



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

**NORMINDICU, NBI-NEMRO
VICENTE "VARF"
BELMONTE, JR.,
MARY JEAN T. ANDRES,
AGNES S. DUMAGUING,
NEMIA G. SILAWAN,
NOEL JAIME JO,
SP01 ROUEL VIEJO AND
RIO B. DON,**

Complainant/s,

**NPS Docket No. X-05-INV-
15A-00043**

-versus -

Criminal Case No: _____

**For: Multiple Murder with
Multiple Frustrated Murder
and Attempted Murder**

**CELSO C. REGENCIA,
AMADOR B. BALLER A.K.A. "DONGKI",
ROGELIO PITOS, SR., A.K.A "KIM",
ROMEO SUGANOB A.K.A. "LOLOY SUGANOB",
DOMINADOR SUMANDURAN TUMALA A.K.A. "KUMANDER
PARAS",
PEEJAY CAPAMPANGAN
ALFEO ARNOCO,
JULITO OROS ANSAD A.K.A. "BINO",
DODO SILVANO;**

ROGELIO PITOS, JR.;
JIMMY,
RUEL,
DIEGO,
JIMBOY,
JOHN DOE,
PETER DOE AND
OTHER JOHN DOES,

Respondent/s.

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RESOLUTION

This resolves the above-entitled complaint filed by Congressman Vicente "Varf" Belmonte, Mary Jean T. Andres, Agnes S. Dumaguing, Nemia G. Silawan, Noel Jaime Jo, SPO1 Rouel Viejo and Rio B. Don against respondents Celso G. Regencia a.k.a. "Colonel" and "Reggie", then incumbent Mayor of Iligan City; Amador B. Baller a.k.a. "Dongki", an avid supporter of respondent Regencia; Rogelio Pitos, Sr., a.k.a "Kim", a former NPA rebel and also an avid friend of respondent Regencia; Romeo Suganob a.k.a. "Loloy Suganob", an alleged illegal numbers game operator and also an avid friend of respondent Regencia; Dominador Sumanduran Tumala a.k.a. "Kumander Paras", a former NPA rebel; Peejay Capampangan, an alleged fugitive and a former close-in security of respondent Regencia; Alfeo Arnoco, also a close-in security of respondent Regencia; Julito Oros Anсад a.k.a. "Bino", also a former NPA rebel; Dodo Silvano; Rogelio Pitos, Jr.; a certain Jimmy, Ruel, Diego, Jimboy, John Doe (the driver of the L300 van), Peter Doe (driver of the green Toyota Revo get-

away vehicle) and other John Does, for the crimes of murder, frustrated and attempted murder.

This case was initially referred to the Office of the Provincial Prosecutor, Misamis Oriental by the Northern Mindanao Criminal Investigation and Detection Unit (NORMINDICU) and the NBI Northern Mindanao Regional Office¹ "Special Investigation Task Force Group Cong. Belmonte" for the conduct of preliminary investigation, with the recommendation that respondent Dominador Sumaduran Tumala a.k.a. "Kumander Paras" be considered as state witness for the Prosecution. Consequently, when this case was endorsed to the Office of the Secretary of Justice thru the Office of the Prosecutor General, the said respondent was already admitted as state witness and covered by the Witness Protection Program (WPP) of the DOJ.

THE CASE

Complainant Congressman Vicente "Varf" Belmonte (complainant Belmonte), avers that on 11 December 2014, at around 1:30 o'clock in the afternoon, he was travelling with his two (2) vehicle convoy along the Access Road in Bgry. Gasi, Laguindingan, Misamis Oriental on their way to Iligan City. They just came from Laguindingan Airport on board two (2) black Mazda BT-50 double cab pick up vehicles. He was inside the first vehicle together with his police escort SPO1 Rouel Viejo (Rouel), security aide Rio B. Don (Rio) and driver Noel J. Jo (Noel). On the second vehicle were his other escorts PO3 Mark A. Andres (Mark) and Eustaquio Silawan (Eustaquio) with their driver, France Ian Dumaguing (Ian).

While they were traversing the inner road just outside the airport and only a few meters away from the intersection road of the National Highway, they were suddenly blocked by a white Mitsubishi L-300 van with gunmen onboard who started firing at

¹ Referral Letter of PS/Supt Alexander Tagum of NORMINDICU and Atty. Ricardo Diaz of NBI dated 20 January 2015

them. He recounts seeing three gun barrels emerge from the van's door as it slid open and fired at the front of the vehicle where he was riding. He instinctively ducked under the hood as the gunmen continued to fire at them. Simultaneously, he also heard gunshots firing at the second vehicle behind them. When a sudden lull occurred, he ordered Rouel to return fire which the latter did and an exchange of gunfire ensued. Thereafter, the van hurriedly sped away. Since Noel was already wounded, Rouel took the driver's seat and managed to drive out of the ambush site towards the National Highway reaching Purok 8 of Poblacion, Laguindingan, Misamis Oriental where rescuers immediately brought him, Rouel and Rio to OWWA Hospital in Alubijid, Misamis Oriental. Noel was brought to a hospital in Cagayan de Oro because of serious injuries he sustained.

Meanwhile, complainant Rio narrates that on the day of the ambush, he was with complainant Belmonte, Rouel and Noel on board one of the vehicles when a white Mitsubishi van blocked their way and armed malefactors showered them with gunfire. With no weapon at hand, he ducked under the seat and then he saw Rouel return fire at the van which prompted it to speed away.

For his part, Noel recounts that he was driving the vehicle where complainant Belmonte and his escorts were, when a white Mitsubishi van blocked their path and armed malefactors opened fire at them. He jumped out and took cover at the back of the car. The injuries he sustained on his left leg, right thigh, and on the shoulder crippled him to the ground. While on the ground, he saw Eustaquio and Mark, the passengers of the second vehicle, already lying on the ground, still alive but profusely bleeding. Their driver, Ian, was also fatally hit. Then three (3) armed men came from behind, went near Eustaquio and Mark and fired shots at them. One of the armed men saw him lying on the ground and aimed his rifle at him which prompted him to beg and utter, "Sir wala ko'y labot Sir! Sir naigo na man ko Sir!" (Sir, I don't have anything to do with this! Sir, I am already hit Sir!). Instead of pulling the trigger, the man picked up Mark's rifle and he and his companions hurriedly left toward the grassy portion of the area.

Complainants Mary Jean, Mark's widow; Nema, Eustaquio's widow; and Agnes, Ian's mother, all assert that on several occasions prior to the ambush, their loved ones have confided to them that their lives as security escorts of complainant Belmonte were in constant danger because of the threats to the latter's life made by respondent Regencia.

THE WITNESSES FOR THE COMPLAINANT

CLEOFO GAID y BAGAS

He claims that on December 11, 2014, he was with his elder sister and daughter travelling along the Access Road on their way towards the National Highway in Brgy. Gasi, Laguindingan, Misamis Oriental on board his motorcycle. Suddenly, they heard bursts of gunfire coming from the direction where they were heading. Out of fear, they stopped and left the motorcycle beside the road and went to a nearby house to hide. When the gunfire ceased a few moments later, he came out of the house and was about to get his motorcycle when a white-colored van rushed by from the direction where they heard the gunfire. It went towards Brgy. Gasi and moments later, three (3) male persons with long firearms followed suit. From their appearance, he reckoned they were left behind by the speeding van. When they came near him, one of them pointed his firearm at him and said in the vernacular "Lakaw na! Lakaw na! Lakaw na! (You go ahead! You go ahead! You go ahead!). He and his companions immediately boarded the motorcycle and left the area. He later learned that an ambush was perpetrated against the convoy of complainant Belmonte.

MARK LU APAG y UBARCO

Witness claims that on or about 1:30 o'clock in the afternoon of December 11, 2014, he was repairing his motorcycle in a motor repair shop located adjacent to the access road of Laguindingan

Airport at Brgy. Gasi, Laguindingan, Misamis Oriental. He and his friends heard bursts of gunfire coming from the access road, which is more or less, a hundred meters away from the shop. About three (3) minutes later, a color gray L-300 Mitsubishi van rushed in front of them in haste going towards Brgy. Liberty. Thereafter, three (3) male persons carrying long high powered firearms came running towards the direction of the van. One of them asked in vernacular "Aha ang van? Aha ang van? Wala mo'y labot ani! Wala mo'y labot! (Where is the van? Where is the van? This is none of your business! This is none of your business!) They pointed them to Brgy. Liberty where the speeding van went.

Witness further claims that the three (3) men were carrying M-16 and AK-47 rifles. He describes one of them as thinly built, about 5'6 to 5'7 in height, wearing a full military camouflage uniform, while the other two were medium and thinly built, around 5'2 to 5'3 in height wearing dirty white and brown cargo pants. He says he noticed one of them speak in a hard Cebuano accent resembling that of a Maranao accent speaking the Visayan dialect.

BOBWALTER PEDISANI y MANZA

Witness claims that at around 8:00 o'clock in the morning of December 11, 2014, he saw a green Toyota Revo, with plate #KCE-447 parked adjacent to the waiting shed of Purok 6, Tubajon, Laguindingan, Misamis Oriental. On the driver's seat was a man smoking a cigarette. At around 1:00 o'clock that afternoon, the man asked him for help to start the car. He and his cousins pushed the car until it started. After about five (5) minutes, the man left them and went uphill. He and his cousins proceeded to the balcony of their grandmother's house nearby. After a while, the green Toyota Revo came rushing downhill at high speed almost hitting the curve as it turned left towards the National Highway.

When he went home later, he heard from the news that the convoy of complainant Belmonte was ambushed along the access

road of Laguindingan Airport. Thereafter, NBI operatives came to their place and conducted an investigation. He gave them the description of the man who drove the green Toyota Revo and he was brought by the NBI operatives to Oroquieta City where he positively identified an abandoned green Toyota Revo as the same car he saw at their place. The NBI operatives told him it was the get-away vehicle used by the ambushers.

ROSITA CALIBU y PACHO

Witness claims she is the common-law wife of respondent Dominador Tumala, a former NPA rebel. Around the last week of August, 2014, her husband told her that his former comrade in the NPA, a certain Bino, and a certain Loloy Suganob, called him about a possible job in Iligan City. On August 28, 2014, her husband asked for her permission to go to Jimenez to see Loloy Suganob. Apparently, Loloy Suganob told her husband that respondent Regencia is offering a job for them in Iligan City.

Her husband left that day and returned home only on December 4, 2014. He told her about his job in a mining site owned by respondent Regencia in Rogongon, Iligan City. However, he was not able to give her money because according to him, he was not yet given his salary and that he needs to return to Iligan because his work with respondent Regencia is not yet over.

On December 8, 2014, her husband went back to Iligan City. A few days later, she received a call from Meriam, the wife of her husband's half-brother Boboy Lariosa to inform her that Lariosa is being detained by his military superiors in the CAFGU in connection with the ambush of complainant Belmonte.

A little while later, Meriam called her up again. This time, Meriam informed her that her husband, respondent Tumala, was arrested in Laguindingan, Misamis Oriental, also in connection with the ambush of complainant Belmonte. Subsequently, NBI operatives came to their house in Sergio Osmena, Zamboanga del Norte. Atty. Alex Cabornay, Chief of NBI-Iligan, asked her over

the telephone if she knows where her husband is. She told Atty. Cabornay that her husband is in Iligan City under the employ of respondent Regencia.

RAUL WARAK-WARAK y JAUDIAN

Witness claims that he and respondent Amador Baller @ Dongki are neighbors in Tambo, Iligan City. The latter has a poultry farm situated beside his house which is frequented by respondent Regencia, who is a cockfighting aficionado.

On December 9, 2014, he saw Dongki in his farmhouse with some visitors who arrived on board a white L-300 van. Around 9:00 o'clock that morning, he was shocked when he saw respondent Regencia in the company of Peejee Capampangan, a known fugitive in their place, arrive on board a white pick-up and went to the group of people who were inside what looked like a cockfighting area inside the farmhouse.

SI FROILAN CASIAN GRAGEDA

The witness is a Special Investigator of the NBI stationed at its Iligan District Office. He avers that at around 1:50 o'clock in the afternoon of December 11, 2014, their office received information that complainant Belmonte was ambushed somewhere in the area of Laguindingan, Misamis Oriental. They responded by proceeding to the area where they saw a vehicle with a lifeless body near it. The Scene of the Crime Operatives (SOCO) were already processing the crime scene, thus, they proceeded to the hospital in Alubijid where complainant Belmonte and his other companions were brought. On their way to the hospital, they passed by another vehicle riddled with bullet holes.

His superior assigned him to lead one of the investigating teams. He and his team went back to the crime site and some of the witnesses told them that there were three (3) men who were seen running away from the crime scene and who failed to board

the L-300 van that was used in the ambush. These witnesses believed that the three (3) men were still trapped within the vicinity.

In their follow-up operation, they found a torched L-300 van in Brgy. Liberty. A witness told them that he saw a green Toyota Revo parked beside the shed since morning and he was even asked by the driver to help him because the car would not start. A few days later, the green Toyota Revo was recovered by the elements of the Oroquieta City Police. When they traced the car's registration documents, they discovered it registered to a certain Natalio Plaza who claimed to have sold the same to a certain Rogelio Pitos, Jr.

Later on December 29, 2014, the elements of CIDG, Region 10 arrested a person, later identified as respondent Tumala, who admitted to have participated in the ambush of complainant Belmonte's convoy. Respondent Tumala led them to the places where he and his companions stayed and made plans how to stage the ambush.

SPO2 GENOVEVO CASERES y MAGLANGIT
PO3 REYNALDO TEVES y LUMAGBAS
PO1 ELIAS GENILLA, JR. y CATALAN
PO1 JESSY CRUZ y QUILAPIO

Genilla and Cruz aver that at about 5:00 o'clock in the morning of December 11, 2014, they were at the basketball court of Brgy. Gasi upon request of its Barangay Captain while Caceres and Teves claim they were at their police station. All of them received information about a motorist who claimed to have seen a suspicious looking person asking for a sari-sari store in Brgy. Gasi.

Caceres and Teves immediately went to Brgy. Gasi to verify the report. Since they were already in the area, Genilla and Cruz conducted their investigation and they saw inside one of the

houses, a suspicious looking person who was drinking coffee. They introduced themselves as police officers and the man stood up to leave but they prevented him from doing so. Cruz recovered one (1) piece of magazine for an M16 rifle loaded with eleven (11) live ammunitions protruding from the back pocket of the man's maong pants, one (1) unit of fragmentation grenade concealed in his waistline and one (1) W86 Telego cellular phone with two (2) sim cards for TM and Smart/Talk n Text Networks. When Genilla opened the phone's "inbox storage", there was one message in a Cebuano dialect that read "maningkamot ka nga makagawas ka diha" (try your best to get out from there).

Genilla and Cruz brought the man to Laguindingan MPS for further verification and further investigation. When Caceres and Teves arrived, they were able to get the identity of the person as respondent Dominador Tumala y Sumanduran, a resident of Ozmena, Zamboanga del Norte. A paraffin test was conducted on respondent Tumala that resulted positive for gun powder residue.

FOR THE RESPONDENTS

Respondents Celso G. Regencia and Alfeo Arnoco vehemently deny the accusations against them and assert the following defenses: (1) The two (2) extra-judicial confessions executed by respondent Tumala suffer material inconsistencies; (2) Evidence are mostly hearsay; (3) No evidence was submitted to corroborate the narration of respondent Tumala; (4) Constitutional rights of respondent Tumala were violated by the arresting officers; (5) Private complainant Andres' Affidavit of Recantation and Desistance discredits the complaint-affidavits; and, (6) alibi.

Respondents claim that the inconsistencies in the two (2) extra-judicial confessions of respondent Tumala are glaringly material which cast serious doubts not only on the credibility of the allegations contained therein, but also on the credibility of the declarant himself. The two statements have different versions

more particularly as regards the subject of the supposed ambush. More importantly, they were never implicated in the first extra-judicial confession executed barely three (3) days after the incident. They likewise assert that the allegations in the said extra-judicial confessions are hearsay and of no probative value. Respondent Regencia points out that even his identity was not known to respondent Tumala, but was only relayed to him by "KIM."

They further argue that the statements of witnesses and private complainants, which supposedly corroborate the narrations of respondent Tumala, are hearsay which cannot in any way salvage the defective extra-judicial confessions of respondent Tumala. Complainants' witnesses have no personal knowledge as to what transpired in the alleged meeting which respondents supposedly attended. Moreover, mere suspicion and assumption of complainant Belmonte that respondent Regencia masterminded the ambush based on his previous pronouncements and threats against him has no evidentiary weight and value. Neither could the statement of Rosita Calibu prove the participation of respondents in the planned ambush against complainant Belmonte.

Respondents further aver that the "affidavit of arrest" executed by the operatives of the PNP proves that the constitutional right against warrantless arrest of respondent Tumala was grossly and blatantly violated. Moreover, the members of the Armed Forces of the Philippines present during the former's arrest narrated that there was no ammunition nor firearms in his possession and custody at the time he was arrested.

Finally, respondents invoke alibi. They claim to be at Camp Tomas Li. Canili Tipanoy, Iligan City on December 9, 2014 to attend the Conferment and Awarding Ceremony. They arrived at the ICPO Parade Ground at around 7:30 a.m. together with PSSupt Ga and MSGR Jemar Vera Cruz. They left ICPO at around 3:30 p.m. and proceeded to the City Hall of Iligan City. This is contrary to the claim of one of complainant's witnesses that he saw them arrive and participate in a meeting at respondent Dongki's farmhouse on the said date.

They attached to their joint counter-affidavit the following: (1) Sworn Affidavits of PSSupt Ga, MSGR Cruz, Melchor Alquizola, Jesse Ray Balanay, Enrique Belmonte, (2) Joint-Affidavit of Pastor Diaz, Gindo Calimpon, Pastor Rod Jarmin, Elena Bocolon and Camilo Anduyaa (3) Joint-Affidavit of PInsp Rodolfo Aranador, Jr., and SPO2 Jerryfel Monsubre and (4) photographs taken during the said affair.

For his part, respondent Amador B. Baller vehemently denies the allegations against him invoking alibi as his defense. He claims that it was physically impossible for him to have attended the alleged meeting at his farm in Purok 6, Tambo, Iligan City on December 9, 2014 because he and his wife left for Cebu on December 8, 2014 and returned back to Iligan City on December 10, 2014 belying the claim of Raul Warak-warak about a meeting in his farm.

He further avers that he does not know respondent Tumala and neither does the latter know him. His alleged participation in the ambush of complainant Belmonte's convoy is total hearsay.

He bolsters his arguments by attaching to his counter-affidavit, the following: (1) Affidavit of Jessica Baller; (2) Machine copies of "Itinerary Receipts" issued by Cebu Pacific; (3) Certificate of Stay issued by Quest Hotel; (4) Copies of the laboratory tests; and (5) Joint-Affidavit of Attys. Vedan and Valdez.

The other named respondents herein did not file their respective counter-affidavits thus the complaint shall be resolved based on the records of the case.

THE PRELIMINARY INVESTIGATION

Pursuant to D.O. No. 066², the undersigned Investigating Panel of Prosecutors conducted preliminary investigation over this case. Only respondents Regencia, Arnoco and Baller filed their respective counter-affidavits. Thereafter, a clarificatory hearing

² Dated 06 February 2015

was conducted after which, the complaint was deemed submitted for resolution.

THE RULING

Prefatorily, a preliminary investigation only determines whether the act or omission complained of constitutes the offense charged and whether probable cause exist to engender a well-founded belief that a crime has been committed and the that respondent/s is/are probably guilty thereof. There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his findings should not run counter to the clear dictates of reason."³ Thus, it is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of prosecution's evidence in support of the charge."⁴ A finding of probable cause merely binds over the suspect to stand trial; it is not a pronouncement of guilt.

That said, and after careful perusal of the records, this Office finds that the evidence on record are sufficient to establish probable cause for the crimes charged.

At the outset, complainant Belmonte underscored the motivation behind the ambush incident, his removal from the political scene in Iligan City. To his mind, the only person who could perpetrate this crime is no other than his bitter political rival, respondent Regencia. This suspicion came to reality by the series of events that transpired after the foiled attempt on his life, foremost of which is the consequent confession of one of the participants (respondent Tumala) to the ambush who pointed to respondent Regencia as the mastermind in concert with the other respondents herein.

³ Metropolitan Bank and Trust Co. v. Tobias II, G.R. No. 177780, 25 January 2012.

⁴ Ang-Abaya v. Ang, G.R. No. 178511, 4 December 2008.

In assailing the validity of Tumala's extra-judicial confessions, respondents Regencia and Arnoco capitalizes on the first statement that the former executed where he did not mention their names nor gave details as to their participation in the adverted incident. While it may be true that there is no direct evidence pointing to them as direct participants, there are circumstantial evidence that would point to their complicity in its commission.

The averments of the complainants that a group of armed men blocked and waylaid the convoy of Congressman Belmonte are corroborated by the testimony of the one of the gunmen in the incident, respondent Tumala himself. He executed an extrajudicial confession⁵ reinforcing the narrations of complainant Belmonte, Noel, Rio and Rouel, about the ambush incident. He confirmed the participation of his companions identifying them as respondents Dodo Silvano, @Diego, @Jimmy, Julito Oros Anсад @ Bino, Jimmy and a driver who were on board the white Mitsubishi L300 van who blocked the path of and fired at the two vehicle convoy which led to the injuries of the complainants and the resultant death of Eustaquio, Ian and Mark.

Moreover, the witnesses herein presented corroborated in all material points, Tumala's subsequent confession on the details of the ambush.

First, the testimony of witness Raul Warak-Warak who claims to have seen on December 9, 2014, respondent Baller in his farmhouse with some visitors who arrived on board a white L-300 van as well as respondent Regencia in the company of Peejee Capampangan, a known fugitive in their place, who also arrived on board a white pick-up and went to the group of people who were inside what looked like a cockfighting area inside the farmhouse.

Second, the distribution and utilization of four (4) M-16 and a Carbine among respondents Tumala, Ruel, Dodo Silvano, Bino and Jimmy is corroborated by witness Gaid⁶ who narrated that he saw a white colored van coming from the direction of the bursts of

⁵ Affidavit of Dominador S. Tumala dated 19 January 2015

⁶ Affidavit of CLEOFO B. GAID JR. dated 17 December 2014

gunfire, followed by three (3) persons armed with long firearms. Witness Apag⁷ further corroborates this narration stating that after they heard the bursts of gunfire coming from the access road, they saw a van hastily pass by in front of them. A few minutes after, three (3) male persons carrying three (3) M-16 rifles and one AK-47 came running and asked them where the van went.

Third, respondent Tumala recalls that one of his companions, Bino, was hit after the victims were able to return fire at the ambushers and thereafter the L-300 van sped away without them. This narration is further corroborated by complainant Rouel who avers that he was able to hit one of the perpetrators in the L-300 van which blocked their way.

Fourth, witness Tumala was positively identified as one of the perpetrators by witness Noel who claims that the former pointed a gun at him while he lay bleeding on the ground and who picked up the rifle of victim Mark. Witnesses Apag and Gaid also identified respondent Tumala as one of the persons who passed by them carrying high powered firearms.

Fifth, the utility of a green Toyota Revo with plate # KCE-447 as the get-away vehicle. Witness Pedisani⁸ categorically claims he saw the said car parked in the waiting shed of Purok 6, Tubajon, Laguindingan, Misamis Oriental apparently waiting. The driver even asked for his help to start the car's engine after which the former drove the same uphill. Minutes later, they saw the same car come downhill at a high speed. Further verification revealed that the car was already sold to respondent Rogelio Pitos Jr. This strengthens the allegation that he and his father, respondent Rogelio Pitos Sr., have a hand in the planning and execution of the ambush.

These circumstances and positive assertions from the witnesses effectively give credit to respondent Tumala's narration of the incident that transpired prior to, during and after the incident.

⁷ Affidavit of MARK LU APAG dated 12 December 2014

⁸ Affidavit of Bobwalter Pedisani dated 18

On the other hand, respondents Regencia, Arnoco and Baller have consistently interposed alibi as their defense. Time and again it has been held that alibi is an inherently weak and unreliable defense, for it is easy to fabricate and difficult to disprove⁹. It cannot prevail over the positive identification of the witness who has no malice to testify against them. For the defense of alibi to prosper, the accuse must present a clear and convincing proof¹⁰ that it is physically impossible for him to be at the locus criminis while the crime is in progress. Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed as well as the facility of access between the two places.¹¹

In his affidavit, respondent Regencia contests the allegation that he attended the December 9, 2014 meeting and presented evidence that he and Arnoco were at the Conferment and Awarding Ceremony of the Iligan Police Force at Camp Tomas Tipanoy, Iligan City. Baller, on the other hand, also claims that he could not have attended the said meeting as he was then in Cebu. To prove his claim, he presented his flight itinerary indicating departure date of December 8 and arrival on December 10.

In both instance, the physical impossibility is not conclusive. The venue of the said Awarding and the meeting is within Iligan City only. Hence, the proximity of the locations does not render it impossible for respondents Regencia and Arnoco to be in the two venues successively. As to respondent Baller, the evidence he presented does not conclusively prove that he was in Cebu during the December 9, 2014 meeting. His itinerary merely indicates that he was scheduled to fly to Cebu on December 8 and a return flight to Iligan City on December 10. Considering the accessibility of mobility and transfer to and from Cebu City, it does not render it physically impossible for him to be at the venue of the meeting,

⁹ People vs. batidor 303 SCRA 335 1999), People vs Dalin 301 SCRA 495, 512 (1999), People vs Tulop 289 SCRA 316 ,333 (1998).

¹⁰ People vs Hillado 307, SCRA 535, 553 (1999); People vs Balmoria 287 SCRA 687, 708 (1998)

¹¹ People vs de Labajan 317 SCRA 566, 575 (1999)

more so that it was held in his own farmhouse. Moreover, his participation in the concurring acts is not limited to the December 9 meeting. Witness Tumala categorically identifies him to have attended another meeting with @ Kim and @ Loloy sometime in September 2014.

As regards the credibility as well as the probative value of the statements given by the witnesses, suffice it to state that it is not within the province of this office to determine. In short, "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."¹²

Further, the facts and circumstances presented show that the elements of murder, namely: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (d) that the killing is not parricide or infanticide.

Three persons are dead because of the ambush incident and the probability that the respondents are responsible is overwhelming. The qualifying circumstance of treachery, and evident premeditation are present. The killing of Eustaquio, Ian and Mark are qualified by treachery because the attack was sudden and the victims were not given any chance to defend themselves. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of

means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.¹³

Evident premeditation is also appreciated as shown in the presence of the following requisites: a) the time when the accused determined to commit the crime; b) an act manifestly indicating that the accused had clung to their determination; and c) sufficient lapse of time between such determination and execution to allow them to reflect upon the consequences of their acts. Respondent Tumala asserts that as early as August, respondents already conspired to kill Belmonte. They had frequent planning sessions months prior to the ambush. They even had an ocular of the site a day before the ambush, distributed the firearms to be used and prepared a get away vehicle to be used for the operation. Indeed, sufficient time had lapsed to allow the accused to reflect upon the consequences of their actions.

The crime of frustrated murder was also committed by the resultant injuries suffered by complainants Belmonte, Noel, Rio and Rouel.

Finally, the facts and circumstance presented show a concurrence of acts of the respondents towards that unified purpose of consummating the overt act of ambushing complainants.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the manner in which the offense is committed, as when the accused acted in concert to achieve the same objective. In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. The overt act may consist of active participation in the

¹³ People vs. dela Cruz, G.R. No. 188353, February 16, 2010.

actual commission of the crime itself or it may consist of moral assistance to his co-conspirators by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy."¹⁴

WHEREFORE, premises considered, it is respectfully recommended that Informations for three (3) counts of Murder, four (4) counts of Frustrated Murder be filed in Court against respondents **CELSO C. REGENCIA, ALFEO ARNOCO, AMADOR B. BALLER @ DONGKI, ROGELIO PITOS SR. @ KIM, ROGELIO PITOS JR., ROMEO SUGANUB @ LOLOY, DOMINADOR S. TUMALA, PEEJAY CAPANGPANGAN, JULITO OROS ANSAD @ BINO, DODO SILVANO** and several **JOHN DOES and PETER DOES**.

The complaint against respondent **DOMINADOR S. TUMALA**, is hereby recommended dismissed in accordance with Sections 3, 10 and 12 of R.A. No. 6981, otherwise known as the Witness Protection Security and Benefit Act.

SO ORDERED.

Manila, Philippines, 6 July 2015.


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Assistant State Prosecutor


SUSAN VILLANUEVA
Assistant State Prosecutor


AGNES FARIDA BAGAFORO-ARELLANO II
Prosecution Attorney

RECOMMENDING APPROVAL:



RICHARD ANTHONY D. FADULLON
Senior Deputy State Prosecutor

APPROVED:



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