

EN BANC

LENIDO LUMANOG and AUGUSTO SANTOS,

Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

x- - - - -x

G.R. No. 182555

CESAR FORTUNA,

Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

x- - - - -x

G.R. No. 185123

PEOPLE OF THE PHILIPPINES,

Plaintiff-Appellee,

- versus -

SPO2 CESAR FORTUNA y ABUDO, RAMESES DE JESUS y CALMA, LENIDO LUMANOG y  
LUISTRO, JOEL DE JESUS y VALDEZ and AUGUSTO SANTOS y GALANG,

Accused,

RAMESES DE JESUS y CALMA  
and JOEL DE JESUS y VALDEZ,

Accused-Appellants.

G.R. No. 187745

Present:

CORONA, C.J.,

CARPIO,

CARPIO MORALES,

VELASCO, JR.,

NACHURA,  
LEONARDO-DE CASTRO,  
BRION,\*  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA, and  
SERENO, JJ.

Promulgated:

September 7, 2010

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## DECISION

VILLARAMA, JR., J.:

For review is the Decision[1] dated April 1, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00667 which affirmed with modification the Joint Decision[2] dated July 30, 1999 of the Regional Trial Court of Quezon City, Branch 103 in Criminal Case Nos. Q-96-66679, Q-96-66680, Q-96-66682, Q-96-66683 and Q-96-66684.

The consolidated cases arose in connection with the killing of former Chief of the Metropolitan Command Intelligence and Security Group of the Philippine Constabulary, now the Philippine National Police (PNP), Colonel Rolando N. Abadilla (“Abadilla”), who was ambushed in broad daylight while driving his car along Katipunan Avenue, Quezon City.

### The Facts

On June 13, 1996, at around 8:00 o’clock in the morning, Abadilla left his house at Soliven I,

Loyola Grand Villas, Loyola Heights, Quezon City and drove his car, a black Honda Accord with Plate No. RNA-777. Soon after he left, his wife Susan Abadilla received a phone call from him and they briefly talked. Just a few minutes after their conversation, she received another phone call from Abadilla's tailor who was asking about her husband because, according to him, he heard a radio broadcast report that Abadilla met an accident.[3]

Meanwhile, at about 8:40 a.m., Senior Police Officer (SPO) 2 Arthur Ortiz, the desk officer on duty at Station 8 of the Central Police District Command (CPDC) located at P. Tuazon Blvd., Project 4, Quezon City, answered a telephone call from a male person who reported a shooting incident along Katipunan Avenue. Station Commander Police Chief Inspector (Insp.) Edward Villena, together with his investigators SPO2 Wahab Magundacan, Police Officer (PO) 2 Gerardo Daganta and PO1 Ronald Francisco immediately boarded a PNP marked vehicle and headed towards Katipunan Avenue.[4]

Upon reaching the area at 8:45 a.m., they saw several onlookers around and near a black Honda Accord with Plate No. RNA-777 on a stop position in the middle lane of Katipunan Avenue facing south going to Libis. They found the victim's bloodied and bullet-riddled body partly slumped onto the pavement at the car's left door, which was open. The front windshield and sliding glass windows on the left and right side were shattered; a hole was seen on the glass window of the left rear door, apparently pierced by a bullet. Glass splinters were scattered inside the car and on the pavement at both sides of the car. On orders of Chief Insp. Villena, PO2 Daganta and PO1 Francisco assisted by a certain Cesar Espiritu, immediately brought the victim to the Quirino Memorial Hospital in Project 4, Quezon City. SPO2 Magundacan was instructed to stay behind to cordon the area for the start of the investigation while Chief Insp. Villena went to their station to get his camera.[5] After ten (10) minutes, Chief Insp. Villena returned and took pictures of the crime scene, and also of the victim at the hospital.[6] SPO2 Magundacan was able to pick up several spent shells and two (2) slugs, apparently fired from .45 and 9 mm. pistols.[7] A sketch was prepared by PO2 Daganta who also interviewed some of the witnesses present at the crime scene.[8] The spot report and list of recovered items (including a Philippine Military Academy gold ring on which was engraved the name "Rolando N. Abadilla") were later prepared by SPO2 Magundacan at the police station.[9]

On the same day, witnesses Cesar F. Espiritu (who was driving his car ahead of the victim), Aurora Urbano (Metro Aide), Ani C. Icot (house gardener of the Abadilla family, Freddie Alejo (security guard posted at Eliscon Electrical Supply store located at 211 Katipunan Avenue) and Minella Alarcon (college professor at Ateneo de Manila University) gave their respective statements before the Criminal Investigation Division of the Central Police District Command (CID-CPDC), PNP-National Capital Region (NCR) at Camp Karingal, Sikatuna Village, Quezon City, while the statement of Merlito Herbas (security guard posted at the Blue Ridge Realty Corporation located at No. 219 Katipunan Avenue, Quezon City) was taken at Station No. 8, CPDC at P. Tuazon Blvd., Proj. 4, Quezon City.[10]

Based on their accounts, the black Honda Accord with Plate Number RNA-777 was caught in traffic while traversing Katipunan Avenue going to Santolan at past 8:00 o'clock on the morning of June 13, 1996. While on a stop position, four (4) men armed with handguns surrounded the said car and fired several successive shots at the man inside it. One (1) of the men who were positioned at the left side of the car opened its door and took something inside. He grabbed the victim by the neck and dropped his body down towards the pavement at the left door. When there were already several people who had come out to see what was happening, one of the suspects shouted, "Walang gagalaw...Dapa!"

Minella Alarcon, who was then with her son-in-law on board her white KIA Pride, was following the victim's car (at other side or diagonal line) at the time of the incident. After the shooting, two (2) of the armed men who fired at the victim's car approached their car and pounded at it saying "Baba...Baba!" Terrified, she and her son-in-law got off and crawled towards the side of the street. The assailants then boarded the KIA Pride and went away to the direction of an alley along Katipunan Avenue. Her car was later recovered, as it was found abandoned along Aguinaldo Street near the corner of J.P. Rizal Street, Project 4, Quezon City, still with bloodstains on the car door.[11]

The victim was pronounced dead on arrival at the hospital. The victim's identity was confirmed by Susan Abadilla who had rushed to the hospital. Chief Insp. Villena escorted her in bringing the victim's body to the PNP Crime Laboratory in Camp Crame for the autopsy requested by the CPDC, PNP-NCR, Camp Karingal.[12] From the testimony and medico-legal report of Dr. Jesusa N. Vergara, it was disclosed that the victim died of hemorrhage as a result of multiple gunshot wounds, mostly in the head and chest, and also sustained abrasions, contusions, lacerated skin, hematoma and incised wounds or cuts in the skin caused by glass splinters.[13]

Records indicate that immediately after the incident, elements of the CPDC, PNP-NCR at Camp Karingal were already coordinating with investigators of Station 8-CPDC who had turned over to said office the evidence gathered and referred the witnesses present at the crime scene.[14] As a result of follow-up operations, Joel de Jesus, alias "Tabong," was apprehended on June 19, 1996 at his house at Dahlia St., Fairview, Quezon City. He executed his Sinumpaang Salaysay dated June 20, 1996 and Karagdagang Sinumpaang Salaysay dated June 21, 1996.[15]

In his first statement, Joel de Jesus narrated that on June 13, 1996 at 6:30 in the morning after parking his tricycle at the corner of Regalado and Camaro Streets, Fairview, he was fetched by Lorenzo "Larry" delos Santos who was his neighbor at Ruby St. Larry was accompanied by his nephew Ogie, and a certain "Tisoy" who drove the owner-type jeep. Larry told him they were going to kill a big-time personality ("may titirahin na malaking tao"), whose name was Abadilla, and that they were going to ambush the latter at Katipunan Avenue. The ambush would be carried out by Joel, Larry, Tisoy, Ram (de Jesus), Cesar who was a policeman, and four (4) others. That same morning, they proceeded to Katipunan Avenue on board Larry's owner-type jeep without a plate and a Mitsubishi L-300 van. They carried .45 and 9 mm. pistols; Joel used a .38 caliber revolver. According to Joel, he only acted as lookout; Lorenzo, Ram and Cesar were the ones who fired shots, while Tisoy focused on a security guard at a store. After the shooting, they separated ways: the owner-type jeep he was riding in headed towards Santolan; Cesar's group split so that three (3) of them rode the L-300 van and the three (3) others boarded a car stolen from a woman driver. Upon reaching Commonwealth Avenue and Tandang Sora, they stopped at Glori Supermarket where all the firearms used were returned to the group, including the revolver earlier given to Joel. It was already dusk when Lorenzo dropped him off at the tricycle parking area at Camaro St.[16]

Joel further stated that the ambush-slay of Abadilla was planned by the group three (3) days before, when they met at the house of Ram de Jesus also in Fairview near his house. Although he did not know the identity of the person who masterminded the ambush-slay of Abadilla, he described the mastermind as the one (1) who opened Abadilla's car and pulled Abadilla from the inside of the car, and he was also the one (1) who drove the L-300 van. Lorenzo told him he should not worry because Lorenzo would take care that he would be compensated for his participation. When they reached Katipunan Avenue, they alighted from their respective vehicles to wait for Abadilla. The L-300 van where the mastermind and Cesar rode was just behind Abadilla's car. There was no more order given to fire because when traffic stopped the vehicles on the road, those in the L-300 van just got down,

positioned themselves and fired upon Abadilla. The mastermind not only fired at Abadilla from outside the latter's car, he even made sure Abadilla was dead, as half of his body went inside the car, firing again at Abadilla before finally dropping him to the ground. Joel added that he just remained silent after the incident, for which he did not earn anything and was threatened by one (1) of those who were in the L-300 van whose name he did not know.[17]

In his second statement, Joel pointed to his cohorts in a police line-up inside the CID-CPDC, PNP-NCR, Camp Karingal, Quezon City where he positively identified Rameses de Jesus ("Ram"), Cesar Fortuna, Lenido Lumanog and PO2 Romeo Costibolo as among those who participated in the ambush-slaying of Abadilla on June 13, 1996.[18]

The afore-named suspects identified by Joel were apprehended during further follow-up operations conducted on June 20, 1996 by "Task Force Rolly" subsequently formed by the PNP after the lead initially provided by him. As mentioned in the Joint Affidavit executed by Police Senior Inspector (P/Sr. Insp.) Ronello N. Navarro, Police Inspector (P/Insp.) Ferdinand A. Marticio, SPO4 Wilfredo G. Galvan and SPO1 Allan dela Cruz dated June 21, 1996, as early as June 15, 1996, or two (2) days after the ambush-slay of Abadilla, their investigation already established the identities of a number of suspects through photo files and forensic sketches of suspects provided by eyewitnesses.[19] Said arresting officers were also able to seize certain firearms and other pieces of evidence, to wit:

4. That after SPO2 cesar Fortuna revealed the whereabouts of the slain victim's stolen cal .45 pistol, we conducted a follow up in a gunsmith located at Sampaloc, Manila on 21 June 1996, from where we held for investigation, one –

DANTE MONTEVIRGEN y VILLANUEVA, 37 years old, married, self-employed/gunsmith, native of Pula, Oriental Mindoro and with given address at 1412 Riverside Street, Commonwealth Avenue, Bgy. Holy Spirit, Quezon City.

5. That upon confrontation said subject person surrendered two (2) cal .45 pistols whom suspect Cesar Fortuna allegedly brought to him for repair/tampering of serial numbers, to wit:

(a) 1- COLT MARK IV cal .45 pistol Gov't Model

SN-66B5574; and

(b) 1-COLT MARK IV cal .45 pistol Series 70

SN-647048.

6. On the same day, 21 June 1996, after SPO2 Cesar Fortuna expressed willingness to surrender the motorcycle allegedly used in casing and surveillance upon the deceased victim, we took said

motorcycle at Gate 2 of Camp Crame along Santolan Road (Col Bony Serrano Avenue), Quezon City, to wit:

1- Unit, KAWASAKI motorcycle without license plate, chassis No. C-5121696, Motor No. 658 122951

7. That the aforementioned subject person together with the property/articles recovered were turned over to the Police Headquarters for investigation and appropriate action;

x x x[20]

With respect to Lorenzo delos Santos, he also executed a statement dated June 21, 1996 admitting his participation in the ambush-slay of Abadilla on June 13, 1996, and pointing to Rameses de Jesus as the mastermind and also named the following suspects: "POGS" whose real name was Lenido Lumanog, Joel de Jesus alias "Tabong," Cesar Fortuna and four (4) others whom he did not know. He said that he was just brought along by Rameses de Jesus and was further threatened that if he would not go with them, they would kill his family. He claimed that he merely acted as a lookout. As similarly recounted by Joel, Lorenzo stated that the group used an L-300 van, a car and a jeep in going to Katipunan Avenue in the morning of June 13, 1996. Joel had a .45 cal pistol, Cesar a .38 revolver, Lenido a 9 mm., a certain Manuel dela Rosa who did not get out of the vehicle, carried a .38 cal revolver, and Lorenzo, also a .38 cal revolver. Rameses, Joel, Cesar and Lenido were the ones who shot Abadilla. After the shooting, the group left him behind and he just walked on the street before taking a taxi ride to the Bureau of Customs. Lorenzo maintained that he was not given any money. He was just picked up from his house at Ruby St., Fairview Subdivision by Rameses, Lenido, Cesar and Joel. He was made to board Rameses' car with a warning that if he did not join the group, they would throw a hand grenade at his family.[21]

In his Karagdagang Salaysay dated June 21, 1996, security guard Freddie Alejo positively identified Joel and Lorenzo during a police line-up. Alejo confirmed these two (2) as the persons he saw from his guard post walking to and fro before the shooting incident. They were also the ones who shouted that no one (1) should interfere at the time the four (4) armed men were firing shots at Abadilla.[22]

SPO2 Cesar Fortuna y Abudo, Rameses de Jesus y Calma, Lorenzo delos Santos y Dela Cruz, Lenido Lumanog y Luistro, Joel de Jesus y Valdez and Arturo Napolitano y Caburnay were charged in Criminal Case No. Q-96-66679 with theft of the alleged gun owned by the late Abadilla (Colt Mark IV cal .45 pistol SN-66BS574), a gold-plated Omega wristwatch and a wallet containing an undetermined amount of cash plus calling cards and other important papers, all of which were supposedly stolen by them after killing Abadilla.[23]

On the other hand, Lorenzo delos Santos y Dela Cruz, SPO2 Cesar Fortuna y Abudo and Rameses de Jesus y Calma were respectively charged with illegal possession of firearms (Presidential Decree No. 1866) in Criminal Case Nos. Q-96-66680, Q-96-66682 and Q-96-66683.[24]

All the seven (7) named accused in Criminal Case No. Q-96-66684 were indicted for Murder under the following Information:

That on or about the 13th day of June, 1996 in Quezon City, Philippines, the above-named accused, conspiring together, confederating with several other persons whose true names, identities, whereabouts have not as yet been ascertained and mutually helping with one another, did then and there, wilfully, unlawfully and feloniously with intent to kill, with evident premeditation, treachery, in consideration of a price, reward or promise, and taking advantage of superior strength, attack and employ personal violence upon the person of COL. ROLANDO ABADILLA y NOLASCO by then and there shooting the latter with the use of different kinds of firearms, hitting him on the different parts of his body, thereby causing the instant and immediate cause of his death, to the damage and prejudice of the heirs of the said COL. ROLANDO ABADILLA y NOLASCO.

Contrary to law.[25]

When arraigned, all the accused pleaded not guilty to the murder charge.

In view of the dismissal of the criminal cases for illegal possession of firearms (P.D. No. 1866) and theft (Criminal Case Nos. Q-96-66679, Q-96-66680, Q-96-66682 and Q-96-66683),[26] our discussion of the proceedings before the trial court will be confined to the case for murder against Fortuna, Lumanog, Joel de Jesus, Rameses de Jesus and Santos.

#### Evidence for the Prosecution

The prosecution presented the testimonies of police officers who conducted the investigation and follow-up operations up to the actual apprehension of suspects in the killing of Abadilla: SPO2 Wahab Magundacan, PO2 Gerardo Daganta, Maj. Edward Villena, P/Insp. Rogelio Castillo, SPO2 Jose Garcia, Jr., SPO3 Romeo De Guzman, SPO2 Pio Tarala, Atty. Florimond Rous, P/Sr. Insp. Jose B. Macanas and P/Insp. Ferdinand Marticio.

The testimonies of P/Insp. Castillo, SPO2 Garcia, SPO2 Tarala, Atty. Rous and P/Sr. Insp. Macanas were given in court in the light of serious allegations of torture, forced confessions and violations of constitutional rights raised by the accused, which were widely reported in the media and brought before the Commission of Human Rights (CHR) and eventually to Amnesty International-USA.

P/Insp. Castillo, testifying on cross-examination, admitted that accused Joel de Jesus was apprehended by members of his squad led by Lt. Rodolfo on June 19, 1996, but said suspect was not presented to him until noontime of the next day, June 20, 1996. He did not ask his men if Joel had been subjected to investigation and if he was, whether he was assisted by counsel. He explained that there were still then follow-up operations in which they needed Joel. As for the press conference wherein Joel was presented together with then Secretary Barbers and General Recaredo Sarmiento, he learned about it only later.[27]

The witness declared that the constitutional mandate and requirements under Republic Act (R.A.) No. 7438 had been complied with because he secured the services of a counsel during the interrogation



of then suspect Joel de Jesus when his sworn statement was taken on June 20, 1996. He had informed the said suspect of his right to counsel in the presence of CID personnel and when he brought him to the office of Atty. Confesor R. Sansano of the Integrated Bar of the Philippines (IBP) located at the second floor of the Hall of Justice, Quezon City Hall. Asked why it occurred to him to bring the suspect to the IBP, the witness replied that he believed IBP was a private, not a government, institution. He also asked Joel -- who was allowed to make a telephone call, although he was not aware if Joel made any such call -- whether he had his own lawyer. He recalled asking Joel if he was willing to go with them to the City Hall, because he had asked to secure the services of counsel. There had been instances when the IBP lawyers assisted some suspects brought by the CPDC. The CPDC provided the typewriter and papers to be used and in this case, Atty. Sansano accommodated them in using the facilities of the IBP Chapter office. Joel executed his statement, with SPO2 Jose L. Garcia, Jr. propounding the questions. They started taking his statement at 1:10 p.m. of June 20, 1996 at Room 235, IBP Office, Quezon City Hall of Justice in the presence of Atty. Sansano and a number of people inside said office.[28] He was apprised for the first time about a suspect (Joel) who was just apprehended when he called their office upon arriving home on the night of June 19, 1996. The information was given to him by the desk sergeant and thereupon he gave instruction to contact the witness and include that suspect in a line-up. He then informed their Chief regarding this development. When he asked for the whereabouts of this suspect, he was given the reply that the suspect was still with their squad conducting follow-up operations.[29]

P/Insp. Castillo recounted that he reported to the office at 8:00 o'clock in the morning of June 20, 1996 and Joel was actually presented to him by Lt. Rodolfo at 10:00 o'clock that same morning, in the presence of CID men. He told Joel he was being implicated in the case, to which Joel replied "Sir, lookout lang naman ako, sir." This initial questioning of Joel took place at the investigation room of the CID, where there were other private complainants talking to investigators, and there were a number of policemen around who were not in uniform. He advised Joel that he was free to use the telephone, and although Joel had no relatives present at that time, he warned Joel that his case was serious and he must seek the services of counsel. He first thought of the legal assistance provided by the City Attorney, then that by the Public Attorney's Office (PAO), and lastly by the IBP. Between 12:30 and 1:00 p.m., he and his men, together with Joel in a separate vehicle, left the CID to go to the Quezon City Hall. They scouted for a lawyer and inquired from the IBP chapter office. They found Atty. Florimond Rous and the lady counsel at a hearing in a courtroom. Atty. Rous advised them to wait for Atty. Sansano, who apparently was the head of the IBP chapter office. He was moving in and out of the office while the statement of Joel was being taken in the presence of Atty. Sansano. Before that, Atty. Sansano talked to Joel alone, after which they were called in again for the taking of the statement at 2:00 p.m. They left City Hall at past 4:00 or 5:00 that afternoon.[30]

SPO2 Garcia, Jr. testified that he was a member of the CID-CPDC at Camp Karingal. On June 20, 1996 when he reported for duty, he was assigned by P/Insp. Castillo to take down the statement of Joel de Jesus. While still inside the office of P/Insp. Castillo, he asked Joel if his statement was voluntary and what kind of statement he was going to give. Joel answered that his statement was voluntary and he wanted to be included as state witness in the Abadilla case. Together with Joel, SPO2 Tarala and SPO1 Edilberto Nicanor, he took lunch at the back of their office before proceeding to the Quezon City Hall at around 12:00 o'clock noon, with P/Insp. Castillo who said that Joel's statement would be taken in front of a counsel. At the Hall of Justice lobby, P/Insp. Castillo instructed them to guard Joel as he would look for a counsel. After more or less 25 to 30 minutes, P/Insp. Castillo came back and they proceeded to the second floor of the office of the IBP chapter. They were met by a lady secretary, and afterwards he saw P/Insp. Castillo talking to a lawyer whom he came to know as Atty. Rous. It seemed Atty. Rous could not decide on what P/Insp. Castillo told him and said he (Atty. Rous) would first ask

the permission of Atty. Sansano. They waited for Atty. Sansano, who arrived in about twenty (20) to twenty-five (25) minutes. Atty. Sansano and P/Insp. Castillo talked for about five (5) minutes and thereafter, Atty. Sansano requested them to leave, because he would talk personally to Joel. Atty. Sansano and Joel talked inside the room for five (5) to ten (10) minutes. Thereafter, he, P/Insp. Castillo, SPO2 Tarala and SPO1 Edilberto Nicanor went inside the room and that was the time Atty. Sansano announced that Joel was ready for the taking of his statement.[31]

SPO2 Garcia, Jr. further testified that he took down the statement of Joel using a typewriter in the office of Atty. Sansano. He brought said typewriter near the table of Atty. Sansano and a chair to sit on beside Joel. Joel was seated in front of the desk where Atty. Sansano was sitting. After completing the taking down of the statement, he gave it to Joel and asked the latter to read it. Joel read the typewritten statement and when he finished reading, he gave the same to Atty. Sansano. Atty. Sansano read all the contents of the document and asked Joel if he understood it, to which he answered "Yes, sir." Atty. Sansano then asked Joel if he was willing to sign the statement, to which the latter again replied in the affirmative. Joel signed the statement in his presence and also that of Atty. Sansano, who likewise signed it in his presence. SPO2 Garcia, Jr. also identified his own signature and that of SPO1 Nicanor who signed the statement in his presence. From the office of Atty. Sansano, they proceeded to the fourth floor in the office of Prosecutor Ramon Gerona before whom Joel subscribed his statement. After reading the statement, Fiscal Gerona explained to Joel in Tagalog the consequences of the statement he executed. Joel was calm and said he was only a lookout in the crime. Earlier, before propounding questions to Joel at the office of Atty. Sansano, the latter addressed Joel in Tagalog: "Joel naiintindihan mo na ang mga itinatanong sa iyo ng mga pulis? Ito ba sarili mo o boluntaryo ba 'tong statement mo na ito hindi ka ba nila tinakot, sinaktan o anupaman?" While Joel was answering his questions, Atty. Sansano halted him from typing the answer given by Joel to ask the latter if he could understand the question propounded to him. The witness was also asked to identify Joel de Jesus inside the courtroom.[32]

On cross-examination, SPO2 Garcia, Jr. affirmed that before the taking down of the statement, he had explained to Joel the consequences of his being a state witness, in accordance with the instruction of P/Insp. Castillo. He specifically explained to Joel: "Itong statement na ito ay puwedeng gamitin laban o panig sa 'yo sa alinmang hukuman dito sa Pilipinas. Ikaw ba ay nakahandang tumestigo sa mga sasabihin ng tao dito sa statement mo na ito na magiging laban sa kanila." Joel told him, "Yes, sir." P/Insp. Castillo had told him that Joel was to turn state witness before the latter was brought to the IBP Office. When P/Insp. Castillo had returned to the lobby of the Hall of Justice, he told them that the only person present who would act as Joel's counsel would be located at the IBP Office, and Joel would be brought there. It was his first time to meet Atty. Sansano. As to whether Joel was also assisted by Atty. Rous when he was investigated on June 21, 1996, the witness said he did not know.[33] Regarding the portion of the statement dated June 20, 1996 wherein he asked Joel about a pending case against him, which Joel identified as a rape case, he denied having knowledge of any such pending case before the taking of the statement. He also did not ask Joel if he already had a counsel, or if Joel already knew Atty. Sansano. Another lawyer, Atty. Rous, was actually present when he was taking Joel's statement at the office of Atty. Sansano, who was also present throughout the time he was taking down the statement of Joel. He did not hear Joel mention the name of another lawyer to Atty. Sansano, specifically that of Atty. David as suggested by defense counsel.[34]

SPO2 Tarala testified that as a member of the PNP Station in Kamuning, Quezon City, assigned at the CID, he came to investigate accused Lorenzo delos Santos on June 21, 1996. On that day, after lunch, he was instructed by P/Insp. Castillo to proceed to the Public Assistance and Reaction Against Crime (PARAC), Dallas Bldg. in Tomas Morato Avenue, because one (1) of the suspects in the Abadilla

slaying was apprehended by the PARAC follow-up team and was supposed to give his statement. So he went there together with SPO1 Primo Borito and PO3 Ramil Hatcher. Upon arriving at said office, he met P/Sr. Insp. Macanas, who called a person he introduced as Lorenzo delos Santos. Before taking down the statement of Lorenzo, he advised the latter of his rights under the law, warning that any statement he would make could be used against him in any court of law, so that he had the right not to answer any question which to his mind would incriminate him. Lorenzo responded by saying that he wanted to give a statement and to be a state witness. When Lorenzo asked if he could use a telephone at the information table, he said yes. Lorenzo then called his office because he was a customs broker, and also called up a relative who was a certain Col. Sala (Col. Milagros Sala), a Quezon City police official. He told Lorenzo that he should have a lawyer of his choice during the taking down of his statement. He prodded Lorenzo to call the lawyer, whom Lorenzo knew to be always at the City Hall. They then proceeded to the Quezon City Hall to look for that lawyer at the Office of the City Attorney. However, Lorenzo was not able to find said lawyer; he asked somebody (a woman) who referred them to the Hall of Justice. After failing to find the person Lorenzo was looking for to be his counsel, an old man, a vendor suggested to them to go upstairs at the IBP Office. The lady secretary of the IBP chapter office introduced them to Atty. Florimond Rous, who then asked him and his companions to step out of the room so Atty. Rous could talk to Lorenzo. Atty. Rous and Lorenzo talked for ten (10) to fifteen (15) minutes, after which they were called again to enter the office. His two (2) companions were left outside and he was told by Atty. Rous that he had already apprised Lorenzo of his rights, but Lorenzo still wanted to give a statement.[35]

Upon the instruction of Atty. Rous, he took down the statement of Lorenzo, the three (3) of them in one (1) corner of the room while over at the receiving area there were the secretary and a lady lawyer. The statement of Lorenzo was in Tagalog, typewritten in question-and-answer form. Each time after he had asked a question, Atty. Rous would in turn ask Lorenzo if he wanted to answer it, and Lorenzo would answer yes. He was at the typewriter, and the two (2) (Atty. Rous and Lorenzo) were in front of him, seated across each other. The taking of the statement started at about 3:10 in the afternoon and was finished in more than one (1) hour. He asked Lorenzo to read first his statement, and then Atty. Rous read it also. Next, they went up to the office of Fiscal Refuerzo, but was referred by the secretary to the inquest fiscal on duty, Fiscal Ben dela Cruz. At his office, Fiscal dela Cruz asked Lorenzo to stand in front of him and asked if the statement was voluntarily given by him, if what was contained therein was true, and if he was ready to swear before him. Lorenzo answered yes, and the subscribing of his statement before Fiscal dela Cruz was also witnessed by Atty. Rous.[36] Lorenzo had earlier told him and his companions at the PARAC office that his participation in the ambush-slay of Abadilla was that of a lookout, and that he was only forced to join the group because of the threat to his family.[37]

SPO2 Tarala admitted that the first time he went to the IBP Office at the Hall of Justice was on June 20, 1996 when SPO2 Garcia, Jr. took the statement of Joel de Jesus. Since only SPO2 Garcia, Jr. and Joel stayed inside the room, he and his companion just walked around.[38]

Atty. Rous testified that he was one (1) of the free legal aid counsels of the Free Legal Aid Committee of the IBP-Quezon City Chapter. One (1) of their primary duties was to assist indigents in their cases, and aside from this, they were also tasked to assist the various suspects during custodial investigations in the various investigations of different agencies, such as the CIS and PNP. He recalled handling at least ten (10) to fifteen (15) of such custodial investigations. On June 21, 1996, he assisted a person by the name of Lorenzo delos Santos accompanied by a police investigator (whose name he could no longer remember) from the Central Police District, who told him that the said suspect was willing to make a confession and asked if he could assist him during his custodial investigation. He identified Lorenzo inside the courtroom.[39] The police investigator had informed him of the charge against

Lorenzo, which was the killing of Abadilla.[40]

Before the start of the investigation of Lorenzo, Atty. Rous related that he asked the policeman to leave him and Lorenzo. When the investigators were gone, he asked Lorenzo to remove his shirt so he could see if there were any tell-tale marks of any harm or specific mark upon him. Having satisfied himself that there were no such mark on the suspect's body, Atty. Rous began interviewing him. He asked Lorenzo if he was willing to execute a confession, and Lorenzo answered he was willing to do so. He then asked Lorenzo if he was willing to have him as his counsel. Evidently, Lorenzo wanted him to be his counsel during the custodial investigation for the taking of his statement. Convinced that Lorenzo was giving his statement without any pressure or force, they started the investigation proper. The police investigator who accompanied Lorenzo to their office was the one (1) who had propounded questions in Tagalog and typed the answers given by Lorenzo also in Tagalog. He was just within hearing distance and was present during the entire time of the taking of Lorenzo's statement. Afterwards, he let Lorenzo read the typewritten statement, and he asked Lorenzo if those were the questions given to him and the answers he had given, to which he replied in the affirmative. He further asked Lorenzo if he was willing to sign the statement without pressure, and Lorenzo said he was willing to sign the same. He asked Lorenzo to sign his statement before the office of Prosecutor Ben dela Cruz. Prosecutor dela Cruz first read the statement and then asked Lorenzo if he was willing to sign the same, and he answered in the affirmative. Lorenzo signed the statement in their presence; he and Prosecutor dela Cruz also signed it.[41]

Atty. Rous further testified on cross-examination, that after the police investigator and Lorenzo had left, a few minutes later, some other investigators arrived at their office, bringing along Joel de Jesus. This Joel de Jesus had given a statement the previous day, June 20, 1996, and he was told that Joel would be giving this time a supplemental statement. The investigators apprised Joel of his constitutional rights before the taking down of his statement. He was not sure if Lorenzo and the police investigator had actually left already, and he could not remember exactly what transpired at this point. The defense counsel noted the absence of the word "competent" to qualify the word "counsel" in the preliminary portion of Lorenzo's statement. Atty. Rous described the answers given by Lorenzo as spontaneous, and he did not recall any hesitancy on the part of the latter. He maintained that he found no contusions or abrasions on Lorenzo's body.[42]

P/Sr. Insp. Macanas testified that he was then assigned at the PARAC as its operations officer. They were closely coordinating with and sharing evidence for case build-up operations with the CPDC in the investigation of the killing of Abadilla. On June 19, 1996, at around 3:00 o'clock in the afternoon, they were directed to proceed to the CPDC headquarters in view of an information that a certain suspect alias "Tabong" was already located while repairing his tricycle somewhere in Fairview, during which he was identified by an eyewitness, security guard Alejo who went there with CPDC operatives. At the time this radio message was received, they were within the vicinity of Fairview, and the CPDC gave the signal for them to accost said suspect. He was present when "Tabong," who was later identified as Joel de Jesus, was arrested by the joint elements of the CPDC and PARAC. Joel was turned over to the CID-CPDC at about past 4:00 p.m. Subsequently, their superior, P/Sr. Supt. Bartolome Baluyot, informed them of revelations given by Joel, for which they were called in again for joint follow-up operations. They brought Joel to Fairview along Ruby St. where Joel's supposed companions, namely: one alias "Ram," Lorenzo delos Santos, Ogie and one (1) alias "Cesar," could be found. Joel first pointed to the house of Ram (Rameses de Jesus), but they did not find him there; instead they found a man named Cesar Fortuna, whom Joel pointed to in front of said house. They immediately apprehended Fortuna and identified themselves. He informed Fortuna that he was being implicated by Joel in the killing of Col. Abadilla. Fortuna introduced himself as a policeman assigned

with the Traffic Management Command (TMC). As a standard procedure, they informed Fortuna of his constitutional rights and then brought him to the CPDC for investigation. At the time, Fortuna had a gun (caliber .38) tucked in his waist, which they confiscated.[43]

P/Sr. Insp. Macanas further testified that in the course of their follow-up operations, with information being provided by Joel, they were also able to arrest another suspect alias “Larry,” whom they met at a dark alley. Upon being pointed to by Joel, they apprehended Larry who was later identified as Lorenzo delos Santos, frisked him and found in his possession a cal .38 Smith and Wesson, for which he could not present any license or document. They brought Lorenzo to the CID-CPDC. He identified both Lorenzo and Fortuna inside the courtroom.[44] On cross-examination, the witness admitted they had no warrant of arrest when they went to Fairview to locate the suspects, as it was a “hot person” case ordered by their superior and requiring the immediate arrest of suspects identified by witnesses like, in this case, Joel. Joel had admitted to the CID-CPDC investigators his participation in the Abadilla killing. After accosting Joel at Camaro St., whom they identified through a photograph, and before taking him to the CID-CPDC, he informed Joel that he was identified as one (1) of the suspects in the killing of Col. Abadilla; that he had a right to remain silent; that anything he will say could be used against him; he had the right to counsel of his own choice, and if he could not afford one, the government would provide him. As to Lorenzo, he was arrested past midnight of June 20, 1996; they had brought Joel along while moving to locate Lorenzo.[45] He was just at the back of those operatives who actually arrested Lorenzo.[46]

The principal witness for the prosecution was Freddie Alejo, who testified that as a security guard employed by Provider Security Agency, he was then assigned at 211 Katipunan Avenue, Blue Ridge, Quezon City. On June 13, 1996, he reported for duty at 7:00 o’clock in the morning. By 7:30 a.m., he noticed two (2) men walking back and forth in front of his post. He was shown by the prosecutor some photographs taken of the parking area he was then guarding, his guard post beside the building and the street in front of said building (Exhibits “G”, “H”, “I” and “J”[47]).

Alejo recounted that there was a man riding in a black car who was shot by four (4) persons in front of the building he was guarding. The car was in the middle lane of the road, and the car’s specific location was found in one (1) of the photographs (Exhibit “H-4”[48]). One (1) of the two (2) persons he earlier saw walking back and forth in front of him pointed a gun at him (the position of said man was marked as Exhibit “H-5”[49]). That man was holding a short gun and he told Alejo to come down (“Baba!”), but he did not budge. He then saw one (1) of the assailants (No. 1 in Exhibit “H”[50]), the one (1) standing on the left side of the car (left front door), grab the victim by the neck, get the clutch bag of the victim inside the car, pull said victim out of the car, and drop him on the road. He then heard another shot coming from said attacker (No. 1). Another man (No. 5 in Exhibit “H”[51]) shouted: “Dapa...walang makikialam!” and the rest of the four (4) men (marked as Nos. 2, 3 and 4 in Exhibit “H”[52]) faced him (witness Alejo). Next, the companion of No. 5, who was earlier walking back and forth in front of him (marked as No. 6 in Exhibit “H”[53]), pointed a gun at him. This time, he did come down, lowering his body and bowing his head inside the guardhouse. The witness identified the suspects inside the courtroom as the persons he saw and marked as No. 5 (Joel de Jesus) the first one who pointed a gun at him shouting “Baba ka!”; No. 1 who grabbed the victim, got his clutch bag and pulled him out of the car (Lenido Lumanog); No. 2 (Rameses de Jesus); No. 6 the second person who pointed a gun at him (Lorenzo delos Santos); No. 4 (Augusto Santos) and No. 3 who was positioned at the right front door of the victim’s car (Cesar Fortuna). Nos. 1 and 3 (Lumanog and Fortuna) were the ones who shot the victim with short firearms, while No. 2 (Rameses) was just standing and facing the victim with a gun in his hand, and No. 4 (Augusto) was also just standing facing the driver and holding a short gun. It was probably less than a minute when the gunfire stopped, and he stood up at his guard

post. The assailants were no longer in sight and he saw the car's window shattered. He identified the victim's black car as shown in photographs (Exhibits "A-1" to "A-4"[54]).[55]

Alejo further testified that he was one (1) of those asked by the policemen who arrived regarding the incident. He was told to go to Station 8, which was just near the place. At Station 8, another security guard of an adjacent building was also being investigated. Thereafter, the police officers brought him to Camp Karingal, along with the other security guard.[56]

On cross-examination, Alejo described his guard post as elevated; and two (2) arm's length on the left and right side, there was an alley just beside the guard post which was at the corner.[57] The victim's car was in front of the building he was guarding, at a slightly slanted direction from it ("Lihis po ng konti"). His view was toward the direction of the front door of the car (rear end). From where he was at the time, the car was at a distance of more or less ten (10) meters. The first time one (1) of the suspects pointed a gun at him, he was not scared. He saw four (4) men standing around the victim's car, two (2) on the left side, and two (2) on the right side. He saw only two (2) of them (the ones at the front left and right sides of the car) shooting at the car; they were carrying short firearms. One (1) of these two (2) got the clutch bag (at the left front side of the car), grabbed the victim by the neck and shot him once before dropping him down the road. Even if he could not see the gun when that assailant pulled the victim from the car, he knew that the victim was shot again, because he saw a gun smoke just beside the left side of the car where the victim was dropped. The second man who pointed a gun at him shouted "Dapa!" and thereupon his companions (the ones at the right rear side, left rear side, and front right side) faced him for less than a minute. Because at that precise moment the gun was not yet poked at him, he was able to recognize their faces. When finally the gun was pointed at him, he became nervous and bowed down his head inside the guard house. The color of the clutch bag taken from the victim was black. He could see the inside of the car from his guard post because the car's glass window was not tinted and, besides, his position was elevated or higher than the height of the car.[58] He confirmed the contents of his Sinumpaang Salaysay (Exhibit "L") before policeman Edilberto Nicanor on June 13, 1996 taken at the CID-PNP, Camp Karingal at 1:55 p.m. or barely four (4) hours after the shooting incident.[59]

Alejo further testified on cross-examination that on June 19, 1996 at around 2:00 o'clock in the afternoon, he was fetched by four (4) policemen at his agency in Monumento and they told him they were going to Fairview. Before this, in the afternoon of June 18, 1996, they showed him a picture of a man wearing eyeglasses, but he told them he would not point a man in photographs, but would like to see the man in person. That was the second time he saw Joel de Jesus since the shooting incident on June 13, 1996. He executed a supplemental statement on June 21, 1996 when he identified said suspect in a police line-up.[60]

On September 26, 1996, the trial court conducted an ocular inspection of the place where the shooting incident took place, in the presence of the prosecutors, defense counsel, Alejo and Maj. Villena. Alejo was asked to demonstrate his exact location, the relative positions of the assailants and the victim's car, and the entire incident he had witnessed in the morning of June 13, 1996. The Presiding Judge who took the same position of Alejo in the guardhouse made the following observations:

COURT:

From this position, the Presiding Judge can see the car very clearly even if the car would be moved back by another segment of the cement or even if it is forwarded by another segment also, as segment can accommodate one car of the likes of Honda Accord and the Court observes that from the

guard post the faces of the persons beside the car are very clear.

x x x

COURT:

The Court observed that from where the witness Alejo was he can still see the whole car as it has been moved back per the directive of Major Villena.

x x x

COURT:

The Court adds that from the position of the witness, Freddie Alejo, the Court can still see faces behind the car which can accommodate another car.

x x x

COURT:

The front right window has been rolled down and also the back right window of the car have been rolled down with the left front door opened, the Court can observed the two (2) front seats particularly the upper portion, meaning the head rest and the back rest, half of the back rest, all the head rest can be seen.

x x x

INTERPRETER:

(measuring the distance from the guardhouse to the black car).

The measurement from the foot of the guardpost up to the right front door of the black car is fifteen (15) meters.

x x x

INTERPRETER:

(Measuring the distance between the bodega to the black car)

The measurement from the front portion of the bodega (papaya) to the side of the black car is 11.8 meters.

x x x

INTERPRETER:

The measurement...the distance from where suspect No. 6 was standing to the guard house when measured is 7.34 meters, your Honor.

x x x

INTERPRETER:

The distance from where suspect No. 5 was standing up to the guard house is 5.17 meters.

x x x

COURT:

After the demonstration while witness Alejo was demonstrating how [suspect No. 2] got the clutch bag and how [suspect No. 2] grabbed the neck of the driver of the black car, the Judge was at the guard post and saw for himself that [Alejo] clearly saw the taking of the clutch bag even if the untinted windows were closed and the pulling of the driver of the black car.[61]

P/Insp. Castillo, on re-direct examination testified that Atty. Sansano actively assisted Joel de Jesus during the time the latter's Sinumpaang Salaysay was being taken by SPO2 Garcia, Jr. There were questions propounded to Joel which Atty. Sansano had told Joel not to answer, and advice was given by said counsel. They left Quezon City Hall at about 5:00 o'clock in the afternoon and returned to the CPDC headquarters. He maintained that all the accused were brought before the City Prosecutor for inquest proceedings prior to the filing of the information in court.[62]

Susan Samonte-Abadilla testified that their family incurred expenses for the burial of her husband, repair of the Honda Accord and loss of the .45 cal gold cup pistol and Omega watch during the shooting of her husband. She further testified that she was very shocked and saddened by the tragic death of her husband. Because she led a practically sheltered life, it was difficult for her, as it was the older children who were now taking care of their businesses, which were attended to by her husband when he was still alive. Three (3) of her eight (8) children were still studying (Ana, 14; Nico, 13; and BJ, 10), and one had just graduated last March 1997.[63]

Merlito Herbas, in his Karagdagang Salaysay dated June 21, 1996, identified Joel de Jesus in a police line-up at the CID-CPDC, Camp Karingal, as one (1) of those men who shot the victim on June 13, 1996.[64] However, not having been presented by the prosecution as witness, he testified for the defense declaring that none of those whom he saw during the shooting incident was present inside the courtroom. He produced a list of amounts he had received from Mayor Abadilla, totaling P30,000.00 in support of his claim that Mayor Abadilla did not fulfill his promise to give him exactly the same salary he was receiving as security guard (P6,000.00 monthly only instead of the P8,000.00 he used to receive as monthly pay), although he admitted having stayed for free inside the Abadilla compound from July 11, 1996 up to November 26, 1996. He was later told that he would no longer be presented as witness because the testimony of Alejo would be sufficient.[65]

Defense Evidence

All the accused raised the defense of alibi, highlighted the negative findings of ballistic and fingerprint examinations, and further alleged torture in the hands of police officers and denial of constitutional rights during custodial investigation.

P/Insp. Reynaldo D. de Guzman, firearms examiner and Chief of the Firearms Division of the PNP



Crime Laboratory, testified that he conducted an examination of the slug recovered from the body of Col. Abadilla, as per request of the CPDC for cross-matching with a bullet also recovered from the body of another shooting victim, Suseso de Dios, i.e., whether or not they were fired from one (1) and the same firearm.[66] The result of their microscopic examination was that the aforesaid bullets were fired from the same firearm.[67]

Dr. Jesse Rey Cruel, medico-legal officer of the CHR, testified that he examined accused Cesar Fortuna, Rameses de Jesus, Lenido Lumanog on June 25, 1996 and Lorenzo delos Santos on July 3, 1996. His findings showed that their bodies bore the following injuries: “(1) Fortuna - abrasions on forearm, elbow and knee; contusions on chest area; and incised wounds on the waist and legs[68]; (2) Rameses - contusions on chest, abdomen, knee and thigh areas[69]; (3) Lumanog - contusions on abdomen and lumbar region, and a horizontal lacerated wound on the forehead[70]; and (4) Lorenzo - abrasions on the arms, contusions in thigh and knee, petechia marks (minute hemorrhages) between chest/abdomen and the penis, discoloration on right arm, and new scars on left arm, right foot and second toe.”[71] All said wounds required not more than nine (9) days of medical attendance. The defense also presented pictures taken at the time of the examination.[72] On cross-examination, Dr. Cruel opined that it was possible the injuries could have been self-inflicted and pointed out that the injury on the forehead of Lumanog was not complained of.[73]

Remedios Dedicatoria, a fingerprint examiner at the PNP Crime Laboratory testified on the results stated in a Dactyloscopy Report No. F-086-96 comparison of the latent prints lifted from the Honda Accord with Plate No. RNA-777, Kia Pride PTZ-401 and Mitsubishi Lancer car with the standard fingerprints of the accused. The only match was found in the specimen fingerprint of Rameses de Jesus with respect to the fragmentary prints lifted from the Mitsubishi Lancer car. None of the fingerprints of the accused is identical with the latent prints lifted from the Honda Accord and Kia Pride.[74] On cross-examination, the witness stated that if a person had touched the car and rubbed it, there would be no fingerprint that could be lifted therefrom. She also admitted that no latent print was taken from inside the Honda Accord nor was there any fingerprint taken of the late Rolando Abadilla (only two [2] fingerprints were taken from his car). When asked if a person opened the car holding only the back portion of the handle, the witness answered that there would likewise be no fingerprint on the outside of the car.[75]

Joel de Jesus testified that on June 19, 1996, at around 3:00 o'clock in the afternoon, he was at their street corner fixing his tricycle and was with Arturo Napolitano and Felicisimo Herrera. A van stopped and six (6) armed men alighted from it, among whom he recognized Antonio Rodolfo, Pio Tarala and Dario Añasco (whom he came to know when they charged him with rape on January 17, 1994, from which charge he was acquitted on June 19, 1996). He even greeted said cops, but they forced him into the van, and handcuffed and blindfolded the three (3) of them. They were brought to a certain house where they were boxed, kicked and slammed on the wall. When his blindfold was removed, the police officers were forcing him to admit that he killed Abadilla. Capt. Rodolfo was also there and he later identified the rest of those who picked him up as Romulo Sales, Lt. Castillo, Bartolome Baluyot, Major Reyes and Cataluña. After he denied having anything to do with the killing, PO2 Tarala tried to suffocate him with a plastic bag. He could not breathe and lost consciousness. Recounting his ordeal in tears, the witness said that for one (1) hour his captors repeatedly inserted a plastic bag and boxed him. A younger looking man then slapped him saying that they had ambushed his father. While detained, he was only given water to drink and not allowed to contact his relatives. He was asked to sign by Lt. Castillo a seven (7)-page document, torturing him if he refused to do so. There were already other signatures on the edge and every page of said document (Sinumpaang Salaysay dated June 20, 1996). He denied the contents of this statement but admitted that he was brought to the IBP Office,

Quezon City Hall. After signing, he heard Lt. Castillo call somebody saying, “Parating na kami dyan.” He was then made to board a vehicle and was taken to the Quezon City Hall where a man wearing barong tagalog was waiting, asking if he was Joel de Jesus. When Lt. Castillo answered in the affirmative, the man just signed the document. He denied having met Atty. Confesor Sansano, nor was he told of his right to the assistance of counsel; he even told them the name of his lawyer at that time, but they just said, “Mas marunong ka pa sa amin.”[76]

Testifying on cross-examination, Joel insisted that on June 13, 1996, he went home at around 10:00 o’clock in the evening. He started plying his route at 6:00 o’clock in the morning; he was hired (inarkila) by a passenger who asked him to bring her to an albularyo in Roosevelt Avenue, Novaliches. He admitted this was the first time he mentioned this, as it was not mentioned in his Affidavits[77] which were prepared by the police. Atty. Lupino Lazaro assisted him in filing charges against the police officers and Atty. Hector Corpuz before the Department of Justice (DOJ). He admitted that he did not say anything about the illegality of his arrest and the torture he suffered prior to his arraignment.[78] On re-direct examination, he denied having executed the Karagdagang Salaysay dated June 21, 1996 before the IBP lawyer, because at this time he was still detained in a safehouse where he remained until June 25, 1996. He was just forced to sign said document; after signing it, he heard Lt. Castillo say to one (1) Fiscal Soler, “Fiscal, salamat.” Thereafter, he and the other accused were presented in a press conference as suspects in the Abadilla slaying inside Camp Crame. During this time, he pointed to Lorenzo delos Santos and Augusto Santos, because they were his enemies at their place. He only pointed to them out of fear that he might be salvaged by the police and because of the torture. He really did not know Abadilla nor was he at any time within the vicinity of Katipunan Avenue on June 13, 1996. He knew Rameses de Jesus, being his longtime neighbor, and also Lumanog who ran for councilor in their place. All he knows was that his co-accused were picked up from their place, and he saw them only during the press conference. He affirmed the contents of the Sinumpaang Salaysay he executed before Police Major (Pol. Maj.) Escote with the assistance of Atty. Lazaro.[79]

Joel admitted that he was the one (1) who pointed out Cesar Fortuna and Rameses de Jesus to the PARAC investigators. He confirmed that he was known as “Tabong” in their locality. He also filed a complaint before the CHR against the same police officers.[80]

Cesar Fortuna testified that he was a member of the PNP assigned at Cagayan de Oro City. He came to Manila on June 7, 1996, as he was ordered by his superior, Col. Roberto Sacramento, to attend to the documents required for reassignment of some of their companions (as evidenced by a used Super Ferry ticket and an unused return ticket for June 20, 1996). On June 11, 1996, he went to the PNP Directorate for Personnel at the office of Insp. Oscar Alcala. However, on the night of June 19, 1996, he was arrested by PARAC operatives while he was at the house of an acquaintance, Rameses de Jesus, in Ruby St., Fairview. He had brought for repair a Ford Maverick Model ’69 registered in the name of Col. Sacramento. At 11:00 o’clock in the evening, his mechanic road-tested the car, but since he was left alone, he decided to go to the house of Rameses which was near the shop. Several armed policemen arrived and entered the house of Rameses. Not finding Rameses there, they asked him instead to go along with them. He was made to board an owner-type jeep and immediately blindfolded. After one (1) hour, they arrived at a place which he was told was the office of PARAC. Somebody approached him and he felt a lighter’s flame touch his chin. He then identified himself as a policeman, but was only told: “Walang pulis pulis dito.” They kept on asking him where Rameses could be found. Still blindfolded, he led them to Palmera Subdivision where he knew Rameses had another house. Upon reaching Palmera, his blindfold was removed, but he was unable to locate the house until they went home at 5:00 p.m. In the morning of June 20, 1996, the policemen told him that he was just

confusing them (nililito), but he explained that he had been to that house only once. The driver of the Honda Civic was already angry at him and inserted a .45 cal pistol in his mouth. They went back to the PARAC office, and he was interrogated about the Abadilla killing. He was informed that he was being implicated as somebody had pointed at him. When he still denied having any knowledge about the ambush-slay, he was repeatedly suffocated with a plastic bag placed on his head while he was handcuffed and blindfolded. After one (1) hour and due to hardship he suffered, he just told them he would admit whatever it was they wanted him to admit. He said that he acted as a look-out. They had him copy a prepared sketch and when his blindfold was finally removed, someone introduced himself as Col. Bartolome Baluyot who told him he just had to obey and he would not be hurt. Maj. George Reyes arrived, looked at the sketch and said it was not the place where Col. Abadilla was ambushed. He was blamed for that fiasco even as he said it was they who prepared the sketch. After an hour, they returned to Palmera Subdivision, Novaliches and this was already between 2:00 and 3:00 p.m. After rounding the area, he found the house, but Rameses was not there. He was made to sit the whole night in the kitchen.[81]

Fortuna continued to narrate that on June 21, 1996, he was made to lie down on a bench covered with a GI sheet and was asked where the firearm of Col. Abadilla was. When he answered that he really did not know about it, they electrocuted him and poured cold water on his body. He told them that if they needed a gun, he had a gun in Sampaloc, a .45 cal licensed firearm. Thereupon, they asked him to go to that place where Dante Montevirgen was the gunsmith. Only the policemen alighted from the vehicle and talked to Montevirgen. He saw that Montevirgen gave them two (2) firearms, after which they went back to the PARAC office. On his licensed firearm, he just brought this for repair on May 10, 1996, saying "ayaw mag-automatic," while the other gun belonged to Capt. Regis, and these were covered by receipts. Next, they asked him about the Rolex watch of Col. Abadilla. When he denied having any knowledge about it, he was again electrocuted. He had filed a complaint before the CHR for the injuries inflicted on him and the violation of his rights. Aside from this case and the charge of illegal possession of firearms, he was also charged with an administrative case and a criminal complaint for carnapping (of the KIA Pride). The carnapping complaint was dismissed by Assistant Prosecutor Amolin on September 23, 1996. The Decision issued by P/Sr. Supt. Rodolfo N. Caisip of the PNP Headquarters Traffic Management Group also dismissed Administrative Case No. 96-09-03. He insisted that on the morning of June 13, 1996, he was at Camp Crame following up the reassignment papers of his colleagues, showing the letter-order issued by Col. Sacramento. He saw PO3 Ramon Manzano at the Office of the Directorate for Personnel at about 9:00 o'clock in the morning. He left said office as soon as he got the folder, signed their logbook, gave it to SPO4 Mercado of the Office of PNP Personnel Highway Patrol. Then he went home to eat before proceeding to the Metro Traffic Force, Central District at the office of Col. Juanito de Guzman at Roces St., Quezon City, at around 2:00 o'clock in the afternoon, for the renewal of the license of Col. Sacramento's driver.[82] He also filed with the CHR an administrative complaint against those police officers who had illegally arrested, detained and tortured him.

Fortuna further testified that PARAC operatives seized his Kawasaki motorcycle which he had left inside Camp Crame because it had no fender. However, the certificate of registration was lost since it had been in custody of the police; the Land Transportation Office (LTO) registration paper was locked inside, and he forgot what its plate number was. He admitted that he was able to use said motorcycle in June 1996 even with the missing fender. He left the motorcycle at Gate 2, Camp Crame before leaving for Cagayan de Oro City; as to his car, he left it at Pier 2. He admitted that he was the same person charged with kidnapping and serious illegal detention with ransom in Criminal Case No. 96-312, which was filed on July 15, 1996 in Mabalacat, Pampanga against him, Lumanog and Rameses by a certain Dr. Jesusa dela Cruz. Said case was transferred to the Quezon City RTC in the same sala of the

presiding judge in this case. The filing of this case destroyed his reputation as a police officer and affected his children, who stopped going to school. He admitted though that he had once been dishonorably discharged from the service as a result of an extortion case filed against him. He had appealed his case and he was reinstated on August 20, 1983. A memorandum dated June 25, 1996 was issued by Col. Sacramento to attest to his moral character and loyalty to the service.[83] He admitted that he never raised the issue of the legality of his arrest or the torture he suffered while in detention, during his arraignment. When confronted with his sworn statement submitted to the CHR, he admitted that he did not mention therein the pouring of cold water on his body, that he was asked to make a sketch of Katipunan Avenue, that a .45 cal pistol was inserted into his mouth and that there was no firearm confiscated from him at the time of his arrest. When he was apprehended on the night of June 19, 1996 at the house of Rameses at Ruby St., he was half-naked standing outside at the balcony. He saw someone's hand, but not the whole body of that person to whom he was shown that night, and he just heard from the policemen he had been positively identified.[84]

Fortuna's claim that he was at Camp Crame following up papers in the morning of June 13, 1996 was corroborated by Oscar Alcala (Chief Clerk of the Recruitment and Selection Division) and SPO2 Ramon Manzano (Office of the Directorate for Personnel and Recruitment). However, Alcala could not present the particular logbook containing the record of the documents and transaction with Fortuna, as it could not be located, as it got lost after the office renovation in the early part of 1997. A xerox copy of the logbook entry was presented in court (Exhibit "70").[85] However, said witness admitted he was not the custodian of the said logbook, and he did not have personal knowledge of the date and time of the entries in Exhibit "70"; it was also SPO2 Manzano who xeroxed the said logbook entry.[86] Manzano confirmed that he personally saw Fortuna in the morning of June 13, 1996, between 9:00 and 9:30, when Fortuna retrieved the papers he earlier submitted in May 1996.[87]

On further cross-examination, Fortuna admitted that he never told his lawyer (Atty. Ramonito M. Delfin) when they brought his complaint before the CHR that he had documents to prove he was at Camp Crame in the morning of June 13, 1996. He explained that the matter did not enter his mind because he had no food and no sleep for several days: "At the time my salaysay was taken from me, everything was still fresh and there were so many things that I wanted to say but I was not able to say because masama pa ang aking pakiramdam." Neither did he mention it to Fiscal Refuerzo who interviewed him after the press conference, as they did not ask him about it.[88] He had brought up such matter with his lawyer in another case not before the sala of the presiding judge in this case.[89]

Lorenzo delos Santos testified that on June 13, 1996, he left his house at Fairview and boarded a bus bound for Quiapo. Upon reaching Quiapo, he heard mass in Quiapo Church until around 8:30 a.m. He arrived in their office at Binondo on June 13, 1996 at 9:30 a.m. He remembered going to the office of the Felipe Santos Brokerage in the same building to check on the date of arrival of a certain shipment. Thereafter, he went back to his office and stayed there until 2:30 p.m. He left his place of work about 4:30 in the afternoon and went to a client who invited him to drink at the house of his brother somewhere in Quezon City. On June 19, 1996, at around 11:00 o'clock in the evening, several persons suddenly barged into his house while he and his wife were sleeping. Sgt. Bela introduced himself, and he was slapped and handcuffed and the house was searched. They took his .38 cal revolver which was licensed. He was blindfolded, made to board a car and taken to a safehouse where he was tied and tortured (suffocation with plastic bag and electrocution). He was told that he was pointed to by Joel, but he explained to them that Joel was his opponent in a court case (for grave threats, physical injuries and trespassing).[90] He also answered their questions regarding his co-accused. He told them that he used to see Rameses when he brings his children to school and came to know Lumanog when he ran as city councilor, while he did not know Fortuna. After the interrogation, he was again subjected to torture

and he felt weak; this lasted up to June 21, 1996. On June 21, 1996, he was brought to a field (bukid) where he was forced to sign a paper. He was then brought to the Quezon City Hall of Justice at the second floor and instructed that he should just walk along. There were two (2) women inside aside from policemen, and he was elbowed by a policeman to sign a document. He signed it out of fear, and the document was handed by the policemen to a man who entered the room, whom he later came to know as Atty. Florimond Rous. He was brought to another floor at the Fiscal's Office while he was still limping. Somebody there asked why he was in that condition, but one (1) of his police companions elbowed him so he just said it was nothing. A man who was probably the Fiscal signed the document, and they left at around 5:00 in the afternoon.[91] Lorenzo admitted he had an owner-type jeep, which was registered in his own name, but said jeep had been mortgaged to Danilo Lintag since May 27, 1996.[92]

Lorenzo presented as witness Edith Lingan, an employee of Felipe M. Santos, who corroborated his alibi.[93]

Augusto Santos testified that on June 13, 1996 at around 7:00 o'clock in the morning, he accompanied his brother-in-law Jonas Ayhon whose wife, his sister, gave birth on June 11, 1996 at the Jose Fabella Hospital at Sta. Cruz, Manila. He stayed there until 2:00 o'clock in the afternoon. On June 26, 1996, five (5) men suddenly barged into their house. He was hit in the neck with a .45 cal. pistol, blindfolded and brought outside where he was beaten. They had no warrant of arrest but were forcing him to admit that Joel de Jesus gave him big money and that he knew what it was. He told them that he did not know anything, and that Joel was his enemy, as his Tito Lorenzo had a quarrel with Joel in which he helped his Tito. He confirmed the contents of the Sinumpaang Salaysay dated July 3, 1996 which he executed at Camp Crame, and also presented a copy of the birth certificate of the baby delivered by his sister at Fabella Hospital.[94]

Jonas Padel Ayhon corroborated the foregoing testimony of his brother-in-law, Augusto "Ogie" Santos, whose half-sister was his wife.[95]

Rameses de Jesus testified that on June 12, 1996 at 7:00 o'clock in the evening, he and Lumanog left for Mabalacat, Pampanga on board the latter's brand new Mitsubishi Lancer, together with Romeo Costibollo, Manny dela Rosa and Boni Mandaro. They arrived in Mabalacat at about 10:00 o'clock in the evening and after resting they started digging in front of the church, inside the compound of the Tiglao family, Lumanog's in-laws. They dug until 4:00 o'clock in the morning of June 13, 1996. Thereafter, they slept and woke up at around 10:00 o'clock in the morning. They helped in the preparations for the celebration of the wedding anniversary of the Tiglaos. After eating lunch, they drank liquor. They returned to Manila only on June 14, 1996 at 7:00 p.m.. On June 19, 1996, they went back to Pampanga and returned to Manila on June 20, 1996. At around 10:00 p.m., they proceeded to Fairview, Quezon City to visit the sick child of Romeo Costibollo who was then confined at Fairview Polymedic Hospital. After Costibollo and Lumanog alighted from their car and while he was parking in front of the hospital, several armed men came. Two (2) men approached him from behind and asked him if Costibollo and Lumanog were his companions. When he replied yes, he was pushed inside the car; Costibollo and Lumanog were handcuffed. Without any warrant, they were apprehended, blindfolded and taken to a place where he was tortured. They were forcing him to admit that he and his companions killed "Kabise" who was the ex-governor of Ilocos Norte. Despite his denials they continued to torture him by electrocution and suffocation with a plastic bag. A policeman arrived with Fortuna, who was asked how much Ram gave them, to which Fortuna replied "P10,000.00." He got mad at Fortuna and cursed him for telling such a lie. After two (2) days, he was brought to Camp Karingal still blindfolded. He was again tortured for two (2) days, the policemen

forcing him to admit he participated in the killing of Col. Abadilla. When he could no longer bear the torture, he finally admitted to Insp. Castillo that he took part in the Abadilla ambush-slay. When the one (1) interviewing him asked how he did it, he just said that Fortuna came to his house with an owner-type jeep and two (2) other persons, and that they rode to Dau, Pampanga and headed to Tarlac, on their way to Ilocos to kill Abadilla. Insp. Castillo got angry, saying that he was just fooling them and he was again hit.[96]

Rameses continued to narrate that after two (2) or three (3) days' stay at Camp Karingal, he and the other accused were presented at a press conference. During the inquest conducted by Fiscal Refuerzo, he saw Freddie Alejo for the first time, and also his co-accused Lumanog, Fortuna, Lorenzo, Joel and Augusto. As far as he knew, they had brought the matter of the torture they suffered in the hands of policemen to the DOJ.[97]

On cross-examination, Rameses was shown a medical certificate issued by Dr. Servillano B. Ritualo III at the PNP General Hospital, Camp Crame, but he said he could no longer remember the date he was examined by said doctor. He confirmed that Fortuna was renting a room in his house together with his mistress "Baby." When confronted with his Sinumpaang Salaysay dated June 26, 1996 he executed before the CHR, he admitted that there was no mention therein of their treasure-hunting trip to Pampanga on June 12 to 15, 1996. He said he was never asked about it. He likewise admitted that he was included in the kidnapping charge filed in Mabalacat, but asserted that it was trumped-up ("Ipinatong po sa akin yan ni Col. Baluyot").[98]

#### The Trial Court's Verdict

On August 11, 1999, the trial court promulgated a Joint Decision dated July 30, 1999, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered as follows:

x x x

V. In Criminal Case No. Q-96-66684, for Murder,:

1. Accused Arturo Napolitano y Caburnay is hereby ACQUITTED;
2. Accused SPO2 Cesar Fortuna y Abudo, Rameses de Jesus y Calma, Leonardo Lumanog y Luistro (a.k.a. Leonido or Lenido), Joel de Jesus y Valdez, and Augusto Santos y Galang are hereby found GUILTY beyond reasonable doubt as co-principals of the crime of MURDER as defined and penalized in the Revised Penal Code for the death of ex-Col. Rolando Abadilla y Nolasco with the aggravating circumstances of treachery (absorbing abuse of superior strength) and evident premeditation and they are hereby sentenced to suffer the penalty of DEATH;
3. Accused Lorenzo delos Santos y dela Cruz is hereby ACQUITTED.

On the civil aspect, accused SPO2 Cesar Fortuna y Abudo, Rameses de Jesus y Calma, Leonardo Lumanog y Luistro (a.k.a. Leonido or Lenido), Joel de Jesus y Valdez and Augusto Santos y Galang are hereby ordered jointly and solidarily to pay the heirs of the deceased ex-Col. Rolando Abadilla y Nolasco the following:

1. As actual damages, the sum of P294,058.86;
2. As indemnity damages, the sum of P50,000.00;
3. As moral damages, the sum of P500,000.00;
4. As exemplary damages, the sum of P500,000.00.

The firearm, one (1) Smith & Wesson .38 caliber revolver with Serial No. 980974, subject of Case No. Q-96-66680 is hereby ordered returned to Lorenzo delos Santos y dela Cruz.

The firearm, one (1) Amscor .38 caliber revolver with Serial No. 21907, subject of Case No. Q-96-66683 is hereby ordered forwarded to the PNP Firearms and Explosives Division, Camp Crame, Quezon City for safekeeping in accordance with law and as said firearm belongs and is licensed to accused Leonardo Lumanog y Luistro (a.k.a. Leonido or Lenido) who has been sentenced in Case No. Q-96-66684 for Murder, until further orders from this court.

Costs against the accused.

Let the entire records of these cases be transmitted forthwith to the Honorable Supreme Court for automatic review, in accordance with law and the Rules of Court.

SO ORDERED.[99]

The trial court was firmly convinced that the prosecution succeeded in establishing the identities of accused Joel, Rameses, Lumanog, Fortuna and Augusto as the perpetrators in the fatal shooting of Abadilla in the morning of June 13, 1996. It found that both security guards Alejo and Herbas confirmed the presence of Joel de Jesus in the crime scene. However, with respect to the positive identification of all the five (5) accused, namely, Joel de Jesus, Rameses de Jesus, Cesar Fortuna, Lenido Lumanog and Augusto Santos, the trial court gave more credence to the testimony of Alejo than the declaration on the witness stand of Herbas who had backtracked on his earlier statement dated June 21, 1996 wherein he pointed to Joel as one (1) of those participants in the shooting incident.

In doubting the credibility of Herbas, the trial court stressed that Herbas was obviously disgruntled at the Abadilla family's failure to give him the promised salary, and circumstances showed that his need for job and money colored his perception and attitude in testifying for the defense. Moreover, despite the impression he had given to the police and the Abadilla family that he could identify the four (4) persons who surrounded Col. Abadilla's car, Herbas could not have really been able to recognize the faces of the ambushers for three (3) reasons: (1) he was on the ground when he turned his head (lumingon) towards where the gunshots were being fired and quite a lot of vehicles in traffic stopped at the time; (2) the whole incident, as far as Herbas observed, happened in seconds only; and (3) Herbas was three (3) Meralco posts away from the ambush site. All these factors combined, according to the trial court, could not have given Herbas enough time and opportunity to clearly see those who ambushed Abadilla, and hence he was really a poor and inadequate witness either for the prosecution or the defense.[100]

Compared to Herbas, the trial court found the eyewitness testimony of Alejo more credible due to his elevated position at his guard post and the fact that the ambush had taken place before his very eyes, so near that one (1) of the conspirators had to order him to lie flat (which obviously he could not do

because of the narrow space inside his guard house), and which appeared to be the reason why a second order came for him to get down from the guard house, to which he nervously complied. From his vantage point, Alejo sufficiently and in a detailed manner recognized the relative positions and participations of the ambushers, each of whom he had identified as Rameses, Fortuna, Lumanog, Augusto and Joel, both in the police line-up and again inside the courtroom during the trial.[101]

The trial court also found that the statements of Joel, in which he admitted his participation in the crime assisted by Atty. Sansano and in the presence of the IBP personnel and police investigators, were not flawed by intimidation or violence when obtained and sworn to before the fiscal. The common defense of alibi put up by all the accused was rejected by the trial court, holding that (1) the alleged treasure-hunting trip made by Lumanog and Rameses was incredible and unpersuasive, as it was contrary to ordinary human experience; (2) Fortuna's claim was weak, the logbook entry on his supposed transaction in the Office of the Directorate for Personnel and Recruitment at Camp Crame was a mere photocopy, and also, as in the case of Rameses, he never mentioned such digging activity in Pampanga in the sworn complaint he had filed before the CHR; (3) Augusto's alibi was supported only by his brother-in-law, and it was simply not usual for menfolk, instead of women, in our family culture, to fetch a woman who had just given birth at the hospital, aside from the observation that Augusto could have gone straight to Fabella Hospital in Sta. Cruz, Manila instead of going first to Buendia, Makati before 7:00 a.m. to fetch his brother-in-law. With respect to Lumanog, the trial court pointed out that his silence and failure to testify in court, despite the evidence implicating him in the murder of Abadilla, justified an inference that he was not innocent.[102]

On August 25, 1999, Lumanog filed a motion for reconsideration.[103] On September 2, 1999, Joel filed a motion for new trial based on newly discovered evidence to present two witnesses, Merevic S. Torre Franca and Rosemarie P. Caguioa, who offered to testify on the whereabouts of Joel on the day of the incident.[104] Lumanog likewise filed a motion for new trial for the presentation of a new witness, who was allegedly on board a taxi immediately behind Abadilla's car, and who clearly saw that those who perpetrated the gruesome crime were not the accused.[105] In his Supplement to the Motion for Reconsideration, Lumanog assailed the inconsistencies in the declarations of Alejo, and the non-presentation of eyewitnesses Minella Alarcon and Metro Aide Aurora Urbano. In addition, Lumanog pointed to well-publicized statements of the Alex Boncayao Brigade (ABB), which claimed responsibility for the killing of Abadilla, but the investigation got sidetracked by another angle -- that a political rival of Abadilla paid money for a contract assassination. He contended that the police opted for the path of least resistance by rounding up the usual suspects, indeed another glaring example of our law enforcers' strategy of instituting trumped-up charges against innocent people just to comply with their superior's directive to accelerate solving an ambush-slay case.[106] In additional pleadings filed by his new counsel, Lumanog reiterated the ABB's assassination theory in the light of more recent press statements issued by said group describing the accused as mere fall guys of the police to project an image of efficiency.[107]

On January 25, 2000, the trial court issued an Order ruling on the pending motions:

WHEREFORE, premises considered, the court resolves:

1. to DENY the Motion for Reconsideration by accused Lenido Lumanog;
2. to DENY the Motion for New Trial by accused Joel de Jesus;
3. to consider the Motion for New Trial by accused Lenido Lumanog as abandoned and/or withdrawn;



4. to DENY the Supplement to the Motion for Reconsideration by accused Lenido Lumanog as well as his addendum thereto and his Manifestation and Motion dated December 15, 1999 to allow him to introduce additional evidence in support of his Supplement to the Motion for Reconsideration;

5. to DENY the Manifestation and Submission dated December 14, 1999 by accused Lenido Lumanog;

6. and to ORDER the immediate transmittal of the records of these cases to the Honorable Supreme Court for automatic review pursuant to law, the Rules of Court and the Joint Decision of this court dated July 30, 1999.

SO ORDERED.[108]

On January 19, 2000, Fr. Roberto P. Reyes, parish priest of the Parish of the Holy Sacrifice, University of the Philippines at Diliman, Quezon City, assisted by Atty. Neri J. Colmenares, filed an “Urgent Independent Motion for Leave of Court to Present Vital Evidence.” Fr. Reyes claimed that an ABB personality came to him confessing that the ABB was responsible for the killing of Abadilla and gave him an object (Omega gold wristwatch) taken from said victim, which can be presented as evidence in this case to prove the innocence of the accused who were erroneously convicted by the trial court and save them from the penalty of death.[109]

After due hearing, the trial court denied the said motion of Fr. Reyes, holding that the latter’s proposed testimony could not be considered an exception to the hearsay rule, considering that: (1) it cannot be said that the person who allegedly approached Fr. Reyes was unable to testify, as said person was simply unwilling to face in a court of law the legal consequences of whatever admissions he made to Fr. Reyes; (2) the alleged admission was made long after trial had ended and long after the court had promulgated its decision, at which time the public and persons interested in the outcome of the case knew already what were the court’s findings and conclusions of fact; and (3) going by the advertised image of the ABB as an ideologically motivated group that would shoot to death public officers and private individuals perceived by its ranking cadres as corrupt, the court found it hard to believe that ABB gunman would in full view of idealist comrades and everybody else, would open Abadilla’s car and steal that watch, and remain unscathed for his unproletarian act by his peers in the organization.[110] The trial court, however, ordered that the Omega wristwatch allegedly belonging to the late Col. Abadilla, the copy of the motion for leave to present vital evidence and the transcript of the proceedings on January 26, 2000 be attached to the records of the case as part of the offer of proof of the defense.

Two (2) more pleadings were filed by Lumanog’s counsel just before the records of Criminal Case No. Q-96-66684 were transmitted to this Court for automatic review, namely, a Final Submission to This Court dated February 8, 2000, together with an attached copy of the letter of Lt. Gen Jose M. Calimlim of the Armed Forces of the Philippines (AFP) Intelligence Service regarding an unsuccessful operation of the ABB to kill Col. Abadilla, and Final Manifestation to This Court dated February 9, 2000.[111]

Lumanog challenged before this Court the validity of the Orders dated January 25, 26, and 28, 2000 allegedly issued with grave abuse of discretion on the part of the trial judge who thereby denied the accused the opportunity to introduce evidence on the alleged role of the ABB in the ambush-slay of Col. Abadilla. On September 7, 2001, we denied his petition for certiorari in G.R. No. 142065,[112] as we thus held:

A perusal of the pieces of evidence, except the Omega wristwatch, which are sought to be presented by the petitioners in a new trial are not newly discovered evidence because they were either available and could have been presented by the defense during the trial of the case with the exercise of due diligence, such as the alleged newspaper reports and AFP/PNP intelligence materials on Col. Abadilla. The wristwatch allegedly belonging to the late Col. Abadilla is immaterial to the case of murder while the testimony of F. Roberto Reyes on the turn over of the said wristwatch by an alleged member of the ABB who purportedly knows certain facts about the killing of Col. Abadilla would be hearsay without the testimony in court of the said alleged member of the ABB. The document which granted amnesty to Wilfredo Batongbakal is irrelevant to the killing of Col. Abadilla inasmuch as Batongbakal does not appear privy to the actual commission of the crime of murder in the case at bar. If at all, those pieces of additional evidence will at most be merely corroborative to the defense of alibi and denial of herein petitioners. Petitioners' alternative prayer that this Court "itself conduct hearings and receive evidence on the ABB angle" is not well taken for the reason that the Supreme Court is not a trier of facts.[113]

Accused-petitioner's motion for reconsideration of the above decision was denied with finality on November 20, 2001.[114] On September 17, 2002, this Court likewise denied for lack of merit the motion for new trial and related relief dated April 26, 2002 filed by counsel for said accused-petitioner.[115]

Pursuant to our decision in *People v. Mateo*,[116] this case was transferred to the Court of Appeals for intermediate review on January 18, 2005.[117]

Ruling of the CA

On April 1, 2008, the CA rendered the assailed decision, thus:

WHEREFORE, in the light of the foregoing, the impugned decision is **AFFIRMED** with the **MODIFICATION** that the accused-appellants are sentenced each to suffer reclusion perpetua without the benefit of parole.

In all other respects, the lower court's decision is **AFFIRMED**.

Costs against appellants.

SO ORDERED.[118]

The CA upheld the conviction of the accused-appellants based on the credible eyewitness testimony of Alejo, who vividly recounted before the trial court their respective positions and participation in the fatal shooting of Abadilla, having been able to witness closely how they committed the crime. On the sufficiency of prosecution evidence to establish appellants' guilt beyond reasonable doubt and the scant weight of their defense of alibi, as well as the allegations of torture and intimidation in the hands of the police investigator and negative results of ballistic and fingerprint tests, the CA ruled as follows:

Despite a lengthy and exhaustive cross-examination by the defense counsel, eyewitness Alejo stuck to the essentials of his story, including the identification of the persons who killed Col. Abadilla. He was only ten (10) meters away from the locus crimini. Standing on an elevated guardhouse, he had a close and unobstructed view of the whole incident. He was in a vantage position to clearly recognize Col. Abadilla's assailants, more so because the crime happened in clear and broad daylight.

Even standing alone, Alejo's positive and unequivocal declaration is sufficient to support a conviction for murder against appellants. Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even for murder. For there is no law requiring that the testimony of a simple [sic] witness should be corroborated for it to be accorded full faith and credit. The credible testimony of a lone witness(es) assumes more weight when there is no showing that he was actuated by improper motive to testify falsely against the accused, as in the case of Freddie Alejo.

x x x

...appellants failed to prove that it was physically impossible for them to be at the locus delicti or within its immediate vicinity at the time the crime was committed.

In the case of Joel de Jesus, he maintains that he was driving his tricycle on a special chartered trip for a passenger going to Roosevelt, Novalichez, Quezon City. But, it was not impossible for him to have also gone to Katipunan Avenue, which is also part of Quezon City; not to mention the fact that with his tricycle, he could have easily moved from one place to another.

The testimonies of Rameses de Jesus and Leonido 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. 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.

Augusto 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.

x x x

Finally, Cesar Fortuna claims that he was in Camp Crame on the day the murder took place. But it was not impossible for him to have gone to Katipunan Road, Blue Ridge, which is relatively near Camp Crame when the shooting happened around 8:40 in the morning. After the shooting, he could have easily and quickly transferred to Camp Crame between 9:00 and 9:30 in the morning of the same day.

In any event, appellants' alibis were belied by the positive identification made by prosecution eyewitness Freddie Alejo.

x x x

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 of Freddie Alejo as the authors of the crime. Such positive identification is totally independent of their extra-judicial confessions. 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. Thus, the Supreme Court in *Draculan vs. Donato*, held:

“x x x. Pangalawa, ang mga karapatan ng mga mamamayan na natatala sa Saligang Batas (sa Bill of

Rights) ay hindi mga paraan upang ang isang tunay na may pagkakasala na labag sa batas, ay makaligtas sa nararapat na pagdurusa. Ang tunay na layunin ng mga tadhanang iyon ng Saligang Batas ay walang iba kundi tiyakin na sinumang nililitis ay magkaroon ng sapat na pagkakataon at paraan na maipagtanggol ang sarili, bukod sa pagbabawal ng pagtanggap ng katibayan (evidence) laban sa kanya na bunga ng pagpipilit, dahas at iba pang paraang labag sa kanyang kalooban.”

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, 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 supposedly in their possession. But these ballistic 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 same ones they used in the ambush-slay.[119]

In its Resolution[120] dated October 28, 2008, the CA denied the motions for reconsideration respectively filed by Fortuna and Joel de Jesus.[121]

Rameses de Jesus and Joel de Jesus filed notices of appeal[122] (G.R. No. 187745), while Fortuna (G.R. No. 185123), and Lumanog and Augusto Santos (G.R. No. 182555) filed their respective petitions for review. On August 6, 2009, G.R. No. 187745 was ordered consolidated with the already consolidated petitions in G.R. Nos. 182555 and 185123.[123] In view of the judgment of the CA imposing the penalty of reclusion perpetua, said petitions for review are treated as appeals, in accordance with A.M. No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases)[124] which provides under Rule 124 (c):

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

#### Appellants’ Arguments

Lenido Lumanog and Augusto Santos set forth the following arguments in their memorandum, which basically reflect the same issues raised by appellants in the memorandum filed in G.R. No. 182555:

1. 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.
2. The affirmation of the conviction over-relies on the testimony of one alleged eyewitness, Freddie Alejo.
3. The affirmation of the conviction misappreciates the alibi evidence for the defense.
4. The affirmation of conviction gravely erred when it unduly disregarded other pieces of vital evidence.
5. The penalty imposed by the Court of Appeals is unconstitutional.[125]

On his part, Fortuna alleges that:

- I. The Honorable Court of Appeals committed serious error and gravely abused its discretion when it affirmed the conviction of the petitioner and his co-accused based solely on the incredible and contradicted eyewitness account of Security Guard (S/G) Alejo.
- II. The Honorable Court of Appeals seriously erred and gravely abused its discretion in not considering the defense of petitioner herein despite the weakness of the evidence of the prosecution.
- III. The Honorable Court seriously erred in favoring the prosecution on the ballistic test showing that the bullets and bullet shells found in the crime scene did not match with any firearms supposedly in petitioner's possession; evidence which was supposed to support the theory of the prosecution. When such physical evidence did not favor the prosecution's theory the same was still taken against the petitioner.
- IV. The Honorable Court of Appeals seriously erred in disregarding allegations and proof of torture and maltreatment by police officers against the petitioner in affirming his conviction.[126]

Appellants assail the wholesale adoption, if not verbatim copying, by the CA of the factual narration, as well as the arguments for and disposition of the merits of the case from the Consolidated Brief for the Appellees, which in turn is based on the memorandum submitted by the private prosecutors to the trial court. This anomaly, according to the appellants, which was aggravated by the insufficient findings of fact and absence of actual discussion of the assignment of errors raised by each appellant before the CA, resulted in the failure of intermediate review without any independent findings and resolution of important issues of the case, thus rendering the CA decision void. Hence, appellants seek not just to overturn or reverse the CA decision but also to declare it null and void, by way of "radical relief" from this Court.

On the merits, appellants principally contend that the CA gravely erred in its over-reliance on the problematic identification provided by the prosecution's lone eyewitness, security guard Alejo. The CA simply did not rule on questions concerning the credibility of said eyewitness through the "totality of circumstances" test. They also fault the CA for misappreciating their common defense of alibi, thus disregarding exculpatory documentary evidence including negative results of ballistic and fingerprint examinations, and evidence of torture which appellants had suffered in the hands of police investigators. Equally deplorable is the trial and appellate courts' refusal to admit evidence coming from underground revolutionary forces, in particular the ABB which claimed responsibility for the killing of Col. Abadilla, a notorious military henchman during the martial law era. Appellants maintain that violations of constitutional rights have been held as a ground for acquittal or dismissal in certain cases. In one (1) case, the long delay in the termination of preliminary investigation was found to be violative of the accused's constitutional rights to procedural due process and speedy disposition of cases and was cause for the dismissal of the case by this Court as a matter of "radical relief."

Finally, the appellants argue that the penalty of reclusion perpetua "without the benefit of parole" meted by the CA pursuant to Sec. 3 of R.A. No. 9346 is unconstitutional. Article III, Section 19 (1) of the 1987 Constitution provides that "any death penalty imposed shall be reduced to reclusion perpetua." There is no mention of "without the benefit of parole" or "shall not be eligible for parole" therein.

Appellants contend that the questioned provisions of R.A. No. 9346 constitute encroachments or

dilutions of the President's broad, if not near absolute, constitutional power of executive clemency, based not only on Article VII, Sec. 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 such. In *Tesoro v. Director of Prisons*,<sup>[127]</sup> for instance, it was held that the power to pardon given to the President by the Constitution includes the power to grant and revoke paroles. The aforesaid provision of R.A. No. 9346 also inflicts an inhuman punishment, which is prohibited by the Constitution, and also violates the equal protection clause of the Bill of Rights.

### Our Ruling

Once again, this Court upholds the constitutional mandate protecting the rights of persons under custodial investigation. But while we strike down the extrajudicial confession extracted in violation of constitutionally enshrined rights and declare it inadmissible in evidence, appellants are not entitled to an acquittal because their conviction was not based on the evidence obtained during such custodial investigation. Even without the extrajudicial confession of appellant Joel de Jesus who was the first to have been arrested, the trial court's judgment is affirmed, as the testimonial and documentary evidence on record have established the guilt of appellants beyond reasonable doubt.

### CA Decision meets the constitutional standard

The Constitution commands that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."<sup>[128]</sup> Judges are expected to make complete findings of fact in their decisions and scrutinize closely the legal aspects of the case in the light of the evidence presented. They should avoid the tendency to generalize and form conclusions without detailing the facts from which such conclusions are deduced. <sup>[129]</sup>

Section 2, Rule 120 of the 1985 Rules on Criminal Procedure, as amended, likewise provides:

Sec. 2. Form and contents of judgments. -- The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

x x x

x x x

x x x. [emphasis supplied.]

We have sustained decisions of lower courts as having substantially or sufficiently complied with the constitutional injunction, notwithstanding the laconic and terse manner in which they were written; and even if "there (was left) much to be desired in terms of (their) clarity, coherence and comprehensibility," provided that they eventually set out the facts and the law on which they were based, as when they stated the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed and the civil liability; or discussed the facts comprising the elements of the offense that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty; or quoted the facts narrated in the prosecution's memorandum, but made their own findings and assessment of evidence, before finally agreeing with the prosecution's evaluation of the case.<sup>[130]</sup>

In the same vein, we have expressed concern over the possible denial of due process when an appellate court failed to provide the appeal the attention it rightfully deserved, thus depriving the appellant of a

fair opportunity to be heard by a fair and responsible magistrate. This situation becomes more ominous in criminal cases, as in this case, where not only property rights are at stake but also the liberty if not the life of a human being.[131] The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the trial court. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[132]

In *Bank of the Philippine Islands v. Leobrera*,[133] we held that though it is not a good practice, we see nothing illegal in the act of the trial court completely copying the memorandum submitted by a party, provided that the decision clearly and distinctly states sufficient findings of fact and the law on which they are based.[134] In another case where we upheld the validity of memorandum decisions, we nevertheless took occasion to remind judges that it is still desirable for an appellate judge to endeavor to make the issues clearer and use his own perceptiveness in unraveling the rollo and his own discernment in discovering the law. No less importantly, he must use his own language in laying down his judgment.[135]

Perusing the CA decision, we hold that it cannot be deemed constitutionally infirm, as it clearly stated the facts and law on which the ruling was based, and while it did not specifically address each and every assigned error raised by appellants, it cannot be said that the appellants were left in the dark as to how the CA reached its ruling affirming the trial court's judgment of conviction. The principal arguments raised in their Memorandum submitted before this Court actually referred to the main points of the CA rulings, such as the alleged sufficiency of prosecution evidence, their common defense of alibi, allegations of torture, probative value of ballistic and fingerprint test results, circumstances qualifying the offense and modification of penalty imposed by the trial court. What appellants essentially assail is the verbatim copying by the CA of not only the facts narrated, but also the arguments and discussion including the legal authorities, in disposing of the appeal. On such wholesale adoption of the Office of the Solicitor General's position, as well as the trial court's insufficient findings of fact, appellants anchor their claim of failure of intermediate review by the CA.

We now proceed to the other substantive issues presented by appellants.

## Rights of Accused During

### Custodial Investigation

The rights of persons under custodial investigation are enshrined in Article III, Section 12 of the 1987 Constitution, which provides:

Sec. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or section 17 hereof (right against self-incrimination) shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violation of this section as well as compensation for the rehabilitation of victims of tortures or similar practices, and their families. [emphasis supplied.]

#### Extrajudicial Confession

of Joel de Jesus Not Valid

Custodial investigation refers to the critical pre-trial stage when the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular person as a suspect.[136] Police officers claimed that appellants were apprehended as a result of “hot pursuit” activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with the identities of his conspirators and where they could be found.

R.A. No. 7438,[137] approved on May 15, 1992, has reinforced the constitutional mandate protecting the rights of persons under custodial investigation. The pertinent provisions read:

#### SEC. 2. Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers.—

a. Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

b. Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer private with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided by with a competent and independent counsel.

x x x x

f. As used in this Act, “custodial investigation” shall include the practice of issuing an “invitation” to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the “inviting” officer for any violation of law. [emphasis supplied.]

Police officers claimed that upon arresting Joel, they informed him of his constitutional rights to remain silent, that any information he would give could be used against him, and that he had the right to a competent and independent counsel, preferably, of his own choice, and if he cannot afford the services of counsel he will be provided with one (1). However, since these rights can only be waived in writing and with the assistance of counsel, there could not have been such a valid waiver by Joel, who was presented to Atty. Sansano at the IBP Office, Quezon City Hall only the following day and stayed



overnight at the police station before he was brought to said counsel.

P/Insp. Castillo admitted that the initial questioning of Joel began in the morning of June 20, 1996, the first time said suspect was presented to him at the CPDC station, even before he was brought to the IBP Office for the taking of his formal statement. Thus, the possibility of appellant Joel having been subjected to intimidation or violence in the hands of police investigators as he claims, cannot be discounted. The constitutional requirement obviously had not been observed. Settled is the rule that the moment a police officer tries to elicit admissions or confessions or even plain information from a suspect, the latter should, at that juncture, be assisted by counsel, unless he waives this right in writing and in the presence of counsel.[138] The purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads appellant to make self-incriminating statements.[139]

Even assuming that custodial investigation started only during Joel's execution of his statement before Atty. Sansano on June 20, 1996, still the said confession must be invalidated. To be acceptable, extrajudicial confessions must conform to constitutional requirements. A confession is not valid and not admissible in evidence when it is obtained in violation of any of the rights of persons under custodial investigation.[140]

Since Joel was provided with a lawyer secured by CPDC investigators from the IBP-Quezon City chapter, it cannot be said that his right to a counsel "preferably of his own choice" was not complied with, particularly as he never objected to Atty. Sansano when the latter was presented to him to be his counsel for the taking down of his statement. The phrase "preferably of his own choice" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense; otherwise the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest.[141] Thus, while the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel – or where the preferred lawyer is not available – is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection against the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.[142]

The question really is whether or not Atty. Sansano was an independent and competent counsel as to satisfy the constitutional requirement. We held that the modifier competent and independent in the 1987 Constitution is not an empty rhetoric. It stresses the need to accord the accused, under the uniquely stressful conditions of a custodial investigation, an informed judgment on the choices explained to him by a diligent and capable lawyer.[143] An effective and vigilant counsel necessarily and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.[144]

Atty. Sansano, who supposedly interviewed Joel and assisted the latter while responding to questions propounded by SPO2 Garcia, Jr., did not testify on whether he had properly discharged his

duties to said client. While SPO2 Garcia, Jr. testified that Atty. Sansano had asked Joel if he understood his answers to the questions of the investigating officer and sometimes stopped Joel from answering certain questions, SPO2 Garcia, Jr. did not say if Atty. Sansano, in the first place, verified from them the date and time of Joel's arrest and the circumstances thereof, or any previous information elicited from him by the investigators at the station, and if said counsel inspected Joel's body for any sign or mark of physical torture.

The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The lawyer's role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused. The accused is entitled to effective, vigilant and independent counsel.[145] Where the prosecution failed to discharge the State's burden of proving with clear and convincing evidence that the accused had enjoyed effective and vigilant counsel before he extrajudicially admitted his guilt, the extrajudicial confession cannot be given any probative value.[146]

With respect to the other appellants, they were likewise entitled to the rights guaranteed by the Constitution when they were brought to the police station as suspects and were, therefore under custodial investigation.[147] However, they cannot simply rely on those violations of constitutional rights during custodial investigation, which are relevant only when the conviction of the accused by the trial court is based on the evidence obtained during such investigation.[148] As for the matters stated in the extrajudicial confession of appellant Joel, these were not the basis for appellants' conviction. It has to be stressed further that no confession or statement by appellants Fortuna, Lumanog, Augusto and Rameses was used as evidence by the prosecution at the trial.

After a thorough and careful review, we hold that there exists sufficient evidence on record to sustain appellants' conviction even without the extrajudicial confession of appellant Joel de Jesus.

### Allegations of Torture and Intimidation

The Court notes with utmost concern the serious allegations of torture of appellants who were dubbed by the media as the "Abadilla 5." This was brought by appellants before the CHR which, in its Resolution dated July 26, 1996, did not make any categorical finding of physical violence inflicted on the appellants by the police authorities. The CHR, however, found prima facie evidence that respondent police officers could have violated R.A. No. 7438, particularly on visitorial rights and the right to counsel, including the law on arbitrary detention, and accordingly forwarded its resolution together with records of the case to the Secretary of Justice, Secretary of the Department of Interior and Local Government, the PNP Director General and the Ombudsman to file the appropriate criminal and/or administrative actions against the person or persons responsible for violating the human rights of the suspects as the evidence may warrant.[149] As per the manifestation of appellants, the DOJ, after conducting a preliminary investigation, referred the matter to the Ombudsman in 2004. As of July 2007, the case before the Ombudsman docketed as OMB-P-C-04-1269/CPL-C-04-1965 was "still pending preliminary investigation.[150]

### Right to Speedy Disposition of Cases

Appellants further cite the comment made by the United Nations Human Rights Committee in its Communication No. 1466/2006 that under the circumstances, there was, insofar as the eight (8)-year delay in the disposition of their appeal in the CA was concerned, a violation of Article 14, paragraph 3 (c) of the International Covenant on Civil and Political Rights (1966). It provides that in the determination of any criminal charge against him, everyone shall be entitled, as among the minimum guarantees provided therein, “to be tried without undue delay.”[151]

Section 16, Article III of the 1987 Constitution provides that “all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”[152] This protection extends to all citizens and covers the periods before, during and after trial, affording broader protection than Section 14(2), which guarantees merely the right to a speedy trial.[153] However, just like the constitutional guarantee of “speedy trial,” “speedy disposition of cases” is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays, which render rights nugatory.[154]

In this case, the records of Criminal Case No. Q-96-66684 were transmitted to this Court for automatic review on February 11, 2000. On September 7, 2001, this Court rendered a decision dismissing the Petition for Certiorari (Rule 65) and for Extraordinary Legal and Equitable Relief (G.R. No. 142065). By June 2004, all appeal briefs for the present review had been filed and on July 6, 2004, appellants filed a Consolidated Motion for Early Decision. On December 13, 2004, they filed a Motion for Early Decision.[155]

By resolution of January 18, 2005, we transferred this case to the CA for intermediate review, conformably with our pronouncement in *People v. Mateo* decided on July 7, 2004. Appellants’ Urgent Motion for Reconsideration of Transfer to the Court of Appeals filed on February 24, 2005 was denied on March 29, 2005. A similar request filed on June 2, 2005 was likewise denied by our Resolution dated July 12, 2005.[156] At the CA, appellants also moved for early resolution of their appeal after the case was submitted for decision on November 29, 2006. The case remained unresolved due to a number of factors, such as the CA internal reorganization and inhibition of some Justices to whom the case was re-raffled.[157] Before the retirement of the ponente, Justice Agustin S. Dizon, the CA’s Sixteenth Division finally rendered its decision on April 1, 2008. Appellants’ motion for reconsideration was denied by the Special Former Sixteenth Division on October 28, 2008.

It must be stressed that in the determination of whether the right to speedy disposition of cases has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. A mere mathematical reckoning of the time involved would not be sufficient.[158] Under the circumstances, we hold that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive.

In several cases where it was manifest that due process of law or other rights guaranteed by the Constitution or statutes have been denied, this Court has not faltered to accord the so-called “radical relief” to keep accused from enduring the rigors and expense of a full-blown trial.[159] In this case, however, appellants are not entitled to the same relief in the absence of clear and convincing showing that the delay in the resolution of their appeal was unreasonable or arbitrary.

#### Credibility of Eyewitness Testimony

Time and again, we have held that the testimony of a sole eyewitness is sufficient to support a

conviction so long as it is clear, straightforward and worthy of credence by the trial court.[160] Indeed, when it comes to credibility of witnesses, this Court accords the highest respect, even finality, to the evaluation made by the lower court of the testimonies of the witnesses presented before it. This holds true notwithstanding that it was another judge who presided at the trial and Judge Jaime N. Salazar, Jr. who penned the decision in this case heard only some witnesses for the defense. It is axiomatic that the fact alone that the judge who heard the evidence was not the one who rendered the judgment, but merely relied on the record of the case, does not render his judgment erroneous or irregular. This is so even if the judge did not have the fullest opportunity to weigh the testimonies, not having heard all the witnesses speak or observed their deportment and manner of testifying.[161]

Verily, a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision. Such reliance does not violate substantive and procedural due process.[162] We have ruled in *People v. Rayray*[163] that the fact that the judge who heard the evidence was not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not per se render his decision void. The validity of a decision is not necessarily impaired by the fact that its ponente only took over from a colleague who had earlier presided at the trial. This circumstance alone cannot be the basis for the reversal of the trial court's decision.[164]

In giving full credence to the eyewitness testimony of security guard Alejo, the trial judge took into account his proximity to the spot where the shooting occurred, his elevated position from his guardhouse, his opportunity to view frontally all the perpetrators for a brief time -- enough for him to remember their faces (when the two [2] lookouts he had earlier noticed walking back and forth in front of his guard post pointed their guns at him one [1] after the other, and later when the four [4] armed men standing around the victim's car momentarily looked at him as he was approached at the guardhouse by the second lookout), and his positive identification in the courtroom of appellants as the six (6) persons whom he saw acting together in the fatal shooting of Abadilla on June 13, 1996. The clear view that Alejo had at the time of the incident was verified by Judge Jose Catral Mendoza (now an Associate Justice of this Court) during the ocular inspection conducted in the presence of the prosecutors, defense counsel, court personnel, and witnesses Alejo and Maj. Villena.

The trial judge also found that Alejo did not waver in his detailed account of how the assailants shot Abadilla who was inside his car, the relative positions of the gunmen and lookouts, and his opportunity to look at them in the face. Alejo immediately gave his statement before the police authorities just hours after the incident took place. Appellants make much of a few inconsistencies in his statement and testimony, with respect to the number of assailants and his reaction when he was ordered to get down in his guard post. But such inconsistencies have already been explained by Alejo during cross-examination by correcting his earlier statement in using number four (4) to refer to those persons actually standing around the car and two (2) more persons as lookouts, and that he got nervous only when the second lookout shouted at him to get down, because the latter actually poked a gun at him. It is settled that affidavits, being ex-parte, are almost always incomplete and often inaccurate, but do not really detract from the credibility of witnesses.[165] The discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused,[166] as testimonial evidence carries more weight than an affidavit.[167]

As to appellants' attempt to discredit Alejo by reason of the latter's acceptance of benefits from the Abadilla family, the same is puerile, considering that the trial court even verified for itself how Alejo could have witnessed the shooting incident and after he withstood intense grilling from defense lawyers. Case law has it that where there is no evidence that the principal witness for the prosecution

was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[168]

The trial judge also correctly rejected appellants' proposition that the eyewitness testimony of security guard Herbas should have been given due weight and that other eyewitnesses should have been presented by the prosecution, specifically Cesar Espiritu and Minella Alarcon, who allegedly had better opportunity to recognize Abadilla's attackers. As correctly pointed out by the trial judge, Herbas could not have really seen at close range the perpetrators from his position at a nearby building, which is several meters away from the ambush site, as confirmed by photographs submitted by the prosecution, which Herbas failed to refute. The same thing can be said of Espiritu who admitted in his Sinumpaang Salaysay that his car was ahead of the Honda Accord driven by Abadilla, and that he had already alighted from his car some houses away from the exact spot where Abadilla was ambushed while his car was in the stop position.[169]

### Positive Identification of Appellants

Appellants assail the out-of-court identification made by Alejo who pointed to appellant Joel de Jesus and Lorenzo delos Santos in a line-up at the police station together with police officers. However, appellants' claim that the police officers who joined the line-up were actually in their police uniforms at the time, as to make the identification process suggestive and hence not valid, was unsubstantiated.

In *People v. Teehankee, Jr.*,[170] we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, thus:

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. . . In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[171] [emphasis supplied.]

Examining the records, we find nothing irregular in the identification made by Alejo at the police station for which he executed the Karagdagang Sinumpaang Salaysay dated June 21, 1996, during which he positively identified Joel de Jesus and Lorenzo delos Santos as those lookouts who had pointed their guns at him demanding that he buck down at his guardhouse. In any case, the trial court did not rely solely on said out-of-court identification considering that Alejo also positively identified appellants during the trial. Thus, even assuming arguendo that Alejo's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it.[172] We have held that the inadmissibility of a police line-up identification should not necessarily foreclose the admissibility of an independent in-court identification.[173]

We also found none of the danger signals enumerated by Patrick M. Wall, a well-known authority in eyewitness identification, which give warning that the identification may be erroneous even though the method used is proper. The danger signals contained in the list, which is not exhaustive, are:

- (1) the witness originally stated that he could not identify anyone;
- (2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;
- (3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;
- (4) before identifying the accused at the trial, the witness erroneously identified some other person;
- (5) other witnesses to the crime fail to identify the accused;
- (6) before trial, the witness sees the accused but fails to identify him;
- (7) before the commission of the crime, the witness had limited opportunity to see the accused;
- (8) the witness and the person identified are of different racial groups;
- (9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;
- (10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;
- (11) several persons committed the crime; and
- (12) the witness fails to make a positive trial identification.[174]

Appellants nonetheless point out the allegedly doubtful prior descriptions given by Alejo, who was able to describe the physical appearance of only two (2) suspects in his statement:

Iyong tumutok sa akin ay naka-asul na t-shirt, edad 30-35, 5'5"-5'6" ang taas, katamtaman ang katawan, maikli ang buhok, kayumanggi. Ang baril niya ay tipong 45 o 9 mm na pistola. Iyong sumakal sa biktima at nang-agaw ng clutch bag nito ay 25-30 ang edad, payat, mahaba ang buhok na nakatali, maitim, may taas na 5'5"-5'6", maiksi din ang baril niya at naka-puting polo. Iyong iba ay maaring makilala ko kung makikita ko uli.[175]

Appellants claimed that if Alejo was referring to appellant Joel de Jesus who pointed a gun at him, his description did not jibe at all since Joel de Jesus was just 22 years old and not 30-35 years of age, and who stands 5'9" and not 5'5"-5'6". And if indeed it was appellant Lenido Lumanog whom Alejo saw as the gunman who had grabbed the victim by the neck after opening the car's left front door, his description again failed because far from being "maitim," Lumanog was in fact fair-complexioned.

We are not persuaded. Alejo positively identified Joel de Jesus in a line-up at the police station and again inside the courtroom as the first lookout who pointed a gun at him. Though his estimate of Joel's age was not precise, it was not that far from his true age, especially if we consider that being a tricycle driver who was exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age. Moreover Alejo's description of Lumanog as dark-skinned was made two (2) months

prior to the dates of the trial when he was again asked to identify him in court. When defense counsel posed the question of the discrepancy in Alejo's description of Lumanog who was then presented as having a fair complexion and was 40 years old, the private prosecutor manifested the possible effect of Lumanog's incarceration for such length of time as to make his appearance different at the time of trial.

Applying the totality-of-circumstances test, we thus reiterate that Alejo's out-court-identification is reliable, for reasons that, first, he was very near the place where Abadilla was shot and thus had a good view of the gunmen, not to mention that the two (2) lookouts directly approached him and pointed their guns at them; second, no competing event took place to draw his attention from the event; third, Alejo immediately gave his descriptions of at least two (2) of the perpetrators, while affirming he could possibly identify the others if he would see them again, and the entire happening that he witnessed; and finally, there was no evidence that the police had supplied or even suggested to Alejo that appellants were the suspects, except for Joel de Jesus whom he refused to just pinpoint on the basis of a photograph shown to him by the police officers, insisting that he would like to see said suspect in person. More importantly, Alejo during the trial had positively identified appellant Joel de Jesus independently of the previous identification made at the police station. Such in-court identification was positive, straightforward and categorical.

Appellants contend that the subsequent acquittal of Lorenzo delos Santos, whom Alejo had categorically pointed to as one (1) of the two (2) men whom he saw walking to and fro in front of his guard post prior to the shooting incident, and as one (1) of the two (2) men who pointed a gun at him and ordered him to get down, totally destroyed said witness' credibility and eroded the trustworthiness of each and every uncorroborated testimony he gave in court. This assertion is untenable. A verdict of acquittal is immediately final; hence, we may no longer review the acquittal of accused Lorenzo delos Santos.[176] However, the acquittal of their co-accused does not necessarily benefit the appellants. We have ruled that accused-appellant may not invoke the acquittal of the other conspirators to merit the reversal of his conviction for murder.[177]

Ballistic and fingerprint examination results are inconclusive and not indispensable

Appellants deplore the trial court's disregard of the results of the ballistic and fingerprint tests, which they claim should exonerate them from liability for the killing of Abadilla. These pieces of evidence were presented by the defense to prove that the empty shells recovered from the crime scene and deformed slug taken from the body of Abadilla were not fired from any of the firearms seized from appellants. Instead, they matched the same firearm used in the killings of Suseso de Dios and other supposed victims of ambush-slay perpetrated by suspected members of the ABB. Further, none of the fingerprints lifted from the KIA Pride, used by the gunmen as getaway vehicle, matched any of the specimens taken from the appellants.

We are not persuaded. As correctly held by the CA, the negative result of ballistic examination was inconclusive, for there is no showing that the firearms supposedly found in appellants' possession were the same ones used in the ambush-slay of Abadilla. The fact that ballistic examination revealed that the empty shells and slug were fired from another firearm does not disprove appellants' guilt, as it was possible that different firearms were used by them in shooting Abadilla.[178] Neither will the finding that the empty shells and slug matched those in another criminal case allegedly involving ABB members, such that they could have been fired from the same firearms belonging to said rebel group, exonerate the appellants who are on trial in this case and not the suspects in another case. To begin with, the prosecution never claimed that the firearms confiscated from appellants, which were the subject of separate charges for illegal possession of firearms, were the same firearms used in the

ambush-slay of Abadilla. A ballistic examination is not indispensable in this case. Even if another weapon was in fact actually used in killing the victim, still, appellants Fortuna and Lumanog cannot escape criminal liability therefor, as they were positively identified by eyewitness Freddie Alejo as the ones who shot Abadilla to death.[179]

As this Court held in *Velasco v. People*[180] --

As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction. The corpus delicti and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt. In the instant case, since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner's guilt beyond reasonable doubt. [emphasis supplied.]

The negative result of the fingerprint tests conducted by fingerprint examiner Remedios is likewise inconclusive and unreliable. Said witness admitted that no prints had been lifted from inside the KIA Pride and only two (2) fingerprints were taken from the car of Abadilla.

Defense of Alibi Cannot

Prevail Over Positive Identification

Alibi is the weakest of all defenses, for it is easy to fabricate and difficult to disprove, and it is for this reason that it cannot prevail over the positive identification of the accused by the witnesses.[181] To be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the locus criminis at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.[182]

Deeply embedded in our jurisprudence is the rule that positive identification of the accused, where categorical and consistent, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants, whose testimonies are not substantiated by clear and convincing evidence.[183] However, none of the appellants presented clear and convincing excuses showing the physical impossibility of their being at the crime scene between 8:00 o'clock and 9:00 o'clock in the morning of June 13, 1996. Hence, the trial court and CA did not err in rejecting their common defense of alibi.

As to the failure of appellant Lumanog to take the witness stand, indeed the grave charges of murder and illegal possession of firearms would have normally impelled an accused to testify in his defense, particularly when his life is at stake. As this Court observed in *People v. Delmendo*: [184]

An adverse inference may also be deduced from appellant's failure to take the witness stand. While his failure to testify cannot be considered against him, it may however help in determining his guilt. "The



unexplained failure of the accused to testify, under a circumstance where the crime imputed to him is so serious that places in the balance his very life and that his testimony might at least help in advancing his defense, gives rise to an inference that he did not want to testify because he did not want to betray himself.”

An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation, and as a precaution against prejudicing himself. A person’s silence, therefore, particularly when it is persistent, may justify an inference that he is not innocent. Thus, we have the general principle that when an accused is silent when he should speak, in circumstances where an innocent person so situated would have spoken, on being accused of a crime, his silence and omission are admissible in evidence against him. Accordingly, it has been aptly said that silence may be assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession.[185]

### Treachery and Evident Premeditation

#### Attended the Commission of the Crime

As regards the presence of treachery as a qualifying circumstance, the evidence clearly showed that the attack on the unsuspecting victim -- who was inside his car on a stop position in the middle of early morning traffic when he was suddenly fired upon by the appellants -- was deliberate, sudden and unexpected. There was simply no chance for Abadilla to survive the ambush-slay, with successive shots quickly fired at close range by two (2) armed men on both sides of his car; and much less to retaliate by using his own gun, as no less than 23 gunshot wounds on his head and chest caused his instantaneous death. As we have consistently ruled, the essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or to repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[186]

Evident premeditation was likewise properly appreciated by the trial court, notwithstanding the inadmissibility of Joel de Jesus’s extrajudicial confession disclosing in detail the pre-planned ambush of Abadilla, apparently a contract killing in which the perpetrators were paid or expected to receive payment for the job. As correctly pointed out by the CA, Alejo had stressed that as early as 7:30 in the morning of June 13, 1996, he already noticed something unusual going on upon seeing the two (2) lookouts (appellants Joel de Jesus and Lorenzo delos Santos) walking to and fro along Katipunan Avenue in front of the building he was guarding. True enough, they were expecting somebody to pass that way, who was no other than Abadilla driving his Honda Accord. After the lapse of more or less one (1) hour, he already heard successive gunshots, while in his guard post, from the direction of the middle lane where Abadilla’s car was surrounded by four (4) men carrying short firearms. All the foregoing disclosed the execution of a pre-conceived plan to kill Abadilla. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out criminal intent within a span of time sufficient to arrive at a calm judgment.[187]

The trial court and CA were therefore correct in declaring the appellants guilty as conspirators in the ambush-slay of Abadilla, the presence of treachery and evident premeditation qualifying the killing to murder under Art. 248 of the Revised Penal Code, as amended.

### Proper Penalty

The CA correctly modified the death penalty imposed by the trial court. At the time the crime was committed, the penalty for murder was reclusion perpetua to death. Since the penalty is composed of two (2) indivisible penalties, then for the purpose of determining the imposable penalty, Article 63 of the Revised Penal Code, as amended, must be considered. It provides in part:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

With the presence of the aggravating circumstance of treachery and there being no mitigating circumstance, the higher penalty of death should be imposed.[188]

In view, however, of the passage of Republic Act No. 9346 entitled, “An Act Prohibiting the Imposition of Death Penalty in the Philippines,” which was signed into law on June 24, 2006, the imposition of the death penalty has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to appellants shall be reclusion perpetua. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellants, they are not eligible for parole following Section 3 of said law which provides:[189]

SECTION 3. 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.

Appellants’ attack on the constitutionality of the above provision on grounds of curtailment of the President’s absolute power to grant executive clemency, imposition of an inhuman punishment and violation of equal protection clause, is utterly misplaced.

As succinctly explained by this Court in *People v. Gardon*[190]

We should point out that the benefit of parole cannot be extended to Gardon even if he committed the crimes for which he is now convicted prior to the effectivity of R.A. No. 9346. Sec. 2 of the Indeterminate Sentence Law provides that the law “shall not apply to persons convicted of offenses punished with death penalty or life- imprisonment.” Although the law makes no reference to persons convicted to suffer the penalty of reclusion perpetua such as Gardon, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to reclusion perpetua. In *People v. Enriquez*, we declared:

[R]eclusion perpetua is the only penalty that can be imposed against the appellants. As correctly argued by the Solicitor General, Act No. 4103, otherwise known as the Indeterminate Sentence Law, cannot be applied in the case of appellants considering the proscription in Sec. 2 thereof, viz:

x x x x

Indeed, in *People v. Asturias*, *Serrano v. Court of Appeals*, *People v. Lampaza* and *People v. Tan*, to name a few cases, we in effect equated the penalty of reclusion perpetua as synonymous to life-imprisonment for purposes of the Indeterminate Sentence Law, and ruled that the latter law does not apply to persons convicted of offenses punishable with the said penalty. Consequently, we affirm the Court of Appeals in not applying the Indeterminate Sentence Law, and in imposing upon appellants the penalty of reclusion perpetua instead.

Reclusion perpetua is an indivisible penalty without a minimum or maximum period. Parole, on the other hand, is extended only to those sentenced to divisible penalties as is evident from Sec. 5 of the Indeterminate Sentence Law, which provides that it is only after “any prisoner shall have served the minimum penalty imposed on him” that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole.[191]

Further, we cite the concurring opinion of Mr. Justice Dante Tinga in *People v. Tubongbanua*,[192] addressing the issue herein raised by appellants, to wit:

No constitutional sanctities will be offended if persons previously sentenced to death, or persons sentenced to reclusion perpetua, are denied the benefit of parole conformably to Section 3 of Rep. Act No. 9346. As to persons previously sentenced to death, it should be remembered that at the time of the commission of the crime, the penalty attached to the crime was death. To their benefit, Rep. Act No. 9346 reduced the penalty attached to the crime to reclusion perpetua. Yet such persons cannot claim the benefit of parole on the basis of the ex post facto clause of the Constitution, since an ex post facto law is one which, among others, “changes punishment, and inflicts a greater punishment than the law annexed to the crime when committed.” Rep. Act No. 9346 had the effect of “inflicting” a lighter punishment, not a greater punishment, than what the law annexed to the crime when committed.[193] [emphasis supplied.]

#### Civil Liability

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[194]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[195] We have ruled that even if the penalty of death is not to be imposed because of the prohibition in R.A. No. 9346, the civil indemnity of P75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.[196] As explained in *People v. Salome*,[197] while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by the law for a heinous offense is still death, and the offense is still heinous. Accordingly, the heirs of Col. Rolando N. Abadilla is entitled to civil indemnity in the amount of P75,000.00. The grant of actual damages representing burial expenses, funeral services and cost of repair of the Honda car, is likewise in order, being duly supported by receipts.[198]

With regard to moral and exemplary damages, we find the amounts awarded by the trial court

excessive and the same are hereby reduced to P75,000.00 and P30,000.00, respectively. It must again be stressed that moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial judge or appellate court justices.[199] As to exemplary damages, the same is justified under Article 2230 of the New Civil Code when a crime is committed with an aggravating circumstance, either qualifying or generic.[200]

WHEREFORE, the consolidated petitions and appeal are hereby DISMISSED. The Decision dated April 1, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00667 is hereby AFFIRMED with MODIFICATIONS in that the civil indemnity for the death of Col. Rolando N. Abadilla is hereby increased to P75,000.00, and the amounts of moral and exemplary damages awarded to his heirs are reduced to P75,000.00 and P30,000.00, respectively.

With costs against the accused-appellants.

SO ORDERED.

MARTIN S. VILLARAMA, JR.

Associate Justice

WE CONCUR:

RENATO C. CORONA

Chief Justice

ANTONIO T. CARPIO

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

(On official leave)

ARTURO D. BRION

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

ROBERTO A. ABAD

Associate Justice

JOSE PORTUGAL PEREZ

Associate Justice

JOSE CATRAL MENDOZA

Associate Justice

MARIA LOURDES P. A. SERENO

Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

RENATO C. CORONA

Chief Justice

\* On official leave.

[1] Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

[2] Penned by Judge Jaime N. Salazar, Jr.

[3] TSN, September 18, 1996, pp. 31-35.

- [4] TSN, August 1, 1996, pp. 14-22; TSN, August 6, 1996, pp. 14-19; TSN, August 7, 1996, pp. 11-13.
- [5] TSN, August 1, 1996, pp. 22-34; TSN, August 6, 1996, pp. 19-23, 35-37; TSN, August 7, 1996, pp. 13-16.
- [6] TSN, August 7, 1996, pp. 17-26; Exhibits “A” to “A-9”, folder of exhibits, pp. 6-9. Also Exhibits “29” to “35” for the Defense, pp. 356-362.
- [7] TSN, August 1, 1996, pp. 41-46.
- [8] TSN, August 1, 1996, pp. 40-41; TSN, August 6, 1996, pp. 30-61; Exhibit “D”, folder of exhibits, p. 13.
- [9] TSN, August 1, 1996, pp. 55-59; TSN, August 6, 1996, pp. 75-76; Exhibits “B” and “C”, folder of exhibits, pp. 10-12.
- [10] Records, Vol. I, pp. 27-40.
- [11] Records, Vol. I, pp. 39-40; See also Exhibits “37” to “45-B-1” for the Defense, folder of exhibits, pp. 363-371.
- [12] TSN, August 7, 1996, pp. 26-28; TSN, September 18, 1996, pp. 36-37.
- [13] TSN, September 10, 1996, p. 97; Exhibit “Q”, folder of exhibits, pp. 34-35.
- [14] Testimony of P/Insp. Rogelio Castillo - TSN, August 7, 1996, pp. 54-124.
- [15] Exhibits “E” and “N”, folder of exhibits, pp. 14-20, 30.
- [16] *Id.*, at pp. 15-17.
- [17] *Id.*, at pp. 18-19.
- [18] *Id.*, at p. 30.
- [19] Exhibit “1” for the Defense (Fortuna), folder of exhibits, pp. 99-101; Records, Vol. I, pp. 60-62.
- [20] *Id.*, at p. 100.
- [21] Exhibit “S”, folder of exhibits, pp. 37-38.
- [22] Exhibit “M”, folder of exhibits, p. 29.
- [23] Records, Vol. I, pp. 2-3.
- [24] *Id.*, at pp. 4-9.

- [25] Id., at pp. 10-12.
- [26] Records, Vol. 3, pp. 1014-1020 and 1027.
- [27] TSN, August 15, 1996, pp. 14, 31-39, 57-62.
- [28] Id., at pp. 46, 64-67, 70-83.
- [29] Id., at pp. 85-99.
- [30] Id., at pp. 99-122, 125-141, 145-154.
- [31] TSN, September 24, 1996, pp. 5-28.
- [32] Id., at pp. 29-71.
- [33] Id., at pp. 78-97.
- [34] TSN, September 25, 1996, pp. 93-113, 135-137.
- [35] TSN, October 3, 1996, pp. 23-46; TSN, October 8, 1996, pp. 19-20.
- [36] TSN, October 3, 1996, pp. 47-68.
- [37] TSN, October 8, 1996, pp. 38-41.
- [38] TSN, October 9, 1996, pp. 66-67.
- [39] TSN, October 15, 1996, pp. 10-17.
- [40] Id., at pp. 45-48.
- [41] Id., at pp. 17-39.
- [42] Id., at pp. 100-164.
- [43] TSN, November 12, 1996, pp. 12-45.
- [44] TSN, November 28, 1996, pp. 3-13.
- [45] Id., at pp. 14-36.
- [46] TSN, December 10, 1996, pp. 25-43.
- [47] Folder of exhibits, pp. 22-25.
- [48] Id., at p. 23.
- [49] Id.



- [50] Id.
- [51] Id.
- [52] Id.
- [53] Id.
- [54] Folder of exhibits, p. 23.
- [55] TSN, August 20, 1996, pp. 11-69.
- [56] Id., at pp. 70-75.
- [57] Id., at pp. 114-120.
- [58] TSN, August 21, 1996, pp. 27-28, 39-43, 45-60, 71-72, 75-87.
- [59] TSN, August 29, 1996, pp. 4-10.
- [60] TSN, September 3, 1996, pp. 10-11, 13-22, 27, 80-82.
- [61] TSN, September 26, 1996, pp. 21-22, 43-44, 46-47, 61-62, 69.
- [62] TSN, September 17, 1996, pp. 16-21.
- [63] TSN, September 18, 1996, pp. 28-30, 36-39, 41-55.
- [64] Exhibit "EE", folder of exhibits, p. 315.
- [65] TSN, February 20, 1998, pp. 58-68, 73-79, 84-85, 91-92, 103-105; Exhibit "48" ("U" for Prosecution), folder of exhibits, p. 188.
- [66] Exhibits "2-F-19" and "2-F-20" and "3", folder of exhibits, pp. 106-108, 111; TSN, December 10, 1997, pp. 15-27.
- [67] TSN, December 10, 1997, pp. 40-42; Exhibits "2" to "2-F-14", folder of exhibits, pp. 102-105.
- [68] Exhibit "5", folder of exhibits, p. 112.
- [69] Exhibit "6", Id. at p. 113.
- [70] Exhibit "8", Id. at p. 116.
- [71] Exhibit "7", Id. at p. 114.
- [72] Exhibits "7-A", "7-B", "9-a" to "9-g", Id. at pp. 115, 117-121; TSN, December 11, 1997, pp. 16-17, 26-149.

- [73] TSN, December 11, 1997, pp. 174-183.
- [74] TSN, January 9, 1998, pp. 12-13, 29-43, 92-98.
- [75] *Id.*, at pp. 119-132.
- [76] TSN, September 9, 1998, pp. 9-32.
- [77] Exhibits “5” and “6”, folder of exhibits, pp. 112-113.
- [78] TSN, September 9, 1998, pp. 33-43.
- [79] TSN, August 26, 1998, pp. 40-61.
- [80] TSN, September 9, 1998, pp. 21-29.
- [81] TSN, September 16, 1998, pp. 4-30; Exhibits “54” to “58”, folder of exhibits, pp. 205-209.
- [82] TSN, September 16, 1998, pp. 31-74; Exhibits “59” to “70-C”, “80”, folder of exhibits, pp. 210-228, 245.
- [83] TSN, November 17, 1998, pp. 13-18, 24-27, 31-38, 43-69; Exhibits “LL” and “76”, folder of exhibits, pp. 326, 234-235.
- [84] TSN, November 24, 1998, pp. 6-10, 14-16; Exhibit “65”, folder of exhibits, pp. 217-220.
- [85] TSN, October 21, 1998, pp. 5-13; folder of exhibits, p. 228.
- [86] TSN, October 21, 1998, pp. 19-20, 25-33.
- [87] *Id.*, at pp. 35-37, 47-48.
- [88] TSN, November 25, 1998, pp. 6-13.
- [89] *Id.*, at p. 17.
- [90] Exhibits “6”, “6-A” and “7,” folder of exhibits, pp. 381, 382-384, 405, 406-408.
- [91] TSN, December 2, 1998, pp. 6-27.
- [92] TSN, December 9, 1998, pp. 3-6.
- [93] TSN, January 28, 1999, pp. 5-10.
- [94] TSN, January 7, 1999, pp. 4-17; Exhibits “1”, “2” and “3”, folder of exhibits, pp. 398-400.
- [95] TSN, January 28, 1999, pp. 34-38.

- [96] TSN, March 9, 1999, pp. 2-49.
- [97] TSN, March 18, 1999, pp. 3-10.
- [98] *Id.*, at pp. 10-20; Exhibits “PP”, “QQ”, “SS” and “TT”, folder of exhibits, pp. 333-342.
- [99] Records, Vol. 3, pp. 1027-1028.
- [100] CA rollo, Vol. II, p. 1021.
- [101] *Id.*, at pp. 1022.
- [102] *Id.*, at pp. 1024-1025.
- [103] Records, Vol. 4, pp. 1039-1049.
- [104] *Id.*, at pp. 1050-1056.
- [105] *Id.*, at pp. 1099-1103.
- [106] *Id.*, at pp. 1183-1201.
- [107] *Id.*, at pp. 1215-1228, 1248-1269.
- [108] *Id.*, at p. 1320.
- [109] *Id.*, at pp. 1270-1273.
- [110] *Id.*, at pp. 1355-1362.
- [111] *Id.*, at pp. 1365-1371.
- [112] *Lumanog v. Salazar, Jr.*, 364 SCRA 719.
- [113] *Id.*, at pp. 725-726.
- [114] CA rollo, Vol. I, pp. 244-245.
- [115] *Id.*, at p. 388.
- [116] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [117] CA rollo, Vol. II, pp. 1583-1584.
- [118] *Id.*, at p. 1797.
- [119] *Id.*, at pp. 1792-1795.
- [120] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices

Regalado E. Maambong and Romeo F. Barza.

[121] CA rollo, Vol. II, pp. 2027-2028.

[122] *Id.*, at pp. 2036-2037, 2046-2047.

[123] Rollo (G.R. No. 187745), pp. 40-48.

[124] Effective October 15, 2004.

[125] Rollo (G.R. No. 182555), p. 285.

[126] Rollo (G.R. No. 185123), pp. 30, 41-42 and 44.

[127] 68 Phil. 154 (1939).

[128] Art. VIII, Sec. 14, 1987 Constitution.

[129] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 305, citing Administrative Circular No. 1 issued on January 28, 1988.

[130] *Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 215-216, citing *People v. Bongbahoy*, G.R. No. 124097, June 17, 1999, 308 SCRA 383, *People v. Landicho*, G.R. No. 116600, July 3, 1996, 258 SCRA 1, 26, *People v. Sadiosa*, G.R. No. 107084, May 15, 1998, 290 SCRA 92, 107 and *People v. Gastador*, G.R. No. 123727, April 14, 1999, 305 SCRA 659, 670.

[131] See *Yao v. Court of Appeals*, *supra* at 218, citing *Romero v. Court of Appeals*, No. L-59606, January 8, 1987, 147 SCRA 183.

[132] *Yao v. Court of Appeals*, *supra* at 219.

[133] G.R. No. 137147, January 29, 2002, 375 SCRA 81.

[134] *Id.* at 86, citing *Hernandez v. Court of Appeals*, G.R. No. 104874, December 14, 1993, 228 SCRA 429, 435 and *Valdez v. Court of Appeals*, G.R. No. 85082, February 25, 1991, 194 SCRA 360.

[135] See *Francisco v. Permskul*, G.R. No. 81006, May 12, 1989, 173 SCRA 324 (1989), cited in *ABD Overseas Manpower Corporation v. NLRC*, G.R. No. 117056, February 24, 1998, 286 SCRA 454, 463.

[136] *People v. Rodriguez*, G.R. No. 129211, October 2, 2000, 341 SCRA 645, 654, citing *People v. Domantay*, G.R. No. 130612, May 11, 1999, 307 SCRA 1, 15 and *People v. Andan*, G.R. No. 116437, March 3, 1997, 269 SCRA 95.

[137] Otherwise known as “An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof.”

[138] *People v. Rapeza*, G.R. No. 169431, April 4, 2007, 520 SCRA 596, 623, citing *People v.*

Delmo, 439 Phil. 212 (2002), cited in *People v. Dueñas, Jr.*, G.R. No. 151286, March 31, 2004, 426 SCRA 666.

[139] *Id.* at 630.

[140] *People v. Muleta*, G.R. No. 130189, June 25, 1999, 309 SCRA 148, 160.

[141] *People v. Mojello*, G.R. No. 145566, March 9, 2004, 425 SCRA 11, 18, citing *People v. Barasina*, G.R. No. 109993, January 21, 1994, 229 SCRA 450.

[142] *Id.*, at 18, citing *People v. Continente*, G.R. Nos. 100801-02, August 25, 2000, 339 SCRA 1.

[143] *People v. Suela*, G.R. Nos. 133570-71, January 15, 2002, 373 SCRA 163, 182, citing *People v. Deniega*, G.R. No. 103499, December 29, 1995, 251 SCRA 626, 638-639 and *People v. Santos*, G.R. No. 117873, December 22, 1997, 283 SCRA 443.

[144] *Id.*, at pp. 181-182, citing *People v. Labtan*, G.R. No. 127493, December 8, 1999, 320 SCRA, 140, 159.

[145] *People v. Peralta*, G.R. No. 145176, March 30, 2004, 426 SCRA 472, 481-482, citing *People v. Binamira*, G.R. No. 110397, August 14, 1997, 277 SCRA 232, 238; *People v. Ordoño*, G.R. No. 132154, June 29, 2000, 334 SCRA 673, 688; *People v. Rodriguez*, G.R. No. 129211, October 2, 2000, 341 SCRA 645, 653; *People v. Rayos*, G.R. No. 133823, February 7, 2001, 351 SCRA 336, 344; and *People v. Patungan*, G.R. No. 138045, March 14, 2001, 354 SCRA 413, 424.

[146] *People v. Paule*, G.R. Nos. 118168-70, September 11, 1996, 261 SCRA 649.

[147] See *People v. Hijada*, G.R. No. 123696, March 11, 2004, 425 SCRA 304.

[148] *People v. Sabalones*, G.R. No. 123485, August 31, 1998, 294 SCRA 751, 790.

[149] Exhibit “79”, folder of exhibits, pp. 237-243.

[150] Letter-reply dated of Ombudsman addressed to Atty. Soliman M. Santos, Jr., Annex “F” of Memorandum for Petitioners, rollo of G.R. No. 182555, p. 442.

[151] Addendum to Petition, CA rollo, Vol. II, pp. 1975-1985.

[152] Sec. 16, Article III.

[153] *Abadia v. Court of Appeals*, G.R. No. 105597, September 23, 1994, 236 SCRA 676, 682, cited in *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394, 407.

[154] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 146-147, citing *Caballero v. Alfonso, Jr.*, G.R. No. L-45647, August 21, 1987, 153 SCRA 153, 163.

[155] CA rollo, Vol. II, pp. 1530-1531 and 1580.

[156] *Id.*, at pp. 1581-1582, 1605-1609.

- [157] *Id.*, at pp. 1728-1761.
- [158] *Gaas v. Mitmug*, G.R. No. 165776, April 30, 2008, 553 SCRA 335, 342-343, citing *Mendoza-Ong v. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.
- [159] *Uy v. Adriano*, G.R. No. 159098, October 27, 2006, 505 SCRA 625, 652-653, citing *Mendoza-Ong v. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423; *Dimayacyac v. Court of Appeals*, G.R. No. 136264, May 28, 2004, 430 SCRA 121; *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001); *Dansal v. Hon. Fernandez, Sr.*, 383 Phil. 897, 908; *Duterte v. Sandiganbayan*, 352 Phil. 557 (1998); and *Tatad v. Sandiganbayan*, G.R. Nos. L-72335-39, March 21, 1998, 159 SCRA 70.
- [160] *People v. Rivera*, G.R. No. 139185, September 29, 2003, 412 SCRA 224, 236.
- [161] *Concepcion v. Court of Appeals*, G.R. No. 120706, January 31, 2000, 324 SCRA 85, 92.
- [162] *Serna v. Court of Appeals*, G.R. No. 124605, June 18, 1999, 308 SCRA 527, 533, citing *People v. Espanola*, G.R. No. 119308, April 18, 1997, 271 SCRA 689, 716.
- [163] G.R. No. 90628, February 1, 1995, 241 SCRA 1, 8-9.
- [164] *Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, G.R. No. 163562, July 21, 2006, 496 SCRA 305, 320.
- [165] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650, 660.
- [166] *People v. Gallo*, G.R. No. 133002, October 19, 2001, 367 SCRA 662, 668.
- [167] *People v. Mendoza*, G.R. No. 142654, November 16, 2001, 369 SCRA 268, 286.
- [168] *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 639.
- [169] *Records*, Vol. I, pp. 27-29.
- [170] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.
- [171] *Id.*, at p. 95.
- [172] *People v. Rivera*, *supra*, at p. 239, citing *People v. Timon*, G.R. Nos. 97841-42, November 12, 1997, 281 SCRA 577, 592.
- [173] *Id.*, citing *People v. Timon*, *id.* and *People v. Lapura*, G.R. No. 94494, March 15, 1996, 255 SCRA 85, 96.
- [174] *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478, 503-504, citing Patrick M. Wall, *Eye-Witness Identification in Criminal Cases* 74 (1965), pp. 90-130.
- [175] Exhibit “L-1”, folder of exhibits, p. 27.

- [176] *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656, 662, citing *People v. Court of Appeals*, G.R. No. 159261, February 21, 2007, 516 SCRA 383.
- [177] *Id.*, citing *People v. Uganap*, G.R. No. 130605, June 19, 2001, 358 SCRA 674, 684.
- [178] See *Maandal v. People*, G.R. No. 144113, June 28, 2001, 360 SCRA 209, 228.
- [179] See *People v. Belaro*, G.R. No. 99869, May 26, 1999, 307 SCRA 591, 605.
- [180] G.R. No. 166479, February 28, 2006, 483 SCRA 649, 666-667.
- [181] *People v. Medina*, G.R. No. 155256, July 30, 2004, 435 SCRA 610, 619.
- [182] *People v. Bracamonte*, G.R. No. 95939, June 17, 1996, 257 SCRA 380.
- [183] *People v. Abes*, 465 Phil. 165 (2004).
- [184] G.R. No. 123300, September 25, 1998, 296 SCRA 371, 379-380.
- [185] *Id.*
- [186] *People v. Castillo*, 426 Phil. 752, 767 (2002).
- [187] *People v. Rabanillo*, G.R. No. 130010, May 26, 1999, 307 SCRA 613, 621.
- [188] *People v. Nabong*, G.R. No. 172324, April 3, 2007, 520 SCRA 437, 457, citing *People v. Navida*, G.R. Nos. 132239-40, December 4, 2000, 346 SCRA 821, 834.
- [189] *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 669, 701.
- [190] G.R. No. 169872, September 27, 2006, 503 SCRA 757, 770-771.
- [191] *Id.*, citing *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; and *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727 (see Concurring Opinion).
- [192] *Id.*
- [193] *Id.*, at pp. 746-747.
- [194] *Id.*, citing *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; and *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727 (see Concurring Opinion).
- [195] *Id.*
- [196] *Madsali v. People*, G.R. No. 179570, February 4, 2010, citing *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.
- [197] 500 Phil. 659, 676 (2006).

[198] Exhibits “T” to “T-6”, folder of exhibits, pp. 40-46; TSN, January 27, 1997, p. 3.

[199] Francisco v. Ferrer, Jr., G.R. No. 142029, February 28, 2001, 353 SCRA 261, 266-267, citing American Home Assurance Company v. Chua, G.R. No. 130421, June 28, 1999, 309 SCRA 250, 263, Benguet Electric Cooperative, Inc. v. Court of Appeals, G.R. No. 127326, December 23, 1999, 321 SCRA 524, 537, Singson v. Court of Appeals, 346 Phil. 831, 845 and De la Serna v. Court of Appeals, G.R. No. 109161, June 21, 1994, 233 SCRA 325, 329-330.

[200] People v. Padilla, G.R. No. 167955 (Formerly G.R. No. 151275), September 30, 2009, citing People v. Marcos, G.R. No. 185380, June 18, 2009.