

**MANUEL GONZALES, PETITIONER AND APPELLANT, VS. MANOLITA GONZALES DE CARUNGCONG, PETITIONER AND APPELLEE;
ALEJANDRO GONZALES, JR., AND JUAN GONZALES, OPPOSITORS
AND APPELLANTS.**

G.R. No. L-3272-73. November 29, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

On November 27, 1948, Manuela Ibarra Vda. de Gonzales (hereafter to be referred to as testatrix) died at the age of about seventy-eight years, leaving five children, namely, Alejandro Gonzales, Jr., Manuel Gonzales, Leopoldo Gonzales, Manolita Gonzales de Carungcong, Juan Gonzales. The estate left by her is estimated at P150,000.

On December 22, 1948, Manuel Gonzales filed in the Court of First Instance of Rizal a petition (Special Proceeding No. 837) for the probate of an alleged will executed by the testatrix on November 16, 1942 (Exhibit B—Manuel Gonzales), devising to Manuel Gonzales the greater portion of the estate, without impairing the legitimes of the other children.

On December 31, 1948, Manolita G. de Carungcong filed in the same court a petition (Special Proceeding No. 838) for the probate of another alleged will executed by the testatrix on May 5, 1945 (Exhibit 1—Manolita G. Carungcong), leaving to Manolita G. de Carungcong the greater bulk of the estate, without impairing the legitimes of the other children.

In his opposition filed on February 16, 1949, Alejandro Gonzales, Jr. sought the disallowance of the wills executed on November 16, 1942, and May 5, 1945, on the ground that, assuming their validity, they had been revoked by the testatrix in an instrument executed by her on November 18, 1948 (Exhibit 2—Alejandro and Juan Gonzales), with the result that her estate should be distributed as if she died intestate.

With the exception of Leopoldo Gonzales, the children of the testatrix filed mutual oppositions to one or the other instruments tending to negative their respective positions.

After a joint hearing, the Court of First Instance of Rizal rendered a decision with the following dispositive pronouncements:

"All facts considered in the light of the evidence presented and in the manner in which the witnesses testified the court concludes and holds:

"First: That Exhibit B—Manuel Gonzales, though validly executed on November 16, 1942, was revoked by Exhibit 1—Manolita G. Carungcong in accordance with the provisions of section 623 of the Code of Civil Procedure.

"Second: That Exhibit 2—Alejandro and Juan Gonzales being executed without the knowledge and testamentary capacity of the testatrix and being contrary to the provisions of section 618 of the Code of Civil

Procedure, the said document is hereby declared null and void.

"Third: That Exhibit 1—Manolita G. Carungcong having been executed in accordance with law the same is hereby declared as the true and last will and testament of the deceased Manuela Ibarra Viuda de Gonzales, and said will is hereby admitted probate."

From this judgment petitioner Manuel Gonzales and oppositors Alejandro Gonzales, Jr. and Juan Gonzales have appealed. The appeal as to Juan Gonzales was dismissed in view of his failure to pay the proportionate share of the printing cost of the record on appeal.

In the parts material to the present appeal, the will executed by the testatrix on May 5, 1945, is of the following form and tenor:

"IKALABING-DALAWA. Na ang aking Huling BILIN AT TESTAMENTONG ito ay binubuo ng PITONG (7) dahon o pagina na may bilang na sunodsunod at ang bawat dahon o pagina ay mayroong tunay kong lagda o firma, gayón din ang lahat ng aking saksi o testigos.

"SA KATUNAYAN ng lahat ng isinasaysay ko dito ay aking nilagdaan ito dito sa Imus, Kavite, Filipinas ngayong ika-5 ng Mayo ng taong 1945, na nakaharap dito sa ating paglagda o pagfirmá ang tatlong saksi o testigos. At aking ding nilagdaan o pinirmahan ang tagilirang kaliwa ng lahat at bawat dahon o pagina nitong testamento kong ito sa harap ng lahat at bawat isang saksi o testigos at ang lahat at bawat isa naman sa kanila ay nangagsilagda o nagsifirma din dito bilang saksi ko sa harap ko at sa harap ng lahat at bawat isa sa kanila, at ganoon din silang mga saksi ko ay nangaglagda o nagsifirma sa tagilirang kaliwa ng lahat at bawat isa sa mga dahon o pagina nitong aking testamento.

"(Sgd.) MANUELA Y. VDA. DE GONZALES
MANUELA IBARRA VDA. DE GONZALES

"Mga Saksi o Testigos:

"(Sgd.) BIENVENIDO DE LOS REYES

"(Sgd.) TAHIMIK T. SAYOC

"(Sgd.) Luis GAERLAN"

It is contended for the appellants that this will does not contain any attestation clause; that, assuming the concluding paragraph to be the attestation clause, it is not valid because it is the act of the testatrix and not of the witnesses, and because it does not state the number of sheets or pages of the will.

In the very recent case of *Valentina Cuevas vs. Pilar Achacoso*, G. R. No. L-3497, decided May, 1951[*] we sustained, finding a precedent in *Aldaba vs. Roque*, 43 Phil., 378, an attestation clause made by the testator and forming part of the body of the will. Through Mr. Justice Bautista, we held:

"The clause above quoted is the attestation clause referred to in the law which, in our opinion; substantially complies with its requirements. The only apparent anomaly we find is that it appears to be an attestation made by the testator himself more than, by the instrumental witnesses. This apparent anomaly, however, is not in our opinion serious nor substantial as to affect the validity of the will, it appearing that right under the signature of the testator, there appear the signatures of the three instrumental witnesses.

" 'Instrumental witness, as defined by Escriche in his *Diccionario Razonada de Legislación, y Jurisprudencia*, Vol. 4, p. 1115, is one who takes part in the execution of an instrument or writing (in re will of Tan Diuco, 45 Phil., 807, 809). An instrumental witness, therefore, does not merely attest to the signature of the testator but also to the proper execution of the will. The fact that the three instrumental witnesses have signed the will immediately under the signature of the testator, shows that they have in fact attested not only to the genuineness of his signature but also to the due execution of the will as embodied in the attestation clause.

"The attestation clause in question bears also similarity with the attestation clause in the will involved in *Aldaba vs. Roque*, (43 Phil., 378). In that case, the attestation clause formed part of the body of the will and its recital was made by the testatrix herself and was signed by her and by the three instrumental witnesses. In upholding the validity of the will, the court said:

" 'In reality, it appears that it is the testatrix who makes the declaration about the points in the last paragraph of the will; however, as the witnesses, together with the testatrix, have signed the said declaration, we are of the opinion and so hold that the words above quoted of the testament constitute a sufficient compliance with the requirements of Act No. 2645'."

Of course three of the Justices of this Court concurred in the result, "in the possibility that the testator in the present case, or the person or persons who prepared the will had relied upon the ruling; laid down in the case of *Aldaba vs. Roque*, supra, and that it would now be unfair to reject the present will when in its preparation a ruling of this Court has been followed." But the case at bar still falls within this view, the will (Exhibit 1—Manolita G. Carungcong) having been executed on May 5, 1945.

The attestation clause contained in the body of the will being thus valid, the statement in the penultimate paragraph of the will hereinabove quoted as to the number of sheets or pages used, is sufficient attestation which may be considered in conjunction with the last paragraph. It is significant that the law does not require the attestation to be contained in a single clause. While perfection in the drafting of a will may be desirable, unsubstantial departure from the usual forms should be ignored, especially where the authenticity of the will is not assailed, as in this case.

The result reached in respect of the sufficiency of the will (Exhibit 1—Manolita G. Carungcong) necessarily disposes of the contention of appellant Manuel Gonzales that the trial court erred in not admitting to probate the will (Exhibit B—Manuel Gonzales), since the latter will must be considered revoked by the subsequent will (Exhibit 1—Manolita G. Carungcong).

What remains to be discussed is the claim of appellant Alejandro Gonzales, Jr. that the will (Exhibit 1—Manolita G. Carungcong) has been revoked by the testatrix in the instrument of November 18, 1948 (Exhibit 2—Alejandro and Juan Gonzales) which provides as follows:

" 'Ako, MANUELA YBAREA VDA. DE GONZALES, may sapat na gulang at naninirahan sa ciudad ng Rizal, may mahusay at wastong pag-iisip at mabuting pagtatanda, sa pamamaguitan ng kasulatang ito at Mlang huling kapasiyahan ay sinasaysay ko at ipinahahayag sa figayon sa alin mang testamento o huling habilin na napirmahan kong una sa kasulatang ito ay pinawawalan ko ng saysay at kabuluhanang lahat pagkat hindi iyong ang tunay kong kalooban ngayon.

" 'Sa katumayan ng lahat ng ito at sa pagkat hindi ako makalagda ngayon ang pinakiusapan si Constancio Padilla na ilagda ako sa kasulatang ito ngayon ika-17 ng Noviembre ng taong ito 1948, dito sa ciudad ng Pasay'."

Appellee Manolita G. de Carungcong, like Manuel Gonzales (as appellee), contends that the testatrix lacked the testamentary capacity when she allegedly executed the instrument of revocation, and their contention was sustained by the trial court. We have examined the record and found no valid reason for reversing the finding of said court which had the benefit. Of observing and hearing the witnesses testify. Upon the other hand, the following considerations amply support the appealed decision:

1. For more than ten years prior to her death, the testatrix had suffered from hypertension. On November 14, 1948, she had aphasia and on November 15, 1948, she was taken to the hospital upon advice of the family physician, Dr. Jose C. Leveriza. In the letter introducing her to the hospital authorities (Exhibit E—Manuel

Gonzales), Dr. Leveriza stated that the testatrix was suffering from hypertension and cerebral thrombosis. Particularly on November 18, 1948, when the alleged instrument of revocation was executed by her, the testatrix was in a comatose and unconscious state and could not talk or understand. The following is the testimony of Dr. Leveriza portraying the physical condition of the testatrix up to November 18, 1948:

"P. ¿Y qué hizo usted cuando Doña Manuela I. Vda. de Gonzales ya estaba en el hospital?—R. Me fui allá para examinarla.

"P. ¿Cuál era el resultado de su examen?—R. Cuando fue al hospital a examinarla en el primer día vía que la aphasia se agravó, o sea que ha perdido el poder de hablar inteligentemente; también encontré que estaba inconsciente, durmiendo constantemente y no se le podía, despertar, tenía la respiración fatigosa, lenta y con estertores, y no podía levantarse, así que yo prescribí que diera el alimento por medio de hypodermoclysis, o sea por medio de inyecciones.

"Sr. PAMINTUAN.—¿Quisiéramos saber, Su Señoría, si se presenta al testigo como experto?

"Sr. SERRANO.—También quisiera saber si se presenta como médico de la familia o como médico experto?

"Sr. AECEGA.—Presento al testigo como médico de cabecera y como médico experto al mismo tiempo.

"P. ¿Y qué hicieron en el hospital en vista de sus instrucciones?—R. Cumplieron la prescripción mía.

"P. ¿Qué sucedió con respecto al estado de la paciente?—R. La paciente a medida que pasaban los días se quedaba grave cada vez y más graves los síntomas aun que el primer día en que fue ella llevada al hospital.

"P. Volviéndome a la condición de la paciente, en qué estado se encontraba Doña Manuela I. Vda. de Gonzales el 14 de noviembre de 1948 antes de ingresarla, en el hospital?—R. La encontré con aphasia, no podía hablar inteligentemente.

"P. ¿Puede usted explicar al Juzgado el curso de la enfermedad de Doña Manuela I. Vda. de Gonzales?—R. Estuvo agravándose desde el segundo día en que fue ingresada al hospital, y desde ese día ya orinaba y deponía en la cama inconscientemente.

(t. s. n., Laquindanum, March 21, 1949, pp. 24-26.)

"P. ¿Explique usted al Juzgado el curso de la enfermedad de la paciente haciendo referencia de las fechas que aparecen en los Exhibitos 3 y 3-4?—R. El noviembre 14, ordené el ingreso de la paciente al Mercy Hospital, porque tuvo parálisis parcial en la lengua, probablemente de origen embolismo o trombosis cerebral, y como ya era de noche no se llevó al hospital, sino el día 15 de noviembre en donde le he hecho dos visitas; la condición de la paciente continuó empeorando hasta el día 25 de noviembre en que sobrevino la complicación de pneumonia hypostatica hasta que falleció el noviembre 27, 1948, a las 2:30 p.m.

(t. s. n., Laquindanum, March 21, 1948, pp. 28-29.)

"JUZGADO.—P. ¿Cómo llegó usted a esa conclusión de que desde el de noviembre de 1948 en que usted ordenó la entrega de la paciente al hospital empeoró su salud hasta que murió el día 27 de noviembre de 1948?—R. Porque cada vez más se acentúa su estado comatoso, y demás su respiración se hacía más fatigosa cada vez que pasaban los días, y con estertores.

"P. ¿Y como estaba su estado mental?—R. Estaba completamente inconsciente desde el día en que entró en el hospital.

"Sr. ARCEGA.—P. ¿Podía hablar la paciente en la fecha en que fue ingresada al hospital?—R. No, señor.

"P. ¿Después del 15 de noviembre de 1948 en que según usted fue ingresada la paciente en el hospital podía hablar ella y hacer entender sus palabras?—R. No, señor.

"P. ¿Y qué hacía la paciente?—R. Estaba durmiendo continuamente, no podía abrir sus ojos por sí sola, sino que yo abría para ver la pupila.

"P. ¿Trató usted de tener conversación con la paciente?—R. Naturalmente trataba, pero no contestaba, y ni creo que me entendía.

"P. ¿Podía levantarse la paciente?—R. No, señor, porque estaba en estado comatoso, y para prevenir la pneumonia hypostatica dos o tres hombres tenían que levantarla y ponerla algo de costado o algo así reclinada.

"P. ¿Y qué resultado tuvo esa precaución que usted tomó?—R. Se ha retrasado o retardado la pneumonia, pero sobrevino, al fin, que siempre es fatal.

"P. ¿Usted dijo que al fin sobrevino la pneumonia, qué efecto tuvo esa pneumonia a la paciente?—R. Precipitó la muerte de la paciente.

"P. ¿El 18 de noviembre de 1948, según testimonio de los testigos, otorgaron el documento Exhibit 2—Alejandro y Juan Gonzales, puede usted decir al Juzgado en qué estado se encontraba Doña Manuela I. Vda. de Gonzales?—R. Estaba en estado comatoso.

"P. ¿Por qué sabe usted eso?—R. Porque en esa fecha yo la visité dos veces: una por la mañana y otra por la tarde.

"P. ¿Y estando en el estado comatoso, como usted, dice, puede usted decir al Juzgado si podía ella hablar o entender sus palabras o su deseo?—R. No, señor.

"P. ¿Hizo usted esfuerzos para hacerle comprender sus palabras?—R. Siempre examinaba a ella para ver si reaccionaba favorablemente la paciente, pero cada vez era peor.

"P. ¿Puede usted decir si en aquella fecha la paciente podía siquiera hacer movimiento de cabeza?—R. No, señor, porque la parte derecha del cuerpo tenía hemiplejía o parálisis.

"P. ¿Cuál es la causa de eso que usted dice hemiplejía o parálisis?—R. Generalmente se debe a una hemorragia cerebral o trombosis del cerebro.

"P. ¿Teniendo hemorragia cerebral o trombosis del cerebro, según usted, cuál es la parte del cuerpo humano que queda afectada?—R. La cabeza y también los brazos, como los miembros del cuerpo.

"P. ¿Qué quiere usted decir 'como los miembros del cuerpo'?—R. Las manos y los pies.

"P. ¿Podía mover la paciente sus manos y su cuerpo?—R. La parte izquierda sí.

"P. ¿Y la parte derecha?—R. No, señor.

"JUZGADO.—Pero una persona en ese estado de salud, como estaba la paciente Doña Manuela I. Vda. de Gonzales, el 18 de noviembre de 1948, podía comprender palabras dichas a ella o indicaciones hechas por alguna persona a ella?—R. No, señor." (t. s. n. Laquindanum, March 21, 1948, pp. 30-33.)

While appellant Alejandro Gonzales, Jr. has attempted to show that Dr. Leveriza was not an expert, the latter's testimony remains uncontradicted. The fact that the testimony of the attesting witnesses tends to imply that the testatrix was of sound mind at the time the alleged instrument of revocation was executed, cannot prevail over the

findings of the attending physician, Dr. Leveriza, because even Dr. Ramon C. Talavera (an attesting witness) testified that although he had not examined the testatrix, her case appeared serious; that he had a hunch that "they were taking advantage of the last moment of the deceased and they were trying to make me an instrument in the accomplishment of their aims," and that he had the idea that the testatrix was in doubtful condition because he "could only judge from the people going there."

It is also argued that if the testatrix was in a comatose condition, Dr. Leveriza would not have ordered to "let her sit on bed or on a chair and let her turn on her side sometime." However, Dr. Leveriza has given the reason for this prescription, namely, to avoid hypostatic pneumonia.

In support of the contention that the testimony of the attesting witnesses should be given more credence than the opinion of an expert witness, reliance is placed on the case of *Caguioa vs. Calderón*, 20 Phil., 400; *Bagtas vs. Paguio*, 22 Phil., 227; *Galvez vs. Galvez*, 26 Phil., 243; *Samson vs. Corrales Tan Quintín*, 44 Phil., 573; *Amata vs. Tablizo*, 48 Phil., 485, and *Neyra vs. Neyra*, 42 Off. Gaz., 2790[*] These cases are notably distinguishable from the case at bar. The former refer to situations in which the doctors were not in a position to certify definitely as to the testamentary capacity of the testators at the time the wills therein involved were executed, because they had not observed the testators on said dates or never saw them; whereas the case now before us involves a family physician who attended the testatrix during her last illness and saw her on the day when the alleged instrument of revocation was executed.

2. We cannot help expressing our surprise at the fact that the instrument of revocation was allegedly executed on November 18, 1948, when, according to the testimony of Jose Padilla, the latter was asked by the testatrix to prepare the necessary document as early as in the month of May, 1948, and reminded about it for the second time weeks before November 1, 1948, and for the third time several days before the latter date (November 1, 1948). The first excuse given by Jose Padilla for the delay is that he was busy and the children of the testatrix had certain disputes which he tried to settle. The second excuse is that he was not able to secure soon enough from Alejandro Gonzales, Jr. some documents of transfer which he wanted to examine in connection with the preparation of the desired instrument of revocation. We are inclined to state that these excuses are rather poor. If Jose Padilla was too busy to give attention to the matter, he could have very easily informed the testatrix and the latter, if really desirous of revoking her former wills, would have employed another to prepare the requisite document. The fact that there were disputes between the children of the testatrix certainly was not an obstacle to the accomplishment of the wish of the testatrix. Neither was it necessary to examine the documents relating to the properties of the testatrix, since the instrument of revocation could be prepared without any reference to the details of her estate. Indeed, the instrument (Exhibit 2—Alejandro and Juan Gonzales) is couched in general terms.

3. Even under the theory of appellant Alejandro Gonzales, Jr., it is hard to rule that the testatrix had sufficient testamentary capacity at the time of the execution of the alleged instrument of revocation. In the first place, Constancio Padilla (brother of Jose Padilla) merely asked the testatrix, first, if she was agreeable to the instrument of revocation prepared by Jose Padilla, and secondly, if she was agreeable to the signing of said document by Constancio Padilla, to which two questions the testatrix allegedly answered "Yes". It is not pretended that the testatrix said more about the matter or gave any further instruction. The attesting witnesses were not introduced to the testatrix, and their presence was not even mentioned to her. It is obviously doubtful whether the testatrix understood the meaning and extent of the ceremony. Assuming that the testatrix answered in the affirmative the two questions of Constancio Padilla, without more, we cannot fairly attribute to her a manifestation of her desire to proceed, right then and there, with the signing of the questioned instrument. In other words, contrary to the recital of the attestation clause, the testatrix cannot rightly be said to have published her last will to the attesting witnesses.

The appealed decision is, therefore, affirmed without costs. So ordered.

Feria, Bengzon, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

PADILLA, J., concurring and dissenting:

I concur and dissent for the same reasons given by Mr. Justice Montemayor in the case of Cuevas vs. Achacoso,[*] G. R. No. L-3497, 18 May 1951.

[*] 88 Phil., 730.

[*] 76 Phil., 296

[*] 88 Phil., 730.

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