

THIRD DIVISION

[G.R. No. 165412, May 30, 2011]

GEORGE MILLER, PETITIONER, VS. SECRETARY HERNANDO B. PEREZ, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND GIOVAN BERNARDINO, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated June 14, 2004 and Resolution^[2] dated September 14, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 72395. The CA dismissed the petition for certiorari after finding no grave abuse of discretion on the part of public respondent Secretary of Justice in issuing his Resolution^[3] dated March 21, 2002 which ordered the exclusion of respondent Giovan Bernardino (Bernardino) from the Information for attempted murder.

The facts as culled from the records:

Petitioner George Miller is a British national and an inmate at the Maximum Security Compound of the New Bilibid Prison (NBP) in Muntinlupa City. In November and December 1998, while serving as Acting Secretary General of the Inmates' Crusade Against Drugs (ICAD) based at NBP, petitioner wrote two confidential letters^[4] addressed to then NBP Superintendent Col. Gregorio Agalo-os. The letters contained a detailed report of the alleged irregularities and drug trading activities of respondent Bernardino and Rodolfo Bernardo (Bernardo), both inmates at the Medium Security Compound and ICAD Treasurer and Chairman, respectively. Petitioner also recommended the transfer of Bernardino and Bernardo to the Maximum Security Compound.

On January 6, 1999, at around 2:30 p.m., while proceeding towards the volleyball court at the Medium Security Compound, petitioner felt a crushing blow at the back of his head. As blood oozed from his head, petitioner ran to the Infirmary for first aid treatment. Later, petitioner was transferred to the NBP hospital. On January 17, 1999, Dr. Ma. Corazon S. Alvarez, Medical Specialist at the NBP hospital, issued a Medical Certificate^[5] with the following findings:

- lacerated wound, one (1), about 8 to 9 cms. long, 1 cm. deep, on parietal area of the head.

- Barring unforeseen (sic) circumstances, healing period is from 7 to 10 days.

Investigation of the incident was immediately ordered by Supt. Agalo-os. PGIII Cecilio M. Lopez conducted the investigation and submitted to the NBP Director his Report^[6] dated January 5, 1999. Based on the sworn statement of petitioner and the verbal admissions made by inmates Constantino Quirante, Jr. (Quirante) and Roberto Ceballos (Ceballos), it was found that a few days before the incident, Bernardo and Bernardino confronted petitioner regarding the letters he wrote reporting the alleged illegal drug activities of Ace Aprid (Apid), Bernardo and Bernardino at ICAD. Bernardo and Bernardino were furious when petitioner admitted having authored the letters, threatening him with the words "*Mamamatay ka,*" which petitioner fully understood: he is going to die. Petitioner discovered that another inmate (Valeroso) to whom he confided the matter, had divulged the existence of the letters to Bernardo and Bernardino. At the time he was hit at the back of his head, petitioner was able to turn around and saw his assailant, later identified as Quirante, who ran away through the gate leading to the "*talipapa*" where petitioner lost sight of him. Petitioner then saw two persons standing near the entrance of the "*talipapa*" and shouted at one of them asking for the identity of his assailant and if he saw the incident. However, the man just kept mum. As petitioner realized that blood was oozing from his head, he immediately went to the Infirmary.

The day after the incident, Bernardo and Bernardino along with fellow inmates Apid, Virgilio Adrales, Rogelio Aguilar, Amable Bendoy, Arnel Modrigo, Alfred Magno and Vergel Bustamante, were brought to the investigation section.

In the course of the investigation, Quirante and Ceballos admitted their participation in the attack on petitioner and the information they provided was summarized by the investigating officer as follows:

x x x x

While the investigation was in progress, inmates Roberto Ceballos and Constantino Quirante voluntarily surfaced admitting their participation in the clubbing of Miller. After having been informed of their constitutional rights, the two during interrogation and without second thought, narrated in detail how and why they attempted to kill Miller in the following manner:

At around 10:30 A.M. of January 6, 1999, in whiling the time under the shade of a tree in a basketball court of the Medium Security Camp, Quirante and Ceballos were approached by Apid and Bernardino to engage their services and offered an amount of P1,500.00 to kill Miller. Being in dire need of money at the very moment, Quirante and Ceballos accepted the offer. Quirante admitted treacherously hitting Miller at the back of his head with a piece of wood but for failing to get him with one blow, he had to flee. On the other hand, Ceballos admitted as the lookout and was asked by Miller the identity of his assailant right after he was clubbed. Accordingly, what motivated them to reveal everything is the fact that only P100.00 was paid in advance to them by Bernardino and Apid and the balance of P1,400.00 as promised to be paid sooner was never fulfilled. The duo even signified their intention to reduce their

participation in writing to authenticate the admission of their guilt. However, in the absence of a lawyer to assist them and to safeguard their constitutional rights, the officer on case opted not to do so.

To ascertain the veracity of Ceballos and Quirante's confession, a confrontation was made at the Director's Office. Several inmates were lined-up with Ceballos and Quirante. Miller when asked to identify his assailant, he spontaneously pointed to Quirante as the one who clubbed him on the head and likewise pointed to Ceballos as the man whom he had shouted at asking for the identity of his assailant.

x x x x^[7]

On the basis of the foregoing, PGIII Lopez recommended that Quirante and Ceballos be charged with Frustrated Murder and the case be placed under further investigation "pending the establishment of sufficient evidence to indict inmates Rodolfo Bernardo, Giovan Bernardino and Ace Aprid."^[8] On February 10, 1999, the case was endorsed to the Office of the City Prosecutor submitting to the said office the following documents: (1) Investigation Report of PGIII Lopez; (2) Sworn Statement of petitioner; (3) Medical Certificate; (4) Routing Slip of Supt. Agalo-os; and (5) petitioner's letters dated November 21, 1998 and December 27, 1998 addressed to the NBP Superintendent.^[9] The case was docketed as I.S. No. 99-B-01314.

On March 30, 1999, Prosecutor Antonio V. Padilla issued his resolution^[10] finding the evidence sufficient to charge Quirante with attempted murder while dismissing the case against Ceballos for insufficiency of evidence, thus:

Anent the charge against Giovan Bernardino and Rodolfo Bernardo, we noticed that the same is merely anchored on suspicion and conjecture. Except the bare allegations of the complainant, nothing would link them to the assault against the complainant. In fact, their names were not even mentioned in the referral letter, dated February 10, 1999, of the Bureau of Corrections addressed to our Office.

WHEREFORE, premises considered, the undersigned respectfully recommends that the attached Information be filed in court. Further, it is recommended that the charge against Ceballos be dismissed on ground of insufficiency of evidence. As to the charge against Bernardino and Bernardo the same is likewise recommended dismissed on ground of insufficiency of evidence *without prejudice to the refilling of same in the event that evidence against them may be unearthed by concerned authorities.*^[11] (Italics supplied.)

Thereafter, an information for attempted murder was filed against Quirante only in the Regional Trial Court (RTC) of Muntinlupa City (Branch 256), docketed as Criminal Case No. 99-452.

On or about April 14, 1999, Quirante and Ceballos executed a joint affidavit in

Tagalog ("*Pinagsamang Sinumpaang Salaysay*"^[12]) which was sworn to before Prosecutor Padilla. They declared that at noontime of January 6, 1999, their services were engaged through their "*Bosyo*" or Commander, Rodrigo Toledo (Toledo), who told them that if they hit ("*paluin*") petitioner they will be paid P1,500 by Bernardino and Bernardo. Hence, they carried out the clubbing of petitioner by 2:00 in the afternoon of the same day in front of the volleyball court of the Medium Security Compound while petitioner was walking from the "*talipapa*." Quirante struck at petitioner from behind using a piece of wood and then ran away towards the "*talipapa*." Petitioner turned around and saw Ceballos whom he asked for the identity of his assailant. In pain and with bleeding wound on his head, petitioner momentarily sat down and then brought himself to the infirmary. Ceballos thought that petitioner did not recognize him since his face was then covered with shirt cloth. A day later, Toledo handed them P100 as initial payment, the balance to be paid by Bernardo and Bernardino also through Toledo. However, three days passed without the P1,400 being paid to them, until they were called to appear before the Director's office. When questioned during the investigation, they readily owned up to the assault on petitioner because Bernardino and Bernardo did not pay the agreed amount.

The sworn statement of Quirante and Ceballos was corroborated by Toledo who likewise executed a "*Sinumpaang Salaysay*"^[13] on even date stating that as early as December 1998, Bernardo and Bernardino have been talking to him about their plan to have petitioner killed. Toledo being the leader of their group (BC 45) at the Medium Security Compound, Bernardo and Bernardino promised that they will pay whoever among his (Toledo) men can do it. Toledo claimed that he initially declined but due to the daily conversations with Bernardo and Bernardino who also gave him food, he finally called on two of his men, Quirante and Ceballos, to carry out the plan to kill petitioner. He was confident that everything will be alright since Bernardo and Bernardino committed to pay P1,500 for the job. A day after the clubbing of petitioner, he gave Quirante and Ceballos P100 as initial payment by Bernardo and Bernardino for their services. Three days later, he learned that Quirante and Ceballos were summoned before the Director's Office in connection with the incident. He affirmed the truth of the admissions made by Quirante and Ceballos because Bernardo and Bernardino failed to comply with their undertaking.

On December 2, 1999, Quirante, Ceballos and Toledo executed new affidavits^[14] in English, which were sworn to before Bureau of Corrections Assistant Director Joselito A. Fajardo and Prosecutor Leopoldo B. Macinas. These new affidavits gave a more detailed narration of the incident and pointed to Bernardo and Bernardino as the "masterminds" with Aprid being an accomplice. Bernardo and Aprid allegedly planned the killing of petitioner together with Toledo, the BC 45 Gang Commander, wherein Quirante agreed to be the one to kill petitioner while another gang member, Ceballos, would act as his lookout. The affidavits also mentioned what transpired during the preliminary investigation conducted by Prosecutor Padilla and the earlier April 1999 Tagalog affidavits they executed before Prosecutor Padilla. These documents were submitted during the reinvestigation conducted by Prosecutor Macinas.

Bernardo and Bernardino submitted their Joint Counter-Affidavit^[15] dated January 19, 2000, stating that it was the second time they were being implicated in the case and pointing out that both investigations by the Investigation Section of the Bureau

of Corrections and the Office of the City Prosecutor, Muntinlupa City showed that they have no participation in the commission of the offense. They asserted that the charges against them have no basis and the fruit of the wrong and malicious imputations of the witnesses. They denied having committed any violation of the rules and regulations of ICAD, of which Bernardo is Chairman while Bernardino is the Treasurer. They claimed that in the three years they have been serving the ICAD, the organization has more than progressed and benefitted their fellow inmates at the NBP. As to the statements given by Quirante, Ceballos and Toledo, and other witnesses, these are conflicting and muddled, showing so much evidence of them having been tutored.

Bernardo and Bernardino likewise presented a "*Sinumpaang Salaysay*"^[16] executed by their witnesses, co-inmates Arnel Modrigo, Virgilio Adrales and Rogelio Aguilar. Said affiants declared that when petitioner approached them and asked if Aprid and Bernardo had anything to do with the incident, they plainly answered in the negative and told petitioner he should ask those persons instead. Everyday, petitioner goes to them asking them to pinpoint Aprid, Bernardo and Bernardino as the masterminds in order to strengthen the case against them. Petitioner even asked them to sign a handwritten letter^[17] prepared by petitioner himself, addressed to Supt. Agalo-os and which, while requesting for their transfer to the Medium Security dormitories, also affirmed the culpability of Aprid, Bernardo and Bernardino for the attempt on the life of petitioner. However, they refused to do so as they know there was no truth to the contents of said letter.

On March 20, 2000, Prosecutor Leopoldo Macinas issued his Memorandum^[18] addressed to the City Prosecutor finding probable cause against Quirante, Ceballos and Toledo in conspiracy with Bernardino, Aprid and Bernardo, for the crime of attempted murder. Prosecutor Macinas was convinced that the detailed account given by Quirante, Ceballos and Toledo were executed freely and voluntarily, and found no reason why they would incriminate their co-inmates other than the truth of the statements in their affidavits. On the other hand, the defenses proffered by Bernardo and Bernardino are evidentiary matters which can be best passed upon after a full-blown trial.

WHEREFORE, it is respectfully recommended that respondents Giovan Bernardino, Rod[o]lfo Bernardo, Rodrigo Toledo, Ace Aprid and Roberto Ceballos be all indicted by way of the herein attached amended information as co-conspirators of accused Constantino Quirante in attempting to kill George Miller, prima facie case having been established.

^[19]

Consequently, an Amended Information was filed with the RTC which included the names of Bernardino, Aprid, Bernardo, Toledo and Ceballos as co-conspirators in the crime of attempted murder.

Bernardino filed a petition for review^[20] with the Department of Justice (DOJ) arguing that there was no sufficient evidence presented to support a claim of conspiracy, which was based merely on conflicting testimonies or affidavits in a language foreign to the affiants. He noted that the English affidavits pointed to three people as the masterminds when originally only two have been implicated by