



## **RESOLUTION CHR (IV) NO. A2008-010 TANAUAN CASE**

For consideration is the Final After Mission Report of the CHR composite Investigation Team on the Alleged Extra-Judicial Killings of Mr. Pepito Magsino on May 21, 2008 and Messrs. Vivencio Javier, Angelito Malabanan and Rolando Lachica on May 22, 2008, all in Tanauan City, Batangas.

### **AUTHORITY**

The case was *motu proprio* investigated by the Commission on Human Rights pursuant to its mandate under Article XIII, Section 18 of the 1987 Constitution of the Philippines which is to investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.

### **FINDINGS OF FACT BY THE CHR COMPOSITE TEAM**

#### **PROFILE OF THE VICTIMS**

##### **A. PEPITO MAGSINO**

Pepito “Pitong” Magsino was 39 yrs. old, Filipino, married to Melinda Magsino with 3 children, stood 5’ 5” in height, with black hair (contrary to intel reports cited in Annex “C-4”, CHR Final After Mission Report) and a bulky figure. Based on an interview with the wife, the following information was obtained:

- ❖ He served time at the Muntinlupa Penitentiary for robbery and possession of prohibited drugs for more or less 7 years until his release for good behavior on March 25, 2006. The robbery, according to his wife, was a frame-up and the drugs planted.
- ❖ After his release, he worked at DSK Company located near Mount Makiling, a company involved in oil and steel. He worked there from August 2006 to February 2007. From April to May of 2007, he would briefly work in DSK Manila. The distance became tedious for him and the standard of living costly so he went back to Tanauan.
- ❖ Unemployed, he spent his time at the gambling place in Tanauan and rely on the good fortune of others who would give him ante. His friends in the neighborhood would, from time to time, hand him small amounts of

money for him to bring back to his family.

- ❖ Around February of 2008, Magsino and his wife, as the latter attests, went to Ex-Barangay Captain Vivencio Javier's residence to talk to the latter regarding their son's unpaid tuition fees. Not having met before, they had to introduce themselves to each other.
- ❖ Their eldest son, Joven Magsino, a freshman at the Tanauan Institute, owed P 20,000.00 representing unpaid tuition fee at the school. They broached the possibility that perhaps Vivencio Javier, as the elder brother of Nenita Collantes, owner of the Tanauan Institute, could act as an intermediary for them and ask that their son be allowed to continue studying. Vivencio Javier commiserated with them but told them that he could not approach his sister if the couple did not have any amount with them to represent goodwill. Disappointed, the couple left. This was the only incident when either of the couple approached Vivencio Javier.

#### B. EX-BARANGAY CAPTAIN VIVENCIO JAVIER

Vivencio Javier was 55 years old. He was the husband of Olivia Javier with whom he had 7 children, namely, Joker, Jake, Joey, Job, Jordan, Jovit and the only girl, KC. He lived at Barangay Pagaspas, Tanauan City where he served as Barangay Captain for eighteen (18) years. He was the eight (8<sup>th</sup>) among eleven children, four of whom are already deceased.

- ❖ Four of Javier's siblings live at the same barangay. Their houses are practically adjacent to each other and one would have an undisturbed view of all other houses, (Annex "U" of the CHR Final after Mission Report) except Captain Servillano Javier's residence which is 370 steps away.
- ❖ Javier's daily routine would be to wake up early in the morning and with the assistance of Lino Pedraja, tend to the care of his lovebirds and engage in gardening or play golf (Annex "B-13" of the CHR Final After Mission Report).

#### C. ANGELITO MALABANAN AND ROLANDO LACHICA

Angelito "Itok" Malabanan was a 39 year old single man and the third among ten siblings. Based on interviews with the people in the neighborhood, the following information was obtained:

- ❖ He was of average height with dark complexion and a mustache. He was a typical man who occasionally drank and smoked.
- ❖ He, however, does not have any criminal record. He worked for and

tended to the care of the fighting cocks of Barangay Captain Servillano Javier.

- ❖ He became a barangay tanod of Pagaspas on September 2007. It was at this time that his father noted a big change in him.
- ❖ According to his father, he became more responsible and drank less often. He would often visit his nieces and father whose house was just near Barangay Captain Servillano Javier's residence.
- ❖ His neighbors described him as a good man who was never involved in any trouble. He hardly ventured out of the barangay.

Rolando Lachica alias "Tinga", on the other hand, was approximately 51 years old. People are not sure of his exact age because he was not born in Pagaspas. The following information was learned based on interviews with the people in the neighborhood:

- ❖ He worked for Barangay Captain Servillano and was the grasscutter of the barangay. He would often be seen either in the compound of Servillano or cutting grass along the road.
- ❖ He was described as a quiet polite man and below average in mental ability.
- ❖ He voluntarily enrolled himself in an Adult Education Course at the community for non-school youths which held classes from 1:00 to 3:00 pm everyday at the Barangay hall.
- ❖ The class consisted of more or less 25 students of various ages. His teacher was Mrs. Noemi Nebral from Tanauan. School started in April.
- ❖ Rolando Lachica professed a keen interest in his studies and religiously did his assignments. Servillano Javier fondly remembers that on the night before the shooting, he invited Rolando to drink but the latter refused because he had homework to do.

The PNP Reports would indicate that all four victims were alleged suspects in the May 16, 2008 RCBC-Cabuyao, Laguna branch robbery and massacre.

### **PNP's VERSION**

Based on the documents furnished to the CHR by the Chief of the Criminal Investigation Detective Division, P/Supt. Joel M. Coronel through Chief Inspector

Arjun Luig, **varying versions** were reported by the Philippine National Police regarding the May 21 and May 22, 2008 incidents.

The PRO CALABARZON Regional Director in his May 22, 2008 memorandum addressed to the DIDM Director, reported the incident as relentless police operations against possible suspects in the RCBC Bank robbery case. The said Regional Director claimed that on May 21, 2008 at about 4:20 P.M., in Barangay 4 Poblacion, Tanauan City, elements of Task Force RCBC led by P/Supt Gilbert Sauro and SPO1 Reynaldo Salazar, Chief PIB and Team Leader, PIB 3<sup>rd</sup> District, both of Batangas PPO, encountered a suspected criminal gang. The encounter resulted in the death of one of the suspects identified as Pepito Magsino y Laura.

He likewise explained that as an aftermath of the above cited incident with a criminal gang, another encounter took place in Brgy. Pagaspas, Tanauan City on May 22, 2008, at about 12:40 A.M. between the suspects and joint elements of PIB, SOG Batangas PPO, RMG4A and RID, PRO CALABARZON. The encounter stemmed from intelligence information received by Task Force RCBC Batangas that the other suspects in the May 21, 2008 armed encounter were sighted in the said barangay. Acting on the information, the operatives conducted casing/surveillance operations but were met by gunfire from the suspects. The encounter resulted in the death of former Barangay Chairman Vivencio Javier, Angelito Malabanan and Rolly Lachica.

The operating teams recovered the following items: one glock 17 9MM pistol with SN UF4884 with magazine and seven live ammunition; one Winchester 94-30-30 rifle SN 3033401; one hand grenade; nine fired cartridge cases of 9MM caliber; one live ammunition of 9MM; seven fired cartridge cases from cal 5.56; and blood samples.

The PRO CALABARZON Regional Director also reported the arrest of two male persons during the operation, namely: Louie Austria y Natanauan and Allan Tapia y Marfe, both residents of Brgy. Pagaspas, Tanauan City for having in their possession one cal 45 pistol each, Armscor A145 with SN 1041034 and Armscor M191145 with SN 1038203, respectively. Relatedly, five cellphones were recovered from one of the slain suspects, former Barangay Chairman Javier. The said items were brought to Camp Vicente Lim, Calamba City for verification.

According to the PRO CALABARZON Regional Director, the neutralized persons were suspected members of the Lucido-Javier Group, a notorious criminal gang involved in big-time nefarious activities in CALABARZON region, particularly in Batangas, Laguna and Cavite provinces.

The Regional Director, previously, in a memorandum dated 18 May 2008, directed the organization of tracker teams for the early solution of the RCBC Bank Robbery and Murder Case and to conduct intensified police operations against

criminal elements operating within their jurisdiction.

On 27 May 2008, eight policemen who were part of Tracker Team 2 were ordered relieved from Batangas PPO and reassigned to RPHAU-ORPHRDD.

Another version of the incident is stated in the spot report of the Officer-In-Charge of the Tanauan Police, P/Supt Willy Perez Atun. An armed encounter with a suspected criminal gang at Slaughter Brgy. 4, Tanauan City at about 4:20 P.M. of May 21, 2008 and follow up operations by elements of Task Force RCBC of Batangas PPO under P/Supt Gilbert Sauro and led by SPO1 Reynaldo Salazar, Team Leader of PIB 3<sup>rd</sup> District resulted to the death of one of the suspects identified as Pepito Magsino y Laura. It also stated that a hot pursuit/continuous follow up operations as an aftermath of the armed encounter with criminal gang on May 22, 2008 where SPO1 Reynaldo Salazar sustained gunshot wounds was conducted by joint elements of PIB and SOG Batangas led by P/Supt Gilbert Sauro and RID PRO CALABARZON at Barangay Pagaspas, Tanauan City, Batangas on or about 12:40 A.M. An intel information was received by Task Force RCBC Batangas that the other suspects in the May 21, 2008 armed encounter and other armed men were reportedly sighted at the said barangay. Acting on the said information, the operatives conducted casing/surveillance operations but accordingly were met by bullet fire from the compound then a firefight ensued resulting to the death of former Barangay Chairman Vivencio Javier of Barangay Pagaspas, Angelito Malabanan and Rolly Lachica.

The same Officer in Charge of the Tanauan Police, in his May 23, 2008 memorandum, reported to the Batangas Provincial Director that an investigation was conducted by the Tanauan Police to determine the facts and circumstances surrounding the armed encounter on May 21, 2008 and determine whether SPO1 Reynaldo Salazar was wounded in line of duty. According to his report, elements of Task Force Batangas under P/Supt Gilbert Sauro and the team led by SPO1 Reynaldo Castillo Salazar were conducting surveillance and possible police operations at barangay Poblacion 4, Tanauan City when they sighted Pepito Magsino with his group walking towards the direction of Sto Tomas. Seeing the presence of the team, the suspects drew their respective short firearms and fired towards the direction of the surveillance team, prompting the latter to return fire. Subject policeman (SPO1 Reynaldo Salazar) was hit on his body and was brought to St. Cabrini Hospital, Sto. Tomas, Batangas for medical treatment while suspect (Pepito Magsino) was also rushed to Dr. Carlito P. Reyes Hospital, Barangay Poblacion 4 but was pronounced dead on arrival (DOA) by Roldan Briones, the attending physician, while his cohort managed to escape after the incident.

The Batangas PPO Provincial Director gave a more detailed account of the incident in his June 4, 2008 memorandum submitted to the Regional Director of PRO CALABARZON. According to his report, the Special Investigation Task Group-RCBC was created to determine the identities of the perpetrators in the May 16, 2008 RCBC bank robbery-massacre. Two tracker teams were likewise

organized to support the task group. Team A, composed of elements of the Batangas Police Intelligence branch is directly under the Chief PIB, Batangas, PPO. Team B, composed of elements of the Batangas Special Operations group, is under P/Supt Marceliano Villafranca. Both Teams diligently exerted efforts in gathering information about the perpetrators.

One of the criminal groups being looked at was the notorious Lucido-Javier Robbery group, since this group is known to kill their victims after the robbery. Based on intelligence reports, this group was led by former Barangay Captain Vivencio Javier of Barangay Pagaspas, Tanauan City. Some of the identified members were Jake Javier (Vivencio's son), Pepito Magsino @ Pitong, Edmundo Padis, Angelito Malabanan and Rolly Lachica.

On May 20, 2008, SPO1 Salazar, Team Leader, 3<sup>rd</sup> PIT, received information that Pepito Magsino and Jake Javier were sighted riding in tandem in Brgy. Balokbalok, Tanauan City.

The next day, May 21, 2008, SPO1 Reynaldo Salazar received information that Pepito Magsino was drinking with some unidentified men somewhere in Slaughter, Brgy. 4, Tanauan City.

At about 2:05 pm., the team of 3<sup>rd</sup> PIT led by SPO1 Salazar, proceeded to the area to conduct casing and surveillance. P/Supt Sauro, Chief, PIB also called on his team to provide support to SPO1 Salazar in case it is needed.

Arriving at the vicinity of the City Slaughter House at Brgy 4, Tanauan City, SPO1 Salazar noticed several persons engaged in a drinking spree. When he approached the group, SPO1 Salazar saw the allegedly three (3) malefactors stood up to urinate. He alighted from his car at a distance of about 7 meters from them. Suddenly one of the alleged malefactors, later identified as Pepito Magsino, turned towards SPO1 Salazar and without any provocation fired his gun at the latter hitting the lawman in his chest and belly.

SPO1 Salazar managed to return fire hitting Magsino on different parts of his body. At this juncture, the companions of Magsino escaped on board a black CRV Honda. Hence, a hot pursuit operation followed under the direct supervision of P/Supt Sauro.

Magsino was brought to the CP Reyes Hospital in Tanauan City by the responding team from Tanauan CPS for medical treatment but was pronounced dead on arrival by the attending physician due to multiple gunshot wounds. SPO1 Reynaldo Salazar was brought to St. Cabrini Medical Center, Sto Tomas, Batangas where he underwent surgery for almost eight hours and was thereafter confined in the Intensive Care Unit (ICU) for four (4) days until he was declared out of danger by his attending physician.

At around 6:00 pm. of May 21, 2008, the PIB Chief received information that one of the companions of Pepito Magsino who figured in the shoot-out was proceeding to the house/compound of former Brgy. Captain Vivencio Javier at Brgy. Pagaspas, Tanauan City. Another information disclosed that unidentified armed factors were also sighted in the compound of incumbent Danny Javier of the same barangay.

Based on these pieces of information, the PIB Chief requested reinforcement from R2 and RMH 4A for a hot pursuit/follow-up activity.

Four (4) teams were organized and were given specific targets:

Team 1 led by P/Supt Gilbert G. Sauro was tasked to check Brgy. Captain Servillano Javier's house for any presence of armed men, particularly the companions of Pepito Magsino.

Team 2 led by P/Supt Marceliano S. Villafranca was assigned to check the presence of armed men particularly the companions of Pepito Magsino reportedly seeking shelter in the house of former Brgy. Captain Vivencio Javier;

Team 3 led by PS/Insp Ricardo Dalmacia of RID was tasked to check the reported presence of armed men believed to be the companions of Pepito who were given protective shelter in the house of Danny Javier; and

Team 4 composed of RMG4 elements was to be responsible for security.

After a briefing, the various teams jumped off to perform their assignments.

As team A led by P/Supt Gilbert Sauro approached the gate of the compound of Brgy. Capt. Servillano Javier, dogs started barking. At a distance of more or less 10 to 12 meters, a man armed with a rifle came out from the gate. At this juncture, the policemen dropped for cover. P/Supt Sauro shouted "MGA PULIS KAMI, ITAPON ANG BARIL". However, instead of heeding the command, the man with gun fired. The team returned fire.

At this juncture, the team maneuvered and managed to get in the compound, but they heard gunfire coming from the dark portion of the house near a hut or "kubo"; Hence, the team returned fire. Minutes later, as Team B led by P/Supt MARCELIANO VILLAFRANCA approached the compound of former Brgy. Capt. Vivencio Javier, the team was fired upon. The gunshots were coming from inside the house of former Brgy. Captain Vivencio Javier. This prompted the

entire team to tactically maneuver. Subsequently, shots were fired at the members of the team. The team returned fire. When the exchange of fire stopped, former Brgy. Capt. Vivencio Javier who was armed with a pistol lay dead on the floor. During clearing operations, two (2) other persons lay dead. They were later identified as Angelito Malabanan who was armed with a Winchester brand rifle and Rolly Lachica who was armed with a hand grenade. Some unidentified companions were able to escape.

Another version by the PNP Operatives in their report was that Pepito was riding on a vehicle from the site/place where he was having a drinking spree allegedly towards the direction of his house when he was chanced upon by the PNP Operatives.

Recovered from the following scene of the crime were the following:

At the first encounter sight on May 21, 2008 at the Slaughter House, Brgy 4, Tanauan City:

- Thirteen (13) fired cartridges of cal 5.56 mm.
- Four (4) fired cartridges of cal.45
- One (1) fired cartridge of cal 35
- One live bullet for cal 38

At the second encounter sight on May 22, 2008 at Barangay Pagaspas, Tanauan City:

- One (1) cal 9mm Glock 17 pistol SN UF402 one (1) magazine and seven (7) live ammo
- One Winchester 94-30-30 rifle SN 3033401
- One (1) hand grenade
- Nine (9) fired cartridge cases from cal 5.56

A list of participating elements was likewise attached in the June 4, 2008 memorandum. Included in the said list were the following:

**Team 1 – PIB, BPPO**

P/Supt GILBERT G. SAURO	- Team Leader
SPO3 SEGUNDO G. BINAY	- Asst. Team Leader
SPO2 ROGELIO L. CANDELARIO JR.	- Member
SPO1 GAUDENCIO C. MAGSUMBOL	- Member
PO3 ROMEO A. PANALIGAN	- Member
PO3 ADI MADLANGBAYAN	- Member

**Team 2 – PIB & PSOG, BPPO**

P/Supt MARCELLANO S. VILLAFRANCA	- Team Leader
SPO3 NARCISO M. AMANTE	- Asst. Team Leader
PO3 FERNAN B. HERNANDEZ	- Member
PO3 RENIE M. MALVEDA	- Member
PO2 ROBERTO A. GODOY	- Member
PO2 EDWALBERTO M. VILLAS	- Member
PO2 LEONARDO L. AQUINO	- Member

**Team 3 - RID, PRO CALABARZON**

P/Supt RICARDO I. DALMACIA	- Team Leader
P/Insp LEOVINO U. RICABLANCA	- Asst. Team Leader
SPO2 LEO MORCILLA	- Member
SPO1 ANGELITO N. DIZON	- Member
SPO1 ANTONIO V. PAOMBONG JR.	- Member
SPO1 ROBERTO B. OPENA	- Member
SPO1 LAURO O CAMITAN	- Member
PO3 ALEXANDER KIM D. SOBREPENA	- Member
PO2 LYNDON . HERRERA	- Member
PO2 JIMMY R. RONCAL	- Member
PO2 KEVIN BERNAS	- Member
PO1 CAMELO M. CASALME	- Member

**Team 4 – RMG 4A**

PO3 RICHARD A. PINHILL	- Team Leader
PO2 REYNALD U. SIRINGAN	- Asst. Team Leader
PO2 JEFREY LUIS C. FRANCA	- Member
PO2 GILBERT M. MOLINO	- Member
PO1 DANILO V. SALVATIERRA JR	- Member
PO1 MICHAEL G. REBATO	- Member
PO1 DEXTER M. CAUDILLA	- Member
PO1 BREN V. SUMADSAD	- Member
PO1 RYAN L. UPAO	- Member
PO1 VICTONIANO P. SANIL	- Member
PO1 VENIORITO LAGO	- Member

3<sup>rd</sup> PIT, BPPO- Surveillance Element (May 21, 2008)  
 SPO1 REYNALDO C. SALAZAR

**WITNESSES' ACCOUNTS**

The CHR composite team, based on the interviews and the sworn statements of various witnesses of the Tanauan incident, was able to gather the following information:

## **MAY 16, 2008**

That on May 16, 2008, Pepito Magsino, Ex-Barangay Captain Vivencio Javier, Angelito Malabanan and Rolando Lachica were nowhere in the scene of the killing and robbery incident which took place at RCBC, Cabuyao.

Several friends of Pepito Magsino could credibly vouch that on the night of May 15, 2008 until the early morning of May 16, 2008, they were busy preparing the ingredients for the food to be served at a wedding in the neighborhood. Another witness testified that he was seen being served food at the wedding celebration. At past 8:00 am of the same day, he, together with his neighbors gathered at the back of his house to drink until late in the afternoon, as evidenced by a joint affidavit executed by the neighbors and collaborated by his wife (Annex "B-17" of the CHR Final After Mission Report).

Witnesses could attest that Ex-Barangay Captain Vivencio Javier was at Barangay Pagaspas, Tanauan City busy tending to his lovebirds and fighting cocks which are located about 15 meters away from his house. During that day, he was also overseeing the repair of the roof of his gazebo which is in his garden adjacent to the main house (Annex "B-13" of the Final After Mission Report).

On the other hand, Rolando Lachica was with Romeo Vasquez, an errand boy of the Javier family, cutting grass in front of Ernesto Javier's residence.

Angelito Malabanan was at Barangay Captain Servillano Javier's residence tending the care of the latter's fighting cocks (Annex "B-14" of the Final After Mission Report).

## **MAY 20, 2008**

Pepito Magsino was established to be in Barangay Poblacion 4 for the duration of the day and assisted in the slaughtering of the pig for the next day's festivities in the neighborhood (Annex B-12 of the Final After Mission Report).

## **MAY 21, 2008**

On May 21, 2008 at around 11:00 am., Pepito Magsino attended Marivic Roque's child baptismal celebration at Barangay Poblacion 4, Tanauan City, Batangas. He stayed and drank with his friends in front of Marivic Roque's house until approximately 4:00 in the afternoon of the same day. After several minutes, a male teen-ager with dyed hair wearing a cap and not from the neighborhood approached the group and said, "PITONG, MAY NAGHAHANAP SA IYO, DOON SA BAHAY NYO." Pepito Magsino then replied, "SIGE, SUSUNOD NA AKO." Pepito Magsino then stood up and bid farewell to his drinking buddies saying, "MGA PARE, SANDALI LANG AT TITIGNAN KO KUNG SINO ANG

MGA ITO.” He then started walking away (Annex “R”, Final After Mission Report). He walked away from the front of Marivic Roque’s house all the way to the end of the dirt road of Trinity Compound. When he reached J. Gonzales Street, the main road leading to Barangay Pagaspas, he turned right, walked past a few houses then turned left toward his house at Slaughterhouse.

An eyewitness to the incident who refused to execute an affidavit and asked that his/her identity be hidden for fear of reprisal, recounted that earlier on the day of May 21, 2008, s/he noticed a red private four door sedan and a black Honda CRV roaming their vicinity at Barangay Poblacion 4 Slaughterhouse. The eyewitness first noticed these two vehicles circling the area at around 7:00 am. S/he further stated that one of the vehicles even stopped around 8:00 am at a sari-sari store near the house of Pepito Magsino where a man alighted from the vehicle to buy softdrinks. Around 1:00 pm, s/he again noticed the vehicles parked from a distance and after some time drove away. This pattern continued for more or less three hours. Minutes before the shooting incident, s/he again noticed that the red private four door sedan was parked at the corner of the road several meters away from the house of Magsino while a black Honda CRV was parked across the house of Magsino (Annex “R” of the CHR Final After Mission Report).

At that point, the eyewitness noticed Magsino texting on his cell phone while walking towards his house coming from the other road behind their house. Only seconds lapsed when s/he saw a man s/he later identified positively as SPO1 Reynaldo Salazar alighting from his car and trailing Magsino. The companion of SPO1 Salazar in the red car also alighted but stood only from a distance and acted as a lookout. Simultaneously, two men in the black Honda CRV alighted from their vehicle. All three men then, from two opposite directions, were able to sandwich Magsino. At this juncture, SPO1 Salazar drew his gun and the other two, their .45 caliber guns and started to fire at Magsino. Magsino was first shot in the arm by SPO1 Salazar who fired the first two shots. Magsino tried to inch toward the gate of his house which was only a few feet away. The shots fired by the three armed men were successive. The eyewitness recalls that Magsino was shot in the leg which prevented him from being able to push the gate open. It was also difficult for him to open the gate because of the heavy stones placed behind it by the household to prevent it from being easily opened. After several shots, Magsino fell to the ground. He tried to crawl towards the sari-sari store adjacent to his house for cover but at this point he was already cornered. The armed men walked closer towards him and peppered him with bullets. Magsino then uttered, “PUTANG INA NIYO, WALA AKONG ATRASO SA INYO.” The eyewitness said that even as Magsino lay dead, the three armed men were still shooting at him. One shot him close to the nape. It was at this point (the eyewitness) noticed the tongue of Pepito Magsino came out.

According to the witness, Pepito Magsino was unarmed at the time of the alleged shooting incident and that SPO1 Salazar was caught in the crossfire when his two armed companions stood across from him and shot at Magsino. When

SPO1 Salazar was shot, the man who acted as a lookout came to his side and helped him to the red car and drove away. The other two men then drove away in the black Honda CRV leaving Magsino dead on the ground bathed in his own blood. The witness further averred that the incident happened in less than five (5) minutes. S/he likewise recalled that two of the armed men wore black vests on top of their shirts and the other wore a white t-shirt. People from the neighborhood also rushed towards the house of Magsino. His friends helped carry his body to the police mobile car. Magsino's body was then brought to the Velma Funeral Homes.

### **MAY 22, 2008**

Around 12:30 to 1:00 in the morning of May 22, 2008 an undetermined number of armed men barged inside the house of former Barangay Captain Vivencio Javier. Once inside, Vivencio's sons, Joey and Joker, had to open the bedroom door because of the loud knocks and demands to open it. Several armed men were waiting for them and were already poking their guns at them. Joey and Joker were ordered to go out with their arms raised. They were made to lift up their shirts and roughly frisked. Next, they were asked if their names were "Mario" to which they replied in the negative and thereafter told the men their true names. They were directed to move towards the corner of the living room near the main door, raise their arms, face the wall and bow down their heads. They stood in this position until the wee hours of the morning while two to three armed men poked their firearms at their backs (Annexes "B-2" and "B-3" of the CHR Final After Mission Report).

Olivia Javier, the wife of Vivencio Javier, headed down the stairs to find out what was happening. She saw her sons being frisked while guns were pointed at them. An armed man then asked her for the whereabouts of her husband and instructed her to make her husband go down the stairs. She went up again and came back with her husband. She led the way down the stairs and tried to shield her husband. When they reached the foot of the stairs, Vivencio walked towards one of the armed men and uttered, "SIR." The armed man asked, "IKAW BA SI KAPITAN?" while shaking hands with the former. Vivencio nodded. The armed man then placed his arm around the shoulders of Vivencio and tried to push the latter with the weight of his body while saying, "KAP, PWEDE KA BANG MAK AUSAP, MAY ITATANONG LANG KAMI SA IYO." When the wife noticed that her husband was being pushed and shoved towards the door, she embraced him. She was forcibly dragged by other armed men to the room of Joey and locked there with the wife of Joey and one year old son. After a few seconds, gunshots were heard. The wife panicked and called up her nephew on the cellphone. When the armed men heard her making a call, her cellphone was taken from her. Gunshots were again heard this time from afar, outside the house of Vivencio (Annex "B-1", CHR Final After Mission Report).

The armed men then went to the second floor of the house. They headed to the master's bedroom where the children, KC and Jovit, were. They ransacked the

room, opened the cabinets and turned the bed upside down. They took the cellphone of Jovit which at that time was being charged and the licensed firearm belonging to Vivencio. (Annex “B-4”, CHR Final After Mission Report). From that time on, the armed men were heard by the members of the household laughing, talking and even playing with the golf set of their father. Joker and Joey heard them make insinuations that they would be killed and their sister KC, who was described by the armed men as beautiful, raped.

The body of former Brgy. Captain Vivencio Javier was found inside his house by members of his family and neighbors when the policemen left. (Annex “B-1” of the CHR Final After Mission Report).

Witnesses who refused to execute sworn statements for fear of their life and reprisal recounted that at around 12:30 to 1:00 in the early morning of May 22, 2008, due to the loud howls of the dogs in the neighborhood, they peeked from their windows and saw an undetermined number of armed men in front of the gate of Captain Servillano Javier’s residence. The armed men were heard shouting, identified themselves and urged the occupants to go out. They then saw Malabanan open the small gate at the left side holding nothing. The armed men poked their firearms at his face. Malabanan raised his arms but was immediately and without warning fired upon by the armed men in the face. When he fell to the ground, he was again fired upon with another round and then peppered with bullets. Eight (8) bullet marks were found on the ground and another three (3) bullet marks were found in the steel gate. Bullets/slugs were recovered (Annex “E” of the CHR Final After Mission Report). According to Angelito Malabanan's father, the autopsy conducted allegedly revealed that his son sustained twelve (12) gunshot wounds.

After Angelito Malabanan was gunned down, the armed men were seen going inside the premises. Moments after, another round of gunshots was heard. The body of Rolando Lachica was found lying several meters from the gazebo where he slept. Remnants of his shattered skull and parts of his brain were found scattered at the mound of earth near a cage which was later covered with sand to hide the ghastly sight. After the incident, the bodies of the victim were brought to the Velma Funeral Homes. According to Malabanan’s father, when he tried to peek at his son’s remains at the morgue of the funeral parlor, he could not bear the sight of the left portion of his son’s head which was totally blown away and at that time, was already emitting a foul odor. According to Barangay Captain Servillano, he found the slippers of Rolando Lachica still at the gazebo hut where he usually slept. Servillano surmised that this could be indicative of the fact that Lachica was dragged from the hut since he never walked without his slippers. It was also observed by Servillano that the sleeping blanket which Lachica used was flung outside the hut only several feet away from where his body was found.

**ISSUE:**

Whether or not the deaths of Pepito Magsino, Vivencio Javier, Angelito Malabanan and Rolando Lachica resulted from a legitimate police encounter with criminal elements.

## **ANALYSIS OF THE CHR COMPOSITE TEAM**

The CHR composite team noted that there are strong indications of a rub-out rather than a shootout. The After Operation Reports submitted by the PNP itself presented conflicting information on the supposed shootout with the victims. These differing claims were quashed not only by narrations from witnesses but by other evidence as well.

First, based on the accounts of eyewitnesses, no shootout could have transpired as Pepito Magsino was alone walking and unarmed during the alleged shoot-out. Likewise, the incident could not have happened in Marivic Roque's yard during the drinking spree or towards Sto. Tomas as claimed by the PNP as this fact was negated by the testimonies of witnesses that Pepito Magsino was gunned down while on his way home after he excused himself from his drinking buddies to check on who was looking for him. His body was in fact found a few meters from his house.

The same testimonies contradicted the PNP's claim that he was sighted with a criminal gang prior to the shooting incident.

The PNP report, that Pepito was riding on a vehicle from the site/place where he was having a drinking spree allegedly towards the direction of his house when he was chanced upon by operatives, was also contradicted by the accounts of witnesses. As narrated by the witnesses, Pepito Magsino was not riding a vehicle prior to the incident nor did he possess any kind of vehicle while he was still alive. An analysis of the distance of the place of the drinking session from the location of his house would give credence to the explanation that it is too impractical to take a vehicle to go back to his house since the distance is approximately 80-100 meters. And based on the information gathered from the witnesses, the ownership of the black Honda CRV used by the perpetrators was traced back to the Provincial Director of Batangas. The said vehicle was even reported by the PNP as the getaway vehicle of Magsino's companions.

Another interesting point was the manner by which SPO1 Reynaldo Salazar together with unnamed PNP operatives conduct its operation. After having killed Pepito Magsino, all of them immediately fled the scene of the killing which is uncharacteristic of an alleged legitimate operation / shoot out as prescribed in the PNP OPERATIONAL PROCEDURES Rules 3,4,6,7 and 9.

Lastly, noteworthy to mention is that the list of participating elements of the PNP listed SPO1 Reynaldo C. Salazar as the only person under the 3<sup>rd</sup> PIT, BPPO whereas according to eyewitness account, three armed companions were with

SPO1 Salazar. The armed men in the vicinity were also estimated by the witnesses to be around fifty to sixty as opposed to the number of participating elements in the list submitted by the PNP.

On the shooting of former Brgy. Captain Vivencio Javier, accounts of witnesses refuted the allegation on the report that a shoot-out happened. Based on the sworn statements of the witnesses, they were able to hear the conversations between the armed men who forcibly barged inside the house of Vivencio Javier and the latter. (Sworn statements of Joker Javier, Joey Javier and Olivia Javier). Survey of the place of incident and analysis of gunshot marks inside the house indicate that shots were made from within the house and exited from the body of slain victim Vivencio Javier to an outward direction proving that no shoot-out transpired as claimed by the report of the PNP operatives. No gunshot marks were found coming from outside the direction of the house of Vivencio Javier based on the analysis of the bullet holes on the place of incident. Nor were gunshot marks found outside the house of the victim that would indicate / prove that the same were fired from the outside of the house. Witness (Roberto Perez) stated that members of the PNP operatives positioned themselves near the house of Barangay Captain Servillano Javier. They fired into the air and was followed by volley of shots from the other direction (a place near / in front of ex- barangay captain Vivencio Javier). This was presumably a way to impress (the nearby residents) that there was a shoot-out transpiring during the said operations. Then shootings were heard within the house of ex- barangay captain Vivencio Javier. These were probably the gunshots that killed him. Furthermore, a witness (Rene Marudo) who refused to sign a sworn statement gave his account and claimed that he was called-up by Olivia Javier prior to the killing of Vivencio Javier seeking assistance to proceed to the latter's house and to determine the identities of armed men circling their residence. He recounted that he immediately acceded to the request but he and his companion were stopped by armed men located on the road in front of the house of the killed victim. He negated that there was a shoot-out but instead claimed that he heard barrage of gunshots from within the house of Vivencio Javier. Lastly, the conversation that took place between Vivencio Javier and an armed man negates a shootout.

On the killings of Angelito Malabanan and Rolando Lachica, the allegation of shoot-out was likewise refuted by statements of the neighbors of Barangay Captain Servillano Javier who personally witnessed the killing of Angelito Malabanan, a houseboy of the owner of the compound. They narrated that Angelito Malabanan, bearing no firearm and contrary to the claim of the PNP in their report, immediately opened the smaller steel gate when the operatives knocked on the gate. However, upon opening of the gate, the operatives suddenly poked their firearms at Angelito Malabanan. After a brief moment, he was shot on the face by one of the operatives and after he fell down to the ground, he was peppered by gunshots by the operatives causing his instant death. The armed men immediately proceeded to the compound using the entrance gate after killing Angelito Malabanan, negating the information on the PNP report that the team

maneuvered to gain access to the subject compound. After a short moment, they heard shots inside the compound. These were probably the shots that killed Rolando Lachica, another house caretaker of Barangay Captain Servillano Javier.

#### **❖ No Warrant of Arrest nor Search Warrant Presented**

The Philippine National Police OPERATIONAL PROCEDURES contain basic guidelines to be observed “regardless of the type of functions to be performed and/or police operations to be conducted which all PNP units and personnel shall comply with and apply.”

Section 11 particularly provides for SPECIAL PROCEDURE, PNP OPERATIONAL PROCEDURES, on how the PNP members/personnel should make an arrest: “All arrests should be made only on the basis of a valid Warrant of Arrest issued by a competent authority.”

No warrant of arrest was presented to the victims nor to the members of the families of the victims to at least support the claim of a legitimate operation which is a clear violation of the rights of both the victims and their families. Assuming that the victims were involved in the RCBC Massacre, considering the time interval between the killings of Pepito Magsino on May 21, 2008 and Vivencio Javier, Angelito Malabanan and Rolando Lachica on May 22, 2008, the PNP operatives had sufficient time to secure or be armed with warrants of arrest in the conduct of their alleged “legitimate” operation. Nowhere to be found in the PNP reports is the claim that warrants of arrest were presented by the PNP operatives to the victims or their families prior to the killings which is bolstered by the accounts of the witnesses to the incident. They simply justified the said killings on the ground that the same materialized by virtue of a “hot pursuit” and “relentless police operation against possible suspects in the RCBC bank robbery case.” (Memorandum dated May 22, 2008 addressed to the Director, DIDM by the Regional Director, PRO CALABARZON). Under the premise that the victims were arrested and not killed, the manner of operation conducted by the PNP does not fall within the contemplation of Section 5, Rule 11, SPECIAL PROCEDURE, PNP OPERATIONAL PROCEDURE, on a lawful warrantless arrest or exceptions mentioned under Section 5, Rule 113 of the Rules on Criminal Procedure.

On the other hand, Rule 12 of the PNP OPERATIONAL PROCEDURE provides the manner on how to conduct valid searches and seizures. No search warrants were presented, hence, invalidating the seizures of the personal belongings of the victims and members of their families which were taken from the place of incident. There is no way then that the PNP Composite team could claim that there was a valid seizure since the fact remains that there were no search warrants presented. The PNP Composite team aggravated the situation, further violating the prescribed manner of the conduct of search procedures by having committed prohibited acts in the conduct of the same, particularly Section 5 (pars. a and b) of Rule 12.

Assuming that there were valid warrants of search and seizure, the PNP Composite team still clearly violated Section 7, Rule 12 for not having issued detailed receipts of the properties or things taken, but instead reported the same in their After Operations Report which contained confusing information as to the manner of operations as well as to the properties or things taken. Neither do these search and seizure incidents fall within the ambit of Section 8, Rule 12 (Valid Warrantless Searches and Seizures) of the PNP OPERATIONAL PROCEDURES.

**\* On the supposed “hot pursuit”**

Rule 2 (par b), GENERAL PROCEDURES, PNP OPERATIONAL PROCEDURES, defines hot pursuit as “ an immediate, recent chase or follow-up without material interval for the purpose of taking into custody any person wanted by virtue of a warrant or one suspected to have committed a recent offense while fleeing from one police jurisdiction to another, necessitating the pursuing police unit to cross jurisdictional boundaries that will normally require prior official personal inter-unit coordination but which the pursuing unit cannot at the moment comply with due to the urgency of the situation.”

Based on the PNP OPERATIONAL PROCEDURES which expounds the meaning of “hot pursuit”, the PNP After Operations Reports cannot claim that the killings in Tanauan City were under the principle of hot pursuit. If the elements of a hot pursuit were to be dissected, the contents of the PNP reports and the actual accounts of the witnesses would actually negate such claim. On the material interval element (e.g. “recent chase or follow-up without material interval”), the time of the commission of the RCBC Robbery and Massacre on May 16, 2008 and the alleged legitimate operation on May 21-22, 2008 showed material interval as contemplated by the definition. As regards the element of purpose (e.g. “...for the purpose of taking into custody any person wanted or one suspected to have committed a recent offense while fleeing from one police jurisdiction to another”), there were no warrants of arrest to strengthen the PNP claim on the legitimacy of the operation and there were no suspects fleeing as evidenced by the accounts of witnesses and the PNP reports. On the element of urgency situation (e.g. would normally... require prior official personal inter unit coordination but which the pursuing unit cannot at the moment comply with due to the urgency of the situation”), the PNP Aftermath Operation Reports would negate the urgency on the interval of time, and would show that the PNP had a well-planned operations and, with prior communication of the different units who were part of the PNP Composite team.

**\*On Basic Requirements of Police Intervention Operations**

It is noteworthy to examine the GENERAL PROCEDURES of the PNP OPERATIONAL PROCEDURES, particularly Rules 3, 4. 6. 7 and 9 in reference to the actual conduct of the PNP Composite Team (Annex “V” of the CHR Final

After Mission Report).

The afore-discussed lapses on the PNP report were primarily an attempt to mislead the facts of the incident and eventually to justify the unlawful acts perpetrated by those who are expected to protect the citizenry and uphold the law. These attempts knowingly or unknowingly placed them in a grave impression of white-washing these inhuman acts. These unlawful practices of “men in uniform” are blatant disrespect and violation of human rights and must be immediately curtailed and the perpetrators prosecuted.

### **\*On the SOCO Reports**

Even in the case of the SOCO Reports, some **inconsistencies/inaccuracies** in the factual statements were noted by the CHR Composite Team, to wit:

Annexes “D-1”, “D-2” and “D-3”, particularly Item XII of SOCO Form #1, which should list all information gathered from the crime scene upon arrival of the SOCO team, was not filled up;

Item XVII of the same form (Annex D-1) lists the injuries sustained by SPO1 Salazar as 2 gunshot wounds on the chest which is not entirely accurate because the gunshots he sustained were one in the chest and in the belly;

SOCO Form # 3 (Annex D-1) listed one (1) bullet of .38 cal which is not listed in the evidence collected but listed in the items found;

In Chemistry Report No. BC-017-08 (Annex D-1), Pepito Magsino was found positive for Gun Powder Nitrates but note that no gun was recovered at the scene of the crime;

Annex “D-2”, Spot Report states that Vivencio Javier sustained multiple gunshot wounds in different parts of the body and beside his right hand is one (1) Glock 17 (9 mm) pistol. Note, however, that the Glock 17 (9 mm) was found to be Negative for gun powder nitrates;

Item XVIII of SOCO Form # 1 under Annex “D-2” was not also filled up and Item XIV which should state the items stolen was filled up with the comment “None”, whereas 7 cellphones, 2 playstations and cash were reported missing in the residence of Vivencio Javier;

SOCO Forms # 4, 5 and 6 are each ironically dated May 21, 2008 whereas the actual date of incident should be May 22, 2008 and not as previously stated;

In SOCO Form # 5, under Annex “D-2”, included among the persons present was Willy Atun, OIC of Tanauan Police at 5:20 pm on May 21, 2008 whereas the actual date of incident in Vivencio Javier’s residence was May 22,

2008;

Chemical Report No. BC-018-08 indicates that Vivencio Javier was Positive for the presence of Gun Powder Nitrates but the gun allegedly found beside his hand was found to be Negative;

In SOCO Form # 1, under Annex “D-3”, Item XII was not filled up;

SOCO Report # 6 of the same Annex is dated May 21, 2008 which should instead be May 22, 2008, the date of the actual incident at Brgy. Captain Servillano Javier’s residence; and

SOCO Form # 5, still of the same Annex, is also dated May 21, 2008 whereas the date of the actual incident should be May 22, 2008 and furthermore, among the persons listed as present was Willy Atun, OIC of Tanauan Police on May 21, 2008 at 5:20 pm which does not correspond to the time and date of the actual incident in Barangay Captain Servillano’s residence.

## **CONCLUSION OF THE CHR COMPOSITE TEAM**

Under the aforesaid premises, the CHR Composite Team submitted that **no shootout could have possibly transpired** as claimed by the PNP. There are, however, **strong indications to suggest a rub-out** in the killing of Messrs. Pepito Magsino, Vivencio Javier, Angelito Malabanan and Rolando Lachica.

## **RECOMMENDATIONS OF THE CHR COMPOSITE TEAM**

The team recommended the following:

1. A public hearing be conducted by the Commission to formally investigate the possible human rights violations in the Tanauan incident with the end objective of seeking justice for the surviving kin of the victims.
2. Subpoena be issued by the Commission *en banc* ordering the respondents to submit their counter-affidavits and their evidence supporting their defense/position and give them opportunity to be heard. In the event that a hearing will be conducted by the Commission, the corresponding subpoenas and/or directives be issued to the respondents and resource persons, thus:
  - a. subpoena duces tecum ad testificandum be issued to Dr. Adel Bautista, for him to submit the final autopsy report on Pepito Magsino, and testify thereon as well as on the autopsy reports he issued insofar as the other three (3) victims; and to submit also the slugs he recovered from the bodies of the victims during the autopsy;

- b. subpoena the Administrator or in charge of the St. Cabrini's Hospital, Sto. Tomas, Batangas, to produce and submit to the Commission the complete medical records of SPO1 Reynaldo Salazar, to include the bullets allegedly recovered from the body of SPO1 Reynaldo Salazar, per the hospital operative record;
  - c. subpoena the head of the Philippine National Police (PNP), provincial commander of the Batangas Provincial Police and the Chief of Police of Tanauan City to explain their side and the human rights violations committed by members of the police force who were involved in the incident;
  - d. subpoena the complete list of the policemen who were with SPO1 Reynaldo Salazar during the killing of Pepito Magsino;
3. The immediate family of Vivencio Javier and other witnesses who fear for their lives be given ample protection under the Witness Protection Program of the Department of Justice. In line with this, it is also recommended that the Witness Protection Program of the CHR be revived;
  4. To refer to the Commission's Assistance and Visitorial Office, (AVO) the matter of possible financial assistance (after evaluation) to the surviving kin of Pepito Magsino, Angelito Malabanan, Rolando Lachica and Vivencio Javier;
  5. The CHR will assist the families of the victims in acquiring free legal assistance from appropriate government agencies if it has been determined that there is a need to file appropriate charges against those involved in the Tanauan incident in the courts;

**WHEREFORE**, the Commission, noting the above findings and recommendations of the CHR Composite Team, and finding the need for additional evidence as to actual number and identities of PNP personnel involved, to clarify inconsistencies in the submitted PNP documents, and so that all parties are afforded due process, **RESOLVES** to adopt the above-stated recommendations with modifications, as follows:

1. To conduct a joint public hearing with the House of Representatives, Committee on Human Rights, per CHR's letter-request to the House of Representatives, Committee on Human Rights, dated 29 May 2008 regarding the conduct of such;
2. On its own but with advice to Congress, to proceed with the conduct of public hearing, giving particular focus on the accountabilities of

officers within the provincial and/or regional PNP hierarchy under the principle of command responsibility;

3. To request the PNP Chief Avelino I. Razon, Jr. to seriously consider placing the officers and personnel/operatives involved in the Tanauan incident, already named (refer to pages 8 & 9 hereof) and still to be named, under preventive suspension or any appropriate relief;
4. To subpoena the witnesses for the victims who refused to execute sworn statements for fear of reprisals from the men involved in the incident and to require them to either execute sworn statements or testify under oath in the course of public hearing;
5. To refer to the Commission's Assistance and Visitorial Office (AVO), for evaluation, the matter of possible financial assistance to the surviving kin of Pepito Magsino, Angelito Malabanan, Rolando Lachica and Vivencio Javier, and for AVO to submit to the Commission *en banc* appropriate recommendations thereon;
6. To assist the families of the victims in acquiring free legal assistance from appropriate government agencies if it has been determined that there is a need to file appropriate charges against those involved in the Tanauan incident in the courts.

Let copies of this Resolution be issued to PNP Chief Avelino I. Razon, Jr., and all concerned officers and personnel/operatives involved in the Tanauan incident.

**SO RESOLVED.**

Done this 24<sup>th</sup> day of July 2008 at Quezon City, Philippines.

**LEILA M. DE LIMA**  
Chairperson

**CECILIA RACHEL V. QUISUMBING**  
Commissioner

**MA. VICTORIA V. CARDONA**  
Commissioner

ATTESTED BY:

**MARIA ASUNCION I. MARIANO-MARAVILLA**

Commission Secretary