

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUGENIA ABANO, ELISEO CABAÑA ALIAS LUCIO CABAÑA AND PABLO CABAÑA ALIAS TEOFILO CABAÑA, DEFENDANTS-APPELLANTS.

G.R. Nos. 57184-85. November 14, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

Before Us on automatic review is the decision of the Cebu-Bohol Circuit Criminal Court in Criminal Cases Nos. CCC-XIV-2147 and CCC-XIV-2148, which found Eugenia Abano guilty of the crimes of parricide and murder, and Eliseo and Teofilo, both surnamed Cabaña, of two murders. Two death penalties were imposed on each of the accused.

The information dated May 7, 1980 in Criminal Case No. CCC-XIV-2147 for parricide and murder alleges:

"That on or about the 7th day of February, 1980 at 11:30 o'clock in the evening, more or less in Sitio Tunga, Barangay Cantuod, Municipality Balamban, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Eugenia Abano, then united in lawful wedlock with Agripino Abano, and conspiring, confederating and mutually helping one another with Eliseo Cabaña alias Lucio Cabaña and Pablo Cabaña alias Teofilo Cabaña, armed with sharp bladed weapons, with evident premeditation and treachery and in consideration of a prize or reward for the accomplishment their criminal purposes, with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab the said Agripino Abano with the weapons aforecited thereby inflicting upon the latter multiple wounds on the vital parts of the body which injuries caused, as a consequence, the instantaneous death of the victim.

"In addition to the above qualifying circumstances, the offense was committed with the aid of armed men; superior strength and arms; nighttime; in consideration of the prize or reward and perpetrated in the dwelling of the victim."

Except for the difference in the name of the accused, the absence of the allegation on the accused's relationship to the victim and the fact that Bienvenida Cumad is identified as the victim, the information for murder in Criminal Case No. CCC-XIV-2148 is also dated May 7, 1980 and couched in basically the same language.

The prosecution's version of the crimes is as follows:

Eugenia Tolero Abano and Agripino Abano were married in 1948.[1] At the time of the commission of the crimes in February, 1980, they had been separated for three years. Eugenia, who was then 57 years old, stayed in the conjugal home in Cumbado, Balamban, Cebu with two of their children, one of whom was mentally incapacitated. To support her dependents, Eugenia worked as copra-maker earning eight pesos a day.

Agripino, 55 years old, lived with another woman, 50-year-old widow Bienvenida Cumad, at the Abanos' hut some 400 meters away from the conjugal home. Only a bridge separated the Abanos' conjugal home from the hut which was actually located in Tunga, Cantuod, Balamban, Cebu.

Behind Eugenia's house was another hut which used to be a pig pen. Elevated from the ground by about two feet, only a sack served as its door. It was occupied by Rodolfo Abano, a son of Eugenia and Agripino, and his family.

At around 7:00 o'clock in the evening of February 7, 1980, Rodolfo's wife, Concordia, saw Eugenia partaking of supper with Eliseo Cabaña and Teofilo Cabaña at the former's house. Concordia knew Eliseo and Teofilo because they were medicine men or quack doctors who frequented Cumbado to treat sick persons.

Just before midnight or at around 11:30 o'clock that night, Concordia was sleeping near the door of their hut, with her four children lying between her and her husband, when she was awakened by someone pulling her hair. As the hut was lighted by a kerosene lamp, she recognized the man pulling her hair to be Eliseo. With Eliseo was his son, Teofilo. Eliseo was standing on the ground but he was able to reach for her hair because of her position near the door.

Eliseo tried to cover her mouth and cautioned her not to make any noise. Afraid of what he might do to her with the bolo [pinuti] she noticed he was carrying, Concordia jumped out of the hut. Eliseo then ordered her to accompany him to her father-in-law, Agripino. Along the way, Eliseo and Teofilo instructed her to tell Agripino that his son Rodolfo [Concordia's husband] was suffering from a stomach ache and that he should be brought to a doctor.

Upon reaching Agripino's hut, Concordia called him saying, "Tay, Tay, wake up, bring Rudy to the doctor because he is suffering stomach ache".[2] Agripino answered by asking her why Rudy had stomach ache. Concordia told him that Rudy had eaten something raw.

Eliseo then dragged Concordia towards the road, pointed the bolo at her and said, "You run now, but do not tell your husband about this because if you will tell him I will kill your husband and all the members of your family".[3] Concordia ran and hid for some time under the big stove between Eugenia's house and her hut before proceeding home.

Delia Cumad, the 15-year-old daughter of Bienvenida, who was then sleeping in one of the two rooms of Agripino's hut was likewise awakened by Concordia's voice. She heard Concordia telling Agripino that Rudy was sick because he ate something raw. Then she noticed Agripino pass by her on his way to the hut's door. When Agripino was already downstairs, Delia heard an impact the sound of which resembled that of the hacking of a banana trunk.[4] Then she heard Agripino calling out, "Day, help Day, I am hacked". Delia tried to prevent her mother Bienvenida from going down the hut but the latter persisted. Bienvenida brought along a kerosene lamp. Because she was afraid, Delia did not even try to peep through the window to see what was happening. Neither did she hear Bienvenida and Agripino mention any names while they were outside the hut.[5]

Almost an hour later, Delia came down the hut. She looked for Agripino and Bienvenida but failed to find them. Scared, she ran to the house of Rosario Montero. On the way, Delia met Rudy and Concordia Abano. Rudy asked her where she was going. Delia replied that she was going to the house of Rosario Montero. She did not tell them what happened to Agripino and Bienvenida.

As it was too quiet in Rosario's house, Delia proceeded to the house of Pesing Baynas to whom she related what had transpired at their hut. Pesing accompanied her back to their hut. Four meters from that hut, they found the lifeless body of Bienvenida.

Rodolfo Abano was awakened by his mother Eugenia at around midnight. She asked him to transport Eliseo and Teofilo Cabaña to Matab-ang, Toledo City in his motorized tricycle. When Rodolfo said that he would rather transport them in the morning, Eugenia told him that Eliseo and Teofilo were in a hurry.

At that time, Concordia was feeding her baby but she accompanied Rodolfo to the garage to get the motorized tricycle. It was on the way to the garage that they met Delia Cumad.

From the garage, Rodolfo went back to his hut where, after Concordia had alighted from the tricycle, Eugenia boarded it. Near her house, Eugenia got off and Eliseo and Teofilo boarded the tricycle. As he was ferrying them to Matab-ang, Rodolfo noticed that they were carrying a piece of sack that was rolled over a two-feet-long object. From Matab-ang, Rodolfo went back to Cantuod. There he met Bernie Verdeflor who told him that his father and his common-law wife were dead.

Bienvenida D. Cumad died of "cardio-respiratory arrest secondary to shock and hemorrhage due to multiple wounds on the neck [head], trunk and extremities".[6] In the medico-legal necropsy report, she is identified as Bienvenida Delfin Abano.[7] Actually, her maiden name was Bienvenida Mancía Delfin but she was mistaken for the legal wife of Agripino by Doctor Ladislao V. Diola, Jr. who conducted the autopsy on the two victims.[8]

Bienvenida sustained an avulsion which penetrated her skull, and four lacerated wounds in the anterior portion of the neck, the right lumbar region, the right iliac region and the right wrist. The inferior vena cava on both sides of her neck and the left carotid arteries were lacerated.[9]

Agripino Albano also died of "cardio-respiratory arrest secondary to shock and hemorrhage due to multiple wounds on the head, trunk and extremities".[10] He sustained twelve lacerated wounds and an abrasion on the head and neck, and twenty-one lacerated wounds, five stab wounds and an avulsion in his trunk and extremities. He had a half-moon fracture in his cranium extending from the left to the right temporal bone and other fractures in his orbital and ethmoidal bones, third cervical vertebra, seventh rib and left elbow joint. He also suffered a subarachnoidal hemorrhage of the brain, and laceration in his upper lobe left lung, middle lobe right lung, septum, right ventricle and right kidney.[11]

In the course of the investigation conducted by the police, Delia Cumad, Rodolfo Abano, Concordia Abano, Eugenia Abano, Eliseo Cabaña and Pablo [Teofilo] Cabaña were interrogated. Significantly, only the interrogations of Rodolfo and Delia were reduced to writing.[12]

In his sworn statement,[13] Rodolfo narrated that at about twelve noon of February 9, 1980, his mother, Eugenia, revealed to him that she hired Eliseo and Pablo [Teofilo] Cabaña to kill Agripino and his common-law wife.

Because of that statement, Vicente S. Cabahug, the sub-station commander of the Balamban Police Force, interrogated Eugenia. At the trial court, Cabahug re-lated how he investigated Eugenia. He testified thus:

"Q.

After the revelation of Rodolfo Abano that it was her mother who hired the other two accused to kill the deceased Agripino Abano and Bienvenida Cumad, what else did you do?

A.

After the revelation of the said Rodolfo Abano of the killing of the father and the common-law wife, I investigated Eugenia Abano as she was made to stay around, then at about 11:00 o'clock on February 11 in the morning, 1980, she admitted and confirmed the revelation of her son, Rodolfo Abano.

COURT [To the witness]:

Q.

But what did she admit?

A.

She admitted and she narrated to me that she even burst tears telling me of the agony that she suffered for the last three years her husband was living in the house with a girl aside room her and they were living 200 meters away where she lives and she confided and confessed that she was forced to him the two accused, these Eliseo and Teofilo Cabaña to kill her husband and common-law wife.[14]

XXX XXX XXX

ATTY. VELOSO:

Q.

According to you, Eugenia Abano admitted hiring the present two accused who appeared to be father and son.

A.

Yes.

Q.

Now. You asked her what was the prize or reward?

A.

Yes, I asked her.

Q.

What did she say?

A.

According to Eugenia Abano she told the two accused, Teofilo and Eliseo Cabaña that the consideration was the proceeds the passenger tricycle that she was going to sell after the killing of her husband and the paramour.

Q.

In other words, she promised to pay the consideration after the act of killing has already taken place?

A.

Yes.

Q.

Did she tell you what guarantee she issued in order that the father and son Cabanas would really execute the act?

A.

She did not give any guarantee.

Q.

So that was only the promise?

A.

According to her only the promise".[15]

According to Cabahug, he reduced Eugenia's statement in writing but he did not bring his notes in court because they were "just more or less [a] scratch".[16]

On the strength of those confessions, Cabahug filed on February 11, 1980, a complaint for parricide with murder and double murder against Eugenia and "Eliseo Doe and Pablo Doe" before the municipal circuit court of Balamban-Asturias. Said complaint was amended three times: first, to fill in the full names of Eliseo and Teofilo; second, to include "Cording Abano" as one of the accused; and third, to reflect Concordia's full name.

On February 14, 1980, the municipal circuit judge issued a warrant for the arrest of Eugenia, Concordia, Eliseo and "Pablo".[17] Eugenia and Concordia voluntarily surrendered to the police.[18] Eliseo was arrested in Toledo City while he and his wife were selling mangoes.[19] He led the arresting officers to Pinamungahan, Cebu, where his son Teofilo [Pablo] was also arrested.[20] After their arrest Eliseo and Teofilo were interogated by Cabahug thus:

"Q.

Having arrested both Eliseo and Teofilo Cabana, did you investigate them?

A.

No. Because we brought along with us Eliseo Cabaña to Pinamungahan and put him in jail when we went up the mountain to arrest Eliseo [sic] Cabaña. When Teofilo Cabaña arrived after his arrest we confronted [sic] them to the Pinamungahan Police Station. When they were confronted by us they admitted that they were the ones who killed Agripino Abano and Bienvenida Cumad. Eliseo Cabaña admitted that he was the one who killed Agripino Abano while the other one, Teofilo Cabaña admitted that he was the one who killed Bienvenida Cumad.

Q.

Who was present when you interrogated Eliseo and Teofilo Cabaña?

A.

We were plenty. We have T/Sgt. Paddy. Baron, Pat. Kiyamko, Pat. Cabanero, then we have Pat. Leonor Dagohoy of the Pinamungahan Police Station and Antonio Mahinay also of the Pinamungahan Police Station were present when we confronted Eliseo and Teofilo Cabaña at the Pinamungahan Police Station.

Q.

In your investigation of the accused Eliseo Cabaña and Teofilo Cabaña did you come to know what weapons were used by them in the commission of the crime?

A.

We asked them the weapon that they used.

Q.

What was their answer?

A.

Eliseo Cabaña said he used a bolo, locally known as pinuti and Teofilo Cabaña admitted also that he used a bolo, locally known as pinuti".[21]

The municipal circuit judge set the preliminary investigation of the case on February 9, 1980. On that date, all the accused appeared in court but they were not assisted by counsel. Eugenia and Concordia manifested that they wanted the investigation postponed to February 28. Notwithstanding, the investigating judge assigned one Atty. Sarmiento as counsel for Concordia who was thereafter investigated.[22]

Eliseo and Teofilo Cabaña waived their right to present evidence in the preliminary investigation. Eugenia also waived her right to further preliminary investigation.[23] Those waivers were the subject of two orders both dated February 28, 1980.[24]

At the continuation of the investigation on March 4, 1980, Atty. Cosme Montesclaros, who "appeared for the accused" but who was actually appearing only for Concordia, presented Eugenia as a witness. She testified that on February 3, 1980, she forged an agreement with Eliseo and Teofilo to kill Agripino and Bienvenida as she herself could not "do it" because she is a woman and that on the night of February 7, she was with Eliseo and Teofilo when they threatened and pulled the hair of Concordia although she did not proceed to the latter's hut.[25]

In view of Eugenia's admissions, Atty. Montesclaros moved to dismiss the charge against Concordia on the ground that "she was threatened at that time".[26] Said counsel then filed a memorandum in support of said motion to dismiss.[27] The prosecution opposed it alleging that Concordia's defense of duress was incredible and fabricated because she was a "principal by direct participation and indispensable cooperation".[28]

Nevertheless, on March 13, 1980, the investigating judge issued an order discharging Concordia as an accused and forwarding the records of the case to the Court of First Instance for trial on the merits. In ordering Concordia's discharge the investigating judge noted that she was a mother of four children the youngest of whom was still being breast-fed for which reason she should not be made "to undergo the travails of confinement in jail pending termination" of the case for humanitarian considerations.[29]

Thereafter, the assistant provincial fiscal filed the two informations quoted and mentioned earlier. At their arraignment, the three accused pleaded not guilty.[30]

They interposed alibi as their defense. Eugenia testified that on February 7, 1980, she was making copra in Singing, Balamban until 5:00 o'clock in the afternoon when she returned home. She did not entertain any visitors and was in bed at 8:00 o'clock. She was awakened at 4:00 o'clock the following morning by Rodolfo who informed her that his Papa had been killed.[31]

Eugenia narrated that when she asked Rodolfo who killed his father, Rodolfo answered that he did not know. She told him to report the killing to the municipal authorities but she herself was detained and investigated by the police on suspicion that she "caused the death" of her husband.[32] On her detention and investigation, Eugenia testified thus:

"COURT [To witness]:

Q.

You were detained ahead of Concordia Abano?

A.

Yes, sir.

COURT: Proceed.

ATTY. DE LA VICTORIA -

Q.

How about your co-accused, did you see them in that detention cell where you and Concordia Abano were detained?

A.

Yes, after they were arrested.

Q.

By the way, where did the police actually placed you?

A.

In the office of the Chief of Police.

Q.

Do you mean to say you were not actually placed the cell?

A.

That is right.

Q.

Concordia Abano testified before this Court that sometime on February 14, 1980 you confided to her that you went the one who instigated the two accused to kill your husband in consideration of a reward in concept of the proceeds of the motorcycle which was in the possession of your husband, what can you say to that?

A.

That is not true.

Q.

What is the truth then?

A.

I never told Concordia that I was the one who instigated the two accused to kill my husband and give them rewards out of the proceeds of the motorcycle in the possession of my husband because I do not have possession of the motorcycle. After my husband lived with another woman he brought the motorcycle and it was my son who drove that motorcycle in conducting passengers.

Q.

Who is that son?

A.

Rodofo Abano.

Q.

Rodofo Abano testified that on February 9, 1980 he went to your house and there you confessed to him that you were the one who induced the two accused in consideration of a reward to kill your husband and his paramour, what can you say to this testimony?

A.

That is not true.

Q.

What is the truth?

A.

I did not tell him that I instigated the killing of my husband. I never had any ire against my husband.

Q.

Do you know Lt. Vicente Cabahug?

A.

Yes, sir.

Q.

Lt. Cabahug testified that you told him that you were the one who induced the two other accused to kill your husband and his paramour in consideration of a reward, what can you say about this?

A.

It was Vicente Cabahug who told me to admit everything so that my daughter-in-law will not be implicated and that will not be included in the case, instead I will be made a witness for the prosecution.

Q.

Can you give any reason why Concordia Abano and Rudy Abano would testify against you in these cases?

A.

Yes sir, it is because the police had requested Rudy to ask me to admit so that Concordia will be dropped from the case because she has many children and I will not be included and instead I will be made a witness.

COURT [To witness]:

Q.

Do you mean to say that you admit the crime only for this reason?

A.

I was compelled to tell statements against myself because the Chief of Police told me that I will not be include in this case."[33]

Eugenia acknowledged that she had a lawyer during the preliminary investigation but her lawyer, Atty. Rafael de la Victoria, was absent during its continuation on March 4, 1981. She testified further:

"Q

Do you know the reason why the Court proceeded with the preliminary investigation in the absence of your lawyer?

FISCAL ?

The witness is incompetent.

COURT -

May answer.

WITNESS -

A.

Yes I know.

ATTY. DE LA VICTORIA -**Q.**

What was the purpose?

A.

So that Concordia Abano will be released.

Q.

Were you able to testify in that preliminary investigation which was conducted on March 4, 1980 by the Municipal Court of Balamban?

A.

Yes, sir.

Q.

Who presented you there since you were not represented by a lawyer?

A.

They forced me to testify so that Concordia will be released.

Q.

Who forced you?

A.

The Chief of Police.

Q.

Can you tell the court what have you testified in that proceeding?

A.

I testified there against myself because I cannot bear looking at my grandchildren, the children of Concordia Abano who were small and who were in jail with Concordia and who were crying all the time and Concordia requested me to own everything in this case so she will be released.

Q.

What was the result of that hearing on preliminary investigation on March 4, 1980?

A.

Concordia was released.

COURT [To witness]:

Q.

You said that you were unable to bear the sight of your grandchildren in jail and so you managed to have Concordia Abano released, what did you testify to in the preliminary investigation that caused Concordia Abano to be released?

A.

I testified there that I was the one who ordered because I was confused that time.

Q.

Order to what?

A.

I was the one who ordered the killing.

Q.

Whom?

A.

My husband.

Q.

What was your reason for being confused. That is not a reason for ordering the killing?

A.

I was confused of the sorrows I felt that I was suspected of ordering the killing of my husband. I did not do it.

Q.

Did you not state for the reason of the killing the fact that your husband was living with another woman?

A.

That is not true, because, although my husband was living with that woman for three years I never did anything against him because I have no ill-feeling against my husband.

ATTY. DE LA VICTORIA -

I want to make of record that the witness is crying in the course of her testimony on that point.

COURT -

Make it of record."[34]

On cross-examination, Eugenia disclosed that she allowed Agripino and Bienvenida to live in their conjugal hut on the land of Irene Mendoza which she and Agripino used to till as tenants therein, because Agripino was "brave" and he used to box and maltreat her whenever she expressed her objection to Agripino's cohabitation with Bienvenida. Eugenia surmised that it was his paramour who induced her husband to mal-treat her so that she would die and Agripino and Bienvenida would be free to live together.[35] Eugenia also admitted that she knew Eliseo and "Pablo" Cabana because as quack doctors, they treated the children of Rodolfo.[36]

According to Eugenia, she voluntarily went to the municipal building on February 11, 1980 to seek protection after she heard rumors that Agripino's brothers and sisters were threatening to kill her.[37] In the municipal building, Rodolfo requested her to admit the crimes so that his wife could be released and then, he apologized to her for the statements against her that he had given the police.[38] Eugenia insisted that she admitted participation in the crimes because of the request of her son.[39]

To establish the whereabouts of Eliseo Cabaña when the crimes were committed, the defense presented in court his wife, Patricia. She testified that on the night of February 7, her husband was at home in Bairan, Toledo City and that when she woke up at 4:00 o'clock in the morning, Eliseo was still asleep.[40] She stated that her husband did not use Lucio as an alias because he was known as either Li or Eli among his friends and neighbors.[41]

Eliseo himself admitted that he was familiarly known as Eli.[42] He was a farmer who was also engaged in mending pots and pans and in making handles or scabbards of bolos. He denied being a quack doctor.[43]

After he and his son Teofilo were arrested on February 14, 1980 in Toledo City and Pinamungahan, respectively, they were detained at the Balamban jail, where they were handcuffed the whole night. When their handcuffs were removed in the morning, a policeman told them that two deaths had occurred in Cantuod and, with a gun pointed at them, that policeman told them to admit the killings otherwise he would break their heads. Eliseo was not able to say a thing but he took cover behind a cemented wall. Later, a policeman named Boy Rosario told them to affix their thumbmarks to a document the contents of which were not read to them.[44]

It was Rodolfo Abano or Rudy who categorically told them to admit having perpetrated the killings and to produce two bolos so they could be exonerated.[45] One of the bolos thus presented was owned by Ambrosio Pilapil.[46] Eliseo told the police about it and the latter took it from Pilapil sometime in February, 1980. Pilapil had delivered it to Eliseo in order that a scabbard could be made for it and Eliseo returned it to Pilapil on January 25, 1980.[47]

The other bolo, Exhibit B, was recovered in Eliseo's house by the police. According to Eliseo, Rudy Abano left it with him early in the morning of February 8, 1980 with the intention of bartering it with one chicken which Rudy needed for his daughter's birthday.[48]

Eliseo expressed his belief that Rodolfo and Concordia Abano were involved in the killings but that they pointed to other persons indiscriminately so that they could extricate themselves from the charges.[49] Although he admitted having been convicted of homicide in another case, Eliseo denied involvement in the murders of Agripino and Bienvenida.[50]

For his part, Teofilo Cabaña, a farmer and coconut-gatherer, testified that on February 7 and 8, 1980, he was in his house in Binabag, Pinamungahan, Cebu.[51] He denied having participated in the murders of Agripino and Bienvenida.[52] He stated that he did not use Pablo as an alias and labelled as lies the prosecution's allegation that

he and his father were quack doctors.

Special counsel Gabriel Trocio, Jr. testified that on February 27, 1980, he administered the oath of Rodolfo Abano who retracted his statement implicating his own mother. In his sworn re-traction, Rodolfo stated that he was forced to make said statement because he wanted his wife to be released as he and his wife were in a "difficult and bitter situation" inasmuch as his pregnant wife had to breastfeed their youngest child in jail.[53]

Defense counsel Rafael de la Victoria testified that on February 18, 1980, Rodolfo Abano sought the help of the Citizens Legal Assistance Office in behalf of his wife and mother.[54] He asserted that contrary to Rodolfo's allegation, the latter voluntarily executed his affidavit of retraction.[55] According to Atty. De la Victoria, he filed before the investigating judge a motion to postpone the preliminary investigation on February 28, 1980 to March 6, 1980[56] but it was not acted upon. When he learned that Eugenia confessed during the continuation of the preliminary investigation on March 4, 1980 while he, as her counsel, could not appear in court, Atty. De la Victoria confronted Eugenia who told him that she was "constrained" to make self-incriminating statements during that hearing.[57] Consequently, on March 8, 1980, Eugenia executed a sworn statement professing innocence of the crimes charged against her and stating that she made self-incriminating statements because of her confused mind and her pity for Concordia whom she wanted released from jail because she was breast-feeding a child and her other children were all crying inside the jail.[58]

The prosecution did not present any rebuttal witnesses.

On January 27, 1981, the lower court rendered the decision under consideration. The lower court stated that the "web of circumstantial evidence" produced "beyond all doubt, complete proof of the guilt" of Eugenia Abano as principal by inducement and Eliseo and Teofilo Cabaña as principals by direct and actual participation.[59] It considered as "evidence of high caliber and of great persuasive value" Eugenia's confession which, it believed, "was not extracted from her under custodial interrogation by police authorities".[60]

In the instant mandatory review, Eugenia Abano, through her counsel de oficio, contends that the lower court erred in: [a] appreciating against her, her alleged verbal extrajudicial confession and her inculpatory statements during the preliminary investigation on March 4, 1980 after she had waived her right to such investigation, in the absence of her counsel and without her being informed of her rights under Section 20, Article IV of the Constitution, and [b] failing to acquit her in both cases on the ground that the prosecution failed to prove her guilt beyond reasonable doubt.

For Eliseo and Teofilo Cabana, the same counsel de oficio avers that the lower court erred in: [a] appreciating against them their alleged extrajudicial confession and that of their co-accused, Eugenia Abano, as well as the latter's confession during the preliminary investigation; [b] giving full faith and credit to the testimony of Concordia Abano and [c] failing to acquit the accused on grounds of reasonable doubt.

In view of the absence of eyewitnesses to the killings, the confessions of the accused are of great importance in the disposition of these cases. Understandably, the appellant's assignments of errors are focused on the issue of whether the rights of the accused had been properly protected when they made self-incriminating statements. The Constitutional provision involved states thus:

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence." [Art. IV]

As the confessions in question were taken during the effectivity of the 1973 Constitution, the aforequoted

constitutional provision is applicable in this case.[61]

In *People vs. Duero*, G.R. No. 52016, May 13, 1981, 104 SCRA 379, this Court discussed extensively the procedural safeguards for in-custody interrogation of accused persons. In that case, wherein no eyewitnesses testified to the brutal killing of an octogenarian, the chief of police, corroborated by the sworn statements of two other policemen, testified that the accused voluntarily confessed to the killing. In ruling against the admissibility of the alleged oral confession, this Court stressed the fact that the prosecution failed to prove that before the accused made his alleged oral confession, he was informed of his rights to remain silent and to have counsel as there was no proof that he knowingly and intelligently waived those rights. The *Duero* ruling is applicable in this case.

While Eugenia Abano was free to go home from February 8, 1980 when she was first "invited" for questioning by Chief of Police Cabahug until the time she confessed on February 11, 1980, she was in fact in the custody of the police notwithstanding Cabahug's assertion that she was "not exactly placed in jail".[62]

Concededly, Cabahug informed Eugenia that she needed a lawyer. But there is no proof that Cabahug offered to secure one for her at the instance of the State especially after she had manifested that she could not afford to hire her own counsel.[63] Cabahug's omission to make such offer is a grave one. It rendered her alleged confession inadmissible.[64]

Similarly, there is no evidence that Eugenia was informed of her right to remain silent. Neither is there proof that she had voluntarily, knowingly and intelligently waived that right.[65]

Moreover, as the unchallenged testimony of Eugenia reveals, she made the confession because the chief of police promised that she would "not be included in the case" as she would be discharged as a prosecution witness. Considering her emotional and mental state at that time, that promise must have overcome Eugenia's better judgment. It became a factor which contributed to the inadmissibility of her confession.[66]

Chief of police Cabahug's uncorroborated testimony on the confessions of Eliseo and Teofilo Cabaña is likewise bereft of indications that he had observed the procedural safeguards mandated by the Constitution to which the Cabañas are entitled as a matter of right. In fact, from Eliseo's unrebutted testimony, use of threats to extract their alleged confessions is evident.[67]

We agree with the Solicitor General that the municipal judge who conducted the preliminary investigation need not apprise Eugenia of the nature and gravity of the charges against her and the consequences of her admission thereof when she appeared as witness for Concordia Abano. During that investigation, all that was needed was for the investigating judge to remind her that she was under oath and that she should "tell the truth and nothing but the truth".

But the Solicitor General overlooked an aspect in the presentation of Eugenia as her daughter-in-law's witness which cannot pass the test of fundamental fairness. She was presented as such witness after she had waived her right to preliminary investigation and at a time when she was unassisted by counsel. As it were, Eugenia, an unschooled copra-maker, was left to fend for herself in a proceeding wherein she herself was the accused.

What added gall to her bitter predicament was the fact that she was presented as a witness to forestall the further detention of her daughter-in-law and insure the latter's discharge as her co-accused only to find herself in the precarious situation of answering questions the implications of which may have been beyond her comprehension. Ironically, the investigating judge cited "human considerations" as a reason for discharging Concordia as an accused, unmindful of the fact that in allowing Eugenia to incriminate herself, he was trampling on her rights as an accused.

As this Court enunciated in *Chavez vs. Court of Appeals*, L-29169, August 19, 1968, 24 SCRA 663, 680 and in *Bermudez vs. Castillo*, 64 Phil. 483, 488, the rule against self-incrimination positively intends to avoid and prohibit the certainly inhuman procedure of compelling a person "to furnish the missing evidence necessary for his conviction". In the *Chavez* case, we expressed the view that the rule may apply even to a co-defendant in a joint trial.

The situation would have been different had Eugenia been assisted by counsel during the preliminary investigation. For then, she could have availed herself of legal advice on when to refrain from answering incriminating questions.

We consider the absence of Eugenia's counsel when she appeared as witness during the preliminary investigation as an irreparable damage which rendered inadmissible her alleged confession.

The inadmissibility in evidence of the accused's extrajudicial confession, notwithstanding, We find the "web of circumstantial evidence" which the trial court found sufficient for conviction, to have remained unimpaired. Under Section 5 of Rule 133, circumstantial evidence is sufficient for conviction if: [a] there is more than one circumstance; [b] the facts from which the inferences are derived are proven; and [c] the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. These requirements have been satisfied in the case at bar.

Concordia testified that she saw Eugenia Abano with her co-accused, Eliseo and Teofilo Cabaña, taking supper together at the former's house hours before the commission of the crimes; that Eliseo and Teofilo forced her [Concordia] to accompany them to Agripino's hut and in order to draw Agripino out of said hut, instructed her to say that her husband Rodolfo needed to be brought to a doctor because of a stomach ache; and that after she returned to her hut, Eugenia woke Rodolfo to ask him to bring Eliseo and Teofilo in his motorized tricycle to Matab-ang, Toledo City. This testimony was not rebutted, but in fact corroborated in part by Delia Cumad, who testified to hearing Concordia calling to Agripino to bring Rodolfo to a doctor as he was suffering from a stomach ache; and by Rodolfo himself, who testified to his being roused from sleep by his mother Eugenia with the request to bring the Cabañas to Matab-ang, Toledo City. Noteworthy is the fact that her request came shortly after the victims were hacked to death as it was while Rodolfo and Concordia were on their way to get the tricycle from the garage that they met Delia, who was then on her way to a neighbor's house to seek help.

Rodolfo testified that from the garage, he went back to his hut, where after Concordia had alighted from the tricycle, Eugenia boarded it up to a place near the latter's hut where she got off and the Cabañas in turn boarded it. Rodolfo likewise stated that he noticed the Cabañas carrying a piece of sack rolled over a two-foot object.

The events narrated by Concordia, Delia and Rodolfo constitute an unbroken chain of natural and rational circumstances, which corroborate each other and point beyond reasonable doubt to the complicity of the accused in the crimes.

The defense attempted to discredit Concordia by turning the tables on her. No reason nor motive was however proffered why Concordia would commit the crimes or why she would falsely accuse her own mother-in-law and the Cabañas, who were virtual strangers and against whom she held no grudge, of crimes so grave. On the other hand, among the persons implicated, it was Eugenia Abano who had the motive to order the killing of her husband and his paramour. Her initial protestation that she harbored no ill-feelings toward her husband and his common-law wife was totally negated by her very own testimony that Agripino used to box and maltreat her every time she objected to his cohabitation with Bienvenida and the suspicion she expressed that it was Bienvenida who induced her husband to maltreat her so that she would die and they would be free to live together. Because her husband was "brave" she could not do anything openly about the situation and she merely kept her

resentment concealed within her. Human nature as it is, the tendency is for pent-up emotions to grow and magnify, rather than diminish and disappear, particularly where the cause thereof is constantly present, as in the case at bar, and it is not uncommon in the realm of human experience for such emotions to burst and translate themselves into violence -- thus, the so-called crimes of passion.

The Court sympathizes with the most pitiful plight of Eugenia Abano. How she must have suffered during the three years that her husband lived with his paramour. The wound in her heart, occasioned by the separation, never had a chance to heal, but was kept raw and bleeding by the brazen and cruel behavior of her husband maintaining a love nest so near the abandoned wife. Four hundred meters in an urban area may seem a long distance, but not so in a rural community where the next-door neighbor may be housed at an even greater distance. It is indeed in cases like this, that the bounden duty of the court to apply the law becomes a painful task and the maxim "dura lex, sed lex" makes its full impact felt. In view of the exceptional circumstances obtaining in the case at bar, the Court recommends executive clemency for accused-appellant Eugenia Abano.

WHEREFORE, the decision of the Cebu-Bohol Circuit Criminal Court in Criminal Cases Nos. CCC-XIV-2147 and CCC-XIV-2148, is hereby affirmed with the modification that the civil indemnities for the heirs of the deceased Agripino Abano and the heirs of the deceased Bienvenida Cumad are hereby increased to P30,000.00 each. For lack of necessary votes, the two death penalties imposed on each of the accused are hereby commuted to reclusion perpetua. Let copies of this decision be furnished the Minister of Justice.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Narvasa, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.
Feliciano, J., on leave.

CONCURRING

Melencio-Herrera, J.,

I believe that if executive clemency is recommended for the principal by inducement, it should also be recommended for the other two accused who, without such inducement, would not have committed the crime. Theirs in a collective criminal responsibility.

[1] Exhibit F.

[2] TSN, October 21, 1980, p. 15.

[3] TSN, supra.

[4] TSN, October 21, 1980, p. 4.

[5] TSN, October 21, 1980, p. 11.

[6] Exhibits D & H.

[7] Exhibit D

[8] TSN, December 4, 1980, p. 7 and November 18, 1980, pp. 2-3.

[9] Exhibit D.

- [10] Exhibits E & G.
- [11] Exhibit E.
- [12] Exhibit C and Record, p. 5.
- [13] Exhibit C.
- [14] TSN, December 4, 1980, p. 3.
- [15] TSN, December 4, 1980, p. 10.
- [16] TSN, December 4, 1980, p. 18.
- [17] Record, p. 7.
- [18] Record, p. 10.
- [19] TSN, January 21, 1981, p. 6.
- [20] TSN, *supra*, p. 15.
- [21] TSN, December 4, 1980, pp. 4-5.
- [22] Exhibit I, p. 2; Folder of Exhibits, p. 13.
- [23] Exhibit 6.
- [24] Record, pp. 15-16.
- [25] Exhibit I, pp. 25 to 28; Folder of Exhibits, pp. 36 to 39.
- [26] Exhibit I, p. 35; Folder of Exhibits, p. 46.
- [27] Record, p. 17.
- [28] Record, pp. 21-22.
- [29] Exhibit 2-Cabaña; Folder of Exhibits, p. 93.
- [30] Record, p. 39.
- [31] TSN, January 20, 1981, p. 3.
- [32] TSN, *supra*, p. 4.
- [33] TSN, *supra*, pp. 5-6.
- [34] TSN, *supra*, pp. 7-8.
- [35] TSN, *supra*, p. 11.
- [36] TSN, *supra*.
- [37] TSN, *supra*, p. 13.
- [38] TSN, *supra*, p. 14.
- [39] TSN, *supra*, p. 15.
- [40] TSN, January 21, 1981, pp. 4 & 6.

- [41] TSN, *supra*, pp. 6 & 7.
- [42] TSN, January 21, 1981, p. 11.
- [43] TSN, *supra*, p. 21.
- [44] TSN., *supra*, p. 16.
- [45] TSN, *supra*, p. 17.
- [46] Exhibit A.
- [47] TSN, January 20, 1981, p. 17.
- [48] TSN, January 21, 1981, p. 20.
- [49] TSN, *supra*, p. 25.
- [50] TSN, January 21, 1981, pp. 19 & 25.
- [51] TSN, January 26, 1981, pp. 4-5.
- [52] TSN, *supra*, p. 6.
- [53] Exhibit 2-Abano; Folder of Exhibits, p. 98.
- [54] Exhibit 5.
- [55] TSN, January 22, 1981, p. 29.
- [56] Exhibit 3-Abano; Folder of Exhibits, p. 102.
- [57] TSN, *supra*, p. 32.
- [58] Exhibit 4; Folder of Exhibits, p. 105.
- [59] Decision, pp. 23-24; Record, pp. 206-207.
- [60] Decision, pp. 25-26; Record, pp. 208-209.
- [61] *Magtoto vs. Manguera*, L-37201-02, March 3, 1975, 63 SCRA 4.
- [62] TSN, December 4, 1980, pp. 20-21.
- [63] TSN, *supra*, p. 24.
- [64] *People vs. Pascual, Jr.*, G.R. No. 53403, November 12, 1981, 109 SCRA 197, 205.
- [65] *People vs. Matilla*, G.R. No. 53570, July 24, 1981, 105 SCRA 768, 772.
- [66] *People vs. Alto*, L-18660, November 29, 1968, 26 SCRA 342, 364.
- [67] TSN, January 21, 1981, p. 16.

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