

## FIRST DIVISION

[ G.R. No. 128073, March 27, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE  
MAMALIAS Y FIEL, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Accused **RENE MAMALIAS Y FIEL** was convicted of murder and frustrated murder by the Regional Trial Court of Manila (Branch 33). He seeks his acquittal on the ground that the trial court convicted him purely on the basis of hearsay evidence but he escaped pending decision of his appeal. The threshold issue is whether we should acquit the accused who is no longer in the custody of the law. We acquit to prevent failure of justice.

The records show that on January 31, 1993, accused Rene Mamalias and a John Doe were charged with the crimes of murder and frustrated murder, for the death of Francisco de Vera y Del Valle, and the gunshot wound inflicted on Alexander Bunag.

[1] The crimes were allegedly committed as follows:

Criminal Case No. 93-115102

"That on or about August 9, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts (sic) are still unknown, and helping each other, with intent to kill, and by means of treachery and with evident premeditation did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one FRANCISCO DE VERA Y DEL VALLE, by then and there shooting the latter on the head thrice with an unknown caliber gun, thereby inflicting upon the said FRANCISCO DE VERA Y DEL VALLE gunshot wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW."

Criminal Case No. 93-115103

"That on or about August 9, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts (sic) are still unknown, and helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one ALEXANDER BUNAG Y FIGUEROA, by then and there shooting the latter with unknown caliber

gun on his face hitting his cheek, thereby inflicting upon the said Alexander Bunag Y Figueroa gunshot wound which was necessarily fatal and mortal, 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 his will, that is, by the timely and able medical assistance rendered to the said ALEXANDER BUNAG Y FIGUEROA which save(d) his life.

CONTRARY TO LAW."

Accused pleaded not guilty.<sup>[2]</sup> His co-accused remained at large. Trial ensued.

The prosecution presented only two (2) witnesses, namely police investigator SPO3 Manuel Liberato of the Western Police District Command and Dr. Remigio Rivera of the Mary Johnston Hospital.

SPO3 LIBERATO testified that the accused was arrested on January 4, 1993. A few days later, a relative of the murder victim Francisco De Vera brought to the police headquarters Epifanio Raymundo, an alleged eyewitness to the shooting incident. The sworn statement of Raymundo was taken by SPO3 Liberato. In his sworn statement, Raymundo claimed that at about 5:00 a.m., on August 9, 1992, he saw De Vera standing in front of house no.1001 in Ilaya Street near Padre Capitan Street, Tondo, Manila. Two (2) unidentified men approached De Vera and, without any provocation, shot him in the head. Alexander Bunag, a fruit vendor, was caught in the line of fire and got hit on the cheek by a stray bullet that killed De Vera.<sup>[3]</sup> The assailants fled after shooting De Vera three (3) times.

SPO3 Liberato also prepared the Booking Sheet and Arrest Report and the Progress Report of the case at bar. In his Progress Report,<sup>[4]</sup> dated January 7, 1993, SPO3 Liberato stated:

"This pertains to the cases of Murder and Frustrated Murder wherein the victims were FRANCISCO DE VERA y DEL VALLE, 48 years old, married, jeepney barker, native of and last resided at Blk. 13, Lot 3, Phase 3-C, Kalayaan Village, Kaloocan City (Deceased) (sic), and ALEXANDER BUNAG y FIGUEROA, 20 years old, single, residing at No. 246 Padre Rada Street, Tondo, Manila (Injured and treated at Mary Johnston Hospital). The suspects are two unidentified malepersons (sic). The incident happened at about 5:00 a.m., August 9, 1992 in front of house no. 1001 Ilaya Street near corner Capitan Street, Tondo, Manila.

Incessant follow-up and discreet inquiries were made for the early resolution of his case and the possible apprehension of the suspects.

On January 4, 1993, RENE MAMALIAS Y FIEL, 33 years old, married, jobless, native of Osamiz City and residing at 1267 Hagonoy Street, Tondo, Manila, JONATHAN DEQUITO Y VINLUAN, 27 years old, married, jobless, native of Pikit North Cotabato and presently residing at no. 2515 Radium Street, San Andres Bukid, Manila, and RODOLFO FEROL Y TUSING, 30 years old, married, jobless, native of Palapag, Samar and

presently residing at no. 2929 Park Avenue Street, Pasay City (ALL UNDER ARREST) all members of the dreaded Robin Padilla gang and suspects in the series of Hold-up, Bank Robberies, Murder and other offenses were apprehended and brought in to this office, after a series of stake outs and raids, by elements of this office.

Witness in herein case, Epifanio Raymundo y Peralta, came to this office and positively pointed to and identified RENE MAMALIAS y FIEL, as one of the two men who fatally shot and killed Francisco De Vera y Del Valle and seriously injuring Alexander Bunag y Figueroa.

When investigated after apprising him of his constitutional rights as person under custodial investigation, Rene Mamalias y Fiel verbally admitted that he only acted as look-out at the time and only gave support to one alias LANDONG WARAY whom he alleged to be the gun wielder. He further stated that he was given P2,400.00 for the job and that it was one alias BOBBY URAK, a muslim, who ordered the killing of the herein named victims.

In view of the foregoing, Rene Mamalias was booked for Murder an Frustrated Murder and the same will be referred to the inquest prosecutor for proper disposition and action."

DR. REMEGIO RIVERA, a resident physician at Mary Johnston Hospital in Tondo, Manila, testified that on August 9, 1992, he treated the gunshot wounds of Alexander Bunag. Bunag sustained gunshot wound at the right cheek, measuring about 1 cm., and possibly a penetrating wound in the cranial area, measuring about 5 cms. However, he did not determine the extent of Bunag's possible head injury as Bunag refused to undergo a skull x-ray. Thus, he just cleansed Bunag's wounds and gave him anti-tetanus medications. Bunag was released that same day.

The prosecution tried to present Alexander Bunag, the heirs of Francisco De Vera and Epifanio Raymundo as additional witnesses but the authorities could not locate them.<sup>[5]</sup> For lack of other material witnesses, the prosecution rested its case.

The defense presented only one witness, accused Rene Mamalias.

Accused claimed that on the date and time of the shooting incident, he was in his house in Masinop, Wagas Street, Tondo, Manila. He fetched water and was unaware of any unusual incident. He denied any knowledge of the crimes imputed against him. On January 4, 1993, while he was counting the proceeds of his sales for watches and eyeglasses, he was arrested without warrant by the police and brought to the Western Police District. He was also not assisted by counsel during his custodial investigation.

On May 15, 1995, the trial court rendered its judgment, finding accused guilty as charged.<sup>[6]</sup> The trial court held:

"x x x. Finally, this court on September 27, 1993, ordered the Superintendent of the Western Police District, Col. Romeo Odi, to effect

the arrest of the witnesses mentioned in these cases but again to no avail. The Court can only surmise that the other witnesses went into hiding for fear of their lives.

The question before this Court is, whether the non-appearance of these witnesses is fatal to the cause of the prosecution?

The Court finds the evidence adduced for the prosecution supportive of the allegations of the information in both offense for murder and for the crime of frustrated murder. Accused did not deny the fact of his apprehension. Accused did not also deny the confrontation between him and the witness for the prosecution Epifanio Raymundo at the police headquarters wherein Epifanio Raymundo pointed to him as the person who shot Francisco De Vera y Del Valle on August 9, 1992. He also did not dispute the claim of the police investigator Manuel Liberato that during his investigation for the death of Francisco De Vera y Del Valle and for the injury sustained by Alexander Bunag he admitted verbally having shot De Vera and that he was paid P2,400.00 by one Landong Waray. His bare denial did not overcome the presumption of guilt established by the evidence adduced by the prosecution.

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WHEREFORE, for all the foregoing, the Court finds the accused Rene Mamalias y Fiel guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code for the death of Francisco Del Valle (sic) and is hereby sentence to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of said Francisco De Vera y Del Valle the amount of P2,400.00.

For the injuries inflicted on Alexander Bunag, the accused Rene Mamalias y Fiel is found guilty beyond reasonable doubt of the crime of frustrated murder defined and punished under Article 248 in relation to Article 6 of the Revised Penal Code and because of Article 48, such penalty is absorbed by the more serious crime of murder. In the latter case, no pronouncement as to civil liability.

SO ORDERED."

Hence, the appeal.<sup>[7]</sup> Accused-appellant contends that:

"THE TRIAL COURT DECISION WAS BASED ON ALLEGATIONS OF FACTS NOT TESTIFIED TO BY THE WITNESSES IN THE COURT AND THEREFORE HEARSAY."

In a Resolution dated August 25, 1997, we inquired from the Director of the Bureau of Corrections whether the accused-appellant is confined in the New Bilibid Prisons or some other institutions under said Bureau.<sup>[8]</sup> In a 1st Indorsement, dated October 7, 1997, the Bureau of Corrections notified this Court that it has no record