

FIRST DIVISION

[G.R. No. 133964, February 13, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL PEÑA, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

Accused-appellant Ramil Peña was charged with murder in an Information which reads, thus:

That on or about the 8th day of December, 1995, in the municipality of Obando, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a firearm with intent to kill one Jimbo Pelagio y Ferrer, did then and there wilfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and shoot the said Jimbo Pelagio y Ferrer, hitting the latter on the head thereby inflicting wound which directly caused the death of the said Jimbo Pelagio y Ferrer.^[1]

In the early morning of December 8, 1995, accused-appellant hired Jimbo Pelagio, a tricycle driver working the night shift, to take him to Paco, Obando, Bulacan. When they reached their destination, he ordered Pelagio to get off the tricycle. Then, accused-appellant robbed Pelagio of his money and repeatedly struck him on the head with a gun. Pelagio fell on the ground unconscious. Accused-appellant shot him on the head and fled on board his tricycle.

That same morning, SPO1 Froilan Bautista got a call from the Valenzuela Emergency Hospital stating that a man had been shot on the head and was in their hospital. SPO1 Bautista and SPO1 Jose Sta. Ana rushed to the hospital and found the still conscious Pelagio lying on a stretcher.

SPO1 Bautista took the statement of Pelagio in a question and answer method, which he took down on two sheets of yellow paper. After his statement was taken, Pelagio affixed his thumbmark on both sheets. In his statement, Pelagio related how accused-appellant inflicted his injuries on him.

The owner of the tricycle, Wilfredo Lampa, after being informed that Pelagio had been shot, proceeded to the hospital. There, Pelagio told him that it was accused-appellant who shot him and took away his tricycle.

Francisca Pelagio, Jimbo Pelagio's mother, also rushed to the hospital. Upon advice of the doctors, Francisca brought her son to the Jose Reyes Memorial Hospital. On February 6, 1996, Jimbo Pelagio expired. According to Francisca, she spent P26,000.00 for his medical and funeral expenses.

For his part, accused-appellant claimed that he was in San Isidro, San Luis, Pampanga together with his wife on the date of the incident. He went into hiding in the house of his uncle, Maximiano Guevarra, for nine (9) months because he allegedly killed a certain Roger Wininsala. He came to know that he was being accused of the murder of Pelagio, whom he did not know, only while he was in detention on a drug charge.

Accused-appellant's testimony was corroborated by his uncle Maximiano Guevarra.

The trial court was not persuaded. On May 13, 1998, it rendered a decision,^[2] the dispositive portion of which reads:

WHEREFORE, the foregoing considered, this Court hereby finds RAMIL PEÑA GUILTY beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code and sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the victim's mother, Francisca Pelagio, the amount of P26,000.00 representing actual damages and the costs of suit.

Hence this appeal.

Accused-appellant claims that the trial court erred in finding that accused-appellant shot Pelagio because there is no evidence that a bullet was embedded in the skull of the victim. More specifically, the attending physicians were not presented to testify that the victim died of a gunshot wound in the head.

Accused-appellant next claims that the evidence relied upon by the trial court is hearsay and inadmissible. He argues that said evidence does not constitute *res gestae*. Particularly, he emphasizes that "it was imperative on the part of the lower court that it should have appreciated the principle of *res gestae* on the basis of the contents of Jimbo Pelagio's statement reduced in handwritten form by SPO1 Bautista, and not on the dying declarations made by Jimbo Pelagio to SPO1 Bautista, Wilfredo Lampa and Francisca Pelagio because these prosecution witnesses had all the time to contrive and improvise on what was actually told them, allegedly by Jimbo Pelagio."^[3]

The pivotal issue is whether the statement of the victim Jimbo Pelagio as well as the testimonies of the prosecution witnesses on the victim's declaration can be considered as part of the *res gestae*, hence, an exception to the hearsay rule.

The statement or declaration made by Pelagio, taken by SPO1 Bautista, reads:

- T: Alam mo ba ang dahilan kung bakit ka naririto sa Valenzuela Emergency Hospital at kinukunan ka ng salaysay?
- S: Opo, dahil pinagpapalo po ako ng baril ni RAMIL PEÑA sa ulo at kinuha and tricycle kong minamaneho.
- T: Taga saan itong si Ramil Peña?
- S: Sa Dulong Tangke, Valenzuela, (Malinta), M.M.

- T: Saan, kailan at anong oras nangyari ito?
 S: Sa Paco, Obando, Bulacan, kaninang ika-8 ng Disyembre 1995 sa ganap na ika-4:15 ng umaga.
- T: Sakay mo ba itong si Ramil Peña?
 S: Oho, sumakay sa may gasolinahan ng Petron sa Malinta, Valenzuela, M.M.
- T: Dati mo bang kilala si Ramil Peña?
 S: Opo.
- T: Ano ba ang tatak ng tricycle mo?
 S: Yamaha RS-100, kulay itim.
- T: Sino and may-ari ng tricycle?
 S: Si Rey Dagul.
- T: Binaril ka ba ni Ramil?
 S: Muntik na ho.
- T: Bakit sa iyo ginawa ni Ramil and bagay na ito?
 S: Ewan ko ho.^[4]

The trial court ruled that Pelagio's statement was a dying declaration since it was uttered at the point of death and with consciousness of that fact due to the serious nature of his wounds. Thus, it admitted Pelagio's statement in evidence as an exception to the hearsay rule.

The requisites for the admissibility of dying declarations have already been established in a long line of cases. An *ante-mortem* statement or dying declaration is entitled to probative weight if: (1) at the time the declaration was made, death was imminent and the declarant was conscious of that fact; (2) the declaration refers to the cause and surrounding circumstances of such death; (3) the declaration relates to facts which the victim was competent to testify to; (4) the declarant thereafter died; and (5) the declaration is offered in a criminal case wherein the declarant's death is the subject of the inquiry.^[5]

The first element is lacking in the case at bar. It was not established with certainty whether Pelagio uttered his statement with consciousness of his impending death. While he was in pain when he made his statement, he expressly stated that accused-appellant only pistol-whipped him and almost shot him.^[6]

The significance of a victim's realization or consciousness that he was on the brink of death cannot be gainsaid. Such *ante mortem* statement is evidence of the highest order because at the threshold of death, all thoughts of fabricating lies are stilled. The utterance of a victim made immediately after sustaining serious injuries may be considered the incident speaking through the victim. It is entitled to the highest credence.^[7]

Granting that Pelagio, after giving his statement, later on realized that he was dying, his statement still can not be considered a dying declaration. The crucial factor to consider is the contemporaneity of the moment when the statement was made and the moment of the realization of death. The time the statement was being made must also be the time the victim was aware that he was dying.

While it may not qualify as a dying declaration, Pelagio's statement may nonetheless be admitted in evidence as part of the *res gestae*. In *People v. Marollano*,^[8] this Court held:

The requisites for the admissibility of the victim's *ante mortem* statement as part of the *res gestae* and also as a dying declaration are present in this case, hence the same should be admitted under both exceptions to the hearsay rule. (Citation omitted) While the admissibility thereof would naturally not be affected whether viewed under either or both considerations, the advantage of resting the issue on the aforesaid dual bases is that its admission would be invulnerable to a theorized absence of an element of one of said exceptions. This is particularly important in this case, considering that the very identification of the assailant and the accuracy thereof are essentially based on the declaration of the victim. (Emphasis supplied)

A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.^[9]

In *People v. Naerta*,^[10] this Court held that:

The term "*res gestae*" comprehends a situation which presents a startling or unusual occurrence sufficient to produce a spontaneous and instinctive reaction, during which interval certain statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content.

Pelagio's declaration is admissible as part of the *res gestae* since it was made shortly after a startling occurrence and under the influence thereof. Under the circumstances, the victim evidently had no opportunity to contrive his statement beforehand.^[11]

In *People v. Hernandez*,^[12] the infliction on a person of a gunshot wound on a vital part of the body should qualify by any standard as a startling occurrence. And the rule is that testimony by a person regarding statements made by another as that startling occurrence was taking place or immediately prior or subsequent thereto, although essentially hearsay, is admissible exceptionally, on the theory that said statements are natural and spontaneous, unreflected and instinctive, made before there had been opportunity to devise or contrive anything contrary to the real fact that occurred, it being said that in these cases, it is the event speaking through the declarant, not the latter speaking of the event.