

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

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

Ponente: PANGANIBAN, J.

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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

In his Memorandum, petitioner submits the following issues for the Court’s consideration:

“I.

Whether the questioned CA Decision and the refusal by the Court of Appeals to reconsider it in its CA Resolution [are in] – accord with the ‘circumstantial evidence rule’ and the controlling jurisprudence thereon;

“II.

Whether the questioned CA Decision and the refusal by the Court of Appeals to reconsider it in its CA Resolution, upholding the trial court’s admission of an irrelevant, immaterial and improper evidence (coming from Edwin Amparado) which was among the basis for conviction – was in accordance with law and jurisprudence;

“III.

Whether the questioned CA Decision and the refusal by the Court of Appeals to reconsider it in its CA Resolution, correctly sustained the trial court’s consideration of an evidence given in a separately conducted

trial (not as against the petitioner) which was among the basis for conviction; and

“IV.

Whether the questioned CA Decision and the refusal by the Court of Appeals to reconsider it in its CA Resolution, which failed to tackle all the issues raised on appeal was consistent with ‘due process’.”[11]

In brief, the issues raised before this Court will be discussed seriatim as follows: (1) whether the trial and the appellate courts erred in taking cognizance of evidence given in the separate trial of petitioner’s co-accused; (2) whether there was sufficient circumstantial evidence to establish petitioner’s guilt beyond reasonable doubt; and (3) whether the Court of Appeals failed to accord due process to petitioner.

This Court’s Ruling

The Petition is meritorious. The prosecution failed to adduce the quantum of evidence needed for a criminal conviction.

First Issue:

Evidence Proffered in Separate Trial

Petitioner alleges that the trial and the appellate courts convicted him on the basis mainly of evidence adduced at the separately held trial of his co-accused. He submits that absent such evidence, there would have been no sufficient proof to establish his guilt beyond reasonable doubt.

In its Memorandum, the Office of the Solicitor General (OSG) simplistically contends that in the trial against petitioner, there was no need to offer anew the evidence separately proffered against the Bontias, because “the case [filed against them] involved only one case number.”[12] Respondent fails to cite jurisprudence in support of such logic or to give even a semblance of a sound rationale therefor.

As a rule, a court should not take judicial notice of evidence presented in other proceedings, even if these have been brought before it or have been heard by and are actually pending before it. This rule is especially true in criminal cases, in which the accused have the constitutional right to confront and cross-examine the witnesses presented against them.[13] Moreover, when a separate trial is granted, the testimony of the accused imputing the crime to the co-accused is not admissible against the latter, who has had no opportunity to cross-examine the witnesses.[14]

Parenthetically, the object of conducting a separate trial would be rendered naught if evidence proffered at the trial of one of the accused would be considered likewise adduced in the distinct trial of the other accused. What then would be the rationale for requesting and being granted separate trial? While the grant of separate trials for persons jointly accused of an offense is discretionary upon the court, the motions therefor are usually found meritorious when antagonism is apparent in the respective defenses of the accused.[15]

In the case before us, petitioner’s co-accused -- Zaldy and Leonardo Bontia -- executed, prior to trial, their respective extrajudicial confessions admitting their complicity in the crime charged and implicating petitioner as the mastermind. On the other hand, in denying their accusations, petitioner stood his ground and refused to execute a statement. Precisely, their antagonistic defenses must have impelled him to seek, and the trial court to grant him, a separate trial.

Records show, however, that most of the prosecution witnesses presented during the trial of the Bontias were likewise presented during the separate trial of petitioner. Testifying against him on December 20, 1990, was Pfc. Danilo Carvajal. The latter said that, as police investigator of the Sasa Patrol Station, he had conducted an

investigation of the shooting incident involving Erlinda Boyose, leading to the arrest of Zaldy and Leonardo Bontia and Melanio Mallari. He had allegedly taken the supposed extrajudicial confession of Leonardo Bontia who, after being apprised of his constitutional rights, voluntarily executed his Sworn Statement in the presence of an inquest lawyer of the Public Attorneys Office (PAO).[16]

On the same day, Atty. Jonathan Jocom testified that he was the PAO lawyer who had assisted the Bontias while each of them was under custodial investigation on August 2, 1989; that prior to their investigation, he had apprised them of their constitutional rights to counsel and not to be compelled to make any statement against their interests; and that despite his repeated warnings about the negative consequences of their statements, they nevertheless voluntarily executed and signed their statements confessing to the crime.[17]

On April 19, 1991, Pfc. Anastacio Naive testified that he had also investigated the shooting incident; interviewed the victim (Erlinda Boyose) and the witness (Edwin Amparado) who was an alleged friend of petitioner; and that he had reduced the statement of Zaldy Bontia into writing after informing the latter of his constitutional rights in the presence of Atty. Jocom. Zaldy named Melanio Mallari as the mastermind who had asked him to look for a triggerman who would “eliminate” Boyose.[18]

The testimonies of Policemen Antonio Ysulat and Victoriano Padilla were admitted by herein petitioner, according to the stipulation of his counsel.[19] Ysulat was the Sasa Patrol Station’s exhibit custodian, to whom the gun that had allegedly been used in the shooting incident was turned over. Padilla was the desk officer who had recorded the Complaint regarding the incident on June 29, 1989, the appearance of Erlinda Boyose, her identification of Zaldy and Leonardo Bontia from a police lineup, and the appearance of Petitioner Mallari at the patrol station on August 2, 1989.

Erlinda stated[20] that she was a classroom teacher and guidance counselor of Bustamante High School, where petitioner was the principal from 1983 to 1989; and that initially, they had a good working relationship, which turned sour when she began inquiring about school funds that had remained unaccounted for. On March 22, 1989, she personally handed over to him a letter[21] she had written, reminding him of, among other things, some basic needs of the school that had remained unmet, such as blackboards, chairs and comfort rooms for the students; and his failure, as the school administrator in the past five years, to account for fees collected from students.

She then admonished him in that letter for his moral indiscretions in office;[22] recommended that he conduct dialogues/discussions with teachers, students and their parents, to disclose financial reports so as to avoid suspicions of fund misuse; and, finally, apologized for having to bring up all these matters, but expressed hope that it would all be for the improvement of the school administration. Boyose further testified that after reading the letter, Mallari told her sarcastically that he had been to so many schools, but that it was only she who had written to him in such a manner; he warned her that she “made a mistake in writing this [letter].”

Boyose also attested to the incidents of that fateful day, June 29, 1989, which culminated in the attempt on her life by Leonardo Bontia. He had asked her earlier that day in school about how to enroll his nephew at the Bustamante High School. Because of the gunshot injuries that she sustained, she had to undergo hospitalization for which she incurred expenses.

While the instant case was pending trial, Leonardo Bontia supposedly wrote her a letter[23] asking for “forgiveness for the crime [he] had done against [her,]” saying that he was in dire need of money at the time. Allegedly, he had to go to Mallari, hoping to be able to ask for some, but the latter instead “dared [him] to discipline Mrs. Boyose,” “gave [him] food and drinks until [he] got drunk,” and also promised to give him money and a job. Because the accused was drunk and, thus, “out of his mind,” he supposedly gave in to the prodding of Mallari.

Only two other witnesses against the Bontias were not presented against Petitioner Mallari. They were (1) Pfc. Remo Pagal, who had also participated in the investigation and allegedly received an informer's tip that led to their arrest; and (2) Dr. Roberto Alabado, who had treated the injuries of the victim.[24]

The remaining witnesses at the separate trial of the Bontias were petitioner's co-accused, Zaldy and Leonardo Bontia. It is worth noting that despite their earlier confessions -- as attested to by Witnesses Carvajal, Jocom and Naive -- the Bontia brothers, assisted by counsel, entered a plea of not guilty. Moreover, during their trial, the brothers denied committing the crime; admitted to having signed their respective statements; but alleged that these had been procured without the assistance of counsel and with the police officers' use of force, intimidation and violence.[25]

After reading the testimonies of Pagal, Alabado and the two Bontias and reviewing the rulings, we find that the trial and the appellate courts could not have taken those testimonies into substantial consideration, if at all, in convicting the petitioner. In fact, the testimonies of Pagal and Alabado were merely corroborative of those of the other witnesses who were presented during petitioner's trial. On the other hand, the declarations of Zaldy and Leonardo Bontia in open court were, on their face, favorable to him. And the lower courts' cognizance of those declarations would not have prejudiced him, as petitioner asserts. However, despite the denials by the Bontias, the lower courts still found them, including petitioner, guilty.

We therefore find no basis at all for the allegation of petitioner that the trial and the appellate courts convicted him on the ground of evidence adduced at his co-accused's separate trial, but supposedly not during his own trial.

Second Issue:

Sufficiency of Circumstantial Evidence

A close perusal of the testimonies of the witnesses presented against petitioner reveals the absence of direct evidence establishing his criminal participation. Nonetheless, in the absence of direct proof, a conviction may still be based on circumstantial evidence. But to warrant such conviction, the following requisites must concur: (1) there is more than one circumstance, (2) the facts from which the inferences are derived are proven, and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

Corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with innocence.[27] Hence, if the totality of the circumstances eliminates beyond reasonable doubt the possibility of innocence, conviction is proper; otherwise, the accused must be acquitted.[28]

With the above jurisprudential premises in mind, we examined the circumstances on the basis of which petitioner had been found guilty beyond reasonable doubt and, consequently, convicted.

According to the CA, the following circumstances were sufficient to establish the criminal culpability of the three accused (Zaldy and Leonardo Bontia, as well as Petitioner Mallari):

"x x x. First, appellant Mallari had an axe to grind against the victim 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 fact shows the motive of Mallari in silencing her. Second, Zaldy Bontia, the person who looked for a killer, is beholden to Melanio Mallari, considering that the latter had promised him a steady government job and had been giving cash advances in the form of allowance to tide him over till such time that he could receive a regular salary from the government. Third, Leonardo Bontia is the older brother of Zaldy. When the job to kill Boyose was offered by Mallari to Leonardo Bontia, the latter immediately acceded considering that he was in dire need of money having eight (8) children and a wife to support. Thus, when confronted by the victim at the police station, he readily admitted that he shot Erlinda Boyose because of the

consideration he hoped to receive from Mallari afterwards. Fourth, the money in the amount of P900.00 which Zaldy Bontia gave to his brother Leonardo so that he can hide came from Mallari. Fifth, the confession made by Zaldy Bontia concerning his participation to the crime after he was confronted by the victim at the police station. Sixth, both Leonardo and Zaldy Bontia voluntarily executed extra-judicial statements regarding their involvement in the crime. In their respective extra-judicial confession, they pointed to Mallari as the person who induced them to kill Boyose. Finally, the letter of Leonardo Bontia marked as Exhibit 'I', addressed to the victim asking for forgiveness, contained narration of events with full of explicit details regarding the commission of the crime.”[29]

In its Memorandum,[30] the OSG substantially repeats the above circumstances in support of the conviction of petitioner.

The first circumstance -- that “Mallari had an axe to grind against the victim because of her persistent inquiries regarding the use or misuse of school funds” -- appears to be a conclusion based merely on the impression of the victim herself. Other than the one letter[31] she wrote to petitioner, only her self-serving statement supported her allegation that she had questioned persistently (several times) his supposed administrative malpractices as school principal.

Be that as it may, a reading of that letter, which was indeed replete with denigrating statements against him, probably served as a motive for a reprisal from him, if its contents were not treated as constructive criticism. To the extent that it tends to establish motive, this circumstance may be taken into consideration in the overall assessment of the evidence against him.

The second to the fourth circumstances[32] are not directly established by the evidence against petitioner. None of the prosecution witnesses testified thereon. A scrutiny of the records of the case reveals that those circumstances were derived from the “Written Statements”[33] that had been made by petitioner’s co-accused and presented when Prosecution Witnesses Carvajal and Naive testified. These witnesses were the police investigators who had reduced into writing the statements of Leonardo and Zaldy Bontia at the time of the arrest of the latter two.

Section 36 of Rule 130 of the Rules of Court provides that witnesses can testify only with regard to facts of which they have personal knowledge; otherwise, their testimonies would be inadmissible for being hearsay.[34] In the present case, neither of the said witnesses had personal knowledge of the second to the fourth circumstances considered by the appellate court, or of the rest of the statements made by the declarants in their respective Written Statements. The witnesses merely attested to the voluntariness and due execution of the Bontias’ respective extrajudicial confessions. Thus, insofar as the substance of those confessions is concerned, the testimonies of the police witnesses are mere hearsay.[35]

The fifth and the sixth circumstances refer to the aforementioned Written Statements of petitioner’s co-accused who did not, however, testify against him. Well-settled is the rule that extrajudicial declarations are inadmissible in evidence against the declarant’s co-accused.[36] The admission by the court of such declarations violates the incriminated person’s right to due process. This principle holds if, as in the case before us, the declarants fail to take the witness stand and thereby deny the accused-petitioner the fundamental right to confront and cross-examine them face-to-face, in order to test their truthfulness and credibility.

True, there are exceptions to this rule, such as when the confession is used as circumstantial evidence to show the probability of the participation of the co-accused in the crime, or when the confession is corroborated by other pieces of evidence.[37] In such instances, the significance of the confession comes to the fore, but only in relation to the other circumstantial evidence establishing the guilt of the person incriminated. In the instant case, the merits of the fifth and the sixth circumstances mentioned by the appellate court depend, therefore, on the strength of the other circumstantial evidence against petitioner.

But, as discussed so far, just the first circumstance, establishing petitioner's motive, may be given due weight. Only one more remains to be considered, as the three other circumstances have been discounted as hearsay.

This last circumstance cited by the appellate court pertains to a supposed letter of Leonardo Bontia addressed to the victim, containing explicit details regarding the commission of the crime and asking for forgiveness. The latter was presented as part of the testimony of the victim, Erlinda Boyose. However, Leonardo was not presented in court to identify it. No other witness testified as to its genuineness or as to the fact that it had personally and voluntarily been written by him. Incidentally, Boyose received it through the mail, and no one ever attested that it had in fact been written and sent by the same Leonardo Bontia, petitioner's co-accused.[38]

As we have said earlier, witnesses can testify only with regard to facts of which they have personal knowledge. Testimonial or documentary evidence is hearsay if it is based, not on the personal knowledge of the witness, but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence -- whether objected to or not -- has no probative value unless the proponent can show that the evidence falls within any of the exceptions to the hearsay rule, as provided in the Rules of Court.[39] Clearly, none of the exceptions apply to the present case.

Thus, an unverified and unidentified private document cannot be accorded probative value. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party to the litigation the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect and of no probative value.[40]

There is another circumstance, not mentioned by the appellate court but advanced by the Office of the Solicitor General: that Prosecution Witness Edwin Amparado declared that he had been contacted by petitioner to kill Boyose. Let us first recall the testimony of that witness, as related by the trial court:

"On December 11, 1990, Edwin Amparado testified that he personally knows accused Mallari because he studied at F. Bangoy Barangay High School where Melanio Mallari was the principal from 1983 to 1984, that he also knows Zaldy Bontia, that the last time he saw Zaldy Bontia was in February 1989 in the house of Melanio Mallari located at Juan Luna, corner Chavez Streets, that he went to the house of Melanio Mallari to pledge his electric fan, that Melanio Mallari asked him to kill Mrs. Boyose who used to be his neighbor at Doña Pilar Village but nothing came out of it, that later he heard over the radio that Mrs. Boyose was shot, that he knows Andy Magdadaro who was his neighbor in Agdao, that they talked about the plan to kill Mrs. Boyose, that Andy Magdadaro was only waiting for his go-signal, that he executed an affidavit regarding the offer of Melanio Mallari to kill Mrs. Boyose. He said on cross-examination that he did not feel disgusted when Mallari asked him to kill Mrs. Boyose, that he thought of killing Mrs. Boyose and relayed the offer to Andy Magdadaro the same job, that he is close to Mr. Mallari, that the job of killing Mrs. Boyose was the only illegal job offered to him by Melanio Mallari, that during that time he needed money because his wife was pregnant, that he relayed the offer to Andy Magdadaro because he is a rebel returnee." [41]

It appears that the prosecution presented Amparado merely to show that petitioner had criminal intent against the victim. The testimony of the witness, however, concerned petitioner's alleged proposal to him (not to the Bontias) to kill Boyose -- an act that, by his own admission, did not materialize. Even if indeed petitioner made such a proposal, it did not necessarily mean that it was also made to the Bontias, absent any strong supporting evidence. The witness does not in fact appear privy to any conspiracy between petitioner and the Bontias.

Thus, insofar as the actual attempt on the life of Boyose is concerned, Amparado's testimony is clearly irrelevant or of no probative weight. It does not tend to establish, to any reasonable degree, the probability of a fact in issue[42] -- whether petitioner had induced or conspired with the Bontias to kill Boyose. Hence, the testimony is

worthless in establishing the guilt of petitioner of the crime charged against him.

In the final analysis, other than the victim's letter to petitioner tending to establish his ill motive, there is hardly any evidence to corroborate his co-accused's extrajudicial confessions (later recanted) or to establish the probability of his actual participation (by inducement) in the commission of the crime. Considering that the strength of the prosecution evidence against him falls short of the required quantum of proof beyond reasonable doubt, his constitutional right to be presumed innocent must prevail.

The Court has repeatedly held that when the circumstances shown to exist yield at least two inferences -- one of which is consistent with the presumption of innocence and the other with the finding of guilt -- the Court must acquit the accused, because the evidence does not then fulfill the test of moral certainty or suffice to support a judgment of conviction.[43]

Consistent with the above principles, and in view of the dearth of evidence to prove his guilt beyond reasonable doubt, petitioner must be acquitted.

Third Issue:

Due Process

Petitioner also claims that he was denied due process by the Court of Appeals, because it allegedly failed to tackle all the issues raised in his appeal brief.

While it is no longer necessary to resolve this issue in view of our disposition of the second one, it is enough to say that petitioner has neglected to substantiate this allegation in his Petition. He did not, in fact, even care to point out -- much less discuss -- what issues the appellate court had failed to resolve. In any event, a wrong disposition by the court is not tantamount to denial of due process.

WHEREFORE, the assailed Decision insofar as it pertains to Petitioner is REVERSED and SET ASIDE. On reasonable doubt, Petitioner Melanio Mallari y Liberato is ACQUITTED. The director of the Bureau of Corrections is directed to cause the immediate release of petitioner, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.
Corona, J., On leave.

[1] Rollo, pp. 11-28.

[2] Id., pp. 29-40. Fourteenth Division. Penned by Justice Elvi John S. Asuncion, with the concurrence of Justices Romeo A. Brawner (Division chair) and Juan Q. Enriquez Jr. (member).

[3] Assailed CA Decision, pp. 11-12; rollo, pp. 39-40.

[4] Rollo, p. 41.

[5] With substantial similarity to the trial court's account (RTC Decision, pp. 10-12), as follows:

“Evaluation of Evidence: After hearing the testimonies of the witnesses and analyzing the exhibits and after considering the arguments of counsel the court is satisfied:

“1. That on June 29, 1983 at about 5:30 p.m. a shooting incident occurred at Km. 13, Panacan, Davao City

near the DPWH depot.

“2. That the victim Erlinda Boyose was a public school teacher assigned at Bustamante Barangay High School located in Tibungco, Davao City.

“3. That in the morning of June 29, 1989 a person who later turned to be the gunman boarded the P.U. jeepney that victim Erlinda Boyose rode.

“4. That she noticed that the said person who she met earlier in the morning and asked her if his nephew could still be enrolled sat beside her.

“5. That at Km. 13, Panacan, near the DPWH depot the man suddenly drew and pointed a gun at her but the gun did not fire despite two attempts prompting the man to say ‘Unsa man ni, dili man ni moboto’, meaning ‘What’s this, this will not fire.’

“6. That the victim instinctively grabbed the gun and both grappled for possession of the gun.

“7. That she then disengaged herself and ran away but the gunman shot and hit her at the lower jaw, at the nape and arms.

“8. That at the San Pedro Hospital emergency room the victim when asked by the police said she knows the gunman not only because the said gunman approached her earlier that day on the pretext of enrolling his nephew but also because the gunman did not wear any mask and because when the gun did not fire after two attempts she grappled for the gun, had a good look at his face and even before the shooting she kept on staring at the gunman for about 5 minutes because she wanted to ask him if he was able to talk to the principal regarding his request that his nephew be enrolled.

“9. That the gunman wanted to kill the victim as the location of the gunshot wounds would clearly indicate.

“10. That the stoolie Edwin Amparado gave the police the leads which led to the arrest of the suspect.

“11. That accused Zaldy Bontia was ‘picked up’ near the house of co-accused Mallari at Chavez corner Juan Luna Streets on August 1, 1989.

“12. That accused Zaldy Bontia did not resist and led the police to the house of his elder brother Leonardo Bontia at Sabangan, Asuncion, Davao del Norte.

“13. That on August 2, 1989 Leonardo Bontia was positively identified by the victim Erlinda Boyose in a police line-up as the one who shot her on June 29, 1989.

“14. That accused Leonardo Bontia readily admitted his guilt and asked forgiveness from Erlinda Boyose in the presence of the police.

“15. That there is no proof that the police suggested to the victim who the gunman was.

“16. That the victim likewise identified co-accused Zaldy Bontia at the police line-up as a constant companion and protege of accused Mallari in the same line-up.

“17. That Atty. Jonathan Jocom of the PAO assisted the two Bontia brothers during the custodial investigation.

“18. That Atty. Jocom also gathered the three accused Leonardo, Zaldy Bontia and Melanio Mallari and told them of their constitutional rights to remain silent and to have a counsel of their choice.

“19. That accused Mallari was not subjected to custodial investigation because Atty. David Montaña, his lawyer was present.

“20. That Leonardo and Zaldy Bontia during the custodial investigation assisted by PAO lawyer, Atty. Jocom,

admitted their participation pointing to Melanio Mallari as the mastermind.”

[**] Spelled as “Jocom” in other parts of the records.

[6] CA Decision, pp. 1-4; rollo, pp. 29-32.

[7] Petitioner Melanio Mallari and Leonardo Bontia were arraigned on October 13, 1989; and Zaldy Bontia, on April 3, 1990.

[8] RTC Decision, pp. 13-14; rollo, pp. 117-118.

[9] Id., pp. 17-18 & 121-122.

[10] This case was deemed submitted for resolution on December 22, 2003, upon this Court’s receipt of petitioner’s Memorandum, signed by Atty. Grace Lina A. Fuentes. Respondent’s Memorandum, signed by Assistant Solicitor General Rodolfo G. Urbiztondo and Solicitor Evelyn C. Balgos-Guballa, was filed on September 18, 2003.

[11] Petitioner’s Memorandum, pp. 7-8; rollo, pp. 214-215. Original in upper case.

[12] Respondent’s Memorandum, p. 11 (citing CA Decision, p. 7; rollo, p. 193).

[13] *People v. Kulais*, 354 Phil. 565, July 16, 1998.

[14] Regalado, *Remedial Law Compendium*, Vol. II, 9[th] rev. ed., p. 462 (citing *People v. Tanso*, 105 Phil. 1289, April 30, 1959; *Talino v. Sandiganbayan*, 148 SCRA 598, March 16, 1987).

[15] See *Joseph v. Villaluz*, 89 SCRA 324, April 10, 1979; *Talino v. Sandiganbayan*, *supra*.

[16] TSN, December 20, 1990, pp. 2-32. The witness testified on substantially the same matters against the Bontias on December 3, 1990.

[17] Id., pp. 33-44. The witness also testified on substantially the same matters against the Bontias on October 22, 1990.

[18] TSN, April 19, 1991, pp. 84-106. The witness also testified on substantially the same matters against the Bontias on December 3, 1990.

[19] Id., pp. 106-109.

[20] TSN, July 23, 1991, pp. 137-159. The witness also testified on substantially the same matters against the Bontias on December 4, 1990 and February 5, 1991.

[21] Exh. “H”; records, pp. 295-299.

[22] Petitioner was allegedly seen by her and other teachers “kissing, necking and petting one of [the] male students.”

[23] Exh. “N”; records, p. 223 (translation on pp. 224-225).

[24] See RTC Decision, pp. 2, 3 & 5; rollo, pp. 106, 107 & 109.

[25] See CA Decision, p. 4; rollo, p. 32.

[26] *People v. Bato*, 348 Phil. 246, January 16, 1998; *People v. Llaguno*, 285 SCRA 124, January 28, 1998.

[27] *People v. Bato*, *supra*; *People v. Mijares*, 358 Phil. 154, October 8, 1998.

[28] *People v. Mondaga*, GR No. 115351, March 27, 1998; *People v. Llaguno*, *supra*.

[29] Assailed CA Decision, pp. 6-7; rollo, pp. 34-35.

[30] The OSG's Memorandum, pp. 9-10; rollo, pp. 191-192, enumerates the following circumstances that allegedly support the conviction of petitioner:

"1. Appellant Mallari had an axe to grind against victim Boyose. He, therefore, had 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 the Bustamante Barangay High School. This is the motive for the shooting of Erlinda Boyose.

"2. The contact man, appellant Zaldy Bontia, was beholden to appellant Melanio Mallari, being a protégé and a man Friday of the latter who exercised moral ascendancy over him, considering that he promised appellant Bontia a steady government job and had been extending cash advances in the form of allowance to tide him over till such time that he could receive a regular salary from the government.

"3. Leonardo Bontia is the older brother of appellant Bontia who at that time the job was offered to him by appellant Mallari to kill Boyose was in dire need of money having eight (8) children and a wife to support. Thus, Leonardo Bontia when confronted by the victim at the police station readily admitted he shot Erlinda Boyose because of the money he hoped to receive from Mallari afterwards.

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

"5. A letter marked Exhibit 'I', addressed to the victim Erlinda Boyose, clearly came from Leonardo Bontia because it contained narration of events anent the crime with full of explicit details which only the author of the shooting who had personal knowledge of it could make, and it asked for forgiveness.

"6. Prosecution witness Edwin Amparado testified that he was contacted by appellant Mallari to kill Boyose."

[31] Exh. "H," *supra*.

[32] "Second, Zaldy Bontia, the person who looked for a killer, is beholden to Melanio Mallari, considering that the latter had promised him a steady government job and had been giving cash advances in the form of allowance to tide him over till such time that he could receive a regular salary from the government. Third, Leonardo Bontia is the older brother of Zaldy. When the job to kill Boyose was offered by Mallari to Leonardo Bontia, the latter immediately acceded considering that he was in dire need of money having eight (8) children and a wife to support. Thus, when confronted by the victim at the police station, he readily admitted that he shot Erlinda Boyose because of the consideration he hoped to receive from Mallari afterwards. Fourth, the money in the amount of P900.00 which Zaldy Bontia gave to his brother Leonardo so that he can hide came from Mallari."

[33] Exhibits "B" & "C"; records, pp. 215-218.

[34] *People v. Manhuyod Jr.*, 352 Phil. 866, May 20, 1998.

[35] *People v. Franco*, 336 Phil. 206, March 4, 1997.

[36] *Santiago v. Court of Appeals*, 356 Phil. 647, September 10, 1998

[37] *People v. Sabalones*, 356 Phil. 255, August 31, 1998.

[38] Testifying in his defense during his separate trial, Leonardo Bontia denied having written the letter (TSN, November 16, 1992, p. 18).

[39] *People v. Sacapaño*, 372 Phil. 543, September 3, 1999; *People v. Crispin*, 383 Phil. 919, March 2, 2000. See

also §36, Rule 130 of the Rules of Court.

[40] PNOC Shipping & Transport Corp. v. Court of Appeals, 358 Phil. 38, October 8, 1998; People v. Sacapaño, *supra*.

[41] RTC Decision, pp. 8-9; rollo, pp. 112-113.

[42] Section 4, Rule 128 of the Rules of Court.

[43] People v. Fider, 223 SCRA 117, June 3, 1993; People v. Santos, 388 Phil. 993, June 8, 2000; People v. Sayana, 405 SCRA 243, July 1, 2003.

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