

RAMON JOAQUIN, PETITIONER, VS. ANTONIO C. NAVARRO, RESPONDENT.*G. R. Nos. L-5426-28. May 29, 1953*

Ponente: TUASON, J.

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These three proceedings were instituted in the Court of First Instance of Manila for the summary settlement of the estates of Joaquin Navarro, Sr., his wife Angela Joaquin de Navarro, Joaquin Navarro, Jr., and Pilar Navarro, deceased. All of them having been heard jointly, Judge Rafael Amparo handed down a single decision which was appealed to the Court of Appeals, whose decision, modifying that of the Court of First Instance, in turn was elevated to the Supreme Court for review.

The main question presented in the first two courts related to the sequence of the deaths of Joaquin Navarro, Sr., his wife, and their children, all of whom were killed in the massacre of civilians by Japanese troops in Manila in February 1945. The trial court found the deaths of these persons to have occurred in this order: 1st. The Navarro girls, named Pilar, Concepcion and Natividad; 2nd. Joaquin Navarro, Jr.; 3rd. Angela Joaquin de Navarro; and 4th, Joaquin Navarro, Sr. The Court of Appeals concurred with the trial court except that, with regard to Angela Joaquin de Navarro and Joaquin Navarro, Jr., the latter was declared to have survived his mother.

It is this modification of the lower court's finding which is now being contested by the petitioner. The importance of the question whether Angela Joaquin de Navarro died before Joaquin Navarro, Jr., or vice versa, lies in the fact that it radically affects the right of succession of Ramon Joaquin, the present petitioner who was an acknowledged natural child of Angela Joaquin and adopted child of the deceased spouses, and of Antonio C. Navarro, respondent, son of Joaquin Navarro, Sr. by first marriage.

The facts, which are not disputed, are outlined in the statement in the decision of the Court of Appeals as follows:

"On February 6, 1945, while the battle for the liberation of Manila was raging, the spouses Joaquin Navarro, Sr. and Angela Joaquin, together with their three daughters, Pilar, Concepcion, and Natividad, and their son Joaquin Navarro, Jr., and the latter's wife, Adela Conde, sought refuge in the ground floor of the building known as the German Club, at the corner of San Marcelino and San Luis Streets of this City. During their stay, the building was packed with refugees, shells were exploding around, and the Club was set on fire. Simultaneously, the Japanese started shooting at the people inside the building, especially those who were trying to escape. The three daughters were hit and fell on the ground near the entrance; and Joaquin Navarro, Sr. and his son decided to abandon the premises to seek a safer haven. They could not convince Angela Joaquin, who refused to join them; and so Joaquin Navarro, Sr., his son, Joaquin Navarro, Jr., and the latter's wife, Adela Conde, and a friend and former neighbor, Francisco Lopes, dashed out of the burning edifice. As they came out, Joaquin Navarro, Jr. was shot in the head by a Japanese soldier and immediately dropped. The others lay flat on the ground in front of the Club premises to avoid the bullets. Minutes later, the German Club, already on fire, collapsed, trapping many people inside, presumably including Angela Joaquin.

"Joaquin Navarro, Sr., Mrs. Joaquin Navarro, Jr., and Francisco Lopez managed to reach an air raid shelter

nearby, and stayed there about three days, until February 10, 1945, when they were forced to leave the shelter because the shelling tore it open. They fled toward the St. Theresa Academy in San Marcelino Street, but unfortunately met Japanese patrols, who fired at the refugees, killing Joaquin Navarro, Sr. and his daughter-in-law.

"At the time of the massacre, Joaquin Navarro, Sr. was aged 70; his wife Angela Joaquin was about 67 years old; Joaquin Navarro, Jr. about 30; Pilar Navarro was two or three years older than her brother; while the other sisters, Concepcion and Natividad Navarro y Joaquin, were between 23 and 25."

The Court of Appeals' finding were all taken from the testimony of Francisco Lopez, who miraculously survived the holocaust, and upon them the Court of Appeals opined that, "as between the mother Angela Joaquin and the son Joaquin Navarro, Jr., the evidence of survivorship is uncertain and insufficient" and the statutory presumption must be applied. The Appellate Court's reasoning for its conclusion is thus stated:

"It does not require argument to show that survivorship cannot be established by proof of the death of only one of the parties; but that there must be adequate proof that one was alive when the other had already died. Now in this case before us, the testimony of the sole witness Lopez is to the effect that Joaquin Navarro, Jr. was shot and died shortly after leaving the German Club in the company of his father and the witness, and that the burning edifice entirely collapsed minutes after the shooting of the son; but there is not a scintilla of evidence, direct or circumstantial, from which we may infer the condition of the mother, Angela Joaquin, during the appreciable interval from the instant her son turned his back to her, to dash out of the Club, until he died. All we can glean from the evidence is that Angela Joaquin was unhurt when her son left her to escape from the German Club; but she could have died almost immediately after, from a variety of causes. She might have been shot by the Japanese, like her daughters, killed by falling beams from the burning edifice, overcome by the fumes, or fatally struck by splinters from the exploding shells. We cannot say for certain. No evidence is available on the point. All we can decide is that no one saw her alive after her son left her side, and that there is no proof when she died. Clearly, this circumstance alone cannot support a finding that she died later than her son, and we are thus compelled to fall back upon the statutory presumption. Indeed, it could be said that the purpose of the presumption of survivorship would be precisely to afford a solution to uncertainties like these. Hence, the son Joaquin Navarro, Jr. aged 30, must be deemed to have survived his mother, Angela Joaquin, who was admittedly above 60 years of age (Rule 123, sec. 69, subsec. (ii), Rules of Court).

"The total lack of evidence on how Angela Joaquin died likewise disposes of the question whether she and her deceased children perished in the same calamity. There being no evidence to the contrary, the only guide is the occasion of the deaths, which is identical for all of them: the battle for the liberation of Manila. A second reason is that the law, in declaring that those fallen in the same battle are to be regarded as perishing in the same calamity, could not have overlooked that a variety of causes of death can (and usually do) operate in the course of combats. During the same battle, some may die from wounds, others from gases, fire, or drowning. It is clear that the law disregards episodic details, and treats of the battle as an overall cause of death in applying the presumption of survivorship.

"We are thus led to the conclusion that the order in which the members of the Navarro-Joaquin family met their end is as follows: first, the three daughters Pilar, Concepcion, and Natividad; then the mother Angela Joaquin; then the son Joaquin Navarro, Jr., and days later (of which there is no doubt), the father Joaquin Navarro, Sr."

Much space in the briefs is taken in a discussion of whether section 334(37) of Act No. 190, now section 69(ii) of Rule 123 of the Rules of Court, has repealed article 33 of the Civil Code of 1889, now article 43 of the New Civil Code. It is the contention of the petitioner that it did not, and that on the assumption that there is total lack of evidence, as the Court of Appeals said, then Angela Joaquin and Joaquin Navarro, Jr. should, under article 33, be held to have died at the same time.

The point is not of much if any relevancy and will be left open for consideration when absolute necessity therefor arises. We say irrelevant because our opinion is that neither of the two provisions is applicable for the reasons to be presently set forth.

Rule 123, section 69(ii) of the Revised Rules of Court, reads:

"When two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not (1) shown who died first, and there are no (2) particular circumstances from which it can be inferred, the survivorship is presumed from the probabilities resulting from the strength and age of the sexes, according to the following rules:

* * * * *

Article 33 of the Civil Code of 1889 is of the following tenor:

"Whenever a doubt arises as to which was the first to die of the two or more persons who would inherit one from the other, the person who alleges the prior death of either must prove the allegation; in the absence of proof the presumption shall be that they died at the same time, and no transmission of rights from one to the other shall take place."

Both provisions, as their language plainly implies, are intended as a substitute for facts, and so are not to be available when there are facts. With particular reference to section 69 (ii) of Rule 123, "the situation which it represents is one in which the facts are not only unknown but unknowable. By hypothesis, there is no specific evidence as to the time of death * * *". * * * it is assumed that no evidence can be produced. * * *. Since the facts are unknown and unknowable, the law may apply the law of fairness appropriate to the different legal situations that arises." (IX Wigmore on Evidence, 1940 ed., 483.)

In *In re Wallace's Estate*, 220 Pac. 683, which the Court of Appeals cited and applied with respect to the deaths of the Navarro girls, pointing out that "our rule is taken from the Fourth Division of sec. 1936 of the California Code of Civil Procedure," the Supreme Court of California said:

"When the statute speaks of 'particular circumstances from which it can be inferred' that one died before the other, it means that there are circumstances from which the fact of death by one before the other may be inferred as a rational conclusion from the facts proven. The Statute does not mean circumstances which would show, or which would tend to show, probably that one died before the other. *Grand Lodge A.O.W.W. vs. Miller*, 8 Cal. App. 28, 96 Pac. 22. When, by circumstantial evidence alone, a party seeks to prove a survivorship contrary to the statutory presumption, the circumstances by which it is sought to prove the survivorship must be such as are competent and sufficient when tested by the general rules of evidence in civil cases. The inference of survivorship cannot rest upon mere surmise, speculation, or conjecture. As was said in *Grand Lodge vs. Miller*, supra, 'if the matter is left to probability, then the statute settles the presumption.' "

It is manifest from the language of section 69(ii) of Rule 123 and of that of the foregoing decision that the evidence of survivorship need not be direct; it may be indirect, circumstantial, or inferential. Where there are facts, known or knowable, from which a rational conclusion can be made, the presumption does not step in, and the rule of preponderance of evidence controls.

Are there particular circumstances on record from which reasonable inference of survivorship between Angela Joaquin and her son can be drawn? Is Francisco Lopez' testimony competent and sufficient for this purpose? For a better appreciation of this issue, it is convenient and necessary to detail the testimony, which was described by the trial court as "disinterested and trustworthy" and by the Court of Appeals as "entitled to credence."

Lopez testified:.

"Q. You said you were also hit at that time as you leave the German Club with Joaquin Navarro, Sr., Joaquin Navarro, Jr. and the latter's wife?—A. Yes, sir.

"Q. Did you fall?—A. I fell down.

"Q. And you said you fell down close to Joaquin Navarro, Jr.?—A. Yes, sir.

"Q. When the German Club collapsed where were you?—A. We were about 15 meters away from the building but I could see what was going on."

* * * * *

"Q. Could there have been an interval of fifteen minutes between the two events, that is the shooting of Joaquin Navarro, Jr. and the collapse of the German Club?—A. Yes, sir, I could not say exactly, Occasions like that, you know, you are confused.

"Q. Could there (have) been an interval of an hour instead of fifteen minutes?—A. Possible, but not probable.

"Q. Could it have been 40 minutes?—A. Yes, sir, about 40 minutes."

* * * * *

"Q. You also know that Angela Joaquin is already dead?—A. Yes, sir.

"Q. Can you tell the Honorable Court when did Angela Joaquin die?—A. Well, a few minutes after we have dashed out, the German Club, which was burning, collapsed over them, including Mrs. Joaquin Navarro, Sr."

* * * * *

"Q. From your testimony it would appear that while you can give positive evidence to the act that Pilar, Concepcion and Natividad Navarro, and Joaquin Navarro, Jr. died, you can not give the same positive evidence to the fact that Angela Joaquin also died?—A. Yes, sir, in the sense that I did not see her actually die, but when the building collapsed over her I saw and I am positive and I did not see her come out of that building so I presumed she died there."

* * * * *

"Q. Why did you have to dash out of the German Club, you, Mr. Joaquin Navarro, Sr. and Mr. Joaquin Navarro Jr. and the latter's wife?—A. Because the Japanese had set fire to the Club and they were shooting people outside, so we thought of running away rather than be roasted."

* * * * *

"Q. You mean to say that before you jumped out of the German Club all the Navarro girls, Pilar, Concepcion, and Natividad, were already wounded?—A. To my knowledge, yes.

"Q. They were wounded?—A. Yes, sir.

"Q. Were they lying on the ground or not?—A. On the ground near the entrance, because most of the people who were shot by the Japanese were those who were trying to escape, and as far as I can remember they were among those killed."

* * * * *

"Q. So you noticed that they were killed or shot by the Japanese a few minutes before you left the place?—A. That is what I think, because those Japanese soldiers were shooting the people inside especially those trying to escape."

* * * * *

"Q. And none of them was shot except the three girls, is that what you mean?—A. There were many people shot because they were trying to escape."

* * * * *

"Q. How come that these girls were shot when they were in side the building, can you explain that?—A. They were trying to escape probably."

It is our opinion that the preceding testimony contains facts quite adequate to solve the problem of survivorship between Angela Joaquin and Joaquin Navarro, Jr. and keep the statutory presumption out of the case. It is believed that in the light of the conditions painted by Lopez, a fair and reasonable inference can be arrived at, namely: that Joaquin Navarro, Jr. died before his mother.

While the possibility that the mother died before the son can not be ruled out, it must be noted that this possibility is entirely speculative and must yield to the more rational deduction from proven facts that it was the other way around. Joaquin Navarro, Jr., it will be recalled, was killed, while running, in front of, and 15 meters from, the German Club. Still in the prime of life, 30, he must have negotiated that distance in five seconds or less, and so died within that interval from the time he dashed out of the building. Now, when Joaquin Navarro, Jr. with his father and wife started to flee from the clubhouse, the old lady was alive and unhurt, so much so that the Navarro father and son tried hard to have her come along. She could have perished within those five or fewer seconds, as stated, but the probabilities that she did seem very remote. True, people in the building were also killed but these, according to Lopez, were mostly refugees who had tried to slip away from it and were shot by Japanese troops. It was not very likely that Mrs. Joaquin Navarro, Sr. made an attempt to escape. She even made frantic efforts to dissuade her husband and son from leaving the place and exposing themselves to gun fire.

This determination of Mrs. Angela Joaquin to stay where she was may well give an idea, at the same time, of a condition of relative safety in the clubhouse at the moment her husband, son, and daughter-in-law left her. It strongly tends to prove that, as the situation looked to her, the perils of death from staying were not so imminent. And it lends credence to Mr. Lopez' statement that the collapse of the clubhouse occurred about 40 minutes after Joaquin Navarro the son was shot in the head and dropped dead, and that it was the collapse that killed Mrs. Angela Navarro. The Court of Appeals said the interval between Joaquin Navarro's death and the breaking down of the edifice was "minutes". Even so, it was much longer than five seconds, long enough to warrant the inference that Mrs. Angela Joaquin was still alive when her son expired.

The Court of Appeals mentioned several causes, besides the collapse of the building, by which Mrs. Navarro could have been killed. All these causes are speculative, and the probabilities, in the light of the known facts, are against them. Dreading Japanese sharpshooters outside as evidenced by her refusal to follow the only remaining living members of her family, she could not have kept away from protective walls. Besides, the building had been set on fire to trap the refugees inside, and there was no necessity for the Japanese to waste their ammunition except upon those who tried to leave the premises. Nor was Angela Joaquin likely to have been killed by falling beams because the building was made of concrete and its collapse, more likely than not, was sudden. As to fumes, these do not cause instantaneous death; certainly not within the brief space of five seconds between her son's departure and his death.

It will be said that all this is indulging in inferences that are not conclusive. Section 69(ii) of Rule 123 does not require that the inference necessary to exclude the presumption therein provided be certain. It is the "particular circumstances from which it (survivorship) can be inferred" that are required to be certain as tested by the rules of evidence. In speaking of inference the rule can not mean beyond doubt, for "inference is never certainty, but it

may be plain enough to justify a finding of fact." (In re Bohenko's Estate, 4 N.Y.S. 2nd. 427, citing Tortora vs. State of New York, 269 N.Y. 199 N.E. 44; Hart vs. Hudson River Bridge Co., 80 N.Y. 622.) As the California courts have said, it is enough that "the circumstances by which it is sought to prove the survivorship must be such as are competent and sufficient when tested by the general rules of evidence in civil cases." (In re Wallace's Estate, supra.) "Juries must often reason," says one author, "according to probabilities, drawing an inference that the main fact in issue existed from collateral facts not directly proving, but strongly tending to prove, its existence. The vital question in such cases is the cogency of the proof afforded by the secondary facts. How likely, according to experience, is the existence of the primary fact if certain secondary facts exist?" (1 Moore on Facts, Sec. 596.) The same author tells us of a case where "a jury was justified in drawing the inference that the person who was caught firing a shot at an animal trespassing on his land was the person who fired a shot about an hour before at the same animal also trespassing." That conclusion was not airtight, but rational. In fact, the circumstances in the illustration leave greater room for another possibility than do the facts of the case at hand.

In conclusion, the presumption that Angela Joaquin de Navarro died before her son is based purely on surmises, speculations, or conjectures without any sure foundation in the evidence. The opposite theory—that the mother outlived her son—is deduced from established facts which, weighed by common experience, engender the inference as a very strong probability. Gauged by the doctrine of preponderance of evidence by which civil cases are decided, this inference ought to prevail. It can not be defeated as in an instance, cited by Lord Chief Justice Kenyon, "bordering on the ridiculous, where in an action on the game laws it was suggested that the gun with which the defendant fired was not charged with shot, but that the bird might have died in consequence of the fright." (1 Moore on Facts, 63, citing Wilkinson vs. Payne, 4 T. R. 468.)

It is said that that part of the decision of the Court of Appeals which the appellant impugns, and which has been discussed, involves findings of fact which can not be disturbed. The point is not, in our judgment, well considered. The particular circumstances from which the parties and the Court of Appeals drew conclusions are, as above seen, undisputed, and this being the case, the correctness or incorrectness of those conclusions raises a question of law, not of fact, which the Supreme Court has jurisdiction to look into. As was said in 1 Moran Commentaries on the Rules of Court, 3rd Ed. 856, 857, "Undisputed evidence is one thing, and contradicted evidence is another. An incredible witness does not cease to be such because he is not impeached or contradicted. But when the evidence is purely documentary, the authenticity of which is not questioned and the only issue is the construction to be placed thereon, or where a case is submitted upon an agreement of facts, or where all the facts are stated in the judgment and the issue is the correctness of the conclusions drawn therefrom, the question is one of law which may be reviewed by the Supreme Court."

The question of whether upon given facts the operation of the statutory presumption is to be invoked is a question of law.

The prohibition against intermeddling with decisions on questions of evidence refers to decisions supported by substantial evidence. By substantial evidence is meant real evidence or at least evidence about which reasonable men may disagree. Findings grounded entirely on speculations, surmises, or conjectures come within the exception to the general rule.

We are constrained to reverse the decision under review, and hold that the distribution of the decedents' estates should be made in accordance with the decision of the trial court. This result precludes the necessity of passing upon the question of "reserva troncal" which was put forward on the hypothetical theory that Mrs. Joaquin Navarro's death preceded that of her son. Without costs.

Feria, Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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