



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0265

-versus-

**FIDEL GARCIA, ALICIA GUDAY,
P/INSP. BENNY ESPARAGOZA,
P/SSUPT. JEROME PAGARAGAN,
and SFO3 DIONESIO
PADUGANAN.**

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0266

-versus-

**FIDEL GARCIA, P/SSUPT.
JEROME PAGARAGAN, P/INSP.
BENNY ESPARAGOZA, SFO3
DIONESIO PADUGANAN, FO3
FELIPE TALE,⁺ SFO1 ARCADIO
SACOL, and PO3 WARREN
DULTRA,**

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0267

-versus-

**FIDEL GARCIA, P/SSUPT.
JEROME PAGARAGAN, P/INSP.
BENNY ESPARAGOZA, SFO3
DIONESIO PADUGANAN, FO3
FELIPE TALE,⁺ SFO1 ARCADIO
SACOL, and PO3 WARREN
DULTRA,**

Accused.

X-----X

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0268

-versus-

**FIDEL GARCIA, P/SSUPT.
JEROME PAGARAGAN, P/INSP.
BENNY ESPARAGOZA, SFO3
DIONESIO PADUGANAN, FO3
FELIPE TALE,+ SFO1 ARCADIO
SACOL, and PO3 WARREN
DULTRA,**

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0269

-versus-

**FIDEL GARCIA, P/SSUPT.
JEROME PAGARAGAN, P/INSP.
BENNY ESPARAGOZA, SFO3
DIONESIO PADUGANAN, FO3
FELIPE TALE,+ SFO1 ARCADIO
SACOL, and PO3 WARREN
DULTRA,**

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0270

-versus-

**FIDEL GARCIA, P/SSUPT.
JEROME PAGARAGAN, P/INSP.
BENNY ESPARAGOZA, SFO3
DIONESIO PADUGANAN, FO3
FELIPE TALE,+ SFO1 ARCADIO
SACOL, and PO3 WARREN
DULTRA,**

Accused.

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Present:

Gomez-Estoesta, J., *Chairperson*
Trespeses, J. and
Hidalgo, J.

Promulgated:

October 25, 2019 *AW*
10/25/19

DECISION

12

GOMEZ-ESTOESTA, J.:

On August 5, 2006, a public assembly was held on a road in Barangay La Fraternidad, Municipality of Tubay, Agusan del Norte, to air environmental grievances against the activities of local mining companies operating in the area. On August 6, 2006, the second day of the rally, after the celebration of morning mass, a water cannon mounted on a firetruck was employed against the assemblyists effectively dispersing them and putting an end to their public demonstration. This act, caught on video, caused the filing of a complaint against several public officials, namely the Mayor of Tubay, local police officials, and the firefighters who had come from the neighboring Cabadbaran Fire Station.

Finding probable cause to support the filing of charges, the Office of the Ombudsman respectively filed the following six (6) Informations against the accused indicated below:

Name of Accused	Criminal Case Nos.					
	SB-11-CRM-0265	SB-11-CRM-0266	SB-11-CRM-0267	SB-11-CRM-0268	SB-11-CRM-0269	SB-11-CRM-0270
Fidel Garcia
Alicia Guday (acquitted) ¹	.					
Jerome Pagaragan
Benny Esparagoza
Warren Dultra	
Dionesio Paduganan
Arcadio Sacol	
Felipe Tale (now deceased) ²	

In **SB-11-CRM-0265**, the Information for *Prohibition, Interruption, & Dissolution of Peaceful Meetings* filed under Article 131, paragraph 3 of the *Revised Penal Code* averred:

That on or about 6 August 2006 at around 8:45 a.m. or sometime prior or subsequent thereto in Barangay La Fraternidad, Tubay, Agusan del Norte and within the jurisdiction of this Honorable Court, the above-named accused Fidel Garcia, Salary Grade 27, then Mayor of the Municipality of Tubay, Alicia Guday, Salary Grade 14 Barangay [Chairperson], Jerome [Pagaragan], Salary Grade 26, Provincial Police Director, Benny Esparagoza, Salary Grade 22, Chief of Police, Dionesio Paduganan, Salary Grade 18, Fire Chief, all public officers, acting together, conspiring, and confederating with one another, committing the crime in the discharge of their official functions and in grave abuse thereof, did then, and there

¹ As per the Court's Resolution dated June 26, 2018 (Records, Vol. 4, pp. 282-310), in Criminal Case No. SB-11-CRM-0265, accused Alicia Guday was acquitted of the crime of Prohibition, Interruption, and Dissolution of Peaceful Meetings under Article 131 of the *Revised Penal Code*

² As per PSA-certified Certificate of Death dated February 9, 2017 (Records, Vol. 4, pp. 354-355)

Handwritten signature/initials

willfully, unlawfully, and feloniously, without legal ground, interrupt the holding of a peaceful meeting/rally attended by Fr. Jenor Luis, Ronald Hinayon, Aliore Page, Juan Amoncio, Camilo Omelgo, Rolando Carlota, Jimmy Beray and other residents of Tubay, Agusan del Norte, through the use of a bulldozer and a water cannon, which then dissolved such peaceful meeting/rally which was being held to address and petition to the authorities for the correction of abuses and redress of grievances in relation to the alleged illegal mining activities done in their municipality, thereby abridging their freedom of speech and their right to peaceably assemble and petition the Government for redress of grievances.

CONTRARY TO LAW.

In **SB-11-CRM-0266**, the Information for *Violation of Section 10 (c) of Batas Pambansa Blg. 880 (the Public Assembly Act of 1985)* alleged:

That on or about 6 August 2006 at about 8:45 a.m. or sometime prior or subsequent thereto in Barangay La Fraternidad, Tubay, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Fidel Garcia, Salary Grade 27, then Mayor of the Municipality of Tubay, P/SSupt. Jerome [Pagaragan], Salary Grade 26, Provincial Police Director, P/Insp. Benny Esparagoza, Salary Grade 22, Chief of Police, SFO3 Dionesio Paduganan, Salary Grade 18, Fire Chief, FO3 Felipe Tale, Salary Grade 14, Fireman, SFO1 Arcadio Sacol, Salary Grade 16, Fireman and PO3 Warren Dultra, Salary Grade 14, Police Officer, all public officers, acting together, conspiring, and confederating with one another, committing the crime in the discharge of their official functions and in grave abuse thereof, did then, and there willfully, unlawfully, and criminally disperse a public assembly attended by Aliore Page, Rolando Carlota, Amado Garcia and other residents of Tubay, Agusan del Norte, through the use of a water cannon as an anti-riot device, in the absence of actual violence, serious threats of violence or deliberate destruction of property, which then dissolved such public assembly which was being held to address and petition to the authorities for the correction of abuses and redress of grievances in relation to the alleged illegal mining activities done in their municipality.

CONTRARY TO LAW.

In **SB-11-CRM-0267**, the Information for *Slight Physical Injuries* filed under Article 266 of the *Revised Penal Code* read:

That on or about 6 August 2006 at about 8:45 a.m. or sometime prior or subsequent thereto in Barangay La Fraternidad, Tubay, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Fidel Garcia, Salary Grade 27, then Mayor of the Municipality of Tubay, P/SSupt. Jerome [Pagaragan], Salary Grade 26, Provincial Police Director, P/Insp. Benny Esparagoza, Salary Grade 22, Chief of Police, SFO3 Dionesio Paduganan, Salary Grade 18, Fire Chief, FO3 Felipe Tale, Salary Grade 14, Fireman, SFO1 Arcadio Sacol, Salary Grade 16, Fireman and PO3 Warren Dultra, Salary Grade 14, Police Officer, all public officers, acting together, conspiring, and confederating with one another, committing the crime in the discharge of their official functions and in grave abuse thereof, did then, and there willfully, unlawfully, and feloniously use violence upon the person of Jocelyn Regala, by turning on the fire truck's water cannon and released pressurized water aimed at a public assembly which included Jocelyn Regala, thereby inflicting upon her

physical injuries which required medical attention for a period of one (1) to seven (7) days.

CONTRARY TO LAW.

Except for Nelia Urgel and Estanislao Delima, who were respectively the injured persons named in the Informations under Criminal Case Nos. **SB-11-CRM-0268 to 0269** for *Slight Physical Injuries*, said Informations contained identical allegations as in Criminal Case No. SB-11-CRM-0267.

In **SB-11-CRM-0270**, the Information for *Grave Coercion* filed under Article 286 of the *Revised Penal Code* alleged:

That on or about 6 August 2006 at about 8:45 a.m. or sometime prior or subsequent thereto in Barangay La Fraternidad, Tubáy, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Fidel Garcia, Salary Grade 27, then Mayor of the Municipality of Tubay, P/SSupt. Jerome [Pagaragan], Salary Grade 26, Provincial Police Director, P/Insp. Benny Esparagoza, Salary Grade 22, Chief of Police, SFO3 Dionesio Paduganan, Salary Grade 18, Fire Chief, FO3 Felipe Tale, Salary Grade 14, Fireman, SFO1 Arcadio Sacol, Salary Grade 16, Fireman and PO3 Warren Dultra, Salary Grade 14, Police Officer, all public officers, acting together, conspiring, and confederating with one another, committing the crime in the discharge of their official functions and in grave abuse thereof, did then, and there willfully, unlawfully, and feloniously, compel Rolando Carlota, Jocelyn Regala, Estanislao Delima, Nelia Urgel, Aliore Page, Amado Garcia, Jimmy Beray and several others, against their will, to desist from holding a public assembly which was being held to address and petition to the authorities for the correction of abuses and redress of grievances in relation to the alleged illegal mining activities done in their municipality, by means of violence, threats and intimidation, to the damage and prejudice of Rolando Carlota, Jocelyn Regala, Estanislao Delima, Nelia Urgel, Aliore Page, Amado Garcia, Jimmy Beray and several others.

CONTRARY TO LAW.

Initially, these cases were pending before different Divisions of this Court; namely, **SB-11-CRM-0265** with the **Fifth Division**, and **SB-11-CRM-0266 to 0270** with the **First Division**. Prior to the consolidation of the cases, the following orders had been issued, viz:

Criminal Case Nos.	Issued by	Order	Date
SB-11-CRM-0265	Fifth Division	Hold Departure Order	July 20, 2011 ³
		Warrant of Arrest	August 1, 2011 ⁴
SB-11-CRM-0266 to 0270	First Division	Hold Departure Order	July 11, 2011 ⁵
		Warrant of Arrest	July 11, 2011 ⁶

³ Records, Vol. 1, p. 121

⁴ *Id.* at 139

⁵ Records, pp. 151-153 (Criminal Case Nos. SB-11-CRM-0266 to 0270)

⁶ *Id.* at 154 (Criminal Case Nos. SB-11-CRM-0266 to 0270)

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On September 22, 2011, *SB-11-CRM-0265* was consolidated with *SB-11-CRM-0266 to 0270* before the **Fifth Division** of this Court.⁷

Upon arraignment, the following accused entered a plea of not guilty on the corresponding dates:

Name of Accused	Date of Arraignment
Alicia Guday	December 8, 2011 ⁸
Dionesio Paduganan	December 8, 2011 ⁹
Fidel Garcia	February 13, 2012 ¹⁰
Jerome Pagaragan	February 13, 2012 ¹¹
Benny Esparagoza	February 13, 2012 ¹²
Dionesio Paduganan	March 27, 2012 ¹³
Arcadio Sacol	March 27, 2012 ¹⁴
Felipe Tale ⁺	March 27, 2012 ¹⁵
Warren Dultra	March 27, 2012 ¹⁶

Pre-trial was held on June 25, 2012 and on August 14, 2012. In the Amended Pre-Trial Order¹⁷ dated August 14, 2012, the parties entered into the following stipulations concerning the public positions held by the accused at the time of the incident complained of:

Name of Accused	Position
Fidel Garcia	Municipal Mayor of Tubay, Agusan del Norte
Alicia Guday	Barangay Chairperson of La Fraternidad, Tubay, Agusan del Norte
Jerome Pagaragan	Police Provincial Director of Agusan del Norte (Police Senior Superintendent [P/SSupt.]) ¹⁸
Benny Esparagoza	Police Chief of Tubay (Police Inspector [P/Insp.]) ¹⁹
Warren Dultra	Police Officer (Police Officer 3 [PO3]) ²⁰

⁷ Order dated September 22, 2011 (Records, Vol. 1, p. 227)

⁸ Records, Vol. 1, p. 323

⁹ *Id.* at 322

¹⁰ *Id.* at 382

¹¹ *Id.* at 384

¹² *Id.* at 383

¹³ *Id.* at 427

¹⁴ *Id.* at 425

¹⁵ *Id.* at 424

¹⁶ *Id.* at 426

¹⁷ Records, Vol. 4, pp. 19-40

¹⁸ The rank classification of uniformed personnel of the Philippine National Police was amended by *Republic Act No. 11200* (2019); the rank of Police Senior Superintendent has been reclassified to Police Colonel

¹⁹ *Ibid.*; the rank of Police Inspector has been reclassified to Police Lieutenant

²⁰ *Ibid.*; the rank of Police Officer 3 has been reclassified to Police Staff Sergeant

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Dionesio Paduganan	Fire Chief of Cabadbaran, Agusan del Norte (Senior Fire Officer 3 [SFO3])
Arcadio Sacol	Driver of the Firetruck (Senior Fire Officer 1 [SFO1])
Felipe Tale ⁺	Firefighter (Fire Officer 3 [FO3])

During the course of the proceedings, the Court received a Notice of Death of accused Tale,²¹ and subsequently, the prosecution verified the fact of his death by submitting a certified Philippine Statistics Authority Certificate of Death.²² Consequently, the Court rendered an Order²³ dated July 18, 2018 dismissing the criminal charges against accused Tale pursuant to Article 89 of the *Revised Penal Code*.²⁴

Thereafter, trial on the merits ensued.

EVIDENCE FOR THE PROSECUTION

The witnesses for the prosecution are comprised of: (a) the townspeople of Tubay, Agusan del Norte, who took part in the rally; and (b) public officers who did not take part therein, but identified material documentary evidence.

A. Participants in the Rally

1. **Father Jenor P. Luis** ("Fr. Luis") was one of the main organizers of the group who led the prayer rally or assembly on August 5 and 6, 2006, supposedly to redress grievances concerning the perceived illegal activities of mining firms operating in said area.²⁵ The mining corporations were identified as San R. Corporation, Galeo Corporation, and SR Metals, Inc.²⁶ The rallyists were members of the parish of Fr. Luis consisting mostly of fisherfolk and farmers who approximated a total of 50 persons.²⁷ A certain

²¹ Records, Vol. 4, p. 247

²² *Id.* at 354-355

²³ *Id.* at 359-360

²⁴ The provision relied upon reads:

Article 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment. (Emphasis supplied)

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²⁵ TSN dated August 15, 2012, p. 9, 12

²⁶ *Vide:* Exhibits U, V, W, and X

²⁷ TSN dated August 16, 2012, pp. 7-8

Atty. Rolando Carlota⁺ (“Atty. Carlota,” now deceased) was among the participants and was present to give legal advice.²⁸

The location of the rally was held on a private road in Barangay La Fraternidad, Tubay, Agusan del Norte, used mainly by the mining companies and by the people who would go to a nearby beach resort. The location on which the rally was held was claimed to be the private property of a certain Maximo Page, who was the ancestor of Aliore Page, one of the rallyists.²⁹ Placed on the road by the rallyists were makeshift tents, a statue of a patron saint, and a “road net for people protection.”³⁰

Fr. Luis recalled that he and his companions had been confronted by the accused during the 2-day rally. Accused Alicia Guday (“accused Guday”), then Barangay Chairperson of La Fraternidad, arrived at the scene and asked the rallyists to leave as they were allegedly delaying the mining operations in the area.³¹ Accused P/Insp. Benny Esparagoza (“accused Esparagoza”) had also arrived at the rally site accompanied by several police officers.³² Upon his arrival, accused Esparagoza informed the rallyists that he obtained a copy of a Dispersal Order issued by then Municipal Mayor accused Fidel Garcia (“accused Garcia”), and commanded the rallyists to disperse after 5 minutes.³³ Fr. Luis remembered that his companions were subjected to frisking by the police officers.³⁴ On the second day of the rally, August 6, 2006, accused P/SSupt. Jerome Pagaragan³⁵ (“accused Pagaragan”) arrived.³⁶ Fr. Luis thought that accused Pagaragan was intimidating the participants because he was shouting at them to leave the place as they had no right to stay and hold a rally thereat.

Despite being ordered to leave, the rallyists stood their ground and justified their presence with the claim that the ground on which they stood was the private property of Maximo Page, evidenced by OCT No. RP-443(217).³⁷ One of the rallyists present, Aliore Page, who claimed to be an heir of Maximo Page, even assured Fr. Luis that the former owned said land and that the rally was allowed.³⁸ Fr. Luis did not obtain a permit to hold a rally because of the assurance of Aliore Page.³⁹ Unbeknownst to Fr. Luis at the time the rally was held, there seemed to be a dispute on the ownership of the property between Bernard Trinos and the Heirs of Maximo Page, which fact Fr. Luis only came to know after the incident.⁴⁰

On August 6, 2006, the rallyists did not comply with the directive to leave, and decided to hold a mass because it was a Sunday.⁴¹ The demand to

²⁸ *Id.* at 5

²⁹ TSN dated August 15, 2012, pp. 14-16

³⁰ *Id.* at 17-18

³¹ *Id.* at 18; TSN dated July 8, 2013, pp. 18-20

³² TSN dated August 15, 2012, p. 19

³³ TSN dated August 16, 2012, p. 3, 6, 22

³⁴ *Id.* at 6

³⁵ Also referred to as “Colonel Pagaragan”

³⁶ TSN dated August 15, 2012, p. 21

³⁷ Exhibit A-7

³⁸ TSN dated August 16, 2012, p. 14

³⁹ TSN dated July 9, 2013, p. 15

⁴⁰ TSN dated August 16, 2012, p. 11, 14

⁴¹ *Id.* at 16

vacate was reiterated, but instead the rallyists stood their ground and held each other's hands.⁴²

Fr. Luis remembered the dispersal of the assembly. A firetruck with a mounted water cannon had been brought in from Cabadbaran Fire Station, which vehicle was manned by 3 personnel.⁴³ The other personnel involved in the dispersal numbered around 10 officers, some in plain clothes, including accused Esparagoza and Pagaragan, and was joined by a pay loader belonging to the mining company.⁴⁴ Said heavy equipment was operated by an employee of the mining company.⁴⁵ The pay loader pushed aside the statue of the patron saint and cleared some blocks that had been placed on the road by the rallyists.⁴⁶ Then, they were sprayed with the water cannon of the firetruck for a few minutes until the crowd was dispersed.⁴⁷ Only the firetruck was used in the act of dispersal.⁴⁸ Fr. Luis admitted that he was not able to identify the person who gave the order to use the water cannon,⁴⁹ nor did he hear if accused Pagaragan or Esparagoza had ordered the pay loader operator to remove the obstructions.⁵⁰

After the incident, the rallyists left the site, and subsequently, there was an investigation conducted by the Commission on Human Rights for the purpose of filing a complaint against the accused.⁵¹

On cross-examination, Fr. Luis disclosed that he occasionally held masses on the streets with the local communities, which practice was called BEC (Basic Ecclesial Community).⁵² Usually, the number of people who participated in BEC celebrations were around 25 to 40.⁵³ He does not obtain a mayor's permit in conducting BEC outreaches, and although the same is held on the streets, the program does not usually disturb the movement of people or vehicles.⁵⁴

Additionally, Fr. Luis explained that the root cause of the protest against the mining companies stemmed from the following factors: the mining operations were carried out in an earthquake-prone area; the same area had been declared a fish and bird sanctuary; and the local residents complained of the waste generated by the mining activities.⁵⁵

While there were complaints of illegal mining activities filed before government agencies, Fr. Luis did not know if the same have been resolved.⁵⁶

⁴² *Id.* at 19

⁴³ *Id.* at 19-21

⁴⁴ *Id.* at 20-21

⁴⁵ TSN dated July 8, 2013, p. 20

⁴⁶ TSN dated August 16, 2012, p. 22, 27

⁴⁷ *Id.* at 28

⁴⁸ *Id.* at 29

⁴⁹ *Ibid*

⁵⁰ TSN dated July 8, 2013, p. 22

⁵¹ TSN dated August 16, 2012, p. 30

⁵² TSN dated November 15, 2012, p. 25

⁵³ *Id.* at 34

⁵⁴ *Id.* at 28, 35

⁵⁵ *Id.* at 44, 45, 46

⁵⁶ TSN dated July 8, 2013, p. 39

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2. **Estanislao M. Delima, Jr. ("Delima")** affirmed that there was a 2-day meeting or rally held on a road which was attended by church members, led by Fr. Luis, and legal adviser Atty. Carlota.⁵⁷ In the midst of the rally, accused Guday and Esparagoza came.⁵⁸

Before the deployment of the water cannon, there were efforts by the policemen to negotiate with Fr. Luis.⁵⁹ The rallyists were, however, eventually dispersed when the water cannon was unleashed. The initial volley of water was aimed towards the ground, followed by a second and third spray, which were aimed at the bodies of the rallyists.⁶⁰ As a result of the incident, Delima sustained injuries.⁶¹

Delima described the road on which the rally was held. It was approximately 4 meters wide and passable by vehicles, which was located within the boundary of the property of Maximo Page.⁶² The prayer rally or meeting was not conducted on the main road of Barangay La Fraternidad, but held on a road which led to the mining site.⁶³ The road was mainly used by the vehicles of the mining company, and the mining site was only a short walk, about 1 kilometer from the rally site.⁶⁴ There was a checkpoint manned by mining company personnel, but at the time of the rally, said checkpoint was not yet in place.⁶⁵ The road was also used by people heading toward their farms and those going to the Tubay Mountain Beach Resort. In the same way, personnel from SR Metals, Inc. and fisherfolk used the road.⁶⁶

Delima then described the emplacements that were placed on the road during the rally: chairs, tables, tents placed on the side of the road, bamboo chutes, and sand.⁶⁷ There was no other road capable of passage by vehicles to reach the mining site, but there were trails or pathways for foot traffic.⁶⁸ Delima remembered that in 2006, the road on which the rally was held was the only road passable by vehicles, but at the present time, the trails or pathways have been bulldozed, and as such, are sufficiently wide for vehicles to traverse.⁶⁹

3. **Ma. Luna C. Grisola ("Grisola")** corroborated the testimony that the rally was held on private property, evidenced by the fact that she saw the original copy of OCT No. RP-443(217).⁷⁰ She asseverated that, on August 6, 2006, accused Pagaragan and Esparagoza were at the site of the rally with around 10 other police officers.⁷¹ Accused Garcia was not present. Accused Esparagoza talked to Fr. Luis instructing the rallyists to leave, failing which

⁵⁷ TSN dated November 14, 2012 (morning), p. 9

⁵⁸ *Id.* at 13

⁵⁹ *Id.* at 16

⁶⁰ *Id.* at 15

⁶¹ *Id.* at 17-18; Exhibit A-13

⁶² TSN dated November 14, 2012 (morning), pp. 11-12, 25

⁶³ TSN dated November 15, 2012, p. 15

⁶⁴ *Id.* at 74

⁶⁵ *Id.* at 8-11, 17

⁶⁶ TSN dated November 14, 2012 (afternoon), p. 14, 32-33

⁶⁷ *Id.* at 25, 26, 38

⁶⁸ *Id.* at 33-34

⁶⁹ *Id.* at 34

⁷⁰ TSN dated March 19, 2013, pp. 21-22

⁷¹ *Id.* at 24

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the firetruck will disperse them.⁷² The firetruck that was brought to the area was operated by the firefighters, not by the police officers, but Grisola could not recall who operated said vehicle or who issued the order to unleash the water cannon.⁷³ Grisola did not hear accused Pagaragan issue a command to use said cannon.⁷⁴

When Grisola was questioned about the area surrounding the rally site, she answered that there were 4 barangays adjacent to Barangay La Fraternidad, but these areas were not accessible via the road where the rally was staged; they were only accessible by boat.⁷⁵

After the dispersal incident, Grisola executed a complaint-affidavit.⁷⁶ She admitted that she protested the mining activities since the permit granted to the mining firm was allegedly only for small scale operations. Grisola even submitted complaints before the Environmental Management Bureau, Provincial Mining Regulatory Board, and the Department of Environment and Natural Resources (“DENR”), but no favorable result was obtained.⁷⁷

4. **Jecelyn Q. Regala (“Regala”)**⁷⁸ executed a *Judicial Affidavit*⁷⁹ which took the place of her direct testimony. She affirmed that she joined the rally led by Fr. Luis, which was held on the land of the Page family. She pointed out that accused Pagaragan, Esparagoza, and Guday were all present at the rally site.⁸⁰ She affirmed that the police officers handed a Dispersal Order to Fr. Luis. Following the mass, the pay loader cleared the road of obstacles, and the water cannon sprayed the rallyists. During the dispersal, accused Pagaragan and Esparagoza were giving orders to the firefighters operating the firetruck and to the pay loader.⁸¹ No other instance of violence occurred, other than the employment of the water cannon.⁸² As a result of the dispersal by water cannon, Regala sustained an injury evidenced by a Medical Certificate.⁸³ Eventually, she executed affidavits as a result of said incident.

In open court, Regala identified her Judicial Affidavit and its annexes.⁸⁴ She clarified that she saw accused Pagaragan on the second day of the rally, and that accused Guday was present on the first day thereof.⁸⁵ When questioned about the participation of accused PO3 Warren Dultra (“accused Dultra”), Regala essentially could not fault him for his role in the dispersal of the rallyists. As far as she could recall the events, she did not remember that accused Dultra had dismantled the tents and other obstructions that had been placed on the road.⁸⁶ Regala could not even identify accused Dultra in

⁷² TSN dated March 20, 2013 (morning), pp. 36-39

⁷³ TSN dated March 19, 2013, pp. 28-30, 41, 43

⁷⁴ TSN dated March 20, 2013 (morning), pp. 39-40

⁷⁵ TSN dated March 20, 2013 (afternoon), pp. 11-13

⁷⁶ Exhibit A

⁷⁷ TSN dated March 19, 2013, pp. 38-40

⁷⁸ Also referred to as “Jocelyn Q. Regala”

⁷⁹ Records, Vol. 2, pp. 242-248

⁸⁰ *Id.* at 244

⁸¹ *Id.* at 245

⁸² *Ibid.*

⁸³ Exhibit A-9

⁸⁴ Exhibits A-8 and A-9”

⁸⁵ TSN dated July 9, 2013, p. 44

⁸⁶ TSN dated July 10, 2013, pp. 8-9

open court; she only included his name as one of the respondents in her complaint because she had heard her companions mention his name.⁸⁷

As a result of being hit by the water cannon, Regala had sustained wounds on her right elbow and right knee.⁸⁸

5. **Junie B. Gabisan** (“**Gabisan**”) was presented to identify and authenticate the prosecution’s electronic evidence consisting of approximately 45 minutes total of video footage of the 2-day rally, which was personally recorded by him. Gabisan affirmed that after the dispersal of the rally, he went to the St. Anne Parish Convent to hand the video footage to the social action center.⁸⁹ The contents of the video were saved by the social action center coordinators on a compact disc-recordable (CD-R),⁹⁰ and Gabisan was present at the time the content was copied.⁹¹ Gabisan himself had subsequently learned how to splice a video, and he personally made a copy of the rally footage in spliced format,⁹² which he then copied onto 3 CDs.⁹³

The video footage began with events that transpired on the first day of the rally, which was on August 5, 2006.⁹⁴ The events of the second day thereof, which was on August 6, 2006, started at the timestamp of thirty-three minutes and forty-four seconds (33:44).⁹⁵

Gabisan gave the bulk of his oral testimony in conjunction with the viewing of the video by the parties during trial. Gabisan gave comments describing the location of the site of the rally and the position of the mining site in relation to the blockade, pointing out the temporary barricades placed on the road by the rallyists, and, as much as he could, identifying persons of interest present at the rally. Gabisan specifically pointed out the presence of the persons of accused Guday,⁹⁶ Esparagoza,⁹⁷ and Pagaragan.⁹⁸ Gabisan disclosed that accused Guday was present only on the first day of the rally which was on August 5, 2006.⁹⁹ On the second day of the rally which was on August 6, 2006, Gabisan narrated that accused Esparagoza had talked with Fr. Luis following the morning mass.¹⁰⁰ Then, the water cannon was employed beginning at timestamp forty-one minutes and twenty-three seconds (41:23).¹⁰¹ Gabisan admitted that he did not see precisely where accused SFO3 Dionesio Paduganan (“**accused Paduganan**”) was at the time of the incident.¹⁰² He then identified a man lying down as Estanislao Delima, Jr. who

⁸⁷ *Id.* at 20-21

⁸⁸ *Id.* at 40

⁸⁹ TSN dated October 5, 2015, p. 15

⁹⁰ Exhibit DD

⁹¹ TSN dated October 5, 2015, pp. 17-18

⁹² TSN dated February 2, 2016, p. 9

⁹³ Exhibits DD-1, DD-2, and DD-3

⁹⁴ TSN dated November 22, 2016, p. 40

⁹⁵ *Id.* at 46

⁹⁶ *Id.* at 18

⁹⁷ *Id.* at 22

⁹⁸ *Id.* at 30

⁹⁹ *Id.* at 84

¹⁰⁰ *Id.* at 27

¹⁰¹ *Id.* at 61

¹⁰² *Id.* at 64

sustained an injury on his feet.¹⁰³ After dispersal, the rallyists proceeded to the convent to see the social action team thereat.¹⁰⁴

When asked on cross-examination whether he knew if the rallyists had obtained a permit, Gabisan answered that they had not obtained such permit.¹⁰⁵

B. Public Officers Who Did Not Participate in the Rally

6. Hilaria Burguños (“Burguños”), presently the Officer-In-Charge (OIC) of the Registry of Deeds of Agusan del Norte.

Burguños revealed that the title which was controlling at the time relevant to the case was OCT No. RP-443(217), and that the ownership of said property had changed subsequent to the incident.¹⁰⁶

During the presentation of the witness in open court, the following facts were the subject of stipulation by the parties: that at the time of the rally, the lot covered by OCT No. RP-443(217) was privately owned, there being no indication on said title that it was a public property;¹⁰⁷ all of the titles presented as part of the prosecution’s evidence, including the subdivision plan, did not show that the subject lot adjoined or was traversed by any barangay road.¹⁰⁸ It was also pointed out that there was an easement on the original Title.¹⁰⁹

On cross-examination, Burguños testified that the name of Aliore Page was not found among the certificates of title presented;¹¹⁰ neither did the latter’s name appear in any extra-judicial settlement with deed of absolute sale.¹¹¹

7. Apolinario T. Macion (“Macion”), Tax Mapper II, Provincial Assessor’s Office.

Macion stated that there was a location map of properties as a result of the tax mapping conducted within Barangay La Fraternidad, Tubay, to determine the owners of the properties and adjoining lots. The tax mapping operation was conducted in 1982.¹¹² What the witness brought to court was the finalized tax map for 1983¹¹³ where it appeared that, in Sitio Kinapuk-an, there was a plot of land owned by Maximo Page covered by OCT No. RP-443(217), which was subdivided into Lot Nos. 001 to 003.¹¹⁴ On the same map, there were broken lines starting from point 026 up to the end of 001, which indicated that there was an existing road thereon.¹¹⁵ However, on the

¹⁰³ *Id.* at 69-70

¹⁰⁴ *Id.* at 85

¹⁰⁵ TSN dated April 5, 2017, p. 21

¹⁰⁶ TSN dated April 10, 2014 (morning), p. 28

¹⁰⁷ *Id.* at 28-30

¹⁰⁸ *Id.* at 30-31

¹⁰⁹ *Id.* at 31

¹¹⁰ *Id.* at 33

¹¹¹ *Id.* at 37

¹¹² TSN dated April 10, 2014 (afternoon), p. 8

¹¹³ *Id.* at 9

¹¹⁴ *Id.* at 10

¹¹⁵ *Id.* at 11

new tax map, which document followed the map dated 1983, there was no longer a broken line.¹¹⁶ One of the bases of the tax mapping was the cadastral survey prepared by the DENR.¹¹⁷

8. **Seldio L. Pilongo** (“Pilongo”), formerly Chief Investigator of the Commission on Human Rights, Caraga Region.

Sometime in August 2006, Pilongo recalled that he had investigated the dispersal of a rally in Barangay La Fraternidad, Tubay, Agusan del Norte. In the course of his investigation, Pilongo interviewed persons who were present during the dispersal, conducted an ocular visit on the rally site, obtained an After Mission Report from the Bureau of Fire Protection in Cabadbaran City, and took affidavits of rallyists which were finalized in the Joint Affidavit Complaint.¹¹⁸ Pilongo was the officer before whom the affidavits of Jecelyn Q. Regala, Nelia Z. Urgel, and Estanislao M. Delima, Jr. were sworn.¹¹⁹ In connection with his investigation, subpoenas were issued to accused Pagaragan, Esparagoza, and Paduganan, who subsequently submitted their respective counter-affidavits. At the conclusion of his work, Pilongo found that there was probable cause that the respondents had committed a violation of the victims’ rights.

Pilongo alluded to the existence of a video recording taken of the rally, which he received from Atty. Carlota.¹²⁰ When asked about the manner by which he conducted his investigation of the incident, Pilongo admitted that the investigation was limited to his interviews of the persons involved. He did not verify the information he obtained from said interviews from other sources.¹²¹ Neither was Pilongo able to authenticate the video footage.¹²²

After the presentation of its witnesses, the prosecution formally offered the following documentary evidence:¹²³

Exhibit	Document Description
“A” to “A-4” et seq. ¹²⁴	Joint Affidavit Complaint dated August 17, 2006
“A-5” ¹²⁵	Dispersal Order dated August 6, 2006
“A-6” to “A-6-a”	Water Shed and Drainage Map
“A-7” and “A-7-b”	Original Certificate of Title No. RP-443(217) in the name of Maximo Page
“A-8”	Affidavit Complaint of Jecelyn Regala dated August 17, 2006
“A-9”	Medical Certificate of Jecelyn Regala dated August 9, 2006
“A-10”	Affidavit Complaint of Nelia Urgel dated August 17, 2006
“A-11”	Medical Certificate of Nelia Urgel dated August 9, 2006

¹¹⁶ *Id.* at 20

¹¹⁷ *Id.* at 22

¹¹⁸ Exhibit A

¹¹⁹ TSN dated February 24, 2015, pp. 17-18

¹²⁰ *Id.* at 21, 54

¹²¹ *Id.* at 54

¹²² *Id.* at 55

¹²³ Records, Vol. 3, pp. 225-249

¹²⁴ There was an overlapping of identically-marked exhibits, namely prosecution’s Exhibit A-1 which was: Second page of the Joint Affidavit Complaint dated August 17, 2006; and Signature of Seldio L. Pilongo

¹²⁵ Another overlap of identically-marked exhibits was made in prosecutions Exhibit A-5, as follows: Dispersal order dated August 6, 2006; and Signature of Estanislao M. Delima on the Joint Affidavit Complaint dated August 17, 2006

"A-11"	Affidavit Complaint of Estanislao Delima, Jr. dated August 17, 2006
"A-13"	Medical Certificate of Estanislao Delima, Jr. dated August 9, 2006
"A-14", "A-14-a", "A-14-e"	Press Statement
"A-15" and "A-15-a"	After Mission Report dated August 16, 2006
"A-16"	Mission Order from the Bureau of Fire Protection dated August 5, 2006
"B"	Counter-Affidavit of P/SSupt. Jerome Pagaragan dated September 15, 2006
"C" et seq.	Counter-Affidavit of P/Insp. Benny Esparagoza dated September 25, 2006
"D"	Memorandum dated September 22, 2006 of the Commission on Human Rights
"E"	Cover Letter dated August 15, 2006
"F"	Joint Complaint Affidavit of Atty. Rolando Carlota, Alicia Austria Carlota, and Jeremia A. Carlota dated August 15, 2006
"G"	Counter-Affidavit of PO3 Warren Dultra dated June 14, 2007
"H"	Counter-Affidavit of SFO3 Dionesio Paduganan
"I"	Counter-Affidavit of FO3 Felipe Tale
"J"	Counter-Affidavit of SFO1 Arcadio Sacol
"K"	Counter-Affidavit of Fidel Garcia
"L"	Counter-Affidavit of P/Insp. Benny Esparagoza
"N"	Counter-Affidavit of PO3 Warren Dultra dated January 22, 2008
"Q"	Subdivision Plan
"U"	Joint Counter Affidavit of Fr. Jenor Luis dated September 7, 2006
"V"	Joint Counter Affidavit dated September 7, 2006
"W"	Addendum to the Joint Rejoinder Affidavit dated November 6, 2006
"X"	Joint Rejoinder Affidavit dated November 14, 2006
"Y"	Letter of Fr. Jenor Luis
"Y-1" and "Y-2"	Sketch by Fr. Jenor Luis (made in open court)
"Z"	TCT No. RT-8253 in the name of Bernardo F. Trinos
"AA"	TCT No. RT-8252 in the name of Heirs of Maximo Page and Nicolasa Monton
"BB"	TCT No. RT-9764 in the name of Barabara Paje represented by Marciano Paler
"CC"	TCT No. RT-9765 in the name of Margarita Paje de Caitom
"DD"	Video Footage
"DD-1" to "DD-3"	Spliced Videos
"DD-4"	Printed Picture of file MOV 09693
"DD-5"	Printed Picture of file MOV 58958
"DD-6"	Printed Picture of file MOV 67550

In its Resolution¹²⁶ dated October 25, 2017, this Court admitted all of the above-stated exhibits save for *Exhibits "A-11", "E", and "F"*. Although the prosecution moved for the reconsideration of the exclusion of said exhibits, the same was partly granted by this Court in its Resolution¹²⁷ dated February 2, 2018 insofar as *Exhibit "A-11"* is concerned.

¹²⁶ Records, Vol. 4, pp. 58-60

¹²⁷ *Id.* at 179-182

Handwritten signature and initials in the bottom right corner of the page.

Thereafter, accused Guday, Esparagoza, Garcia, Pagaragan, Paduganan, Dultra, and accused FOI Arcadio Sacol (“accused Sacol”) separately filed *Motions for Leave of Court to File Demurrer to Evidence*. However, the Court only granted the *Motion for Leave* filed by accused Guday and Esparagoza.¹²⁸

In a Resolution¹²⁹ dated June 26, 2018, while the Court denied the Demurrer to Evidence concerning accused Esparagoza, accused Guday was *acquitted* of the crime of Prohibition, Interruption, and Dissolution of Peaceful Meetings (*Criminal Case No. SB-11-CRM-0265*) on ground that the prosecution failed to show that accused Guday prohibited, interrupted, or dissolved a peaceful meeting, or that she conspired with the co-accused to commit the same. Although the prosecution moved for the reconsideration of said ruling,¹³⁰ the same was denied by the Court in a Resolution¹³¹ dated August 9, 2018.

EVIDENCE FOR THE DEFENSE

The witnesses for the defense are: (a) the accused public officials of Agusan del Norte, namely the Municipal Mayor of Tubay, police officers, and firefighters; and (b) other public officers who were presented to identify documents. The salient portions of their respective testimonies are below:

A. The Accused Public Officials

i) The Municipal Mayor of Tubay, Agusan del Norte

1. Accused Fidel E. Garcia, Jr. (“Accused Garcia”)

In his Judicial Affidavit¹³² dated July 10, 2018 accused Garcia stated that one of his chief duties as Municipal Mayor was to enforce all laws and ordinances.

On August 6, 2006, accused Garcia issued a Dispersal Order¹³³ directing the local police force to disperse an illegal assembly that had been on-going for 3 days at Barangay La Fraternidad, Daan Maharlika, along the Secondary National Highway of Tubay. The assembly began on August 4, 2006, and was headed by a lawyer. The Police Chief, accused P/Insp. Benny Esparagoza (“accused Esparagoza”), had informed accused Garcia that the illegal rally was held on a Barangay Road, which was a public road connected to the National Highway. Furthermore, accused Garcia was told that the rallyists had no permit for their assembly, and that their demonstration had completely blocked the free flow of commerce.

¹²⁸ Resolution dated April 12, 2018 (Records, Vol. 4, pp. 196-203)

¹²⁹ Records, Vol. 4, pp. 282-310

¹³⁰ Prosecution’s Motion for Reconsideration (Records, Vol. 4, pp. 318-324)

¹³¹ Records, Vol. 4, pp. 373-382

¹³² *Id.* at 327-337

¹³³ Exhibit I-Garcia

Accused Garcia affirmed that he was not present during the dispersal of the demonstration on August 6, 2006 because he was in Butuan for a routine medical check-up. He had not given an order to use a firetruck to disperse the rally, instead commanding his police to follow the rules of engagement outlined in *Department of Interior and Local Government Memorandum Circular No. 2006-79*.¹³⁴ This Memorandum essentially pertained to the additional guidelines required to be observed on the occasion of public assemblies in accordance with *Batas Pambansa Blg. 880* ("*B.P. 880*"). Nonetheless, accused Garcia had been monitoring the public assembly through his staff because he wanted no untoward incidents to occur, and to ensure that his Police Chief, accused Esparagoza, would follow accused Garcia's directive to negotiate with the rallyists and to persuade them to move their protest to the freedom park. Accused Garcia had also instructed his police officers to exercise maximum tolerance.

On August 5, 2006, accused Esparagoza reported that the rally became unruly, and that there were unidentified bad elements posing as protestors whose objective was to paralyze local mining activities by possibly placing bombs. This report was contained in the Memorandum¹³⁵ dated August 5, 2006. There was also a Letter¹³⁶ dated August 4, 2006 of Alicia L. Guday, Barangay Chairperson of La Fraternidad, which requested police assistance due to the possibility of armed elements joining the assembly for the purpose of disrupting the local mining operations.

Accused Garcia recalled that he was asked to issue a dispersal order, but he instead instructed accused Esparagoza to just persuade the rallyists to voluntarily disperse the demonstration, and to change the venue of the same to the freedom park of Tubay. Said freedom park had been established by the Sangguniang Bayan of Tubay through *Ordinance No. 2006-05*¹³⁷ dated June 19, 2006, which officially designated the freedom park on the corner of the streets of Roxas and Osmeña going towards the fishing port area.

Accused Garcia called the Governor of Agusan del Norte, Erlpe Amante, but the latter just said that he was aware of the rally, and that he had already directed the Police Regional Director to intervene. The Governor then told accused Garcia to issue a dispersal order because the rally was an illegal assembly.

In the early morning of August 6, 2006, accused Esparagoza visited accused Garcia's residence seeking the issuance of a dispersal order because the former believed in the existence of an imminent danger caused by the presence of possible elements of the New People's Army ("*NPA*"). Accused Garcia thus issued the Dispersal Order.

Accused Garcia opined that the road on which the rally was held has been a Barangay Road, or a public road, for as long as he could remember. To confirm his assertion, accused Garcia had requested cadastral road maps from

¹³⁴ Exhibit 3-Garcia and Pagaragan; Exhibit 3-Esparagoza

¹³⁵ Exhibit 2-a Garcia and Pagaragan; Exhibit 2-a Esparagoza

¹³⁶ Exhibit 2-Garcia and Pagaragan; Exhibit 2-Esparagoza

¹³⁷ Exhibit 4-Garcia and Pagaragan; Exhibit 4-Esparagoza

the Office of the Municipal Assessor of Tubay, and from the Office of the District Engineer of Agusan del Norte. Upon securing said maps, accused Garcia highlighted that the National Highway was connected to the road crossing Barangay La Fraternidad going to Purok 7 and Barangay Binoangan. Further, the road in question was labelled on the maps as a Barangay Road.

Accused Garcia reiterated that he was absent from the assembly site before, during, and after the rally. He denied inflicting physical injuries upon the assemblyists as he never ordered that a firetruck be brought to the rally site to disperse the same. Said firetruck was not even from Tubay, but from Cabadbaran City. He had no control over the Bureau of Fire Protection (“BFP”) personnel manning the firetruck, and he never once coordinated with the Fire Chief of Cabadbaran, accused SFO3 Dionesio Paduganan (“accused Paduganan”). Accused Garcia was in disbelief that the rallyists could even sustain physical injuries because, in his words, water *per se* is not capable of inflicting wounds.

Accused Garcia believed that the dispersal order was justified because the assembly had already been held for 3 days and his police officers had exercised maximum tolerance towards the demonstrators. However, he claimed to have no knowledge as to how the bulldozer had arrived at the rally site.

On cross-examination, accused Garcia explained that he considered August 4, 2006 as the first day of the rally because there was a procession by the demonstrators to Barangay La Fraternidad where they camped overnight,¹³⁸ and he was informed by his staff that the rally began on said date.¹³⁹

Accused Garcia was informed by his police officers that the rallyists had documents, e.g. certificates of title and subdivision plans, showing that the land on which the rally was held was on private property. However, accused Garcia’s research in the Assessor’s Office disclosed that the road was actually a Barangay Road covered by the Cadastral Map of Tubay.¹⁴⁰ Accused Garcia averred that he had instructed the Municipal Assessor to look into the town’s records, and the latter had found that Barangay Road was indeed covered by a cadastral survey conducted long ago.¹⁴¹ He thus concluded that the road used by the rallyists was public property.

Accused Garcia has lived in Tubay since birth, and he is familiar with the roads in his town. He has been Municipal Mayor since 1988. As soon as he had learned of the demonstration in Barangay La Fraternidad, accused Garcia already had a hunch that the rally was held on a public road because the people wanted to block the entry of SR Metals, Inc. to the area.¹⁴²

¹³⁸ TSN dated July 18, 2018 (afternoon), pp. 35-36

¹³⁹ *Id.* at 37

¹⁴⁰ *Id.* at 41; Exhibit 5-a Garcia and Pagaragan; Exhibit 5-a Esparagoza

¹⁴¹ TSN dated July 18, 2018 (afternoon), p. 42

¹⁴² *Id.* at 45

Accused Garcia admitted that a public road could traverse private property, and in fact, the entire Barangay La Fraternidad is privately owned.¹⁴³ The National Government built the road in question, but the Provincial and Municipal Government had spent public funds for the maintenance thereof.¹⁴⁴ This road crosses private lots going to the coastal area.¹⁴⁵

Accused Garcia was aware of a common practice in expropriation proceedings wherein the land owners would just sign quit claims to allow the Government to pass through their properties.¹⁴⁶ He was unaware of any quit claim signed by heirs of Maximo Page. He has not received any letters or claims from the heirs of Maximo Page claiming ownership of the public road.¹⁴⁷

At the time that accused Garcia issued the Dispersal Order, on the morning of August 6, 2006, he did not yet consider securing copies of the cadastral map and the provincial road map.¹⁴⁸ The Dispersal Order was not issued on the directive of the Governor. Accused Garcia decided to issue said Order as a result of his assessment of the situation based on the reports gathered by him.¹⁴⁹ He was not aware if there were any untoward incidents during the rally, such as the throwing stones, the discharging of firearms, or if police officials were harmed.¹⁵⁰ Accused Garcia had designated accused Esparagoza, his Police Chief, as the ground commander for the rally.¹⁵¹ He was unaware that there was a firetruck at the time of the assembly.¹⁵²

ii) Police Officials of Agusan del Norte

2. **Accused PO2 Warren C. Dultra** (“accused Dultra”), uniformed member of the Philippine National Police (“PNP”) presently holding the rank of Senior Police Officer 2 (now Police Senior Master Sergeant).¹⁵³

In his Judicial Affidavit¹⁵⁴ dated May 9, 2018, accused Dultra stated that, on August 6, 2006, he had been assigned to the Tubay Police Station for approximately 1 month, and he was on duty as the criminal investigator. His Chief, accused Esparagoza, then announced that there was a rally, without a proper permit, in Barangay La Fraternidad.

When accused Dultra arrived at the site of the rally, he noticed that accused P/SSupt. Jerome Pagaragan (“accused Pagaragan”), the Police Provincial Director of Agusan del Norte, and accused Esparagoza had arrived before him, and were accompanied by other police officers from the regional

¹⁴³ *Id.* at 45-46

¹⁴⁴ *Id.* at 59-60

¹⁴⁵ *Id.* at 48-49

¹⁴⁶ *Id.* at 49-50

¹⁴⁷ *Id.* at 61-62

¹⁴⁸ *Id.* at 53

¹⁴⁹ *Id.* at 56

¹⁵⁰ *Id.* at 58

¹⁵¹ *Id.* at 62

¹⁵² *Id.* at 63-64

¹⁵³ *Supra*, note 18

¹⁵⁴ Records, Vol. 4, pp. 233-239

and provincial mobile groups. The rally was held on a Barangay Road such that no vehicles could pass through.

Accused Dultra averred that he was at the assembly site only because of his duty to ensure peace and order. He was positioned about 30 meters from the demonstration, and he was neither part of the negotiation team or the dispersal team. He felt that he was dragged into these cases due to his identification by Atty. Carlota. Also, he had been named by the affidavit of the complainants as one of the persons who had dismantled the tents and other obstructions on the road.

On cross-examination, accused Dultra revealed that he also acted as an intelligence officer whose duty was to observe if the rallyists were in possession of weapons.¹⁵⁵ He thought that the rally site was held on a private property, and as a result, a rally permit was not necessary.¹⁵⁶ Accused Dultra hailed from Cabadbaran, Agusan del Norte,¹⁵⁷ but he is familiar with Barangay La Fraternidad due to his work, and he affirmed that the road in question is of a private nature.¹⁵⁸ However, the road could be used by the public going to Barangay Binuangan.¹⁵⁹ Accused Dultra said that the locals of Barangay La Fraternidad had told him that the road was privately owned, but he could not name the owner thereof.¹⁶⁰

On re-direct examination, accused Dultra noticed that some rallyists wore masks and handkerchiefs to cover their face, and among them were some new faces he was unfamiliar with.¹⁶¹

On re-cross examination, accused Dultra mentioned that the road was blocked by the rally such that not even a two-wheeled motorcycle could pass.¹⁶² Pedestrians, however, could pass through, and they were not prohibited from doing so.¹⁶³ He observed at the rally that there were no gunshots fired by the rallyists, and nothing was thrown by them at the police officers.¹⁶⁴

3. Accused P/Insp. Benny C. Esparagoza (“accused Esparagoza”) uniformed member of the PNP presently holding the rank of Police Major.¹⁶⁵

In his Judicial Affidavit¹⁶⁶ dated November 6, 2018, accused Esparagoza identified documents for the defense of accused Garcia and Pagaragan. He recalled that in the month of August 2006, he had received a Letter¹⁶⁷ from Barangay Chairperson Alicia Guday of La Fraternidad

¹⁵⁵ TSN dated May 29, 2018, pp. 23-25

¹⁵⁶ *Id.* at 29-30

¹⁵⁷ *Id.* at 50

¹⁵⁸ *Id.* at 30, 36

¹⁵⁹ *Id.* at 53-54, 57-58

¹⁶⁰ *Id.* at 69-71

¹⁶¹ *Id.* at 74-75

¹⁶² *Id.* at 80

¹⁶³ *Id.* at 82

¹⁶⁴ *Id.* at 83-84

¹⁶⁵ *Supra*, note 18

¹⁶⁶ Records, Vol. 4, pp. 414-419

¹⁶⁷ Exhibit 2-Garcia and Pagaragan; Exhibit 2-Esparagoza

requesting police assistance to monitor the presence of strangers carrying firearms and conducting suspicious meetings. Accused Esparagoza then instructed his investigator, accused Dultra, to go to the area to quietly obtain intelligence based on the request. On August 5, 2006, accused Dultra reported that there were several unidentified suspicious individuals in Barangay La Fraternidad armed with short firearms, and they threatened to disrupt the mining operations by bombing the mining company's site and its equipment. In response, accused Esparagoza organized a Civil Disturbance Management group, with him as its leader, to exhaust all peaceful remedies to persuade the demonstrators to voluntarily disperse. He also issued a Memorandum¹⁶⁸ to the Municipal Mayor to update him of the situation. Accused Esparagoza, however, does not have a copy of the Memorandum because the same is stored at Tubay Police Station, and he is no longer assigned thereat.

On cross-examination, accused Esparagoza could not recall if the Letter of Barangay Chairperson Alicia Guday was recorded in any logbook.¹⁶⁹ Actually, the letter-request had been personally given to him by her.¹⁷⁰ Aside from said Letter, accused Esparagoza had received information from the National Intelligence Coordinating Agency sometime on August 4, 2006,¹⁷¹ along with complaints from a certain Jimwell Orpilla of SR Metals, Inc.¹⁷²

The intelligence received by accused Esparagoza was that there was a group of anti-mining rallyists gathering at Barangay La Fraternidad to the effect that there will be convergence thereat of groups of people carrying firearms.¹⁷³ He was also informed that the mass was only a front by the priest, Fr. Luis, who was actually the leader of the anti-mining group. However, this intelligence information received by accused Esparagoza were not reduced into written reports.¹⁷⁴

Accused Esparagoza was told by accused Garcia to observe the rules of engagement, and to begin with negotiations. The Memorandum accused Esparagoza composed was preparatory in case the situation at the rally would spiral out of control and need to be dispersed.¹⁷⁵

The Civil Disturbance Management Group which accused Esparagoza organized did not prepare a written report after the incident complained of. However, he would give situation reports ("sitrep") every 30 minutes by calling the Police Provincial Director, accused Pagaragan.¹⁷⁶ The sitrep could be done verbally, by phoning his superior, or by a written report after the incident. Usually, the written report would be prepared by the duty investigator, accused Dultra. Accused Dultra had double duty as an

¹⁶⁸ Exhibit 2-a Garcia and Pagaragan; Exhibit 2-a Esparagoza

¹⁶⁹ TSN dated November 27, 2018, p. 13

¹⁷⁰ *Id.* at 14

¹⁷¹ *Id.* at 15

¹⁷² *Id.* at 16

¹⁷³ *Id.* at 21-22

¹⁷⁴ *Id.* at 22

¹⁷⁵ *Id.* at 25

¹⁷⁶ *Id.* at 27

investigator and an intelligence officer because the Tubay Police Station was undermanned.¹⁷⁷

On re-direct examination, accused Esparagoza felt a sense of success after the incident complained of because no lives nor vehicles had been lost. Additionally, he mentioned that Tubay had been attacked by subversive elements during his term as Police Chief, but no lives were lost.¹⁷⁸

4. Accused P/SSupt. Jerome P. Pagaragan (“accused Pagaragan”) retired PNP officer, presently employed at Department of Agriculture, Fisheries Protection and Law Enforcement Group, Diliman, Quezon City.

In his Judicial Affidavit¹⁷⁹ dated January 4, 2019, accused Pagaragan remembered that he was the former Police Provincial Director of Agusan del Norte in 2005. In the month of August 2006, Governor Erlpe Amante had personally phoned him and ordered him to hold a dialogue with rallyists and their leader at Barangay La Fraternidad. Accused Pagaragan confirmed the existence of the assembly by speaking with accused Esparagoza. Accused Pagaragan advised the latter to deal with the rally by exercising maximum tolerance and exerting all-out efforts for a peaceful resolution bearing in mind that the rally site is NPA territory. Accused Esparagoza related to accused Pagaragan that, based on local reports, the NPA had infiltrated the rally at Barangay La Fraternidad and that there were suspicious individuals lurking around thereat.

Accused Pagaragan did not issue an order that a firetruck be dispatched to the site of the assembly because the BFP is not under his command authority. Also, he averred that he could not have dispatched a bulldozer to the rally site since his office does not have such equipment on-hand.

Accused Pagaragan arrived in Tubay around 4 a.m. on August 6, 2006, and he was updated on the on-going rally by accused Esparagoza. The pair then saw accused Garcia at the latter’s residence. Accused Garcia instructed them to exercise maximum tolerance and to persuade the rallyists to transfer their gathering to the freedom park.

When accused Pagaragan arrived at the rally site, he negotiated with the organizers of the demonstration to remove the obstructions on the road and to proceed to the freedom park, but to no avail. Following the mass held in the morning of August 6, 2006, Fr. Luis told accused Esparagoza that the rallyists would be willing to compromise if Secretary Reyes of the Department of Environment and Natural Resources and the bishop would speak to the rallyists and talk to them about their concerns. This demand was written in the Letter¹⁸⁰ dated April 5, 2006, which had been given to accused Esparagoza.

Accused Pagaragan, feeling exhausted, then moved about 70 meters away from the crowd, when suddenly the firetruck sprayed the water cannon

¹⁷⁷ *Id.* at 28

¹⁷⁸ *Id.* at 29

¹⁷⁹ Records, Vol. 4, pp. 439-447

¹⁸⁰ Exhibit 8-Garcia and Pagaragan; Exhibit 8-Esparagoza

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towards the ground near the rallyists. He noticed that there was a John Doe wearing civilian attire who was directing the operation of the firetruck.

Accused Pagaragan maintained that his only participation in the dispersal was to dismantle the obstructions on the road, which he did after the firetruck had emptied its payload.

On cross-examination, accused Pagaragan admitted that, by virtue of his rank, accused Esparagoza is under his control and supervision.¹⁸¹ There was a need for him to go to the rally due to the order of the Governor to establish a dialogue with the rally leaders.¹⁸² He did not know that accused Esparagoza had already been on-scene handling the situation.¹⁸³

Accused Pagaragan stated that classified intelligence information concerning Agusan del Norte is contained in a yearly or monthly report.¹⁸⁴ There was a need for him to receive situational updates because there were times when communists had attacked police outposts.¹⁸⁵ But he could no longer recall if there was specific intelligence insofar as Tubay is concerned.¹⁸⁶ Accused Esparagoza had verbally mentioned to accused Pagaragan that there were reports of armed men in the vicinity of the rally site.¹⁸⁷

While the rallyists showed accused Pagaragan certificates of title to support their claim that the demonstration was on private property, he no longer verified the claim because accused Garcia had told him that the assembly was held on public property.¹⁸⁸ Accused Pagaragan believed maximum tolerance was afforded the rallyists.¹⁸⁹

Accused Pagaragan disclosed that he was not the one who gave the order to use the water cannon, and he does not know who did.¹⁹⁰ He did not verify the identity of the John Doe,¹⁹¹ and he was unfamiliar with the BFP personnel who were manning the firetruck.¹⁹²

5. Accused P/Insp. Benny C. Esparagoza (“accused Esparagoza”)

In his Judicial Affidavit¹⁹³ dated February 12, 2019, accused Esparagoza stated that he was assigned as the Police Chief of Tubay, Agusan del Norte in 2006. In August of even year, there were several complaints from the Barangays in Tubay, including the workers of the mining firm operating in Barangay La Fraternidad, such that the latter’s trucks and heavy vehicles were unable to use the road thereat due to a rally that completely blocked said

¹⁸¹ TSN dated January 15, 2019, p. 16

¹⁸² *Id.* at 19-20

¹⁸³ *Id.* at 20

¹⁸⁴ *Id.* at 22

¹⁸⁵ *Id.* at 23

¹⁸⁶ *Id.* at 25

¹⁸⁷ *Id.* at 27-28

¹⁸⁸ *Id.* at 29-30

¹⁸⁹ *Id.* at 35-37

¹⁹⁰ *Id.* at 38-39

¹⁹¹ *Id.* at 40

¹⁹² *Id.* at 43-44

¹⁹³ Records of Judicial Affidavits, Vol. 1, pp. 1-5

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road. These complaints were verbally made, except for one written request for intelligence assistance from Barangay Captain Alicia Guday who reported that there were strangers carrying firearms and conducting suspicious meetings in her area of responsibility.

Accused Esparagoza immediately reported the fact of the rally to Mayor Garcia. Accused Garcia instructed him to personally monitor the rally and convince the participants to move their assembly to the freedom park.

Negotiations began on August 4 and 5, 2006. In the late afternoon of August 5, 2006, accused Pagaragan requested for a situational update of the rally. Accused Esparagoza relayed that there was a danger of a violent event as a result of an intelligence report that there were armed men lurking at the assembly area. Accused Pagaragan told him to exercise maximum tolerance, and that he would speak to the rally leaders the following day.

On August 6, 2006, accused Pagaragan went to the Tubay Police Station to discuss the event, and then he and accused Esparagoza went to the Mayor's residence. At around 6 a.m., both accused Esparagoza and Pagaragan arrived at Barangay La Fraternidad. Accused Esparagoza claimed that he did nothing because accused Pagaragan was the ranking officer in the chain of command, and the role of the former was only to serve as the back-up. No back-up order came from accused Pagaragan. Suddenly, the rally was dispersed by an unidentified person in civilian clothes who directed the firetruck and the Fire Chief to employ the water cannon.

On cross-examination, accused Esparagoza related that part of the contingency plan was to deploy the water cannon.¹⁹⁴ He was aware that the firefighters of Cabadbaran executed an After Mission Report, which was submitted to the Commission on Human Rights, but accused Esparagoza was not aware of its contents.¹⁹⁵

Accused Esparagoza explained that, in a police operation, he would wait for further instructions from his superiors before taking action himself. In these cases, his superior officer was accused Pagaragan, but accused Esparagoza did not receive any instruction from him.¹⁹⁶

Accused Esparagoza theorized that the firefighters were in-control of the John Doe in the civilian clothes because he assumed that said unknown person was a member of the BFP.¹⁹⁷ In fact, during the dispersal of the rally, accused Esparagoza noticed that some BFP personnel wore uniforms, whereas others were in civilian clothes.¹⁹⁸ Accused Esparagoza did not know accused SFO1 Arcadio Sacol and accused SFO3 Dionesio Paduganan until the trial of these cases.¹⁹⁹ Accused Esparagoza could not recall who operated the

¹⁹⁴ TSN dated February 19, 2019, p. 6

¹⁹⁵ *Id.* at 9-10

¹⁹⁶ *Id.* at 10-11

¹⁹⁷ *Id.* at 12-13

¹⁹⁸ *Id.* at 13

¹⁹⁹ *Ibid*

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firetruck,²⁰⁰ but one of his police officers was onboard said vehicle for security reasons.²⁰¹

When propounded clarificatory questions by the Court, accused Esparagoza answered that his objective was not to disperse the assembly, but to open a dialogue with the rally leaders and to secure the area.²⁰² Accused Esparagoza was focused on a person dressed in civilian clothes who was using a megaphone and telling the rallyists to fight for the environment.²⁰³

Accused Esparagoza confirmed the presence of some members of the NPA who were part of the Semi-Legal Team, which group was composed of unarmed members of the legal front, e.g. *Kilusang Mayo Uno*.²⁰⁴ Accused Esparagoza went on to characterize the rally as seemingly normal, but his intelligence said that other NPA members were expected to merge with the rallyists to attack the Tubay Police Station and burn mining equipment.²⁰⁵ This intelligence supposedly originated from the Philippine Army, but the rally looked normal and peaceful to accused Esparagoza.²⁰⁶ He related, however, that it had happened before that there were diversions by the NPA to take attention away from attacks on police stations.²⁰⁷

On re-direct examination, accused Esparagoza mentioned that there had been an NPA attack on Carmen Police Station, however, said assault had occurred after his term as Police Chief of Tubay.²⁰⁸

iii) Firefighters of Cabadbaran, Agusan del Norte

6. Accused SFO1 Arcadio R. Sacol ("accused Sacol"), retired BFP member.

In his Judicial Affidavit²⁰⁹ dated May 9, 2018, accused Sacol asseverated that he was assigned as a firetruck driver at Cabadbaran Fire Station on August 6, 2006. He was told by the Fire Chief, accused Paduganan of a Mission Order which required them to provide assistance in Tubay.

Upon arrival at the rally site, accused Sacol saw rallyists who appeared belligerent, were in possession of stones, and that they blocked the Barangay Road prohibiting the flow of all vehicles. Accused Sacol maneuvered the firetruck to face the rallyists. He was accompanied by accused Paduganan along with two other firefighters, Felipe Tale⁺ and Adriano Bisoy, the latter of whom was positioned on top of the truck and manning the water turret. Accused Sacol insisted that he merely drove the firetruck, and he could not see how the turret was operated. He said that Atty. Carlota handpicked his political enemies and charged them accordingly in the complaint. Atty. Carlota

²⁰⁰ *Id.* at 16-17

²⁰¹ *Id.* at 17-18

²⁰² *Id.* at 19

²⁰³ *Id.* at 20-21

²⁰⁴ *Id.* at 21

²⁰⁵ *Id.* at 22

²⁰⁶ *Id.* at 23-24

²⁰⁷ *Id.* at 24-25

²⁰⁸ *Id.* at 29-30

²⁰⁹ Records, Vol. 4, pp. 240-245

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even ran for public office after the filing of these cases using the video footage of the dispersal of the assembly.

On cross-examination, accused Sacol disclosed that the Mission Order was not furnished to him when he proceeded to Tubay, and that he merely followed his Chief's verbal orders.²¹⁰

Accused Sacol's main responsibility was to drive one of the two firetrucks of the Cabadbaran Fire Station, and he was the driver on duty on the day of August 6, 2006.²¹¹ He admitted that he had been to the rally site on August 5, 2006 to survey the area before returning to his station. He recalled that, on August 5, 2006, there did not appear to be any sign of an assembly because Barangay La Fraternidad was quiet with only a few people present.²¹²

As the driver of the firetruck, accused Sacol averred that he positioned said vehicle at a distance of 15 to 30 meters away from the rallyists.²¹³

7. Accused SFO3 Dionesio E. Paduganan ("accused Paduganan"), retired BFP member.

In his Judicial Affidavit²¹⁴ dated June 13, 2018, accused Paduganan confirmed that he was the Officer-In-Charge of the Cabadbaran Fire Station during the time material to these cases. He had received a call from Mayor Herman Libarnes ("Mayor Libarnes") of Cabadbaran to proceed to Tubay due to the request for assistance by both the Municipal Mayor of Tubay and the Governor of Agusan del Norte.

In his youth, accused Paduganan had been to Barangay La Fraternidad for Boy Scout's camping trips in high school. He was aware that the rally was held in the middle of a road used by the public, but he did not go to the rally site on August 5, 2006.

On even date, accused Paduganan and his firefighters went to Tubay Police Station where he was made to stay there and wait for instruction from accused Esparagoza. His fire station had received a memorandum request from the Tubay Police Station to send a firetruck to assist in the dispersal of an illegal rally held in the middle of a Barangay Road in La Fraternidad. Following procedure, accused Paduganan informed the Office of the Provincial Fire Marshal, wherein he was referred to secure clearance from the Office of the Regional Fire Director. The Regional Director called the Station to give the clearance as per the request of accused Garcia, provided that the same was approval by Mayor Libarnes.

On August 5, 2006, Mayor Libarnes called the Station to instruct accused Paduganan to proceed as per the request. Since negotiations were still on-going for the rallyists to open the road to traffic, accused Paduganan

²¹⁰ TSN dated May 29, 2018, pp. 105-106

²¹¹ *Id.* at 106-108

²¹² *Id.* at 123

²¹³ *Id.* at 117

²¹⁴ Records, Vol. 4, pp. 274-280

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returned to the Station at around 11 p.m. At this point, he learned that the rally was on a public road.

On August 6, 2006, accused Paduganan met accused Esparagoza at Tubay, and the latter was acting as the ground commander. After a long negotiation, accused Esparagoza was the one who issued the order to the firefighters to disperse the rally through the use of the water cannon. Accused Paduganan denied the charges against him.

On cross-examination, accused Paduganan clarified that he proceeded to Tubay on the basis of an oral directive and an unsigned Mission Order,²¹⁵ however, based on his past experience, this was ordinary.

The order of accused Esparagoza to disperse the rally was given directly to his driver.²¹⁶ Accused Paduganan related that on the day of the rally, he did not have administrative supervision over his men because the ground commander, or the person in-charge, in Tubay was accused Esparagoza.²¹⁷

It was Mayor Libarnes of Cabadbaran City who gave him the instruction to go to Tubay on August 5 and 6,²¹⁸ while it was his superior, Colonel Alejandro Cagampang, who approved the mission for him to assist in Tubay as per the request made by accused Garcia and the Governor.²¹⁹ Accused Paduganan also considered Mayor Libarnes as his immediate superior.²²⁰

On re-direct examination, accused Paduganan said that he had not yet seen the rally on August 5, 2006 because his team only stayed at the Tubay Police Station.²²¹ They proceeded to the rally on the following day.²²²

On re-cross examination, accused Paduganan affirmed that he and his firefighters stayed at the Tubay Police Station on August 5, 2006.²²³

When asked clarificatory questions by the Court, accused Paduganan disclosed that accused Garcia and Esparagoza told him that the rally was illegal because the rallyists had no permit, and their demonstration was in the middle of the road. When accused Paduganan and his firefighters went to Tubay, they already knew that their purpose was to dissolve the illegal rally.²²⁴

B. Other Public Officers

8. **Elvia L. Rañises**, Municipal Assessor of Tubay, Agusan del Norte.

²¹⁵ TSN dated July 18, 2018 (morning), pp. 16

²¹⁶ *Id.* at 23

²¹⁷ *Id.* at 24

²¹⁸ *Id.* at 30

²¹⁹ *Id.* at 33

²²⁰ *Id.* at 34

²²¹ *Id.* at 37

²²² *Id.* at 38

²²³ *Id.* at 41-42

²²⁴ *Id.* at 43-44

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Before the witness could give her testimony, counsels for the parties stipulated that:²²⁵ she was the Municipal Assessor of Tubay; she can identify Cadastral Map 905 of Tubay;²²⁶ she can testify on the due execution and authenticity of said Map; and she wrote a Letter²²⁷ dated February 22, 2012 to accused Garcia transmitting said Map.

With the abovementioned stipulations, the presentation of the witness was dispensed with.

9. Alicia L. Guday (“Guday”), former Barangay Chairperson of Barangay La Fraternidad, Tubay, Agusan del Norte

In her Judicial Affidavit²²⁸ dated August 31, 2018, Guday testified that in August 2006, a group of demonstrators had gathered protesting the mining activities in her area of responsibility, and it was reported to her that several unidentified armed individuals had joined the assembly. Guday wrote PNP officials requesting for intelligence monitoring of the presence of said individuals at the start of the rally on August 4, 2006

On cross-examination, Guday stated that the Barangay Tanod reported to her that armed individuals were joining the rally.²²⁹ But when she went to the rally site on August 5, 2006, she could not notice said individuals among the many people gathered.²³⁰ On even date, Guday followed-up her letter to the Police Chief, who replied that his men will survey the area,²³¹ and she no longer minded the matter anymore on the following day.²³² Guday did not go to the rally site on August 6 as she just monitored the situation from her office.
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10. Engineer Alipio B. Grana (“Engr. Grana”) retired District Engineer of Agusan del Norte, 2nd District Engineering Office.

In his Judicial Affidavit²³⁴ dated November 15, 2018, Engr. Grana testified that the Barangay Road in La Fraternidad was already existing and declared as a Barangay Road at the time he was a district engineer. The road had been maintained by the Department of Public Works and Highways up to 1991.

On September 11, 2006, Engr. Grana received a query from the Mayor of Tubay asking about the status of the road. Engr. Grana’s review of his office records showed that the Barangay Road led from La Fraternidad Proper to Purok 7 going to Barangay Binoangan. He then issued a Certification that the road in question was declared as a Barangay Road.

²²⁵ TSN dated September 26, 2018, pp. 6-15

²²⁶ Exhibit 5-a Garcia and Pagaragan; Exhibit 5-a Esparagoza

²²⁷ Exhibit 5-Garcia and Pagaragan; Exhibit 5-Esparagoza

²²⁸ Records, Vol. 4, pp. 400-403

²²⁹ TSN dated September 26, 2018, pp. 23-24

²³⁰ *Id.* at 25-26

²³¹ *Id.* at 30

²³² *Id.* at 30

²³³ *Id.* at 31-32

²³⁴ Records, Vol. 4, pp. 420-425

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On cross-examination, Engr. Grana remembered that the query of accused Garcia was verbal.²³⁵ In response thereto, Engr. Grana had instructed his staff to verify the status of the road by checking the records.²³⁶ The cadastral map, and the actual use of the road, formed his basis in issuing the certification and finding that the road in question was declared as a Barangay Road.²³⁷ His office, however, is not responsible for the surveying or classifying of public roads.

Engr. Grana admitted that he did not know of any official act which stated that the road was a barangay road.²³⁸ Neither did he coordinate with the Land Management Bureau in issuing the certification.²³⁹

Following the presentation of the defense witnesses, accused Esparagoza subsequently filed a *Motion to Allow Accused Esparagoza to Present Additional Evidence*²⁴⁰ dated May 1, 2019, but the same was denied by the Court in a *Resolution*²⁴¹ dated May 22, 2019.

Thereafter, accused Garcia, Pagaragan, and Esparagoza offered the following exhibits:²⁴²

Exhibit		Description
Accused Garcia and Pagaragan	Accused Esparagoza	
"1-Garcia and Pagaragan" to "1-a Garcia and Pagaragan"	"1-Esparagoza,"	Order of Dispersal dated August 6, 2006
"2-Garcia and Pagaragan," "2-b Garcia and Pagaragan," "2-c Garcia and Pagaragan"	"2-Esparagoza"	Letter dated August 4, 2006 of Alicia L. Guday
"2-a Garcia and Pagaragan" to "2-a-1 Garcia and Pagaragan"	"2-a Esparagoza"	Letter-Memorandum dated August 5, 2006
"3- Garcia and Pagaragan" to "3-a Garcia and Pagaragan"	"3-Esparagoza" to "3-a Esparagoza"	DILG Memorandum Circular Nos. 2006-79 and 2006-42
"4-Garcia and Pagaragan"	"4-Esparagoza"	Sangguniang Bayan Ordinance No. 2006-05
"5-Garcia and Pagaragan"	"5-Esparagoza"	Letter of Municipal Assessor dated February 22, 2012
"5-a Garcia and Pagaragan" to "5-a-1 Garcia and Pagaragan"	"5-a Esparagoza" to "5-a-1 Esparagoza"	Cadastral Map

²³⁵ TSN dated November 26, 2018, p. 12

²³⁶ *Id.* at 14

²³⁷ *Id.* at 16-17

²³⁸ *Id.* at 19

²³⁹ *Id.* at 22

²⁴⁰ Records, Vol. 5, pp. 29-33

²⁴¹ *Id.* at 48-50

²⁴² Formal Offer of Exhibits dated April 10, 2019 by accused Garcia and Pagaragan (Records, Vol. 4, pp. 494-498); Formal Offer of Exhibits dated June 4, 2019 by accused Esparagoza (Records, Vol. 5, pp. 56-60)

"6-Garcia and Pagaragan"	"6-Esparagoza"	Letter of Provincial Engineer George T. Tan
"6-a Garcia and Pagaragan" to "6-b-1 Garcia and Pagaragan"	"6-a Esparagoza" to "6-b-1 Esparagoza"	Provincial Road Map of Agusan del Norte
"7-Garcia and Pagaragan" to "7-b Garcia and Pagaragan"	"7-Esparagoza" to "7-b Esparagoza"	Certification from Office of the District Engineer-DPWH
"8-Garcia and Pagaragan"	"8-Esparagoza"	Letter dated August 5, 2006 of Fr. Luis Jenor
"29-Garcia and Pagaragan" to "29-a Garcia and Pagaragan"	"29-Esparagoza"	Joint Counter-Affidavit

In a Resolution²⁴³ dated July 15, 2019 the Court admitted the above exhibits of said accused.

It did not appear that accused Dultra, Sacol, and Paduganan offered any documentary exhibits for their defense.

Thereafter, the following memoranda were filed on the following dates: Memorandum for the Prosecution²⁴⁴ on August 27, 2019; Memorandum for Accused Garcia and Pagaragan²⁴⁵ on September 4, 2019; Memorandum²⁴⁶ for accused Paduganan, Sacol, and Dultra on September 12, 2019; and Memorandum for Accused Esparagoza²⁴⁷ on September 12, 2019.

THIS COURT'S RULING

The people's right to peaceably assemble is guaranteed under Section 4, Article III of the *Constitution*, which provides:²⁴⁸

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances. (Emphasis supplied)

In a landmark decision by the Supreme Court in *Bayan v. Ermita*,²⁴⁹ the right to peaceably assemble was explained thusly:

The first point to mark is that the right to peaceably assemble and petition for redress of grievances is, together with freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection. For these rights constitute the very basis of a functional democratic polity, without which all the other rights would

²⁴³ Records, Vol. 5, pp. 77-80

²⁴⁴ *Id.* at 114-158

²⁴⁵ *Id.* at 166-188

²⁴⁶ *Id.* at 192-203

²⁴⁷ *Id.* at 204-228

²⁴⁸ PHIL. CONST., art. III, § 4

²⁴⁹ G.R. Nos. 169838, 169848 & 169881, April 25, 2006

be meaningless and unprotected. As stated in *Jacinto v. CA*, the Court, as early as the onset of this century, in *U.S. v. Apurado*, already upheld the right to assembly and petition, as follows:

There is no question as to the petitioners' rights to peaceful assembly to petition the government for a redress of grievances and, for that matter, to organize or form associations for purposes not contrary to law, as well as to engage in peaceful concerted activities. These rights are guaranteed by no less than the Constitution, particularly Sections 4 and 8 of the Bill of Rights, Section 2(5) of Article IX, and Section 3 of Article XIII. Jurisprudence abounds with hallowed pronouncements defending and promoting the people's exercise of these rights. As early as the onset of this century, this Court in *U.S. vs. Apurado*, already upheld the right to assembly and petition and even went as far as to acknowledge:

"It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater, the grievance and the more intense the feeling, the less perfect, as a rule will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would become a delusion and a snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising."

Again, in *Primicias v. Fugoso*, the Court likewise sustained the primacy of freedom of speech and to assembly and petition over comfort and convenience in the use of streets and parks. (Emphasis supplied)

The Highest Court continued in *Bayan v. Ermita*, however, that the right to peaceably assemble is "not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent."²⁵⁰

*Batas Pambansa Blg. 880*²⁵¹ (*B.P. 880*) governs the holding of public demonstrations, assemblies, or rallies, which prescribes the process of applying for a permit to hold a public assembly, the use of public roads for

²⁵⁰ G.R. Nos. 169838, 169848 & 169881, April 25, 2006

²⁵¹ An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petitioner the Government For Other Purposes [THE PUBLIC ASSEMBLY ACT OF 1985], *Batas Pambansa Blg. 880*, § (1985)

such assemblies, and imposing the rules of engagement which bind law enforcement officers under penalty of law, among others. The salient provisions of *B.P. 880* state, to wit:

Section 4. Permit when required and when not required - A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

XXX XXX XXX

Section 7. Use of public thoroughfare - Should the proposed public assembly involve the use, for an appreciable length of time, of any public highway, boulevard, avenue, road or street, the mayor or any official acting in his behalf may, to prevent grave public inconvenience, designate the route thereof which is convenient to the participants or reroute the vehicular traffic to another direction so that there will be no serious or undue interference with the free flow of commerce and trade.

XXX XXX XXX

Section 9. Non-interference by law enforcement authorities - Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meter[s] away from the area of activity ready to maintain peace and order at all times. (Emphasis supplied)

These cases all stemmed from the 2-day rally held in Barangay La Fraternidad, Municipality of Tubay, Agusan del Norte, on August 5 and 6, 2006. The attendees thereof comprised approximately 50 participants, including Father Jenor P. Luis, Atty. Rolando Carlota, Estanislao M. Delima, Jr., Ma. Luna C. Grisola, Jecelyn Q. Regala, Junie B. Gabisan, and several residents of the barangay who were mainly farmers and fisherfolk. The alleged purpose of the rally was to air environmental grievances against the waste generated by the nearby mining activities of SR Metals, Inc., a private company whose mining site was located only 1 kilometer from the site of said rally. The demonstration was staged in the middle of a 4-meter wide road, and since the demonstrators had placed on the road several large rocks, tents, and a statue of a patron saint, among others, vehicular traffic, even 2-wheeled motorcycles, came to a complete standstill. Complaints thus poured in the offices of Tubay local government units, especially from SR Metals, Inc. whose operations were greatly delayed.

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Notably, it was not disputed that the assemblyists did not obtain a rally permit from the Office of the Mayor of Tubay prior to holding the rally. It thus became hotly debated whether the site on which the assembly occurred stood on public or private property.

THE RALLY HELD ON THE ROAD IN
BARANGAY LA FRATERNIDAD ON
AUGUST 5 AND 6, 2006 WAS PRIVATE
PROPERTY.

All the accused commonly argued that the place on which the rally occurred was allegedly a public area as it was a Barangay Road owned by the Government. They cited documents such as the Cadastral Map of Tubay,²⁵² identified by witness Municipal Assessor Elvia Rañises, which specifically labelled said road as a "Barangay Road." The accused also relied on the Provincial Road Map of Agusan del Norte,²⁵³ testified on by witness Engineer Alipio Grana who was the former District Engineer of Agusan del Norte, 2nd District Engineering Office, which document alluded to the Barangay Road as part of the interconnected network of public roads in Agusan del Norte. The accused further highlighted that the maintenance of said road was shouldered by the National Government, which was affirmed by Engineer Alipio Grana of the 2nd District Engineering Office.

The posture of the accused that the road where the rally was held is public is misplaced.

The road in question cannot be deemed a public area owned by the National Government because that portion of the road on which the rally site was staged was on the private property titled under Original Certificate of Title No. RP-443(217)²⁵⁴ in the name of a certain Maximo Page,²⁵⁵ the predecessor of Aliore Page.²⁵⁶ Fr. Luis who lead the assembly testified thusly:²⁵⁷

XXX XXX XXX

JUSTICE JURADO

Q Who is the owner of that place where you were staying?

A The owner[,] Your Honors, is the heirs of Maximo [] Paje who was with us, Your Honor[,] during that time. And, he brought in fact the title and the necessary documents[,] Your Honors, proving that they privately owned the place where we staged the peaceful assembly to air our grievances against the agencies who are involved and responsible for the illegal mining operation of the area, sir.

²⁵² Exhibit 5-a Garcia and Pagaragan; Exhibit 5-a Esparagoza

²⁵³ Exhibit 6-a Garcia and Pagaragan; Exhibit 6-a Esparagoza

²⁵⁴ Exhibit A-7

²⁵⁵ Also referred to as "Maximo Paje"

²⁵⁶ Also spelled as "Allore Paje"

²⁵⁷ TSN dated August 16, 2012, pp. 8-9

JUSTICE JURADO

Q Do you have a copy of the documents that was shown to you by the persons who [were] with you?

A I would like to us (sic) our legal counsel, Your Honors.

PROS. EPRES

Q Mr. Witness, I am showing to you a title, original certificate of title number RP-443217.

JUSTICE GISMUNDO

Of the Registry of Deeds of what?

PROS. EPRES

Of the Registry of Deeds of Agusan [d]el Norte, Your Honor.

Q Is this the title you are referring to as the heirs of Paje brought with them during the assembly?

A Yes, sir.

INTERPRETER

Shown to the witness is a title.

JUSTICE GISMUNDO

Q What's the marking?

PROS. BATAKAN

The document was previously marked as Exhibit "A-7", Your Honor.

JUSTICE GISMUNDO

Without prejudice to the presentation of the duly marked evidence.

Q Mr. Witness, who told you that the assembly to be made at the place of Paje?

A Because, one of the heirs whom in the person of Allure Paje was with us during those times and it is there where we thought that time that it is proper for our assembly. (Emphasis supplied)

XXX XXX XXX

At the time of the rally, it was testified on by witness Hilaria Burguños, the Officer-In-Charge of the Registry of Deeds of Agusan del Norte that, although the ownership of said property had changed subsequent to the incident subject of these cases, the certificate of title which was then controlling was OCT No. RP-443(217).²⁵⁸ A scanned version of this Certificate of Title is shown below:

²⁵⁸ TSN dated April 10, 2014 (morning), p. 28

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Journal Form No. 45-D
(Revised September, 1934)

Book
Page 105
How book III
Page 43

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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
Land Registration Commission

REGISTRY OF DEEDS FOR THE AGUAS DEL NORTE

ANNEX "C"

Original Certificate of Title

No. 11693 (217)

Entered in accordance with section 122 of Act No. 496, of the Philippine Commission, pursuant to a patent issued by the President of the Philippines, dated at Manila on the 21st day of October, in the year nineteen hundred and twenty-nine

and spread in the records of the Bureau of Lands, as follows:

UNITED STATES OF AMERICA
THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES
Bureau of Lands No. Y-36910 BUREAU OF LANDS CERTIFICATE OF TITLE
Patent No. 11693 MANILA NO. 217

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

BEAS, MARINO P. DE, possessing all the qualifications required by law in the fully complied with and consummated all of the conditions, requirements, and provisions of Chapter VII, of Act No. 2074 of the Philippine Legislature, providing for the granting of free patents to native settlers and has continuously occupied and cultivated, either by himself or thru his ancestors, for the prescribed period, the following-described agricultural land situated in the sitio of Barrio of Fraternidad, Municipality of Cabasaran, Province of Misamis (Now Misamis del Norte) on the island of Mindanao, Philippine Islands, containing an area of 6 hectares, 11 area, and 17 centares, according to the official plot of the survey thereof on file in the Bureau of Lands, Manila, and described on the back hereof;

NOW, WHEREAS, Act No. 2074, entitled "an act to declare the purpose of the people to the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands", approved August 29, 1916, provides hereby granted unto the said MARINO P. DE, the tract of land above described.

TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereunto of right belonging, unto the said MARINO P. DE and to his/her heirs or their assigns forever, subject to the provisions of sections 116, 119, 120, and 122 of Act 2074 of the Philippine Legislature, which provide that except in favor of the Government or any of its branches, units, or corporation, or legally constituted banking corporations, the land hereby acquired shall remain inalienable and shall not be subject to incumbrance for a period of five (5) years from the date of this patent, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period, and shall not be alienated, or transferred to any person, corporation (Continue on Page 43-44)

Transcribed in the "Registration Book" for the Province of Agusan, pursuant to the provisions of section 11 of Act No. 496, this 21st day of November, nineteen hundred and twenty-nine, at 3:15 P. M.



(Sgd.) ARIBASO S. PICCIO

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(CONTINUATION OF TECHNICAL DESCRIPTION)

or partnership not authorized to acquire lands of the public domain under said Act No. 2874, or any part thereof, without the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources, and solely for commercial, industrial, educational, scientific or charitable purposes or for a right of way, and to all conditions and public encumbrances, and servitudes recognized and prescribed by law, especially those mentioned in sections 105, 108, 109, 110, 111, and 312 of Act No. 2874 of the Philippine Legislature as amended.

IN TESTIMONY WHEREOF, and by authority of the United States of America and the Government of the Philippine Islands, I, WRIGHT P. DAVIS, Governor-General of the Philippine Islands, have caused these letters to be made patent, and the seal of the Government of the Philippine Islands to be hereunto affixed.

Given under my hand at the City of Manila, on this 21st day of October in the year of Our Lord one thousand nine hundred and twenty-nine.

(SGD.) WRIGHT P. DAVIS
Governor-General of the Philippine Islands

COUNTERSIGNED:

(SGD.) DON PAUL R. ALUMAN
Secretary of Agriculture and Natural Resources
Recorded in the Bureau of Lands, Vol. 24, Page 298.

TECHNICAL DESCRIPTION CONTINUATION

Beginning at a point marked 1 on plan P-36910, N. 20°40'W., 2521.33 m. from BLAN No. 2, So. of Tubay, Np. of Tababaray, thence S. 79°34'W., 273.09 m. to point 2; S. 9°34'E., 216.03 m. to point 3; N. 87°00'W., 87.68 m. to point 4; N. 68°40'W., 113.36 m. to point 5; S. 87°12'W., 134.14 to point 6; S. 4°55'W., 202.70 m. to point 1, point of beginning. Containing an area of 6.3117 hectares. Points 1 to 6 inclusive, S.L. cyl. concrete monuments; points 1 and 6, on shore of Taigan Bay bounded on the north, by Public Land; on the east, by Public land; on the south, by Public land and property claimed by Encida Seloy; on the west, by Butuan Bay. Bearings true, declination 2°08'N., Points referred to marked on plan P-36910. Surveyed under authority of sections 41-43 Act No. 2874 and in accordance with existing regulations of the Bureau of Lands, by Antonio T. Mason, Jr., Surveyor, under the supervision of Angel Alunast, Public Land Surveyor, on Oct. 20, 1927 and approved on August 22, 1929. Description written in the Bureau of Lands Office by J. Mercado on Sept. 19, 1929.

RESTITUTION OF LOST COPY

"Pursuant to section 7 of Republic Act No. 26, this certificate of title having been administratively reconstituted is without prejudice to any party the right or interest in the property was duly noted on the original copy thereof at the time it was lost or destroyed."

IT IS HEREBY CERTIFIED that this certificate of title consisting of two pages was on January 8, 1979 at 10:00 A.M., been reconstituted from the owner's duplicate of Original Certificate of Title No. 217, Page No. 105, the reconstitution having been effected thru a petition and entered under Entry No. 305 of the records of Orders and Petitions for reconstitution of Lost Certificates of Titles pursuant to the provisions of Republic Act No. 26.

Butuan City, Philippines, January 8, 1979 at 10:00 A.M.

Jesus S. Delfino
JESUS S. DELFINO
V. ASSY. PROVINCIAL CLERK
Republic of the Philippines

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CASE
PT. GARCIA
1-16-09

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
Land Registration Commission
REGISTRY OF DEEDS FOR THE AGUSAN DEL NORTE

Page 43
Now Book III
Page 43
Exh A-7
9/1/14

Original Certificate of Title

No. RF-443 (217)

Entered in accordance with section 122 of Act No. 496, of the Philippine Commission, pursuant to a patent issued by the President of the Philippines, dated at Manila on the 21st day of October, in the year nineteen hundred and twenty-nine

and spread in the records of the Bureau of Lands, as follows:

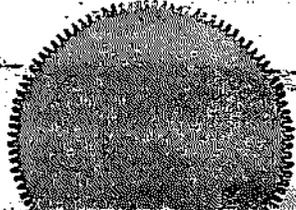
UNITED STATES OF AMERICA
THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES
Bureau of Lands No. P-36910 BUREAU OF LANDS CERTIFICATE OF TITLE
Patent No. 11693 MANILA NO. 217
FREE PATENT

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, MAXIMO PAGE, possessing all the qualifications required by law in the premises, has fully complied with and consummated all of the conditions, requirements, and provisions of Chapter VII, of Act No. 2874 of the Philippine Legislature, providing for the granting of free patents to native settlers and has continuously occupied and cultivated, either by himself or thru his ancestors, for the prescribed period the following-described agricultural land situated in the sitio of , Barrio of Fraternidad, Municipality of Cabadbaran, Province of Agusan (Now Agusan del Norte) on the Island of Mindanao, Philippine Islands, containing an area of 6 hectares, 31 ares, and 17 centavos, according to the official plot of the survey thereof on file in the Bureau of Lands, Manila, and described on the back hereof;

NOW, THEREFORE, KNOW YE, That, by authority of the provisions of the Act of Congress of the United States, entitled "An act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those Islands approved August 29, 1916, there is hereby granted unto the said MAXIMO PAGE, the tract of land above described.

TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereunto of right belonging, unto the said MAXIMO PAGE and to his/her heirs or heir and assigns forever, subject to the provisions of sections 116, 119, 120, and 122 of Act 2874 of the Philippine Legislature, which provide that except in favor of the Government or any of its branches, units, or corporations, or legally constituted banking corporations, the land hereby acquired shall ~~not be subject to~~ be inalienable and shall not be subject to expropriation for a period of five (5) years from the date of this patent, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period, and shall not be encumbered, alienated, or transferred to any person, corporation (Contains on Page 43-A) Transcribed in the "Registration Book" for the



Province of Agusan, pursuant to the provisions of section 41 of Act No. 496, this 21st day of November, nineteen hundred and twenty-nine, at 3:15 P. M.

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RP-443 P3

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Page _____ -B

MEMORANDUM OF INCUMBRANCES

Entry No. _____

Entry No. 70925-70929 - Certification of landholdings

Entry No. 70930-70931 - Affidavit of Publication

Entry No. 70932 - Affidavit of Non-Tenancy

Entry No. 70933

Extrajudicial Settlement executed among the Hrs. of Maximo Page and Nicolasa Mantua, adjudicating unto themselves the parcel of land described in this title together with some unregistered parcel of land and the parties agreed that in this parcel be shared among Marciano Paler, representing the children of Barbara Page, Margarita Page de Caiton and Severino Page in 1/3 shares each of this parcel and of the other heirs is assigned to unregistered parcel of land, for the other three heirs namely: Inocencia Pabla de Page, Olimpia Page and Martino Page per extrajudicial settlement dated at Tabay, Agusan del Norte on September 9, 1968 and known as doc. no. 137; page no. 89; book no. II; series of 1968 of the notarial register of Municipal Judge and Notary Public ex-officio Edgar Batitang and filed under no. 34222.

Entry No. 70934

Extrajudicial Settlement With Deed of Absolute Sale executed among the Hrs. of Severino Page namely: Lito, Rico Marilyn, Eduardo Marlon and Romeo all surnamed Page, adjudicating unto themselves the share of their father Severino Page on this title and at the same time said share of Severino Page which is 2.1390 has. was sold by the hrs. unto and in favor of Bernarde P. Trinos for the sum of P80,000.00 only per extrajudicial settlement dated at Cababaran, Agusan del Norte on October 4, 2006 and known as doc. no. 284; page no. 57; book no. 5; series of 2006 of the notarial register of Rolando F. Carista, Notary Public and filed under no. 34223.

Entry No. 70935 - Letter Request

Entry No. 70936

Subdivision Plan Pcd-19-011667 executed by Boly S. Dahang, Geodetic Engineer, subdividing the parcel of land described in this title into two (2) lots namely: lot 1 and 2 per approved plan dated September 6, 2006 and by virtue of which this certificate of title is hereby cancelled under TCR-19-8252 and 19-8253 and filed under no. 34223.

Butuan City, November 16, 2007 at 2:25 p.m.

typed by: bob
checked & verified by:

ATTY. ANTONIO P. ESPINOSA
Registrar of Deeds
Agusan del Norte

A certified true copy from original on file.
Butuan City, April 7, 2014.

Hilaria D. Provisor
LRR I / OIC Registrar of Deeds

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... have caused these letters to be made patent, and the
Seal of the Department of the Philippine Islands to be hereunto affixed.

Given under my hand at the City of Manila, on this 21st day of October in the
year of Our Lord one thousand nine hundred and twenty-nine.

(SGD.) DWIGHT F. DAVIS
Governor-General of the Philippine Islands

COUNTERSIGNED:

(SGD.) RAFAEL R. ALUNAN
Secretary of Agriculture and Natural Resources
Recorded in the Bureau of Lands, Vol. 24, Page 298.

Exh. A-7-a
[Handwritten initials]

TECHNICAL DESCRIPTION CONTINUATION

Beginning at a point marked 1 on plan F-36910, N. 20°10'E., 2521.33 m. from
BLM No. 2, Co. of Tubay, Mp. of Cabadbaran, thence N. 79°34'E., 278.09 m. to point
2; S. 97°34'E., 216.08 m. to point 3; N. 87°00'W., 87.68 m. to point 4; S. 68°40'W.
113.36 m. to point 5; S. 87°12'W., 134.14 to point 6; N. 4°55'W., 206.70 m. to
point 1, point of beginning. Containing an area of 6.3117 hectares. Points 1 to
6 inclusive, B.L. Cyl. concrete monuments; points 1 and 6, on shore of Butuan Bay.
Bounded on the north, by Public land; on the east, by Public land; on the south,
by Public land and property claimed by Candida Seloy; on the west, by Butuan Bay.
Bearings true, declination 2°08'E., Points referred to marked on plan F-36910.
Surveyed under authority of sections 41-43 Act No. 2874 and in accordance with
existing regulations of the Bureau of Lands, by Antonio T. Josen, Jr., Surveyor,
under the supervision of Angel Alunang, Public Land Surveyor, on Oct. 20, 1927
and approved on August 22, 1929. Description written in the Bureau of Lands Office
by J. Mercado on Sept. 19, 1929.

MEMORANDUM OF ENCUMBRANCES

Pursuant to Section 7 of Republic Act No. 26, this certificate of title
having been administratively reconstituted is without prejudice to any party whose
right or interest in the property was duly noted on the original copy thereof at
the time it was lost or destroyed."

IT IS HEREBY CERTIFIED that this certificate of title consisting of two pages
has on January 8, 1979 at 10:00 A.M., been reconstituted from the owner's duplicate
of Original Certificate of Title No. 217, Page No. 105, the reconstitution having
been effected thru a petition and entered under Entry No. 385 of the records of
Orders and Petitions for reconstitution of Lost certificates of Titles pursuant
to the provisions of Republic Act No. 26.

Butuan City, Philippines, January 8, 1979 at 10:00 A.M.

[Signature]
JESUS S. DELFIN
PROVINCIAL CLERK
Register of Deeds of Butuan

Entry No. 70923-
Entry No. 70924-
Entry No. 70925-

CERTIFICATE AUTHORIZING REGISTRATION
SERIAL No. 192167471-73 DATE ISSUED 3/12/07
REVENUE DISTRICT No. 103
REVENUE DISTRICT OFFICER *[Signature]*
TAXES PAID: P. 500, 000, 4, 000.00

(Continued on Additional Sheet _____, Page _____)
10-000 Register of Deeds

Upon carefully scrutinizing OCT No. RP-443(217), it does not appear
that there was any public road or other encumbrance annotated on the
Certificate of Title itself which affected the private ownership of the property
by Maximo Page. There are no annotations of any notice of *lis pendens*
indicating that a portion of his land had been subjected to any
expropriation proceeding initiated by the Government for the purpose of
providing for a public road or national highway, nor were there any
annotations by the local register of deeds alluding that a court had

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rendered a decision on any expropriation case in favor of the Republic or legal easement in favor of the Municipality. Absent such annotations on the Certificate of Title itself, the nature of the entire property remained private, and it cannot be concluded that the road which traversed the property of Maximo Page was a Barangay Road owned by the Government.

What further undermines the credibility of the maps presented by the accused is the fact that although witness Engineer Alipio Grana had averred that the road in question was a Barangay Road based on its use, he had not coordinated with the Land Management Bureau of the Department of Environment and Natural Resources (“DENR”) prior to making such statement.²⁵⁹ Later on, he admitted that he did not know of any official act which had classified said road as a Barangay Road as his office is not responsible for surveying or classifying roads. This was the thrust of his answers on cross-examination, to wit:²⁶⁰

xxx xxx xxx

CHAIRPERSON:

Just a minute. You checked your personal files to find out if this barangay road in La Fraternidad is a barangay road?

WITNESS:

Yes, Your Honor.

CHAIRPERSON:

Your basis, as you said per question of Prosecutor Dela Torre, is, we did not get that. What is your basis that it is classified as a barangay road?

WITNESS:

That is barangay road, Your Honor, before the ... (interrupted)

CHAIRPERSON:

Yes. What is your basis, Engineer?

WITNESS:

That is one of the existing barangay roads, Your Honor.

CHAIRPERSON:

Is your office responsible for surveying or classifying roads?

WITNESS:

No, Your Honor.

CHAIRPERSON:

That's right. So, how did you get the conclusion that it is a barangay road?

WITNESS:

²⁵⁹ TSN dated November 26, 2018, p. 22

²⁶⁰ *Id.* at 15-19

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I know that barangay road, Your Honor, because I wasn't still District Engineer before, I was the Area Engineer of that road, Your Honor.

CHAIRPERSON:

You're referring to the use?

WITNESS:

Yes, Your Honor.

CHAIRPERSON:

But you're not referring to any formal classification by a government agency classifying that road as barangay?

WITNESS:

Yes, Your Honor, that is barangay road.

CHAIRPERSON:

So, just use?

WITNESS:

Use, Your Honor.

XXX XXX XXX

PROSECUTOR DELA TORRE:

May I interrupt the witness, Your Honors?

CHAIRPERSON:

Yes.

BY PROSECUTOR DELA TORRE:

Q. Mr. Witness, I was asking for a declaration. Is there a written declaration, presidential proclamation, department order or circular, or any written declaration from your office or any other office which states that this is a barangay road?

A. I do not know, Sir.

Q. You do not know?

A. I know that that is a barangay road, Sir.

Q. That would be all, Sir. (Emphasis supplied)

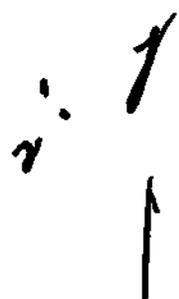
XXX XXX XXX

The private nature of the road was further corroborated by accused Dultra, viz:²⁶¹

XXX XXX XXX

CHAIRPERSON:

²⁶¹ TSN dated May 29, 2018, pp. 35-36, 52-54



Q I'm sorry, why do you keep referring to a barangay road when earlier you said it is a private property?

WITNESS:

A You Honors, it is also a barangay road going to Binuangan Site, Brgy. Binunganan, the private properties... (interrupted)

CHAIRPERSON:

Q Yes, but kindly clarify, is it a barangay road maintained by the municipality or is it simply a road that because it's the only way, it was granted access to people going in and out to certain areas?

WITNESS:

A As far as I know, Your Honors, it is a private road but also the barangay can go there, can pass through there but it is maintained by the private firm, Your Honors.

CHAIRPERSON:

All right, so it's a private road maintained by the owner, thank you.

xxx xxx xxx

ATTY. DOYON:

Q So you are saying in Question No. 7 and Answer, I quote, "Where exactly was the rally held?["] You said, "On barangay road[."]" And then, when asked by the Prosecutor, you said "It's a private road[."]" My question is, can you explain the discrepancy of your answer in the direct [] examination and the cross-examination, Mr. Witness?

WITNESS:

A That road is a local property going up to one area but that is not actually exclusively a private road, sir.

ATTY. DOYON:

Q What do you mean by public and private?

WITNESS:

A That road could be passed through by the community going to Brgy. Binuangan, sir.

ATTY. DOYON:

Q You just answer my question. What do you mean by, it's a public and private road?

ASSOCIATE JUSTICE TRESPESES:

Q Mr. Witness, in other words, who owns the road? Is it owned by a private individual?

WITNESS:

A Individual, sir.

ASSOCIATE JUSTICE TRESPESES:

Q Okay, so, it's a private road, that's what you mean because it is owned by a private individual but everybody could pass through that, that's what you mean by public?

WITNESS:

A Yes, Your Honors. (Emphasis supplied)

xxx xxx xxx

As between OCT No. RP-443(217) and the theory posited by the accused, primacy should be accorded the former being a certificate of title registered under the Torrens system. Apropos is the pronouncement of the Supreme Court in *Ching v. Court of Appeals*,²⁶² as follows:

The real purpose of the Torrens system is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*," to avoid the possibility of losing his land (National Grains Authority v. IAC, 157 SCRA 388 [1988]).

A Torrens title is generally a conclusive evidence of the ownership of the land referred to therein (Section 49, Act 496). A strong presumption exists that Torrens titles are regularly issued and that they are valid. A Torrens title is incontrovertible against any "information possessoria" or title existing prior to the issuance thereof not annotated on the title (Salamat Vda. de Medina v. Cruz, G.R. No. 39272, May 4, 1988). (Emphasis supplied)

Assuming *arguendo* that the crossing of the road on the property of Maximo Page was an easement of right of way, this would not change the private nature of his property or divest him of the private ownership of the affected portion thereof. Article 630 of the *Civil Code* is quoted: "[t]he owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement."²⁶³ In other words, the ownership of that portion on which the road traversed remains with Maximo Page as he is the registered owner of his lot (the *servient estate*). Further, even it was to be assumed that the easement on the part of Maximo Page's land had existed for decades, prescription would not deprive him of his ownership thereof. Jurisprudence provides that prescription does *not* run against registered land because a title, once registered, cannot be defeated even by adverse, open and notorious possession.²⁶⁴

From these circumstances, it was therefore an inaccurate conclusion for the accused to proclaim that the road in question was a public area on the mere basis that the Cadastral Map of Tubay²⁶⁵ and the Provincial

²⁶² G.R. No. 59731, January 11, 1990

²⁶³ An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 630 (1950)

²⁶⁴ *Vide: Ong v. Court of Appeals*, G.R. No. 142056, April 19, 2001

²⁶⁵ Exhibit 5-a Garcia and Pagaragan; Exhibit 5-a Esparagoza

Road Map of Agusan del Norte²⁶⁶ labelled the same as a “Barangay Road.” In truth, although the venue of the demonstration was on a road used by the public at large, the same was within the bounds of the private property titled under OCT No. RP-443(217)²⁶⁷ in the name of Maximo Page.

By law, the owner of a private property is entitled to the full enjoyment of all the rights of ownership appurtenant over it, which rights include the discretion to hold public meetings, gatherings, or even demonstrations. *Gallent v. Velasquez* is quoted hereunder:²⁶⁸

A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the civil law. The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces, *jus utendi*; *jus fruendi* the right to consume the thing by its use, *jus abutendi* the right to alienate, encumber, transform or even destroy the thing owned, *jus disponendi* and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing *jus vindicandi*.

This recognition of the property owner’s rights reverberates in Section 4 of *B.P. 880* which provides in clear language that **no permit to hold a public assembly is required if done on private property, in which case only the consent of the owner, or the one entitled to its legal possession, is required.**²⁶⁹ **All that was necessary, therefore, for the rally to be lawfully held on the land of Maximo Page was the consent of his lawful heirs entitled to its possession. The consent of the heirs of Maximo Page to hold the assembly on their land was positively manifested by the fact that Aliore Page, one of the descendants of Maximo Page, joined the protest, viz:**²⁷⁰

XXX XXX XXX

PROS. EPRES:

Q You said that the area was a private property which was owned by a certain – that the area is a titled lot under the name of the heirs of Maximo Page?

A Yes, sir.

Q And who is Maximo Page?

²⁶⁶ Exhibit 6-a Garcia and Pagaragan; Exhibit 6-a Esparagoza

²⁶⁷ Exhibit A-7

²⁶⁸ G.R. Nos. 203949 & 205071, April 6, 2016, which cited the Separate Opinion of Associate Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 994-995 (2000).

²⁶⁹ See THE PUBLIC ASSEMBLY ACT OF 1985, § 4

²⁷⁰ TSN dated August 15, 2012, p. 15

A He was the grandfather of Aliore Page who was with us during those days of our assembly and prayer protest in the area, sir.

XXX XXX XXX

Yet, even after the rallyists substantiated their claim that they stood on private property by showing OCT No. RP-443(217) to the accused law enforcers, the rally was still forcibly dissolved only on its second day, or on August 6, 2006, after the participants thereof were sprayed by a mounted water cannon from a BFP firetruck which had been brought in from Cabadbaran Fire Station. **Flowing from the constitutional guarantee of freedom of expression, which fundamental right enjoys primacy in the realm of constitutional protection as per *Bayan v. Ermita*,²⁷¹ the use of water cannons to disperse or dissolve peaceful public assemblies is strictly regulated by B.P. 880, which requires as a condition precedent that the assembly is attended by violence or destruction of property, viz:²⁷²**

Section 10. Police assistance when requested - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties **always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:**

(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

(b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

(c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device **shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.** (Emphasis supplied)

It was thus imperative for the accused to adequately prove the existence of an exigent circumstance that violence or acts of destruction of property during the public assembly, which would trump the claim of the assemblyists that their demonstration was peaceful, and therefore would have made the dispersal thereof necessary through the deployment of the water cannon, or by other means.

²⁷¹ G.R. Nos. 169838, 169848 & 169881, April 25, 2006

²⁷² THE PUBLIC ASSEMBLY ACT OF 1985, § 10

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THE RALLY AT BARANGAY LA FRATERNIDAD WAS NOT ACTUALLY PERVADED BY VIOLENCE OR DELIBERATE ACTS OF DESTRUCTION OF PROPERTY, WHICH UNDERMINED THE BASIS OF THE EMPLOYMENT OF THE WATER CANNON AGAINST THE RALLYISTS.

The accused justified their deployment of the water cannon and the dissolution of the assembly on the premise that there were alleged intelligence reports from the military that the peaceful gathering at Barangay La Fraternidad had supposedly been infiltrated by elements of the New People's Army ("NPA"), the ultra-violent wing of the Communist Party of the Philippines, such that armed outsiders had disguised themselves among the rallyists and they were purportedly plotting to bomb SR Metals, Inc. the mining company operating in said area.

The theory of the accused is unsupported by the evidence on record.

Other than the inconvenience of temporary stoppage of operations suffered by SR Metals, Inc. as a result of the total blockage of free commerce on the road in Barangay La Fraternidad, it had not been adequately established that actual or threatened violence, much less any deliberate destruction of the property of the mining company, or even threats thereof, pervaded the rally. Quite the opposite, the accused themselves admitted that the assembly actually appeared to be normal and peaceful by all appearances.

In truth, accused Dultra, who was present during the assembly at Barangay La Fraternidad, recalled that, other than the fact that some of the rallyists had worn handkerchiefs to cover their faces, no objects had been hurled at the police officers on-scene, and he had failed to observe any persons illegally discharging any firearms.²⁷³

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PROSECUTOR DELA TORRE:

We submit, Your Honors.

Q Likewise, during the re-direct, you mentioned that there were suspicious and new people who were roaming around, blending with the rallyists, correct?

WITNESS:

A Yes, sir.

PROSECUTOR DELA TORRE:

²⁷³ TSN dated May 29, 2018, pp. 83-85

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Q Do you confirm even during and after the dispersal of the rallyists, there were no gunshots fire[d] from the rallyists, Mr. Witness, did they throw anything at you?

WITNESS:

A There was none, sir.

Q Did they throw anything towards the dispersal team?

WITNESS:

A During the dispersal there was no one throwing anything at us, sir.

PROSECUTOR DELA TORRE:

Q So, this suspicious and new people, maybe, since you are an intelligence operative is not confirmed based on that fact or statement?

WITNESS:

A That was what I saw, sir. We were only depending (sic) ourselves because those people were wearing masks.

PROSECUTOR DELA TORRE:

Q But the point of the prosecution is, there were no untoward incident even during and after the dispersal which was thrown against you?

ATTY. MENDOZA-YU:

Objection, Your Honors. There was no untoward incident of stone throwing.

PROSECUTOR DELA TORRE

Stone throwing or even firing of guns.

ASSOCIATE JUSTICE JACINTO

Already answered. (Emphasis supplied)

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The overall peaceful nature of the protest was also attested to by accused Esparagoza, Police Chief of Tubay, who had negotiated face-to-face with the demonstrators, and was therefore in the best position to determine the presence of actual, or threatened, violence, including destruction of property, if any. But when questioned by the Court if there was a belligerent air to the demonstration, accused Esparagoza replied in the negative, to wit:²⁷⁴

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AJ TRESPESSES:

But how did you characterize the rally when you arrived at the scene on that particular date? How did you characterize the behavior of the rallyists? Were they violent or aggressive? Or it was just a normal rally staged by these environmental troops?

WITNESS:

²⁷⁴ TSN dated February 19, 2019, pp. 23-24

If you look at the rally, [Y]our Honor, it seems to be just normal.

AJ TRESPESES:

When you say, normal, meaning, it was peaceful?

WITNESS:

Yes, [Y]our Honor.

AJ TRESPESES:

The usual shouting of their slogans?

WITNESS:

They were manageable, [Y]our Honor. (Emphasis supplied)

xxx xxx xxx

Moreover, accused Garcia, who had been actively monitoring the rally at Barangay La Fraternidad through his staff,²⁷⁵ never even received any significant reports of volatile, untoward incidents caused by the people holding the demonstration.²⁷⁶

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BY PROSECUTOR DELA TORRE:

Q. In relation to the question of the Honorable Court, would you agree with me that even though after the rallyists were dispersed by the concerned officials, there were no untoward incidents that happened coming from the rallyists, correct, Sir? Meaning, they never threw stones or they never fired any guns or they never did any harm to the police officials, correct, Sir?

A. I'm not aware of that, Sir.

Q. You were not made aware of that?

A. Yes, Sir. (Emphasis supplied)

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Even accused Guday, then Barangay Chairperson of La Fraternidad, who had initially testified that she received reports of armed individuals posing as rallyists, could not confirm the same when she went to the rally site on August 5, 2006.²⁷⁷

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PROSECUTOR DELA TORRE:

Q Can you elaborate what was the exact description of these individuals mentioned to you by your barangay officials?

WITNESS:

A My barangay tanod reported to me that there are also people by the road in Kinapuk-an. Those people gathered together and my barangay tanod saw armed people, sir.

²⁷⁵ Judicial Affidavit dated July 10, 2018 of accused Garcia (Records, Vol. 4, pp. 327-337)

²⁷⁶ TSN dated July 18, 2018 (afternoon), p. 58

²⁷⁷ TSN dated September 26, 2018, pp. 23-26

Handwritten marks: a vertical line with a checkmark-like symbol at the top, and a vertical line with a dot at the bottom.

CHAIRPERSON:

Next question.

PROSECUTOR DELA TORRE:

Q When was this information relayed to you?

WITNESS:

A August 4, 2006, sir.

PROSECUTOR DELA TORRE:

Q And this was on the same day that you wrote the letter?

WITNESS:

A Yes, sir.

PROSECUTOR DELA TORRE:

Q Immediately upon informing you of the presence of these alleged individuals, you immediately wrote the letter?

WITNESS:

A Yes, sir.

PROSECUTOR DELA TORRE:

Q After you wrote the letter, what did you do with the same, ma'am?

WITNESS:

A I indicated on the letter that the police should see what is going on because there might be an incident that is going to happen?

PROSECUTOR DELA TORRE:

Q The following day, did you follow-up if there is any incident which transpired in connection with your letter, ma'am?

WITNESS:

A On August 5, I went there and saw that they were blocking the road. They had the image of the patron saint, sir.

PROSECUTOR DELA TORRE:

Q In short, you went to the rally site?

WITNESS:

A Yes, I went there on August 5, sir. I saw that they were blocking the roads with boulders and bamboos.

PROSECUTOR DELA TORRE:

Q But were you able to witness if these individuals were possessing firearms?

ATTY. DY:

If I may, Your Honors, I think the witness' testimony is not that she personally saw the armed individuals, Your Honors. It was reported to her...
(interrupted)

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CHAIRPERSON:

Yes, but when she went on August 5, that's the gist of the cross-examination now which is a different day.

ATTY. DY:

We submit, Your Honors.

CHAIRPERSON:

Answer.

WITNESS:

I didn't really notice any armed men because there were so many people there. (Emphasis supplied)

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Regarding the supposed intelligence information of possible NPA attacks in Tubay, accused Pagaragan, then Police Provincial Director of Agusan del Norte, failed to recall having received any actual reports received by his office during the time material to these cases:²⁷⁸

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PROS. DELA TORRE:

Request for readback (sic), Your Honors.

CHAIRPERSON:

Readback (sic) Elsa.

STENOGRAPHER:

I can contain the Municipality of Tubay. Situational update of Municipality of Tubay.

CHAIRPERSON:

There is no specific intelligence classified information insofar as Tubay is concerned. Will you confirm that?

WITNESS:

It depends, Your Honors, if the intelligence community would observed (sic) any indication ... (interrupted)

PROS. DELA TORRE:

Q The question is there or there is any?

CHAIRPERSON:

Yes, answer, is there or not any classified intelligence information?

WITNESS:

I cannot remember anymore, Your Honors.

CHAIRPERSON:

²⁷⁸ TSN dated January 15, 2019, pp. 24-26

But this will be important because you seemed to allege that there are NPA infiltrates insofar as that rally was concerned. That will be very important from the point of view of the Court in appreciating your defense. So, you are now saying that there is none insofar as Tubay is concerned?

WITNESS:

I cannot, Your Honors.

CHAIRPERSON:

You cannot recall?

WITNESS:

Yes, Your Honors. (Emphasis supplied)

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The final nail in the coffin was hammered by the aforesaid testimony of accused Pagaragan. Being then the top police official of Agusan del Norte, accused Pagaragan should have been privy to all reports concerning would-be plots of communist attacks against the towns and cities within his area of responsibility, including the Municipality of Tubay. Although accused Esparagoza was adamant about the existence of such intelligence, the fact of the matter is that accused Pagaragan could not confirm the existence of any intelligence report, classified or not, concerning the Municipality of Tubay that had been forwarded to his office. This greatly undermines the veracity of the theory advanced by accused Esparagoza concerning the presence of NPA elements at the rally held in Barangay La Fraternidad on August 5 and 6, 2006.

As disclosed by the evidence, the intelligence reports of would-be rebel attacks in Tubay remained unconfirmed. Quite the opposite, the rally at Barangay La Fraternidad appeared to be normal and bereft of violence against the government agents on duty thereat, the townsfolk, and the operations of the mining company. On this premise, it cannot be said that the deployment of the water cannon against the demonstrators was justified. It was a deprivation of the constitutional rights of the assemblyists, therefore, that they had to endure the full blast of the water cannon fired from the BFP firetruck, when all they did was to hold a rally not characterized by violence.

The crucial question that now must be answered is thus: who gave the order to unleash the water cannon?

While the prosecution theorized that all the accused conspired with one another in the commission of the crimes charged, the accused deflected by laying individual blame to varying persons.

Accused Garcia, Pagaragan, and Esparagoza, flatly denied that any of them had issued the order to unleash the water cannon. Instead, they pinpointed a John Doe in civilian attire as the mastermind who purportedly

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commanded the BFP personnel manning the firetruck to deploy the water turret.

For accused Paduganan, Sacol, and Dultra, however, they all skirted around the issue. Accused Dultra pleaded that he was outranked by his superiors, and consequently, he was in no position to give the order to use the water cannon. On the other hand, accused Paduganan and Sacol claimed that they were only present during the dispersal because they were ordered to proceed to Barangay La Fraternidad on the authority of Mayor Herman Libarnes of Cabadbaran, and they questioned why the latter, and another firefighter named Adriano Bisoy, Jr., were excluded from the present charges.

Jurisprudence has it that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.²⁷⁹ In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed.²⁸⁰ "When conspiracy is established, the responsibility of the conspirators is collective, not individual, rendering all of them equally liable regardless of the extent of their respective participations."²⁸¹

Conspiracy may be proved by direct or circumstantial evidence. Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence.²⁸² Conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. It may be deduced from the mode and manner in which the offense was perpetrated.²⁸³

The discussions below will tackle the individual participation of the accused in the dispersal of the public assembly at Barangay La Fraternidad on August 6, 2006, in relation to conspiracy, if any.

THERE IS STRONG EVIDENCE TO POINT TO ACCUSED GARCIA AS THE EPICENTER IN WANTING TO OUTRIGHTLY DISPERSE THE RALLY AT BARANGAY LA FRATERNIDAD, TUBAY BY TAPPING HIS POLICE CHIEF, ACCUSED ESPARAGOZA, TO DISSOLVE THE SAME WITH THE AID OF A BFP FIRETRUCK FROM CABADBARAN FIRE STATION. IT LATER APPEARED THAT ACCUSED

²⁷⁹ *People v. Macaranas*, G.R. No. 226846, June 21, 2017

²⁸⁰ *Ibid*

²⁸¹ *People v. Elizalde y Sumagdon*, G.R. No. 210434, December 5, 2016

²⁸² *Ibid*

²⁸³ *Supra*, note 279

ESPARAGOZA WAS THE ONE WHO PERSONALLY ISSUED THE COMMAND TO EMPLOY THE WATER CANNON AGAINST THE RALLYISTS, WHICH PUT AN END TO THEIR PEACEFUL GATHERING TO AIR GRIEVANCES AGAINST LOCAL MINING OPERATIONS.

A sizeable contingent of police from Tubay and fire personnel from neighboring Cabadbaran were brought to bear upon the assembly as a result of the Dispersal Order²⁸⁴ dated August 6, 2006, in which accused Garcia, as Municipal Mayor, gave a direct order for the police personnel of Tubay to disperse the assembly in Barangay La Fraternidad. A scanned copy of the Order is reproduced below:

7. NINE "A"
Exh. A-5
1-18 3/20/12

Office of the Mayor
MUNICIPALITY OF TUBAY
Tubay, Agusan del Norte

MEMORANDUM :

FOR : COPTUBAY 000

FROM : MUNICIPAL OFFICE
TUBAY, AGUSAN DEL NORTE

SUBJECT : ORDER TO DISPERSE THE RACIAL ASSEMBLY
HELD AT LA FRATERNIDAD, TUBAY, AND

DATE : 06 AUGUST 2006

1.) Reference :

a.) MEMORANDUM CIRCULAR NO. 2006-79 dated July 7, 2006. Subject: Guidelines on the conduct of Public Assemblies/Rallies to be held in designated place wherein freedom park is stated on the particular guidelines.

2.) In connection with the above reference, you are hereby directed to disperse those Illegal Assemblies/Rallies held at La Fraternidad, Davao Maharlikan along Secondary National Highway.

3.) Request favorable action to this order.


EDILBERTO E. GARCIA JR.
Municipal Mayor

OMB - MIN

²⁸⁴ Exhibit A-5

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While the accused claimed that the rally had actually started on August 4, 2006, Fr. Luis and the other rallyists established that their assembly only converged on August 5, 2006. Why then was the Dispersal Order immediately issued on August 6, 2006, merely one day after the inception of the assembly, if it was the intent of accused Garcia to establish a peaceful dialogue with the rallyists in the interest of maximum tolerance? One need only to carefully examine the evidence to see that it was the true plan of the accused to disperse the assembly from the beginning.

Upon learning of the rally in Barangay La Fraternidad, accused Garcia wasted no time in phoning Governor Erlpe Amante ("**Governor Amante**") for assistance.²⁸⁵ By presumably prodding Mayor Herman Libarnes ("**Mayor Libarnes**") through Governor Amante, accused Garcia was able to essentially borrow from Cabadbaran Fire Station a firetruck for the purpose of bringing the same to Barangay La Fraternidad to disperse the assembly thereat. The request for said vehicle had been confirmed by accused Paduganan, Fire Chief of Cabadbaran, who pertinently recalled that his office had received a request for assistance from accused Garcia and Governor Amante, in this wise.²⁸⁶

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8. Question: How about on 5 August 2006, did you go to Barangay La Fraternidad?

Answer: No, Ma'am. Only in the police station of Tubay.

9. Question: Why?

Answer: Initially, on said date, my attention was called by our **Regional Director that the Mayor of Tubay and the Governor of Agusan del Norte were asking for assistance. Per Mission Order dated 5 August 2006 (Exhibit 32), which was given to me, [my staff and I] went to the police station of Tubay. We were made to stay there and wait for instructions from the Chief of Police Benny Esparagoza.**

10. Question: You said that you were given a Mission Order to go to Tubay, please tell this Honorable Court what transpired before you went to Tubay?

Answer: On 5 August 2006 at [3:00 p.m.], the station where I am assigned received a memorandum request from the O.I.C. of Tubay, [Municipal] Police Station for a Fire Truck to be used in the dispersal of an illegal rally held right in the middle of a barangay road at La Fraternidad, Tubay, Agusan del Norte.

11. Question: What happened next[,] if any?

Answer: Acting as the Municipal Fire [Marshal] of the station of the Bureau of Fire Protection of Cabadbaran, Agusan del Norte, I immediately called and informed the Office of the Provincial Fire [Marshal] (OPFM), [C/Insp.] Gloria G. Gutierrez about the subject request. The OPFM said that

²⁸⁵ Judicial Affidavit dated July 10, 2018 of accused Garcia (Records, Vol. 4, p. 331)

²⁸⁶ Judicial Affidavit dated June 13, 2018 of accused Paduganan (Records, Vol. 4, pp. 276-277)

I have to get a clearance from the office of the Regional Director, F/Supt. Alejandro M. Cagampang.

12. Question: What happened after, if any?

Answer: Moments later, [F/Supt.] Alejandro M. Cagampang called the station that Mayor Fidel Garcia called him and asked for assistance and as to the availability of a fire truck. He gave instruction to me as Acting Municipal Fire Marshal, that he has confirmed and given clearance to the request provided that the [L]ocal [C]hief Executive in Cabadbaran, Mayor Herman M. Libarnes[,] will confirm and approve the request. (Emphasis supplied)

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Evidence disclosed accused Esparagoza had also made a request to Cabadbaran Fire Station to secure the use of a firetruck. The Mission Order dated August 5, 2006 stated:²⁸⁷

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PURPOSE : To provide assistance as per request by the Chief of Police of Tubay P/Insp. Benny C. Esparagoza through his Memorandum received [by] this station on same date, requesting fire truck availability to be used in dispersal of illegal rallies thereat[.]

DURATION : -1900H to 2200H of Aug. 05 and 0400H to 1000H of Aug. 6, 2006

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There was no justification for the accused to cause a firetruck to be brought from Cabadbaran to the rally site if not for the sole purpose of the dispersal of the assembly. There was nothing on record which suggested that the firetruck would be put to use in Barangay La Fraternidad for the extinguishment of actual fires, or that the same would serve in a humanitarian role as a result of a water shortage in the area, *inter alia*. It was thus apparent that the intent of accused Garcia and Esparagoza in specifically requesting for said vehicle disclosed their goal to put an end to the public demonstration via dispersing the assemblyists through the use of the water turret.

By virtue of his power of administrative supervision over the local police force in his jurisdiction,²⁸⁸ accused Garcia specifically designated

²⁸⁷ Exhibit A-16

²⁸⁸ Pursuant to *Republic Act No. 6975*:

SECTION 51. Powers of Local Government Officials Over the PNP Units or Forces. — Governors and mayors shall be deputized as representatives of the Commission in their respective territorial jurisdiction. As such, the local executives shall discharge the following functions:

XXX XXX XXX

(b) City and Municipal Mayors — (1) Operational Supervision and Control. The city and municipal mayors shall exercise operational supervision and control over PNP units in their respective jurisdiction except during the thirty (30) day period immediately preceding and the thirty (30) days following any national, local and barangay elections. During the said period, the local police forces shall be under the supervision and control of the Commission on Elections.

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accused Esparagoza as the **ground commander** to oversee the dissolution of the assembly.²⁸⁹ This act would prove to be significant. Accused Esparagoza was identified by the rallyists as the one who had been telling them to disperse,²⁹⁰ and had explicitly issued them a warning that, “you have to disperse in 5 minutes or else the firetruck will operate.”²⁹¹ In his capacity as the ground commander, accused Esparagoza then issued the command to deploy the water cannon against the assemblyists gathered at Barangay Fraternidad. This was revealed by accused Paduganan:²⁹²

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19. Question: What happened after, if any?

Answer: At about 4:00 in the morning of 6 August 2006, we were told again to go to Tubay for assistance. We were met by P.N.P. Provincial Director P/Sr. Supt. Jerome P. Pagaragan and the local police of Tubay headed by P/Insp. Benny Cristobas Esparagoza who acted as the ground commander. It would appear that the rallyists never left and stayed on until the following day.

20. Question: What happened after, if any?

Answer: After a long negotiation with the rallyists, P/Insp. Esparagoza, acting Municipal Police Marshal, decided to disperse the rally and ordered by firemen to use the water cannon. (Emphasis supplied)

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The After Mission Report²⁹³ dated August 16, 2006, executed by the firefighters of Cabadbaran Fire Station, corroborated the fact that accused Esparagoza, indeed, issued the command to unleash the water cannon. A copy of said Report, obtained by Seldio L. Pilongo, former Chief Investigator of the Commission on Human Rights, Caraga Region, read:

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-0400H of Aug. 06, 2006, duty detailed firefighters headed by SFO3 Dionesio E. Paduganan MFM [Municipal Fire Marshal], SFO1 Sacol, FO3 Tale, FO2 Bisoy and FO1 Paduganan together with the firefighting

The term 'operational supervision and control' shall mean the power to direct, superintend, and oversee the day-to-day functions of police investigation of crime, crime prevention activities, and traffic control in accordance with the rules and regulations promulgated by the Commission.

It shall also include the power to direct the employment and deployment of units or elements of the PNP, through the station commander, to ensure public safety and effective maintenance of peace and order within the locality. For this purpose, the terms 'employment' and 'deployment' shall mean as follows: (Emphasis supplied)

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²⁸⁹ TSN dated July 18, 2018 (afternoon), p. 62

²⁹⁰ TSN dated August 16, 2012, p. 6

²⁹¹ TSN dated March 20, 2013 (morning) pp. 38-39

²⁹² Judicial Affidavit dated June 13, 2018 of accused Paduganan (Records, Vol. 4, p. 278)

²⁹³ Exhibit A-15

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government officials on-duty at Barangay La Fraternidad. Accused Esparagoza was then positively identified as the person who issued the command to deploy the water cannon. Based on these premises, it is therefore clear that both accused Garcia and accused Esparagoza must be held responsible for their undeniable participation in the dispersal of the rally.

But pertaining to Police Provincial Director accused Pagaragan, police officer accused Dultra, Fire Chief accused Paduganan, and firefighter accused Sacol, did the evidence show that they, too, should be equally liable in the dispersal of the rally?

The answer to this question is in the negative, for each of the above-named accused, as will be shown hereunder.

NOTHING ON RECORD PINNED THE RESPONSIBILITY OF FIRING THE WATER CANNON ON POLICE PROVINCIAL DIRECTOR ACCUSED PAGARAGAN. TRUTH IS, HE WAS AT THE RALLY SITE FOR LEGITIMATE REASONS: FIRST, HE WAS DUTY BOUND AS A POLICE OFFICIAL TO KEEP PEACE AND ORDER WITHIN HIS AREA OF RESPONSIBILITY, WHICH INCLUDED BARANGAY LA FRATERNIDAD, AND SECOND, HE HAD BEEN DIRECTLY ORDERED BY THE GOVERNOR TO GO TO BARANGAY LA FRATERNIDAD TO ESTABLISH A DIPLOMATIC SOLUTION TO THE RALLY.

Without a doubt, accused Pagaragan was at the rally at Barangay La Fraternidad on August 5, 2006. This was so because Governor Amante directly phoned accused Pagaragan and ordered him to establish a dialogue with the rallyists.²⁹⁴ This was a lawful order by Governor Amante in his capacity as the chief executive official of the provincial government, under *Republic Act No. 7160* ("*R.A. 7160*"), otherwise known as the *Local Government Code of 1991*, viz:²⁹⁵

SECTION 465. The Chief Executive: Powers, Duties, Functions, and Compensation. — (a) The provincial governor, as the chief executive of the provincial government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

²⁹⁴ Judicial Affidavit dated January 4, 2019 of accused Pagaragan (Records, Vol. 4, p. 441)

²⁹⁵ An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160, § 465 (1991)

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(b) For efficient, effective and economical governance the purpose of which is the general welfare of the province and its inhabitants pursuant to Section 16 of this Code, the provincial governor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the provincial government, and in this connection, shall:

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(2) Enforce all laws and ordinances relative to the governance of the province and the exercise of the appropriate corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the province and, in addition to the foregoing, shall:

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(vi) Call upon the appropriate national law enforcement agencies to suppress disorder, riot, lawless violence, rebellion or sedition or to apprehend violators of the law when public interest so requires and the police forces of the component city or municipality where the disorder or violation is happening are inadequate to cope with the situation or the violators;
(Emphasis supplied)

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Accused Pagaragan thus was bound by law to comply with the directive of Governor Amante. But his presence at the rally was further necessary due to his job as Police Provincial Director of Agusan del Norte. As a police officer, part of his responsibilities was to maintain peace and order and to ensure public safety in his area of operations, Agusan del Norte, to which Barangay La Fraternidad belonged. *Republic Act No. 6975 ("R.A. 6975")* provides:²⁹⁶

SECTION 24. Powers and Functions. — The PNP shall have the following powers and functions:

(a) Enforce all laws and ordinances relative to the protection of lives and properties;

(b) **Maintain peace and order and take all necessary steps to ensure public safety;**

(c) Investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution;
(Emphasis supplied)

²⁹⁶ An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and For Other Purposes [DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990], § 24

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The public demonstration at Barangay La Fraternidad necessarily alerted the police authorities as it caused a complete blockage of the road such that no vehicles could pass, much less access, the mining site located nearby. Clearly, there was a disruption of peace in Tubay. As a high-ranking police officer, accused Pagaragan had the legal duty to maintain public order in said Barangay, which justified his presence thereat. Not only that, he had already been given such directive by Governor Amante. Accused Pagaragan thus had to try to find a diplomatic resolution for the conflict between the rallyists and the mining firm.

However, it has not been established by the prosecution that accused Pagaragan had a direct hand in the firing of the water cannon against the assemblyists. In the first place, no witness has identified accused Pagaragan as the one who commanded the firefighters to fire the water cannon, or that he had ordered the Fire Chief of Cabadbaran to send a firetruck to Barangay La Fraternidad. Secondly, while accused Pagaragan outranked and was the superior of accused Esparagoza, the latter admitted during trial that he never received any instruction from the former at the rally:²⁹⁷

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CHAIRPERSON:

You were not furnished a copy of that Report?

WITNESS:

Yes, [Y]our Honor.

CHAIRPERSON:

But it says that you are very assertive in giving directives, instead of simply doing nothing and awaiting the back[-]up order of the immediate superior?

WITNESS:

With your permission, [Y]our Honor, I will try to explain.

In a police operation, [Y]our Honor, I need to wait for further instructions before I take any action.

AJ TRESPESES:

Further instructions from whom?

WITNESS:

From my superior, referring [to] P/SSupt. Jerome Pagaragan, [Y]our Honor.

Q In connection with that, [M]r. [W]itness, you claimed that you did not receive any instruction from Chief Pagaragan, correct?

²⁹⁷ TSN dated February 19, 2019, pp. 10-12

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A Yes, sir.

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CHAIRPERSON:

Okay.

Q Mr. [W]itness, in connection with this paragraph, you mentioned that you saw somebody in civilian clothes completely orchestrating the fire [marshal] and [firetruck], what do you mean by saying, "orchestrating[?]" [A]re they the ones making orders to the fire [marshal]? Is that what you are trying to say?

A I beg your pardon, sir?

Q Are you trying to impress upon this Court that the ones who ordered the dispersal or use of [the] water cannon were civilians? They were the ones who gave orders to the BFP personnel?

A Yes, sir.

Q So, did you verify the identities of these alleged civilians who gave orders to the [BSP] personnel?

A **As what I said, during that time, in the presence of my superior officer, I took his command.** (Emphasis supplied)

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As narrated by accused Esparagoza, it was he, not accused Pagaragan, who took up the reins of command during the rally, and the reason therefor was obvious: accused Esparagoza was acting as the incident or ground commander at the rally. In other words, accused Pagaragan was *not* calling the shots, especially the order to deploy the water cannon; neither had accused Pagaragan made requests to Cabadbaran Fire Station for the use of a firetruck. What was only apparent in accused Pagaragan's actions was that he had approached the organizers of the assembly, had established a dialogue with them as ordered by the Governor, and had simply requested them to remove the barricades on the road and transfer the assembly to the freedom park.²⁹⁸ Accused Pagaragan, therefore, should not be held liable for the firing of the water cannon, absent any direct evidence to the contrary.

To reiterate, accused Pagaragan took a backseat role at the rally. At the helm was accused Esparagoza alone who had control of the government forces at the rally site by virtue of his appointment as ground commander by accused Garcia. It was also accused Esparagoza who had made a request for a firetruck to Cabadbaran Fire Station to be put to use in the dispersal of the rally. Moreover, none other than accused Esparagoza was pinpointed as the person who had issued the directive to fire the water cannon at the assemblyists.

²⁹⁸ Judicial Affidavit dated January 4, 2019 of accused Pagaragan (Records, Vol. 4, p. 444)

ACCUSED DULTRA WAS ONLY PRESENT AT THE RALLY BY VIRTUE OF HIS DUTY AS A POLICE OFFICER TO OVERSEE THE PEACE AND ORDER OF THE COMMUNITY, BUT HE DID NOT TAKE ACTIVE PARTICIPATION IN THE DISPERSAL OF THE ASSEMBLY.

In its Memorandum, the prosecution opined that accused Dultra carried out illegal orders by spying, in civilian clothes, on the assemblyists, which supposedly violated the Sections 9 and 10 (a) of *B.P. 880*,²⁹⁹ which essentially prescribes that *police officials at rallies must observe the 100-meter distance rule, and that said officials must wear complete uniform prominently displaying their nameplates and the unit to which they belong*. However, said provisions were not the kernel of the charges against accused Dultra.

The specific provision of *B.P. 880* for which accused Dultra was indicted was only in relation to Section 10 (c), in *Criminal Case No. SB-11-CRM-0266*, which essentially alleged that he conspired in *unlawfully dispersing a public assembly through the use of a water cannon in the absence of actual violence, serious threats of violence, or deliberate destruction of property*. Put differently, nowhere was accused Dultra indicted for his alleged violations of Sections 9 and 10 (a) of *B.P. 880*.

In *People v. Paglinawan*,³⁰⁰ the Supreme Court pronounced, “[t]he Constitution is clear that an accused has the right to be informed of the nature and cause of the accusation against him. Hence, a person cannot be convicted of a crime for which he has not been charged, otherwise, he would be denied the due process of law.” Heeding this doctrine, it is thus beyond cavil that accused Dultra cannot be convicted for Violations of

²⁹⁹ The cited provisions read:

Section 9. Non-interference by law enforcement authorities - Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meter away from the area of activity ready to maintain peace and order at all times.

Section 10. Police assistance when requested - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of “maximum tolerance” as herein defined; xxx (Emphasis supplied)

³⁰⁰ *Vide*: G.R. No. 123094, January 31, 2000

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Sections 9 and 10 (a) of *B.P. 880* because the commission thereof was never alleged in the Informations.

As it were, accused Dultra only went to the rally site at Barangay La Fraternidad because he was then assigned at the Tubay Police Station, and the Police Chief, accused Esparagoza, announced that a public assembly was being held thereat.³⁰¹ Necessarily, accused Dultra had to obey his commanding officer, and his presence was required at the rally site. Furthermore, the assembly itself was well-within the jurisdiction of police matters, which is obvious to ensure peace and public order.³⁰²

However, it cannot be said that accused Dultra had directly participated in the dispersal of the assemblyists. It is noteworthy that he was an intelligence officer and investigator; he was neither part of the dispersal team, or was the negotiation team.³⁰³ It is also highlighted that at the time of the rally, accused Dultra was only holding the rank of Police Officer 3, and as such, he was far outranked by both Police Chief accused Esparagoza and Police Provincial Director, accused Pagaragan. Given the presence of accused Dultra's superior officers and the chain of command in the PNP, accused Dultra had zero authority to command the dispersal of the assembly.

Moreover, none of the witnesses had pinpointed accused Dultra in the firing of the water cannon against the rallyists. Prosecution witness Jecelyn Regala, one of the rallyists, could not fault accused Dultra for the dispersal that occurred. As far as her recollection of the events, Jecelyn Regala remembered that accused Dultra helped in dismantling the physical obstructions placed by the rallyists on the road, but she could not point her finger at him as the one who had dispersed the rallyists. Additionally, Jecelyn Regala went on to say that accused Dultra had only been named in the complaint because she merely heard of his name.³⁰⁴

XXX XXX XXX

ATTY. YU

Q Madame Witness, you said in your Complaint Affidavit that is attached to your Judicial Affidavit that a certain Police Officer [Warren] Dultra came in only after the water cannon was used and only because he helped in dismantling what remained of the makeshift tent and other obstructions that you placed on the ground, do you remember having stated that in your Complaint Affidavit?

A Yes, [ma'am]

³⁰¹ Judicial Affidavit dated May 9, 2018 of accused Dultra (Records, Vol. 4, pp. 2-3)

³⁰² DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990, § 24

³⁰³ Judicial Affidavit dated May 9, 2018 of accused Dultra (Records, Vol. 4, p. 3)

³⁰⁴ TSN dated July 10, 2013, pp. 19-21

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Q So you confirm that he was not part of the team which dispersed your group but a person who just helped all of you dismantle the other tents that remained?

A He was with the group.

Q Which group, the mining company group or the group of the policemen?

A He was with the group of policemen.

Q Do you personally know Mr. Dultra?

A No [ma'am].

Q Can you identify him?

A No, [ma'am].

Q Why did you put here that a certain Police Officer [Warren] Dultra came in to dismantle what remained of the makeshift tents if you do not know him and you do not recognize him?

WITNESS

A Because many police officers went there to dismantle the barricade.

ATTY. YU

Q So how many policemen were there?

A I cannot estimate.

Q So this is just a guess, that most likely one of them is named [Warren] Dultra?

A I just heard of his name, [ma'am].

Q You heard his name in the Province of Agusan del Norte?

A I heard his name from my companions.

Q So basically you merely included his name because somebody told you that most likely there is a policeman named [Warren] Dultra being talked about in the [Municipality] of Tubay?

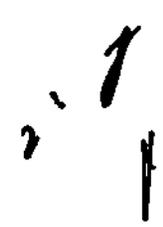
A Yes, [ma'am].

Q And you did not even know or identify the other policemen which you said you saw among the people who were part of the dispersal team?

A I do not know, [ma'am].

XXX XXX XXX

Considering that accused Dultra could not be positively identified by witnesses to have participated in the actual dispersal, via water cannon, against the rallyists, that he did not have the command authority to issue the order to deploy said cannon, and that he was only present at the assembly site by virtue of his duty to keep the peace, he cannot be faulted for the firing of the water cannon against the rallyists.



THE PRESENCE OF FIREFIGHTERS ACCUSED PADUGANAN AND SACOL WAS DUE TO THEIR COMPLIANCE TO THE ORDER BY THEIR SUPERIORS THAT THEY BE PRESENT AT THE RALLY TO RENDER ASSISTANCE TO THE POLICE OFFICERS. BUT NEITHER OF THEM HAD PHYSICALLY OPERATED THE WATER CANNON, AND IT WAS NOT THEM WHO ISSUED THE COMMAND TO DEPLOY SAID CANNON.

While rendering medical aid could be a secondary mission of a BFP firefighter, keeping the peace is not explicitly among the primary functions of said Organization's responsibilities, which are defined by *R.A. 6975*, as follows.³⁰⁵

SECTION 54. Powers and Functions. — The Fire Bureau shall be responsible for the prevention and suppression of all destructive fires on buildings, houses and other structures, forest, land transportation vehicles and equipment, ships or vessels docked at piers or wharves or anchored in major seaports, petroleum industry installations, plane crashes and other similar incidents, as well as the enforcement of the Fire Code and other related laws.

The Fire Bureau shall have the power to investigate all causes of fires and, if necessary, file the proper complaints with the city or provincial prosecutor who has jurisdiction over the case.

Essentially, considering that the public assembly at Barangay La Fraternidad was a dispute between the locals and the mining company operating nearby which resulted in the total obstruction of the road in said area, the event was clearly not within the primary area of responsibilities of BFP firefighters; rather, the rally was part and parcel of the jurisdiction of the PNP, or other law enforcement officials, being intimately related to the maintenance of peace and order. Nonetheless, the necessity of the presence of Fire Chief accused Paduganan and firefighter Sacol stemmed from a direct order by their superiors to bring one of the Station's firetrucks to the rally site. Accused Paduganan recalled that Mayor Libarnes and Governor Amante both relayed the request for assistance by accused Garcia, and that said request had been duly approved by his superior officer F/Supt. Alejandro Cagampang,³⁰⁶ in this wise:³⁰⁷

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³⁰⁵ DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990, § 54

³⁰⁶ Also referred to as "Colonel Cagampang"

³⁰⁷ TSN dated July 18, 2018 (morning), pp. 31-35

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ATTY. DY

Q In paragraph 4 of your Answer, Mr. Witness, you claimed that Mayor Herman Libarnes of Cabadbaran City informed you that the Mayor of Tubay and the Governor of Agusan del Norte asked your assistance with regard to the rally in La Fraternidad, Tubay. Do you recall having made that statement?

A Yes, Sir.

Q By the way, who is this Mayor of Tubay you are referring to?

WITNESS

A He is Mayor Fidel Garcia, Sir.

XXX XXX XXX

Q Did you verify personally from Mayor Fidel Garcia of Tubay as to the instruction of your director for you to proceed to the [M]unicipality of Tubay?

A At that time, I no longer have the time to verify from Mayor Garcia. I received the call from [Colonel] Cagampang approving the instruction for us to proceed to Tubay.

AJ JACINTO

Q As a fireman, if you receive an order from your immediate superior, do you still have to confirm if that order really exists or you just obey what orders you received?

A I confirmed, [Y]our [H]onor, from our Provincial Fire [Marshal] if we are to proceed. If our Provincial Fire [Marshal] tells us to go, Sir, then we will do that because there's already been an instruction.

CHAIRPERSON

Q What if there is no instruction from your Regional Director, there's a mere request from the Mayor or Governor, would you respond?

A No, [Y]our Honor, because we have to ask permission first from our Provincial Director.

Q In other words, who do you consider to have immediate control and supervision over you, will it be the local government unit as represented by the Mayor or your Director, Regional or Provincial Director?

A First, our immediate supervisor is the [L]ocal [C]hief [E]xecutive, Mayor Herman Libarnes.

ATTY. DY

Q In paragraph 12 of your testimony, again, Mr. Witness, you claimed that it was your Fire Supt. Alejandro Cagampang who called your station that Mayor Fidel Garcia who called your superintendent asking for assistance for the availability of a firetruck. Do you recall having made that statement?

A Yes, Sir. (Emphasis supplied)

XXX XXX XXX

None of the evidence, however, placed the responsibility of the dispersal of the rallyists squarely on the shoulders of accused Paduganan and Sacol. While accused Paduganan was the Fire Chief of Cabadbaran, and necessarily therefore, the ranking BFP official on-scene at the rally site, he was not the ground commander who was in-charge of the public officials overseeing the public assembly, which role was filled by accused Esparagoza. To be sure, it is reiterated that the demonstration was a police matter, not an incident attended by any actual fires, water shortages, and other matters which would necessitate the action of firefighting personnel and equipment.

To recall, it bears stressing that the dispersal of the rallyists was squarely the province of the officer-in-charge, accused Esparagoza, who was positively identified as having given the command to fire the water cannon. It was relevant that said command was specifically directed to accused Felipe Tale,⁺ who was then operating the water cannon during the rally. The After Mission Report³⁰⁸ dated August 16, 2006 was illuminating, viz:

XXX XXX XXX

-0400H of Aug. 06, 2006, duty detailed firefighters headed by SFO3 Dionesio E. Paduganan MFM [Municipal Fire Marshal], SFO1 Sacol, FO3 Tale, FO2 Bisoy and FO1 Paduganan together with the firefighting apparatus proceed[ed] to the said area (Tubay ADN [Agusan del Norte]) and immediately coordinate[ed] [with] P/Insp. Esparagoza Acting Mun. Police Marshal.

-0700H After the mass and long nego[t]iation with the rallyist[s], still they refused to [disperse] and [thereafter] P/Insp. Esparagoza, Acting Mun. Police Marshal ordered the firefighter to [use] the water cannon and immediately FO3 Tale follow[ed] the order and spray[ed] the rallyist[s] using the turret.

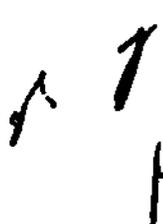
-0745H Rallyist[s] withdr[e]w their post.

XXX XXX XXX

Because he was not the one physically operating the water cannon, nor did he shout the order to deploy the same, accused Paduganan should not be responsible for the dispersal of the assemblyists. To emphasize, his presence was only pursuant to the marching order given by his superiors, F/Supt. Alejandro Cagampang and Mayor Libarnes, to accede to the requests by accused Garcia and accused Esparagoza to provide the services of a firetruck at the rally site.

On the other hand, accused Sacol merely drove the firetruck to Barangay La Fraternidad because that was his responsibility as the on-duty driver on August 6, 2006. Additionally, accused Sacol was only following a

³⁰⁸ Exhibit A-15



directive from his superior, Fire Chief accused Paduganan. During his cross-examination, accused Sacol stated:³⁰⁹

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PROSECUTOR DELA TORRE:

Q So, different. If that is a different assignment, why did you mention earlier that you were assigned (paused) I will rephrase my question, Your Honors.

What was your basis when you proceeded to the Municipality of Tubay, is this the document or the other document that you mentioned?

XXX XXX XXX

WITNESS:

A This Order referring to Exhibit "A-16" was addressed to my chief and the negotiation was between them and I was just ordered by my chief to drive to Tubay, sir.

PROSECUTOR DELA TORRE:

Q Mr. Witness, when you proceeded to the Municipality of Tubay from Cabadbaran, were you furnished with this Mission Order?

WITNESS:

A I was verbally instructed, sir.

PROSECUTOR DELA TORRE:

Q So, why did you say, why did you attach this particular exhibit if the order to you was a mere verbal instruction and not for this particular document?

WITNESS:

A As part of the attachments, sir, because there was a verbal order but I always follow what my chief [says], sir.

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CHAIRPERSON:

Nonetheless, Prosecutor Dela Torre, he said that that Mission Order was not even given to him.

Q But nonetheless, Mr. Sacol, if there is an instruction that there is supposed to be a firetruck to be used in the dispersal, of an illegal rally as stated in the Mission Order, who is designated in the Bureau of Fire Protection to drive a firetruck?

WITNESS:

A I[,] Your Honors.

CHAIRPERSON:

³⁰⁹ TSN dated May 29, 2018, pp. 104-108

Q Is there no other?

WITNESS:

A No other, ma'am, because I was the one on-duty [at] that time, Your Honors.

CHAIRPERSON:

Q That was August 6, 2006?

WITNESS:

A Yes, Your Honors.

CHAIRPERSON:

Q Your designation is a?

WITNESS:

A Firetruck Driver, Your Honors.

ASSOCIATE JUSTICE TRESPESES:

Q How many Firetruck Drivers are there in your particular station?

WITNESS:

A There are two (2) Firetruck Drivers, Your Honors.

ASSOCIATE JUSTICE TRESPESES:

Q You are one of the two?

WITNESS:

A Yes, Your Honors.

ASSOCIATE JUSTICE TRESPESES:

Q And during that time, you were on duty?

WITNESS:

A Yes, Your Honors. (Emphasis supplied)

XXX XXX XXX

The responsibility for the dispersal of the public assembly at Barangay La Fraternidad could not be traced back to accused Paduganan and Sacol based on the foregoing circumstances.

CONSPIRACY WAS NOT ESTABLISHED TO LINK ACCUSED PAGARAGAN, DULTRA, PADUGANAN, AND SACOL TO THE CRIMES CHARGED.

Without the direct participation of accused Pagaragan, Dultra, Paduganan, and Sacol in the violent dispersal of the assembly, it is difficult to

accuse them of sharing a common criminal goal with that of accused Garcia and Esparagoza. In *People v. Salga*,³¹⁰ the Supreme Court teaches:

We need to stress, too, that the community of design to commit an offense must be a conscious one; and that conspiracy transcends mere companionship. Hence, mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose. (Emphasis supplied)

As per the above jurisprudence, mere presence at the scene of the crime does not equate to conspiracy. As has been discussed, even if accused Pagaragan, Dultra, Paduganan, and Sacol were bodily present at the rally at Barangay La Fraternidad, this was so because they each had their own respective responsibilities: police officers accused Pagaragan and Dultra had been ordered by their superiors to oversee the public assembly, and the same was essentially a police matter being intimately related to peace and order; and on the other hand, accused Paduganan and Sacol, too, had been commanded by their respective bosses to render assistance at the rally site, but this assistance did not extend to firing the water cannon, or ordering its deployment at the rallyists. In other words, it has not been adequately proven by the prosecution that said accused took active participation in the dispersal of the rallyists by water cannon on August 6, 2006. Conspiracy is thus absent with respect to accused Pagaragan, Dultra, Paduganan, and Sacol.

What now remains to be seen is who among the accused should be liable for the crimes charged in these cases.

Criminal Case No. SB-11-CRM-0265
(for Prohibition, Interruption, & Dissolution of Peaceful Meetings filed
under Article 131, paragraph 3 of the Revised Penal Code)

Involved in *Criminal Case No. SB-11-CRM-0265* are:³¹¹ accused Garcia, Esparagoza, Pagaragan, and Paduganan.

Article 131, paragraph 3 of the *Revised Penal Code* provides:

Art. 131. Prohibition, interruption, and dissolution of peaceful meetings. - The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.

The same penalty shall be imposed upon any public officer or employee who shall hinder any person from joining any lawful association or from attending any of its meetings.

³¹⁰ G.R. No. 233334, July 23, 2018

³¹¹ *Supra*, note 1

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The same penalty shall be imposed upon any public officer or employee who shall prohibit or hinder any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances. (Emphasis supplied)

As can be gleaned from the above provision, the essential elements constituting the crime of *Prohibition, Interruption, and Dissolution of Peaceful Meetings* are: (a) that the offender is a public officer or employee; and (b) that he or she commits any of the acts prohibited under Article 131 of the *Revised Penal Code*.

In this case, the evidence will show that:

ACCUSED GARCIA, ESPARAGOZA, PAGARAGAN, AND PADUGANAN WERE ALL PUBLIC OFFICERS AT THE TIME MATERIAL TO THESE CASES.

The parties entered into stipulations on the public positions held by the accused at the time of the incident complained of, namely:³¹² accused Garcia was Municipal Mayor of Tubay, Agusan del Norte; accused Esparagoza was Police Chief of Tubay; accused Pagaragan was Police Provincial Director of Agusan del Norte; and accused Paduganan was Fire Chief of Cabadbaran, Agusan del Norte.

The *first element* is thus established.

ACCUSED GARCIA AND ESPARAGOZA SHOULD BEAR THE RESPONSIBILITY FOR DISSOLVING THE PUBLIC ASSEMBLY IN LA FRATERNIDAD, TUBAY, AGUSAN DEL NORTE, WHICH EFFECTIVELY PROHIBITED THE RALLYISTS FROM CONTINUING WITH THEIR ACTION OF PETITIONING THE AUTHORITIES TO REDRESS THEIR GRIEVANCES AGAINST LOCAL MINING OPERATIONS.

Records show that, on August 5, 2006, Fr. Luis accompanied by several farmers and fisherfolk staged a public demonstration on a road in Barangay La Fraternidad, Tubay, Agusan del Norte denouncing the local mining operations nearby, and seeking an audience with then Secretary Reyes of the DENR.³¹³ While the public meeting was held on a road, the mere fact that it was used by the public did not characterize the same as a public property or a

³¹² Amended Pre-Trial Order dated August 14, 2012 (Records, Vol. 4, pp. 19-40)

³¹³ Exhibit Y

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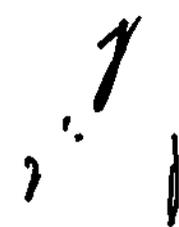
Barangay Road. To emphasize, the rallyists held their demonstration on the private property of Maximo Page under OCT No. RP-443(217), which title did not contain any annotations indicating that any portion of it had been subject of expropriation proceedings or legal easement by the Government. Absent such annotations, therefore, the property in its entirety remained privately owned. Being private property, all the rights of ownership granted by law resided with the owner thereof, such as the discretion to hold gatherings, meetings, or assemblies thereon. Consequently, it was unnecessary for the assemblyists to secure a permit to hold a rally from the Office of the Mayor, as expressly provided by Section 4 of *B.P. 880*.³¹⁴

SECTION 4. Permit When Required and When Not Required. —
A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, **no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.**
(Emphasis supplied)

In other words, all that was required for the approval of the demonstration on the said property was the consent of the heirs of Maximo Page, which consent had obtained by the fact that Aliore Page, an heir of Maximo Page, joined the demonstration.

The news of this assembly was inevitably picked up by accused Garcia, whose office presumably received complaints from the mining company due to the total blockage of the road frequently used by it, which halted its business operations. In response, accused Garcia promptly called Governor Amante, seeking assistance in the dispersal of the rally, and both of them were able to secure the services of a firetruck from Cabadbaran Fire Station, of which accused Paduganan was in-charge by virtue of his position as Fire Chief. Eventually, Mayor Libarnes and Colonel Cagampang, the superiors of Fire Chief accused Paduganan, approved the request for assistance of accused Garcia. It was also disclosed that accused Esparagoza, too, had requested the services of a firetruck from Cabadbaran Fire Station. Aside from securing aid from the BFP for the dispersal, Governor Amante also phoned accused Pagaragan, then Police Provincial Director, and ordered the latter to establish a dialogue with the rallyists. Meantime, accused Esparagoza, Police Chief of Tubay, was already at the rally site in Barangay La Fraternidad attempting to persuade the assemblyists to voluntarily move the venue of the assembly to the freedom park of Tubay, but to no avail.

³¹⁴ THE PUBLIC ASSEMBLY ACT OF 1985, § 4



In the morning of the second day of the rally on August 6, 2006, accused Garcia issued a Dispersal Order directing accused Esparagoza to disperse the public assembly, who had been designated as the ground commander for the incident. By this time, accused Pagaragan, accused Paduganan, and the firetruck arrived at the venue of the demonstration. Following the celebration of morning mass, accused Esparagoza issued a final warning giving the rallyists 5 minutes to dissolve their demonstration under threat of spraying the water cannon of the firetruck. Then, by virtue of his authority as the ground commander, accused Esparagoza personally issued the command to firefighter Felipe Tale⁺ to deploy the water cannon against the assemblyists. It was puzzling why accused Esparagoza issued such order because witnesses for both the prosecution and defense were one in testifying that the rally was characterized as normal and peaceful; in fact, no objects had been thrown at the police officers, nor were there any discharge of firearms by the assemblyists, and no property of the mining company had been destroyed. After the firetruck's water reserves had been depleted on the rallyists, some of them suffered injuries requiring medical attention which was evidenced by the Medical Certificates³¹⁵ of Estanislao M. Delima, Jr., Jecelyn Q. Regala, and Nelia Z. Urgel. At this point, the assemblyists were left with no choice but to end their demonstration, and the obstacles they had placed on the road were dismantled and cleared therefrom.

It is thus clear that the forceful dispersal of the rally was effected by the actions of accused Garcia and Esparagoza. As a result, the rallyists were prohibited, by force, from continuing the assembly, the purpose of which was to simply establish a dialogue with DENR Secretary Reyes to address environmental issues caused by local mining operations. The *second element*, therefore, obtains.

However, it is difficult to find fault against accused Pagaragan (Police Provincial Director of Agusan del Norte) and Paduganan (Fire Chief of Cabadbaran Fire Station) because, other than their mere presence at the rally site, said accused did not actively participate in the dispersal of the rallyists via the use of the water cannon. To recapitulate, neither accused Pagaragan or accused Paduganan had urged or prodded accused Esparagoza to unleash the water cannon. It was solely accused Esparagoza who was positively identified as having issued the order to fire the water cannon, which was manned by firefighter Felipe Tale,⁺ not accused Paduganan. Even if accused Pagaragan outranked accused Esparagoza, it was the latter who had the authority to give said command because he was designated as the ground commander, he was the Police Chief of Tubay in which the rally occurred, and he had been ordered by accused Garcia to dissolve the rally. Absent any clear, direct participation

³¹⁵ Exhibits A-9, A-11, and A-13

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in the crime complained of by accused Pagaragan and Paduganan, they should be excluded from responsibility therefor.

Moreover, among the justifying circumstances in Article 11 of the *Revised Penal Code* are:

ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:

XXX XXX XXX

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose. (Emphasis supplied)

The presence of both accused Pagaragan and Paduganan, respectively, was necessary under the circumstances. On one hand, accused Pagaragan necessarily had to be present at the rally site because, as a police officer, he was legally bound to ensure the maintenance of peace and order in Agusan del Norte, which included Tubay. Also, accused Pagaragan had been given a direct order from the Governor to try and establish a dialogue with the rallyists, which made his presence at the rally site all the more mandatory. On the other hand, the presence of accused Paduganan was required because he, too, was only following the orders from his superiors to go to the rally site, which directives were issued by Colonel Cagampang and Mayor Libarnes of Cabadbaran; accused Paduganan was left with no other choice but to comply therewith. Evidently, both accused Pagaragan and Paduganan merely acted in fulfillment of their duties as a police officer and firefighter, respectively. And they had been given orders by their respective superiors to be present at the rally site. They therefore cannot incur criminal liability based on the existence of justifying circumstances under Article 11 of the *Revised Penal Code*.

Criminal Case No. SB-11-CRM-0266
(for Violation of B.P. 880 [The Public Assembly Act of 1985])

Involved in *Criminal Case No. SB-11-CRM-0266* are:³¹⁶ accused Garcia, Esparagoza, Pagaragan, Dultra, Paduganan, and Sacol.

B.P. 880 enumerates mandatory rules that must be observed by police officials at public assemblies or rallies, among which prescribes when anti-riot devices, such as water cannons, may be lawfully deployed, viz.³¹⁷

³¹⁶ In view of the fact of death of accused Felipe Tale, the cases against him were dismissed by the Court in an Order dated July 18, 2018 (Records, Vol. 4, pp. 359-360) pursuant to Article 89 of the *Revised Penal Code*

³¹⁷ THE PUBLIC ASSEMBLY ACT OF 1985, § 10

Section 10. Police assistance when requested - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

(b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

(c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property. (Emphasis supplied)

Any violation of the aforecited provision is prohibited by Section 13 (f) of *B.P. 880*,³¹⁸ and the penalty therefor is defined under Section 14, *supra*.³¹⁹

SECTION 14. Penalties. — Any person found guilty and convicted of any of the prohibited acts defined in the immediately preceding section shall be punished as follows:

(a) violation of subparagraph (a) shall be punished by imprisonment of one month and one day to six months;

(b) violations of subparagraphs (b), (c), (d), (e), (f), and item 4, subparagraph (g) shall be punished by imprisonment of six months and one day to six years; (Emphasis supplied)

XXX XXX XXX

In this case, the accused claimed that the firing of the water cannon at the rallyists on August 6, 2006 was justified because of alleged reports that the armed members of the NPA had infiltrated the assembly at Barangay La Fraternidad, and that the latter planned to destroy the mining operations through the use of explosives.

³¹⁸ The provision relied upon states:

SECTION 13. Prohibited Acts. — The following shall constitute violations of this Act:

(f) Acts in violation of Section 10 hereof;
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³¹⁹ THE PUBLIC ASSEMBLY ACT OF 1985, § 14

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However, the evidence told a different tale; no actual or threatened violence, much less any deliberate destruction of the property of the mining company, or even threats thereof, pervaded the rally. It was even quite telling that the accused themselves freely admitted that the rally actually appeared to be normal and peaceful by all appearances. First, accused Dultra recalled that, other than some of the rallyists wearing handkerchiefs to cover their faces, no objects had been hurled at the police officers, and no persons had been illegally discharging any firearms. This was confirmed by accused Esparagoza who remarked that the assembly seemed to be just normal and peaceful. Second, accused Garcia, who had been remotely monitoring the rally, received no situational reports of any untoward incidents caused by the rallyists. Third, even witness Alicia Guday, then Barangay Chairperson of La Fraternidad, could not confirm the presence of any armed individuals when she went to the rally site on August 5, 2006. Finally, it was significant that accused Pagaragan remarked that he could not recall having received any intelligence of possible NPA attacks in Tubay during the time material to this case. This statement by accused Pagaragan was significant because, as the Police Provincial Director, he should have been privy to all reports concerning imminent plots of communist attacks against the towns and cities within his area of responsibility, including the Municipality of Tubay, and the fact that he could not confirm the existence of such reports undermines the veracity of the defense relied on by the accused. Absent any violence or destruction of property, threatened or actual, there was thus no valid justification for the firing of the water turret at the rally.

As it happened, accused Garcia was ultimately responsible for use of the water cannon against the rallyists even if he was not physically present at Barangay La Fraternidad. Accused Garcia specifically requested, through his political allies, the services of a firetruck from Cabadbaran. This request revealed the true intent of accused Garcia which was to forcefully disperse the rally. Firetrucks have absolutely no business being at rallies, if not for the purpose of dispersal, their primary purpose being to extinguish actual fires, or in a pinch, to provide temporary relief in case of a water shortage. Then, accused Garcia had ordered accused Esparagoza to disperse the rally, which was only on its second day, and the former designated the latter as the ground commander. This designation gave accused Esparagoza the full authority to control the police and fire units at the assembly. But what cemented his equal responsibility for the crime charged was accused Esparagoza's act of directing the firing of the water cannon. Because no violence or destruction of property occurred at the rally, it was thus unlawful to use the water cannon against the rallyists. Hence, accused Garcia and Esparagoza must be liable for contravening Section 10 (c) of *B.P. 880*.

On the other hand, it is difficult to find fault with the actions of accused Pagaragan, Dultra, Paduganan, and Sacol. None of the evidence pinpointed

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them as the person who directly ordered firefighter Felipe Tale⁺ to deploy the water turret, or that they had any active participation in its use. In fact, both accused Dultra and Sacol were respectively outranked by their superior officers, and as such, they had no authority to command the firing of the water cannon. Further, it is emphasized that accused Sacol merely stayed in the driver's seat of the firetruck because he was the designated driver on the day of the incident complained of. Additionally, the mere fact that accused Pagaragan, Dultra, Paduganan, and Sacol were present at the rally site does not *ipso facto* establish their liability. In truth, said accused were merely following orders given by their respective superiors to report to Barangay La Fraternidad, which they were bound to follow. This constituted the justifying circumstances of fulfillment of a duty and obedience to an order issued by a superior under Article 11 of the *Revised Penal Code*. Criminal liability, therefore, did not arise for the crime charged against Pagaragan, Dultra, Paduganan, and Sacol.

Criminal Case Nos. SB-11-CRM-0267 to 0269
(for Slight Physical Injuries filed under Article 266 of the Revised Penal Code)

Involved in *Criminal Case No. SB-11-CRM-0267 to 0269* are:³²⁰ accused Garcia, Esparagoza, Pagaragan, Dultra, Paduganan, and Sacol. The abovenamed accused were indicted for the wounding of three (3) persons, namely: Estanislao M. Delima, Jr. ("Delima"), Jecelyn Q. Regala ("Regala"), and Nelia Z. Urgel ("Urgel").

The crime of Slight Physical Injuries is defined and penalized under Article 266 of the *Revised Penal Code*:

ART. 266. Slight Physical Injuries and Maltreatment. — The crime of slight physical injuries shall be punished:

1. By arresto menor when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.
2. By arresto menor or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance. (Emphasis supplied)

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Delima, Regala, and Urgel all executed separate complaint-affidavits³²¹ averring that they were attendees of the rally and sustained injuries as a result of the dispersal of said assembly through the use of a water cannon on August

³²⁰ *Supra*, note 316

³²¹ Exhibits A-9, A-11, and A-13

6, 2006, and they appended medical certificates to attest to their injuries. Said certificates found that:

Name	Document	Finding/Injury
Jecelyn Q. Regala	Medical Certificate ³²² dated August 9, 2006	Confluent Abrasion, (R) elbow "xxx said condition will heal in 7 days."
Nelia Z. Urgel	Medical Certificate ³²³ dated August 9, 2006	Hematoma, (R) foot, (R) shoulder, back portion "xxx said condition will heal in 7 days."
Estanislao M. Delima, Jr.	Medical Certificate ³²⁴ dated August 9, 2006	Lacerated wound (R) leg 3 cm. "xxx said condition will heal in 7 days."

All of the above Medical Certificates were issued by the Cabadbaran City District Hospital, a government hospital. Since the attending doctors who issued said certificate are public officers in the performance of their official duties, the entries made are *prima facie* evidence of the facts stated therein.³²⁵

In *Jabalde v. People*, which cited *Villareal v. People*, the Highest Court pronounced.³²⁶

In order to be found guilty of the felonious acts under Articles 262 to 266 of the [Revised Penal Code], the employment of physical injuries must be coupled with dolus malus. As an act that is mala in se, the existence of malicious intent is fundamental, since injury arises from the mental state of the wrongdoer — iniuria ex affectu facientis consistat. If there is no criminal intent, the accused cannot be found guilty of an intentional felony. Thus, in case of physical injuries under the [Revised Penal Code], there must be a specific animus iniuriandi or malicious intention to do wrong against the physical integrity or well-being of a person, so as to incapacitate and deprive the victim of certain bodily functions. Without proof beyond reasonable doubt of the required animus iniuriandi, the overt act of inflicting physical injuries per se merely satisfies the elements of freedom and intelligence in an intentional felony. The commission of the act does not, in itself, make a man guilty unless his intentions are. (Emphasis supplied)

³²² Exhibit A-9

³²³ Exhibit A-11

³²⁴ Exhibit A-13

³²⁵ REVISED RULES ON EVIDENCE, rule 132, § 23

³²⁶ G.R. No. 195224, June 15, 2016 citing 680 Phil. 527 (2012)

In these cases, the *mens rea* of accused Garcia and Esparagoza to inflict physical injuries upon the rallyists – namely, against Delima, Regala, and Urgel – was manifest in their choice to bring the firetruck from Cabadbaran to the rally site, and to deploy the same against the assemblyists. There could not have been any other reason for the bringing of said vehicle to the rally were it not for the sole purpose of dispersing the rally; nothing on record suggests that the firetruck was to be used for its true purpose of fighting actual fires. As a rule, every person shall be held responsible for all the natural and logical consequences of their felonious act.³²⁷ Accused Garcia and Esparagoza must therefore bear the responsibility for the physical injuries inflicted to Delima, Regala, and Urgel, said wounds being the natural and logical consequences of the firing of the water cannon against them. On the basis that the injuries respectively inflicted upon Delima, Regala, and Urgel necessitated them to obtain medical attendance, and it was found that said wounds would heal in 7 days, which is well-within the period of 1 to 9 days prescribed by *Revised Penal Code*, the crime committed by accused Garcia and Pagaragan amounted to Slight Physical Injuries.

Yet, the same conclusion does not obtain against Pagaragan, Dultra, Paduganan, and Sacol, whose participation in the rally essentially amounted to their mere presence thereat; no evidence has been established proving that they intended to physically harm the rallyists. They therefore did not incur criminal liability for their actions.

Criminal Case No. SB-11-CRM-0270
(for Grave Coercion under Article 286 of the *Revised Penal Code*)

Involved in *Criminal Case No. SB-11-CRM-0266* are:³²⁸ accused Garcia, Esparagoza, Pagaragan, Dultra, Paduganan, and Sacol.

Article 286 of the *Revised Penal Code* defines and punishes the crime of *Grave Coercion*, as follows:

ARTICLE 286. Grave Coercions. — The penalty of prisión correccional and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed upon any person who, without any authority of law, shall, by means of violence, threats, or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed in violation of the exercise of the right of suffrage, or for the purpose of compelling another to perform any

³²⁷ *People v. Buenamer*, G.R. No. 206227, August 31, 2016

³²⁸ *Supra*, note 316

religious act, or to prevent him from exercising such right or from so doing such act, the penalty next higher in degree shall be imposed.

The elements of the above crime are:³²⁹

1. That a person is prevented by another from doing something not prohibited by law, or compelled to do something against his or her will, be it right or wrong;
2. That the prevention or compulsion is effected by violence, threats or intimidation; and
3. That the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.

A review of the evidence on record will reveal that:

The employment of the water turret against the rallyists on August 6, 2006 abruptly ended the public demonstration, at Barangay La Fraternidad, which had been staged based on the rallyists' constitutional right to peaceably assemble. This proved the existence of the *first element*.

Undeniably, the dissolution or dispersal of said assembly was violently effected through the firing of a water cannon, which resulted in the inflicting of physical injuries upon the rallyists, including Delima, Regala, and Urgel, which injuries required them to seek medical treatment. The *second element* is thus present.

However, accused Garcia and Esparagoza had no right to disperse the rally. To recapitulate, although the public meeting was held in the middle of a road in Barangay La Fraternidad, that portion of the road on which the demonstration was staged was within the bounds of the private property of Maximo Page under OCT No. RP-443(217). Being private property, the lawful owner thereof was entitled to exercise all the rights of ownership granted by law, which includes the right to peaceably assemble. It was thus unnecessary for the assemblyists to secure a permit to hold a rally from the Office of the Mayor, as per *B.P. 880*.³³⁰ All that was needed by the rallyists to stage said demonstration on said property was to secure the approval of the heirs of Maximo Page, particularly Aliore Page, and the consent of the latter

³²⁹ *Alejandro v. Bernas*, G.R. No. 179243, September 7, 2011

³³⁰ As per Section 4 of *B.P. 880*, to wit:

SECTION 4. Permit When Required and When Not Required. — A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act. (Emphasis supplied)

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was manifest by the fact that said person even joined the demonstration. The *third element*, therefore, obtains.

Since accused Garcia and Esparagoza had no legal basis in dissolving the rally, which prevented the rallyists from continuing their assembly, they alone should bear responsibility for the crime of Grave Coercion, absent any participation in the dispersal thereof by accused Pagaragan, Dultra, Paduganan, and Sacol.

All told, with respect to accused Garcia and Esparagoza, the prosecution established, beyond reasonable doubt, the existence of all the elements of the following crimes for which they had been charged, to wit:

- A. **Prohibition, Interruption, & Dissolution of Peaceful Meetings** under Article 131, paragraph 3 of the *Revised Penal Code* in *Criminal Case No. SB-11-CRM-0265*;
- B. **Violation of Section 10 (c) of B.P. 880** in *Criminal Case No. SB-11-CRM-0266*;
- C. **Slight Physical Injuries** under Article 266 of the *Revised Penal Code* in *Criminal Case Nos. SB-11-CRM-0267 to 0269*; and
- D. **Grave Coercion** under Article 286 of the *Revised Penal Code* in *Criminal Case No. SB-11-CRM-0270*.

The conviction of accused Garcia and Esparagoza for the abovementioned felonies is thus warranted. There being conspiracy present, said accused are equally liable pursuant to the rule that when conspiracy is established, the responsibility of the conspirators is collective, not individual, rendering all of them equally liable regardless of the extent of their respective participations.³³¹

On the other hand, the prosecution did *not* establish all of the elements of the crimes with which accused Pagaragan, Dultra, Paduganan, and Sacol were respectively charged *nor* did it prove that said accused conspired with their co-accused Garcia and Esparagoza. Following the doctrine in *People v. Salga*, that “mere presence at the scene of the crime does not in itself amount to conspiracy . . . absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose[.]”³³² their acquittal is in order. Under the circumstances, their presence was even necessary owing to their respective duties as police and fire officials, especially so considering that they were ordered by their superiors to proceed to the rally site at Barangay La Fraternidad. Justifying circumstances were thus present, and consequently, said accused did not incur criminal liability as per Article 11 of the *Revised Penal Code*.

WHEREFORE, judgment is rendered as follows:

³³¹ *People v. Elizalde y Sumagdon*, G.R. No. 210434, December 5, 2016

³³² G.R. No. 233334, July 23, 2018

1. In *Criminal Case No. SB-11-CRM-0265*, accused Fidel Garcia and P/Insp. Benny Esparagoza are found **GUILTY** beyond reasonable doubt of *Prohibition, Interruption, & Dissolution of Peaceful Meetings* under Article 131, paragraph 3 of the *Revised Penal Code*. There being no aggravating nor mitigating circumstances proven, they are sentenced to suffer the indeterminate penalty of **FOUR (4) MONTHS AND TWENTY-ONE (21) DAYS** of *arresto mayor* in its maximum period as minimum, to **ONE (1) YEAR, ONE (1) MONTH, AND ELEVEN (11) DAYS** of *prisión correccional* in its minimum period as maximum.

For failure of the prosecution to prove the guilt of accused P/SSupt. Jerome Pagaragan and SFO3 Dionesio Paduganan beyond reasonable doubt, they are **ACQUITTED** of the crime charged.

2. In *Criminal Case No. SB-11-CRM-0266*, accused Fidel Garcia and P/Insp. Benny Esparagoza are found **GUILTY** beyond reasonable doubt of Violation of Section 10 (c) of *B.P. 880*, and they are sentenced to suffer imprisonment of **SIX (6) MONTHS**.

For failure of the prosecution to prove the guilt of accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol beyond reasonable doubt, they are **ACQUITTED** of the crime charged.

3. In *Criminal Case No. SB-11-CRM-0267*, accused Fidel Garcia and P/Insp. Benny Esparagoza are found **GUILTY** beyond reasonable doubt of *Slight Physical Injuries* under Article 266 of the *Revised Penal Code*. There being no aggravating nor mitigating circumstances proven, they are sentenced to suffer the determinate penalty of **ELEVEN (11) DAYS** of *arresto menor*.

For failure of the prosecution to prove the guilt of accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol beyond reasonable doubt, they are **ACQUITTED** of the crime charged.

4. In *Criminal Case No. SB-11-CRM-0268*, accused Fidel Garcia and P/Insp. Benny Esparagoza are found **GUILTY** beyond reasonable doubt of *Slight Physical Injuries* under Article 266 of the *Revised Penal Code*. There being no aggravating nor mitigating circumstances proven, they are sentenced to suffer the determinate penalty of **ELEVEN (11) DAYS** of *arresto menor*.

For failure of the prosecution to prove the guilt of accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol beyond reasonable doubt, they are **ACQUITTED** of the crime charged.

5. In *Criminal Case No. SB-11-CRM-0269*, accused Fidel Garcia and P/Insp. Benny Esparagoza are found **GUILTY** beyond reasonable doubt of *Slight Physical Injuries* under Article 266 of the *Revised Penal Code*. There being no aggravating nor mitigating circumstances proven, they are sentenced to suffer the determinate penalty of **ELEVEN (11) DAYS** of *arresto menor*.

For failure of the prosecution to prove the guilt of accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol beyond reasonable doubt, they are **ACQUITTED** of the crime charged.

6. In *Criminal Case No. SB-11-CRM-0270*, accused Fidel Garcia and P/Insp. Benny Esparagoza are found **GUILTY** beyond reasonable doubt of *Grave Coercion* under Article 286 of the *Revised Penal Code*. There being no aggravating nor mitigating circumstances proven, they are sentenced to suffer the indeterminate penalty of **TWO (2) MONTHS AND ONE (1) DAY** of *arresto mayor* as minimum, to **TWO (2) YEARS, FOUR (4) MONTHS AND ONE (1) DAY** of *prisión correccional* as maximum and to each pay a **FINE** of **SIX THOUSAND PESOS (P6,000.00)**.

For failure of the prosecution to prove the guilt of accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol beyond reasonable doubt, they are **ACQUITTED** of the crime charged.

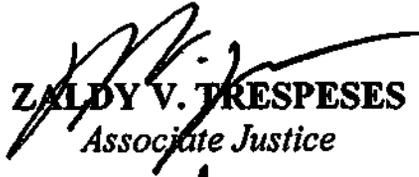
The cash bonds each posted by accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol are ordered released subject to the usual accounting procedures.

Insofar as accused P/SSupt. Jerome Pagaragan, PO3 Warren Dultra, SFO3 Dionesio Paduganan, and SFO1 Arcadio Sacol are concerned, the Hold Departure Orders issued by this Court on July 11 and 20, 2011 are set aside, and the Order issued by the Bureau of Immigration incorporating the names of said accused in the Hold Departure List is ordered recalled and cancelled.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

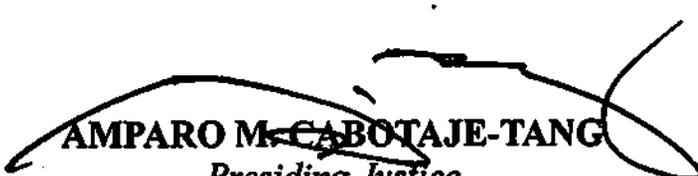
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice