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REPUBLIC OF THE PHILIPPINES)
First Regular Session)
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S E N A T E

COMMITTEE REPORT NO. 97

Submitted by the Committee on Public Order and Dangerous Drugs on
MAY 17 2017

Re: Privilege Speech of Senator Antonio F. Trillanes IV on the Public Confession of SPO3 Arturo Lascañas about "Davao Death Squad"
Delivered on February 20, 2017

Recommending the Adoption of this Report and the Implementation of its Recommendations

Sponsor: Senator Lacson

MR. PRESIDENT:

The Committee on Public Order and Dangerous Drugs to which was referred the Privilege Speech of Senator Antonio F. Trillanes IV on the Public Confession of SPO3 Arturo Lascañas about "Davao Death Squad" Delivered on February 20, 2017, has considered the same and has the honor to submit this Report to the Senate.

Respectfully Submitted:

SEN. PANFILO M. LACSON
Chairman, Ctte. on Public Order and Dangerous Drugs

VICE CHAIRPERSONS:

SEN. GREGORIO B. HONASAN II
Ctte. on Public Order & Dangerous Drugs

*agree on the recommendation
but with reservations as to procedure*
SEN. GRACE POE
Ctte. on Public Order & Dangerous Drugs

Members:

SEN. LOREN B. LEGARDA
Ctte. on Public Order & Dangerous Drugs

SEN. JOSEPH VICTOR G. EJERCITO
Ctte. on Public Order & Dangerous Drugs

SEN. EMMANUEL "Manny" PACQUIAO
Ctte. on Public Order & Dangerous Drugs

SEN. MARIA LOURDES NANCY S. BINAY
Ctte. on Public Order & Dangerous Drugs

SEN. LEILA M. DE LIMA
Ctte. on Public Order & Dangerous Drugs

*I do not concur and will
interpretate.*
SEN. ANTONIO F. TRILLANES IV
Ctte. on Public Order & Dangerous Drugs

Ex-Officio Members:

SEN. FRANKLIN M. DRILON
Senate Minority Floor Leader


SEN. VICENTE C. SOTTO III
Senate Majority Floor Leader


SEN. RALPH G. RECTO
Senate President-Pro Tempore

HON. AQUILINO "KOKO" PIMENTEL III
Senate President
Senate of the Philippines
Pasay City

I. BACKGROUND

The Committee on Justice and Human Rights jointly with the Committee on Public Order and Dangerous Drugs conducted an inquiry, in aid of legislation, on the following referrals:

SRN 9. RESOLUTION DIRECTING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS TO INVESTIGATE, IN AID OF LEGISLATION, THE RECENT RAMPANT EXTRA-JUDICIAL KILLINGS AND SUMMARY EXECUTIONS OF SUSPECTED CRIMINALS, TO STRENGTHEN THE MECHANISMS OF ACCOUNTABILITY OF LAW ENFORCERS, AND TO INSTITUTE CORRECTIVE LEGISLATIVE MEASURES TO ENSURE FULL RESPECT FOR BASIC HUMAN RIGHTS, ESPECIALLY THE RIGHT TO LIFE (Sen. Leila M. De Lima)

SRN 151. RESOLUTION URGING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED EXTRA-JUDICIAL OR SUMMARY KILLINGS PURPORTEDLY COMMITTED BY THE "DAVAO DEATH SQUAD", WITH THE INTENTION OF COMING UP WITH REMEDIAL LEGISLATION TO ENSURE THE PROTECTION OF THE PEOPLE'S BASIC HUMAN RIGHTS, AND THEIR RIGHT TO LIFE AND THE OBSERVANCE OF DUE PROCESS OF LAW IN THE GOVERNMENT'S CONDUCT OF ITS CAMPAIGN AGAINST TERRORISM, DRUGS AND STREET CRIMES (Sen. Antonio F. Trillanes, IV)

After six (6) public hearings, the Committee on Justice and Human Rights jointly with the Committee on Public Order and Dangerous Drugs submitted Joint Committee Report No. 18 dated December 05, 2016. Among the findings contained in the report are as follows:

- I. There is no proof that there is a State-sponsored policy to commit killings to eradicate illegal drugs in the country.
- II. There is no sufficient evidence to prove that a Davao Death Squad (DDS) exists.¹

Among the witnesses directed to appear before the Joint Committee was then Senior Police Officer 3 Arturo Bariquit Lascañas ("Lascañas") who negated the testimony of Mr. Edgar Matobato when the latter appeared before said Committees on October 03, 2016. Further, he categorically denied the existence of, and his participation in the alleged Davao Death Squad and called it a mere product of "media hype."²

On February 20, 2017, months after the filing of Joint Committee Report No. 18, Lascañas was again presented by the Free Legal Assistance Group (FLAG) in a press conference where he belied his previous testimony made under oath. Contradicting his previous statements, he confirmed the existence of, as well as his involvement with, the

¹ Joint Committee Report No. 18, pp 3-4.

² TSN, October 03, 2016, p.131.

Davao Death Squad. His recantation was allegedly the end product of his “spiritual renewal” way back in 2015.

Consequently, Sen. Antonio F. Trillanes IV delivered a privilege speech the same day relating to the statements earlier made by Lascañas with a motion to refer the same to the Committee on Public Order and Dangerous Drugs to conduct an inquiry on the matter in aid of legislation.

With this referral, this Committee conducted a hearing on the matter last March 06, 2017.

II. CONSIDERATIONS

a. Recantation of Witness

At the start of the hearing, the Chairman of the Committee strongly advised fellow members and the public to exercise caution in receiving flip-flopping statements from resource persons. For the entire duration of this inquiry, this Committee was guided by the wisdom of no less than the words of the Supreme Court in *People vs. Ayuman*³ stated in this wise:

“xxx mere retraction by a prosecution witness **does not necessarily vitiate the original testimony if credible**; that the Court looks with disfavor upon retractions of testimonies previously given in court; that the rationale for the rule is that affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration; and that recanted testimony is **exceedingly unreliable.**” (*emphasis supplied*)

In the United States, courts often interpret recantations as evidence of the **unreliability** of the witness, not the accuracy of the new testimony.⁴ It is true that decisions of the Supreme Court here and abroad have resulted in exonerations of wrongfully accused individuals. It is however reckless to rely on such information alone, and to state the same as justification to accept the newly offered testimony of Lascañas, and to abandon his previous statement. Citing cases and names of persons exonerated alone without further discussing how it is on all fours with the issue at hand, or presenting facts that led the courts to accept and consider the new testimony as credible, could naturally mislead the public.

In this inquiry, the recantation of Lascañas was evaluated in the context of the corroborating evidence or lack thereof, as against public records and evidence that he and other witnesses presented and submitted in the previous inquiry conducted by the Committee on Justice and Human Rights.

b. Allegations of conspiracy

³ G.R. No. 133436, April 14, 2004.

⁴ *People v. Canter*, 496 N.W.2d 336, 341–42 (Mich. Ct. App. 1992) (per curiam) (“Contrary to defendant’s contentions, neither the veracity of [the witness’] recanting testimony nor the falsity of her trial testimony has clearly been established.”); *State v. Perry*, 758 P.2d 268, 275 (Mont. 1988) (stating that “recanted testimony demonstrates the unreliability of a witness”); *Carpitcher*, 641 S.E.2d at 489–90.

Lascañas' testimony was an attempt to establish the existence of the Davao Death Squad, purportedly composed of some Davao police officers, among them were Sonny Buenaventura, Fulgencio Pavo, Jim Tan, Dick Cloribel, and himself, who were allegedly taking orders from then-Mayor Rodrigo R. Duterte. His was a testimony of grand conspiracy involving the Davao Death Squad.

In this regard, the general rule is that the extra-judicial declarations of a co-conspirator, made before the formation of the conspiracy or after the accomplishment of its object, are inadmissible in evidence as against the other co-conspirators, on the ground that the accused in a criminal case has the constitutional right to be confronted with the witnesses against him and to cross-examine them.⁵

Thus, the Rules of Evidence, as provided in Section 30 of Rule 130 of the Rules of Court, requires that the evidence other than the declaration of the co-conspirator must be put forward:

"Sec. 30. Admission by Conspirator. — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration."

This rule is among the exceptions to the *Res Inter Alios Acta* doctrine, which provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.⁶

Following said rules, Lascañas' testimony could not be possibly considered as evidence against the persons he was implicating without first putting forward other evidence that could establish the grand conspiracy he was claiming.

His testimony cannot be used as evidence against the President and other police officers allegedly involved in the Davao Death Squad without him offering independent evidence other than his testimony. Thus, Lascañas has the burden to provide this Committee with facts that would qualify his testimony as an admission by a conspirator as contemplated by Rule 130, Section 30 of the Rules of Court.

Moreover, the Chairperson made it clear to Lascañas, at the beginning of the inquiry, that it was necessary for him to (1) prove the conspiracy by evidence **other than the admission itself**; (2) show that the admission relates to the common object; and (3) prove that it has been made **while he was engaged in carrying out the conspiracy**. These, he failed to do. Thus, the Committee was left without a choice but to dismiss his recantation. Also, in as much as a recantation is exceedingly unreliable, his credibility is therefore extremely doubtful.

III. TESTIMONY ON RECORD DATED OCTOBER 03, 2016

By way of reference, we quoted selected portions of Lascañas' testimony made under oath last October 03, 2016 when he was summoned to testify based on personal knowledge on his alleged involvement in the alleged Davao Death Squad.

⁵ People vs. Cui, G.R. No. 121982, September 10, 1999.

⁶ Tamargo vs. Awingan, G.R. No. 177727, January 19, 2010.

XXX

SEN. VILLANUEVA. And then how can you convince us na ikaw and mas nagsasabi ng katotohanan kaysa kay Matobato?

LASCANAS. Unang-una po, hindi ko po puwedeng isugal and almost 35 yrs of serbisyo ko po sa pulis. Pangalawa po, iyong pamilya ko, mga anak ko.⁷

XXX

SEN DE LIMA. So inaamin ninyo ho ba na kayo ang pinaka close – kayong dalawa- kay Mayor Duterte na na sabi ni Mr. Matobato and trato sa inyo ni Mayor Rody Duterte ay his very own brother – like his very own brother? Para daw kayong kapatid ni Mayor Duterte, totoo?

LASCANAS. Your Honor, excuse me for my word, **hindi po totoo iyan, sinungaling po si Edgar, Your Honor.**⁸

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SEN LACSON. So talagang tahasang pinabubulaanan mo iyong alegasyon ni Matobato na napakalakas mo kay Mayor Duterte?

LASCANAS. **Wala pong katotohanan iyan.** And to add, Mr. Chair, Your Honor, noong nagkaroon ako ng severe illness, on dialysis ako, iyong panganay kong anak na bago lang pasa sa nursing, nag-apply sa City Hall of Davao City, hindi lang ito natanggap, nainsulto pa.⁹

XXX

SEN CAYETANO: Pina-ambush ho ba ni Mayor Duterte, now President Duterte, si Mr. Jun Pala?

LASCANAS. **Hindi po totoo yan, Your Honor.**

SEN. CAYETANO: Pina ambush po ba ninyo si Mr. Pala?

LASCANAS. **Hindi po totoo iyan, Your Honor.**¹⁰

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LASCANAS. Mr. Chair, Your Honor, hinuli po naming siya on the strength of a warrant of arrest issued by the Davao Oriental MTC. After his arrest, in-endorse

⁷ TSN, October 03, 2016, p.254.

⁸ TSN, October 03, 2016, p.140.

⁹ TSN, October 03, 2016, p194.

¹⁰ TSN, October 03, 2016, pp.182-183.

po naming siya sa Kaputian Police Station for record purposes. And then, dinala po naming siya sa Sigaboy Police Station for proper turnover. Kasi doon po ang jurisdiction ng kaso pati iyong warrant officer na nag-coordinate sa amin.

LASCANAS. As reported, Mr. Chair, by the Sigaboy Police, **nakatakas po** iyong preso. And then, reportedly after three or five days, nakita po siyang patay doon po sa vicinity ng Pantukan, which is nearby the Sigaboy, Davao Oriental.¹¹

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SEN. DE LIMA. Okay. Siyempre po. Katulad siguro ng iba na mga pinatawag naming ngayon, hindi kayo aamin na mayroong Davao Death Squad.

LASCANAS. Wala pong Davao Death Squad, Your Honor, media hype lang iyan.¹²

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SEN. CAYETANO. Okay. So let me give you that opportunity. Sabi, sir, ni Mr. Matobato, ikaw daw ang team leader ng Davao Death Squad.

MR. LASCAÑAS. Unang-una, Your Honor, **hindi iyan totoo.** Pangalawa, **walang Davao Death Squad.**"¹³ (*emphasis supplied*)

IV. COMMENTS AND OBSERVATIONS - LASCANAS AFFIDAVIT DATED FEBRUARY 20, 2017 AND TESTIMONY

*"I made my public confession last week because of my desire to tell all the truth not only because of my spiritual renewal, but the fear of God and I wanted to clear my conscience."*¹⁴ – that was how Arturo Lascañas justified his recantation. Although the matter is really between him and his god, the Committee noted that the alleged spiritual renewal occurred way back in 2015 or months before his October 03, 2016 testimony to the Joint Senate Committees on Justice and Public Order wherein he denied the allegations of Mr. Matobato.

Further, let us not overlook the fact that Lascañas, a person who claimed as someone with close personal relations with the President of the Republic, admittedly failed to close deals and secure contracts with the government on several occasions after he testified for the first time in Senate.¹⁵

Proceeding on a more substantial matter, this Committee finds the Affidavit and testimony of Lascañas as self-serving and not worthy of belief and bereft of credibility. More so, no other clear and convincing evidence was presented to substantiate his allegations. In addition, there was no effort at all to legally establish the alleged

¹¹ TSN, October 03, 2016, pp.477-478.

¹² TSN, October 03, 2016, p.131.

¹³ TSN, October 03, 2016, p.180.

¹⁴ TSN, March 06, 2017, p.11.

¹⁵ TSN, March 06, 2017, pp.92-101.

conspiracy and the requisites for the exception to the *res inter alios acta* rule made known to him by the Chairman before proceeding with his testimony.

Notwithstanding the time and resources wasted in entertaining this witness, the Committee proceeded with this report in order to shed light on certain issues/controversies raised to apprise the public who deserve no less than transparency and truthfulness.

a. Alan Tancio and the Origins of the Davao Death Squad

In the Affidavit of Lascañas dated February 19, 2017, he made mention of the origins of the Davao Death Squad. We directly quote the following statement:

"Origins of the Davao Death Squad"

9. At the time once can say that our group was already the Davao Death Squad but we were not known as DDS until the raid on the residence of ALAN TANCIO when the Davao City Police Director was ISIDRO LAPENA. TANCIO was a known drug pusher/cARRIER of illegal drugs, whose residence was located in Bacaca, Davao City."¹⁶ (*emphasis supplied*)

The Committee did a fact check to determine the approximate year when the name Davao Death Squad was first used. Using now Philippine Drug Enforcement Agency (PDEA) Director Isidro Lapeña's record in public service as Davao City Chief of Police by way of reference, Lascañas' narration on said origin should be some time between 1996 and 1998.

However, Lascañas negated his own statements as to the origins of the title Davao Death Squad when he testified before this Committee. According to him, the raid of Alan Tancio's house occurred sometime in 2001. His testimony was also directly quoted as follows:

"2001, Mayor Duterte was again captured the power of city hall of Davao City, up to 2015. 2001, dito po nacreate and heinous crime group. Isa ako sa mga pasimuno ng death squad. Dito din, in between sa mga tao na ito, dito lumabas ang Davao Death Squad noong pinamunuan ni Major Asentista ang pag-atake naming sa isang lugar sa Bacaca Heights, Davao City. Ito ay bahay ni Alan Tancio. xxx At dito, ang instruction sa amin ni Major Asentista ay mag-iwan ng isang note. xxx So dito, napagkasunduan ng grupo na isulat ang Davao Death Squad. Nangyari ito and the first casualty ng Davao Death Squad ay iyong katulong ni Alan Tancio." (*emphasis supplied*)

Remarkably, we referred to the video clip of GMA 7's *State of the Nation with Jessica Soho* dated February 23, 2017.¹⁷ In the four-minute video, Ms. Maki Pulido tracked down and interviewed a few neighbors of Alan Tancio who shared their recollection of the raid. According to the residents, the incident took place at Garcia Heights, Bajada, Davao City and not at Bacaca Heights, as mentioned in Lascañas' Affidavit. In addition,

¹⁶ Affidavit of Arturo Lascañas, February 20, 2017, page 2.

¹⁷ <http://www.gmanetwork.com/news/video/stateofthenation/402706/davao-death-squad-raid-sa-drug-den-ni-alan-tancio-naalala-pa-rin-ng-mga-residente-kahit-2-dekada-ang-nakalipas/video>

there were **two deaths**, male and female, that resulted from the raid contrary to his narration that only the housemaid was killed.

b. Patasaja Family Kidnapping and Murder

Also included in Lascañas' Affidavit were the details of the alleged massacre of a certain Patasaja Family. To give a brief background, the alleged Davao Death Squad pursued Mr. Patasaja because of his involvement in the kidnapping of a certain Mrs. Abaca, a prominent person from Davao City. The deaths of other members of his family were merely collateral damage.

In paragraph 15 of his Affidavit, Lascañas stated that "We (MAJOR ERNESTO MACASAET, MAJOR ASENTISTA, SPO4 DICK CLORIBEL, SPO4 FULGENCIO PAVO, SPO3 GERRY BAGUHIN and SPO3 TEODORO PAGUIDOPON, SPO4 BEN LAUD and myself) were the lead group of the Davao City policemen tasked and instructed personally by MAYOR DUTERTE to conduct investigation, follow-up operations and pursue the suspects in the said kidnapping incident in Davao City."

To verify the allegations, this Committee furnished a copy of the Affidavit to the Philippine National Police (PNP) and directed the submission of documents relating to the incidents mentioned. Among the submissions was a Memorandum signed by Police Superintendent Glen G. Dumla from the National Headquarters of the PNP Anti-Kidnapping Group. The Memorandum disclosed that the PNP had not received any report on the alleged kidnapping as is states:

"2. In connection with the above reference, please be informed that this group has no available records pertaining to the kidnapping of Mrs. Abaca of Davao City."¹⁸ (*emphasis supplied*)

In addition, we looked into another Memorandum, this time signed by Police Senior Superintendent Maximo C. Layugan of General Santos City Police Office containing a **Special Written Report Re: Alleged Kidnapping of Patasaja Family**.

Based on the Affidavit and testimony, Mr. Patasaja was living near Police Senior Inspector Patayan's residence when the alleged kidnapping was perpetrated. The directive of the PNP National Headquarters was to determine the veracity of the information and to collect facts relative thereto. As such, relatives, local officials, and residents of Pendatun Avenue, General Santos City where PSI Patayan resided were interviewed, and yielded the following information:

1. Patayan already passed away on August 01, 2008 due to complicated illness and deteriorating health;
2. The Patayan Family has been residing in Pendatun Avenue, General Santos City since 1953;
3. One of Patayan's daughters averred that they have no knowledge about the kidnapping of a certain Patasaja that occurred within the premises of their residence. More so, they have no neighbors having the name or surname Patasaja living in their neighborhood;

¹⁸ PNP Memorandum dated March 03, 2017

4. Patayan lived in a close knitted community and the residents were familiar with each other. So if the Patasaja family lived near, they would probably know because twenty years ago, only a few families were living in the area; and,
5. Purok Chairman Robert B. Dingal, a resident in the area since his childhood, certified that ever since, there has been no individual or resident who lived in their locality that has the name or family name Patasaja. Likewise, when asked about the alleged kidnapping, he said that there was no such incident that transpired in their neighborhood or adjacent places.

After consideration of information gathered, the PNP reported out its Comments/Assessment in this wise:

- "q. Considering the above circumstances, it is therefore safe to conclude that the alleged kidnapping of PATASAJA family in General Santos City has **no veracity and is bereft of truth.**
- r. Patasaja or Pasajata as mentioned in the affidavit of retired SPO3 Lascañas is not residing or never had been a resident of the Purok where PINSP PATAYAN was residing as manifestation of the inquiry conducted by this office. This significantly contradicts the allegations of SPO3 Lascañas that PATASAJA was a neighbor of PINSP Patayan the time when the latter was abducted by alleged Davao Policemen in General Santos City twenty years ago.
- s. The disclosures on the Sworn Statement of retired SPO3 Lascañas with regard to the abduction and killing of Patasaja Family were all baseless and not founded on any substantial evidence."¹⁹ (*emphasis supplied*)

Finally, the Chairman of this Committee noticed a glaring inconsistency in Lascañas' narration of facts pertaining to the killing of the Patasaja family in his press conference last February 20, 2017 and the Affidavit that he signed the day before. During his press conference he said:

"...Baka ito gagawa ng pagganti dahil inubos natin ang buong pamilya nya. Dito po walang nagsuporta. Dito, evil prevailed. Napatay po ang buong pamilya sa **harap ko**, using a caliber .22 with a silencer. And the rest po is history." (*emphasis supplied*)

His Affidavit, however states:

"32. After a while I **heard** several muffled gunshots of a firearm with a suppressor coming from the small house where MR. PATASAJA, his father in law and male helper and house maid were located. I then **heard** the loud screams of the wife and then silence after several gunshots were fired. I did not then know how the child was killed because it was dark." (*emphasis supplied*)

¹⁹ PNP Memorandum dated March 04, 2017

During the public hearing of this Committee, the Chairman pointed out and confronted the witness on this inconsistency.

"THE CHAIRMAN. Arthur, puwede bang—kasi baka makalimutan ko itatanong ko. Nasabi mo sa affidavit mo rin, narinig mo iyong tunog ng baril na may suppressor, hindi ba?

MR. LASCAÑAS. Suppressed.

THE CHAIRMAN. So, kaharap ka ba mismo noong ginawa o narinig mo lamang iyong tunog ng suppressor?

MR. LASCAÑAS. Narinig ko lang po.

THE CHAIRMAN. So noong nangyayari iyon, wala ka? Narinig mo lang?

MR. LASCAÑAS. Sa labas po ako ng bahay, Mr. Chair.

THE CHAIRMAN. Nasa labas ka ng bahay. Kasi alam mo sa presscon mo noon, noong February 20—kasi ang affidavit mo dated February 19, hindi ba? Iyong public confession mo, February 20, isang araw lang ang pagitan, ang sinabi mo rito, "Baka ito gagawa ng pagganti dahil inubos natin ang buong pamilya niya. Dito po walang suporta. Dito, evil prevailed. Napatay po ang buong pamilya sa harap ko using a ..." Alin po ang totoo rito ngayon, iyong inyong affidavit o iyong sinabi sa inyong presscon? Magkaiba. Sa inyong presscon maliwanag na nandian ka, kaharap ka noong nangyayari kasi, "Napatay po ang buong pamilya sa harap ko using a caliber .22 with a silencer. And the rest po is history." Pero sa iyong affidavit na ginawa noong—isang araw lang ang pagitan kasi February 19 against the February 20 public confession, sinabi mo nga at kinonfirm (confirm) mo ngayon na narinig mo lamang at nasa labas ka ng bahay. So alin po ang totoo talaga?

MR. LASCAÑAS. Totoo po iyon, Mr. Chairman.

THE CHAIRMAN. Hindi. Alin ang totoo sa dalawa?

MR. LASCAÑAS. Nandoon ako sa labas pero I consider na nakita ko.

THE CHAIRMAN. So mali iyong nasabi mo sa presscon. Nakalimutan mo.

MR. LASCAÑAS. Baka naano ko lang, Mr. Chairman." (*emphasis supplied*)

Indeed, sight and auditory perception are two different senses capable of being easily distinguished and described in any language or dialect. Truly, it is unacceptable to say that one has seen an event that was not witnessed by the human eye. In the same manner, a witness is not expected to give error-free testimony considering the lapse of time and the treachery of human memory,²⁰ but let us not forget that this statement is qualified and limited **only to minor and trivial matters innocent lapses**. The pronouncement of the Supreme Court on inconsistencies on minor lapses should not be twisted in order to be applicable to contradictions on relevant matters as to how a person witnessed the commission of a crime.

²⁰ People vs. Mirandilla Jr., G.R. No. 186417, July 27, 2011.

c. Killing of Gaudencio "Jun" Bersabal, Jr.

Lascañas also recounted the arrest and the purported killing of a certain Jun Bersabal, former leader of ex-PC soldiers engaged in various criminal activities, per order of then-Mayor Duterte. To cover up the killing, they allegedly connived with Insp Rommel Mitra of Sigaboy Police Station to make it appear that Bersabal was properly turned over to the station and thereafter escaped during the night.

Emphasis should be given to the fact that the case of Jun Bersabal has been investigated by the Commission on Human Rights (CHR). Though the individuals impleaded to this investigation were SPO4 Fulgencio Pavo, SPO3 Gerry Bagohin, SPO3 Stephen Abella, SPO1 Arturo Lascañas, Edgar Matobato, SPO2 Ruben Laguesma and P/SR INSP Rommel Mitra, there was no clear and convincing evidence presented by a truthful and credible witness to prove their involvement and participation in Bersabal's killing. Having said so, the presumption of regularity accorded to public officials in the performance of duty prevails.

The Resolution²¹ of the CHR dated December 22, 1997 could not be more informative on the evidentiary weight of the facts presented:

"While it is true that the respondents had custody over the person of Gaudencio Bersabal, Jr. at one time or another and could therefore be responsible for the latter's death, no substantial evidence has yet been obtained to prove such fact directly. In other words, **the evidence on hand remains uncorroborated in its material aspects and thus the crime itself could not be squarely ascribed to any of the respondents.** xxx

xxx While the Commission has to admit that the presumption of regularity of official acts should be observed in this case, some reservations exist insofar as it is concerned especially with respect to the truthfulness of the reports on the alleged transfer of custody. **It is, nevertheless, aware of the fact that the presumption of regularity prevails until it is overcome by no less than clear and convincing evidence to the contrary** xxx "(emphasis supplied)

For the public's information, said investigation only recommended the filing of a criminal complaint against SPO2 Ruben Laguesma for infidelity in the custody of prisoners under Article 224 of the Revised Penal Code.

Since Lascañas failed to present corroborating evidence in this regard, his mere statement alone did not qualify his testimony as direct evidence sufficient to overturn the presumption of regularity.

d. Killing of Juan "Jun" Pala, Jr.

Up to this day, the case of Jun Pala, former block timer of DXGO "Aksyon Radyo" remains unresolved. According to Lascañas, Jun Pala was among Mayor Duterte's critiques. For attacking and lambasting him on air, he was ordered killed per

²¹ CHR Resolution dated December 22, 1997 Re: *Case of Gaudencio Bersabal, Jr, Lucina Bersabal vs. Pavo, Bagohin, Abella, Lascañas, Matobato, Laguesma, Mitra.*

the instruction of then-Mayor Duterte for Three Million Pesos (Php3,000,000.00). In order to accomplish the assignment, Lascañas sought the assistance of SPO1 Jim Tan, Valentin Duhilag, Alan Duhilag and Roland Duhilag.

Similar to the previous killings averred, Lascañas offered no other corroborating evidence other than Mr. Pala being one of then-Mayor Duterte's critiques. What can be inferred therefrom, if any, was a possible motive on the part of Mayor Duterte, which the Supreme Court, in a catena of cases, has emphatically stated that *motive alone is not proof of a crime*.²² In order to tip the scales in its favor, intent and not motive must be established by the prosecution. Motive is hardly ever an essential element of a crime. A man driven by extreme moral perversion may be led to commit a crime, without a real motive but just for the sake of committing it.²³ Along the same line, a man who commits a crime with an apparent motive may produce different results, for which he is punished.

To impute a crime on another individual on the basis of motive alone will be a dangerous precedent. We also draw your attention to the comprehensive report on the shooting and death of Juan Porras Pala signed and submitted by Police Superintendent Edilberto DC Leonardo of the Criminal Investigation and Detection Group 11 (CIDG 11). According to the report, Mrs. Louie Pala, the victim's wife, executed an Affidavit on October 16, 2003 stating that her late husband generated lots of enemies during his political career both public and private entities and received several threats to his life.²⁴

e. Findings of the Office of the Ombudsman

On CHR Resolution dated June 28, 2012,²⁵ the Commission recommends the Office of the Ombudsman to investigate on the possible administrative and criminal liability of then-Mayor Duterte for his inaction in the face of evidence of numerous killings committed in Davao City and his toleration of the commission of those offenses.

The Fact Finding Report of the Office of the Ombudsman dated May 5, 2014 recommending the closure and termination of the investigation states:

"A closer study of the records of the case including the stenographic notes taken during the series of public inquiry made by the Commission reveals that it had all the opportunity to gather what is called "substantial data, information and evidence" on the so-called DDS has there been any. Unfortunately, however, **there was none**. In fact, no less than the Commission's Regional Director Atty. Alberto Sipaco, Jr. testified under oath that "the regional office of the CHR in this region **does not have any specific or complete proof as to the existence of the so-called Davao Death Squad**". He further said, thus: "Now, it would be unbecoming of the Commission if through chismis and other gossips, we would be relying on it as a fact already when there are no supporting justification."

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²² People vs. Maongco, G.R. No. 108963-65, March 1, 1994.

²³ Reyes, Revised Penal Code, Twelfth Edition, p. 60.

²⁴ CIDG Memorandum dated February 24, 2017.

²⁵ Re: EJK attributed or attributable to the so-called Davao Death Squad.

The conclusion therefore, that “the Commission points to the existence of a Davao Death Squad and its responsibility for the killings as described above” has **no basis** after all. In fine, the “killings attributed or attributable to the DDS” therefore, do not actually exist. Or at the very least, no evidence documentary or testimonial was unearthed either by Regional Director Sipaco or by the Commission itself before, during and after its public inquiries.

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IN VIEW OF THE FOREGOING, the undersigned investigators respectfully reiterate our findings as contained in our Evaluation Report dated December 5, 2013 stating:

There being no evidence to support the “killings attributed or attributable to the DDS” much less the involvement of Mayor Rodrigo Duterte and his local police officials of Davao to said acts, this Office tends to agree with the Commission’s Regional Director Sipaco that **“it would be unbecoming of the Commission if through chismis and other gossips, we would be relying on it as a fact already when there are no supporting justification”**.

xxx In fact, we have actually validated the same findings in this investigation that **no evidence was gathered** to support the killings attributed or attributable to the DDS”/ In fine, the said allegation as CHR Director Sipaco would put it, remains what he called as “chismis and other gossips”. (*emphasis supplied*)

f. Other alleged killings

One of the problems this Committee took note of apart from Lascañas’ self-serving testimony was the fact that many of the alleged murders were not included in his Affidavit and the facts surrounding therein were not discussed in detail. As such, the Committee was deprived of the opportunity to verify even the mere fact of death of the people mentioned. Instead of limiting his testimony on the contents of his Affidavit, he went further to briefly state the killing of other individuals such as Fred Sotto, Felicisimo Cunanan, Jr., eleven (11) Chinese nationals, a Taiwanese national and two (2) Filipino companions, and even an unnamed dance instructor of Mayor Duterte’s sister, Jocelyn.

This Committee resolves to disregard these allegations on the basis of Lascañas’ failure to establish the *corpus delicti* therein. To expound on the matter, the Supreme Court, on several occasions, has explained that *corpus delicti* refers to the **fact of the commission of the crime** charged or to the body or substance of the crime.²⁶ In order to prove *corpus delicti*, Lascañas must have established that (1) a certain fact has been proven – the persons mentioned died / were killed; and (2) the Davao Death Squad and Mayor Duterte are criminally responsible for the act.

²⁶ People vs. Perez, G.R. No. 179154, July 31, 2009.

This Committee noted that had Lascañas passed the test of credibility and at the same time supplied his testimony with corroborative evidence, the same would have been sufficient granting that the Supreme Court had ruled that even a single witness' uncorroborated testimony, if credible may be sufficient to prove the *corpus delicti* and warrant a conviction.

Finally, we also highlighted his statement that they kidnapped and killed M/Sgt Ronald Caigas. However, news reports way back in 2011 would belie said claim. In fact, Col. Domingo Tutaan, Chief of the Armed Forces' Human Rights Office, said *retired M/Sgt. Donald Caigas passed away in 2010 due to a lingering illness.*²⁷

V. CONCLUSION

Mere retraction made by Lascañas does not necessarily vitiate his original testimony; and that his testimony solemnly given should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each was given be carefully scrutinized, the reasons or motives for the change carefully scrutinized, in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.²⁸

To further expound on the matter, we rely on the wisdom of the Supreme Court:

"Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. **The rule is that a witness may be impeached by a previous contradictory statement; not that a previous statement is presumed to be false merely because a witness now says that the same is not true.** The jurisprudence of this Court has always been otherwise, i.e., **that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained.** We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous. Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind[s] for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous, witnesses. x x x"²⁹

Comparing Lascañas' testimony then and now, it appears that he was a credible witness back then when he refuted the allegations of Edgar Matobato. His current testimony is flooded with loopholes and uncertainty on material facts. Apart from the lack of corroborating evidence, his testimony was easily negated and destroyed by established facts, legal presumptions and resolutions of government agencies concerned.

²⁷ <http://www.gmanetwork.com/news/news/nation/226741/afp-retired-soldier-in-missing-students-case-died-last-year/story>

²⁸ People vs. Mendoza, G.R. No. 109279-80, January 18, 1999.

²⁹ People vs. Panida, G.R. No. 127125, July 06, 1999.

Note that this Committee was expecting to hear details and receive other proof beyond what is easily accessible to a former police officer like Lascañas. The mosque bombings and deaths of persons such as Pala and Bersabal are of public record. Any person with an evil design could easily fabricate allegations to be inserted in between circumstances already borne by official records.

The claim that Lascañas' testimony must be accepted as true and credible because there was no contrary testimony from any other witness deserves scant consideration. To be true and credible, the testimony must stand on its own merits, and not simply rely on the absence of other testimony contrary to it.

We must emphasize that a mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt. There must always be sufficient evidence to support the charge. This brings to the fore the application of the age-old but familiar rule that he who alleges must prove his allegations.³⁰

The testimonies of both Matobato and Lascañas, are considered weak and did not pass the scrutiny of the respective Committees they were presented. The lack of credibility of both witnesses results in the lack of evidentiary value of their testimonies. **Aside from the extrajudicial confession, no other piece of evidence was presented to prove the alleged conspiracy.** Therefore, their confession has no probative value.³¹

The alleged conspiracy among the members of the Davao Death Squad was not properly established by independent evidence. Nor was it shown that the extra-judicial statements of Lascañas were made while they were engaged in carrying out the conspiracy. In truth, the statements were made after the conspiracy has ended and after the consummation of the crime. They were not acts or declarations made during the conspiracy's existence.

Since the extra-judicial admissions were made after the supposed conspiracy, they are binding only upon the confessant and are not admissible to others; as against the latter, the confession is hearsay.³² The reason is that:

"On a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him."³³

Further, it should be noted that the Order of the Ombudsman dated March 29, 2012 did not penalize the police officers for any involvement in the Davao Death Squad. The Order merely penalized twenty-one (21) officers with a one-month suspension for their failure to reduce the number of killings. To specify:

"From the foregoing figures, it is evident that respondents were

³⁰ Spouses Boyboy vs. Yabut, A.C. No. 5225, April 29, 2003.

³¹ *Supra, note 6*

³² *Supra, note 5.*

³³ *Supra, note 5.*

remiss in their duty to significantly reduce the number of killings. xxx Also, the same shows that respondents failed to solve a substantial number, if not all, of the killings."

On a final note, after this Committee adjourned the hearing, several names such as Jose Basilio, Crispin Salazar and Roberto Fajardo and their alleged affidavits somehow made their way in the news. To be emphatic, this body has always opened its doors to any witness whose would-be testimonies are relevant in our search for the truth. These individuals could be easily presented and their Affidavits scrutinized had they been properly presented similar to Lascañas. The inquiry was adjourned without objections or motion to invite the abovementioned individuals. To name drop them after the inquiry only causes a stir without giving the public the opportunity to see if they will pass the scrutiny of the Committee. This Committee will not allow itself to be used as an avenue for verbal accusations without a backbone of truth intended not only destroy the reputations of individuals but also promote divisiveness between and among the different political sectors of our society.

VI. RECOMMENDATIONS

In view of the foregoing, the Committee recommends the following: 1. Amendment of the Revised Penal Code to increase the penalty for the crime of perjury; and 2. Amendment of the Rules of the Senate to punish witnesses who give inconsistent testimonies in a Senate inquiry.

Increase of penalty for the crime of perjury

This inquiry only highlights the fact that there are individuals who have the audacity to spread falsity before this august body that obtains its power from the highest law of the land. These untruthful statements, given under oath before a Senate Committee, undermine Congress' Constitutionally-granted authority to conduct inquiries in aid of legislation. These attempts to impede the Legislative branch from performing its Constitutional function must therefore be punished accordingly.

Despite the fact that perjury and giving false testimony are already criminal in nature, the prevalence of committing such crimes remains. One solution is to impose heavier penalties for the commission of the crime. Increased penalty will serve as deterrence against possible violators.

Articles 180 to 184 of the Revised Penal Code penalize giving false testimony. There are bills currently pending in the Senate that seek to increase the penalties for such crimes, even providing for much higher penalty if the offender is a public officer. One of these is Senate Bill No. 253 authored by the Chairman of the Committee on Public Order and Dangerous Drugs.

The Committee recommends that these bills be given primacy. Enactment of these bills is necessary for the effective performance of functions not only of the Legislative branch but all other public offices, as well.

Amendment of Rules of the Senate

Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provides:

Sec. 18. Contempt. (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor xxx (*underline supplied*)

The Section provides two instances when a testimony made may be subject of contempt, i.e.: when he testifies falsely, or evasively. As it is currently worded, the Section does not punish a witness who gives incompatible/inconsistent testimonies. This allows a witness to change his/her position, or recant his/her previous testimony, without fear of penalty.

Jurisprudence dictates that there are "two essential elements of proof for perjury: (1) the statement made by the defendants must be proven false; and (2) it must be proven that the defendant did not believe those statements to be true."³⁴ That there are contradictory sworn statements is not sufficient to convict the witness. It must be proven first, which of the contradictory statements is false, and second, that the statement is false by evidence other than the contradicting statement.³⁵ "Proof that accused has given contradictory testimony under oath at a different time will not be sufficient to establish the falsity of testimony charged as perjury, for this would leave simply one oath of the defendant as against another, and it would not appear that the testimony charged was false rather than the testimony contradictory thereof. The two statements will simply neutralize each other; there must be some corroboration of the contradictory testimony. Such corroboration, however, may be furnished by evidence *aliunde* tending to show perjury independently of the declarations of testimony of the accused."³⁶

The rationale of these principles governing conviction for perjury may be applied to Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation. Mere incompatibility/inconsistency of statements, without showing that one of these is false, cannot be a ground for citing a witness for contempt.

Such seeming inadequacy of Section 18 results to several disadvantages. First, it undermines the authority of the Senate Committee conducting inquiry in aid of legislation. Any attempt to confuse the public with contradictory statements places doubt on the findings of the Senate Committee concerned. Such is an affront to the Legislative branch, before whom the witnesses swear to state only the truth. Second, it delays the Senate in the performance of its function. Recantation of statements, for one, requires reconsideration of supposedly established truths. This will necessitate the Senators to again scrutinize each of the statements made before them. Third, the further delay in the proceedings is a waste of taxpayers' money. Legislative proceedings are funded by the public. Any extension of the proceedings demands not only additional time and effort from the Senators, but also additional funding.

For these reasons, it is only necessary to amend Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation to the effect that wholly

³⁴ Criste B. Villanueva vs. Hon. Secretary of Justice, G.R. No. 162187, November 18, 2005.

³⁵ *Ibid.*

³⁶ *Ibid.*

contradictory statements before the Senate body, together with false and evasive testimonies, are considered ground for citing a witness in contempt.

VII. EPILOGUE

Tunnel vision contributes significantly to the problem of wrongful appreciation of established facts. Tunnel vision is a natural human tendency that causes people "to focus on a particular conclusion and then filter all evidence in a case through the lens provided by that conclusion."³⁷

Notwithstanding the inconsistencies and lack of evidentiary value of the testimony presented, stories and allegations as to this so-called Davao Death Squad will continue to plague this nation. One thing is for sure, Arturo Lascañas is not the person to prove its actual existence and finally bring to justice the perpetrators of numerous unresolved crimes in Davao City or elsewhere if proven so.

³⁷ Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 Wis. L. Rev. 291, 292.