

**IN THE MATTER OF THE PETITION TO PROBATE OF THE WILL OF
DIGNA MARAVILLA, HERMINIO MARAVILLA,
PETITIONER-APPELLANT, AND ADELINA SAJO,
LEGATEE-APPELLANT, VS. PEDRO MARAVILLA, ASUN...**

G.R. No. L-23225. February 27, 1971

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

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

These are appeals (before Republic Act 5440) from the decision of the Court of First Instance of Negros Occidental, in its Special Proceeding No. 4977, denying the probate of the will of the deceased, Digna Maravilla. These appeals were brought to the Court of Appeals, but said court certified the same to this Supreme Court on 26 May 1964, in accord with the latter's prior decision in *Fernandez, etc., et al. vs. Maravilla*, L-18799, 31 March 1964,[1] which settled the question of appellate jurisdiction in favor of the Supreme Court over that of the Court of Appeals, on the appeal from the appointment of a special co-administrator in the same Special Proceeding No. 4977 in view of the value of the estate.

Appellant Herminio Maravilla, probate petitioner and husband of the decedent, died on 16 July 1966, after the case was submitted for decision. Upon motion for intervention filed by Concepcion Maravilla Kohlhaas and Rose Mary Kohlhaas, this Supreme Court allowed their intervention on 24 July 1967, upon showing that their interest as substitute heirs was vested definitely upon the death of Herminio Maravilla, and that said movants for intervention merely adopt the pleadings and briefs filed in behalf of the deceased Herminio Maravilla so that the intervention will not delay the disposition of the case.[2]

Appellees Pedro[3], Asuncion and Regina, all surnamed "Maravilla", who are allegedly the brother and sisters of the deceased Digna Maravilla and oppositors to the probate, had moved to require the P.C. Laboratory to submit explanations of the photographs of the will and the signatures thereon previously filed,[4] but this Court, considering that such explanations would amount to new evidence not heard at the trial, denied the motion on 3 August 1967.[5]

Herminio Maravilla's petition for probate was opposed by the appellees in an amended opposition filed in the course of the trial in the court below and admitted without objection. The opposition alleged the following grounds:

“a) That the deceased, Digna Maravilla, the alleged testatrix and the instrumental witnesses did not sign the alleged will, each and every page thereof, in the presence of each other;

“b) That the deceased, Digna Maravilla, the alleged testatrix, affixed her signature to her alleged will under undue and improper pressure and influence and/or duress brought to bear upon her by the petitioner, for his own personal benefit and advantage and that of his nieces, Adelina Sajo and Rose Marie M. Kohlhaas and his half-sister Conchita Maravilla Kohlhaas;

"c) That the deceased, Digna Maravilla, at the time she affixed her signature to her alleged will was not of sound and disposing mind;

"d) That the alleged will, now being offered for probate had already been revoked by the deceased, Digna Maravilla." [6]

After trial, the court below rendered judgment, holding as unsubstantiated the last three (3) grounds above-enumerated, but sustaining the first, that is, that the will was not executed in accordance with Section 618 of Act 190, and, therefore, denied the probate of the will.

The petitioner and one Adelina Sajo, who was named a devisee under the questioned will, appealed the judgment, as aforesaid, assigning errors of fact and law. The oppositors-appellees did not appeal but counter-assigned errors in their brief.

There is no controversy that the late Digna Maravilla died in Manapla, Negros Occidental, on 12 August 1958, leaving an extensive estate. Prior to her death, she was a resident of Saravia, same province. It is, likewise, undisputed that, at the time of the probate proceedings, only one (1) (Aquilino Mansueto) of the three (3) attesting witnesses to the will had survived, the two (2) others (Timoteo Hernaez and Mariano Buenaflor) having died previously.

The will submitted for probate, Exhibit "A", which is typewritten in the Spanish language, purports to have been executed in Manila on the 7th day of October, 1944; it consists of five (5) pages, including the page on which the attestation clause was completed. The purported signatures of the testatrix appear at the logical end of the will on page four and at the left margin of all the other pages. The attestation clause reads as follows:

"CLAUSULA DE ATESTIGUAMIENTO.

"Nosotros, TIMOTEO HERNAEZ, AQUILINO MANSUETO y MARIANO BUENAFLOR los abajo firmantes todos mayores de edad y sin impedimento alguno para ser testigos de este testamento, certificamos y atestiguamos: Que en la fecha y lugar arriba mencionados Da. DIGNA MARAVILLA ha otorgado el presente documento como su testamento y ultima voluntad que consta de cinco paginas utiles incluyendo esta pagina de atestiguamiento, escrito a maquina en una sola cara de cada hoja, todas paginadas correlativamente en letras de puño y letra de la testadora, habiendo dicha testadora, despues de leído el mismo en nuestra presencia, firmado por triplicado al pie de este testamento y al margen izquierdo de cada una de las cinco paginas de que se compone en presencia de todos y cada uno de nosotros que tambien firmamos en el margen izquierdo de cada pagina y al pie de este atestiguamiento los unos en presencia de los otros y todos en presencia de la testadora, quien en el acto del otorgamiento y firma de este documento se halla en plena capacidad intelectual, amenazada ni engañada para otorgar y firmar este testamento.

"Asi lo atestiguamos y firmamos por triplicado de nuestro puño y letra en Manila hoy a siete de Octubre de mil novecientos cuarenta y cuatro."

At the bottom thereof appear the purported signatures of Timoteo Hernaez, Aquilino Mansueto and Mariano Buenaflor, attesting witnesses. Their signatures appear also on the left margin of all the five (5) pages. The paging of the will is by handwritten words, such as "Pagina Primera", "Pagina Segunda", etc., written at the top of each page. On the lower half of the third page, before the name "CONCEPCION P. MARAVILLA", is the typewritten word "hermana", which was crossed out, and over it was handwritten the word "cuñada", bearing, at the left thereof, the initials "D. M."

After the legacies in favor of herein appellant Adelina Sajo, a niece of Digna Maravilla, the latter's sister-in-law, Concepcion P. Maravilla de Kohlhaas, and Concepcion's daughter, Rose Mary Kohlhaas, the will named appellant Herminio Maravilla as universal heir and executor. In case of the heir's death, or if he should not become heir for

any reason, he is to be substituted by the legatee Adelina Sajo in one-half of the properties bequeathed, the other half to pass collectively to legatees Concepcion P. Maravilla and the daughter of the latter, Rose Mary Kohlhaas. All previous wills are declared revoked.

In view of the trial court's decision of 8 February 1960 (Record on Appeal, pages 25-51) refusing probate of the will, the instituted heir, Herminio Maravilla, and the legatee, Adelina Sajo, perfected their appeal, assigning as errors the findings of the trial court that (a) instrumental witness Aquilino Mansueto did not actually see Digna Maravilla sign the will; (b) that Digna Maravilla was not present when Mansueto signed the will as witness; (c) that Mansueto "most probably" did not see Mariano Buenaflor sign as witness to the will; (d) the testimony of attorney Manuel Villanueva on the due execution of Digna Maravilla's testament was biased and not deserving of credit; and (e) in refusing probate to the alleged will for not having been executed with the requisites prescribed by Section 618 of Act 190.

At the hearing before the court a quo, only one of the three instrumental witnesses, Col. (ret.) Aquilino Mansueto, appeared and testified, inasmuch as the other two witnesses (Timoteo Hernaez and Mariano Buenaflor) concededly died prior to the trial of the case. Col. Mansueto identified his own signature and those of Dr. Timoteo Hernaez and of Digna Maravilla, and asserted that the latter did sign in the presence of all three witnesses and attorney Villanueva¹; that Hernaez signed in his presence and in the presence of the other witnesses and of Digna Maravilla; and that present at the signing were "Dr. Timoteo Hernaez, Mr. Mariano Buenaflor, attorney Manuel Villanueva, and both Herminio Maravilla and Mrs. Digna Maravilla" (the testatrix) and identified his signature and those of Digna and Hernaez² although, subsequently, the witness admitted that he could not remember very well whether Mr. Maravilla was there at the time he signed the will. The witness explained that he could not remember some details because fourteen years had elapsed, and when he signed as a witness, he did not give it any importance, and because at the time he (Col. Mansueto) was very worried because of rumours that the Japanese Kempeitai would arrest officers of the USAFFE who did not want to collaborate.³

Colonel Mansueto's testimony was supported by that of the husband of the testatrix, Herminio Maravilla, and of attorney Manuel Villanueva. Herminio Maravilla's evidence is that a week before 7 October 1944 his wife, Digna Maravilla, told him of her desire to "renew" her will because of the critical period in Manila before the liberation;⁴ he invited Buenaflor, Hernaez and Mansueto to attest to the will⁵; sent his messenger, Mariano Buenaflor, to ask attorney Manuel Villanueva to come to his house at Mabini, Ermita, Manila, in order to prepare the will⁶; at his wife's request, he gave the list of properties to Villanueva⁷; he knew that the will was executed in the dining room while he remained in the sala⁸; and Villanueva, Mansueto, Hernaez and Buenaflor were in his house in the morning of 7 October 1944 and sat with his wife around the table in the dining room, with Villanueva at one end, Digna beside him and the witnesses facing each other;⁹ and after the signing they had lunch, at his invitation, and when they were eating, petitioner Maravilla saw the three (3) copies of the will on the dining table.¹⁰ However, he did not see them sign.¹¹

Attorney Manuel Villanueva, as third witness for the proponent asserted that he had been the lawyer of the Maravillas; that 5 or 6 days before 7 October 1944 he had been summoned through Mariano Buenaflor to the house of the Maravillas at 222 Mabini, Ermita, Manila, and there met Digna who requested him to draft a new will, revoking her old one, to include as additional beneficiaries Adelina Sajo, Concepcion Maravilla, and the latter's youngest daughter, Rose Mary Kohlhaas, who lived with her (Digna) and whom she considered as her real children, having cared for them since childhood. Digna gave Villanueva instructions concerning the will, and handed him her old will and a handwritten list of the certificates of title of her properties, which list she asked and obtained from her husband. Before leaving, Villanueva asked Digna to look for three witnesses; their names were furnished him two or three days later and he sent word that the will could be executed on 7 October 1944 (as it

actually was); on that day he brought one original and 2 copies with him, and handed them to Digna; she read the document and while doing so the witnesses Mansueto, Hernaez and Buenaflor came. Villanueva talked with them and satisfied himself that they were competent, whereupon all proceeded to the dining room table. Attorney Villanueva sat at the head thereof, Digna at his right, and Hernaez at the right of Digna; at his left was first Mansueto and then Buenaflor. At the lawyer's behest Digna Maravilla read the will in the presence of the witnesses; after reading she called his attention to a clerical error on page 3, at the second to the last line of paragraph 9, where Con-cepcion Maravilla was designated as "hermana"; the word was cancelled by the testatrix who wrote "cuñada" above the cancelled word, and placed her initials "D. M. " beside it. She also wrote on top of each page the words "Pagina primera", "Pagina Segunda" and so on, upon Villanueva's instructions, and then Digna and the witnesses signed in the presence of one another and of attorney Villanueva.¹² The latter did not ask the husband (Herminio) to join the group when the will was executed, and Herminio remained near the window in the sala.¹³ Digna appeared to the witness very healthy and spoke in Spanish intelligently. The signing ended around 12:30 p.m., and after it all ate lunch.¹⁴

Upon the evidence, the trial judge concluded that Mansueto did not actually see Digna Maravilla sign the will in question, basing such conclusion upon the fact that while Mansueto positively identified his own signature ("I identify this as my signature") but not that of the testatrix, his five answers to the questions of counsel, in reference thereto, being "this must be the signature of Mrs. Digna Maravilla".

In our opinion, the trial court's conclusion is far fetched, fanciful and unwarranted. It was but natural that witness Mansueto should be positive about his own signature, since he was familiar with it. He had to be less positive about Digna Maravilla's signature since he could not be closely acquainted with the same: for aught the record shows, the signing of the will was the only occasion he saw her sign; he had no opportunity to study her signature before or after the execution of Exhibit "A". Furthermore, he witnessed Digna's signing not less than fourteen years previously. To demand that in identifying Digna's signature Mansueto should display a positiveness equal to the certainty shown by him in recognizing his own, exceeds the bounds of the reasonable. The variation in the expressions used by the witness is the best evidence that he was being candid and careful, and it is a clear badge of truthfulness rather than the reverse.

The trial court's error gains no support from Mansueto's statement on cross-examination that "I remember and (I) signed the will in the presence of all the witnesses and in the presence of attorney Villa-nueva" (page 29, Volume 1, T.s.n., Amago). In the absence of an assurance that no one else was present, this assertion does not really contradict Mansueto's testimony in chief that "I have read the entire document before I signed it in the presence of the other witnesses, Digna Maravilla and Attorney Villanueva" (t.s.n., Amago, Volume 1, pages 18-19). It is well to note that the cross examiner did not ask Mansueto if no one else besides those mentioned by him had seen him sign. Any contradiction inferred from both statements is purely con-jectural; it did not come from the witness and is insufficient to impeach his veracity, the difference in the answers being due to no more than an accidental lapse of memory. A will may be allowed even if some witnesses do not remember having attested it, if other evidence satisfactorily show due execution (V. Act 190, Section 632), and that failure of witness to identify his signature does not bar probate.¹⁵

That Mansueto, Hernaez and Buenaflor, together with the testatrix and the lawyer, sat next to one another around one table when the will was signed is clearly established by the uncontradicted testimony of both attorney Villanueva and Herminio Maravilla; and that detail proves beyond doubt that each one of the parties concerned did sign in the presence of all the others. It should be remembered, in this connection, that the test is not whether a witness did see the signing of the will but whether he was in a position to see if he chose to do so.¹⁶

The trial court rejected the evidence of both Herminio Maravilla and Manuel Villanueva, giving as a reason that

they were biased and in-terested in having the probate succeed. The reasoning is not warranted: for Herminio Maravilla certainly stood to gain more under the previous will of his wife (Exhibit "G") where he was made the sole beneficiary. As to attorney Villanueva, while he had been a friend of Herminio from boyhood, he also had been the family lawyer, and his intervention in the execution of the will of one of his clients became inevitable, for it is not to be expected that the testatrix should call upon a stranger for the purpose. If Villanueva wished to perjure in favor of Herminio, all he needed was to color his testimony against the due execution of the will (Exhibit "A") and not in favor thereof, since, as previously observed, Digna's first will (Exhibit "G") was more advantageous to the widower.

We find it difficult to understand the trial court's distrust of a lawyer who did no more than discharge his professional duty, or its readiness to attribute improper motives to proponent's witnesses. This Court, in *Sotelo vs. Luzan*, 59 Phil. 908, has remarked that -

"It is hardly conceivable that any attorney of any standing would risk his professional reputa-tion by falsifying a will and then go before a court and give false testimony."

And in *Fernandez vs. Tantoco*, 49 Phil. 380, 385, We ruled:

"In weighing the testimony of the attesting witnesses to a will, the statements of a competent attorney, who has been charged with the responsibili-ty of seeing to the proper execution of the instrument, is entitled to greater weight than the testi-mony of a person casually called to participate in the act, supposing of course that no motive is revealed that should induce the attorney to prevaricate. The reason is that the mind of the attorney, being conversant with the requisites of proper execution of the instrument, is more likely to become fixed on details, and he is more likely than other persons to retain those incidents in his memory.'" (Emphasis supplied)

Appellees endeavoured to sustain the court's refusal to probate the will by referring to the evidence of their witness Marino Tupas, a man of "no permanent job"¹⁷, who narrated that on the last week of September, 1944 one Mariano Buenaflor had been introduced to him by one Lt. Garaton at his guerrilla outpost in Montalban and described as a man wanted by the Japanese. Tupas' patently exaggerated testimony is that this Buenaflor stayed with him at his outpost camp until January, 1945, living and sleeping with him, and was never for a single moment out of his sight¹⁸. Why a civilian refugee should remain at a guerrilla outpost for four months, without engaging in any particular helpful activity on his part, was not explained. Shown photographs and asked to identify Buenaflor, Tupas hedged by pleading that the Buenaflor who stayed with him had a long beard. Thus, oppositor-appellees' reverse alibi for the instrumental witness, Mariano Buenaflor, was not only pa-tently mendacious but did not establish any reliable connection between the instrumental witness of Digna's will and the Buenaflor who, according to Tupas, stuck to him as a burr in 1944. No wonder the trial court gave no credit to such evidence.

Oppositors' attempts to establish that the testatrix Digna Maravilla was mentally incompetent to validly execute the will in question met no better fate in the court below. They introduced one Eufrocina Berja who qualified Digna Maravilla as insane because she saw Digna Maravilla acting strangely one morning in 1921 (23 years before the will was execu-ted). In Berja's own words -

"Would you not call a person insane who is waving a bunch of flowers and singing along a road, es-pecially taking into consideration their reputation in the Community?" (t.s.n., 21 May 1959, page 19)

Even if to this ridiculous appraisal were to be added the fact that (according to this witness) Digna saw her in 1946, but would not answer her questions and "was in a deep thought (sic) and her tongue was coming out of her mouth" (Do., pages 14-15), her evidence would cer-tainly not justify a finding that Digna Maravilla was not competent to execute the testament in 1944. By Berja's standards, any one could be held insane.

Nor is the case for the oppositors improved by the evidence of their witness Eleazar Lopez, who asserted having visited his aunt, Digna Mara-villa (whom he had not seen since he was four years old), two days after the first bombing of Manila by the American planes in September, 1944. Lopez claimed to have seen Digna on that occasion laughing and crying and then staring blankly at the ceiling, without recognizing the witness; and that he visited her again toward mid-October of the same year and she had worsened.¹⁹ Coming from a nephew who expected to succeed if the will in question were denied probate, and who sought to become administrator of the estate, even offering to resign from his position in the government if appointed²⁰, this testimony of Lopez was evidently colored by his monetary interest, thus leading to its correct discrediting by the trial court. His recollection after 15 years of the alleged symptoms of his aunt is very suspicious, as it does not even appear that Lopez at the time bothered to inquire from other persons what caused his aunt's alleged abnormal condition. Moreover, the court's duty to reconcile conflicts of evidence should lead it to hold that the symptoms described by Lopez were due to a temporary disturbance of the nerves caused by the unsettling effect of a bombardment not previously experienced, compatible with the due execution of the will on 7 October 1944. As between the testimony of Lopez and that of attorney Villanueva, who repeatedly visited and talked to the testatrix around the time her will was executed, We have no hesitation in accepting the latter's view that Digna Maravilla was competent to make the will when it was signed. The law itself declares that -

"To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties or that his mind be wholly unbroken unimpaired or unshattered by disease, injury or other cause." (Civil Code, Article 799; Bugnao vs. Ubag, 14 Phil. 163).

We are satisfied that the preponderance of evidence is to the effect that the testament, Exhibit "A", was duly executed by a qualified testatrix and competent witnesses, in conformity with the statutory requirements.

IN VIEW OF THE FOREGOING, the decree of the court below denying probate of the 1944 will of Digna Maravilla (Exhibit "A") is reversed and the said testament is hereby ordered probated. Let the records be returned to the Court of origin for further proceedings conformable to law. Costs against oppositors-appellees.

Concepcion, C.J., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur. Makalintal, J., did not take part.

[1] 10 SCRA 589.

[2] Rollo, page 213.

[3] Ordered substituted by Francisco Maravilla on 10 March 1960 (Record on Appeal, page 59).

[4] Only a photostatic copy, in lieu of the original copy of the will was submitted in evidence.

[5] Rollo, page 219.

[6] Record on Appeal, page 21.

1 T.s.n., Amago, Vol. 2, 26 January 1959, page 11.

2 T.s.n., Amago, pages 14-15, 16-19.

3 T.s.n., Amago, pages 20-21.

4 T.s.n., 24 October 1958, page 46.

5 T.s.n., 24 October 1958, page 44.

- 6 T.s.n., 24 October 1958, page 33.
- 7 T.s.n., 24 October 1958, page 34; 26 January 1959, page 46.
- 8 T.s.n., 24 October 1958, pages 36-37.
- 9 T.s.n., 24 October 1958, pages 39-43.
- 10 T.s.n., 24 October 1958, page 52.
- 11 T.s.n., 24 October 1958, pages 36-38.
- 12 T.s.n., Amago, 26 January 1959, 8-10, 11-19; 27, 57-58; 66-69.
- 13 T.s.n., 26 January 1959, page 70; 27 January 1959, pages 12-13.
- 14 T.s.n., Amago, 26 January 1959, page 70.
- 15 Castañeda vs. Alemany, 3 Phil. 426; Valera vs. Purugganan, 4 Phil. 719.
- 16 Yap Tua vs. Yap Ca, 27 Phil. 579; In re Siason, 10 Phil. 504; Neyra vs. Neyra, 76 Phil. 333.
- 17 T.s.n., 20 May 1959, page 5.
- 18 T.s.n., 20 May 1959, page 15.
- 19 T.s.n., 21 March 1959, page 41.
- 20 T.s.n., Esquillo, 5 March 1960, page 72.

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