

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFISTA BRAGAT VDA. DE CABANGAHAN, ACCUSED-APPELLANT.*G.R. No. 70037. July 07, 1989*

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-70037/>**NARVASA, J.:**

Teofista Bragat was convicted by the Regional Trial Court of Lanao del Norte[1] of the felony of parricide for having killed her husband, Zacarias Cabangahan, on April 8, 1978, and was sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, to suffer as well the accessory penalties of the law, and to pay the costs. Teofista and Zacarias were married on November 25, 1950 before a Catholic priest in Malingao, Tubod, Lanao del Norte.[2] The conviction was grounded on circumstantial evidence, there being no eye-witnesses to the killing.

It appears that on April 8, 1978, at about midnight, Titing Manoop, a neighbor of the spouses Zacarias Cabangahan and Teofista Bragat at Barangay Candis, Municipality of Tubod, Lanao del Norte, went to the residence of Pat. Corsino Vicoy of the Integrated National Police of Tubod, roused him from sleep, and asked him to investigate a killing which had taken place at Barangay Candis.

Before proceeding to Candis, however, Pat. Vicoy first went to the Municipal Hall of Tubod to see if verification could be had of Manoop's report. There he saw Teofista Bragat, and learned from the guard on duty that she had "surrendered to him."¹ According to Vicoy, he had asked her, "Why are you here?" and she had "answered that she (had) killed her husband."² Pat. Vicoy then made the following entries in the police blotter, in his own hand, to wit:³

ENTRY NO. DATE TIME

070-78 04-09-78 0220H VOLUNTARY

SURRENDERED.

One Teofista Cabangahan y Bragat, 49 years old, married, farmer and a resident of Candis, Tubod, Lanao del Norte, voluntarily surrendered in this station for she allegedly killed her husband, Zacarias Cabangahan, 48 years old, married and a resident of Candis, Tubod, Lanao del Norte. Motive is family trouble.

0240H -- Pat. Corsino Vicoy, INP, investigator of Tubod Police Station (left station) with Dr. Marcelino Robles, PHU, Tubod, Lanao del Norte, left station and went to the scene of the incident to investigate.

Thereafter Pat. Vicoy went to Barangay Candis to investigate the crime, in the company of Dr. Marcelino Robles, the Municipal Health Officer. They came upon the lifeless body of Zacarias Cabangahan. Dr. Robles' post-mortem examination of the cadaver which disclosed several "deep, hacking" wounds in the head, neck and left shoulder. In the autopsy report he subsequently drew up,⁴ Dr. Robles detailed the number and nature of the decedent's wounds, and set down the "Cause of Death" as "Shock, due to hemorrhage, secondary to multiple

hacking wound." Dr. Robles also later declared, on the witness stand, that the victim's wounds had been caused by a sharp-edged instrument, like a bolo, and all the wounds were fatal.⁵ The bolo supposedly used in the killing was turned over to Pat. Vicoy by the barrio captain, and later presented in evidence at Teofista's trial.⁶

On his return to the Municipal Building, Pat. Vicoy made another entry in the police blotter,⁷ as follows:

0530H Pat. Corsino Vicoy arrived station from Candis, Tubod, Lanao del Norte; investigated the incident and it was found out that one Zacarias Cabangahan was already dead. The said incident was happened at about 12:00 midnight April 8, 1978.

He asked Teofista, who by then had been placed in a cell, why she had killed her husband. Her reply, according to Vicoy, was that "she can't bear any more because he was always quarreling with her."¹ He made no further effort to investigate Teofista because when he asked his station commander if he should make an investigation in writing, the latter had said, "never mind."²

Teofista was in due course charged with parricide in the Regional Trial Court. Upon arraignment she entered a plea of not guilty with the assistance of counsel de oficio. The prosecution thereafter presented evidence, tending to establish the facts narrated in the preceding paragraphs.

In her defense, Teofista's lawyer presented two (2) witnesses. The first was Vicente Remocaldo. He testified that he had attended a prayer meeting in connection with the death of a barangay resident held at Candis on April 8, 1978 at about 8 o'clock in the evening, that Teofista was present at the meeting, that snacks were served after the prayers, and the women started to leave at about 9:30 o'clock that night.³ Teofista's second witness was Agripino Llangoren, who deposed that he knew Teofista and her husband, Zacarias Cabangahan, because they were his neighbors; that Zacarias was a drunkard and when drunk, always quarreled with his family; that at about 7:00 o'clock in the evening of April 8, 1978, he had heard loud noises emanating from the Cabangahan spouses' residence, followed by complete silence moments later; that at around 10:00 o'clock, when Teofista had returned from a prayer meeting held at a nearby residence, loud noises had again emanated from her house; that he had then repaired to the Cabangahans' house to find out what was going on; that he was met at the door by Teofista who asked him to bring her to the Municipal Building of Tubod; and that he had escorted her to the place and left her there.⁴ The defense opted not to present the accused herself as witness, after having been given about a month's time by the Trial Judge to consider and come to a decision about the matter.

On November 12, 1984, the Trial Court promulgated its verdict, finding Teofista guilty beyond reasonable doubt of parricide, as aforesaid,⁵ and sentencing her accordingly.

Teofista has appealed and before this Court pleads for reversal of her conviction, contending that the Court erred in finding her and the victim to have been legally married, and that her guilt had been proven beyond reasonable doubt.

As observed in this opinion's opening paragraph, there were no witnesses at all to the killing. Not one of the witnesses who gave evidence made any claim to having seen Teofista kill her husband. There was no competent proof to establish that the bolo given to Pat. Vicoy by the barangay captain was indeed the weapon used in the killing, or that it even belonged to Teofista.¹

Neither was there any proof of the time of the victim's death. In fact, Dr. Robles frankly acknowledged his inability to make an estimate of that time.² The evidence shows that on the day in question, Teofista was out of the house from about 7:30 o'clock to 10 o'clock in the evening. From aught that appears, the killing could as well have taken place while she was out of the house as upon her return.

It is true that Teofista had gone to the Municipal Building that night, having been escorted there at her request by

her neighbor, Llangoren. The latter had gone to her home because he had heard loud noises coming from the place. Pat. Vicoy had first seen her there, at the police station, and learned from the guard that she had come to give herself up, in other words, to turn herself over to the custody of the police. It was under these circumstances, after Vicoy had been asked to investigate a killing and Teofista had placed herself in police custody -- in fact she was afterwards detained in a cell -- that as testified to by Pat. Vicoy, she had twice admitted killing her husband: first, to explain her appearance at the police station, and later that same night, upon his return from his investigation at the scene of the crime, when she also disclosed the motive for the deed, that she could no longer endure her spouse's constant quarrelling with her.³

True, Vicoy declared on direct questioning that it was he who had elicited both admissions from Teofista. But to all intents and purposes he recanted that testimony at least as to the first alleged admission, when under cross-examination, he had had to admit otherwise and that he was only informed about it by the jail guard;⁴

"Q In your direct examination, you said that you were in your house past midnight when somebody came to you on April 7, 1978?

A Yes, sir.

Q That is the only time you knew about this case when you reached the police station?

WITNESS:

After that time.

Q And it was when you arrived at the police station that you knew the accused was already there?

A Yes, sir.

Q The entries that you made mentioned Exhibit C-1 you actually have no knowledge of the contents?

A I have because I was informed by the guard.

Q Your knowledge is thru information?

A Yes, sir.

Q So, all the things that you wrote is what the guard told you?

A Yes sir.

Q So that, what you wrote in that entries is not with your own knowledge but from other sources?

A The other paragraph, sir.

Q. What paragraph in this entries in Exhibit C-1?

A The first paragraph, sir.

Q What is the other paragraph?

A I was referring to Exhibit C-1.

Q This Exhibit C-1?

A Yes, sir."

Apart, therefore, from any other consideration bearing on its admissibility or competence, Vicoy's testimony as to Teofista's initial admission must be dismissed as mere hearsay, said admission not being made to him or in his

presence, and of which he learned only at second hand from the jail guard who, incidentally, was never presented to testify. Even, however, positing the contrary, the fact remains that both alleged admissions of Teofista were made when she was already in police custody or otherwise deprived of her freedom of action in some significant way.¹ In such a case, it was required by the 1973 Constitution (then in force) that any interrogation of her be preceded by the cautionary advice of her "right to remain silent and to counsel,"² which, if the record is any indication, was never given. Consequently, any answers given by her under questioning were inadmissible in evidence against her and should have been so treated by the Trial Court.

"If this case were to be decided under the 1935 Constitution, the trial court's judgment of conviction could be affirmed. But we have to decide it under the rule in the 1973 Constitution as to a confession obtained while the confessant is under police custody. And that rule applies squarely to this case (*Magtoto vs. Manguera*, *Simeon vs. Villaluz* and *People vs. Isnani*, L-37201-02, L-37424 and L-38929, March 3, 1975, 63 SCRA 4.)

"Inasmuch as the prosecution in this case failed to prove that before Duero made his alleged oral confession he was informed of his rights to remain silent and to have counsel and because there is no proof that he knowingly and intelligently waived those rights, his confession is inadmissible in evidence."¹

It may be stated as a corollary that in view of the peremptory character of the Constitutional admonition about giving these pre-interrogation advisories, there must be clear proof that they were given. The presumption of regular performance of official duty that might otherwise arise from the making of an admission or confession to a police office will not suffice in lieu of such proof.

The Trial Court's view that Teofista's declarations may be regarded as part of the *res gestae* is incorrect. It assumes in the first place, that said declarations -- that she had gone to the police station because she had killed her husband, and she had killed him because his constant quarreling with her had become unbearable -- are hearsay. They are not. They were actually made to Pat. Vicoy, and actually heard by him. So that when Pat. Vicoy subsequently spoke about those statements on the witness stand, he was not speaking of facts which he had merely learned from others, but of those which he knew of his own knowledge, derived from his own perception.² Teofista's statements may more properly be considered admissions, declarations of a party as to a relevant fact, which might otherwise have been given in evidence against her,³ had they not been rendered inadmissible by the failure of Pat. Vicoy himself to observe the cardinal requisites prescribed by the Constitution for custodial interrogation.

In second place, even if Teofista's answers to Pat. Vicoy's questions be considered hearsay, they would not in the premises still qualify as part of the *res gestae*. To be so admissible, it should appear that Teofista's answers had been made under the immediate influence of a startling occurrence,⁴ in this case, obviously her husband's slaying, without time or opportunity to devise or contrive;¹ that, as has so often been said in reference to the rule, it is the event speaking through the witness, not the witness speaking of the event. Here, however, the circumstances show Teofista to be no longer under shock; some time had already passed from the startling occurrence to the time that she was questioned by Pat. Vicoy at the police station; she had had time to compose herself; indeed, there is nothing in the record to suggest that she was otherwise than in full possession of her faculties at that time.

The Trial Judge evinced some perplexity as to why Teofista did not take the witness stand. In His Honor's view, she might have provided the answers to some questions left unanswered by the evidence of the prosecution. There is, however, no obligation imposed by law on a defendant in a criminal action to supply gaps in the prosecution evidence by taking the witness stand himself, even if it should appear that he is the only one in possession of the relevant information. It is after all the duty of the prosecution to furnish the answers to all questions relative to the guilt of the accused in the form of clear and convincing evidence. If it is unable to give acceptable answers to some of those questions, it cannot look to the accused for them. It is the defendant's right to testify,² or not to

testify at all.³ And if he should choose not to testify, no adverse implication is allowed to be drawn therefrom. Of this the law leaves no doubt. The defendant's "neglect or refusal to be a witness shall not in any manner prejudice or be used against him."⁴

WHEREFORE, the appellant Teofista Bragat Vda. de Cabangahan is ACQUITTED on reasonable doubt, and the bail given for her provisional liberty DISCHARGED, with costs de oficio.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Branch IV at Iligan City, Hon. Jesus O. Ibay, presiding

[2] Exh. E-1, p. 5, Rec.; TSN, Jan. 23, 1981, pp. 20-22; Rollo, pp. 47-49

1 TSN, Sept. 3, 1980, p. 38

2 Id., p. 39-43

3 Exhs. C-1, and C-2, respectively, p. 112, Record; a typewritten certification was afterwards prepared by him under date of August 21, 1978 (Exh. B) reproducing these entries (Exhs. B-1 and B-2, respectively), and one (1) other (Exh. B-3), TSN, Sept. 3, 1980, pp. 43 et seq.

4 Exh. A, p. 3, Record

5 TSN, July 18, 1980, pp. 9-13

6 TSN, Sept. 3, 1980, p. 47; Exh. D

7 Exh. C-3; see footnote 5, supra

1 TSN, Sept. 3, 1980, pp. 53-54

2 Id., p. 54

3 Rollo, pp. 49-50

4 Id., p. 50

5 SEE footnote 2, at p. 1, supra

1 TSN, Sept. 3, 1980, p. 47; Oct. 15, 1980, pp. 65-66

2 TSN, July 18, 1980 pp. 21-22

3 See footnote 5, at p. 2: Transcript of stenographic notes, Sept. 3, 1980, pp. 53-54, supra.

4 TSN, Oct. 15, 1980, pp. 63-64

1 People vs. Caguioa, 95 SCRA 2, 9, quoting Miranda vs. Arizona, 384 U.S. 436, 16, L.Ed. 694, 10 ALR, 3d. 974

2 Sec 20, Art. IV, 1973 Constitution

1 People vs. Duero, 104 SCRA 379, 385-386; People vs. Caguioa, supra; People vs. Taylaran, 108 SCRA 373

2 Sec. 30, Rule 130, Rules of Court

3 Sec. 22, Rule 130, Rules of Court

4 Sec. 36, Rule 130, Rules of Court

1 See Moran, Comments on the Rules, 1980 ed., Vol. 5, pp. 348-349

2 Sec. 1 (d), Rule 115, 1964 Rules of Court

3 Sec. 1 (e), Rule 115, 1964 Rules of Court

4 Sec. 1 (d), Rule 115, 1964 Rules of Court. The rule has been amended by the 1985 Rules on Criminal Procedure, and now reads, "His silence shall not in any manner prejudice him."

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CONCURRING OPINION

CRUZ, J.:

There are three things that puzzle me about this case, viz., why the accused voluntarily went to the police station and was subsequently detained; why no effort was taken to secure a statement from her under all the safeguards of the Bill of Rights, including the presence and advice of counsel; and why the guard to whom she had allegedly confessed was not presented at the trial. I think the investigation and prosecution of this case were mishandled. While I have the suspicion that the accused is guilty as charged, I nevertheless must concur in her acquittal because of the constitutional presumption of innocence. No one could have been convicted on the slipshod evidence of the prosecution.

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