PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO DE LAS ERAS Y ZAFRA, ALIAS GERRY, ACCUSED-APPELLANT.

G.R. No. 134128. September 28, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Branch 3, Bohol, City of Tagbilaran, finding accused Gerardo de las Eras y Zafra, alias Gerry, guilty beyond reasonable doubt of murder and sentencing him to reclusion perpetua and to indemnify the heirs of the victim Ursula Calimbo in the sum of P16,992.50, representing actual civil liability and the further amount of P50,000.00 as moral damages.

On March 30, 1992, assistant city prosecutor of Tagbilaran City Rio C. Achas filed with the Regional Trial Court, Bohol, at Tagbilaran City, an information[2] charging accused Gerardo de las Eras y Zafra, alias Gerry, with murder, reading as follows:

> "That on or about the 17[th] day of February, 1992, in the municipality of Cortes, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without any justifiable cause, with evident premeditation, taking advantage of superior strength, and treachery by the suddenness and unexpectedness of the acts, the victim who was unarmed being then unaware thereof, did then and there wilfully, unlawfully and feloniously attack, assault and strike several times with the use of a club (hard wood) one Ursula Calimbo, a defenseless old woman, hitting the latter on the head and other vital parts of her body, thereby causing her immediate death; to the damage and prejudice of the heirs of the victim in the amount to be proved during the trial.
>
> "Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended, in relation to Article 14, of the same Code.
>
> "City of Tagbilaran, March 24, 1992."

On November 13, 1995, the trial court arraigned the accused. He pleaded not guilty.[3] Trial ensued.

On February 17, 1992, at around 7:00 in the evening, Gerome Diola saw accused Gerardo de las Eras (also known as "Gerry") within the vicinity of the house of Ursula Calimbo (then seventy-three years old).[4] Gerome knew accused de las Eras since childhood. They had a short conversation, then parted ways. Shortly after that chance meeting, Gerome learned that Ursula Calimbo had been struck to death.[5]

Hilaria Calimbo Binatero, daughter of Ursula, testified that she lived next door to her mother, their houses separated only by a fence. In the evening of February 17, 1992, she was cooking in her house when she heard her mother cry for help, "Ellen, tabangin ko (Ellen, please help me)."[6] She rushed to her mother and found her bloodied near the main door. She asked her what happened and who was responsible for her condition. Her mother replied, "Gerry."[7]

Hilaria testified that on February 10, 1992, she saw accused de las Eras hiding behind the fence of her mother's

house, looking particularly at the back of the house near the kitchen and the comfort room. On February 12, 1992, her mother received a pension of P3,000.00. On February 14, 1992, someone stole the money. Her mother suspected accused de las Eras as the culprit.[8]

Luisito Redulla testified that he rushed to the scene of the crime when he heard Ellen (Hilaria Binatero) cry for help. He went to the victim and asked what happened to her and who was responsible, and she answered "Gerry, the son of Pepe and Corning struck her (gibunalan siya)."[9] Incidentally, accused Gerardo de las Eras' parents are Felipe, nicknamed Pepe, and Cornelia Zafra de las Eras.[10] Luisito Redulla was the arresting officer when, in 1989, accused Gerry de las Eras was charged with theft.[11]

Hilaria immediately rushed Ursula to the hospital, but after one hour, she died. The family spent P16,992.50 for the interment and burial of the victim.[12]

Immediately after the incident, police took pictures of the locus criminis showing the deceased's comfort room, a pair of slippers and the hard wood used to strike the victim,[13] part of the kitchen sink which also showed an opening in the wall,[14] and the door beside the sink which was slightly open.[15]

In his defense, accused Gerardo de las Eras invoked denial and alibi. Early in the evening of February 17, 1992, he accompanied Dedec Carnecer to have a battery recharged,[16] and after which, he went directly to his grandmother to buy cigarettes and to have supper.[17] His grandmother's house was about one hundred (100) meters away from the house of the victim.[18]

After due trial, on April 8, 1998, the trial court rendered a decision, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, this Court finds accused Gerardo de las Eras, alias Gerry, GUILTY beyond reasonable doubt of the Crime of Murder, and hereby imposes upon him the penalty of imprisonment of reclusion perpetua, to suffer the necessary penalties imposed by law, and to indemnify the heirs of his victim the sum of P16,992.50, representing actual civil liability and the further amount of P50,000.00 as moral damages, but without subsidiary imprisonment in case of insolvency.
>
> "Without pronouncement as to Costs.
>
> "SO ORDERED.
>
> "Given, this 17[th] day of February, 1998.
>
> "(Sgd.) PACITO A. YAPE
>
> "Judge"[19]

Hence, this appeal.[20]

In his brief, accused-appellant raised as issue the prosecution's failure to prove his guilt beyond reasonable doubt. He contends that the trial court erred in relying heavily on the dying declaration of the deceased and other circumstantial evidence.[21]

We find the appeal without merit.

The trial court, in convicting accused-appellant, considered the following circumstantial evidence:

(a) That on February 10, 1992 at about 2:00 p.m. or a week before the incident of February 17, 1992, Gerry was hiding behind the fence of the victim's house, near the trunk of a jackfruit tree. He was observed to be surveying the premises of the house.

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(b) That Ursula Calimbo received her monthly pension of P3,000.00 on February 12, 1992, five (5) days before the incident.

(c) That on February 14, 1992, Ursula Calimbo lost her money and she suspected accused Gerry as the culprit.

(d) That accused Gerardo de las Eras was previously caught, arrested and convicted of theft before the MCTC of Cortes, Bohol as testified to by Clerk of Court Abelia Redillas.

(e) That on February 17, 1992 at about 7:00 p.m. before the incident took place at about 8:00 p.m., accused Gerry was seen by prosecution witness Jerome Diola. When asked by Diola during the brief and chance meeting as to his destination, de las Eras seemed unable to give a definite answer as he was giving two different destinations: first, that he was on his way to his brother's house; and on the second, to the bakery of Delfina Boot, as if he were up for some mischief.

(f) That the place where Diola and Gerry parted ways appears to be some 60 meters away to the house of the victim or a few meters away from the house of his Lola Naning where he took his late supper.

(g) That accused has a strong motive to kill the victim because he wanted to silence her for good, at the same time to exact vengeance on the victim who suspected accused de las Eras to have stolen her pension money.

(h) That when the victim, who was already bleeding on her brows, when asked as to her assailant, first, by her daughter Hilaria Calimbo Binatero, and later by SPO3 Lucito Redulla, she mentioned accused's name consistently. That the accused is known by his nickname Gerry in the neighborhood, and that is the only Gerry in the community.[22]

Circumstantial evidence suffices to convict an accused if the following requisites concur: (1) there must be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances produces a conviction beyond reasonable doubt.[23] The totality of the evidence must form an unbroken chain showing beyond reasonable doubt the culpability of the accused.[24]

The dying declaration made by the victim immediately prior to her death constitutes evidence of the highest order[25]of the cause of her death and of the identity of the assailant. Under the Revised Rules on Evidence,[26] a dying declaration is admissible provided the following requisites are present: (1) the statement concerns the crime and surrounding circumstances of the declarant's death; (2) at the time it was made, the declarant was under the consciousness of an impending death; (3) the declarant would have been competent as a witness had he survived; and (4) the declaration was offered in a criminal case for homicide, murder, or parricide in which the declarant was the victim.[27] When asked by her daughter Hilaria Binatero[28]and policeman Luisito Redulla,[29] the victim pointed to accused-appellant Gerry de las Eras as her assailant. This qualifies as a dying declaration.[30]

Denial and alibi are weak defenses and cannot overturn the positive identification by the prosecution witnesses of the assailant, more so when there are material inconsistencies in the testimony of the accused denying his participation in the crime. In this case, accused-appellant gave different responses as to his whereabouts when the crime was committed, thus:

> Q: Do you remember having testified on June 14, 1996 that at 5:00 p.m., more or less, you were at your house when Dedec arrived at your house?
>
> A: Yes.
>
> Q: And now you are testifying in answer to the court's question that when Dedec went to your house, it was only your sister whom he met and told your sister to tell you that Dedec wanted to see you, which is which now?

A: When Dedec came to our house, I was at the upper portion of the house.

COURT: Why are you telling the court that you were out when Dedec came?

A: I was at the upper portion and my sister told me that Dedec was there.

Q: So you have a talk with him?

A: Yes, before we left.

Q: So, there are now four versions, on July 14, 1996, you said Dedec came to your house to ask you to help him have his battery charged, on question of the court today, you answer that you were around the house, on question of Prosecutor Rodolfo R. Ligason, you said, you were at the upper portion of your house, now, you are telling the court that your sister told you that Dedec Carnecer was there, and you have a talk with him, which is which now?

A: I wish to tell the court that Dedec Carnecer came to my house, he first see my sister, who told me that Dedec was around, and I met Dedec, who told me to go to his house.

Q: So you will not change your answer anymore?

A: Yes.[31]

Accused-appellant also gave different versions as to where he stayed during the charging of the battery. First, he said that they waited at the store across the whole time that the battery was being charged. At another time, he said that he went first to his grandmother's house and then came back later to get the charged battery, thus:

Q: Is it not a fact that usually in order to give power to the battery, the battery should be charged slowly, and therefore, it should be charged overnight and to be taken the following day?

A: I do not know.

Q: Do you mean to say that after bringing the battery to Igang, after some few minutes, Dedec Carnecer brought it back to his house?

A: It was left there for three hours.

Q: Do you mean to say that you waited for that number of hours, three hours?

A: Yes.

Q: What time did you arrive?

A: Almost 6:30 p.m.

Q: So, in effect, you waited until 9:30 p.m?

A: No, because we went back to the shop at 8:30 p.m. because Anoy Igang told us to get the battery.

Q: Did you not tell the court that you waited for three hours to have the battery charged?

A: While we waited, Igang told us to get the battery at 8:30, so we returned to his shop at 8:30 p.m.

Q: So, it did not take you three hours to wait after all?

A: I do not know, because they were not ones who waited.

Q: But you came back at 8:30 p.m?

A: Yes.

Q: And you were able to get the battery?

A: Yes.

Q: In other words, it only took you two hours, not three hours?

A: Yes.

Q: But why did you tell the court that you waited for three hours?

A: Yes, because they were talking with Dedec Carnecer.

Q: In other words, it did not take you about three hours to wait, it only took you 1 ½ hours?

A: Yes, that is true.

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Q: While you were on cross, I heard your answer to the effect that after all, you have the battery charged for three hours, but in your testimony on June 14, 1996, you said that the battery was charged at Anoy Igang's shop for two hours, my question is, did you deliberately change the two hours to three hours in order to suit the requirements in charging the battery?

A: What Anoy Igang told us when I arrived at 6:30 p.m., that we will come back at 8:30 p.m., because the battery will be ready by that time.

Q: Though, you were not quite responsive to my question, did I get you right just a while ago that you said that you came back to Anoy Igang's shop to get the battery?

A: Yes.

Q: This is quite a new matter because when you testified on June 14, 1996, you said that from Anoy Igang's shop taking out the battery, you went to the house of Dedec Carnecer arriving 7:30 p.m., leaving 8:00 p.m. going to the house of your lola?

A: The truth is, we went to Arsenio Agot's store and went back at 8:00 p.m. to get the battery.

COURT: The court noticed that most often you are not responsive to the question asked, remember, these series of questions are vital, since your defense here is alibi, but on my notes on your testimony of July 16, you declared that there was no unusual incident at the store of Agot, in fact, you have been seated at the bench of the store with Dedec Carnecer, and there was no unusual incident thereat. And at about 7:00 p.m., you returned to the shop of Igang and was able to retrieve the battery, and you went home to the house of Dedec Carnecer, arriving there at 7:30 p.m., it seems that you are making some conflicting statements. Do not answer the question unless you are very sure of your answer.

A: I was confused because the question of the fiscal was not in series and sequence.[32]

Accused-appellant's defense of denial and alibi is further weakened by the fact that he escaped from detention on May 23, 1992, before his arraignment.[33] On January 21, 1995, he was re-arrested and detained at the Bohol Detention and Rehabilitation Center (BDRC) for another crime.[34] On June 7, 1997, during the trial of this case, accused-appellant again escaped from the guard on duty.[35] On December 17, 1997, he was apprehended again.[36] Such escapade is akin to flight before arrest in the commission of a crime, which is an indication of guilt.[37]

However, there was no eyewitness showing how the assailant attacked the victim. Without any particulars as to

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the manner in which the aggression commenced or how the act which resulted in the victim's death unfolded, treachery cannot be appreciated.[38] In the absence of specific evidence proving the qualifying circumstances of treachery and abuse of superior strength, absorbed therein,[39] the crime committed is homicide, not murder.

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court, Bohol, Branch 3, Tagbilaran City, in Criminal Case No. 7727, convicting accused-appellant Gerardo de las Eras y Zafra, alias Gerry, with the modification that in lieu of murder, the Court finds accused Gerardo de las Eras y Zafra, alias Gerry, guilty beyond reasonable doubt of homicide, defined and penalized under Article 249 of the Revised Penal Code. In the absence of any modifying circumstances and applying the Indeterminate Sentence Law, the Court hereby sentences him to twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, to indemnify the heirs of the deceased Ursula Calimbo in the amount of P50,000.00 plus P16,992.50 as actual damages and P50,000.00 as moral damages and costs in all instances.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. 7727. Judge Pacito A. Yape, presiding. Original Record, pp. 83-97; Rollo, pp. 22-36.

[2] Original Record, pp. 17-18.

[3] Ibid., p. 32.

[4] Exh. "I" (Death Certificate).

[5] TSN, June 5, 1996, pp. 3-6.

[6] Ibid., pp. 9, 11.

[7] Ibid., p. 11.

[8] TSN, June 5, 1996, pp. 9-11.

[9] TSN, June 6, 1996, pp. 30-31, 39.

[10] TSN, June 14, 1996, p. 2.

[11] TSN, June 6, 1996, pp. 33-37; Exh. "H".

[12] Exhs. "D", "E" and "F"; TSN, June 6, 1996, pp. 16-20.

[13] Exh. "C". The club (hard wood) was marked as Exh. "A".

[14] Exh. "C-1".

[15] Exh. "C-2".

[16] TSN, June 14, 1996, pp. 5-6.

[17] TSN, July 17, 1996, p. 8.

[18] TSN, August 9, 1996, p. 2.

[19] Original Record, p. 97; Rollo, p. 36. On June 9, 1999, we accepted the appeal (Rollo, pp. 41-42).

[20] Original Record, p. 99; Rollo, p. 37.

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[21] Appellant's Brief, Rollo, p. 64.

[22] Decision, p. 13 (Rollo, p. 34; Original Record, p. 95). Emphasis supplied.

[23] People v. Espina, 326 SCRA 753, 762-763 (2000); People v. Ragundiaz, 334 SCRA 193, 201-202 (2000); People v. Casingal, 337 SCRA 100, 110 (2000); People v. Rendaje, G. R. No. 136745, November 15, 2000.

[24] People v. Rendaje, supra, Note 23, citing People v. Fronda, 328 SCRA 185 (2000).

[25] People v. Rada, 367 Phil. 466, 481 (1999). A dying declaration is entitled to the highest credence (People v. Molina, 311 SCRA 517, 525 (1999).

[26] Rule 130, Section 37, effective July 1, 1989.

[27] People v. Atrejenio, 310 SCRA 229, 240 (1999); People v. Reduca, 361 Phil. 444, 458-459 (1999); People v. Nialda, 352 Phil. 355, 363-364 (1998); People v. Bromo, 318 SCRA 760, 778 (1999); People v. Gado, 358 Phil. 956, 966 (1998).

[28] TSN, June 5, 1996, p. 11.

[29] TSN, June 6, 1996, p. 39.

[30] People v. Atrejenio, supra, Note 27; People v. Molina, supra, Note 25, at pp. 524-525.

[31] TSN, August 9, 1996, pp. 4-5 (emphasis supplied).

[32] TSN, August 9, 1996, pp. 6-9 (emphasis supplied).

[33] Original Record, p. 25.

[34] Ibid., p. 29.

[35] Ibid., p. 52.

[36] Ibid., pp. 77-80.

[37] People v. Alvarez, G. R. No. 121769, November 22, 2000.

[38] People v. Casingal, 337 SCRA 100, 112 (2000), citing People v. Rios, 333 SCRA 823 (2000).

[39] People v. Taclan, 367 Phil. 648, 662 (1999).

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