

Republic of the Philippines
REGIONAL TRIAL COURT
National Capital Judicial Region
Branch 148, Makati City

**CHAN ROBLES AND ASSOCIATES
LAW FIRM**

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PEOPLE OF THE PHILIPPINES,

-versus-

CRIM. CASE NO. 03-2784

CAPT. MILO MAESTRECAMPO, ET AL.,
Accused.

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ORDER

Consistent with the Supreme Court's Resolution in G.R. NO. 24194 entitled "*Sen. Antonio "Sonny" F. Trillanes IV versus Hon. Salvador C. Mediadea, et al.*", this resolves the factual issues occasioned by Proclamation No. 572, Series of 2018, which proclamation is the basis for the prosecution's "*Very Urgent Omnibus Motion for the Issuance of Hold Departure Order (HDO) and Alias Warrant of Arrest*".

Also, without intending to breach that "becoming modesty" which trial courts should observe when confronted with legal issues concurrently being heard before the higher courts, and only insofar as the Supreme Court in the same cited case also gave this trial court "*xxx leeway in exercising their concurrent jurisdiction to hear and resolve the pleadings/motions filed by the parties as regards the legality of Proclamation No. 572, Series of 2018*", the Court likewise addresses herein the issues on the legality of the said proclamation.

On the legality of Proclamation No. 572

In his pleadings, Trillanes assails the legality and constitutionality of Proclamation No. 572 on the following grounds:

- (1) Proclamation No. 572 constitutes a usurpation of judicial power to review, among others, presidential proclamations, vested exclusively and solely in the Supreme Court and other courts created by law, when it declared as null and void the subsisting and/or fully implemented Amnesty Proclamation No. 75, Series of 2010.
- (2) Proclamation No. 572 transgresses the constitutional design of shared power between the President and Congress to grant amnesty when it declared void Proclamation No. 75 without the requisite concurrence of Congress.

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- (3) Proclamation No. 572 violates the due process clause and the exclusive authority of the courts to issue warrants of arrest when it directed the arrest of Trillanes.
- (4) Proclamation No. 572 also violates the constitutional proscriptions on ex post facto laws and bills of attainder insofar as it abrogated an amnesty grant and re-criminalizes what has been decriminalized, and insofar as it effectively punishes Trillanes without the benefit of a trial.
- (5) Proclamation No. 572 violates the equal protection clause insofar as it singles out and targets Trillanes, even as there are others who are and may be similarly situated.

The Court is not convinced.

Wittingly or unwittingly, Proclamation No. 572 is clearly misconstrued or misread as declaring null and void Proclamation No. 75. There is, however, nothing in Proclamation No. 572 that voids directly or indirectly Proclamation No. 75.

Proclamation No. 572 declares void the grant of amnesty to Trillanes inasmuch as he allegedly failed to file an application for amnesty and refused or failed to admit guilt for his participation in the Oakwood Mutiny, among others, two requirements or conditions for the grant of amnesty under Proclamation No. 75. It is captioned as a revocation of DND Ad Hoc Committee Resolution No. 2 (#1) dated January 31, 2011 insofar as it granted amnesty to former LTSG Antonio F. Trillanes IV. Otherwise put, it is the implementation and the application of Proclamation No. 75 as to Trillanes, and not Proclamation No. 75 itself, which is the subject of Proclamation No. 572.

Given that Proclamation No. 572 does not declare as void Proclamation No. 75, the assertion that Proclamation No. 572 violates the constitution insofar as it effectively encroached on the judicial power to review presidential proclamations exclusively vested in the courts, is at least misplaced, if not irrelevant. Proclamation No. 572 does not pretend to review the validity of Proclamation No. 75; only its implementation as to Trillanes.

For the same token, it cannot be said that Proclamation No. 572 transgresses the shared power between the President and Congress to grant amnesty, when it nullified Proclamation No. 75 without Congressional concurrence.

Trillanes argues that since the President can grant amnesty only with the concurrence of Congress, then it follows that he can withdraw a grant of amnesty only with the concurrence of Congress.

While the argument may be valid if the revocation/nullification contemplated under Proclamation No. 572 is directed at Proclamation No. 75, it is again misplaced and irrelevant herein, considering that as earlier stated, Proclamation No. 572 does not void Proclamation No. 75, but only the grant of amnesty to Trillanes due to his alleged failure to comply with the basic requirements to qualify for such amnesty.

The issuance of Proclamations is part of the Ordinance Power or the rule making authority of the President. Book III Title I, Chapter II, Section 4 of the Administrative Code of 1987 defines Proclamations as acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of specific law or regulation is made to depend. Except therefore for amnesty proclamations, which under the Constitution requires the concurrence of Congress and/or as may otherwise be provided by law, all other proclamations, including Proclamation No. 572 does not require congressional concurrence.

The Constitution provides that the President shall have control of all the executive departments, bureaus and offices, and he shall ensure that the laws be faithfully executed. In the consolidated cases of *Biriaogo vs. The Phi., Truth Commission et.al. G.G. Nos. 192935 & 193036, December 7, 2010* the Supreme Court held:

"Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and substitute the judgment of the former with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws."

On its face, Proclamation No. 572, in voiding the grant of amnesty to Trillanes under DND Ad Hoc Committee Resolution No. 2, is merely rectifying the allegedly erroneous inclusion of Trillanes as one of those qualified for amnesty despite his non-compliance with the basic requirements for the grant thereof. The Department of National Defense (DND) is part of the executive branch of government, which is under the administrative supervision and control of the President. Proclamation No. 572 is a legitimate exercise of the power of "control". It is purely an executive act, which does not need the concurrence of Congress.

Trillanes argues that Proclamation No. 572 is violative of the due process clause insofar as it directs his arrest without an arrest warrant, and/or otherwise arrogates judicial power in favour of the executive insofar as the proclamation operates as a warrant of arrest which only courts can issue.

Section 2 of Proclamation No. 572 reads:

"Section 2. Effects.

1. As a consequence, the Department of Justice and Court Martial of the Armed Forces of the Philippines are ordered to pursue all criminal and administrative cases filed against former LTSG Antonio Trillanes in relation to the Oakwood Mutiny and the Manila Peninsula Incident.
2. The Armed Forces of the Philippines and the Philippine National Police are ordered to employ all lawful means to apprehend former LTSG Antonio Trillanes so that he can be recommitted to the detention facility where he had been incarcerated for him to stand trial for the crimes he is charged with."

The directive under Proclamation No. 572 is clear: to pursue all criminal and administrative cases filed against Trillanes in relation to the Oakwood Mutiny and the Manila Peninsula incident, not to ignore those cases; to employ all lawful means to apprehend him, not to

apprehend him, without regard to the law, or with or without a proper warrant of arrest; and to let him stand trial for the crimes he is charged with.

There is nothing in Proclamation No. 572 which may in the least suggest that Trillanes' right to due process be disregarded in the pursuit of the cases filed against him, or in the effort to apprehend him to stand trial for the crimes he is charged with. There is no directive to apprehend him at all cost; on the contrary, the AFP and the PNP are enjoined to employ all lawful means to apprehend him. This clearly means that the arrest should be by virtue of a warrant of arrest or upon a valid warrantless arrest, and not in disregard of one.

Trillanes avers that Proclamation No. 572 constitutes an *ex post facto* law because it goes back in time and attempts to re-criminalize what has been decriminalized and/or obliterated by the amnesty granted to him, and/or because it deprives him of some lawful protection which he has become entitled to, particularly the grant of amnesty under Proclamation No. 75.

He also contends that Proclamation No. 572 is a bill of attainder because it attempts to inflict punishment on him without the benefit of a judicial trial.

It is settled that the constitutional doctrine that prescribes *ex post facto* law generally prohibits retroactivity of penal laws. In *Salvador vs. Mapa et.al.*, G.R. No. 135080, November 28, 2007, Supreme Court defined penal laws to wit:

"Penal laws are those acts of the legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for the punishment."

The instant proclamation does not come within the purview of the aforesaid definition since it is not an act of the legislature, but essentially an executive act. Further, it does not deprive Trillanes of a lawful protection from a previous proclamation of amnesty because Proclamation No. 572 does not operate to revoke Proclamation No. 75, but only the allegedly erroneous grant to him of the benefits of Proclamation No. 75 due to his alleged non-compliance with the basic requirements to avail of the said amnesty. It must be remembered that the amnesty given to Trillanes is a conditional amnesty, which means that certain conditions must be complied with before he can avail of or be qualified for the full benefits thereof, including the protection from any prosecution for the offenses covered in the amnesty.

Meanwhile, Proclamation No. 572 cannot also be considered a bill of attainder since a bill of attainder is a legislative act that inflicts punishment without trial. As stated above, the Proclamation is not a legislative, but an executive act. Moreover, the wordings of the Proclamation does not inflict punishment without judicial trial since the Department of Justice was precisely directed to pursue the previous cases filed against Trillanes. It does not preclude the determination by the Court of the guilt of Trillanes in a proper trial. In short, Proclamation No. 572 does not preclude, as in fact it recognizes, that Trillanes should face trial for the crimes he is charged with.

Finally, Trillanes asserts that Proclamation No. 572 constitutes a violation of the equal protection clause enshrined in the Constitution. Accordingly, the fact that his name was mentioned eight times in the said proclamation, even as there are others who are or may be similarly situated, is a clear indication that he is being singled out and specifically targeted, showing the malicious character of the proclamation.

In the consolidated cases of *Biriaogo vs. The Phil., Truth Commission et.al., G.R. Nos. 192935 193036, December 7, 2010*, the Supreme Court held:

"According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed." It "requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities."

Meanwhile, jurisprudence recognizes that "underinclusiveness", "reasonable prioritization" and "selective investigation" are not necessarily violative of the equal protection clause, provided the same are not arbitrary or discriminatory.

"The Court is not unaware that "mere underinclusiveness is not fatal to the validity of a law under the equal protection clause." "Legislation is not unconstitutional merely because it is not all-embracing and does not include all the evils within its reach." It has been written that a regulation challenged under the equal protection clause is not devoid of a rational predicate simply because it happens to be incomplete. In several instances, the underinclusiveness was not considered a valid reason to strike down a law or regulation where the purpose can be attained in future legislations or regulations. These cases refer to the "step by step" process. "With regard to equal protection claims, a legislature does not run the risk of losing the entire remedial scheme simply because it fails, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked."

Further, before a selective investigation or enforcement may be considered as violating the equal protection clause, it must be proven that it is arbitrary or discriminatory in nature. A presumption of regularity lies with the government acts and in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official functions.

In *People v. Dela Piedra*, G.R. No. 121777, January 24, 2001, the Supreme Court held:

"The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is

not without more a denial of the equal protection of the laws. **The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination.** This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. But a discriminatory purpose is not presumed, there must be a showing of clear and intentional discrimination. Appellant has failed to show that, in charging appellant in court, that there was a clear and intentional discrimination on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboanguena, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws. (Emphasis supplied)"

It must be noted that Proclamation No. 572 does not preclude future investigations of the other amnesty grantees under Proclamation No. 75. Also, the Proclamation itself can be amended, or subsequent Proclamations may be issued to expand the investigations or coverage of the Proclamation to include those who may be found to be similarly situated with Trillanes.

It appears that there are 277 amnesty grantees, including Trillanes. The "whereas clauses" of Proclamation No. 572, states "there is no available copy of his application for amnesty in the records" even as he alone announced to the media that "they were not admitting guilt xxx kasi we believe na hindi iyon ang nararapat na i-charge sa amin." - these two circumstances may be sufficient bases on the part of the executive to initiate a review of the grant of amnesty to him.

On the factual basis of Proclamation No. 572

Proclamation No. 572, in voiding the grant of amnesty to Trillanes, is anchored on two assertions of fact, to wit: a) That Trillanes failed to file an Official Amnesty Application Form; and b) That he refused to admit and/or failed to admit guilt for the crimes committed on the occasion of the Oakwood Mutiny and Peninsula Manila Hotel Siege.

The twin factual issues for the consideration of the Court therefore are:

1. Whether or not Trillanes filed the requisite application for amnesty under Proclamation No. 75 before he was granted amnesty in 2011; and
2. Whether or not there was an admission of guilt on his part at the time he applied for and was granted amnesty.

At the hearing of this case on October 5, 2018, the prosecution presented its witnesses **Lt. Col. Thea Joan N. Andrade, Atty. Norman T. Daanoy, Ms. Arlene D. Manjares, Atty. Maria Rhodora A. Malabag-Peralta and Mark Dalan Merueñas.**

Before Lt. Col Andrade testified, parties stipulated that said witness is the incumbent Chief of the Discipline, Law and Order Division, Office of Deputy Staff for Personnel (J1), based in Camp Aguinaldo Quezon City and that she issued a Certification to the effect that based on the records of the her office, former accused Ex-Ltsg Antonio F. Trillanes was granted amnesty, albeit there is no available copy of his application for amnesty, in the records of their office.

On direct, **Lt. Col. Andrade** further testified that as the Chief of the Discipline, Law and Order Division of OJ1, she issued a Certification dated August 30, 2018 pertaining to the grant of amnesty to former Ex-Ltsg Antonio F. Trillanes IV from the requesting party, Solicitor General Jose C. Calida.

On cross, she affirmed that in the said Certification, she stated that Trillanes was granted amnesty but there was no available copy of his application; that she did not certify that Trillanes did not apply for amnesty since she had no personal knowledge of whether or not Trillanes applied; that it was not her intention to certify that Trillanes did not apply.

On redirect, she averred that she did not know if there were any records of Trillanes' application and her basis in certifying that Trillanes was granted amnesty was the Memorandum from the Office of the Secretary of National Defense to the Chief of Staff of the list of personnel who have been granted amnesty, which included the name of Ex-Ltsg Antonio F. Trillanes; that there is no record of the amnesty application requested by the Office of the Solicitor General.

On re-cross, she affirmed that as far as she knew, other than the Memorandum file with her office, there is no other document extent with the DND or with the AFP, which would show that Trillanes was granted amnesty.

The second witness for the prosecution was **Atty. Norman T. Daanoy.** Before he testified, the parties stipulated that he is the Chief of the Legal Affairs of the Office of the Department of National Defense.

On direct, he testified that as Chief of the DND Legal Affairs, he is the Chief legal adviser for the Department of National Defense; that

on September 14, 2018, he received an instruction from the Office of the Secretary to act on the request of Senior Deputy Prosecutor Richard Anthony Fadullon for a copy of DND Amnesty Circular No.1 and records of deliberations, proceedings, minutes in the implementation of Proclamation No. 75 concerning the grant of amnesty for those involve in the Oakwood Mutiny, Marine Stand-Off and the Manila Peninsula Rebellion; that based on his personal knowledge, as well as Department Order No. 320 (?) issued by the Secretary of National Defense, that the chief of offices of the Office of the Undersecretary of National Defense, the Office of the Undersecretary for Defense Policy, and the Office of the Assistant Secretary for Personnel were members of the DND Ad Hoc Committee, which acted on the amnesty applications; that he inquired from the administrative officers of the said offices regarding the DOJ request; that his verification and inquiry from the administrative officers did not yield any records or any documents pertaining to the proceedings, deliberation, minutes performed to the amnesty applications pursuant to the implementation of Proclamation No. 75 dated November 24, 2010; that per request, the DOJ also furnished the latter a copy of Department of National Defense Amnesty Committee Circular No. 1

On cross, the witness testified that he and his office was not the central repository of all records in DND and the same not his was function; that he was not a member of the DND Ad Hoc Committee tasked with the processing of the amnesty nor was he a part of the Secretariat that supported the Ad Hoc Committee; that he did no longer talked to the actual members of the Ad hoc committee to obtain the records because they were not anymore in the Department of National Defense; that he did not try to talk to Lt. Col Berbical and Lt. Col. Machica who were then members of the Secretariat and who were supposed to keep the documents based on DND Circular No. 1; that he only limited his search, verification and inquiry in the Department of National Defense; that all of the records of the 277 grantees of Amnesty were missing in the Department of National Defense.

On redirect, he averred that since the chiefs of the offices where he conducted his search were no longer with the Department of National Defense, he went to the offices of these officers; that the last paragraph of the letter he sent to Senior Deputy State Prosecutor Fadullon states that there was no record of any document purporting to be the Transcript of Stenographic Notes, Minutes of Deliberations or any investigative proceeding pertaining to the application for Amnesty of Senator Trillanes at the Records Division of the Office of the Administrative Service which serves as the only repository of such records.

On re-cross, he testified that in his 33 years at the DND, he never had the opportunity to attend the amnesty deliberations or proceedings.

The third witness for the prosecution was **Arlene De Rama Manjares**. The parties stipulated that she is the incumbent Chief of

the Records Division, Administrative Service, Department of National Defense, Camp Aguinaldo, Quezon City.

Said witness testified that she has been the Chief of the Records Division of the Administrative Service of the DND since October 2014; that as Chief of the said office, she was in charge of the supervision and safekeeping of all the DND records, as well as their disposal to the National Archives of the Philippines; that she issued a Certification dated October 3, 2018 pertaining to the Amnesty Records of those involved in the 2003 Oakwood Mutiny, 2006 Marine Standoff and the Manila Peninsula Incident, to the effect that there were no existing Application for Amnesty on file with at the Records Division.

On cross, she averred that prior to October 2014, she was assigned to the Administrative Service as Chief of Finance and had no supervision over records keeping at the DND; that she did not know whether or not there were amnesty applications which were actually filed with her current office or if the same were subsequently taken out; that she did not have a record of all the amnesty applications of the 277 applicants; that she did not have the opportunity to check the records of all the offices where the members of the Amnesty Committee or Secretariat had office before; that they have a decentralized records system that was why she only concentrated her search on the Records Division of the Administrative Service of DND.

On redirect, the witness averred that when she assumed her position as head of the DND Records Division in 2014, she became responsible for all the records that were found in the Records Division at the time she arrived and even the ones in the past; that her search was confined to the Records Division because of the decentralized records keeping system in their office.

The next witness for the prosecution was **Atty. Maria Rhodora A. Malabag-Peralta**, Clerk of Court of this Branch.

She testified that she issued a Certification dated September 10, 2018 upon the request of Assistant State Prosecutor Mary Jane Sytat certifying that the records of Criminal Case No. 03-2784 do not bear a copy of the written application for amnesty covering Trillanes despite the directive in the Order dated December 16, 2010; that the third paragraph of the said order directed all the accused to inform and submit to the Court a copy of their written applications for amnesty submitted to the Commission under the Department of National Defense on or before January 22, 2011 or earlier.

On cross, the witness averred that the Manifestation and Ex-Parte Motion of Trillanes appears in the records of the case and attached to the said Manifestation is the copy of the Certificate of Amnesty of Senator Trillanes; that based on the records, the Court acted on the said Manifestation and Ex-parte Motion by issuing the order dated September 21, 2011 dismissing the case against Senator Trillanes IV, Gary Alejandro and James Layug pursuant to the grant of amnesty under Proclamation No. 75.

On re-direct, the witness affirmed that based on the records, other than the Certificate of Amnesty attached to the Ex-parte Manifestation and Motion of Trillanes which was submitted in lieu of the application for amnesty, nothing else was submitted.

The last witness for the prosecution and which was presented to testify on the second factual issue was **Mark Dalan Meruenas**, News Editor GMA News Online.

He testified that he had been working with GMA News since 2007; that on January 5, 2011, he was a reporter for the GMA News Online; that his area of assignment then was at PNP, AFP and DND; that on January 5, 2011, he went to Camp Aguinaldo from Camp Crame to cover the Amnesty Application of Senator Trillanes; that on the said day, Senator Trillanes arrived and they watched undergo the application process; that when Trillanes went out, they did an ambush interview; that he recorded the ambush interview and filed a story which appeared in their website; that he wrote two stories dated January 5, 2011, one on the actual filing of the application and the second as offshoot of the ambush interview; that in the said interview, which he wrote in his article online on January 5, 2011, Trillanes was asked a question and he replied that they note a general admission of guilt but thereafter qualified his statement by saying that they were not admitting to the charges hurled against them which was coup d'état and rebellion; that he was able to quote said statement through his digital recorder.

On cross, the witness affirmed that he was there when Trillanes applied for amnesty; that he was there to cover the filing of the application and he saw Trillanes filing, reading part of the application form and swearing to it; that he saw Trillanes submitting the Application form to the members of the Secretariat of the Amnesty Committee and personally witnessed the actual application for amnesty by Trillanes; that what he talked about was the interview after the application; that he affirmed that the official declaration would be those contained in the Amnesty Application; that Trillanes and his colleagues admitted that they participated in the actual uprising which was the Oakwood Mutiny and admitted their guilt and violated the Revised Penal Code and Military Rules; that he could no longer remember if Trillanes had the opportunity to explain his answers or if they had the opportunity to inquire further; that he only remembered that it was an ambush interview and he only reported what Trillanes said.

On redirect, he testified that he could no longer remember what he heard at that time that he saw Trillanes file his application; that what he wrote was based on what he heard and recorded; that the ambush interview was made after Trillanes got out of the room, stopped and answered questions while standing; that he actually saw the application form which was submitted but they were far away so he did not read it; that he only assumed that what was submitted was the application form and did not see what supporting documents were submitted in the course of the application.

On re-cross, the witness affirmed that he saw Trillanes file his application and swear to it before the Officer of the Secretariat; that in the article he wrote, there was a picture therein of Senator Trillanes holding the amnesty application he filed.

Thereafter, the prosecution orally offered their exhibits to wit:

- Exhibit "A" - Certification dated August 30, 2018 of Col. Thea Joanne Andrade;
- Exhibit "B" - Memorandum to the Chief of Staff, AFP, signed by Sec. Voltaire T. Gazmin;
- Exhibit "C" - letter dated September 14, 2018, addressed to one Secretary Delfin N. Lorenzana from one Richard Anthony Fadullon, Prosecutor General, National Prosecution Service;
- Exhibits "D" - Department Order No. 320 dated December 15, 2010;
- Exhibit "E" to "E-4" - Department of National Defense Amnesty Committee Circular No. 1;
- Exhibit "F" - letter dated September 21, 2018, addressed to Senior State Prosecutor Richard Anthony D. Fadullon, signed by one Atty. Tadeo in behalf of Atty. Norman T. Daanoy;
- Exhibit "G" - Certification issued by the Chief of the Records Division, Arlene D. Manjares;
- Exhibit "H" - Certification dated September 10, 2018, signed by Branch Clerk of Court of RTC 148, Atty. Maria Rhodora A. Malabag-Peralta;
- Exhibit "I" with submarkings - Order dated December 16, 2010 issued by then Presiding Judge Oscar B. Pimentel;
- Exhibit "J" - Order of this Court dated September 21, 2011, signed by then Acting Presiding Judge Ma. Rita A. Bascos-Sarabia;
- Exhibit "K" - Article on the GMA News Online written by one Mark Meruenas dated January 5, 2011
- Exhibit "L" to "L-1" - Department Order No. 323 dated December 22, 2010
- Exhibit "M" - photocopy of the pro forma Amnesty Application Form

Taking note of the Comments/Objections made by the defense, the Court admitted the Exhibits offered by the Prosecution without prejudice to the appreciation of their probative value.

On the part of Trillanes, the witnesses presented were **Col. Josefa C. Berbigal, Usec Honorio S. Azcueta, Former Marine Msg. Dominador E. Rull, Jr. and Former Cpt. Emmanuel C. Tirador.**

Trillanes' first witness was **Col. Josefa C. Berbital**, Military Officer/lawyer, c/o Office of the Ethical Standards and Public Accountability. Camp Gen. Emilio Aguinaldo, Quezon City.

The parties stipulated that Berbital was appointed and designated head of the Secretariat which received and processed the applications for amnesty pursuant to Proclamation 75.

In the affidavit executed by Berbital, she averred that she is currently serving as Commissioned Officer of the Judge Advocate General's Office (JAGO) of the Armed Forces of the Philippines (AFP) as Colonel; that she was appointed in a concurrent capacity as Head of the Secretariat of the DND Ad hoc Amnesty Committee which processed the applications for amnesty filed pursuant to Proclamation No. 75; that one of the applications for amnesty she processed was that of Senator Antonio F. Trillanes IV filed on January 5, 2011; that she knew Trillanes filed his amnesty application because she personally received Trillanes' amnesty; that before accepting the application, he asked Trillanes to read the pre-printed statement contained therein making a general admission of his guilt for his alleged offense before asking him to take his oath thereon; that thereafter, she transmitted Trillanes' amnesty application through a Memorandum addressed to the Chairman of the DND Ad Hoc Amnesty Committee and the name of Senator Trillanes appeared in number eight(8) among the officers mentioned in the said memorandum; that after the Committee studied the application, they found the same to be in order, complete and in compliance with all the requirements of Proclamation No. 75, thus, the Committee recommended Trillanes' amnesty application, among others, for approval through DND Ad Hoc Amnesty Committee Resolution No. 2; that the application used by Trillanes was the official form provided by DND Ad Hoc Amnesty Committee dated November 24, 2010 which contained the pre-printed statement on the general admission of guilt.

Berbital further testified that at the time she was designated as head of the Secretariat, she was the Chief of the Discipline Law and Order Division of the Assistant Chief of Staff for Personnel J1; that she met Trillanes on January 5, 2011 when he applied for amnesty before the Ad Hoc Amnesty Secretariat which she headed; that at the time Trillanes applied for amnesty, she received a call from the Department of National Defense informing her that Senator Trillanes was coming to the office of the Secretariat to file his amnesty application; that Senator Trillanes actually came with other male applicants, media men and other staff to their office at the Aguinaldo Room of AFP Officer's club; that when she met Trillanes at the stairs of the right wing of AFCOP, she ushered him to their office; that she could no longer recall if Trillanes was handed the form or he was already carrying it, but afterwards, Trillanes showed her the filled up application form to which she administered the oath; that she emphasized to Trillanes the specific admission of guilt for their participation in the incidents that they were charged or involved in; that the admission of guilt was already in the form, and the oath she administered was to the fact that Trillanes swore or attest to the truthfulness of all the information entered in the application and that he was admitting guilt for his

involvement in the incidents he participated in, and was recanting earlier statements he may have given that maybe inconsistent therewith; that Trillanes answered in the affirmative; that she went over the application first before administering the oath and as far as she recalled, it was complete; that the application for amnesty under Proclamation 75, dated November 24, 2010 shown to him contained the portion where the applicant was admitting guilt, particularly under no.2 case data; that the incidents checked by Trillanes in the case data were the July 2007 Oakwood Mutiny and November 29, 2007 Peninsula Manila Hotel Incident; that as far as she was concerned, and as head of the secretariat, the application was complete; that the application form of Trillanes together with those who applied for amnesty on the said day were reported to the DND Amnesty Committee fifteen(15) days after the application was filed; that the application forms were physically left with them; that each of the applicants for amnesty were given only one application form to fill it up, and once it was given back to the Secretariat, the applicants did not have a copy thereof; that the document shown to her dated January 5, 2011 addressed to the Chairman of the DND Ad Hoc Amnesty Committee, containing the list of applicants on the said day was one of the reports they rendered to the Amnesty Ad Hoc Committee which was signed by her; that the original of the said letter report dated January 5, 2011 was forwarded to the DND Ad hoc Committee at the Office of the Secretary for Defense Affairs (OUSDA); that she was present in all the deliberations of the Committee; that she was there when the applications filed on January 5, 2011 were deliberated on January 21, 2011; that after the deliberation, DND Ad Hoc Resolution No.2, drafted by her, was signed in her presence by the members of the committee; that said DND Resolution included the name of Trillanes as one of the applicants; that she did not know where the original of the Resolution were because all the folders containing the applications as well the said resolution were submitted to the DND Ad Hoc Committee supposedly for submission to the Secretary of National Defense; that she executed an Affidavit in connection with the present case and confirmed and affirmed the truthfulness and veracity of the statements made therein.

On cross, the witness testified that she was not necessarily familiar with all the names of those who applied for amnesty and she had no recollection of their faces, since it was executed a long time ago, but she was sure that they were the ones who applied for amnesty; that as head of the Secretariat, her primary duty was to receive documents pertaining to the application for amnesty under Proclamation 75 and to process by checking them; that she met Senator Trillanes at the stairs and assisted him to their office as a matter of courtesy to the Senator; that since there were a lot of people in the Aguinaldo Room at that time, she was not sure if it was her staff who gave the application form to Senator Trillanes or he was carrying one already; that what she remembered only was when the official form was presented to him by Senator Trillanes; that the Affidavit she executed in this case was prepared by the Office of Senator Trillanes after she supplied and talked about the contents of it to the staff of the Senator; the she prepared the affidavit but she did

not see the Court order directing her to execute said affidavit; that the admission of guilt was in "Case Data" of the form where the applicants acknowledged and admitted guilt for participation or involvement in the incidents they were charged; that she was sure that Senator Trillanes submitted, together with his application form a separate narration of facts of his supposed involvement in any of the three incidents mentioned in the form; that the folders containing the documents of each and individual members were forwarded to the OUSDA; that the Department Order creating the Secretariat provided that a Notary Public be assigned to administer the oath of the amnesty applicants; that a notary public would only be there to augment or assist the Secretariat since she was not always there; that she had authority to administer oath based on the amnesty itself and for which reason she has a stamp as administering officer; that by virtue of the function of the DND Secretariat such as to receive statements or testimonies, she had the authority to administer oath; that there was only one copy of the application form of Trillanes which was submitted; that the documents she collected from Trillanes werethe form, narration of facts and charge sheet or any document that would relate to his involvement in the 2003 Oakwood Mutiny; that after she received all the documents pertaining to the application of Senator Trillanes, her staff placed it in a folder and she assumed they kept it in a safe steel cabinet in the Aguinaldo Room; that at the deliberations, she was always present and pre drafted the DND Ad Hoc Committee Resolution No. 2 to be signed by the members present; that at the time of the deliberations, all the members of the Ad Hoc Committee were given copies of the application forms and supporting documents of the applicants who would be deliberated on that particular day, including Senator Trillanes; that the members of the Committee would discuss the applications one by one and check the completeness in each folder; that during the deliberations on January 21, four of the members of the AD Hoc Committee were present; that said members did not go deep into the case anymore like the details of the participation of the applicants to the subject incidents; that said members only checked the requirements; that after the deliberation, four of the members signed the resolution; that the original of the records which were distributed to each and every member of the Committee was retained with the Chairman of the ad hoc committee because the same would be forwarded to the Secretary of National Defense for approval; that the other photocopies of the records distributed to the members were retrieved by the Secretariat for safekeeping; that when the applications for amnesty stopped, said loose records were no longer taken seriously since the original copies were already forwarded to the Amnesty Committee particularly to the Chairman; that she did not know if the said original records were submitted or forwarded to the Secretary of National Defense (DND); that she did not have any proof that it was actually turned over and she was relying only on her memory; that she authenticated the DND Ad Hoc Resolution based on her recollection as she did it as head of the Secretariat.

On redirect, the witness affirmed that as head of the Secretariat, Senator Trillanes complied with all the requirements and the

Committee who deliberated on his papers on January 21, 2011 did not find any adverse information or reason to deny said application.

On re-cross, she testified that she prepared her affidavit upon receipt of the request from the Office of the Senator which was coursed through the Chief of Staff.

Trillanes' second witness was **Honorio S. Azcueta**, retired AFP Officer with residence address at No.88 Vista Real Ave. Batasan Hills, Quezon City. The parties stipulated that the witness was a former Undersecretary of the Department of National Defense and the Chair of the Ad Hoc Amnesty Committee, created pursuant to Proclamation No.75. They also admitted pertinent portions of the Department of National Defense Amnesty Committee Circular No.1 pertaining to the tasks and functions of the Ad Hoc Committee under Sections 5, 6 and 11 thereof; and the creation of the Secretariat of the Committee pursuant to Department Order 323 of the DND; that the Ad Hoc Committee was tasked to oversee the proceedings and make sure that the applicants for amnesty fully complied with the requirements.

In the Affidavit executed by Azcueta, he averred that then DND Secretary Voltaire T. Gazmin and the Committee issued DND Amnesty Circular No.1 on December 21, 2010 to implement the provisions of Proclamation No. 75; that in relation to Section 14 of the Circular, DND issued Department Order No. 323 on December 22, 2010 designating the members of the Secretariat who were tasked to receive the applications and review them in relation to other personnel records of said applicants in their custody and for determination of other matters such as possible reintegration of qualified enlisted personnel and payment of benefits when applicable; that based on the DND Circular, the first requirement for an amnesty was the actual submission of an application form as prescribed under Section 5 of the Circular which could be secured from the Secretariat or downloaded from Official DND and AFP websites; that he gave specific instructions for the Secretariat to check that all application forms be duly filled up and signed especially on the pertinent portions on the admission of involvement/participation on any of the three subject incidents, admission of guilt/violation of laws and recantation of all previous inconsistent statements; that thereafter, the Secretariat would present the amnesty applicants duly processed and ready for final determination by the Committee; that the Committee along with the Secretariat, discussed the merits of the applications and verified the correct filling up of the portions on the admission/involvement/participation in any of the three subject incidents, violations of the laws and recantation of all previous inconsistent statements; that as Chairman of DND Ad Hoc Amnesty Committee, he conscientiously performed his duties in accordance with Proclamation No. 75 and DND Circular and strictly complied and caused strict compliance will all the requirements pursuant to the same; that the amnesty applications which were recommended for approval by the Committee including that of Senator Trillanes, underwent the necessary and applicable procedures set in Proclamation No. 75 and DND Circular.

The witness further testified that after publication of the proclamation together with the form devised for the applicants to fill up, they were assisted by the Secretariat to receive personally filled-up forms and to check the veracity and completeness of the filled up form; that the Secretariat was tasked to receive amnesty applications, oppositions, evidence and other documents, and that was the reason why a JAGO officer was assigned in the Secretariat; that the Secretariat received the application filed personally by the applicants, checked whether they complied with all the requirements like filling up of the vacant spaces on what incidents they were involved; that the Secretariat also received the narration of the applicant's involvement and thereafter the applicant would swear on his application form; that thereafter, the Secretariat prepared the official register of applicants for posting and after the 15 day posting period, the Secretariat would inform the Committee whether or not the applicants satisfied the requirements; that on the deliberations they conducted, they checked the applications one by one to determine if the applicant was qualified or not; that they made sure the applicant signed in the admission of guilt, the incidents they participated in and submitted their narration of involvement; that in all the applications they processed and recommended for approval which included the application of Senator Trillanes. All the processes were strictly followed.

He further testified that he had the opportunity to take a look at the application of Senator Trillanes and per his assessment and that of the Committee, the Senator complied with all the requirements set forth in Proclamation No. 75 and DND Circular No. 1; that he executed an Affidavit in relation to this case and affirmed and confirmed all the allegations and averments he made therein.

On cross, he testified that during the deliberation on January 21, 2011, he recalled that one of the names of the applicants who was deliberated was Senator Trillanes; that on the bunch of the applications given to the Committee for deliberation, there was only one copy of the original application form and he thought there was no duplicate copy; that he could not recall however, if photocopies of the same were given to the other members; that aside from the application form of Senator Trillanes, appended to it was his narration of his involvement in the incidents although he could not recall if it was in an affidavit form; that in the conduct of their deliberations, they checked the documents and particular statements pertaining to said documents; that the admission of guilt as required pertained to the applicant's involvement in the incidents and the crime; that in the application form supposed to have been filled up by Trillanes, there was no mention of any particular crime or the specific crimes of rebellion or coup d'etat but there was guilt and they were charged; that they did not go into the details of the narration of facts anymore because it was public knowledge that Trillanes was involved in Oakwood and Peninsula Siege; that it was his interpretation that since the applicants acknowledged participation in the July 27 Oakwood Mutiny and November 29, 2007 Peninsula Manila Hotel Incident, their admission or their signature were already equated to an admission of guilt for the crimes charged; that after the deliberations on January

21, 2011, the documents were returned to the Secretariat because he did not maintain records and the same was the responsibility of the Secretariat to collate all documents.

On redirect, the witness affirmed that as Chair of the Committee, and up to this date, he was satisfied and convinced that the application of Senator Trillanes fully complied with all the requirements of Proclamation No. 75 and Circular No. 1 of the DND Amnesty Committee.

On re-cross, the witness affirmed that, in the form, there were incidents and violations of the 1987 Constitution, Articles of War and the Revised Penal Code but there was no mention of the specific crimes of Rebellion and Coup D'etat.

Trillanes' third witness was **Dominador E. Rull, Jr.**, 65 years old, Retired AFP Personnel and with residence address at 17 Narra St, North Signal Village, Taguig City.

Rull identified the affidavit he executed and the photos attached and referred to in the said affidavit which were allegedly taken while Senator Trillanes took his oath for his amnesty application on January 5, 2011. In two of the photos, Rull identified himself as the one in the middle of the photo, wearing a white shirt, beside him was Senator Trillanes whose right hand was raised, taking an oath before another person in military uniform in his left, whose right hand was also raised, and whom he identified as Col. Berbical. Another photo he identified depicted Col. Berbical, with him on the right side of Berbical, and on his right side was Senator Trillanes. He also identified a picture of the amnesty application of Trillanes, which allegedly was filed by Trillanes and signed by Col. Berbical.

In the Affidavit executed by Rull, he averred that he was an enlisted personnel of the Philippine Marines with the highest rank of Master Sergeant and served as such from 1974 to 2002; that when Proclamation No. 75 was issued, he accompanied other members of the Magdalo group who applied and availed of the amnesty at the DND in Camp Aguinaldo, Quezon City on January 5, 2011; that one of those who applied for amnesty on the said day was Senator Trillanes and he acted as his aide at that time since he had no Executive Assistant; that before Senator Trillanes filed his amnesty application, he personally reviewed, examined, and went over the same to make sure that it was complete and properly filled up; that he was personally present and witnessed how Trillanes filed and submitted his amnesty application to LTC Berbical, head of the Secretariat of the DND ad hoc Committee in charge of the processing of the amnesty applications under Proclamation 75; that thereafter, Trillanes, in his presence and within his hearing as he was just one or two feet away, was asked by Berbical to read the statement contained in the amnesty application form making a general admission of guilt as to the charges filed, before she administered his oath; that he could personally attest to the fact that Trillanes accomplished his application for amnesty on January 5, 2011 and made a general admission of his guilt because he personally saw, heard and witnessed all the foregoing first hand; that

to prove the foregoing, he attached and submitted photos of himself and Senator Trillanes before LTC Berbital at Camp Aguinaldo Quezon City on January 5, 2011 (which he authenticated by signing the same); that he also enclosed a photograph of the amnesty application of Senator Trillanes, duly received and acknowledged before Berbital and which he also signed to authenticate the same.

The last witness Trillanes was **Emmanuel C. Tirador**, government employee, with residence address at 462, Camias, San Miguel Bulacan.

In his Affidavit, he testified that he was an enlisted personnel of the Philippine Army with the rank of Corporal and served as such from 1998 to 2009; that he was a member of the group which became known as Magdalo and thus he was involved in the July 27, 2003 Oakwood Hotel Mutiny and November 29, 2007 Peninsula Manila Siege; that upon the issuance of Proclamation No. 75, he decided to apply for and avail of the amnesty together with other members of the Magdalo group; that he filed his application for amnesty together with Senator Trillanes and he acted as close-in security or bodyguard of the Senator; that because of this, he was present and personally witnessed how Trillanes filed and submitted his amnesty application to LTC Berbital, head of the Secretariat of DND Ad Hoc Committee; that he was present and heard Trillanes read the statement contained in the amnesty application form making a general admission of his guilt as to the charges filed against him upon the directive of Berbital, before the latter administered the oath; that he could personally attest to the fact that Trillanes filed his application for amnesty on January 5, 2001 and made a general admission of his guilt; that to prove the foregoing, he submitted the photos of himself with Senator Trillanes appearing before LTC Berbital at the DND office in Camp Aguinaldo on January 5, 2011. He authenticated the pictures by marking and signing the same.

Similar to Rull, Tirador was made to identify the affidavit he executed and the photos attached to the said affidavit. He testified that the photos attached to his affidavit was when Senator Trillanes applied for amnesty and he identified himself in one photo as the one wearing striped polo shirt in checkered green, while Senator Trillanes was the person on his left side. Another photo was also of him on the left side of the picture wearing the same striped polo shirt while Senator Trillanes was on his left side.

The parties stipulated on the testimonies of witnesses Rull and Tirador insofar as they executed affidavits in relation to this case, and were being presented merely to identify their affidavits and the photographs and screenshots attached to the affidavits. Considering the stipulations, the prosecution no longer conducted cross examination on the said witnesses.

On October 9, 2018, Trillanes filed his formal offer of evidence. The Prosecution filed its Opposition thereto and on October 11, 2018, the following exhibits were admitted by the Court:

Exhibit "1"

- Certificate of Amnesty;

- Affidavit of Col. Josefa C. Berbigal;
- Affidavit of Col. Honorio S. Azcueta;
- Affidavit of Dominador Rull, Jr.;
- printed photographs attached to and "4-D with sub-markings
- Affidavit of Rull of him, Senator Trillanes and Col. Berbigal
- printed photograph of the Application for Amnesty of Trillanes
- Affidavit of Emmanuel C. Tirador;
- printed photographs of Trillanes and Tirador
- Memorandum dated January 5, 2011, signed By Col. Berbigal;
- DND Ad Hoc Committee Resolution Resolution No. 2;
- Blank Application Form; under Proclamation No. 75 dated November 24, 2018;
- Part II Case Data of the application form;
- DND Amnesty Circular No. 1;
- DND Department Order No. 323 dated December 22, 2010;
- Memorandum dated May 23, 2011 of Former DND Secretary Voltaire Gazmin;
- Certification dated August 30, 2018 issued by Lt. Col. Thea Joan Andrade
- Original copy of the Manifestation and Ex-parte Motion to Dismiss & Certificate of Amnesty;
- original copy of the Order dated September 21, 2011;

Under Proclamation No. 75, Concurrent Resolution No. 4 and DND Amnesty Committee Circular No. 1, for amnesty to be granted, the applicant must:

- 1. File a sworn written application for amnesty; and
- 2. Make an express admission of actual involvement/participation in relation or incident to, among others, the July 29, 2003 Oakwood Mutiny, and that such involvement/participation

K

constituted a violation of the 1987 Constitution, Criminal laws and the Articles of War; and

3. Recant all previous statements, if any, that are inconsistent with the express admission as aforesaid.

Trillanes "alleged" Official Amnesty Application was never presented as evidence in these proceedings.

The prosecution asserts that Trillanes failed to file a written application for amnesty as required under Proclamation No. 75, as in fact his "alleged" application does not exist and is not available in the records of the DND and/or the Ad Hoc Amnesty Committee, and/or anywhere else. Otherwise put, because the document does not exist or is not available, then Trillanes did not file an application for amnesty.

Trillanes asserts that he in fact applied for amnesty and accomplished the pro forma Official Amnesty Application Form, similar in content to Exhibit "M/8" hereof, except for the entries on personal circumstances, his signatures and the notarization and the signature of Col. Berbical.

There is thus an issue as to the due execution and existence of Trillanes Official Amnesty Application form. Restated, the issue is whether or not Trillanes filed an official amnesty application form. The pertinent question is: are there evidence, other than the application form itself, to establish that Trillanes filed his application for amnesty?

Jurisprudence dictates that when the issue is the existence and due execution of a document and not its contents, the best evidence rule cannot be invoked and the Court need not address or consider the requisite for admissibility of secondary evidence. It is sufficient that the party offering secondary evidence establish the existence and due execution of the document by preponderance of evidence, and the Court, in such a case may admit secondary evidence even without accounting for the original. In *Heirs of Margarita Prodon vs. Heirs of Maximo S. Alvarez et.al.*, G.R. No. 170604, September 2, 2013, the Supreme Court ruled:

"But the evils of mistransmission of critical facts, fraud, and misleading inferences arise only when the issue relates to the terms of the writing. Hence, the Best Evidence Rule applies only when the terms of a writing are in issue. When the evidence sought to be introduced concerns external facts, such as the existence, execution or delivery of the writing, without reference to its terms, the Best Evidence Rule cannot be invoked. In such a case, secondary evidence may be admitted even without accounting for the original. x x x

Considering that the Best Evidence Rule was not applicable because the terms of the deed of sale with right to repurchase were not the issue, **the CA did not have to address and determine whether the existence, execution, and loss, as pre-requisites for the presentation of secondary evidence, had been established by Prodon's evidence. It should have simply addressed and determined whether or not the "existence" and "execution" of the deed as the facts in issue had been proved by preponderance of evidence.**

Indeed, for Prodon who had the burden to prove the existence and due execution of the deed of sale with right to repurchase, the presentation of evidence other than the original document, like the testimonies of Prodon and Jose Camilon, the Notarial Register of Notary Eliseo Razon, and the Primary Entry Book of the Register of Deeds, would have sufficed even without first proving the loss or unavailability of the original of the deed. x x x"

To prove that Trillanes did file his application for amnesty, the Affidavits and the testimonies of persons who had personal knowledge of the fact that Trillanes filed his application for amnesty were presented. Col. Berbical, Head of the Secretariat of the DND Ad Hoc Committee which was tasked to receive and process applications for Amnesty under Proclamation No. 75 categorically testified in court and through her Affidavit that she personally received and processed the application form of Trillanes; that she checked the application and ensured that it was properly filled up; that she directed Trillanes to read the pre-printed statement of general admission of guilt in the application form and administered the oath on him attesting to the completeness and truthfulness of all the information entered in the application form and the admission of guilt as pre-printed in the form; and that thereafter she placed her stamp mark as administering officer on the form and signed said form after she was satisfied of its completeness.

Her testimony is supported by the testimony of Former Undersecretary Azcueta, Chairman of the DND Ad Hoc Amnesty Committee who was one of those who personally deliberated on the amnesty applications all the amnesty applicants including Trillanes. He testified that he looked at the application of Trillanes and per his assessment and that of the Committee, Trillanes fully complied with all the requirements of Proclamation No. 75 and Circular No. 1 of the DND Amnesty Committee.

The fact that Trillanes filed his application for amnesty was also substantiated by the Affidavits and testimonies of Msgt. Rull and Ex Cpl. Tirador who were personally present and who personally witnessed the filing of Trillanes of his application for amnesty on January 5, 2011 before Col. Berbical. The prosecution did not contest those affidavits and even stated in their Reply filed on September 26, 2018 that they do not discount the fact of the presence of said witnesses at the time Trillanes filed his amnesty application, only that, said witnesses do not have knowledge of the contents of the application form.

While Rull and Tirador may be considered to have an interest in this case -- as one of them acted as aide of Trillanes at the time of his application while the other one was a former member of the Magdalo group -- but this does not mean that their testimonies are totally self-serving or without weight particularly as to the assertion that Trillanes filed an application for amnesty because they were personally present and they witnessed said incident.

The fact that they were present at the time Trillanes filed his application is evidenced by the photographs they identified in Court reflecting them, Sen. Trillanes and Col. Berbical (Exhs. "4-B", "4-C", and "4-D"). In the consolidated cases of *Sison et.al vs. CA et.al., G.R.*

Nos. 108280-83, G.R. Nos. 114931-33, November 16, 1995 the Supreme Court held:

"The photographer, however, is not the only witness who can identify the pictures he has taken. **The correctness of the photograph as a faithful representation of the object portrayed can be proved *prima facie*, either by the testimony of the person who made it or by other competent witnesses, after which the court can admit it subject to impeachment as to its accuracy. Photographs, therefore, can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.**"

In the case herein, while Rull and Tirador are not the photographers who took the subject pictures, they are considered competent witnesses who can testify as to the exactness and accuracy of the photographs because they were present at the time said pictures were taken and they are in fact among the persons who are shown in the said pictures.

Meanwhile, the prosecution's witness himself, GMA News Reporter Mark Dallan Merueñas affirmed in his testimony that he was there when Trillanes filed his application for amnesty and personally witnessed the filing by Trillanes of his application and the taking of his oath before Berbical, thus:

"Q Sir, this article that you wrote, can you kindly read the opening statement that you made?

A

(Witness reading)

"We are man enough to admit that we have broken rules."

Q

Please continue.

A

"These were the words of former Navy Lt. Senior Grade and incumbent Senator Antonio Trillanes IV after he availed of government amnesty on Wednesday, along with the other Magdalo soldiers."

Q

Go ahead.

A

"Trillanes said they filled out an application form and signed the sections that state they were agreeing to their "general admission of guilt" that they violated military rules and the Revised Penal Code (RPC)."

Q

So, during the proceedings when Senator Trillanes applied for amnesty, you were there all along? Correct?

A

Yes, sir.

Q

And you actually witnessed him applying for amnesty?

A

Yes, sir.

Q

Because the prosecution here are saying that he did not apply for amnesty. So do you affirm and confirm before this Honorable Court that he did apply for amnesty?

A

I was there, sir, to cover the filing of the application.

Q

And you saw him filing the application for amnesty?

A

Yes, sir.

Q

Did you see him reading part of the application form and swearing to it? Did you witness that?

A

Yes, sir.

Q

So, I think there is no dispute that Senator Trillanes, per your recollection, actually applied for amnesty. Is that correct?

A

Yes, sir.

Q

And you saw him submit the amnesty application form to the members of the Secretariat of the Amnesty Committee. Correct?

A

Yes, sir." (TSN dated October 5, 2018, 9:00 a.m., pages 101-103)

The aforesaid witnesses have personal knowledge of the fact of that Trillanes applied for amnesty; and three of them particularly,

Berbigal, Azcueta and Merueñas are disinterested persons who have no reason to concoct or fabricate their testimonies.

Apart from the testimonies of Trillanes' witnesses, the photograph of the application form of Trillanes presented and testified to in Rull's Affidavit (Exh. "4") and the article of GMA News Reporter Merueñas with the picture of Trillanes holding his amnesty application are competent evidence of the existence, execution and filing of the said application for amnesty. Rule 11 Section 1 of the Rules on Electronic Evidence provides:

"SECTION 1. Audio, video and similar evidence. - Audio and video evidence of events, acts or transactions shall be admissible provided is shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof.

Meanwhile, as discussed above in *Sison et.al vs. CA et.al*¹, the photographer who took the pictures is not only person who can authenticate the same, but also any competent person who can testify on the accuracy thereof.

The photograph of the filled up application form of Trillanes submitted to Berbigal was presented and identified by Rull. In his Affidavit, Rull explained that, as shown in the pictures attached to his affidavit, he was personally present at the time Trillanes filed his application for amnesty and witnessed the submission by Trillanes of his application form to Berbigal before the latter administered the oath to him, and Rull's presence was not contested by the prosecution.

Merueñas, on the other hand, who was also personally present at the time of Trillanes' application, affirmed that the photo appearing in his article, was indeed Trillanes holding his amnesty application form.

There are also secondary evidence that support the assertion that Trillanes filed his application for amnesty. The Memorandum dated January 5, 2011 addressed to the Chairman of the DND Ad Hoc Committee executed by Berbigal herself (Exh. "6") shows the name of Trillanes appearing as number eight (8) among the officers who applied for amnesty on January 5, 2011. The DND Ad Hoc Committee Resolution No. 2 dated January 31, 2011 (Exh. "7"), containing the names of applicants, whose applications for amnesty were being reconsidered for approval, also includes the name of Trillanes.

While the original copies of the aforesaid Memorandum and Resolution were not presented, the Court is convinced that its existence, due execution and loss were fully established.

The best evidence rule provides that when the subject of the inquiry is the contents of a document, no evidence is admissible other than the original itself. Rule 130 Section 3 provides for the exceptions to the best evidence rule to wit:

¹G.R. Nos. 108280-83, G.R. Nos. 114931-33, November 16, 1995

- a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror.

x x x

- d) When the original is a public record in the custody of a public officer or is recorded in a public office."

Meanwhile Section 5 of Rule 130 likewise states:

"Sec.5 When original document is unavailable.- **When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents** by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

In *Country Bankers Insurance Corp. vs. Lagman, G.R. No. 165487, July 13, 2011*, the Supreme Court laid down the requirements before secondary evidence maybe admitted to wit:

"Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) **the existence or due execution of the original;** (2) **the loss and destruction of the original or the reason for its non-production in court;** and (3) **on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed.**

In the case at bar, the due execution and existence of the Memorandum was established through Berbital who testified that she personally prepared the said Memorandum and signed the same. She affirmed and authenticated her signature appearing in the said Memorandum.

Meanwhile, the existence and due execution of DND Ad Hoc Resolution No. 2 was also testified by Berbital as she personally drafted the said Resolution and was personally present when the members of the Committee signed the said Resolution. It is settled that the authenticity and due execution of a private document may be proved either by anyone who saw the document executed or written; or by anyone who saw the document executed or written; or by evidence of the genuineness of the signature or handwriting of the maker. Meanwhile, the writer himself could duly authenticate his disputed signature in a document. In *Juan Dela Rama et.al., vs. Papa et.al., G.R. No. 142309, January 30, 2009*, the Supreme Court held:

"It is in fact well established in law of evidence that the testimony of the very person whose signature is disputed is more than competent proof on the genuineness of such signature. According to Wigmore on Evidence, there even was once thought that for proving the genuineness of a document, the alleged writer was a preferred witness, though it is now believed that no such rule of preference exists. At the same time, there is no rule that automatically discounts the testimony of the alleged writer as to the genuineness or spuriousness of his own signature. x x x

We acknowledge the general premise that the testimony of the very person whose signature is put in question has probative value, whether such testimony is offered to affirm or dispute the genuineness of the

signature. The testimony satisfies the requirements under Section 22 of Rule 132 on how handwriting must be proved."

Berbical also testified that the original copies of the said Memorandum, DND Resolution No. 2 and the other amnesty documents of those who applied for amnesty under Proclamation 75 were/are not in her possession anymore, but were forwarded to the Chairman of the DND Ad Hoc Committee. She also testified that the loose records of said documents were no longer taken seriously by the Secretariat. The Chairman of the Ad Hoc Committee, Azcueta, on the other hand, testified that the original records of the amnesty applications including that of Trillanes, were returned to the Secretariat headed by Berbical.

The prosecution's witnesses, such as Andrade from J1, Atty. Daanoy of the DND Legal Affairs, as well as Manajares of the DND Records Division, from which these records should be available after the Ad hoc Committee became functus officio, testified that there are no available or existing records of applications for amnesty in their possession, not only for Trillanes, but for all the of the 277 grantees.

These records of the applications for amnesty may be considered records in the custody of a public officer or recorded into a public office, and among the persons who can attest to their authenticity is the person in custody thereof. Said persons, however, cannot attest or authenticate these records because the documents were/are now lost apparently while in the custody of the public officers themselves.

It appears that the Memorandum and DND Ad Hoc Resolution No. 2 and all other records pertaining to the amnesty applications, including that of Trillanes, were mishandled by the official custodian, resulting to their "loss" or unavailability. There is no evidence that this loss is attributable to Trillanes.

It is relevant to state at this point that the inability of Trillanes to produce a copy of his amnesty application from -- and the loss of any other copy thereof -- is explained and established in the testimony of Berbical.

Berbical testified that there is only one copy of application form furnished to the applicants which they were required to fill up. No second copy or receiving copy was given to the applicants. This single application form once accomplished was submitted to the Secretariat for processing. The pertinent portions of Berbical's testimony are quoted to wit:

Q

"Okay. What happened to the application form that the senator filled up?

A

The application forms together with those that applied for that day were reported to the DND Amnesty Committee, but for about 15 days after we received that, it's retained with us.

Q

So the application forms were actually, physically left with you by the applicants?

A

Yeah, yes.

Q

Do you remember whether or not the applicants were given receiving copies of the applications that they filed?

A

In all the applicants for amnesty, we only give them one, one form within which to file their...

Q

And when they filled up the form and gave it to you, obviously they did not have any copy anymore?

A

Yes, sir." (TSN dated October 5, 2018, 9:00 a.m., pages 135-136)

Berbigal's statement is reiterated by Azcueta, who said that there was no duplicate copy of the application forms accomplished by the applicants.

The above explains then why Trillanes could not present the original copy of his application form and why he failed to submit to this Court a copy of the same when directed by the Court in its order dated December 16, 2010.

It is also clear that the original application form of Trillanes was submitted to the Secretariat which was tasked to receive and process the applications of those who applied for amnesty under Proclamation No. 75. The original application form however can no longer be produced in Court, without bad faith on the part of Trillanes as it was apparently lost in the custody of the public officers to whom it should be found.

On the other hand, the prosecution failed to sufficiently establish its claim that Trillanes did not file an official application form for amnesty.

The Certifications issued, as well as the testimonies of the prosecution witnesses, are of equivocal import.

First, the witnesses presented have no personal knowledge on whether Trillanes filed his application for amnesty as they were not even members of the Secretariat or even the Ad Hoc Committee which personally received and processed the applications of those who applied for amnesty under Proclamation No. 75.

Andrade, who issued the Certification in fact testified that Trillanes applied for amnesty based on a Memorandum to the Chief of Staff of AFP regarding the Amnesty Grantees and its Guidelines under Proclamation No. 75, the original of which according to her was in her possession. Meanwhile, her Certification which stated "there is no available copy of his application for amnesty in the records" pertaining to Trillanes does not necessarily indicate that Trillanes did not apply for amnesty. Berbital even affirmed that it was not her intention to certify that Trillanes did not apply for amnesty.

On the other hand, Atty. Norman Daanoy, Chief legal adviser of DND, aside from not having any personal knowledge on whether Trillanes applied for amnesty or not as he was not a member of the Secretariat or the Ad hoc Committee admitted that in his search for minutes of deliberations, pertaining to the application of amnesty of Trillanes and others, he no longer inquired from the individual members of the Secretariat who personally handled the amnesty applications and only limited his search to the DND proper. He also affirmed that he never attended the deliberations at the time of the amnesty proceedings.

It may perhaps be pertinent to note here that such deliberations were not even mandatory under the DND Circular No. 1 to wit:

"Section 10. Determination of qualification of applicants under the Amnesty Program. - Upon receipt of the sworn application of any applicant and any sworn opposition thereto, **the Committee shall immediately proceed to calendar the same for deliberation or for clarificatory hearing, if deemed necessary.** x x x

Section 11. Deliberations by the Committee; Admission of Participation and Guilt. - **The Committee may, in the presence of quorum,** conduct deliberations or any other investigative proceedings to clarify or resolve issues. x x x"

Also, even assuming that no deliberations were made, as stated above this is immaterial as the lapses or irregularities in the processing of Trillanes' application do not discount the fact that Trillanes filed his application for amnesty.

Meanwhile, Arlene Manjares, the Chief of the Records Division of the Administrative Services of DND, who also has no personal knowledge on the processing of the amnesty applications testified that she assumed her position as Chief of the Records Division only in October 2014 and certified that there are no existing applications for amnesty for all the 277 applicants on file. This however does not necessarily mean that she has personal knowledge on the status of the records or if there were existing amnesty applications prior to her assumption in 2014.

On the other hand, the fact that Trillanes failed to comply with this Court's order in 2010 to submit a copy of his application for amnesty is explained by the fact that the applicants were not given a second copy or a receiving copy of said application form. Besides, the non-submission herein does not indicate that he did not apply because it is the DND ad hoc committee which was tasked to receive and

process the applications and determine whether or not the applicants are qualified for amnesty.

The prosecution also argues that there is no evidence to prove that a narration of facts was attached to the application form of Trillanes, as this was not stated in the Affidavit of Berbical. Suffice it to say that said narration of facts is not required in Proclamation No. 75, nor in Concurrent Resolution No. 4 of Congress, or even in DND Circular No. 1.

Nonetheless, Berbical also testified that the narration of facts was duly attached to the application form of Trillanes when he filed the same. The fact that said narration of facts was also not presented and could no longer be found is as discussed above, the fault of the government officers who were tasked to take custody thereof and should not be taken against the applicant.

The prosecution also questions the alleged lack of authority of Berbical to administer oath. The testimonies and documents presented show that Berbical, as the designated head of the Secretariat which was tasked to receive and process sworn applications including oppositions thereto is "prima facie" authorized to administer the oaths to the applicants, as she even had a stamp mark she used as administering officer. Meanwhile, the fact that in the Department Order creating the Secretariat, a notary public was to be assigned to the Secretariat to administer the oath does not preclude Berbical, as head of the Secretariat, from administering the oath, given the nature and duties of the Secretariat. Berbical explained that the Notary Public should be there in case she was not available as she also had other duties as lawyer. In the absence of any other competent evidence to show that Berbical was not authorized, the Court can only presume that she had such authority.

But, even assuming that Berbical was not duly authorized to administer oath, the Court is of the view that the same does not affect the validity of Trillanes' application and this should not be taken against the applicant who appears to be in good faith in the full belief that Berbical was authorized to take his oath. There is no reason for Trillanes to doubt Berbical's authority as she headed the Secretariat which was primarily tasked to receive and process their sworn applications. This lack of authority may be akin to a document notarized by a person who has no authority to notarize. In *Tigno et.al vs. Spouses Aquino et.al.*, G.R. No. 129416, November 25, 2004, the Supreme Court maintained that such document or the transaction contained in such document remains valid despite the lack of authority of the person notarizing it to wit:

x x x "True enough, from a civil law perspective, the absence of notarization of the *Deed of Sale* would not necessarily invalidate the transaction evidenced therein. Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet it is also an accepted rule that the failure to observe the proper form does not render the transaction invalid. Thus, it has been uniformly held that the form required in Article 1358 is not essential to the validity or

enforceability of the transaction, but required merely for convenience" x
x x

Meanwhile, granting that there are irregularities or lapses in the processing of Trillanes amnesty, which may include the lack of authority of the administering officer, to the mind of the Court, these are now irrelevant or immaterial to the fact established by the evidence, both preponderant and secondary, that Trillanes applied for amnesty and filed his application form in accordance with Proclamation 75 and DND Amnesty Committee Circular No 1. Any such irregularities and defects should have been raised during the proceedings or on appeal to the President. Based on the DND Circular, oppositions to the Amnesty Applications should be filed within fifteen (15) days from the publication of the list of applicants. At the time of the application, no opposition was made and there is no showing that an appeal was made before the Office of the President. Hence, the determination or findings of the DND at the lapse of the fifteen days had become final.

1. Failure to admit guilt on the crimes committed.

Concurrent Resolution No. 4 of Congress and the DND Amnesty Committee Circular No. 1 provides as follows:

"(a) No application for amnesty shall be given due course without the applicant admitting his guilt or culpability of any or all of the subject incidents in writing as expressed in the application;"
(Concurrent Resolution No. 4)

"Section 11. Deliberations by the Committee; Admission of Participation and Guilt. x x x

No application shall be approved without an express admission by the applicant of actual involvement/participation in connection with, in relation or incident to the July 27, 2003 Oakwood Mutiny, the February 2006 Marines Stand-Off and/or the November 29, 2007 Peninsula Hotel Incident and that such involvement/participation constituted a violation of the 1987 Constitution, criminal laws and the Articles of War, as indicated in the application form. No application shall likewise be approved without a recantation of all previous statements, if any, that are inconsistent with such express admission of actual involvement/participation and guilt." (DND Amnesty Circular No. 1)

Both parties agree that there is a pro forma application form to be filled up and filed by the applicants for amnesty. The pro forma application form is a common exhibit of both parties (Exh. "M" and Exh. "8"). The form contains a recital of general admission of guilt and recantation in its Case Data portion.

Notably, the recital in the second paragraph of Section 11 of the DND Circular is restated almost verbatim in the pro forma application, thus:

"II CASE DATA

x x x

I hereby acknowledge that my involvement/participation in the subject incidents constituted a violation of the 1987 Constitution, criminal laws and the

Articles of War. I hereby recant my previous statements that are contrary, if any, to this express admission of involvement/participation and guilt."

Since it is established that Trillanes filed his Application for Amnesty in the form prescribed, it follows that he made an express admission of participation/involvement and guilt, and a recantation in the tenor of the recital in Section 11 of DND Circular No. 1, as restated in the Case Data portion of the application form.

This admission and recantation are substantiated by the testimony of Berbical who stated that before he swore Trillanes in on his application, he checked to ensure that it was fully filled up; that he asked Trillanes to read the said part on admission of involvement/participation and guilt as stated in the application form; that she emphasized such admission of guilt again when he swore Trillanes. This was also attested to by Rull and Tirador who were also personally present when Trillanes applied for amnesty and took an oath before Berbical. Likewise, Azcueta also affirmed that they checked the applications one by one including that of Trillanes and made sure that it was properly filled up particularly such portion on general admission of guilt.

The prosecution places much weight on the GMA Online News dated January 5, 2011 where reporter Mark Meruenas reported that Trillanes allegedly uttered the following, to wit:

"I would like to qualify that we did not admit to the charge of coup d'etat or anything na i-finile sa amin kasi we believe na hindi iyon ang nararapat na i-charge sa amin."

The Court cannot ascertain whether the quoted statement is accurate inasmuch as the original recording thereof was not presented in evidence herein. But assuming that the same is an accurate citation of Trillanes' statement, the same should have been the subject of consideration by the DND Ad Hoc Amnesty Committee when it processed and deliberated on the amnesty application of Trillanes. Also, it could and should have been raised as an opposition to the application, or even as a basis for appeal before the Office of the President. Apparently, no opposition based on the statement was raised at any stage before the DND Ad Hoc Amnesty Committee, the Secretary of National Defense, and even the Office of the President. The matter cannot now be resurrected herein.

In any case, Trillanes' statement in the news report (assuming the same was not misquoted or misunderstood, as the original record of such interview was not presented) where he allegedly stated that he did not admit to the crime of coup d'etat, is not inconsistent with his admission of involvement/participation and guilt in the subject incidents or a refusal to admit guilt considering that such specific admission of the crime of coup d'etat does not appear to be required under Proclamation No. 75, Concurrent Resolution No. 4 of Congress and DND Circular No. 1. The general admission he made as pre printed in the application form is sufficient compliance with what is required in the Amnesty Proclamation and its implementing rules.

CONCLUSION

1. Proclamation No. 572, series of 2018 is purely an executive act and prerogative in the exercise of the President's power of control and supervision over all offices and agencies of the executive department. In voiding the grant of amnesty to Trillanes, Proclamation No. 572 merely sought to correct what the executive branch perceives to be an erroneous grant of amnesty to Trillanes, who allegedly did not apply for amnesty and who failed to admit guilt and/or participation and involvement in, among others, the Oakwood Mutiny, and/or otherwise failed to recant previous statements contrary to such admissions.

2. Trillanes assails Proclamation No. 572 as unconstitutional. The Court finds no basis to believe that Proclamation No. 572 has breached any constitutional guaranty or that it has encroached on the constitutional power of either the judicial or the executive branch.

3. Proclamation No. 572 posits that Trillanes failed to file an amnesty application, and failed to admit guilt on his participation in the Oakwood Mutiny, among others, and failed to recant previous statements inconsistent with any such admission. Accordingly, the grant of amnesty to him is void. The parties presented their respective evidences on the factual issues earlier stated occasioned by the Proclamation.

3.a. The Court finds the prosecution's evidence equivocal in its import. The fact that no records of the application exists in the files of the Secretariat and/or the Ad Hoc Committee or the other offices of the DND does not of itself mean that no application was filed. The prosecution witness, who certified on the unavailability of Trillanes' amnesty application records testified that she did not intend to state thereby that Trillanes did not file an amnesty application.

3.b. Trillanes, on the other hand, submitted evidence consisting of eye-witnesses' testimonies, duly authenticated photographs and secondary evidence to establish that he, in fact, personally filed his amnesty application in the prescribed form - in which he admitted guilt for his participation in the Oakwood Mutiny, among others, and he recanted any previous statement inconsistent with such admission -- before the Secretariat of the DND Ad Hoc Amnesty Committee on January 5, 2011. The testimonies of Col. Berbigal, then Head of the Secretariat of the Ad Hoc Amnesty Committee, Undersecretary Azcueta, then Head of the Ad Hoc Amnesty Committee, Rull, Tirador, and even Meruenas, prosecution witness, taken together, point to the same fact, ie., that Trillanes did file an application for amnesty in the form and manner prescribed by the pertinent rules. The prosecution failed to rebut Trillanes' witnesses and evidences.

On the basis therefore of the unrebutted evidence, both preponderant and admissible secondary, presented by Trillanes, the

Court finds and so holds that Trillanes did file his amnesty application in the prescribed form in which he also admitted guilt for his participation in the Oakwood Mutiny, among others, and in which he further recanted all previous statements that he may have made contrary to said admission.

POSTSCRIPT

The foregoing disquisitions were prompted by the prosecution's Urgent Ex-parte Motion for issuance of Warrant of Arrest and a Hold Departure Order against Trillanes based on Proclamation No. 572. The records show that this case has long been dismissed as per the Court's Order dated September 21, 2011, by virtue of Proclamation No. 75 and the accused's avowal thereof. The dismissal, it appears, has become final and executory.

Well established is the doctrine that a final and executory judgment shall be immutable. The Court, in fact, loses jurisdiction over the case when its decision has become final and executory.

Nonetheless, the Court, based on the resolution of the Supreme Court in G.R. No. 24194, went on to review the legality and resolve factual issues surrounding Proclamation No. 572.

Given its findings, both on the legality of Proclamation No. 572, and its factual bases, the Court finds no reason to disturb the doctrine of immutability of a final and executory judgment.

Meanwhile, the law is vibrant. Jurisprudence is its lifeblood. Subsequent jurisprudence may forge new horizons in which exceptions to the immutability of a final and executory judgment may be born.

For now, the Court finds itself powerless to disturb the said doctrine even if it had sustained the factual bases for the issuance of Proclamation No. 572.

WHEREFORE, premises considered, the prosecution's Very Urgent Ex-Parte Omnibus Motion for the Issuance of Hold Departure Order and Alias Warrant of Arrest against accused Antonio F. Trillanes IV is **DENIED DUE COURSE**.

SO ORDERED.

City of Makati, October 22, 2018.


ANDRES BARTOLOME SORIANO
Presiding Judge