

INTESTATE ESTATE OF THE DECEASED ELIGIO NAVAL. PETRITA PASCUAL AND RUDYARDO SANTIAGO, CO-ADMINISTRATORS, POTENCIANO GABRIEL, ET AL., PLAINTIFFS AND APPELLANTS, VS. ISABEL GABRIE...

G. R. No. L-7923. November 29, 1957

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Against the Estate of the late Eligio Naval, who died in 1938 without surviving descendants or ascendants, various money claims were filed by his father-in-law, Potenciano Gabriel, and his sisters-in-law, Trinidad and Eulalia Gabriel. The estate was appraised at P95,355 as of June 1938; on the other hand, the claims of the Gabriels amounted to P138,472, as follows:

(a) Potenciano Gabriel, father of the widow Isabel Gabriel, in his own behalf

P74909.00

(b) Potenciano Gabriel, father of the widow Isabel Gabriel, as heir of Remigia Gabriel, sister of the widow Isabel Gabriel

20,726.00

(c) Trinidad Gabriel, sister of the widow Isabel Gabriel

15,550.00

(d) Eulalia Gabriel, sister of the widow Isabel Gabriel

17,757.00

(e) Modesto Bautista, husband of Eulalia Gabriel and brother-in-law of the widow Isabel Gabriel

9,530

Total

P138,472.00

The indebtedness was allegedly incurred through loans made to the deceased on various dates and occasions.

The claims were resisted by the brothers and sisters of the deceased, as his heirs intestate. One of the latter, Petrita Pascual, had been appointed administratrix, vice the widow Isabel Gabriel, who was removed in 1948 on account

of irregularities in the course of her administration.

After trial, the Court of First Instance of Rizal by decision rendered on July 14, 1942 (Sp. Proc. No. 6617), rejected the claims of the father-in-law and sisters-in-law of the deceased as false, except a claim of P100 by the father-in-law, Potenciano Gabriel, which was allowed. The decision was appealed by the claimants to the Supreme Court where it was docketed as G. R. No. 48901; but as the records and evidence were partly destroyed on occasion of the liberation of Manila and the lost evidence could not be reconstituted, the case had to be remanded to the court of origin for new trial and decision. The hearings having been duly held, the Court of First Instance of Rizal rendered a new decision on December 15, 1953, once more disallowing the claims. An appeal was again interposed and was docketed in this Court as G. R. No. L-7923.

The mainstay of appellants' evidence is the document designated as Exhibit X. It purports to be a copy of a private deed bearing the signatures of the deceased Naval and his wife, Isabel Gabriel, and executed on March 1, 1936, wherein the spouses acknowledge being indebted to Potenciano Gabriel in the amount of P69,898; to Remigia Gabriel, P17,226; to Eulalia Gabriel, 17,757 and to Trinidad Gabriel, P14,850.

The production of this document at the new trial was suspicious from the very start. The records of the case are clear that the original of the document had been one of the exhibits presented during the first trial in 1936 and rejected by the trial judge as a forgery. Attached to the records elevated to the Supreme Court on appeal of the claimants (G. R. No. 48901), said original was admittedly destroyed on occasion of the battles for the liberation of Manila. In 1946, notices were issued requiring counsel for both parties to state whether they had copies to present for the reconstitution of the destroyed records. Counsel for the claimants then manifested that, they had no other papers or pleadings to be presented; and in subsequent proceedings in the Court of First Instance, no attempt was made to present copies of the destroyed Exhibit X until the hearing of September 22 of 1953.

It was the theory of the claimants that this new Exhibit X constitutes an original copy of the exhibit that was destroyed with the records of the previous case; that said copy and its existence had been forgotten by the claimants, until the new counsel had taken pains to examine one by one all the papers left in their possession and luckily found the aforesaid copy. This is shown by the question propounded by counsel for claimants in the court below:

"Q. Showing to you this document which has been marked as Exhibit X, original salvaged from the last war and existing now, do you recognize this document?" (t.s.n. p. 12.)

The trial court refused to give credit to this Exhibit X, for the reason that it could not be a signed original copy and remain authentic, inasmuch as Trinidad Gabriel herself had asserted (on cross-examination) that only the original had been signed by Eligio Naval (t.s.n. pp. 5, 6), and that all the exhibits of the previous case (including the original of Exhibit X) had been destroyed; and the claimants themselves so admitted in their motion for new trial of April 17, 1950. From which the necessary inference is that Exhibit X is a forgery, and of no probative value. The trial court cogently reasoned out as follows:

"Pero eoiMo es posible que un documento privado firmado el 1.º de Marzo de 1936, y que fue sometido en juicio antes de la guerra, pueda resucitarse el año 1953, despues de 17 años euahdo se ha hecho constar formalmente, tanto en las actuaciones ante el Tribunal Supremo conio en los procedimientos ante este fuzgado, que ya no existe ningun otro papel o documento relativo a estas reclamaciones? Aclemas, Trinidad Gabriel declaro que solo hubo un original del documento firmado por el difunto." (Rec. App. p. 188.)

In order to circumvent the forcible reasoning of the court below, appellants now contend on appeal that their Exhibit X is not an original copy, as they had previously asserted, but a carbon copy of the destroyed exhibit. This specious turnabout is of no help to claimants. Our examination of this new Exhibit X, with the naked eye as well

as under magnification, convinces us that it is not a carbon copy, as belatedly argued by claimants. The clearness of the imprints it bears of the texture of the typewriter ribbon that was used, is proof positive that it is an original typewriting, bearing the purported signature of the deceased Naval, and as such it can not be but falsified, since the only signed copy of this alleged acknowledgment of indebtedness was destroyed with the other exhibits of the preceding case G. R. No. 48901. In addition, the numerous retouchings of the alleged signature of Eligio Naval, retouchings entirely unnecessary for its legibility, reinforce this conclusion.

Exhibit Y purports to be a letter of transmittal of Exhibit X, and can not have greater probative value than the latter. As to the other exhibits, they have no independent evidentiary weight, being merely alleged pencil copies of the destroyed original promissory notes. Moreover, the trial court has observed that the appearance and condition of these copies belie the claim that they were made around 1937, contemporaneously with the originals, and our own observation justifies the distrust of the trial judge (Rec. App. p. 134). Like Exhibit X, these exhibits were not presented during the reconstitution proceedings, as they would have been if they were in existence at that time.

There remains the oral evidence. As to the testimony of Isabel Gabriel, the widow of the deceased, it is significant that both the judge who heard her testify in the original proceedings as well as the one who presided at the new trial, considered this witness unworthy of credit in view of her manifest bias in favor of the claimants, who are her father and sisters. In addition, her evident hostility toward the relatives of her husband, and her decided intent to exclude them from all participation in her estate, were manifested in her actuations as the administratrix of the estate. As noted by the court below, her failure to submit a true inventory of the estate and her submission of accounts that the probate court found false and contradictory (Resolution of October 28, 1935) do not warrant relying on her sole and uncorroborated testimony.

As to that of Trinidad Gabriel, sister of the widow Isabel Gabriel, the trial court has correctly discarded it upon objection that, being the claimant herself, she was incompetent to testify as to any matter that took place prior to the death of the alleged debtor. (Rule 123, section 26, paragraph (c) of the Rules of Court; *Maxilom vs. Tabotabo*, 9 Phil. 390; *Kiel vs. Estate of Sabert*, 46 Phil. 193; *Icard vs. Masigan and Icard*, 71 Phil. 419; *Amante vs. Manzanero*, 71 Phil. 553; *Legarda vs. Jureidini*, 46 Official Gazette 631).

In any event, testimony of this character, that can not be contradicted for the reason that the other party can no longer appear and testify, warrants extreme wariness in accepting it unless adequately corroborated by clear and impartial evidence, which is here non-existent.

"Public policy requires that claims against the estates of the dead should be established by very satisfactory evidence, and the courts should see to it that such estates are fairly protected against unfounded and rapacious raids." (*Van Slooten vs. Wheeler*, 140 M. Y. 624, 633, 35 NE. 583.)

"Where the person by whom alone an interested witness can be contradicted is dead, a degree of proof formally greater than a preponderance of evidence is probably not required but the circumstance affects the weight of the evidence and is proper for consideration in determining on which side the preponderance of the evidence lies." (*Wylie vs. Charlton*, 43 Neb. 840; 62 NW. 220.)

"Where an account of circumstances leading to a loss is entirely within the control of one side of a controversy, there is more of a burden upon such party than where the matter has been open to the other side for an ascertainment of the facts." (*The Ma-nitou*, 116 Fed. 60, 63.)

Considering further that the claimants have resorted to false and fabricated evidence, a conduct entirely inconsistent with a truthful and honest claim, we see no reason for giving credit to their testimony. This Court has ruled that where "forgery has been resorted to in order to strengthen the testimony, we must regard it as practically worthless." (*Gonzales vs. Mauricio*, 53 Phil. 72S, 736).

The decision appealed from is hereby affirmed in toto, with costs against the appellants.

The trial court is instructed to refer Exhibit X to the provincial fiscal, for investigation and such action as the investigation may warrant. So ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bmitista Angelo, Labrador, Endencia and Felix, JJ., concur.

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