

EN BANC

[G.R. No. 142065, September 07, 2001]

**LENIDO LUMANOG, AUGUSTO SANTOS, SPO2 CESAR FORTUNA
AND RAMESES DE JESUS, PETITIONERS, VS. HON. JAIME N.
SALAZAR, JR., AS JUDGE OF RTC OF QUEZON CITY BRANCH 103,
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to annul and set aside the Orders^[1] dated January 25, 26 and 28, 2000 of the Regional Trial Court of Quezon City, Branch 103, presided by respondent Judge Jaime N. Salazar, Jr., in Criminal Case No. Q-96-66684 for murder.

It appears that on June 13, 1996 at around 8:00 o'clock in the morning, retired Colonel Rolando N. Abadilla was killed in an ambush along Katipunan Avenue, Project 4, Quezon City. Police investigation of the slaying incident resulted in the arrest of herein petitioners Lenido L. Lumanog, SPO2 Cesar A. Fortuna, Rameses C. De Jesus, Augusto G. Santos and their co-accused Joel V. De Jesus, Lorenzo C. Delos Santos and Arturo C. Napolitano. Subsequently, an information for the crime of murder^[2] was filed against all the accused. An information for the crime of theft^[3] was also filed against them, except Augusto G. Santos, including separate informations for the crime of illegal possession of firearm^[4] against Lorenzo C. Delos Santos, SPO2 Cesar A. Fortuna and Rameses C. De Jesus.

Upon arraignment, all the accused entered the plea of "Not guilty" to each of the informations respectively filed against them.

After joint trial on the merits, respondent trial judge issued on August 11, 1999 a Joint Decision^[5] dated July 30, 1999 convicting Lenido Lumanog, SPO2 Cesar Fortuna, Rameses De Jesus, Joel De Jesus and Augusto Santos of the crime of murder for killing retired Col. Rolando N. Abadilla and sentencing them to suffer the supreme penalty of death, while acquitting Arturo Napolitano and Lorenzo Delos Santos on the ground of reasonable doubt. The separate informations for theft and illegal possession of firearms were dismissed for lack of evidence.

On August 25, 1999 accused Lenido Lumanog, through his counsel, Atty. Asterio Rea, timely filed a Motion for Reconsideration^[6] of the Joint Decision, which motion was opposed by the prosecution. This was followed by separate Motions for New Trial respectively filed by accused Joel De Jesus and Lenido Lumanog, through counsel, on September 2, 1999 and September 24, 1999 which were both opposed by the prosecution.

On November 25, 1999 accused Lumanog, through his new counsel, Atty. Soliman Santos, filed a Supplement to the Motion for Reconsideration.^[7] On December 16, 1999 the same accused filed an Addendum to Supplement^[8] (to the motion for reconsideration) dated December 13, 1999 including a Manifestation and Submission^[9] dated December 14, 1999 and a Manifestation and Motion^[10] dated December 15, 1999. The prosecution filed an opposition to the Addendum to Supplement on January 12, 2000 to which a Reply/Rejoinder was filed by accused Lumanog on January 25, 2000.

On January 14, 2000 accused Lumanog, through counsel, filed another set of three (3) pleadings, namely: Memorandum to Clarify Pending Incidents/Motions^[11] dated January 11, 2000, Memorandum on Nature of Proposed Additional Evidence^[12] dated January 12, 2000 and Manifestation on the Posture and Attitude of the Prosecution^[13] dated January 13, 2000.

Meanwhile, on January 19, 2000, Fr. Roberto P. Reyes, parish priest of the Parish of the Holy Sacrifice, University of the Philippines, Diliman, Quezon City, assisted by Atty. Neri Javier Colmenares, filed an Urgent Independent Motion for Leave of Court to Present Vital Evidence.^[14]

On January 25, 2000 respondent judge issued an Order^[15] the dispositive portion of which reads:

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.

After the hearing on January 26, 2000, respondent judge issued another Order^[16] denying the Urgent Independent Motion for Leave of Court to Present Vital Evidence

filed by Fr. Roberto Reyes on the ground that it was belatedly filed, barred by the rule on hearsay and for lack of legal standing of movant Fr. Reyes to file the said motion before the trial court. Respondent trial judge, 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.

The Order^[17] issued on January 28, 2000 merely elaborated on the grounds relied upon by respondent judge in denying on January 26, 2000 the Urgent Independent Motion for Leave of Court to Present Vital Evidence of Fr. Reyes.

Just before the records of Criminal Case No. Q-96-66684 were transmitted to this Court on February 11, 2000, for automatic review of the said Joint Decision dated July 30, 1999, accused Lumanog through his new counsel belatedly filed on February 9, 2000 two (2) more pleadings, namely, a Final Submission To This Court^[18] dated February 8, 2000 together with an attached copy of the letter of Lt. Gen. Jose M. Calimlim of the AFP Intelligence Service regarding an unsuccessful operation of the Alex Boncayao Brigade (ABB, for brevity) to kill Col. Abadilla, and Final Manifestation To This Court^[19] dated February 9, 2000.

The instant petition for certiorari^[20] assails the three (3) separate Orders of respondent trial judge in Criminal Case No. Q-96-66684 respectively dated January 25, 26 and 28, 2000 insofar as respondent trial judge allegedly gravely abused his discretion in denying petitioners-accused the opportunity to introduce evidence on the alleged role of the ABB in the ambush slay of Col. Abadilla. The ABB angle of the case was raised for the first time on November 25, 1999 in petitioner-accused Lumanog's Supplement to the Motion for Reconsideration in support of their defense of alibi and denial. Petitioners argue that since the ABB allegedly killed Col. Abadilla, then they, who are not members thereof, are entitled to be acquitted of the crime of murder. Additionally, petitioners seek the inhibition of respondent judge from this case allegedly for being biased against the petitioners.

In their separate comments^[21] the People, represented by the Office of the Solicitor General, and the private prosecutors, led by Atty. Manuel M. Lazaro, contend in essence that respondent trial judge did not commit grave abuse of discretion in denying the Supplement to the Motion for Reconsideration dated November 25, 1999 of petitioner Lumanog, which partakes of a motion for new trial, and his Addendum to Supplement dated December 13, 1999 including the Urgent Independent Motion for Leave of Court to Present Vital Evidence dated January 19, 2000 of Fr. Roberto Reyes for the reason, among others, that the same were belatedly filed. The respondents also contend that the alleged pieces of evidence sought to be presented by the petitioners consisting of raw and unverified newspaper reports and AFP/PNP intelligence materials are not newly discovered evidence, and that the testimony of Fr. Reyes on his conversation with an alleged ABB member who purportedly knows certain facts about the Abadilla killing and who turned over to him the Omega wristwatch allegedly belonging to the victim, would be hearsay.

Besides, the new theory of the petitioners, which was raised for the first time in petitioner Lumanog's Supplement to the Motion for Reconsideration dated November