

EN BANC

[G.R. No. 141737, March 20, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO CARIÑO, GOYETO CARIÑO AND JOHN DOE, ACCUSED.
ERNESTO CARIÑO AND GOYETO CARIÑO, ACCUSED-
APPELLANTS.**

DECISION

BELLOSILLO, J.:

On automatic review is the Decision of the court *a quo* finding accused Ernesto Cariño and Goyeto Cariño guilty of Robbery with Multiple Homicide and sentencing both to death and jointly and severally to pay the heirs of their victims the aggregate amount of P367,042.15 plus costs.^[1]

On 24 April 1995 Floserfina A. Panis and her helper Milagros L. Behil were tending their *sari-sari* store in front of their house in Barangay Mabalodbalod, Tigaon, Camarines Sur. Their store was a built-in attachment to their house where at that time Floserfina's husband, Romeo V. Panis, her daughter-in-law Mito M. Panis, and her two (2) grandchildren Emmanuel, two (2) years old and Michelle, seven (7) months old, were resting.

At around 7:00 o'clock that evening, just when they were about to close their *sari-sari* store, three (3) men barged in. One of them stood by the rice bin, prompting Floserfina to ask if he was going to buy rice. The man remained silent, and in one swift move, grabbed Floserfina's arm, twisted it behind her back, and demanded money from her saying, "*Pera, pera!*" The intruder was then joined by his companion, later known as Goyeto Cariño, who pulled out a bladed weapon, poked it at her neck and ordered her to show them where the money was kept. Frightened, Floserfina pointed to the cashier's box to which she was then dragged and mauled. The men helped themselves with the contents of the box including the wallet of her husband Romeo which more or less totaled P5,000.00. Soon enough the store was plunged into darkness as the intruders turned off the switch of the fluorescent lamp.

Gripped with fear, Milagros fled towards the kitchen and sneaked out through the back door. This startled Romeo and their daughter Mito, who was then carrying her daughter Michelle and watching over her son Emmanuel. Suddenly, from within the store appeared one of the intruders, later identified as accused Ernesto Cariño, looking for Milagros. Romeo and Mito replied that Milagros went out through the back door. Ernesto followed her. Sensing danger, Romeo looked around for something to arm himself with but found none. Nonetheless, Romeo followed Ernesto to the back door where the latter attacked him with a bladed weapon and repeatedly stabbed him. Romeo cried out in pain, "*Aray, aray . . .*" Horrified, Mito clutched her daughter Michelle firmly and dashed towards the highway leaving behind her two-year old son Emmanuel.

With her arm still twisted behind her, now by the third intruder, Floserfina could only hear Romeo moaning. Soon after, she could also hear Emmanuel wailing. Floserfina was then shoved by the unidentified intruder towards the kitchen where she caught a glimpse of her grandson Emmanuel lying on the sofa. She thought he was just sleeping. The other two (2) men, later identified as Ernesto Cariño and Goyeto Cariño, demanded from Floserfina the key to the room upstairs, and she handed it to them. As moving her body was now getting difficult for Floserfina as a consequence of the twisting of her arms, the men left her behind in the kitchen and proceeded upstairs in search for more loot.

Floserfina took advantage of the situation and escaped. Outside, she was met by Mito and Milagros. Mito was still carrying Michelle. They were immediately assisted by their neighbors who were awakened by the commotion, although they refused to go inside the house. Some twenty (20) minutes later, army soldiers arrived. Subsequent inspection of the premises yielded the lifeless bodies of Romeo^[2] and Emmanuel in the kitchen. By then the culprits had already gone.

The Bicol Regional Office of the National Bureau of Investigation based in Naga City, invited Floserfina, Mito and Milagros to give their sworn statements and identify the assailants. In a police line-up, Ernesto Cariño and Goyeto Cariño were instantly tagged as the ones responsible for the crime.^[3] The identity of the third man was never known. He has remained at large.

On 16 November 1995 an Information for robbery with multiple homicide and serious physical injuries was filed against Ernesto Cariño, Goyeto Cariño and John Doe, the third man who remains unidentified and at large.^[4]

Accused Ernesto Cariño and Goyeto Cariño denied the charges and claimed that they were both in Concepcion Grande, Naga City, at the time of the commission of the crime. Ernesto claimed that on the night of the incident he was sleeping in the house of Pedro Zamora where he had been working as a farm laborer from January to July 1995. This was corroborated by Pedro Zamora himself when he testified that Ernesto ate and slept in his house during that period.

Goyeto Cariño, similarly invoking denial and alibi, asserted that from February to June 1995 he was under the employ of Domingo Shapno in the latter's gravel and sand business. Goyeto averred that during that period he could never have left the place because his wife and child were with him. According to him, on 28 June 1995, he heard over the radio that he was wanted by the NBI so that sometime in November 1995 he voluntarily presented himself at their office. His version was confirmed by Domingo Shapno who added that Goyeto even worked with Rogelio Magdaong in the latter's gravel and sand business from February to May 1995.

The trial court found the defense of Ernesto Cariño and Goyeto Cariño lame and limp and reiterated the doctrine that denial and alibi were the weakest of defenses and could not prevail against the positive identification of the accused by all three (3) prosecution witnesses, absent any convincing evidence to the contrary. The court *quo* however convicted both Ernesto and Goyeto Cariño only of the complex crime of robbery with homicide as the charge for physical injuries was considered absorbed in the principal complex crime. Thus, with the attendance of two (2) aggravating

circumstances, namely, nighttime and unlawful entry or trespass to dwelling, without any mitigating circumstance to offset them, the trial court still sentenced them to death. Moreover, the court also ordered them jointly and severally to pay the offended party, Floserfina Panis, P50,000.00 as death indemnity, P200,000.00 as burial expenses, and P112,042.15 as medical expenses, P5,000.00 as actual damages, and to pay the costs. As for the case against the accused John Doe, the case was ordered archived in the meantime, to be reinstated when the court would have acquired jurisdiction over him by his arrest.^[5]

Accused-appellants now attack the credibility of the prosecution witnesses and aver that their testimonies were full of inconsistencies hence not worthy of belief. They contend that their identification by Floserfina A. Panis is anomalous since in her *Sinumpaang Salaysay* she declared that she did not know the identity of the assailants and only pointed to accused-appellants as the authors of the crime during trial, explaining that she recognized them as they were regular customers in their store. Likewise, they contend that their identification by Mito M. Panis is flawed as she declared in her *Sinumpaang Salaysay* that no one else entered the store of her mother-in-law that night and thus her implicating them as the perpetrators who stabbed fatally her father-in-law Romeo is erroneous.

Accused-appellants likewise assail their conviction as they claim that the prosecution failed to sufficiently establish robbery. They argue that Floserfina's assertion that the store was robbed in the amount of P5,000.00 should not be given credit absent any corroborative evidence showing that robbery indeed took place. They dispute the failure of the prosecution to present further evidence showing that robbery occurred considering that Floserfina testified that she gave accused-appellants the key to the room upstairs where presumably more money and belongings were taken.

Findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. The trial court is in the best position to assess the credibility of witnesses because of their unique opportunity to observe the witnesses first hand and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses in the process of unearthing the truth. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.^[6]

The alleged inconsistencies between Floserfina Panis' *Sinumpaang Salaysay* and direct testimony are more imagined than real as they could be explained by the events that transpired in the interim. True, in her 2 May 1995 *Sinumpaang Salaysay* before the NBI she stated that she did not recognize the three (3) men who broke into her store and home but she ended with the assurance that she would be able to identify the assailants once she saw them again —

x x x x Ibig ko lang pong idagdag na mamumukhaan ko sila pag makita ko muli ang mga lalaking pumasok sa aming bahay.^[7]

It was on the basis of this last statement that Floserfina Panis was invited on 24 July 1995 to the NBI, Bicol Regional Office, Naga City, to see if she could recognize any of the eight (8) male persons presented to her in a police line-up and she pointed to a man in *sando* and shorts whom she said was among those who broke into her

store.^[8] The NBI divulged the man's name as Ernesto Cariño and only then did his identity become known to Floserfina. She also came to know of the identity of Goyeto Cariño in the same manner.^[9] Not a few also came forward to point to accused-appellants as those lounging before the store drinking softdrinks prior to the break-in.^[10] Thus, it was not surprising that Floserfina testified in court that she knew Ernesto Cariño and Goyeto Cariño.^[11]

Vital is that Floserfina Panis, although deeply distraught over the death of her husband and grandson, was straightforward in her account of the robbery and unswerving in her identification of accused-appellants. Indeed, she was compelled by a desire to seek justice for her loved ones but far from leading her into falsehood in naming accused-appellants as the malefactors as they so claim, it was this overwhelming need which made her certain of their identities. Thus -

Q: Also did you not see anyone of them getting the money from the cashier desk because it was dark?

A: I do not know anymore for as long as these two persons were the ones who were there and I am so sure of that. Oh God! Justice will be given to me! (Witness went hysterical)^[12]

We now go into the alleged discrepancy between the *Sinumpaang Salaysay* and the testimony of Mito M. Panis. To this we must defer for indeed Mito clearly declared in her *Sinumpaang Salaysay* that no one else other than Ernesto Cariño entered the kitchen that evening and that it was he alone who stabbed her father-in-law Romeo V. Panis, which is highly in contrast to her testimony in court that Goyeto Cariño likewise went inside the kitchen and joined the foray.^[13] In addition, while omitting details on Emmanuel's stabbing and the identity of his assailant in her *Sinumpaang Salaysay*, Mito conspicuously relayed in court that she saw Ernesto stab Emmanuel repeatedly. We are aware of the legal principle that inconsistencies between an affidavit/sworn statement and a declaration made in open court do not necessarily damage an offended party's credibility, being generally incomplete or even inaccurate and thus are not final repositories of truth.^[14] But it should be noted that affidavits/sworn statements more often than not approximate the truth as they vividly unveil the details in an event yet unmarred by man's traitorous memory. Hence, insofar as Goyeto's participation in the stabbing of Romeo was concerned, we consider Mito's testimony unreliable as it was dubious if not totally untrue.

As for Emmanuel, it is uncertain as to who among accused-appellants delivered the blow that ended his young and fragile life, but circumstantial evidence points strongly to Ernesto Cariño as the perpetrator. Mito Panis testified that in her haste and fear she forgot to carry Emmanuel with her. The child was about a meter or so away from Ernesto who was then disabling Romeo Panis.^[15] Inside the store, Floserfina heard her husband Romeo cry in pain followed by Emmanuel's wail. It does not take erudite thinking to conclude that Ernesto Cariño was the aggressor as the chain of events, unbroken and unfettered, points to no other.

Be that as it may, this will not shield Goyeto Cariño from the full wrath of the law as it has been sufficiently established that the crime was committed with conspiracy. Conspiracy is evident in the collective and individual acts of accused-appellants that demonstrate the existence of a common design towards the accomplishment of the