

## EN BANC

[ G.R. No. 182555, September 07, 2010 ]

**LENIDO LUMANOG AND AUGUSTO SANTOS, PETITIONERS, VS.  
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R. No. 185123]

**CESAR FORTUNA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

[G.R. No. 187745]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. 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.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

For review is the Decision<sup>[1]</sup> 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<sup>[2]</sup> 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.<sup>[3]</sup>

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.<sup>[4]</sup>

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.<sup>[5]</sup> After ten (10) minutes, Chief Insp. Villena returned and took pictures of the crime scene, and also of the victim at the hospital.<sup>[6]</sup> SPO2 Magundacan was able to pick up several spent shells and two (2) slugs, apparently fired from .45 and 9 mm. pistols.<sup>[7]</sup> A sketch was prepared by PO2 Daganta who also interviewed some of the witnesses present at the crime scene.<sup>[8]</sup> 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.<sup>[9]</sup>

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.<sup>[10]</sup>

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.<sup>[11]</sup>

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.<sup>[12]</sup> 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.<sup>[13]</sup>

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.<sup>[14]</sup> 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.<sup>[15]</sup>

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.<sup>[16]</sup>

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.<sup>[17]</sup>

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-slating of Abadilla on June 13, 1996.<sup>[18]</sup>

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.<sup>[19]</sup> 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<sup>[20]</sup>

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.<sup>[21]</sup>

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.<sup>[22]</sup>

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.<sup>[23]</sup>

On the other hand, Lorenzo delos Santos y Dela Cruz, SPO2 Cesar Fortuna y Abudo