

**TESTATE ESTATE OF MARIA ZUÑIGA VDA. DE PANDO, DECEASED.
JUAN REYES, PETITIONER AND ADMINISTRATOR AND APPELLANT,
VS. DOLORES ZUÑIGA VDA. DE VIDAL, OPPOSITOR AND APPELLEE.**

G.R. No. L-2862. April 21, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This concerns the admission to probate of a document claimed to be the last will and testament of Maria Zuñiga Vda. de Pando who died in the City of Manila on October 29, 1945.

On November 6, 1945, a petition for the probate of said will was filed in the Court of First Instance of Manila. On December 21, 1945, Dolores Zuñiga Vda. de Vidal, sister of the deceased, filed an opposition based on several grounds. And, after several days of trial, at which both parties presented their respective evidence, the court rendered its decision disallowing the will on the ground that the signatures of the deceased appearing therein are not genuine, that it was not proven that the deceased knew the Spanish language in which it was written, and that even if the signatures are genuine, the same reveal that the deceased was not of sound mind when she signed the will. From this decision petitioner appealed to this Court.

While petitioner imputes nine errors to the lower court, we believe, however, that for purposes of this appeal a discussion of some would be sufficient. That, the issues may be boiled down as follows: 1) Whether or not the signatures of the deceased appearing in the will (Exhibit "C") are genuine; 2) whether or not there is evidence to show that the testatrix knew the language in which the will was written; and 3) whether or not the testatrix was of sound and disposing mind when she signed the will.

1. To prove that the will was signed by the testatrix in accordance with law, petitioner presented as witnesses the three persons who attested to the execution of the will. These witnesses are: Cornelia Gonzales de Romero, Quintin Ulpindo and Consuelo B. de Catindig. The first used to provide the deceased with ice every day, and in one of those occasions she went to her house to bring ice, she was requested to act as witness to the execution of the will. The second was a laborer whose job was to fix bed made of rattan, and in one of those days he went to the house of the deceased to work, he was asked also to witness the signing of the will. And the third was a neighbor of the deceased for many years who was also requested to act as an instrumental witness. These witnesses testified in their own simple and natural way that the deceased signed the will seated on her bed but over a small table placed near the bed in their presence, and after she had signed it in the places where her signatures appear, they in turn signed said will in her presence and in the presence of each other. This is the substance of what they have testified and from an examination of their testimony the court entertains no doubt that they had told the truth. There is nothing in their testimony which may in any way reflect against their credibility nor has the oppositor proven any fact or circumstance which may give rise to the suspicion that they testified out of personal interest or pecuniary consideration. They have impressed the court as simple persons who had intervened in the execution of the will out merely of deference to the testatrix whom they had served for sometime and had

known to be a good and respectable woman.

What evidence has the oppositor presented to contradict the testimony of these instrumental witnesses? Only one expert witness, Jose G. Villanueva, who made a comparative analysis of the signatures appearing in the will in relation to some genuine signatures of the deceased, and in fact testified on the analysis and study he has made of said signatures and submitted a memorandum on the study and comparison he has made. And in his testimony as well as in his memorandum, this witness has reached the conclusion that the hand that wrote the signatures of the deceased appearing in the will is not the same hand that wrote the genuine signatures he had examined and which he used as basis of his analytical study, thereby concluding that said signatures are not genuine. The lower court gave full faith and credit to the opinion of this expert witness, and decreed as a result that the will cannot be admitted to probate.

There are, however, certain important facts and circumstances which make us differ from this opinion of the lower court. In the first place, we find that the opinion of this expert witness has been rebutted by another expert witness, Jose C. Espinosa, whose opinion, to our mind, deserves more weight and credence. And our reason for reaching this conclusion is the fact that the standards of comparison used by Espinosa are more reliable than those used by Villanueva. Thus, the standards used by Villanueva in the comparison are two signatures appearing in two documents executed on November 10, 1942, one signature in an identification card affixed in April 1940, a half signature appearing in a letter written on October 8, 1943, one signature appearing in a letter written on July 16, 1945, and one signature appearing in a letter written in January, 1945, whereas the disputed signatures appearing in the will were affixed on October 29, 1945. On the other hand, the standards used by Espinosa in making his comparative study bear dates much closer to that of the disputed signatures. Thus, he examined four genuine signatures that were affixed on October 16, 1945, other four signatures affixed in October 1945, one on January 2, 1945, one on January 24, 1945, and one on September 24, 1945. He also examined one affixed on March 12, 1941, only for emphasis. The closeness or proximity of the time in which the standards used had been written to that of the suspected signature or document is very important to bring about an accurate analysis and conclusion. The selection of the proper standards of comparison is of paramount importance specially if we consider the age and state of health of the author of the questioned signatures. A signature affixed in 1941 may involve characteristics different from those borne by a signature affixed in 1945. And this is because the passing of time and the increase in age may have a decisive influence in the writing characteristics of a person. It is for these reasons that the authorities are of the opinion that in order to bring about an accurate comparison and analysis, the standards of comparison must be as close as possible in point of time to the suspected signature. Such was not followed in the study made by Villanueva. But such was observed in the study made by Espinosa. He followed the standard practice in handwriting analysis. It is for this reason that we hold that Espinosa's opinion deserves more weight and consideration.

"The standards should, if possible, have been made at the same time as the suspected document. It is preferable that the standards embrace the time of the origin of the document, so that one part comes from the time before the origin, and one part from the time after the origin. (Page 423 'Modern Criminal Investigation' by Soderman and O'Connell, 1936, Funk and Wagnalls Company, New York and London.)

"If possible not less than five or six signatures should always be examined and preferably double that number." (Page 139, Forensic Chemistry and Scientific Criminal Investigation by Lucas, 1935, Edward Arnold & Co., London.)

2. Another ground on which the lower court based the disallowance of the will is the failure of the petitioner to prove that the testatrix knew and spoke the language in which the will in question appears to have been written. According to the lower court, the law requires that the will should be written in the dialect or language known to

the testator and this fact not having been proven, the probate of the will must fail. And so the will was disallowed.

There is indeed nothing in the testimony of the witnesses presented by the petitioner which would indicate that the testatrix knew and spoke the Spanish language used in the preparation of the will in question. But, in our opinion, this failure alone does not in itself suffice to conclude that this important requirement of the law has not been complied with, it appearing that there is enough evidence on record which supplies this technical omission. In the first place, we have the undisputed fact that the deceased was a mestiza española, was married to a Spaniard, Recaredo Pando, and made several trips to Spain. In the second place, we have the very letters submitted as evidence by the oppositor written in Spanish by the deceased in her own handwriting (Exhibits 1, 2, 5 and 4). Having proven by her very own evidence that the deceased possessed the Spanish language, oppositor cannot now be allowed to allege the contrary. These facts give rise to the presumption that the testator knew the language in which the testament has been written, which presumption should stand unless the contrary is proven (*Abangan vs. Abangan*, 40 Phil., 476; *Gonzales vs. Laurel*, 46 Phil. 750). And this presumption has not been overcome. And finally, we have the very attestation clause of the will which states that the testatrix knew and possessed the Spanish language. It is true that this matter is not required to be stated in the attestation clause, but its inclusion can only mean that the instrumental witnesses wanted to make it of record that the deceased knew the language in which the will was written. There is, therefore, no valid reason why the will should be avoided on this ground.

3. The remaining ground which the lower court has considered in disallowing the will is the fact that the deceased was not of sound and disposing mind when she signed the will, and it reached this conclusion, not because of any direct evidence on the matter, but simply because the deceased signed the will in a somewhat varied form. On this point the lower court said:

"El Juzgado es de opinion que aunque se alega que las firmas arriba indicadas fueran de Maria Zuñiga Vda. de Pando, las mismas revelan que ella no estaba en el pleno goce de sus facultades mentales cuando la hicieron firmar el documento, Exhibit C, pues el hecho de que en una sola ocasion la repetida Maria Zuñiga Vda. de Pando firmo dos veces, sin escribir su verdadero nombre, demuestra que ella no se daba cuenta de sus actos por no hallarse mentalmente sana. Si esto es asi, no se debe legalizar como testamento y ultima voluntad de la finada Maria Zuñiga Vda. de Pando el documento, Exhibit C, porque el Artículo 614 de la Ley 190 y el Artículo 12, Reglamentos de los Tribunales, disponen que solamente pueden otorgar testamento las personas que al tiempo de su otorgamiento estaban en el pleno goce de sus facultades mentales."

The above conclusion is contrary to what the instrumental witnesses have said on this point. Cornelia Gonzales de Romero stated that she spoke to the deceased before the signing of the will, and judging from the way she spoke she was of the impression that the deceased was of sound mind at the time. To the same effect is the testimony of Consuelo B. de Catindig. She said that her impression when the deceased signed the will was that she could still talk and read, only that she was weak. In fact she read the will before signing it. These statements had not been contradicted. They give an idea of the mental condition of the deceased while the signatures affixed by the deceased in the will differ from each other in certain respects, this is only due to her age and state of health rather than to a defective mental condition. They do not reveal a condition of forgery or lack of genuineness. These differences or irregularities are common in the writings of old people and, far from showing lack of genuineness, are indicative of the age, sickness, or weak condition of the writer. A comparison of the three disputed signatures in the will will readily give this impression.

"Abbreviated, distorted and illegible, forms, Which are sufficiently free and rapid, often actually indicate genuineness rather than forgery even though they are very unusual and not exactly like those in the standard writing. Those who write with difficulty or hesitation through some physical infirmity may sometimes produce broken and unfinished signatures and these results, which in themselves are distinctly divergent as compared with signatures produced under conditions of strength and health, may forcefully indicate genuineness. Under

conditions of weakness due to disease or age, parts of a genuine signature may be clumsily written over a second time not at just the same place and in a way which clearly shows that the writer either could not see or was so weak and inattentive as not to care what the result might be. This careless, perfectly evident repetition (figure 184), unlike the painstaking and delicate retouching of the forger, often indicates genuineness." (Page 365, *Questioned Documents* by Osborne, 2nd Edition, 1927.)

We are, therefore, of the opinion that the lower court erred in disallowing the will Exhibit C.

Wherefore, the decision appealed from is hereby reversed. The Court admits the will, Exhibit C to probate, and remands this case to the lower court for further proceedings, with costs against the appellee.

Paras, C. J., Feria, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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