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Republic of the Philippines
REGIONAL TRIAL COURT
7th Judicial Region
Branch 21, Cebu City

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. CBU-75556

FOR: M U R D E R

- versus -

ESTANISLAO BISMANOS
GERRY CAGAYAG
ROWIE BARUA
RANDY F. GRECIA
OSMEÑA MONTAÑER and
ESTRELLA SABAY

Accused.

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DECISION

On 24 March 2005, Marlene G. Esperat was shot and killed in her home while having dinner with her family. The victim had been the target of assassination attempts including a grenade attack on her house in 2003 and an attempted abduction in 2002 after she filed several graft cases against ranking public officers. Marlene, who was the president of Region 12 Tri-Media Association, the publisher of the Midland Review and a radio broadcaster, was popularly known as “Madame Witness” because of her public service media expose’s. During her employment in the Department of Agriculture (DA) Region 12 from 1987 to 2004, she uncovered various cases of graft and corrupt practices by public officials involving rampant misuse of public funds intended for the alleviation of marginalized farmers.

On April 8, 2005, City Prosecutor Emmanuel S. De Peralta filed the information in this case charging John Doe and alias “Jeck” for the murder of Marlene Esperat.

On April 12, 2005, Prosecutor Al P. Calica filed the amended information charging accused Estanislao Bismanos alias Jun Brown, Rowie Barua, Gerry Cabayag and Randy Grecia alias Jeck.

In an Order dated 12 April 2005, the Court scheduled the arraignment of the four (4) accused on May 9, 2005. On

May 9, 2005, the four (4) accused namely: Estanislao Bismanos, Randy Grecia, Gerry Cabayag and Rowie Barua, duly assisted by Atty. Alvin Guntang of the Public Attorneys Office (PAO), pleaded Not Guilty. Subsequently, on April 15, 2005, the Criminal Investigation and Detection Group filed and submitted additional pieces of evidence implicating Osmeña Montañer and Estrella Sabay in the murder based on the extra-judicial confessions of Estanislao Bismanos and Karagdagang Salaysay of Sgt. Rowie Barua, Philippine Army, who is Sabay's close in security personnel.

On May 17, 2005, State Prosecutor Nestor Lazaro after preliminary investigation, filed the 2nd Amended Information duly approved by Chief State Prosecutor Jovencio R. Zuño imploding Osmeña Montañer and Estrella Sabay in the charge.

Thus, accused were charged in the 2nd amended information which reads as follows, viz:

“The undersigned accuses Estanislao Bismanos @ Jun Brown, Rowie Barua @ Owie, Gerry Baguin Cabayag, Randy Fernandez Grecia, Osmeña Montañer and Estrella Sabay of the crime of MURDER under Article 248 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about 7:00 o'clock in the evening of March 24, 2005 inside the house of Marlene Garcia Esperat at Purok Ilang-ilang, Barangay New Isabela, Tacurong City, Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, accused Gerry Cabayag, armed with an unlicensed firearm, being the gunman as well as accused Randy F. Grecia who acted as lookout/guard/backup of said accused Gerry B. Cabayag for the accomplishment of their evil purpose of killing Marlene Garcia Esperat, did then and there, conspiring, confederating and mutually helping one another together with accused Estanislao Bismanos and Rowie Barua upon order from accused Osmeña Motañer and Estrella Sabay, with intent to kill, treachery, evident premeditation and in consideration of a price, reward or promise paid by the aforesaid accused Osmeña Montañer and Estrella Sabay did then and there, willfully, unlawfully and feloniously attack, assault and shoot Marlene Garcia Esperat, in the dining room of her house while the latter was eating supper with her

children, with the use of the previously mentioned weapon, thereby inflicting gunshot wound on said Marlene Garcia Esperat which caused her instantaneous death. After which, accused Gerry Cabayag and Estanislao Bismanos Jr. escaped through the use of a motorcycle.

The generic aggravating circumstances that the crime was committed in the dwelling of the offended party and with the use of an unlicensed firearm attended the killing of the victim.

Contrary to Law.

Manila for Tacurong City, Philippines, May 17, 2005.”

On May 20, 2005, the Court issued a Warrant of arrest against Montañer and Sabay. On May 23, 2005, accused Montañer and Sabay filed an Urgent Motion to Suspend Further Proceedings and Recall Warrant of Arrest which the Court denied in its Order dated May 26, 2005.

On June 9, 2005, the Department of Justice issued DOJ Resolution No. 268 upon Petition for Review of Montañer and Sabay ordering a re-investigation of this case by the City Prosecutor of Tacurong City who was ordered to move for the suspension of the proceedings and to make a report of the action taken within 10 days from receipt thereof.

On June 14, 2005 Secretary Gonzales issued Department Order No. 295 constituting a Panel of Prosecutors composed of Prosecutors Emmanuel de Peralta, Florencio de la Cruz, Jr., Edwin S. Dayog, Paulino Q. Gallegos, Tocod D. Ronda and Nestor Lazaro to conduct a reinvestigation in this case.

On June 29, 2005, Prosecutors Emmanuel de Peralta, Tocod Ronda, Florencio de la Cruz Jr., Edwin S. Dayog and Paulino Q. Gallegos rendered a resolution dismissing the complaint against Montañer and Sabay.

On July 1, 2005, Prosecutors Emmanuel de Peralta and Tocod Ronda filed a Motion to Withdraw the 2nd Amended Information and to Recall Warrant of Arrest.

On July 4, 2005, accused Estanislao Bismanos, Gerry Cabayag and Randy Grecia pleaded GUILTY upon re-arraignment. Considering that it is a capital offense, the Court ordered the prosecution to present evidence.

On July 6, 2005, Secretary Gonzales issued a Memorandum to the investigating panel stating that Resolution dated June 9, 2005 “only directed them to move for the suspension of the proceedings as pending result of the preliminary investigation as regard to the new respondent mentioned therein and directing the Panel to reconcile the finding in the first preliminary investigation and its own findings taking into account the new evidence submitted and thereafter to submit the same to the Secretary for resolution”.

On July 25, 2005, The Court issued an Omnibus Order granting the Motion to Recall Warrant of arrest and denied accused’s motion to withdraw 2nd Amended Information and directed the prosecution to adduce additional evidence against accused Osmeña Montañer and Estrella Sabay.

On July 26, the Secretary of Justice issued Department Order No. 384 reconstituting the Prosecution Panel with Prosecutors Emmanuel de Peralta, De la Cruz Dayog, Lazaro and Dacera. Prosecutor Ronda was excluded from the Panel. On even date, Department Order No. 385 was issued revoking the designation of Prosecutor Tocod Ronda as OIC of Tacurong City Prosecution Office.

On July 29, 2005, the Panel Under DO 295 dismissed the case against Montañer and Sabay and Withdrew the information. Subsequently, Prosecutors De Peralta and Ronda filed a Compliance with Omnibus Order submitting and simultaneously offering in evidence *the “true and real evidence with regards to Montañer and Sabay”*.

On August 8, 2005, the Court issued an order directing the prosecution thru Prosecutor Tocod Ronda and the accused thru Atty. Benjamin Fajardo to comment on request of private prosecutor for a change of venue. On August 15, 2005 Prosecutor Tocod Ronda submitted his Comment opposing the transfer of venue. On August 17, 2005 Atty. Benjamin Fajardo. Jr., counsel for detained accused Bismanos, Grecia and Cabayag, on the other hand, endorsed the request for change of venue of the case to Cebu City.

On August 17, 2005, Hon. Francis E. Palmones, Jr., Acting Judge, submitted his comment to the Office of the Deputy Court Administrator manifesting his favorable recommendation and/or endorsement that venue of trial be transferred from Tacurong City to Cebu City.

On August 18, 2005, Department Order No. 442 reconstituted the Prosecution Panel with State Prosecutors Dacera, Dayog, De la Cruz, Lazaro and Medalle as members.

On August 22, 2005, the Prosecution Panel filed a Manifestation & Omnibus Motion praying for reconsideration of the order recalling the warrant of arrest, to expunge Prosecutor Ronda and De Peralta's "Compliance with Omnibus Order" and to Set Case for Hearing for Determination of Probable Cause.

On August 31, 2005, Acting Judge Francis Palmones, Jr. denied the said Omnibus Motion and instead dismissed the case against accused Montañer and Sabay.

On November 23, 2005, the Supreme Court granted the request for change of venue and ordered the transmittal of the records to the Regional Trial Court of Cebu City.

On 22 February 2006, the Regional Trial Court of Cebu City Branch 21 denied the prosecution's motion for extension of time to file motion for reconsideration as well as the denial of the prosecution's motion to admit motion for reconsideration of the order of dismissal of the case against accused Osmeña Montañer and Estrella Sabay.

On March 14, 2006, the prosecution filed a Motion for Reconsideration to the court's aforesaid order to which accused Estrella Sabay filed an opposition dated 20 March 2006.

On 23 May 2006, the prosecution filed a Motion to Discharge accused Rowie Barua as state witness. The same was not opposed by Atty. Elmer Pacayra, accused's counsel.

On 1 June 2006, the Honorable Court denied the prosecution's motion for reconsideration questioning the order dated 22 February 2006.

On 30 June 2006, the prosecution rested its case and filed its Formal Offer of Evidence. On 19 July 2006, Atty. Elmer Pacayra filed his Comments/Objections to the prosecution's Formal Offer of Evidence. After the Court admitted prosecution's exhibits taking note of accused's comments thereon, the case was submitted for decision.

On July 31, 2006, the Court issued an order holding in abeyance its ruling on the motion to discharge Rowie Barua pending resolution of the appeal taken by the

prosecution with the Honorable Court of Appeals, considering that per the Court's finding there is no absolute necessity for Barua's testimony in the prosecution of the three (3) accused.

PROSECUTION'S EVIDENCE

POLICE INSPECTOR JOSE TEODY CONDESA testified that on March 24, 2005, their office received information from their team in Tacurong City that Marlene Esperat was killed at around 7:30 PM in her house at Tanio Subdivison, New Isabella, Tacurong City, Sultan Kudarat. They coordinated with the Tacurong City Police which recovered one (1) empty cartridge caliber .45 from the crime scene in the dining area of the victim's house. They submitted empty .45 caliber cartridge to the crime laboratory for examination (Exhibit "C-2") and requested the NBI to turn over the bullet recovered from the victim's body for laboratory examination dated 30 March 2005.

Upon receiving reports that suspects were in Davao City, they launched operations there. They also investigated Rynche Arcones, daughter of the deceased, who declared that the lookout, later identified as Randy Grecia, bought E Load for his phone. Rynche Arcones stated that from March 13, 15, and 19, 2005 up to the day their mother was killed, accused Randy Grecia was always in their store. They were able to discover the identity of Randy Grecia after they traced his phone numbers.

On April 7, 2005 Randy Grecia voluntarily surrendered to Police Chief Inspector Harrison Martinez, the husband of his aunt, who is the younger sister of his father. Grecia executed an extra-judicial statement with the assistance of Atty. Chalmer Gevieso which he subscribed and swore to before Hon. Oscar Noel, Presiding Judge of Regional Trial Court, Branch 5, Gen. Santos City (Exhibits I to I-8). In his sworn statement, Grecia declared that he knows the addresses of his companions who were in Cagangohan, Panabo Davao del Norte while Owie Bancure (Rowie Barua) resides in Libungan, North Cotabato. He admitted that they placed Marlene Esperat under surveillance using a red Honda Wave-X motorcycle owned by Jerry Cabayag. Bismanos and Grecia started their surveillance on March 13, 2005 at about 4:00 PM by buying a cigarette from the store of Esperat. The following day, Jerry Cabayag and Estanislao Bismanos returned again and bought a cigarette from Esperat's store. After 3 days or on March 15, 2005, they conducted surveillance on a rotation basis. On March 19, 2005 at about 10 AM, Grecia placed a bet of "last 2" and had a

pedicure beside the store of Ms. Esperat until 1 PM. The following day, Grecia played chess with Jamjam, the son of Esperat from 5 PM to 6 PM. On March 24, 2005 at about 10 AM, he stayed at the store and bought cigarettes and left for lunch at around 1 PM. He returned at 3 PM and bought an E-load for his cellular phone P25 and also loaded P10 to his text mate's number. He later returned to complain because the E Load failed to register so they re-loaded it and was successful. While playing "dampa" with the two kids outside the store, Grecia noticed Ms. Esperat about to have supper around 7 PM at the dining room of her house together with Jamjam. He immediately informed Jerry Cabayag and Estanislao Bismanos after which he took a multi cab going to Isulan, Sultan Kudarat. Cabayag and Bismanos proceeded to Esperat's house and shot her pursuant to their plan. They stayed in Isulan that night and went to Grecia's grandfather's house in Bagumbayan the following day. The next day, they went to Cotabato City to get the final payment. Grecia said that they were hired by Owie Bancure from Libugan, North Cotabato. He heard from Estanislao Bismanos that it had something to do with the Department of Agriculture problem in Cotabato City. They were paid -P-100,000: -P-50,000 for down payment and -P-50,000 was paid after the mission was accomplished. It was Owie Bancure who turned over the money to Estanislao Bismanos, first at the carinderia near the plaza and then at a barbeque plaza along the National Highway in Cotabato City. The down payment was used for their operational expenses and the second payment was divided as follows: -P-18,000 to Gerry Cabayag, -P-18,000 to Estanislao Bismanos and -P-14,000 went to Grecia.

On April 8, 2005, after they learned from Grecia that the other suspects were hiding at Bgy. Caganguhan, Panabo, Davao del Norte, the group of Col. Danilo Galapon, his superior, verified the information and followed Estanislao Bismanos to his rendezvous with Rowie Barua at the Gaisano Mall in Davao City where they were arrested. The law men later proceeded to the house of Estanislao Bismanos where Gerry Cabayag was hiding. After investigation and verification, they recovered the .45 caliber pistol of Gerry Cabayag from Barangay Captain Andres Diongco of Bgy. Buclad, Asuncion, Davao del Norte where Cabayag met an accident in the evening of March 28, 2005 on board his motorcycle.

On April 10, 2005, the CIDG Region 12 requested the Crime Laboratory Service 12 to conduct ballistics and gun powder residue examination on the recovered caliber .45 Colt pistol with serial number 731428 belonging to Gerry

Cabayag (Exhibit "J-4") . Upon examination and comparison of the firearm and the fired .45 caliber cartridge recovered from the crime scene as well as the deformed .45 caliber bullet (deformed) recovered from the body of the deceased, it was determined that the spent cartridge and the deformed bullet were fired from Cabayag's firearm (Exhibit "J") . The subject firearm likewise tested positive for gunpowder nitrates (Exhibit "M")

Police Inspector Condesa further testified that on 14 April 2005, Estanislao Bismanos gave a statement at the Public Attorney's Office in Gen. Santos City (Exhibit "X") duly assisted by Atty. Yolanda Ogena, District Chief (Exhibit "X-6") which he subscribed and sworn to before Prosecutor Andres N. Lorenzo, Jr. (Exhibit "X-9"). Bismanos likewise executed a supplemental statement on May 3, 2005 at the PAO District Office duly assisted by Atty. Ogena (Exhibit "Y").

In his extra judicial statement, Estanislao Bismanos corroborated the statement given by Randy Grecia on how they carried out the plan to kill Marlene Esperat. Bismanos stated that prior to the killing of Marlene they have already planned it. Jerry Cabayag received the signal from Randy Grecia thru text messages that it was the right time to do the mission because the victim was eating in the dining area. Together with Jerry Cabayag, they proceeded to the house of Marlene Esperat on board the red Honda Wave. Upon reaching the vicinity of Esperat's house, Cabayag alighted and walked to it. Thereafter Bismanos heard a gunshot and Cabayag came back and they proceeded to Grecia's aunt's house. They received the final payment of -P-60,000 for the killing of Esperat in the evening of 27 March 2005 at around 7 PM in a restaurant beside Las Hermanas.

Inspector Condesa further identified the Extra Judicial Statement of Rowie Barua given on April 11, 2005 (Exhibit "AA") stating that the same was duly executed by accused with the assistance of counsel Atty. Jose Tabosares and his Karagdagang Sinumpaang Salaysay dated 14 April 2005 (Exhibit -"BB") which was taken with the assistance of PAO District Chief, Atty. Yolanda U. Ogena and Atty. Jose Blanza, Jr.

KEVIN GEORGE ESPERAT, 14 years old stated that on March 24, 2005 at around noon while he was in their house in Tacurong city with his elder sister Rhynche, a man bought cigarettes and ice water. His sister said they have no ice water and the man asked for a glass of water. Rynche gave him (Kevin) the glass but the man took it saying that he will be the one to get water inside and got water from the

dispenser. The man stayed long inside their house. He was scolded by his sister because he did not get the water himself. Thereafter, he went to the market and returned home at 5:00 PM. Rynche asked him to prepare dinner and at around 7:00 PM while they were having dinner with his mother Marlene Esperat and his brother James Derek a man entered their house and said "Good evening ma'am". He looked at the person who greeted his mother and he saw him shot his mother on the head with a .45 caliber pistol. Her mother fell and he tried to ran after the assailant. He identified accused Gerry Cabayag as the gunman who shot his mother (pp. 52-72, TSN, April 4, 2006).

RHYNCHÉ GARCIA ARCONES, 24 years old, testified that she is the daughter of Marlene Esperat from a previous marriage. She is an orphan since her father, Severino Arcones, a broadcaster of Bombo Radio in Iloilo, was also killed. On March 13, 2005 while she was at their store adjacent to their house, a man bought cigarettes and joined her and Josie Robles, her mother's manicurist, in their conversation. He also placed a bet with Josie on her "last 2" game. At that time, they knew him as "Jeck" which was the name written in the last 2 receipts. Jeck asked for her cellphone number and she gave him her old Globe number. On March 19, 2005, she saw him in their store and asked him why was he walking in a staggering (wobbly) manner. He said that he had a pedicure with Josie Robles. He came to the store at 1:00 PM and left around 6:00 PM.

On 24 March 2005, Randy Grecia arrived at around 9:30 AM and bought E-Load worth P25 for his Smart number. She also sold him P10 Pasa Load. She told him that the Globe system is still busy and Grecia said that its ok for him to wait. Grecia returned at 12:00 noon and complained that the load he bought did not reach him. She told him that the network is still busy and that she will follow it up. Later, a man bought Winston cigarette and ice water. The man was wearing a blue orange shirt, navy blue walking shorts, a pair of slippers and a cap. Since there was no ice water, the man asked for a glass of water. She asked his brother Kevin to get a glass of water but the latter did not immediately comply. The man entered their dining room and got a glass of water himself and was looking around their dining area before he left. At 4 PM, Randy Grecia again arrived and stayed for a while. At around 5:00 PM the man who asked for a glass of water again bought cigarettes. He was identified as accused Gerry Cabayag. At around 6:00 PM, she saw Randy Grecia playing "dampa", a rubber band game with some kids. At around 7:00 PM, Gerry Cabayag went back to the store to buy a cigarette. While she was

getting the cigarette, Cabayag entered their house and she heard a gunshot. She saw her mother slumped towards the chair where her younger brother, James Derek was seated. She cried for help and called Task Force Tugis of the Army.

Rhynche likewise declared that her mother was an employee of the Department of Agriculture in Region 12, Cotabato City. At the time of her death, she was a columnist at the Midland Review and a radio commentator of the Radio Natin in Tacurong City. She lives with her mother together with her two brothers and stepfather. Her mother is their breadwinner with her monthly salary of P20,000 from the Commission on Audit her sales from Tupperware and store, and the income from their tricycle and multicab. Before she died her mother, Marlene Esperat entrusted the care of her brothers to her and told her that she must be strong because she (Marlene) has many death threats. Because of the threats to their life, their freedom have been curtailed even at home. She pities her brothers because they could not go out of their house. Now that her mother's assailants have been arrested she wants that the masterminds would also be jailed to give justice to her mother's death (pp 34, TSN April 5, 2006)

POLICE CHIEF INSPECTOR SUSAN M. CAYABYAB, testified that she is a forensic Officer assigned to the Regional Crime laboratory Office 12, Camp Lira, Gen. Santos City. On April 10, 2005, she received a request from CIDG 12 thru Superintendent Danilo Galapon for ballistics and gunpowder residue (GPR) examination of a .45 caliber pistol with serial number 731428 which was received by the CIDG from Brgy. Captain Andres Diongo, of Barangay Buclad, Asuncion, Davao del Norte after the firearm was recovered from the possession of Gerry Cabayag on March 28, 2005 (Exhibit "M-4"). Upon receipt of the request and the articles to be examined, she conducted the examination using the dry paraffin test which gave a positive result for the presence of gunpowder nitrates. PCI Cayabyab submitted her findings contained in Chemistry Report NO. C-027-2005 (Exhibit "M") wherein she concluded that .45 caliber pistol submitted to her for examination contains gunpowder nitrates.

SPO1 MOISES S. ABRIL, Forensic Firearms Examiner of the PNP Crime laboratory Service 12 testified that on 10 April 2005, his office received a request for ballistics examinations of one caliber .45 Colt pistol with serial number 731428 recovered from accused Gerry Cabayag (Exhibit "J-4"). Immediately thereafter, he subjected the firearm to microscopic examination and comparison on the fired .45 caliber cartridge recovered from the crime scene

(GG) and the caliber .45 bullet (deformed) recovered from the body of the deceased (ME). After examination, he concluded that the fired .45 caliber cartridge and deformed bullet were fired from the subject firearm recovered from Gerry Cabayag. He filed a Firearms Identification Report No. RFAID 010-2005 approved by their Regional Chief, Police Superintendent Engr. Salome de los Reyes Jose (Exhibit "J").

SGT. ROWIE BARUA testified that he is a member of the 36th Military Intelligence Company, stationed in PC Hill, Cotabato City. On 8 December 2004, he was assigned as close in security of Estrella Sabay, the chief accountant of the Department of Agriculture, Region 12.

On 16 February 2005, while he was in his residence in Capayawi, Libungan, North Cotabato, he met his childhood friend Jun Bismanos who used to be connected in PC and Army, and told him about a job his boss Estrella Sabay wanted to be done. Bismanos asked him "Unsa man na nga trabaho, tumba?", he told him just to come over.

On 28 February 2005, when Bismanos arrived in Cotabato City, Rowie Barua told his boss Estrella Sabay that the person whom she had asked to come is already there in Cotabato City. At his Boss office, Estrella Sabay gave him Five thousand pesos (-P-5,000.00), the picture of Marlene Esperat and her address on a piece of paper. Later, Bismanos proceeded to the residence of Esperat and he called Rowie Barua saying, "na locate na naku, dili man diay big time, ingna imo amo pwede ra One hundred thousand pesos (-P-100,000.00) later changed it to One hundred twenty thousand pesos (-P-120,000.00) not included are the expenses.

On 3 March 2005, Bismanos called Barua in order to get the advance payment. He was introduced by Bismanos to Randy and Gerry and told him that they are there in Cotabato to get the one half (1/2) payment for the job of Esperat. In the afternoon, Barua called up Bismanos to meet him at Williams Batchoy where they ordered Batchoy and gave them the money (1/2 down payment) from which he was given a share of Five thousand pesos (-P-5,000.00).

On 24 March 2005, at 8:00 o'clock in the evening, Bismanos called him to say that Marlene Esperat had been killed and to ask his boss Estrella Sabay to prepare the money because they are going to get it. Instead he advised them to come back on March 27, 2005 because it was a holiday and his boss, Estrella Sabay, was out of town.

On 27 March 2005 his boss, Estrella Sabay, gave him Sixty thousand pesos (-P-60,000.00) cash and delivered to the accused at first at Cora's Restaurant but later they transfer to Mang Gorio's lechon as Cora's Restaurant was closed. He gave the envelop to Gerry who was waiting at the CR and he was given his share of Three thousand five pesos (-P-3,500.00).

On 7 April 2005, he received a call from Bismanos seeking assistance because Gerry Cabayag met an accident. He reported to his boss Estrella Sabay and on the 8th of April 2005, his boss Estrella Sabay gave him Ten thousand pesos (-P-10,000.00) to be given to Bismanos and Gerry. He went to Jollibee in order to give the Ten thousand pesos (-P-10,000.00) to Bismanos as he was to meet with them and while giving the money to Bismanos, they were arrested, handcuffed and brought to CIDG office, Tagum City by Col. Galapon. Later, his boss Estrella Sabay called him up on the cell phone but he was not allowed to answer.

There is no question as to the admissibility of accused's Gerry Cabayag, Estanislao Bismanos and Randy Grecia's extrajudicial statements admitting responsibility for the offense charged.

Although present at the trial, they did not impugn the existence, due execution, accuracy and truth of their declarations therein. Despite their presence at the trial, not one of them has shown any indication that their resolve to admit the crime has diminished and that their confession is not voluntary.

The rationale for the admissibility of a confession is that when made freely and voluntarily, confession constitutes evidence of a high order since it is supported by the strong presumption that no sane person or one of normal mind will deliberately knowingly confess himself to be the perpetrator of a crime, unless prompted by truth and conscience (People vs. Lara, 334 Phil. 779 297 SCRA 119). "There is no evidence of a higher quality than a confession. It represents the outward manifestation of the guilty conscience of a man. The same is admissible as evidence of guilt of a high quality." (People vs. Garcia, 54 06 652, 656)

The events stated in accused's respective confessions are consistent with the physical evidence and corroborated by the testimony of prosecution witnesses. According to Gerry Cabayag's statement he shot Marlene Esperat in the face once. The autopsy report (Exhibit. "MM") and

photographs (Exhibit "PP") taken of Marlene corroborate this fact. The murder weapon, .45 caliber Colt pistol with serial number 731428 (Exhibit "J-5") confiscated from Gerry Cabayag (Exhibit "K"), was subjected to ballistics examination and positively identified to be the same weapon that fired the bullet recovered from the body of the deceased (Exhibit "C-5-B") that killed her as well as the .45 caliber spent cartridge casing recovered from the crime scene.

Article 248 of the Revised Penal Code provides that:
"Murder. – Any person who, not falling within the provisions at Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
1. With treachery, xxx
2. In consideration of a price, reward, or promise;
3. xxx
4. xxx
5. With evident premeditation
6. xxx"

Murder will exist with only one of the circumstances described in Article 248. When more than one of the said circumstances are present, the others must be considered as generic aggravating. Thus, when in killing the victim, the commission of the crime is attended by (1) evident premeditation, (2) treachery, and (3) price, reward or promise, only one of them shall qualify the killing to murder and the others shall be considered as generic aggravating circumstances (People vs. Dueno 90 SCRA 23).

The killing of Marlene is qualified with treachery, because the shooting was sudden and unexpected, and the victim was not in a position to defend herself. To constitute treachery, the means methods or forms of attack must be consciously adopted by the offender. Treachery to qualify the killing to murder, the following requisites must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution. When Grecia, who with Bismanos and Cabayag took turns in watching the movements of Marlene for a long period of time, informed the latter that Marlene was having dinner with her family in the early evening of March 24, 1995, there is sufficient evidence that they deliberately and consciously adopted the means of execution employed by them. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance

to defend himself, thereby ensuring without risk to the aggressor the commission of the crime (People vs. Bubiso, 399 SCRA 267).

It was clearly established that Gerry Cabayag shot and killed Marlene suddenly, without warning although frontally, thus giving the victim no time to flee or to prepare for her defense or enable her to offer the least resistance to the sudden assault. Treachery exists in this case because the means, method or manner of attack employed by the accused assures no risk to himself from any defensive or retaliatory act which the victim might take (People vs. Unarce, 270 SCRA 756). There was no apparent reason for Marlene to think that Gerry Cabayag would viciously attack her as the latter even greeted her "Maayong gabii Mam". At this point, Marlene and her family were absolutely caught by surprise. She was not in a position to defend herself. Evidently, the elements of treachery are present in the killing of Marlene Esperat.

The aggravating circumstance of price, reward or promise likewise attended the Marlene's murder. The person who received the price or reward or who accepted a promise of price or reward would not have killed the victim were it not for that price, reward or promise.

Marlene's murder is aggravated by evident premeditation. Evident premeditation is present and it qualifies the killing of a person to murder, when the prosecution proves (1) the time when the offender determined (conceived) to kill his victim (2) an act of the offender manifestly indicating that he clung to his determination to kill his victim (3) a sufficient lapse of time between the determination and the execution of the killing.

Thus, it is evident that as early as the initial meeting of Barua and Bismanos, the intent to kill Marlene was engendered in the minds of accused. There is clear proof that accused hatched the murderous plan, and the interval of time therefrom to its commission.

Marlene Esperat's murder is likewise qualified by its commission in her dwelling. The home is sort of sacred place for its owner. He who goes to another's house to hurt her or do her wrong, is more guilty than he who offends her elsewhere. Dwelling is aggravating when the crime is committed in the dwelling of the offended party and the latter did not provoke the accused. Thus, accused's greater perversity is shown by the place of their commission of the offense by their violation of the sanctity of the home by

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trespassing therein with violence or against the will of the owner.

The penalty for murder is reclusion perpetua to death. Considering that the proven aggravating circumstances cannot all be offset by the mitigating circumstance (voluntary surrender of accused Randy Grecia) that attended the commission of the offense, the penalty that should be imposed shall be in its maximum, that is, the penalty of DEATH. But considering further that RA 9346 has abolished the imposition of the Death Penalty, the Accused can only be meted the penalty of Reclusion Perpetua.

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered finding the accused Estanislao Bismanos, alias Jun, Gerry Cabayag and Randy Grecia, alias Jeck, GUILTY beyond reasonable doubt for the crime of Murder qualified by Treachery punishable under Act. 248 of the Revised Penal Code, they are hereby sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalties of the law; to indemnify the heirs of the victim, Marlene G. Esperat in the sum of SEVENTY FIVE THOUSAND (-P-75,000.00) PESOS as Civil indemnity; SEVENTY FIVE THOUSAND (-P-75,000.00) as moral damages, TWENTY FIVE THOUSAND (-P-25,000.00) as exemplary damages; and to pay the costs. On the ground of insufficiency of evidence, the accused Rowie Barua is hereby declared ACQUITTED.

SO ORDERED.

Given in Chambers, City of Cebu, Philippines,
September 28, 2006.

ERIC F. MENCHAVEZ
J u d g e

EFM/cbr