Republic of the Philippines
SUPREME COURT
Manila

En Banc

Copy No. ___

LENIDO LUMANOG and AUGUSTO SANTOS,
Petitioners,

- versus –

G.R. No. _____
(CA-G.R. CR HC No. 00667, ABADILLA MURDER CASE)

PEOPLE OF THE PHILIPPINES,
Respondent.

x ----------x

PETITION FOR REVIEW ON *CERTIORARI*[1] AND FOR EXTRAORDINARY LEGAL AND EQUITABLE REMEDIES[2]

PETITIONERS, through counsels, unto this Honorable Court, respectfully state:

I.
PREFATORY STATEMENT

This is an appeal under Rule 45 of the Rules of Court from the Decision of the Court of Appeals (Sixteenth Division) dated April 1, 2008 in CA-G.R. CR-HC No. 00667 entitled "People of the Philippines vs. SPO2 Cesar Fortuna, et al.," This petition likewise seeks extraordinary legal and equitable remedies as well as other "radical relief." A certified copy of the said Decision in question is hereto attached as ***Annex A*** and is hereinafter referred to as the "**CA Decision**" for brevity.

---

[1] Such is the prudent practice (to play safe with procedural technicalities) by the FLAG Death Penalty Task Force in the SC in former death penalty automatic review cases which it transferred to the CA, e.g. in G.R. No. 181119 ("People vs. Arnel Alicando Briones") on appeal from CA-G.R. CEB CR-HC No. 00571.

[2] Following the style of the petitions in *Berina vs. Philippine Maritime Institute* (117 SCRA 581), *Guzman vs. National University* (142 SCRA 699), and *Non vs. Dames* (185 SCRA 523), where herein lead counsel was a counsel for petitioners therein. Herein lead counsel wishes to acknowledge some editorial and formatting assistance from Atty. Plutarco B.. Bawagan, Jr., his former colleague in the Protestant Lawyers League of the Philippines (PLLP).

That CA case was **originally a death penalty case on automatic review with this Honorable Court** (G.R. Nos. 141660-64) where it was pending from February 2000 to January 2005. It was **transferred by this Court to the CA for its intermediate review**, per Resolution dated 18 January 2005, pursuant to the *Mateo* ruling[3] of this Court.

II.
STATEMENT OF MATERIAL DATES

Notice of the said CA Decision was received by herein lead counsel on 18 April 2008. The 15-day reglementary period for a petition under Rule 45 ends on 3 May 2008, a Saturday, thus moving to the next working day, Monday, 5 May 2008, the last day for its filing.

III.
PARTIES

Petitioners **LENIDO LUMANOG** and **AUGUSTO SANTOS** are presently imprisoned at the New Bilibid Prisons in Muntinlupa City where they have been placed since 1999, shortly after judgment of conviction as among the accused in Crim. Cases No. 96-66679 to 84, RTC Branch 103, Quezon City entitled "People of the Philippines vs. SPO2 Cesar Fortuna, et al." They are represented herein by the undersigned counsels.

Respondent **PEOPLE OF THE PHILIPPINES** is represented by the Office of the Solicitor General (OSG) with offices at 134 Amorsolo St., Legaspi Village, Makati City where it may be served processes by this Honorable Court.

---

[3] *People vs. Mateo*, 433 SCRA 640 (2004).

IV.
CONCISE STATEMENT OF THE MATTERS INVOLVED

This is both an appeal as well as an action for extraordinary legal and equitable remedies regarding the aforesaid CA Decision which affirmed the trial court's Joint Decision dated July 30, 1999 in Crim. Case No. 96-66684, RTC Branch 103, Quezon City convicting the five accused-appellants (SPO2 Cesar Fortuna, Rameses de Jesus, Lenido Lumanog, Joel de Jesus, and Augusto Santos) for the murder of ex-Col. Rolando Abadilla (thus they have become known as the "Abadilla 5") and sentencing them with the death penalty. The CA Decision, however, modified the death sentence to "*reclusion perpetua* without the benefit of parole."

The main point of this Petition is to call the urgent attention and action of this Honorable Court to what petitioners believe is a grave failure of appellate review, thus resulting in a grave miscarriage of justice. Simply put, there was no real review at all in the CA. This is largely a question of law, particularly the violation of constitutional as well as international human rights of the herein petitioners and their three other co-accused-appellants ***by*** the CA.

Because of this failure of review, the existing merits of the appeal by the accused-appellants, including the herein petitioners, remain the same. Their various assignments of error presented in their appeal briefs (four in all, including that of herein petitioners) remain just as valid because they were not really passed upon by the CA.

Just the same, this appeal to the Honorable Court will address the merits of the appeal issues as appearing on the face of the CA Decision and

on the *apparent*, but *not real*, discussion therein. The question of guilt or innocence has to do with at least three general areas of appellate discussion:

1. Over-reliance on one alleged eyewitness, security guard Freddie Alejo;
2. Misappreciation of the alibi defenses of the accused-appellants; and
3. Undue disregard of other vital evidence, especially exculpatory forensic/physical evidence as well as offered additional evidence on the Alex Boncayao Brigade (ABB) angle of true responsibility for the Abadilla ambush-killing.

These are not just factual or evidentiary matters but also involve important questions of law on the appreciation of various kinds of evidence as well as on the constitutional and human rights of the accused-appellants, especially as death (though later modified to "*reclusion perpetua* without parole") convicts, to all possible legal means to prove their innocence.

Finally, petitioners must raise a question not only of law but of no less than constitutionality regarding the penalty imposed in the CA Decision, namely "*reclusion perpetua* without the benefit of parole," as well as its basis in Section 3 of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines). A certified copy of the said Act is hereto attached as ***Annex B*** and is hereinafter referred to as the "**R.A. 9346**" for brevity.

For all these reasons of law, equity and justice, petitioners invoke the full measure of the judicial power of this Honorable Supreme Court, to urgently act in order to correct a grave miscarriage of justice in the form of a failure of intermediate review by the CA of an originally death penalty case.

The Honorable Court bears some moral responsibility somehow for having in the first place transferred the case to the CA more than three years ago, although it was already ripe for decision (with appeal briefs in) before the end of five years in this Court. The gravity of this turn of events, especially from the perspective of the "Abadilla 5" and what they have had to endure in terms of various sufferings since their arrests in June 1996 (nearly 12 years now), becomes clearer as petitioners now proceed to discuss in detail the reasons and arguments relied on for the allowance of their petition. The discussion will show that what is at stake here is not only the life and liberty of the "Abadilla 5" but also the integrity and efficacy of the Philippine criminal justice system, particularly its appellate review level.

V.
DISCUSSION

A. The Court of Appeals did not make a real and honest review of the appealed case. There was a failure of appellate review, rendering its decision void.

That **there was no real and honest review of the appealed case transferred by this Court to the CA** is easily established by merely comparing the questioned CA Decision (Annex A) with the OSG's "Consolidated Appellee's Brief" dated May 31, 2004, a copy of which is hereto attached as ***Annex C*** and which is hereinafter referred to as the "**OSG Brief**" for brevity.

First of all, the CA Decision (at pp. 1-2) relies only on the OSG Brief's version of the facts (at its pp. 11-13). But in this, the CA Decision at least properly makes an attribution to the OSG Brief.

More telling is **the CA Decision's wholesale copying *verbatim* (at pp. 8-16) of the Arguments, including quoted testimonial excerpts and jurisprudential citations, in the OSG Brief (at pp. 17-31), but this time without any attribution.** This includes the quoted testimony of the sole eyewitness of the prosecution, Freddie Alejo, in pp. 9-11 of the CA Decision which is the same as that found in pp. 18-22 of the OSG Brief. And this wholesale copied portion constitutes the veritable meat of the CA Decision, including its *ratio decidendi*.

The CA Decision (at pp. 6-8) pays lips service to the Assignment of Errors in the Brief for Accused-Appellants Lenido Lumanog and Augusto Santos (herein petitioners), but does not subsequently refer to any particular argument statements or formulations therein that would show that the CA at least read it. Instead, the CA Decision just relied on the OSG Brief to somehow reflect and address these arguments for the defense.

The CA Decision's statement (at p. 8) that "All the contentions and arguments of the other accused-appellants are incorporated and interrelated with the contentions of appellants Lenido Lumanog and Augusto Santos" is totally unfair to the three other accused-appellants whose counsels prepared their own extensive briefs with their own assignments of error and their own arguments, and which all deserve to be considered judiciously as befits collegial appellate review of an originally death penalty case.

Sad to say, the CA Decision evidently took the path of least resistance of relying on and apparently reading only the OSG Brief but none of the four briefs for accused-appellants. It is no wonder that the CA Decision reads like a prosecution brief which finds everything right and nothing wrong with the prosecution's anchor testimony of security guard Alejo, and everything wrong and nothing right with certain evidence (especially the alibis) for the defense. Notably, the CA Decision does not cover/refute all of the defense evidence, as shall be shown further below.

In fine, there was no real review of the appealed case in the CA, thus, resulting in a failure of appellate review. This Honorable Court had transferred the previously death penalty automatic review case **to the CA for intermediate review but this did not really happen**. **This kind of situation had not been contemplated in the relatively recent 2004 *Mateo* ruling**[4] for intermediate (CA) appellate review of death penalty, *reclusion perpetua* or life imprisonment cases. **What happened in the case at bar should occasion a review of that ruling** since a number of such covered cases have already come back to this Court from the CA. To be included in such a review should be a clarification of any procedural grey areas regarding further and final review in this Court in such *Mateo*-type cases.

The significance and serious nature of the failure of appellate review in the case at bar becomes clearer when we go back to the stated rationale for the *Mateo* ruling:

> If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the [Supreme Court] now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all

[4] Ibid., at 656.

> possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be **overdone**.[5]

In the case at bar, this was not even **underdone** because this was **not done at all**. All told, the CA Decision violated certain constitutional and international human rights of the accused-appellants, including herein petitioners, thus:

- The constitutional general due process clause (Art. III, Sec. 1);
- The constitutional specific due process clause in criminal proceedings (Art. III, Sec. 14[1]);
- The constitutional right to be heard by himself and counsel (Art. III, Sec. 14[2]);
- The international human right to review by a higher tribunal (*International Covenant on Civil and Political Rights [ICCPR]*, Art. 14[5]); and
- The international human right to a competent, independent and impartial tribunal (*ICCPR*, Art. 14[1]).

The last two cited international human rights stated in the *ICCPR* to which the Philippines is a State Party are particularly relevant to the case at bar. The relatively recent (2007) UN Human Rights Committee's General Comment on the right to review by a higher tribunal[6] contains several points pertinent to the case at bar (HRC jurisprudence citations omitted, but boldface type ours):

- The right… imposes on the State party a duty to **review substantively**, both on the basis of sufficiency of evidence and of the law, the conviction and sentence, such that the procedure allows for **due consideration** of the nature of the case.
- The **effectiveness of this right** is also impaired, and article 14, paragraph 5 **violated, if the review by the higher instance court is unduly delayed** in violation of paragraph 3 (c) of the same provision.
- The right of appeal is **of particular importance in death penalty cases**… as in such cases the denial of legal aid for an appeal effectively precludes an **effective review** of the conviction and sentence by the higher instance court.

---

[5] Ibid., at 656; underscoring and emphasis supplied.

[6] Human Rights Committee, General Comment No. 32, on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, particularly "VII. REVIEW BY A HIGHER TRIBUNAL," pp. 14-15. Herein lead counsel wishes to acknowledge the research assistance of Danilo Reyes of the Asian Human Rights Commission in Hong Kong in providing this helpful material.

It is clear that **the appellate review must be effective** or substantive, with due consideration of the merits of the case, especially in death penalty cases. A *pro forma* appellate review which merely goes through the motions, like the one done by the CA in the case at bar, is not a review at all.

Speaking of undue delay in relation to the right to review by a higher tribunal, petitioners already mentioned – and the records will show – the undue delay in the appealed case at bar: five years (February 2000-January 2005) pending automatic review before this Court, and then more than three years (February 2005-April 2008) on intermediate review in the CA, for a total of more than eight years (February 2000-April 2008) on appeal. In those more than three years in the CA, there were at least nine Justices successively assigned to the case. The case records got to the ninth assigned Justice, Agustin S. Dizon, only in December 2007, after the one-year constitutional deadline for deciding this case after submission for decision in the CA[7] had already lapsed on 30 November 2007.[8]

Alarmed by the *rigodon* pattern of Justices assigned to the case in the CA, undersigned lead counsel wrote the CA Presiding Justice Conrado M. Vasquez twice, first on 10 December 2007 (Human Rights Day) and then on 14 February 2008 (Valentine's Day), to ensure that the *rigodon* stops there so that an appellate Decision can finally be had. This is reflected in two quick-action 1st Indorsements by CA Presiding Justice Vasquez on 11

[7] 1987 Constitution, Art. VIII, Sec. 15(1).
[8] Based on the CA G.R. CR-HC No. 00667 Resolution dated November 29, 2006 considering the appeal SUBMITTED for Decision.

December 2007 and on 15 February 2008, copies of which are attached hereto as ***Annexes D and D-1***, respectively.

For the assigned Justice to decide this major murder case with voluminous records within three to four months from the time the records got to him might be welcome in terms of a moved-for early Decision, but it is also of **unbelievable speediness for cases of this sort**. This apparent speed is now explained by the mere copying *verbatim* from the 36-page OSG Brief and without anymore reading the bulkier briefs for the accused-appellants, four briefs totaling 407 pages (without the Annexes), not to mention the other parts of the voluminous records like the transcripts of witness testimonies and formal offers of evidence. Did the assigned Justice do this out of pique from all those Indorsements, including one from the Office of the Chief Justice of this Court on 11 February 2008 (copy attached hereto as ***Annex D-2***) referring to an email from a Ms. Babette Irgmaier presumably from abroad? But the accused-appellants and their supporters should not be begrudged their moves for an early Decision, given the long delay in the resolution of their appeal.

The same aforesaid UN Human Rights Committee General Comment also has this to say on the right to a competent, independent and impartial tribunal[9] that is pertinent to the case at bar (HRC jurisprudence citations omitted, but boldface type ours):

- A situation **where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former** is incompatible with the notion of an independent tribunal.

[9] Human Rights Committee, General Comment No. 32, on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, particularly "III. FAIR AND PUBLIC HEARING BY A COMPETENT, INDEPENDENT AND IMPARTIAL TRIBUNAL," pp. 4-9.

- The requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, **nor act in ways that improperly promote the interests of one of the parties to the detriment of the other**. Second, the tribunal **must also appear to a reasonable observer to be impartial**.

In the case at bar, the CA Decision's wholesale copying *verbatim* of the Arguments in the OSG Brief for the prosecution shows that it (the CA Sixteenth Division) was not a competent, independent and impartial tribunal, "competent" here being used in the colloquial rather than legal sense of the word to mean capable. Just the fact that the supposedly collegial appellate Decision in a major murder case consists merely of 16 pages would already give rise, even without yet reading it, to preliminary doubts about the quality and thoroughness of this Decision.[10] Reading it only confirms those doubts.

To pursue the paper trail further, as it were, it turns out that the meat of the OSG Brief itself (at pp. 18-27) lifts heavily, though at least not *verbatim*, from the Memorandum of the Private Prosecutors (representing the Abadilla family) in the trial court dated July 19, 1999 (at pp. 26-29, 33-34, 43-45) – these pertinent pages, as well as the first and last (p. 50), of the Memorandum are hereto attached as ***Annex E***. Petitioners believe that **this paper trail shows where all the "inspiration" for the Arguments in the OSG Brief and in the CA Decision came from. It appears that one interested private party has been able to effectively influence the government prosecution offices and even the judiciary to improperly promote the interests of that party** to the detriment of the adverse parties, the accused-appellants, including herein petitioners.

---

[10] Compare this, for example, to the 117-page Decision dated March 18, 2008 in CA-G.R. CR HC No. 02091 (*People vs. Jose Villarosa*, et al.), also a major murder case with a former Congressman as the lead accused-appellant in the CA.

The two above-discussed international human rights - to review by a higher tribunal, and to a competent, independent and impartial tribunal – while not expressly stated in the constitutional Bill of Rights should be deemed and declared by this Honorable Supreme Court as incorporated therein, particularly under Article III, Section 14 on due process in criminal cases. Those two international human rights as well as others in the *ICCPR* are of the same nature as the rights in the Bill of Rights, and therefore have constitutional status just like the latter.

They are generally accepted principles of international law that are part of the law of the land, particularly its fundamental law. Note that in the landmark 1949 case of *Kuroda vs. Jalandoni*, this Honorable Court through the venerable Chief Justice Manuel V. Moran had already indicated that there were/are certain "generally accepted principles and policies of international law which are part of our Constitution."[11] Surely, those human rights in the International Bill of Rights are among those principles and policies. **This is, therefore, an excellent opportunity to break new jurisprudential ground.**

For all the foregoing grave reasons, petitioners submit that the CA Decision should be declared void, and not just overturned or reversed, as an extraordinary legal and equitable remedy, or as "radical relief"[12] for grave breaches of the National and International Bill of Rights.

As indicated earlier above, **while the CA Decision listed all twelve (12) Assigned Errors** per the Brief for Accused-Appellants Lenido

---

[11] *Kuroda vs. Jalandoni*, 83 Phil. 171, at 177.
[12] Per *Tatad vs. Sandiganbayan* (159 SCRA 70), *Salonga vs. Cruz Pano* (134 SCRA 438), *Mead vs. Argel* (115 SCRA 256), *Yap vs. Lutero* (105 Phil. 3007), and *People vs. Zulueta* (89 Phil. 890).

Lumanog and Augusto Santos (herein petitioners), **it did not address them all through its copied Arguments from the OSG Brief**. Among these unaddressed errors are:

- Failure of the trial court to properly appreciate the testimony of the other security guard eyewitness, Merlito Herbas, which belies that of Alejo (Assigned Error IV);

- The trial court's ruling that Lumanog's not testifying justifies an inference that he is not innocent and may be regarded as a quasi-confession (Assigned Error VII);

- The trial court's failure to appreciate and co-relate the personal circumstances of the several accused and the circumstances of their arrest which show as unlikely both guilt and conspiracy (Assigned Error IX);

- The trial court's failure to give more weight to physical evidence, particularly the exculpatory ballistics and dactyloscopy (fingerprint) evidence (Assigned Error X); and

- The trial court's denying the accused a last chance to introduce additional evidence on the hitherto undeveloped Alex Boncayao Brigade (ABB) angle of true responsibility for the Abadilla ambush-killing (Assigned Errors XI & XII).

To a large extent, therefore, **the said appellants' brief of herein petitioners still stands and is therefore incorporated into this Petition by way of reference**. In fact, because of the adequacy of petitioners' arguments therein, they did not deem it necessary anymore to interpose a reply brief vis-à-vis the OSG Brief, whether the case was still in this Court or later transferred to the CA. The same for the other defense counsels.

But now that the CA Decision has actually adopted *en toto* the Arguments in the OSG Brief as its own (as shown by no attribution), petitioners shall now proceed, as concisely as they can (given the appellants' briefs still there to refer to), to engage those arguments more head on in the following three sections of this Petition. And after that, a last substantive area of discussion on the unconstitutionality of the penalty meted by the CA Decision. **Petitioners thus deal now with the merits of the CA Decision as though it were valid, but this is without prejudice to our main point**

that it was not a valid or legitimate decision because there was no real or actual appellate review.

B. The affirmation of the conviction over-relies on the testimony of one alleged eyewitness, Freddie Alejo.

In ruling that Freddie Alejo's testimony must be given full faith and credit, the Honorable Court of Appeals unjustly failed to consider the assignment of errors painstakingly explained in the appellants' brief and summarized as follows:

a. The earlier sworn statement made by Freddie Alejo omitted material details which were overly emphasized in his testimony about the two men walking to and fro in front of his guard post prior to the shooting incident;

b. Discrepancies between the sworn statement and the testimony in open court;

Subject	**Narration in Prior Sworn Statement**	**Testimony in Open Court**
Number of Assailants	Four (4)	Six (6)
Assailants who pointed a gun at him	One (1) of the four (4) assailants he saw around the victim's car	Two (2) other persons, not among the four (4) assailants around the victim's car
Reaction when he was ordered to get down by one of the assailants	Nervous and could not move	Not nervous and had the opportunity to see all assailants facing him at the same time.

c. Physical attributes of accused do not match the descriptions made by Freddie Alejo in his sworn statement, rendering him an unreliable witness and casting not just a reasonable but a very serious doubt as to whether the accused are the very same persons Freddie Alejo saw committing the acts complained of, or stated differently, whether Freddie Alejo's cursory pointing to the accused in court can be considered positive identification at all;

d. Incredibility, to the point of being beyond the capability of any human being, of Freddie Alejo's testimony that while one of the assailants was pointing a gun at him, all the other suspects faced him simultaneously from different locations, allowing him to see all the suspects' faces for less than a minute, which became the basis of his identification of the purported assailants;

e. Discrepancies between the sworn statement and the testimony were never explained by the prosecution, seriously eroding Freddie Alejo's credibility as a witness;

f. Freddie Alejo received benefits from the family of the victim, making him a paid witness whose testimony should be scrutinized with the strictest measures to ensure that no one should go punished based on the testimony of a witness who would obey the wishes of those who give him favors for fear of losing the benefits he is receiving; and

g. The acquittal of Lorenzo de los Santos whom Freddie Alejo categorically and unequivocably pointed to as one of the two men he saw walking to and fro in front of his guard post prior to the shooting incident, and as one of the two men who pointed a gun at him and ordered him to get down, totally destroyed Alejo's credibility and eroded the trustworthiness of each and every uncorroborated testimony he gave in court.

Instead of addressing these issues, the CA Decision merely copied the OSG Brief, never bothering to explain why the trial court's determination and ruling should stand despite the errors pointed to and painstakingly discussed by the appellants.

Interestingly, nowhere in the CA Decision does it discuss the supposed positive identification of the accused made by Freddie Alejo despite the serious questions raised by appellants as to the reliability of said positive identification. The CA Decision merely referred to the positive identification in dismissing the defense of alibi put forward by the accused. For an affirmation of conviction for the very serious crime of murder hinged solely on the purported positive identification made by the only witness presented in court, there must be a thorough discussion why the positive identification made by the witness must stand and prevail over other evidences presented in court. More so, when the supposed positive identification is questioned, the reviewing tribunal must endeavor to explain and categorically state that the flaws attributed to the testimony of the single witness has not destroyed the reliability of the positive identification made

by the witness of the supposed criminals. Absent such declaration, it leaves a doubt, a kind that is not just reasonable, but one that disturbs the mind of an ordinary person, whether the persons now languishing in prison for almost twelve years are the very persons who committed the crime complained of.

Each assignment of error begs for a discussion why it should or should not be sustained by the reviewing tribunal. The CA Decision never addressed any of the assigned errors pointing to the flaws in Freddie Alejo's testimony, directly assailing his credibility. Instead, the CA Decision merely states, "Alejo's positive and unequivocal declaration is sufficient to support a conviction for murder against appellants."

How can Alejo's uncorroborated declarations characterized by inconsistencies, discrepancies, material omissions, and incredibility be ever considered sufficient to support conviction?

The CA Decision also pointed out, "there is no showing that he was actuated by improper motive to testify falsely against the accused." An improper motive is not limited to falsely testifying against the accused. It includes, as in the case of Freddie Alejo, a motive to testify falsely to please the family of the victim who has become his benefactors. The Honorable Court of Appeals failed to see this motive tainting Freddie Alejo's testimony which should have prompted the court to scrutinize said testimony more stringently.

When the credibility of the witness is assailed by putting forward facts and circumstances that would materially affect the result of the case, the reviewing tribunal has the duty to scrutinize the findings of the trial court with regards to the questioned credibility of such witness, and categorically

rule why such findings of the trial court must stand or fail. As this Court has ruled in *People vs. Maximo Ramos*:[13]

> Normally, findings of the trial court as to the credibility of witnesses are accorded great weight, even finality, on appeal, **unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case**.

All the assigned errors pertain to facts and circumstances which the trial court has failed to appreciate and which, if taken into account, would materially affect the result of the case. Yet, the Honorable Court of Appeals never bothered to take into account any of these facts and circumstances.

We take solace in the pronouncement of this Honorable Court in the same afore-cited case of *People vs. Maximo Ramos*:

> The constitutional presumption of innocence requires this Court **to take "a more than casual consideration" of every circumstance or doubt favoring the innocence of the accused as courts have imperative duty to "put prosecution evidence under severe testing."**[14]

We believe, and we pin our last hope in the last bastion of justice in this country, that while the CA Decision has failed to **"put prosecution evidence under severe testing,"** this Honorable Court, after passing on the responsibility to the CA more than three years ago, will now perform its pronounced duty **"to take 'a more than casual consideration' of every circumstance or doubt favoring the innocence of the accused"** to guarantee the constitutional presumption of innocence of all the appellants in this case.

C. **The affirmation of the conviction misappreciates the alibi evidence for the defense.**

---

[13] G. R. Nos. 135068-72 September 20, 2001; boldface supplied.
[14] Ibid.

In dismissing the alibi of Augusto Santos, the CA Decision (at p. 13) states, “Augusto Santos claims that he was at the Fabella Hospital in Sta. Cruz Manila, and his alibi was corroborated by his brother-in-law, Jonas Padel Ayhon, who is not an impartial witness. Where nothing supports the alibi except the testimony of a relative, it deserves scant consideration.”

It is not true that there is nothing except the testimony of Jonas Padel Ayhon to support the alibi put forward by Augusto Santos. In fact, documentary evidence were presented to support the testimony of Jonas Ayhon to prove that Augusto Santos was with him on June 13, 1996. The certificate of live birth issued by the Local Civil Registrar showing that Dorothy, the sister of Augusto Santos, gave birth on June 11, 1996 and the medical certificate issued by Dr. Fabella Memorial Hospital showing that, Dorothy was discharged from the hospital on June 13, 1996, corroborates Jonas Ayhon’s testimony that he and appellant Augusto Santos fetched Dorothy from the hospital on that day.

What is disturbing, and what was not ruled upon in the CA Decision, was how the trial court dismissed the defense of Augusto Santos. The lower court, in finding the alibi deficient, never pointed to any factual consideration to prove the such deficiency. Rather, it merely raised questions, based on conjectures, why Augusto had to go first to Buendia before proceeding to Fabella Hospital and why it was Augusto and not any woman who would accompany Jonas to fetch Dorothy from the hospital.

Such manner of dismissing, based on conjectural reasoning, defenses of accused whose life hangs in the balance of justice, deserves the attention of this Honorable Court in line with the constitutional presumption of

innocence of every person accused with a crime. Every evidence presented by an accused must be overcome by an equal weight of evidence before it can be disregarded. The court cannot simply rely on conjectural reasoning in dismissing the only defense that might be available to an accused.

In the case of Augusto Santos, he has presented his whereabouts on the time and date when the complained crime happened. There can be no other way, except if he lies in court, that he can establish his presence in Fabella Hospital on that day, except through the testimony of the only person who was his companion in fetching his sister, and through the documentary evidence, namely, the certificate of live birth and the medical certificate issued by the hospital. To dismiss such evidence by merely raising questions why he had first to go to Buendia and why it was not a woman who had to fetch Dorothy from the hospital would be to disregard the principle that evidence must be rebutted by another evidence, and not by conjectural reasoning.

Similarly, for appellant Leonido Lumanog, his alibi that he was in Mabalacat, Pampanga, treasure hunting on the eve of June 12, 1996 and helping out in the preparations for the golden wedding of his in-laws, was dismissed, not based on contrary evidence presented by the prosecution, but by conjectural reasoning by the lower court.

It might interest this Honorable Court to note that the CA Decision erred in ruling that the testimony of appellant Lumanog “that they were treasure hunting in Mabalacat, Pampanga on the day in question, lack credence as they are unsupported by the testimonies of independent witnesses.” Appellant Lumanog never testified in court. If this is any

indication of the kind of review that the CA Decision performed on this celebrated case of murder, how can appellants expect that their rights are accorded importance by the tribunal upon whose responsibility their fate and freedom is lodged?

Ruling on the impossibility of Leonido Lumanog being at the crime scene, the Honorable Court of Appeals stated, “At any rate, Rameses de Jesus admitted that they were using the new car of Leonido Lumanog. Hence, it was not physically impossible for them to travel to Quezon City via the North Expressway at the time the crime took place.”

Ruling that “it was not physically impossible for them to travel to Quezon City” just because “they were using the new car of Leonido Lumanog” is just like saying that anyone who has a car and who gets implicated in the commission of the crime, must, perforce be, the criminal because the suspect has the means to be at the crime scene.

Again, clear and convincing evidence presented by the prosecution must be pointed to by the deciding tribunal in ruling that the accused were at the scene of the crime and nowhere else when the crime was committed. The court cannot simply say that it was impossible for the accused to be at the crime scene without any direct and clear evidence.

In this case, the only evidence presented by the prosecution is the testimony of the alleged eyewitness. When the supposed positive identification made by the only witness presented in court, upon which the conviction of the appellants is based, is questionable because of inconsistencies, discrepancies, material omissions, unreliability, incredibility, and biased for the family of the victim who has paid the

witness, then no evidence is left upon which to anchor the conviction. When the evidence of the prosecution is weak, the defense of alibi either gains strength or is not needed at all to find for an acquittal based on reasonable doubt. And even if the alibi is weak, it does not strengthen the case of the prosecution any bit to favor conviction.

In *People vs. Primitivo Salas, et al.,*[15] this Honorable Court ruled:

> Suffice it to state that alibi, although generally regarded as the weakest of all defenses in a criminal prosecution, assumes considerable importance and gains commensurate strength in the face of unreliable and unsatisfactory evidence of the identification of an accused as the author of the crime charged. Furthermore, the *onus probandi* rests on the prosecution, and such *onus* remains with the prosecution throughout the trial, notwithstanding the weakness of the defense.

Thus, while the alibis of the accused may be weak, it does not take away the duty of the prosecution to establish beyond reasonable doubt, the guilt of all the appellants. As inscribed in the words of Justice J. B. L. Reyes,

> The rule of alibi, that it must be satisfactorily proven, was never intended to change the burden of proof in criminal cases, otherwise, we still see the absurdity of an accused being put in a more difficult position, where the prosecution's evidence is vague and weak than where it is strong.[16]

In the more recent above-cited case of *People vs. Maximo Ramos,* this Honorable Court also ratiocinated:

> As a rule, alibis should be regarded with suspicion and received with caution, not only because they are inherently weak and unreliable, but also because they can be easily fabricated. But equally fundamental is the axiom that evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the defense. A conviction in a criminal case must rest on nothing less than proof beyond reasonable doubt. The prosecution cannot use the weakness of the defense to enhance its cause. And, where the prosecution's evidence is weak or just equally tenuous, alibis need not be inquired into.[17]

---

[15] G.R. No. L-35946, August 7, 1975.
[16] *People vs. Fraga et al.*, No. I-12005; *People vs. Williams*, G.R. No. L-46890, November 29, 1977.

[17] G. R. Nos. 135068-72 September 20, 2001.

In the light of the foregoing rulings on the subject of alibi, it might be wise for this Court to examine the way trial courts dismiss the defense of alibi based on the requirement that the accused must be able to establish that it is impossible for him to be at the crime scene. The possibility of being at the crime scene must be based on positive evidence and not merely on conjectural reasoning by the court.

If it is the accused who must establish the impossibility of being in the crime scene, the burden of proving one's innocence becomes greater when the court can simply dismiss alibi on mere conjectural grounds. This practice goes against the constitutional presumption of innocence.

While the CA Decision, copying *verbatim* from the OSG Brief, devoted much space to impugning the alibi defenses of the accused-appellants, these defenses are not the only, nor even the most persuasive, exculpatory evidence or offered evidence in their favor. We proceed now to deal with this issue.

D. The affirmation of conviction gravely erred when it unduly disregarded other pieces of vital evidence.

In the CA Decision's over-reliance on one alleged eyewitness, security guard Freddie Alejo, it has also unduly disregarded other vital evidence, not only the misappreciated alibi defenses of the accused-appellants. For one, as already discussed in section B above, the CA Decision had nothing to say about the assigned error of the trial court's

failure to properly appreciate the testimony of the other security guard eyewitness, Merlito Herbas, which belies that of Alejo's.

The only other evidence for the defense which the CA Decision (at p. 14) says something about is **the ballistics evidence**:

> … neither was their claim that the results of the ballistics test purportedly showing that the bullets and bullet shells found in the crime scene did not match with any of the firearms in their possession. But these ballistics results are inconclusive and can never prevail over appellants' positive identification by eyewitness Freddie Alejo as the persons who perpetrated the ambush-slay of Col. Abadilla. Besides, there is no showing that the firearms supposedly found in appellants' possession long after the incident were the ones they used in the ambush-slay.

This pronouncement totally misses the point on two levels. First, on the level of the value of ballistics evidence in general. And second, on the level of the particular significance of the ballistics evidence in the case at bar. On the first level, the CA decision shows an erroneous valuation of ballistics evidence – "inconclusive and can never prevail over… positive identification…" Never? This is astounding to hear from a superior court in this day and age of "CSI."[18] This Honorable Court, in *People vs. Bardaje*,[19] had already pronounced "physical evidence is of the highest order. It speaks more eloquently than a hundred witnesses." Physical evidence is usually more reliable because it basically speaks for itself (*res ipsa loquitor*) – it cannot be coached what to say; neither can it lose or change its memory. Coupled with expert evidence, then such evidence is as good as it gets.

And ballistics evidence is certainly among the most reliable, if not the most reliable, of physical evidence in cases involving gunshots like the case at bar. Particular note can be taken of one outstanding firearms

[18] The title of a currently popular TV series on "Crime Scene Investigation" through the thorough gathering and rigorous analysis of forensic evidence.
[19] 99 SCRA 399.

identification case in the Philippines, the Honorable Court's *per curiam* decision in the Timbol brothers case[20] where it referred to "certain elementary principles of ballistics" and used the word "***conclusively***" several times to describe the results of the ballistics examination therein.

We now proceed to quote from two authoritative books on ballistics, one foreign and one local, from the library of PNP Crime Laboratory Firearms Identification Division Chief Reynaldo Dimalanta de Guzman, whose expert witness testimony in the case at bar was erroneously devalued by the trial court. From the classic textbook by Hatcher ("one of the truly great Firearms men of all time"), Jury and Weller:

> The place of the Firearms Identification Expert is now firmly established in this country and abroad. His work has become routine in police investigation. His evidence is accepted without question in courts. Science has come to the aid of Justice to an astonishing degree. Dramatic cases of the apprehension and conviction of criminals by firearms evidence are more frequent than the public realizes. However, those who have given their minds and so much of their lives to the development of this science take *even more satisfaction from the cases where they have prevented the trial and conviction of innocent men for crimes they did not commit.*[21]

And from the definitive local textbook by the long-time former Chief of Ballistics of the NBI, Domingo R. del Rosario:

> THE FINAL IDENTIFICATION OF A FATAL GUN IS, AS IN ALL FIELDS OF IDENTIFICATION, BASED NOT ON A FEW MARKINGS, BUT ON A PATTERN OF MARKINGS OR A COMBINATION OF THESE MARKINGS... Some of their characteristics are given at "birth" (the tool markings) and others develop during its lifetime. However, the combination of these two will be evidenced in the markings it will imprint on bullets and cartridge cases when fired. *These markings are the "signature" of this particular gun and no other.* If God in all His infinite Greatness did not see fit to make any two things absolutely identical, how can we then as ordinary people hope to attempt to do so?[22]

---

[20] *People vs. Timbol* (G.R. No. 47471-47473, 1943), reprinted in *The Lawyers Journal*, March 31, 1946, p. 109.

[21] Major General Julian S. Hatcher, Lieutenant Colonel Frank J. Jury and Jac Weller, *Firearms Investigation Identification and Evidence* (1957) 1; italics supplied.

[22] Domingo R. Del Rosario, *Forensic Ballistics* (3rd ed, 1996), 68; italics supplied.

Now, we go to the second level where the CA Decision totally misses a point, that of the particular significance of the ballistics evidence in the case at bar. The CA Decision speaks only about "the ballistics test purportedly showing that the bullets and bullet shells found in the crime scene did not match with any of the firearms in their possession… there is no showing that the firearms supposedly found in appellants' possession long after the incident were the ones they used in the ambush-slay." Here, there is already an indication of the innocence of the accused-appellants, but the CA Decision chose to speculate otherwise (that they ambush-slayed Abadilla and that they used other guns), showing its prosecution bias at the expense of the accused-appellants' constitutional and human right to presumption of innocence.[23]

But even that ("that the bullets and bullet shells found in the crime scene did not match with any of the firearms in their possession") is not the most important exculpatory ballistics evidence for the accused-appellants. More significant, and completely missed by both the trial court decision and the CA Decision (copied from the OSG Brief), are the conclusions of several ballistics reports that the fired bullets and cartridge cases in the Abadilla murder "were fired from one and the same firearm" in the killings of Leonardo Ty, Nestor Encarnacion and Suseso de Dios, as shown by accused Cesar Fortuna's Exhibits "2" to "4", "71" to "75" and derivative exhibits under his Formal Offer of Evidence dated April 19, 1999 at the trial court level.

---

[23] 1987 Constitution, Art. III, Sec. 14 (2); and *ICCPR*, Art. 14 (2).

The trial court, and more so the CA in its Decision even though this was pointed out in the Brief for Accused-Appellants Lenido Lumanog and Augusto Santos (at pp. 113-14), also failed to note and pursue the relevant angle on this indicated in accused Fortuna's formal offer of Exhibit "71", which was stated in p.12 (RTC record, p. 96 of one folder) as follows:

> Exh. 71 - Memorandum dated June 24, 1996 requesting ballistics examination of the submitted specimen firearm to determine if the same was used in the ambush in the killing of several personalities *by members of the ABB*. (italics supplied)
>
> (Purpose) – Offered to prove the propriety and regularity of the ballistics examination conducted by the witness on the subject firearm suspected to be the one used in the ambush of several personalities *by members of the ABB*. Likewise offered as part of the testimony of the witness [de Guzman]. (italics supplied)

Parenthetically, it must be noted that, despite the implications of the ballistics evidence, the accused-appellants were never charged or even investigated for the killings of Ty, Encarnacion and de Dios. Their "role" it seems was only to be charged for the Abadilla murder.

As for the Alex Boncayao Brigade (ABB) angle of true responsibility for this murder, this is important as additional evidence to establish the innocence of all the accused, none of whom are ABB members. It is this angle which completes the essential truth and ties together the loose ends about the Abadilla murder: the accused-appellants are innocent not only because they were not at the scene of the crime (alibi) and they did not commit it (denial) but also because somebody else committed it (the ABB, of which they are not part).

There is evidence as well as (pr)offered evidence on the ABB angle in the record of the case at bar that, unfortunately, has not been given by the trial and by appellate courts the attention that it deserves. Petitioners submit that it is never too late for this, at least while this case is still under review, at

the highest and final judicial level. For now, **perhaps the best summation of the said available evidence on the ABB angle is found in the "Motion for New Trial and Related Relief[24]" dated/filed 26 April 2002 [and its Annexes of Exhs. "A" to "L", including derivative exhibits] when this case was first brought on automatic review before this Court (G.R. No. 141660-64)**, and which petitioners incorporate herein by reference. That motion was denied by this Honorable Court then but should be given a second look by it now that this case is up for final review.

Just the same, it would be good to preliminarily (for this final review) list here, for the attention of this Honorable Court and its new members, the **admitted as well as (pr)offered evidence on the ABB angle in this case**:

- **Ballistics evidence** showing a match between pistols used in the Abadilla killing and in other acknowledged ABB killings (e.g. those of Leonardo Ty and Suseso de Dios), along with the **ballistics expert testimony** of PNP Crime Laboratory Firearms Identification Division Chief Reynaldo Dimalanta de Guzman;

- The **Omega wrist watch taken by the ambush-slayers of Abadilla** and turned over by an unidentified ABB personality (thus reaffirming ABB responsibility) to Fr. Roberto P. Reyes with his initial testimony and later affidavit on this;

- The **ABB's own early media statements** and interviews in June 1996 claiming responsibility for and explaining the Abadilla killing;

- **Official written statements of two later factions from the split ABB** reiterating responsibility for the Abadilla killing and exonerating the "Abadilla 5," namely the press statements of the Revolutionary Proletarian Army-Alex Boncayao Brigade (RPA-ABB) dated 26 December 1999 and of the Partido ng Manggagawang Pilipino (PMP) dated June 13, 2001, both authenticated by investigative journalist Earl G. Parreno with an Affidavit;

- **National Amnesty Commission (NAC) Resolution** dated 27 May 1999 in favor of former ABB operative Wilfredo Batongbakal indicating the ABB plan or intention to kill Abadilla which partly resulted in the mistaken killing of Suseso de Dios outside the La Vista gate (where Abadilla would usually pass coming from his Loyola Grand Villas residence), as well as the ABB killings of police officers Timoteo Zarcal and Jose Pring;

---

[24] Related relief here referred, among others, to that provided under Rule 121 (New Trial or Reconsideration), Sec. 6, which speaks not only of newly-discovered evidence but also "such other [or additional] evidence as the court may, in the interest of justice, allow to be introduced." The trial court had applied strictly the "newly-discovered" requirement or qualification, resulting in the non-admission of offered additional (not necessarily "newly-discovered") evidence on the ABB angle.

- **Sinumpaang Salaysay (Sworn Statement) of Wilfredo Batongbakal** dated 25 February 1997 (given to the Intelligence Service, Armed Forces of the Philippines shortly after his capture as an ABB operative) to the same effect as stated immediately above, with a cover letter from then ISAFP Chief Lt. Gen. Jose M. Calimlim;

- **Philippine Army (PA) Press Statement** on "Army Nabs Top ABB Personality' issued by PA Commanding General Lt. Gen. Clemente P. Mariano attributing to the ABB the killings of Abadilla, business tycoon Leonardo Ty, police officers Timoteo Zarcal and Jose Pring, and US Army Col. James Rowe of JUSMAG;[25]

- **Affidavit of Marvin Matibag Serrano** dated 19 June 1996 (six days after the Abadilla killing), taken by the police, implicating one Imelda Vicario (a known ABB operative) in a plan to kill Abadilla, as supporting paper for an arrest and search warrant application in another case;

- **Several police certifications about the recovery and turn-over of a specifically described .45 caliber pistol from an encounter with armed RPA-ABB elements** in Rodriguez, Rizal on 31 March 1998, this pistol believed to be that of Abadilla which was taken from him during his ambush-slaying, which should be verifiable by anyone closely familiar with Abadilla's personal pistol; and

- **Sinumpaang Salaysay of the "Abadilla 5"** dated 7 March 2002 denying any involvement in the ABB.

Speaking of the killing of business tycoon Leonardo Ty, the CA decision last year on this, affirming the trial court's judgment of conviction, indicates its own ABB angle by noting that the killers of Ty shouted "*Mabuhay ang ABB!*" right after ambush-slaying him in his car with pistol fire while it was stalled in traffic in December 1995,[26] exactly the same as the *modus operandi* in the Abadilla killing in June 1996.

In addition to these pieces of evidence on the ABB angle, some of which are physical and/or forensic evidence (like the first, second and penultimate ones listed above), there is still one more significant forensic evidence to note in the record of the case at bar: the **dactyloscopy (fingerprint) evidence**. The trial court disregarded, while the CA Decision did not even mention, the dactyloscopy reports finding no match between

---

[25] The latter's murder was the subject of the Supreme Court Decision in *People vs. Continente and Itaas* (G.R. Nos. 100801-02, August 25, 2000), where for the first time there is judicial notice of the ABB.

[26] *People vs. Ruperto Lopez, Jr. and Orlando Bondalian, Jr.*, CA-G.R. CR HC No. 01734, October 30, 2007, at p. 4.

the fingerprint samples lifted from the victim's car and the recovered get-away car with blood stains. The blood stains indicate that the suspect who grabbed the victim by the neck, and thus the only one whose hands could have been bloodied, had left fingerprint marks on the get-away car. None of the fingerprint marks lifted from this car matched any of the fingerprints of any of the accused-appellants. This alone is already a strong indication of their innocence.

Recall that last year's Final Alston Report on Extrajudicial Executions in the Philippines observed, among others, that limited forensic resources or use of physical evidence had led to police over-reliance on dubious witness testimony.[27] Come to think of it, the Abadilla killing was itself an "extrajudicial execution" long before this terminology became current.

Finally, in terms of other vital evidence disregarded or overlooked, both by the trial court and by the CA, there is also the significant **circumstantial evidence** in the personal circumstances of the accused-appellants and in the circumstances of their arrests which show as unlikely both guilt and conspiracy. This is a classic case of rounding up the usual suspects (some admittedly with criminal records) in a chosen area (Fairview district in Quezon City). But the "Abadilla 5" were a disparate and motley group of unlikely conspirators – no mastermind, no motive, and no capability (unlike the ABB on all three counts) for the urban guerrilla-style assassination of a dreaded former Constabulary Colonel and Marcos martial law enforcer (but some of the accused did not even know who he was or

[27] Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, on his Mission to the Philippines (12-21 February 2007), para. 55, the final report being released in November 2007.

what he represented). There were even serious inter-personal rifts involving criminal charges and counter-charges between Joel de Jesus, on one hand, and Lorenzo de los Santos (later acquitted by the trial court) and his nephew Augusto Santos, on the other. Look too at the **personal circumstances of the "Abadilla 5"** at the time of their arrests in June 1996:

1. **Lenido Lumanog** – a businessman who ran a security agency (dealing a lot with persons of military and police background) and once ran for councilor of Fairview (with the support of military personalities and Guardians Brotherhood leaders like Sen. Gringo Honasan and Col. Billy Bibit);

2. **SPO2 Cesar Fortuna** – a Cebuano police officer of the Traffic Management Command in Cagayan de Oro City sent on an official mission to Manila and renting accommodations from Rameses de Jesus in Fairview;

3. **Rameses de Jesus** – engaged in a buy and sell business, also based in Fairview, a business associate of Lumanog;

4. **Joel de Jesus** – a tricycle driver in Fairview; and

5. **Augusto Santos** -- engaged in odd jobs such as construction worker in Fairview.

The **circumstances of their arrests** in the Fairview area within a week or so after the Abadilla killing in June 1996 do not indicate guilt, flight or "prudently" hiding or cooling off elsewhere at the height of a high-profile police manhunt for the Abadilla killers, if they were really that. These circumstances are recounted, among others, in the Brief for Accused-Appellants Lenido Lumanog and Augusto Santos (at pp. 16-20) and are just referred to here, without recounting them again, for brevity.

To round out this last section of petitioners' arguments, on the CA Decision's undue disregard of other vital evidence, it must be brought to the attention of this Honorable Court that their attempts to introduce additional evidence on the ABB angle had been rebuffed on several levels already:

1. **At the trial court level (Crim. Case No. 96-66684)** -- during the reconsideration stage after judgment of conviction and before elevation to the SC on automatic review;

2. **At the SC level (G.R. No. 142065)** – on Petition for Certiorari (Rule 65), eventually resulting in a Decision of dismissal, *Lumanog vs. Salazar, Jr.* (354 SCRA 719);

3. **At the SC level (G.R. No. 141660-64)** – on automatic review, a "Motion for New Trial and Related Relief" dated/filed 26 April 2002 was denied; but the automatic review was not resolved because it was transferred to the CA; and

4. **At the CA level (CA-G.R. CR HC No. 00667)** – on intermediate review which affirmed the trial court's judgment of conviction, without really reviewing it on appeal.

At all these several levels, the accused-appellants called the attention of the courts concerned to a number of rules and rulings of this Court for liberality in securing to every individual all possible legal means to prove his innocence of a crime of which he is charged and convicted especially when the penalty imposed is death. Seven or so rulings are recapitulated in the Brief for Accused-Appellants Lenido Lumanog and Augusto Santos (at pp. 126-128): *People vs. Del Mundo* (262 SCRA 266, 273); *People vs. Marivic Genosa* (G.R. No. 135981, September 29, 2000, at pp. 11, 14); *People vs. Ernesto Ebias* (G.R. No. 127130, October 12, 2000); *People vs. Gallo* (315 SCRA 461); *People vs. Alipayo* (324 SCRA 447, 465); *People vs. Villaruel* (261 SCRA 386); and *People vs. Parazo* (G.R. No. 121176, July 8, 1999).

Even the *Mateo* ruling, which brought the case at bar to the CA, expressed much the spirit of those rulings: "If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed… Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone."[28]

[28] *People vs. Mateo*, 433 SCRA 640, at 656 (2004).

The CA Decision itself (at p. 14), though still copying from the OSG Brief (at p. 27), cites a relevant Filipino language ruling by this Court in *Draculan vs. Donato*[29] from which there is this passage:

> Ang tunay na layunin ng mga tadhanang iyon [sa Bill of Rights] ng Saligang Batas ay walang iba kundi tiyakin na sinumang nalilitis ay magkaroon ng sapat na pagkakataon at paraan na maipagtanggol ang sarili… (Our free translation: "The true purpose of those mandates [in the Bill of Rights] of the Constitution is none other than to ensure that anyone under trial has adequate opportunity and means to defend himself…")

It is ironic and unfortunate that the CA Decision failed to live up to these two rulings which are supposed to be part of its terms of reference in the case at bar, but which it has turned into dead-letter case law of this Court. It is now left to this Honorable Court to infuse life back into the spirit, if not letter, of these rulings, as applicable to the case at bar.

A final note now on one particular aspect of other vital evidence as seen in the case at bar but also obtaining in an increasing number of serious criminal cases. This is **the issue of admitting and appreciating evidence coming from underground revolutionary forces** (like the ABB) which claim responsibility for their political killings, especially where these could help exonerate innocent accused. It would be a pity if they cannot avail of that truth which shall set them free. It would be a pity if this was to be denied them because supposedly barred by "obsolete and Jurassic doctrines" like "positive identification by a lone witness"[30] and even by the hearsay rule.

---

[29] 85 SCRA 267 (1978).

[30] Rodolfo Dimasalang, "Abandon obsolete, unfair 'lone witness' doctrine" (letter to the editor), *Philippine Daily Inquirer*, 30 April 2008, p. A16. See also Solita Collas-Monsod, "Mangled principles of law," *Philippine Daily Inquirer*, 19 April 2008, p. A12, where she touches particularly on the herein CA Decision as reported in the news to highlight that "the eyewitness-carries-more weight principle is increasingly under fire in the United States and England because studies have found that eyewitness evidence is the leading cause of wrongful convictions."

One recent big murder case in the CA where statements pointing to and admitting New People's Army (NPA) responsibility were so easily dismissed as hearsay ("and cannot prevail over the positive testimonies of the prosecution's eyewitnesses") is the Congressman Villarosa case for the killing of the Quintos brothers.[31]

"There must be a way to receive, test/cross-check and appreciate various forms of evidence that underground rebel sources who cannot come out might proffer in relation to extrajudicial killings and enforced disappearances which they have had a hand in or have intimate knowledge of, if only to spare the innocent from false charges/fabricated cases."[32] The constitutional basis for the new writs of *Amparo* and *Habeas Data* is also relevant to the particular matter we just raised: the Supreme Court's power to promulgate rules concerning the protection and enforcement of constitutional rights.[33]

The same constitutional power of this Honorable Court to promulgate rules covers pleadings, practice and procedure in all courts.[34] Given what happened - undue delay only to end up in a Decision with no real appellate review - in the case at bar as a result of its transfer from this Court to the CA pursuant to the *Mateo* ruling, there may be a need to review that ruling as well as clarify any procedural grey areas regarding further and final review from the CA to this Court in such *Mateo*-type cases which were previously pending automatic review before this Court.

---

[31] *People vs. Jose Villarosa*, et al., CA-G.R. CR HC No. 02091, March 18, 2008, Decision, at p. 100.
[32] Atty. Soliman M. Santos, Jr., letter to Chief Justice Reynato S. Puno, Re: "National Consultative Summit on Extrajudicial Killings and Enforced Disappearances – Searching for Solutions," dated 07-07-07 from Naga City.
[33] 1987 Constitution, Art. VIII, Sec. 5 (5).
[34] Ibid.

E. The penalty imposed by the Court of Appeals is unconstitutional. [35]

The CA Decision (at p. 16) modified only the death penalty previously imposed by the trial court on the "Abadilla 5" by instead meting them "*reclusion perpetua* without the benefit of parole." It premised this in this way: "In the instant case, since the law does not allow anymore the imposition of death penalty which had been abolished, the decision of the trial court has to be modified." In fact, this is the only paragraph, the last one in the discussion of issues and arguments (pp. 8-16) before the dispositive portion of the CA Decision, which was original in the sense that it was *not copied* from the OSG Brief.

Though not stated, this is apparently based on Section 3 of Republic Act (R.A.) No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) which reads: "Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended."

The "*reclusion perpetua* without the benefit of parole" penalty meted out in the CA Decision, if not also Section 3 of R.A. No. 9346, is unconstitutional. First of all, the Constitution, in Article III, Section 19(1), third sentence, in the context of non-imposition of the death penalty,

[35] The idea for raising this issue comes from Maria Socorro I. Diokno, Secretary-General, Free Legal Assistance Group (FLAG), but the arguments which follow are those of the herein counsels for petitioners. It will be recalled in that in their original Brief for Accused-Appellants Lenido Lumanog and Augusto Santos dated 1 October 2003, the very first Assigned Error raised was on the imposition of an unconstitutional penalty, the death penalty. The three other briefs for accused-appellants did not raise this issue. At any rate, the issue was still unresolved when it was overtaken by R.A. 9346 prohibiting the imposition of the death penalty.

provides that **"Any death penalty already imposed shall be reduced to *reclusion perpetua*." There is no mention of "without the benefit of parole"** or "shall not be eligible for parole." Neither the courts nor Congress should be beyond the Constitution, particularly on a Bill of Rights penal matter like this.

Secondly, the questioned penalty and provision are **encroachments or dilutions of the President's broad, if not near absolute, constitutional power of executive clemency**, based not only on the Constitution's Article VII, Section 19 but also on constitutional tradition and jurisprudence. Although the said section does not explicitly mention "parole" as a form of executive clemency, constitutional tradition and jurisprudence indicate it to be. In the case of *Tesoro vs. Director of Prisons*,[36] the Supreme Court held:

> **The power to pardon given the President by the Constitution**, upon such conditions and with such restrictions as he may deem proper to impose, **includes the power to grant and revoke paroles**. If the omission of the power of parole in the Constitution is to be construed as a denial thereof to the President, the effect would be to discharge unconditionally parolees, who, before the adoption of the Constitution, have been released conditionally be the Chief Executive. That such effect was never intended by the Constitutional Convention is obviously beyond question.

In fact, in the 1987 Constitution, Article IX-C, Section 5, parole is explicitly mentioned along with pardon, amnesty and suspension of sentence as among what the President may grant, with the favorable recommendation of the Commission on Elections, for violations of election laws, rules and regulations. In other words, parole is really in the arsenal of the President's power of executive clemency; this is not just limited to election violation cases. Parole is clearly an executive matter or prerogative (we will not use

---

[36] 688 Phil. 154 (1939); bold face supplied.

the term "executive privilege"), as pointed out by constitutional-political law authority and former Supreme Court Justice Isagani A. Cruz.[37] And of course, "The executive power shall be vested in the President of the Philippines,"[38] and in "no other."[39]

Thirdly, the aforesaid questioned penalty and provision inflicts **an inhuman punishment** which is constitutionally prohibited.[40] Inhuman not in the sense of direct physical suffering in the execution of the penalty but in the sense of going against the grain of redeeming humanity and of holding out hope, that one has the chance of being graced with executive clemency in whatever form, of being released after a minimum sentence has been served with good conduct. In fact, this is supposed to be the purpose of the Indeterminate Sentence Law: "to uplift and redeem valuable human material and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness."[41]

Fourthly and finally, the questioned penalty and provision **violate the equal protection clause** of the Bill of Rights.[42] They do not meet at least two requisites of reasonable classification: (1) must rest on substantial distinctions; and (2) must be germane to the purpose of the law. It does not appear that persons whose sentences have been reduced from death to *reclusion perpetua* are substantially distinct from other convicted prisoners who may avail of parole. The exclusion of the former from parole is not germane to, and in fact defeats, the above-stated purpose of the law.

---

[37] Isagani A. Cruz, *Philippine Political Law* (Quezon City: Central Lawbook Publishing Co., Inc., 1982) 163.
[38] 1987 Constitution, Art. VII, Sec. 1.
[39] *Villena vs. Secretary of Interior*, 67 Phil. 451, at 464 (1939).
[40] 1987 Constitution, Art. III, Sec. 19 (1).
[41] *People vs. Ducosin*, 59 Phil. 109.
[42] 1987 Constitution, Art. III, Sec. 1.

VI.
CLOSING ARGUMENTS:
THE ROLE OF TORTURE

In closing, something must be said about what the CA Decision (at pp. 13-14), copying *verbatim* from the OSG Brief (at pp. 26-28), says about the extra-judicial confessions of some of the accused extracted by torture:

> Further, appellants' allegations that the police authorities maltreated them, and forcibly extracted their extra-judicial confessions do not exculpate them from criminal liability. For one, their conviction was not based on their extra-judicial confessions, but on their positive identification by Freddie Alejo as authors of the crime… For another, the Constitutional guarantees contained in the Bill of Rights cannot be used as a shield whereby a person guilty of a crime may escape punishment…. To repeat, assuming that appellants' allegations of torture were true, the same do not exculpate them from liability for the crime which the People had adequately established by independent evidence…

Let us say that that is the case – "their conviction was not based on their extra-judicial confessions, but on their positive identification by Freddie Alejo." Still, the torture and other constitutional and human rights violations used to extract those confessions are not to be simply swept aside or put under the rug, as it were. Instead of upholding the Constitutional guarantees in the Bill of Rights as a matter of "valu(ing) the dignity of every human person and guarantee(ing) full respect for human rights,"[43] the CA (16th Division)/OSG would rather emphasize that they "cannot be used as a shield whereby a person guilty of a crime may escape punishment." That is clearly indicative of a prosecution mindset on human rights.

Certain consequences, including entitlements, arise from such constitutional and human rights violations, apart from the exclusionary rule

---

[43] Ibid., Art. II, Sec. 11.

on the evidence obtained through these violations.[44] Among others, there should be penal and civil sanctions for such violations as well as compensation to and rehabilitation of victims of torture and similar practices, and even their families.[45]

Violations of related constitutional rights were likewise a ground for acquittal or dismissal in other cases. In one case, the long delay in the termination of the preliminary investigation was found to be violative of the constitutional rights of the accused to procedural due process and to speedy disposition of cases, the latter under the Constitution's Article III, Section 16. Accordingly, the case was **DISMISSED by the Supreme Court, as a matter of "radical relief:"** **"**In a number of cases, this Court has not hesitated to grant the so-called 'radical relief' and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights."[46]

With more reason should radical relief be granted in the case at bar where there have been graver and multiple violations of constitutional and human rights of the accused from their warrantless (stated otherwise, unwarranted) arrests up to the trial court's judgment of conviction itself and, as we have shown, up to the latest case development subject of this Petition, the CA Decision itself. The "Abadilla 5" and several other suspects who were arrested but later released or acquitted (like Arturo Napolitano and Lorenzo de los Santos, uncle of Augusto Santos) suffered "the works:"

---

[44] Ibid., Art. III, Sec. 12 (3).
[45] Ibid., Art. III, Sec. 12 (4).
[46] *Tatad vs. Sandiganbayan* (159 SCRA 70), citing *Salonga vs. Cruz Pano* (134 SCRA 438), *Mean vs. Argel* (115 SCRA 256), *Yap vs. Lutero* (105 Phil. 3007) and *People vs. Zulueta* (89 Phil. 880).

warrantless arrests,[47] violation of the Miranda rule,[48] arbitrary detention,[49] secret detention,[50] torture,[51] uncounselled statements,[52] coerced confessions,[53] as the four briefs for accused-appellants show.[54]

Even more telling than these briefs are the physical, photographic, medical and expert evidence to that effect (see especially accused Fortuna's Exhibits "5" to "9", "58", "61" to "66", "79" and "82" under his Formal Offer of Evidence dated April 19, 1999). Only one with "eyes wide shut" will fail to see the "third degree" (if there was a higher degree number, we would use it) from which the accused "graduated" from what was literally a four-day (instead of four-year) University of (literally) *Hard Knocks*.

The accused-appellants and their relatives filed, at the first opportunity, complaints for torture and other human rights violations (e.g. unlawful arrest, arbitrary detention, physical injuries, etc.) against the arresting and detaining police officers before the Commission on Human Rights in June 1996 (see e.g. accused Fortuna's Exhs. "65" & "66"). But to make a really long story short, the consolidated complaint against the police officers is currently, believe it or not, "*still pending preliminary investigation*," according to the Office of the Ombudsman (in OMB-P-C-04-1269/CPL-C-04-1965) [see ***Annex F*** – copy of a letter from the Office of the Ombudsman to Atty. Soliman M. Santos, Jr. dated 16 July 2007].

---

[47] 1987 Constitution, Art. III, Sec. 2; and Rules of Court, Rule 113, Sec. 5.
[48] 1987 Constitution, Art. III, Sec. 12(1).
[49] *International Covenant of Civil and Political Rights*, Art. 9(1); and Revised Penal Code, Art. 124.
[50] 1987 Constitution, Art. III, Sec. 12(2).
[51] Ibid.; and *ICCPR*, Art. 7.
[52] 1987 Constitution, Art. III, Sec. 12(1) & (3).
[53] 1987 Constitution, Art. III, Sec. 12(2) & (3).
[54] See e.g. the relevant discussion of Assigned Errors V and VI in pp. 70-98 of the Brief for Accused-Appellants Lenido Lumanog and Augusto Santos dated 1 October 2003.

The Department of Justice (in I.S. No. 96-663) had referred the matter to the Office of the Ombudsman in 2004, after its own preliminary investigation already recommended the filing of criminal informations for Delay in the Delivery of Detained Persons and violation of the Law on Custodial Investigation, *but not for torture* or what amounts to it in Philippine law. The matter had come from the CHR after it found, in July 1996, *prima facie* evidence of violation of the Law on Custodial Investigation, including arbitrary detention, and forwarded it to the DOJ "to file the appropriate criminal and/or administrative actions against the person or persons responsible of violating the human rights of the suspects as the evidence may warrant."

Nearing 12 years after the arrest of the accused-appellants, no criminal and/or administrative action has actually been filed to date against the arresting and detaining police officers for torture and other human rights violations committed against the "Abadilla 5" and other suspects. And so, while there have been great delays in both the cases against them (the Abadilla murder case at bar) and against their arresting and detaining police officers, there has been a double standard even when it comes to delay. In the case against the "Abadilla 5," the delay has at least been in the judicial process of almost 12 years, but mainly in the appellate stage of more than eight years. In the case against the police officers, the judicial process has not even started, as the case remains bogged down in the preliminary investigation stage, going from the CHR (1996) to the DOJ (1996-2004) and to the Office of the Ombudsman (2004-present) where it is "still pending." This long delay in the termination of the preliminary investigation of that

matter should be added to the already long list of violations of constitutional and human rights of the accused-appellants as should accord them "radical relief" in the case at bar.

VII.
PRAYER FOR RELIEF

WHEREFORE, in view of all the foregoing, it is respectfully prayed of this Honorable Supreme Court that it:

a) DECLARE AS VOID the Decision of the Court of Appeals (Sixteenth Division) in CA-G.R. CR HC No. 00667 dated Apr 01 2008 (Annex A) for absence of an actual appellate review;

b) FORTHWITH ITSELF SPEEDILY DECIDE, WITHOUT REMANDING TO THE COURT OF APPEALS, the appellate review of the trial court's judgment of conviction, i.e. the Joint Decision of July 30, 1999 in Crim. Case No. 96-66679 to 84, RTC Branch 103, Quezon City (Annex A of the Brief for Accused-Appellants Lenido Lumanog and Augusto Santos dated 1 October 2003), so that this conviction be SET ASIDE AND REVERSED AND ALL ACCUSED-APPELLANTS, INC. HEREIN PETITIONERS, BE ACQUITTED;

c) REVIEW, based on the experience of the case at bar and other relevant cases, THE APPLICATION OF THE *MATEO* RULING, ruling, particularly whether this intermediate review mechanism has been "in favor of the accused" as it is supposed to be, particularly in terms of quality ("to ensure utmost circumspection… in the evaluation of the facts") and duration (no undue delay), including a clarification of any procedural grey areas regarding further and final review;

d) DECLARE the two relevant international human rights - to review by a higher tribunal, and to a competent, independent and impartial tribunal – AS GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW WHICH ARE PART OF THE **FUNDAMENTAL** LAW OF THE LAND (the Constitution) and as incorporated in its Bill of Rights, particularly under Art. III, Sec. 14 on due process in criminal cases;

e) DECLARE AS UNCONSTITUTIONAL the penalty of "*reclusion perpetua* without the benefit of parole" and Section 3 of Republic Act No. 9346;

f) ORDER the concerned instrumentalities of the Philippine state, through the Office of the Executive Secretary/Office of the President, to provide adequate COMPENSATION TO AND REHABILITATION OF ALL ACCUSED-APPELLANTS, INC. HEREIN PETITIONERS, for the cumulative grave violations of their constitutional and human rights, which include the undue delay in the appellate review of the case at bar, over a period of about 12 years now; and

g) GRANT all accused-appellants, inc. herein petitioners, such further or other relief, including EXTRAORDINARY LEGAL AND EQUITABLE REMEDIES AS WELL AS "RADICAL RELIEF," as may be deemed just and equitable.

Quezon and Pasig City for Manila, 3 May 2008.

SOLIMAN M. SANTOS, JR.
and VICENTE DANTE P. ADAN
Counsels for Petitioners
by:

SOLIMAN M. SANTOS, JR.
Lead Counsel
18 Mariposa St., Cubao, QC
Lifetime IBP OR No. 563588
Camarines Sur – 1/2/03
PTR No. 0547181
Canaman, Cam. Sur – 1/2/08

[The Verification and sworn Certification against Forum Shopping follow on the next pages.]

Copy furnished: (by personal delivery)

Court of Appeals
(thru the Presiding Justice)
Maria Orosa St.
Ermita, Manila

The Solicitor General
134 Amorsolo St.
Legaspi Village, Makati City