

LENIDO LUMANOG and

AUGUSTO SANTOS,

Petitioners,

G.R. No. 182555

- versus -

(CA-G.R. CR HC No. 00667,

ABADILLA MURDER CASE)

PEOPLE OF THE PHILIPPINES, ET AL.

Respondents.

x -----x

VEHEMENT OPPOSITION TO CONSOLIDATION

PETITIONERS, through counsels, unto this Honorable Court, respectfully allege that:

1. The OSG has filed a Manifestation dated June 17, 2009 attaching its “Motion for Consolidation” dated May 26, 2009 in G.R. No. 185123 of the Second Division seeking consolidation with this *En Banc* case, the other case also on appeal from CA-G.R. CR HC No. 00667 but involving another accused –appellant Cesar Fortuna, and invoking Rule 31, Sec. 1.

2. Said PROCEDURAL Rule 31, Sec. 1 on consolidation must yield to the SUBSTANTIVE constitutional right of the petitioners herein to a speedy disposition of their said case, as we shall show. But even by the terms of Rule 31, Sec. 1, the proposed consolidation lacks merit.

3. Consolidation under Rule 31, Sec. 1 is expressly premised or allowed on at least two grounds: (1) “involving a common question of law or fact;” and (2) “to avoid unnecessary costs or delay.”

4. A simple comparative perusal of the petitions in this case and in G.R. No. 185123 will readily show the there are certain uncommon questions of law and fact. To mention just two of the most prominent questions in this case not raised in the other case: (1) the Alex Boncayao Brigade (ABB) angle of true responsibility for the Abadilla murder; and (2) the unconstitutionality of the penalty of “*reclusion perpetua* without the benefit of parole” or as provided in Sec. 3 of R.A. No. 9346 prohibiting the imposition of death penalty in the Philippines. In fact, it was partly due to this latter question that this case was transferred from the Third Division to the *En Banc* by Resolution dated 13 August 2008. The *En Banc* status of this case also makes it different from the other case of Division status.

5. Consolidating G.R. No. 185123 with this case will cause unnecessary delay to the latter (after already so much delay in the history of this case since elevation to the SC in 2000), where the two Memorandums (of Petitioners and of Respondent People) have already been filed, making it ripe for decision. In contrast, only the Petition and Comment have been filed in the other case – where a Reply might still be filed, and then followed by the usual requirement to submit simultaneous Memorandums.

6. If the logic of the OSG were to be followed, it would mean consolidation also of two more separate cases, those of accused-appellants Rameses de Jesus and Joel de Jesus in CA-G.R. CR HC No. 00667. Their cases have barely just been elevated to this Honorable Court and do not appear to even have any starting Petitions (due to a Notice of Appeal mode).

7. To wait then for all these cases, including G.R. No. 185123, to reach the post-Memorandum and Decision-ready stage of this case would be extremely prejudicial to the two petitioners therein. Their constitutional right to a speedy disposition of their case would be gravely violated. Their long agony in prison of already 13 years would be further prolonged. More so in the case of Lenido Lumanog who has been a kidney transplant patient for more than six years already since April 2003. The proposed consolidation will result not only in further delay but also in further costs for them while a decision which can already be made on their case is instead held in abeyance.

WHEREFORE, in view of the foregoing, it is respectfully prayed that G.R. No. 185123, and for that matter any other cases, be refused consolidation with this case.

Quezon City, 1 July 2009.

SOLIMAN M. SANTOS, JR.

and VICENTE DANTE P. ADAN

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July 1, 2009

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