

THIRD DIVISION

[G.R. No. 153911, December 10, 2004]

**MELANIO MALLARI Y LIBERATO, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

PANGANIBAN, J.:

To warrant conviction based on circumstantial evidence, the totality of the circumstances must eliminate beyond reasonable doubt the possibility of innocence; otherwise, the accused must be acquitted.

The Case

Before us is a Petition for Review^[1] on Certiorari under Rule 45 in relation to Rule 125 of the Rules of Court, seeking “to reverse, set aside, nullify and/or modify” the December 18, 2001 Decision^[2] of the Court of Appeals (CA) in CA-GR CR No. 18051. The dispositive portion of that Decision states:

“**WHEREFORE**, foregoing premises considered, the decision appealed from is **MODIFIED**. Accused-appellants Melanio Mallari and Zaldy Bontia, as well as Leonardo Bontia are found guilty of Attempted Murder punishable under Article 248 in relation to Article 6 of the Revised Penal Code for which they are **SENTENCED** to four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. The award with respect to damages and costs stand.”^[3]

In its May 14, 2002 Resolution,^[4] the CA denied petitioner’s Motion for Reconsideration of the assailed Decision.

The Facts

Version of the Prosecution

The factual background of the case, as related by the Court of Appeals^[5] based on prosecution evidence, is as follows:

“The records show that private complainant Erlinda Boyose was a teacher at the Bustamante High School, Davao City from 1977 up to 1989. At the start, she had a good working relationship with the school principal, appellant Melanio Mallari. However, their relationship turned sour when she began to question appellant Mallari on alleged unaccounted school funds.

"On June 29, 1989 at about 9:00 o'clock in the morning, while Boyose was at the Guidance Office, a man approached her and asked if he can still enroll his nephew. As enrollment was already closed, she advised the man to see Mallari, who is the school principal.

"Thereafter, Boyose went to her classroom. About twenty minutes later, the man approached her again. Meeting him by the door, she asked the man if he was able to talk to Mallari. The man answered that the principal was not in his office. So, she advised the man to just return the following day.

"In the afternoon, Boyose rode on a jeepney bound for Sasa, Davao. She observed that the man who talked to her in the morning was also in the same jeepney. She then inquired from him if he was able to talk to the principal regarding the enrollment of his nephew but the man just ignored her.

"While they were near Km. 13, Panacan, Davao City, the said man drew and pointed a gun at Boyose's temple. Boyose heard two successive clicking sounds of the gun but it did not fire. She heard the man utter in the Cebuano dialect, '*Unsa man ni, dili man ni moboto*', meaning 'What's this, this will not fire.' She then grabbed the gun and grappled for its possession. But she failed. Eventually, she was able to get out of the jeepney and ran away but the man followed her and shot her repeatedly.

"Boyose was hit in the lower mouth and at her back. She shouted for help. A man helped her and brought her to the San Pedro Hospital where she was treated and confined.

"Policeman Remo Pagal of the Sasa Police Station was one of those who went to the crime scene on June 29, 1989 to investigate. But nothing came out of it. He was only able to get the description of the gunman the following day when he interviewed the victim at the hospital.

"The police investigators were able to get the lead when a certain Andy Magdadaro went to the Sasa Police Station and told Policeman Pagal that he knew something about the shooting of Erlinda Boyose. He told the said police investigator that he was asked by one Edwin Amparado to kill Boyose but the plan was not carried out. He pointed to accused-appellant Zaldy Bontia as the man who hired Amparado to look for a triggerman.

"Thus, Edwin Amparado was picked up by the police. While in the police station where he was brought, he told the police investigators that in one occasion, he went to the house of appellant Mallari and the latter asked him to kill Boyose who used to be his neighbor at Doña Pilar Village but the same did not push thru. He later offered this job to Andy Magdadaro who was his neighbor in Agdao. They talked about the plan to kill Boyose and Magdadaro was only waiting for his go-signal. At the police station, he executed an affidavit regarding the offer of Mallari to kill Boyose.

"On August 1, 1989, at around 3:00 p.m., Pagal together with other policemen from the Sasa Police Station arrested appellant Zaldy Bontia

near the house of accused-appellant Mallari. Zaldy allegedly admitted participation in the incident and implicated his brother Leonardo Bontia as the gunman. The police lost no time in going to Asuncion, Davao del Norte to arrest Leonardo Bontia.

"Leonardo Bontia was brought to the Sasa Police Station at about 2:00 p.m. of August 2, 1989. Later that day, a police line-up was conducted and Boyose identified accused Leonardo Bontia as the gunman. She likewise identified accused-appellant Zaldy Bontia to be the constant companion and protégé of accused-appellant Mallari.

"When the custodial investigation was about to start, the Bontia brothers were apprised by police investigators Anastacio Naive of their rights under the Constitution. When asked by Naive if they had a lawyer to assist them, they told him that they had none. Naive then stopped the investigation and called the PAO office for assistance. At around 5:00 p.m. on that day, Atty. Jonathan Jocum, ** a PAO lawyer arrived. Pfc. Naive then asked the Bontia brothers if they wanted to be represented by Atty. Jocum and they said they are agreeable.

"During the custodial investigation, Leonardo Bontia admitted to be the gunman. He pointed to appellant Mallari as the one who hired him to kill Boyose. On the [other] hand, Zaldy Bontia admitted to have been hired by Mallari to look for a gunman to kill Erlinda Boyose and that he was the one who recommended to Mallari his brother Leonardo Bontia to do the job for a fee.

"Melanio Mallari, Leonardo Bontia and Zaldy Bontia, were accordingly charged by Asst. City Prosecutor Jose Emmanuel M. Castillo of the crime of Frustrated Murder, in an Information alleging –

'That on or about June 29, 1989, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused Melanio Mallari, directly interested in the death of Erlinda P. Boyose, conspiring, confederating and helping one another, accused Melanio Mallari induced his co-accused Leonardo Bontia and Zaldy Bontia, the latter convincing his brother Leonardo Bontia of the plan to kill said Erlinda P. Boyose by giving price and/or offering a reward to kill said Erlinda P. Boyose and which price and/or offer was accepted by said Leonardo Bontia and Zaldy Bontia; that in pursuance of said conspiracy said accused Leonardo Bontia, with treachery and evident premeditation, willfully, unlawfully and feloniously assaulted, and shot with a caliber 22 Magnum homemade revolver and hit said Erlinda Boyose, thereby inflicting upon her the following, to wit:

'AVULSION. LOWER LIP AND NAPE SECONDARY TO GUNSHOT WOUND WITH DISPLACEMENT OF TEETH ON MANDIBLE; FOREIGN BODY, G-4-5 LEVEL which injuries would ordinarily cause the death of the said Erlinda Boyose, thus performing all the acts of execution which should have produced the

crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is the timely shout and cry for help of Erlinda Boyose that as a result of which immediate assistance was had from a member of a coast guard and by the timely and able medical assistance rendered to the said Erlinda Boyose which prevented her death.”^[6]

During their arraignment,^[7] all the accused pleaded not guilty. Thereafter, herein Petitioner Mallari moved for a separate trial, which was granted by the trial court in its Order dated September 18, 1990.

In his separate trial, Mallari did not present evidence to establish his innocence or to refute the prosecution’s evidence against him. Instead, he moved for dismissal by way of demurrer to evidence which, however, the trial court denied in its Order dated July 2, 1992. Thereafter, although given ample time and granted numerous postponements over about a year, petitioner failed to present any witness in his favor.

Even in its Memorandum, the defense did not present its version of facts.

Ruling of the Trial Court

After evaluating the evidence on record, the RTC concluded that there was conspiracy among the three accused, although Leonardo Bontia was alone when he shot Erlinda Boyose. It held herein Petitioner Mallari liable as principal by inducement, Leonardo Bontia as principal by direct participation, and Zaldy Bontia as principal by indispensable cooperation, based on the following circumstances supposedly establishing their complicity:

“1. Accused Mallari has an axe to grind against victim Boyose therefore, has an interest of silencing her because of her persistent inquiries regarding the use or misuse of school funds under the custody of Mallari as principal of Bustamante Barangay High School. This is the motive for the shooting of Erlinda Boyose.

“2. The contact man Zaldy Bontia is beholden to Melanio Mallari being a protégé and a man Friday of the latter who exercised moral ascendancy considering that he promised Zaldy a steady government job and have been extending cash advances in the form of allowances to tide him over till such time that he can receive a regular salary from the government.

“3. Leonardo Bontia is the older brother of Zaldy who at that time the job was offered to him by Mallari to kill Boyose was in dire need of money having eight (8) children and wife to support.

“4. Leonardo Bontia when confronted by the victim at the police station readily admitted he shot Erlinda Boyose because of the money he hopes to receive from Mallari afterwards.

“5. Zaldy Bontia gave P900.00 to Leonardo Bontia which came from Mallari so Leonardo can hide.

"6. That Zaldy Bontia likewise confessed of his participation of the crime after being confronted by the victim at the police station.

"7. Both Leonardo and Zaldy Bontia voluntarily executed an extra-judicial statement regarding their complicity to the crime.

"8. A letter marked exh. 'I' addressed to the victim Erlinda Boyose which clearly came from Leonardo Bontia because it contained narration of events anent the crime and full of explicit details which only the author of the shooting has personal knowledge of and asking for forgiveness."^[8]

Thus, the RTC disposed as follows:

"WHEREFORE, the prosecution having established the guilt of accused Melanio Mallari as principal by inducement, Leonardo Bontia as principal by direct participation and Zaldy Bontia as principal by indispensable cooperation beyond reasonable doubt, the court finds the aforesaid three accused guilty of the crime of frustrated murder as charged in the information. They are hereby sentenced to suffer the indeterminate penalty of 4 years 2 months and 20 days of *prision correccional* as the minimum to 11 years 6 months and 21 days of *prision mayor* as the maximum and to solidarily indemnify the victim Erlinda Boyose in the amount of P15,000.00 representing loss of income, P8,000.00 representing hospital and medical expenses, P20,000.00 as attorney's fees and P50,000.00 as moral damages and to pay the cost."^[9]

Ruling of the Court of Appeals

On appeal, the CA essentially upheld the findings and conclusions of the trial court, except as to the stage of the crime committed.

The appellate court was convinced that petitioner was the one who had induced the Bontia brothers to kill Boyose, despite the absence of direct evidence showing his participation in the crime charged. It ratiocinated that the accused could be convicted on the basis of circumstantial evidence. There was more than one circumstance, the facts from which the inferences were derived had been proven, and the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt.

It further held that, in the separately held trial of petitioner, there was "no need for the prosecution to offer the evidence adduced during the trial of the Bontia brother[s,]" considering that only one criminal Complaint had been filed against all the accused. Moreover, the issue could not be raised for the first time on appeal.

Hence, as stated earlier, the CA modified the trial court's disposition and convicted the accused-appellants of attempted murder.

This Petition^[10] was filed only by the alleged mastermind, Melanio Mallari.

Issues