

IN THE MATTER OF THE PETITION OF ALFONSO R. LIM SO, TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. ALFONSO R. LIM SO, PETITIONER AND APPELLEE VS. REPUBLIC OF THE PHILIPPINES OPPOS...*G. R. No. L-1967. May 28, 1951*

Ponente: JUGO, J.

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In the course of the proceedings for the settlement of the estate of the deceased Faustino Neri San Jose, Special Proceedings No. 6-A of the Court of First Instance of Misamis Oriental, Matilde Menciano, in her behalf and in behalf of the minors Carlo Magno Neri and Faustino Neri, Jr., filed a motion for declaration of heirs, alleging that she is the widow of the deceased Faustino Neri San Jose, to whom she was married according to the rites of the Roman Catholic Church on September 28, 1944, before Rev. Father Isaias Edralin, S. J.; that before the marriage the deceased and she lived together as husband and wife, there having been no impediment to their marriage; that as a result of their cohabitation before the marriage the child Carlo Magno Neri was born on March 9, 1940 and was later baptized, said child having enjoyed the status of a recognized natural child; that their second child Faustino Neri, Jr., was born on April 24, 1945; and that Carlo Magno Neri was legitimized by the subsequent matrimony of his parents and Faustino Neri, Jr., is a legitimate child born in lawful wedlock.

Paz Neri San Jose, then executrix of the estate of the deceased Faustino Neri San Jose, and Rodolfo Pelaez, designated universal heir in the will of the deceased dated December 19, 1940, filed an amended answer with the permission of the court, in which they denied the substantial allegations of the above-mentioned motion for declaration of heirs and further alleged in substance that the deceased Faustino Neri San Jose, from the year 1943, was suffering from senile dementia caused by anemia which became worse from September 9, 1944, when the Province of Misamis Oriental where the deceased lived was bombarded by American planes; that the marriage between said deceased and Matilde Menciano, if it was solemnized, was in violation of the legal provisions and requisites, for he (the deceased) was deprived of his free will due to his age, sickness, and bombardment, and Matilde Menciano, taking advantage of the deceased's condition, by intrigue and threat of abandoning him, forced Neri by means of deceit (dolo) and threat to marry her; and that the deceased was sterile, unable to procreate, and was impotent and congenitally sterile, the same as his brothers Anastasio, Filomeno, Pedro, and his sister Conchita, who had had no children. The defendants also filed a counterclaim for the sum of P286,000 in cash, and for jewels and certain properties, which, as alleged, were retained and illegally disposed of by Matilde Menciano.

The above allegations of the parties give rise to the following issues:

- (1) Was the marriage between the deceased Faustino Neri San Jose and Matilde Menciano valid?;
- (2) Are the children Faustino Neri, Jr. and Carlo Magno Neri the legitimate children of the deceased Faustino Neri San Jose and Matilde Menciano?; and

(3) Did Matilde Menciano have in her possession and illegally disposed of the cash, jewels, and certain properties above mentioned?

The marriage between the deceased and Matilde Men-tiano is evidenced by Exhibit 1-C, which is an application for a marriage license, dated September 28, 1944, signed by Faustino Neri San Jose, to marry Matilde Menciano; Exhibit 1-B, also an application for a marriage license dated September 28, 1944, signed by Matilde Menciano, to marry Faustino Neri San Jose; Exhibit 1-D, certificate for immediate issuance of the marriage license applied for, signed by the Acting Local Civil Registrar and Faustino Neri San Jose and Matilde Menciano; and Exhibit 1-A, the marriage contract signed by Faustino Neri San Jose and Matilde Menciano as contracting parties, Rev. Isaías Edralin, as solemnizing officer, and the witnesses L. 6. Castanos and Samson Pangan.

As all the above four exhibits are official and public documents, their validity can be successfully assailed only by strong, clear, and convincing oral testimony.

In the case of *Arroyo vs. Granada* (18 Phil., 484), it was held:

"1. CANCELLATION OF INSTRUMENTS; SUFFICIENCY OF PROOF.—To justify the setting aside of an instrument solemnly executed and voluntarily delivered, upon the ground that its execution was obtained by false and fraudulent representations, the proof must be clear and convincing." (Syllabus)

In the case of *Sy Tiangco vs. Pablo and Apao* (59 Phil., 119), this Court declared:

"1. PUBLIC DOCUMENT; EXECUTION; DENIAL OF ALLEGED SIGNER; BURDEN OF PROOF.—Plaintiff's attorneys vigorously contend that when the plaintiff denied having signed the deed, it was incumbent upon the defendants to call the witnesses thereto. The execution of a document that has been ratified before a notary public cannot be disproved by the mere denial of the alleged signer. No inference unfavorable to the defendants arises from their failure to call the subscribing witnesses." (Syllabus)

Is the oral evidence presented by the defendants of sufficient force and weight to overcome the above official documents?

The witnesses for the defendants testified in substance that the deceased Faustino Neri was so weak and sick that he could not even talk coherently and intelligibly. Their testimony is too sweeping, because they refer to a general period of time. There must have been times when the deceased may have been unable to attend to business or even to converse on account of his sickness, and even Father Edralin did not solemnize the marriage on a certain date on account of the weak condition of Faustino Neri and waited for about two days to perform the ceremony when the old man, although somewhat weak, had a clear mind. Father Edralin's testimony is strongly corroborated by the form of the signatures of Faustino Neri in the above mentioned Exhibits 1-A, 1-C, and 1-D. A mere glance at those signatures will convince anyone that they could not have been written by a man who is almost unconscious and physically and intellectually incapacitated, as the defendants' witnesses represent him to have been. It should be noted that his signature is complicated, containing many flourishes, such that it can not be signed by one who is not of sound mind and of fair physical condition. He may have been sick at that time, but not to such a degree as to render him unconscious of what he was doing. If the signatures of the deceased in Exhibits 1-A, 1-C, and 1-D are compared with each other it will be readily seen that they are practically uniform, which could not have been accomplished by a man who is a nervous wreck. There is no sign of trembling of the hands or fingers of the person who affixed those signatures, which usually happens to a very sick man. In the case of *Torres et al. vs. Lopez* (48 Phil., 772), this court made the following pronouncement:

"3.Id.; Id.; Tests of Capacity.—Neither old age, physical infirmities, feebleness of mind, weakness of the memory, the appointment of a guardian, nor eccentricities are sufficient singly or jointly to show testamentary incapacity. The nature and rationality of the will is of some practical utility in determining capacity. Each case

rests on its own facts and must be decided by its own facts." (Syllabus, p. 773.)

* * * * *

"11. Id.; Id.; Id.; Id.; Case at Bar.—On January 3, 1924, when the testator, Tomas Rodriguez, made his will, he was 76 years old, physically decrepit, weak of intellect, suffering from a loss of memory, had a guardian of his person and his property, and was eccentric, but he still possessed that spark of reason and of life, that strength of mind to form a fixed intention and to summon his enfeebled thoughts to enforce that intention, which the law terms 'testamentary capacity.' Two of the subscribing witnesses testified clearly to the regular manner in which the will was executed, and one did not. The attending physicians and three other doctors who were present at the execution of the will expressed opinions entirely favorable to the capacity of the testator. Three other members of the medical profession expressed opinions entirely unfavorable to the capacity of the testator and certified that he was of unsound mind. Held, That Tomas Rodriguez on January 3, 1924, possessed sufficient mentality to make a will which would meet the legal test regarding testamentary capacity; that the proponents of the will have carried successfully the burden of proof and have shown him of sound mind on that date; and that it was reversible error on the part of the trial court not to admit his will to probate." (Syllabus, p. 774)

In *Sancho vs. Abella* (58 Phil., 728), this court said:

"1. WILLS; PROBATE; CAPACITY TO MAKE A WILL.—Neither senile debility, nor deafness, nor blindness, nor poor memory, is by itself sufficient to establish the presumption that the person suffering therefrom is not in the full enjoyment of his mental faculties, when there is sufficient evidence of his mental sanity at the time of the execution of the will.

"2. ID.; ID.; ID.;—Neither the fact of her being given accommodations in a convent, nor the presence of the parish priest, nor a priest acting as a witness, constitutes undue influence sufficient to justify the annulment of a legacy in favor of a bishop of a diocese, made in her will by a testatrix 88 years of age, suffering from defective eyesight and hearing, while she is stopping in a convent within the aforesaid diocese." (Syllabi)

Although the above doctrine relates to testamentary capacity, there is no reason why it should not be applied to the capacity to contract marriage, which requires the same mental condition. Consequently, the court below did not err in declaring valid the marriage of Faustino Neri San Jose and Matilde Menciano.

The next issue is whether Faustino Neri, Jr., and Carlo Magno Neri are legitimate children of the deceased Faustino Neri and Matilde Menciano.

As above stated, the deceased Faustino Neri and Matilde Menciano were married on September 28, 1944. Faustino Neri, Jr., was born on April 24, 1945; that is, two hundred eight days, or more than one hundred eighty days, after the marriage, but less than three hundred days after the death of Faustino Neri San Jose which occurred on October 11, 1944. There is no question that before and after the marriage, the deceased and Matilde Menciano cohabitated.

Rule 123, section 68(c), reads as follows:

"SEC. 68. Conclusive presumptions.—The following are instances of conclusive presumptions:

" * * * * *

"(c) The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate, if not born within the one hundred and eighty days immediately succeeding the marriage, or after the expiration of three hundred days following its dissolution;

" * * * * *

The above-quoted provision is so clear that it does not require interpretation or construction, but only application.

The requirements for the conclusive presumption that Faustino Neri, Jr. is the legitimate son of the legitimate marriage of the deceased Faustino Neri and Matilde Menciano exist as above stated, with the possible exception of the requisite as to potency.

Was the deceased Faustino Neri impotent during his cohabitation with Matilde Menciano?

Impotency being an abnormal condition should not be presumed. The presumption is in favor of potency. The best evidence that the deceased was potent is the statement of Dr. Antonio Garcia that in order to get a specimen of the semen of the deceased Faustino Neri for examination as to its contents of spermatozoa, Faustino, following the doctor's advice, used a rubber sac, commonly called "condon", and a woman. The fact that the deceased was able to produce the specimen by said means shows conclusively that he was potent. Impotency is not synonymous with sterility. Impotency is the physical inability to have sexual intercourse; it is different from sterility.

"(1) Impotence, in Medical Jurisprudence.—Inability on the part of the male organ of copulation to perform its proper function. Impotence applies only to disorders affecting the function of the organ of copulation, while sterility applies only to lack of fertility in the reproductive elements of either sex. (Dennis, System of Surgery; Bouvier's Law Dictionary, Rawle's Third Revision, VoL II, p. 1514)

"(2) Impotentia (L.) Impotence."Impotentia Coeundi, inability of the male to perform the sexual act.

"Impotentia Erigendi, inability to have an erection of the penis. (The American Illustrated Medical Dictionary, by Dorland, 20th Edition, p. 721)

"i. Coeundi. Inability of the male to perform the sexual act. i. erigendi, impotence due to the absence of the power of erection. (Stedman's Practical Medical Dictionary, p. 551)

"(4) Impotence." '3. Law & Med. Incapacity for sexual intercourse.' (Webster's New International Dictionary, Second Edition, Unabridged, p. 1251).

"(5) Impotency or Impotence.—Want of power for copulation, not mere sterility. The absence of complete power of copulation is an essential element to constitute impotency. (31 C. J., p. 259).

"(6) Impotence.—Inability to perform the sexual act may be due to defective organs from abnormal or incomplete development, or to deficient internal secretions, or to disorders of the nervous system diminishing the libido. Impotence may or may not be accompanied by sterility. (The Columbia Encyclopedia, 877),"

Consequently, the requisite of potency also existed. The necessary conclusion is that the child Faustino Neri, Jr., is conclusively presumed to be the legitimate son of the deceased Faustino Neri with Matilde Menciano in lawful wedlock.

The attorney for the plaintiffs correctly objected to the evidence regarding sterility and any other evidence as to paternity. The objection should not have been overruled

However, even considering the evidence as to sterility, it results that the examinations of the semen by Drs. Garcia and Marfori in 1940, to determine the existence of spermatozoa, do not establish that the deceased was sterile. According to medical jurisprudence, a man may not have spermatozoa at a certain time, but may have had it previously or may have it subsequently to the examination. The examinations by Drs. Garcia and Marfori were made in 1940. From that time Faustino Neri San Jose cohabited with Matilde Menciano until his death on October 11, 1944.

Doctor Jose F. Marfori testified as follows:

"Q. How many times did you examine his seminal fluid?

—

A. Only once.

"Q. In other words, from the latter part of 1940 up to his death, you examined only once his seminal fluid?

—

A. Yes, sir.

Q. Is it not a fact that you cannot determine sterility or his inability to procreate with one examination?

—

A. It would have been better if there was an examination of his seminal fluid every year."

"Q. But the truth is that today a man may lack spermatozoa in his seminal fluid, but much later it may appear?

—

A. That is possible." (P. 28, t. s. n., Gaane)

It should be noted that Doctor Marfori is a nephew-in-law of the deceased Faustino Neri.

With regard to the supposed examination made by Doctor Garcia in Cebu on December 9, 1940, Cristobal Lopez, nephew of Faustino, testified that during said period, December, 1940, the deceased Neri never went out of Cagayan, Oriental Misamis. eW cannot accord much weight to the testimony of Doctor Garcia that he made the examination.

But even supposing that said doctors made such examinations, still the result is inconclusive, for the reasons above set forth, and cannot in any way overthrow the conclusive presumption established by Rule 123, section

Carlo Magno Neri was born on March 9, 1940, that is, before the marriage. Both the deceased Faustino and Matilde Menciano were free to marry without any legal impediment. However, the court below declared that Carlo Magno Neri has not been acknowledged as a natural child and, consequently, cannot be legitimized by the subsequent marriage of his parents. We cannot review this finding because the plaintiffs did not appeal.

The defendants allege that Matilde Menciano is retaining or has illegally disposed of P286,000, genuine Philippine currency, certain jewels, and documents. The trial court, after a careful and exhaustive review of the evidence, correctly reached the conclusion that such allegation has not been substantiated. Let us make a short analysis of the defendants' evidence on this point.

The principal witness for this claim was Rodolfo Pelaez, who testified that the deceased Faustino in 1939 delivered to him the sum of P250,000 in small denominations to be exchanged in a bank in Manila for bills of larger denominations as P500, etc. After having exchanged it with the help of Representative Ozamis (dead on the date of the trial), he returned to the province and delivered the sum to the deceased Neri. On cross-examination he was not able to say whether the bills he took to Manila in October, 1939, were treasury certificates or bank bills; that in July, 1944, he visited Cagayan and he saw his uncle Faustino living with Matilde Menciano and Carlo Magno Neri in the house of a Chinaman on Calle Del Mar; that he saw the sum of P250,000 in a wooden aparador. But when he was asked whether he actually saw the money in the aparador, he said he was so informed by his uncle. His testimony is hearsay. Furthermore, there is no reason why his uncle should have accounted to him for the money. His testimony is contradicted by that of Paz Neri San Jose, his mother, who stated that the

deceased Faustino went to the house of the Chinaman on Calle Del Mar only to fetch certain document which he had left there; that the deceased was not living in said house; that he went there now and then to play monte; that the deceased and herself were living in the house of one Tamparong; that the deceased used to carry with him his money, jewels, and documents, in a sack, wherever he went to play; that at the time of the air raid by the Americans, the deceased went to the house on Calle Del Mar carrying the said sack, but he returned to the house of Tamparong, leaving the sack in the house on Calle Del Mar, but after the air raid he returned on the latter house to fetch the sack. This testimony of Paz Neri, who was a witness for the defendants and a co-defendant herself, contradicts in essential and important features that of Rodolfo Pelaez.

The testimony of Paz Neri would show that the deceased Neri was distrustful of relatives and friends when his funds were concerned. P250,000 in 1939 was quite a fortune in itself and, consisting of cash, could have been easily disposed of. In 1939 nobody believed for certain that there would be war. Why then should the deceased have wanted to change the money for bigger denominations when he could have deposited it in a nearby branch of the Philippine National Bank where the deceased could have gone, for, as alleged by the defendants, he even went to Cebu in 1940 for examination of his seminal fluid?

It was testified to by Clotilde Galarrita de Labitad that Matilde Menciano showed to her the sum of P284,000 in genuine Philippine currency and counted the money in her presence. This is unbelievable. Could she not have counted it without the presence of anybody and thus avoided the danger of theft or robbery?

With regard to the jewels no satisfactory evidence was presented to prove that Matilde Menciano misappropriated them. She received and had in her possession a few jewels given to her by the deceased Faustino for the benefit of the children.

As to the revocation of the appointment of Paz Neri San Jose as executrix, the trial court made a reasonable exercise of its discretion in setting it aside and appointing Matilde Menciano administratrix, in view of the hostility between them which would cause many incidental questions and delay in the termination of the proceedings if Paz Neri had continued as such executrix. We see no reason for interfering in this case with the discretion of the court.

The appellees contend that the court erred in not completely annulling the institution of universal heir, without considering Rodolfo Pelaez as a legatee. Inasmuch as the plaintiffs did not appeal, they are bound by the decision of the trial court.

In view of the foregoing, the judgment appealed from is affirmed in all its parts, with costs against the appellants. It is so ordered.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor. and Bautista Angelo, JJ., concurr.

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