

AUGUSTO GOMEZ, AS SPECIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF CONSUELO GOMEZ, PETITIONER, VS. MARIA RITA GOMEZ-SAMSON, MARCIAL SAMSON, JESUS B. GOMEZ, AND THE REGISTER OF D...

G.R. No. 156284. February 06, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Which came first, the chicken or the egg?

This age-old question has spurned millions of debates in scientific and religious circles, and has stimulated the imagination of generations of children and adults. Many profess that they are certain of the answer, and yet their answers are divergent.

The case at bar involves a similarly baffling question, but in significantly lesser proportions of philosophical mystery. Petitioner claims that, in the two Deeds of Donation he is impugning, the signatures of the donee were jotted down before the bodies of the Deeds were typewritten. Respondents maintain that the bodies of the Deeds were encoded first, and then, a clashing presentation of expert witnesses and circumstantial evidence ensued. Petitioner's expert claims she is certain of the answer: the signature came first. Respondents' expert, on the other hand, says that it is impossible to determine which came first accurately. As both the trial court and the Court of Appeals ruled in favor of respondents, petitioner is furious how these courts could adopt an opinion that was "neither here nor there."

However, as it is with the chicken and egg riddle, is the person certain of which came first necessarily the one who is more credible?

This is a Petition for Review on Certiorari of the Decision[1] and Resolution[2] dated 4 September 2002 and 27 November 2002, respectively, of the Court of Appeals in CA-G.R. CV No. 40391 affirming the Joint Decision of the Regional Trial Court (RTC) of Pasig City dated 8 April 1992 in Civil Cases No. 36089 and No. 36090.

The facts of the case, as summarized by the Court of Appeals, are as follows:

On February 15, 1980, [petitioner] instituted these cases, to wit: (1) Civil Case No. 36089, entitled: "Augusto Gomez, as Special Administrator of the Intestate Estate of Consuelo Gomez, Plaintiff, versus Maria Rita Gomez-Samson, Marcial Samson, Jesus B. Gomez, and the Registers of Deeds of Pasig and Marikina, Rizal, Defendants"; and (2) Civil Case No. 36090, entitled: "Augusto Gomez, as Special Administrator of the Intestate Estate of Consuelo Gomez, Plaintiff, versus Ariston Gomez, Sr., and Ariston B. Gomez, Jr., Defendants", both in the Regional Trial Court, Pasig City.

CONSUELO, ARISTON, SR. and Angel, all surnamed Gomez, were sister and brothers, respectively. MARIA-RITA Gomez-Samson, JESUS Gomez and ARISTON Gomez, JR. are the children of ARISTON, SR. while AUGUSTO Gomez is the child of Angel.

In Civil Case No. 36089, plaintiff AUGUSTO alleged in his complaint that CONSUELO, who died on November 6, 1979, was the owner of the following real properties:

"(a) A parcel of land, with all the improvements thereon, situated in Marikina, Metro Manila, covered by Transfer Certificate of Title No. 340233 in her name, x x x;

"(b) A parcel of land, with all the improvements thereon, situated in Marikina, Metro Manila, covered by Transfer Certificate of Title No. 353818 in her name, x x x,"

"(c) A parcel of land, with all the improvements thereon, situated in Pasig, Metro Manila, covered by Transfer Certificate of Title No. 268396 in her name, x x x;"

that after the death of Consuelo, defendants Rita and Jesus fraudulently prepared and/or caused to be prepared a Deed of Donation Intervivos; that in the said document, Consuelo donated the above described properties to defendants Rita and Jesus; that the said defendants forged or caused to be forged the signature of the donor, Consuelo; that the notarial acknowledgement on the said document was antedated to April 21, 1979; that on the basis of the said document defendants sought the cancellation of the certificates of title in the name of Consuelo and the issuance of new ones in the names of defendants Rita and Jesus.

On the basis of the foregoing, plaintiff prayed that the Deed of Donation Intervivos be declared false, null and void ab initio, and/or be nullified; that TCT Nos. 340233, 353818, and 268396 be reinstated or be replaced by titles in the name of the Intestate Estate of Consuelo Gomez; and, that defendants be ordered to pay damages, by way of attorney's fees and expenses of litigation plus costs.

On April 24, 1980, private defendants, and nominal defendants Registers of Deeds of Pasig and Marikina, Rizal, filed their common answer, denying the material allegations in the complaint and asserting that a copy of the deed of donation was submitted to the Notarial Section of the CFI of Quezon City as early as July 2, 1979; that the said document is valid and not a forgery or otherwise subject to similar infirmity; that the said document being valid, the properties covered therein passed in ownership to private defendants, as early as April 20, 1979; that defendants have the perfect and absolute right to cause the cancellation of TCT Nos. 340233, 353818, and 26839 and request for the issuance of new certificates of titles in their respective names; that they have the right to use, enjoy, possess, dispose and own these properties; that no law was violated by the nominal defendants when the old certificates of title were cancelled and new certificates were issued in the name of the private defendants, hence, plaintiff has no cause of action against the nominal defendants neither has the court jurisdiction over the foregoing issue.

Defendants thereafter prayed for moral damages of P2,000,000.00; compensatory damages of P1,000,000.00; exemplary damages of P500,000.00; attorney's fees of P200,000.00; and that individual plaintiff be made jointly and severally liable with the estate of Consuelo Gomez.

In Civil Case No. 36090, the same plaintiff alleged in his complaint that Consuelo was also the sole and absolute owner of the following personal properties:

(a) Seventy-five (75) common shares of stock of V-Tri Realty, Inc. with a total par value of P75,000.00 and covered by Stock Certificate No. 003;

(b) Eleven thousand eight hundred fifty three (11,853) common shares of stock of First Philippine Holdings Corporation with a total par value of P118,530.00 covered by Stock Certificates Nos. A-02614 (7,443 shares) and A-02613 (2,040 shares) and A-09018 (2,370 shares);

(c) Jewelries and collector's items, contained in Consuelo Gomez's Safe Deposit Box No. 44 at the PCI Bank, Marikina Branch, which were inventoried on January 9, 1980 per Order of the Court in Special Proceedings No.

9164;

(d) A four-door sedan 1978 Mercedes Benz 200 with Motor No. 11593810-050706, Serial/Chassis No. 12302050-069893, Plate No. A6-252 and LTC Registration Certificate No. 0140373 valued at P200,000.00, more or less at the time Consuelo Gomez died;

(e) A four-door sedan 1979 Toyota Corona with Motor No. 12RM-031643, Serial/Chassis No. RT-130-901150, Plate No. B-09-373 and LTC Registration Certificate No. 0358757, valued at P50,000.00, more or less at the time Consuelo Gomez died;

(f) Two hundred thousand pesos (P200,000.00) including accrued interests on money market placement with the BA Finance Corporation per its promissory note No. BAT-0116 dated March 9, 1978.

that after the death of Consuelo, defendants fraudulently prepared and/or caused to be prepared a Deed of Donation Intervivos; that in the said document Consuelo donated the above described properties to defendants Ariston, Sr. and Ariston, Jr.; that the said defendants forged or caused to be forged the signature of the donor, Consuelo; that the notarial acknowledgment on the said document was antedated to April 21, 1979; that on the basis of the said document defendant Ariston, Sr., [in] December 1978, effected or tried to effect a change of the LTC registration of the two (2) vehicles; that defendant Ariston, Jr., for his part, pre-terminated the money market placements with BA Finance and received checks in the sums of P187,027.74 and P4,405.56; that with the exception of the jewelries, which are with the bank, defendant Ariston, Sr., has benefited and will continue to benefit from the use of the two (2) vehicles and from the dividends earned by the shares of stocks.

On the basis of the foregoing, the plaintiff prayed that the Deed of Donation Intervivos be declared false, null and void ab initio, and/or be nullified; that defendant Ariston, Sr., be ordered to deliver the stock certificates, jewelries, collector's items, and vehicles in his possession plus all the cash dividends earned by the shares of stock and reasonable compensation for the use of the two (2) motor vehicles; that defendant Ariston, Jr. be ordered to pay the amount of P191,533.00 received by him from BA Finance, with interest from the time he received the amount until he fully pays the plaintiff; and, damages, by way of attorney's fees and expenses of litigation, plus costs.

On March 19, 1980, defendants Ariston, Sr. and Ariston Jr., filed their answer, denying the material allegations in the complaint and asserting that a copy of the Deed of Donation was submitted to the Notarial Section of the CFI of Quezon City as early as July 2, 1979; that the said document is valid and not a forgery or otherwise subject to similar infirmity; that the said document being valid, the properties covered therein passed in ownership to defendants, as early as April 20, 1979; and that defendants have the perfect and absolute right to use, enjoy, possess and own these properties.

Defendants thereafter prayed for moral damages of P2,000,000.00; compensatory damages of P1,000,000.00; exemplary damages of P500,000.00; attorney's fees of P200,000.00; and that individual plaintiff be made jointly and severally liable with the estate of Consuelo Gomez.

On May 27, 1980, the plaintiff filed a Motion to Consolidate, in both cases, which the trial court in Civil Case No. 36090 granted in its Order dated June 6, 1980. Whereupon, the records of Civil Case No. 36090 were transmitted to the RTC, Branch 23.

After appropriate proceedings, the trial court directed the parties to submit their respective memoranda thirty (30) days from their receipt of the transcript of stenographic notes.

In its joint decision dated April 8, 1992, the trial court dismissed the complaints.[3]

The dispositive portion of the RTC Joint Decision reads:

WHEREFORE, it is Ordered:

- That the instant complaints be dismissed;
- That the replevin bonds nos. 2223, 2224, 2225, and 2226 of the Stronghold Insurance Company, Incorporated be cancelled;
- That Augusto Gomez and the estate of the late Consuelo Gomez, jointly and solidarily, should pay to Ariston Gomez, Jr. the following amounts:

Moral damages of P1,000,000.00;

Exemplary damages of P250,000.00

Attorney's fees of P200,000.00

And costs of suit; with legal interest on all the amounts, except on costs and attorney's fees, commencing from February 15, 1980, until fully paid.[4]

Petitioner filed a Petition for Review with the Court of Appeals. The latter affirmed the RTC's Joint Decision in the 4 September 2002 assailed Decision, the dispositive portion of which reads:

WHEREFORE, the appealed decision is AFFIRMED in toto.[5]

Petitioner filed a Motion for Reconsideration, but the same was denied by the Court of Appeals in the assailed Resolution dated 27 November 2002.

Petitioner filed the present Petition for Review on Certiorari, bringing forth before us the following issues for our consideration:

- 1) Whether or not the instant petition presents several exceptions to the general rule that an appeal by certiorari under Rule 45 may only raise questions of law and that factual findings of the Court of Appeals are binding on this Honorable Court;
- 2) Whether or not the Court of Appeals' Decision is based on a misapprehension of facts and on inferences that are manifestly mistaken, absurd or impossible;
- 3) Whether or not the Court of Appeals seriously erred in its finding of fact that Consuelo Gomez herself paid the donor's tax of the properties subject of the donation on 09 October 1979 when the evidence on record point to the contrary;
- 4) Whether or not the Court of Appeals seriously erred in giving credence to the testimony of former judge Jose Sebastian, the Notary Public who notarized the assailed Deeds of Donation;
- 5) Whether or not the Court of Appeals seriously erred in dismissing the irregularities apparent on the face of the assailed Deeds of Donation as mere lapses of a non-lawyer who prepared them;
- 6) Whether or not the Court of Appeals seriously erred in totally disregarding the very unusual circumstances relative to the alleged totally execution and notarization of the assailed Deeds of Donation;
- 7) Whether or not the Court of Appeals seriously erred and is manifestly mistaken in inferring that respondents were able to sufficiently and substantially explain the reason for the belated transfer of the pertinent properties covered by the assailed Deeds of Donation;
- 8) Whether or not the Court of Appeals seriously erred and is manifestly mistaken in not giving due weight to

the expert opinion of the NBI representative, which the lower court itself sought; and

9) Whether or not the Court of Appeals seriously erred in not finding that the totality of circumstantial evidence presented by petitioner produced a single network of circumstances establishing the simulation and falsification of the assailed Deeds of Donation.[6]

As acknowledged by petitioner, findings of fact of the trial court, especially when upheld by the Court of Appeals, are binding on the Supreme Court.[7] Petitioner, however, seeks refuge in the following established exceptions[8] to this rule:

- 1) When the inference made is manifestly mistaken, absurd or impossible.[9]
- 2) When there is grave abuse of discretion in the appreciation of facts.[10]
- 3) When the judgment is based on a misapprehension of facts.[11]
- 4) Where the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;[12] and
- 5) Where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on absence of evidence but are contradicted by the evidence of record. [13]

Weight and Credibility of the Expert Witnesses

The core issue in this Petition, as in that in the lower courts, is whether petitioner was able to prove that the Deeds of Donation were merely intercalated into two sheets of paper signed by Consuelo Gomez (Consuelo).

The only direct evidence presented by petitioner on this matter is the testimony of Zenaida Torres, Document Examiner[14] of the National Bureau of Investigation (NBI). Respondents, on the other hand, presented their own expert witness, Francisco Cruz, Chief of Document Examination[15] of the PC-INP Crime Laboratory. Other direct evidence presented by respondents includes testimonies positively stating that the Deeds of Donation were signed by Consuelo in their completed form in the presence of Notary Public Jose Sebastian. These testimonies are that of Jose Sebastian himself, and that of several of the respondents including Ariston Gomez, Jr. (Ariston, Jr.), who allegedly drafted said Deeds of Donation.

As the testimony of Zenaida Torres is the single most important evidence of petitioner, it is imperative to examine the lengthy discussion of the trial court analyzing her testimony, and the contradictory findings of Francisco Cruz.

Zenaida Torres's testimony, as noted by the trial court, was that she had examined the two Deeds of Donation, denominated as Documents No. 401 and No. 402, and her findings were that the signatures therein were indeed those of Consuelo. However, she opined that Documents No. 401 and No. 402 were not typed or prepared in one continuous sitting because the horizontal lines had some variances horizontally. Nevertheless, she admitted that the vertical lines did not show any variance.

Zenaida Torres also testified that with respect to Document No. 401, the typewritten words "Consuelo C. Gomez" were typed after the handwritten signature "Consuelo C. Gomez." This is based on her analysis of the letter "o" in the handwritten signature, which touches the letter "n" in the typewritten name "Consuelo C. Gomez." She could not, however, make any similar findings with respect to Document No. 402, because the typewritten words "Consuelo C. Gomez" and the handwritten signature "Consuelo C. Gomez" "do not even touch" in the latter document.

Zenaida Torres failed to convince the trial court that the Deeds of Donation were not prepared in one sitting:

To start with, it is very significant that Torres herself admits that the signatures of Consuelo in the Donations 401 and 402 are genuine.

(This is contrary to the allegations of Augusto in his complaint; wherein he alleged that the signatures of Consuelo were forged. In fact, as per the allegations, in Augusto's complaint, the signatures were forged, after the death of Consuelo).

(In effect, Augusto is now trying to shift the thrust of his attack, to a scenario wherein Consuelo allegedly signed two papers in blank, and thereafter, said Donations 401 and 402 were typed on top.)

Furthermore, Torres fell apart during, cross-examination. Torres admitted that she had not taken any specialized studies on the matter of "Questioned Documents," except on one or two seminars on "Questioned Documents." She admitted that she had not passed the Board Exams, as a Chemist; she further admitted that she has not written any thesis or similar work on the subject matter at issue.

Regarding non-typing in one continuous sitting, she admitted that she had never seen the typewriter used to type the Donations 401 and 402, nor even tried to get hold of it, before she made the report; that there were no variances insofar as the vertical alignments of the typewritten documents were concerned; that there were only variances insofar as the horizontal alignments are concerned; she admitted that if anybody had wanted to incorporate a document into a blank sheet of paper, on top of a signature, the normal step to be taken would be to be careful on horizontal alignment, which can be seen via the naked eye; and not the vertical alignment. Yet, the vertical alignment, as admitted by her, was perfect.

In fact, she had to admit that it is possible that if the paper roller is loose, the horizontal alignment will have a variance; whereas, the vertical alignment would have no variance, and there would be nothing sinister about this. She had to admit this, because she was confronted with an authority on the matter, more particularly the book of Wilson Harrison (vide Exhibit "17"). She admitted that she had not used bromide when she took the photographs of the two (2) Donations 401 and 402, which photographs she later on enlarged. She admitted that when she had taken the photographs of the two (2) Donations, she had not put the typewritten pitch measure on top. She admitted that when the photographs were enlarged, the alignment of the typewritten words became distorted; more so when a typewriter pitch measure is not used, when photographing the documents.

In effect, insofar as the issue of typewriting in one sitting or not, is concerned, the testimony of Torres was completely discredited (Vide TSN of May 19, 1986).[16]

On the other hand, the trial court gave weight to the testimony of Francisco Cruz:

Cruz testified on this point that the Donations 401 and 402 were both typed in one continuous sitting. He elucidated clearly on how he arrived at this conclusion.

To start with, he was able to determine that the typewriter used was the elite typewriter, because as per Cruz, when his typewriting measuring the instruments were placed over the documents, there were twelve (12) letters that went inside one inch, which is a characteristic of an elite typewriter.

Secondly, he noticed that the color tone of the typewriter ink is the same, thru the entire documents.

As per Cruz, this is another indication that the Donations 401 and 402 were prepared in one continuous sitting, because, as per Cruz, if the typewriter is used one time and sometime after that, the typewriter is used again, the color tone will most probably be different.

He further concluded that both the horizontal and vertical alignments are in agreement. He explained how he arrived at this conclusion.

As per Cruz, by using an instrument which is a typewriting measuring instrument produced by the Criminal Research Co., Inc. in the USA and placing said instrument to test the vertical alignment from the top down to

the bottom, there is a perfect vertical alignment.

In fact, as per Cruz, when he took photographs of the documents, he had already placed the typewriting measuring instrument over the document and he showed to the court the enlarged photographs, indicating clearly that all the vertical alignments are all in order.

He also found out that the horizontal and vertical alignments are in agreement.

He explained that the slight variances as to the spacing of the words "Know All Men By These Presents" and the words "That I Consuelo C. Gomez, single, of legal age, Filipino, and a resident of 24 Pine Street, New Marikina Subdivision, Marikina", there is a slight disagreement in the spacing, but not in the alignment.

He explained that the normal reason for such discrepancy in the spacing is because the typist sometimes tries to push the variable spacer; the [button] on the left side of the roller, and if you press that round [button], there will be a variance spacing namely one space, two spaces, and three spaces; and these are not attached so there is a variable in the spacing.

In short, this was due to the pushing of the variable paper by the typist.

Furthermore, he emphasized that the left margins are aligned and this signifies that there was typing in one continuous sitting, because if you type on a paper and re-insert it again, there are differences in the left hand margin. All of his findings appear in the blow up photographs which were marked as Exhibits "31" to "34".

He even pointed out the differences in the Jurat wherein admittedly, Judge Sebastian inserted the date "21[st]" and "1" (page number), "401" (document number), "I" (book number), and "82" (series); and also his signature "Jose R. Sebastian" and his "PTR Number" (vide pages 12 to 19, TSN of April 25, 1982).

All attempts by opposite counsel to discredit the testimony of Cruz on this issue, proved futile.[17]

As stated above, petitioner also alleges that the signature "Consuelo C. Gomez" was written before the typewritten name "Consuelo C. Gomez." In this second round of analysis of the respective testimonies of Zenaida Torres and Francisco Cruz, the trial court arrived at the same conclusion:

[ZENAIDA TORRES'S] FINDINGS ARE BASED SOLELY ON A SINGLE HANDWRITTEN LETTER "O", WHICH TOUCHES (DOES NOT EVEN INTERSECT) THE TYPEWRITTEN LETTER "N". BASED ON THIS, WITHOUT MORE, TORRES CONCLUDED THAT THE TYPEWRITTEN NAME "CONSUELO C. GOMEZ" CAME AFTER THE HANDWRITTEN SIGNATURE "CONSUELO C. GOMEZ".

We need but cite authorities on the matter (with which Authorities Torres was confronted and which authorities she had to admit), which read as follows:

The Intersection of Ink Lines with Typescript. It is often stated that is possible to determine whether an ink line which intersects typescript was written before or after the typing. The theory is simple; most typewriter inks are greasy and an ink line tends to shrink in width as it passes over a greasy place on the paper. If, indeed, an ink line is observed to suffer a distinct reduction in width every time it intersects the typescript it may safely be concluded that the ink line was written after the typescript.

In practice, however, ink lines written across typescript are rarely seen to suffer any appreciable shrinkage in width, since the amount of oily medium transferred from the ribbon to the paper is rarely sufficient to have any effect. Indeed, if the ink happens to be alkaline, surplus ink, instead of shrinking, may spread out into the typescript to increase the width of the inkline at the intersection. In the case the proof that the ink followed the typescript would be the presence of a swelling rather than a shrinkage.

Experience has shown that it is rarely possible for any definite opinion as to the order of appearance on the paper for intersecting ink lines and typescript to be justified on the [meager] amount of evidence which

generally available.

A similar state of affairs will be found to hold for carbon paper and waxer; which have much in common with typewriter ribbons in the way the mark they make on paper react with intersecting ink lines". (Wilson, Suspect Documents; Exhibits "19"; "19-A"; "37"; "37-D"; underscoring ours).

In fact, the very authority of Torres on the matter, states as follows:

"Sequence of Writing

Intersecting writing strokes may have distinctive patterns, depending upon the order of writing the lapse of time between the two writings, the density of the two strokes and the kind of inks, writing instruments, and paper used. With a binocular microscope or a hand-magnifier aided by skillfully controlled light and photography, the true order of preparation may be revealed and demonstrated to a lay observer.

What appears to be the obvious solution may not always be the correct answer. For example, the line of deepest color usually appears on top even if it was written first. Careful study and testing is necessary before reaching a conclusion. Some of the more common criteria for determining sequence are considered in the following paragraphs.

If we considered the intersection of two writing strokes or the intersection of writing and typewriting the majority of problems are covered. Substantial, repeated intersections of two writings offer a higher probability of success than a single indifferent intersection, such as a weak stroke crossing another which only very infrequently can produce a clear indication of the order of writing". (Exhibits "V" and "V-1" (underscoring ours)).[18]

The trial court again sided with Francisco Cruz who testified, citing authorities,[19] that it is impossible to determine accurately which came first, because there were no intersections at all.[20] The trial court added: "[i]n fact, common sense, without more, dictates that if there are no intersections (between the typewritten and the handwritten words), it would be extremely difficult, if not impossible, to determine which came first." [21] The Court of Appeals found nothing erroneous in these findings of the trial court.[22]

Petitioner claims that the testimony of Zenaida Torres, having positively maintained that the handwritten signatures "Consuelo C. Gomez" in both Deeds of Donation were affixed before the typewritten name of Consuelo C. Gomez, cannot possibly be overcome by the opinion of Francisco Cruz that was "neither here nor there." [23]

Petitioner also puts in issue the fact that Zenaida Torres was a court-appointed expert, as opposed to Francisco Cruz who was merely designated by respondents. Petitioner also assails the credibility of Francisco Cruz on the ground that he had once testified in favor of respondent Ariston, Jr.[24]

Finally, petitioner stresses that Zenaida Torres conducted her tests on the carbon originals of both Deeds of Donation that were then in the possession of the Notarial Register of Quezon City. On the other hand, Francisco Cruz conducted his tests, with respect to Document No. 401, on the original in the possession of Ariston, Jr.

On the first point, we agree with petitioner that positive evidence[25] is, as a general rule, more credible than negative evidence.[26] However, the reason for this rule is that the witness who testifies to a negative may have forgotten what actually occurred, while it is impossible to remember what never existed.[27]

Expert witnesses, though, examine documentary and object evidence precisely to testify on their findings in court. It is, thus, highly improbable for an expert witness to forget his examination of said evidence. Consequently, whereas faulty memory may be the reason for the negative testimonies delivered by ordinary witnesses, this is unlikely to be so with respect to expert witnesses. While we, therefore, cannot say that positive evidence does not

carry an inherent advantage over negative evidence when it comes to expert witnesses,[28] the process by which the expert witnesses arrived at their conclusions should be carefully examined and considered.

On this respect, Prof. Wigmore states that the ordinary expert witness, in perhaps the larger proportion of the topics upon which he may be questioned, has not a knowledge derived from personal observation. He virtually reproduces, literally or in substance, conclusions of others which he accepts on the authority of the eminent names responsible for them.[29] In the case at bar, the expert witnesses cited sources as bases of their observations. Francisco Cruz's statement that "no finding or conclusion could be arrived at,"[30] has basis on the sources presented both by him and by Zenaida Torres. Both sets of authorities speak of intersecting ink lines. However, the typewritten words "Consuelo C. Gomez" barely touch and do not intersect the handwritten signature Consuelo C. Gomez in Document No. 401. In Document No. 402, said typewritten words and handwritten signature do not even touch.

In the case at bar, therefore, the expert testimony that "no finding or conclusion can be arrived at," was found to be more credible than the expert testimony positively stating that the signatures were affixed before the typing of the Deeds of Donation. The former expert testimony has proven to be more in consonance with the authorities cited by both experts.

As regards the assertion that Zenaida Torres conducted her tests on the carbon originals of both Deeds of Donation found in the notarial registrar, whereas Francisco Cruz merely examined the original in the possession of Ariston, Jr. with respect to Document No. 401, suffice it to say that this circumstance cannot be attributed to respondents. After the examination of the documents by Zenaida Torres, fire razed the Quezon City Hall. The carbon originals of said Deeds were among the documents burned in the fire. Petitioner never rebutted respondents' manifestation concerning this incident, nor accused respondents of burning the Quezon City Hall.

Other than the above allegations, petitioner's attack on the entire testimony of Francisco Cruz (including the part concerning whether the Deeds were typed in one continuous sitting) rests primarily in the contention that, while Zenaida Torres was court-appointed, Francisco Cruz's testimony was solicited by respondents, one of whom had previously solicited such testimony for another case.

In *United States v. Trono*,[31] we held:

Expert testimony no doubt constitutes evidence worthy of meriting consideration, although not exclusive on questions of a professional character. The courts of justice, however, are not bound to submit their findings necessarily to such testimony; they are free to weigh them, and they can give or refuse to give them any value as proof, or they can even counterbalance such evidence with the other elements of conviction which may have been adduced during the trial. (Emphasis supplied.)

Similarly, in *Espiritu v. Court of Appeals*[32] and *Salomon v. Intermediate Appellate Court*,[33] this Court held:

Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study or observation of the matters about which he testifies, and any other matters which serve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect (20 Am. Jur., 1056-1058). The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.

(Underscoring supplied.)

Thus, while the expert witness' possible bias in favor of the side for whom he or she testifies, and the fact that he or she is a paid witness, may be considered by the trial court, the latter should weigh the same with all the other evidence adduced during trial, as well as with the witness' deportment, actions, ability, and character upon the witness stand. The trial court is consequently given the discretion in weighing all these circumstances in its determination of the expert witness' credibility, as it is in a better position than the appellate courts to observe the demeanor of these witnesses. As there is no evidence of abuse of discretion on the part of the trial court in such determination, the latter is not reviewable by this Court.

Alleged patent irregularities on the
face of the assailed Deeds of
Donation

As previously mentioned, the testimony of Zenaida Torres constitutes the only direct evidence presented by petitioner to prove that the Deeds of Donation were merely intercalated over the signature of Consuelo. Petitioner, however, also presents the following circumstantial evidence and arguments to prove the same, claiming that there are patent irregularities on the face of the assailed Deeds of Donation:

- 1) Both deeds are each one-page documents contained in a letter size (8" ½" x "11") paper, instead of the usual legal size (8" ½" x "14") paper, and typed single spaced, with barely any margin on its four sides;[34]
- 2) In Doc. 401, three parcels of land located in two different municipalities were purportedly donated to two donees in the same document;[35]
- 3) In Doc. 402, shares of stock in two corporations, jewelries and collector's items in a bank deposit box, two registered cars, cash and money placement in another bank, and a bodega were donated to three donees in the same document;[36]
- 4) The bodega mentioned in Doc. No. 402 was not owned by Consuelo. If the Deeds were executed by Consuelo, she would surely have known this fact as she was the treasurer of V-TRI Realty Corporation;[37]
- 5) If Doc. 401 is superimposed on Doc. 402, the signature of Consuelo on both documents appear almost in the same place;[38]
- 6) The whole of both Deeds of Donation, including the notarial acknowledgement portion and the TAN Numbers and Residence Certificates of the signatories, were typed with only one typewriter. The only portions that seemed to have been typed with a different machine are the date ("21[st]") below the acknowledgement and the filled-in numbers of the "Doc. No. ____; Book No. ____; Page No. ____" portion, the name "Jose R. Sebastian" above the words NOTARY PUBLIC and the PTR Number with date and place of issue;[39]
- 7) The PTR Number and its date and place of issue appear in the right hand side of the name and signature of Jose Sebastian, instead of below it;[40]
- 8) The inserted date (which was typed with the same machine used for typing the name of notary public Jose Sebastian) is different from the date of the clause "In WITNESS WHEREOF, the parties hereunto set their hands in Quezon City, on the 20th day of April/1979" (which was typed with another machine; the one used in typing the body of the deed and the body of the acknowledgment);[41]
- 9) The TAN Numbers and the Residence Certificate Numbers of the purported donor and donees have already been typed with the same machine that was used in typing the body of the deed and the body of the acknowledgment;[42]

10) It is highly questionable that a supposedly well-educated person like Ariston Gomez, Jr. would not have thought of preparing at least five copies of each document as there were four donees and one donor.[43]

The Court of Appeals ruled:

As to the alleged intercalation of the text of the deeds of donation above the supposedly priorly affixed signature of CONSUELO on a blank sheet of bond paper, as shown by the one-page document in a letter size paper, typed single space with barely any room left on the top, bottom and left and right margins, as well as the lack of copies thereof, it has been explained that the same was due to the fact that the said documents were prepared by defendant ARISTON, JR., a non-lawyer inexperienced with the way such documents should be executed and in how many copies. x x x.

x x x x

Accordingly, it is not surprising that someone as unfamiliar and inexperienced in preparing a deed of donation, or any deed of conveyance for that matter, as ARISTON, JR., prepared the documents that are the subject matter of the case at bar in the manner that he did.[44]

Petitioner counters that the alleged irregularities "do not relate to the proper construction or manner of writing the documents as would necessitate the expertise of a lawyer. Rather, they relate to matters as basic as observing the proper margins at the top, left, right and bottom portions of the document, using the appropriate paper size and number of pages that are necessary and observing appropriate spacing and proper placement of the words in the document."

All these alleged irregularities are more apparent than real. None of these alleged irregularities affects the validity of the subject Deeds of Donation, nor connotes fraud or foul play. It is true that the condition and physical appearance of a questioned document constitute a valuable factor which, if correctly evaluated in light of surrounding circumstances, may help in determining whether it is genuine or forged.[45] However, neither the expert witnesses, nor our personal examination of the exhibits, had revealed such a questionable physical condition.

Legal documents contained in 8 ½ x 11 paper are neither unheard of, nor even uncommon. The same is true with regard to single-spaced legal documents; in fact, petitioner's Supplemental Memorandum was actually single-spaced.

That the subject Deeds of Donation appear to have conveyed numerous properties in two sheets of paper does not militate against their authenticity. Not all people equate length with importance. The simplicity and practicality of organizing the properties to be donated into real and personal properties, and using one-page documents to convey each category, are clearly appealing to people who value brevity. The same appeal of conciseness had driven petitioner to make a single-spaced Supplemental Memorandum whose only object was to summarize the arguments he has laid down in the original twice-as-long Memorandum,[46] an endeavor that we, in fact, appreciate.

The allegation concerning the use of one typewriter to encode both Deeds of Donation, including the notarial acknowledgment portion, TAN, and residence certificates, is purely paranoia. Being in the legal profession for many years, we are aware that it is common practice for the parties to a contract to type the whole document, so that all the notary public has to do is to input his signature, seal, and the numbers pertaining to his notarial registry.

The use of single-paged documents also provides an explanation as to why the PTR number and the date and place of issue are found in the right-hand side of the name and signature of Jose Sebastian, instead of below it. We

agree with respondents that it is irrational, impractical, and contrary to human experience to use another page just to insert those minute but necessary details. Such use of single-paged documents, taken together with the fact that the Deeds of Donation are of almost the same length, are also the reasons why it does not baffle us that the signatures of Consuelo appear at around the same portions of these Deeds. Indeed, we would have been suspicious had these documents been of varying lengths, but the signatures still appear on the same portions in both.

The only observations concerning the physical appearance of the subject Deeds of Donation that truly give us doubts as to their authenticity are the relatively small margins on the sides of the same, the lack of copies thereof, and the alleged inclusion in Document No. 402 of a bodega allegedly not owned by Consuelo. However, these doubts are not enough to establish the commission of fraud by respondents and to overturn the presumption that persons are innocent of crime or wrong.[47] Good faith is always presumed.[48] It is the one who alleges bad faith who has the burden to prove the same,[49] who, in this case, is the petitioner.

The small margins in the said Deeds of Donation, while indicative of sloppiness, were not necessarily resorted to because there was a need to intercalate a long document and, thus, prove petitioner's theory that there were only two pieces of paper signed by Consuelo. Respondents admit that the use of one sheet of paper for both Deeds of Donation was intentional, for brevity's sake. While the ensuing litigation could now have caused regrets on the part of Ariston, Jr. for his decision to sacrifice the margins for brevity's sake, there still appears no indication that he did so maliciously. Indeed, law professors remind bar examinees every year to leave margins on their booklets. Despite the importance examinees put into such examinations, however, examinees seem to constantly forget these reminders.

The testimonies of Ariston Gomez, Sr. (Ariston, Sr.), Ariston, Jr., Maria Rita Gomez-Samson (Maria Rita), and Notary Public Jose Sebastian tend to show that there were one original and two copies each of Documents No. 401 and No. 402. Of these documents, it was the original of Document No. 402 and a duplicate original of Document No. 401 which were actually presented by petitioner himself before the trial court, through the representative of the notarial registrar of Quezon City, who testified pursuant to a subpoena. The latter two documents were submitted to the NBI for examination by petitioner and by the NBI Handwriting Expert, Zenaida Torres.

Petitioner testified that he could not find copies of the two Deeds of Donation with the Bureau of Records Management. He, however, was able to find certified true copies of these documents with the Register of Deeds and the Land Transportation Commission.[50]

According to the testimony of Ariston, Jr., the original of Document No. 401 was separated from the brown envelope, containing the other copies of the Deeds of Donation, which Jose Sebastian left with respondents, as they were trying to fit the same into a certain red album. On the other hand, Maria Rita testified that one copy each of the duplicate originals of Documents No. 401 and No. 402 were lost. Maria Rita explained that when she was about to leave for Spain to visit her sister in Palma de Mallorca, her father, Ariston, Sr., gave her the brown envelope, containing duplicate originals of the Deeds of Donation in question, to show to her sister in Palma de Mallorca.[51] Maria Rita explained in detail how her handbag was stolen as she was praying in a chapel while waiting for the connecting flight from Madrid to Palma de Mallorca. The handbag allegedly contained not only duplicate originals of the said Deeds of Donation, but also other important documents and her valuables. Maria Rita presented the police report of the Spanish police authorities[52] and her letter to the Valley National Bank of U.S.A.,[53] regarding these losses.

Notary public Jose Sebastian retained two copies of the Deeds of Donation in his files. Jose Sebastian explained

that he did so because Consuelo wanted two copies of each document. Since Jose Sebastian had to transmit to the Notarial Registrar duplicate originals of the document, he had to photocopy the same to keep as his own copies, and transmit to the Notarial Registrar whatever duplicate original copies he had. Jose Sebastian did not notice that, instead of retaining a duplicate original of Document No. 402, what was left with him was the original.[54]

While it cannot be denied that the unfortunate incidents and accidents presented by respondents do arouse some suspicions, the testimonies of Ariston, Jr., Maria Rita, and Jose Sebastian had been carefully examined by the trial court, which found them to be credible. Time and again, this Court has ruled that the findings of the trial court respecting the credibility of witnesses are accorded great weight and respect since it had the opportunity to observe the demeanor of the witnesses as they testified before the court. Unless substantial facts and circumstances have been overlooked or misunderstood by the latter which, if considered, would materially affect the result of the case, this Court will undauntedly sustain the findings of the lower court.[55]

All petitioner has succeeded in doing, however, is to instill doubts in our minds. While such approach would succeed if carried out by the accused in criminal cases, plaintiffs in civil cases need to do much more to overturn findings of fact and credibility by the trial court, especially when the same had been affirmed by the Court of Appeals. It must be stressed that although this Court may overturn a conviction of the lower court based on reasonable doubt, overturning judgments in civil cases should be based on preponderance of evidence, and with the further qualification that, when the scales shall stand upon an equipoise, the court should find for the defendant.[56]

Respondents also point out that Ariston, Jr., the person they claim to have prepared said Deeds of Donation, was never confronted during the trial with all these alleged irregularities on the face of the Deeds of Donation. As such, the trial court was never given a chance to determine whether Ariston, Jr. would have given a rational, logical and acceptable explanation for the same.

Respondents are correct. As the alleged irregularities do not, on their faces, indicate bad faith on the part of respondents, it is necessary for petitioner to confront respondents with these observations. Respondents would not have thought that the Deeds of Donation would be impugned on the mere basis that they were written on short bond paper, or that their margins are small. Respondents were thus deprived of a chance to rebut these observations by testimonies and other evidence, and were forced to explain the same in memoranda and briefs with the appellate courts, where these observations started to crop up. It would have been different if the date of the documents had been after Consuelo's death, or if there had been obvious alterations on the documents. In the latter cases, it would have been the responsibility of respondents' counsel to see to it that Ariston, Jr. explain such inconsistencies.

Payment of donor's tax before the death of Consuelo

In ruling that there had been no antedating or falsification of the subject Deeds of Donation, the Court of Appeals was also persuaded by the following evidence: (1) the finding that it was the deceased CONSUELO herself who paid the donor's tax of the properties subject of the donation, as evidenced by the Philippine Commercial and Industrial Bank (PCIB) check she issued to the Commissioner of the Bureau of Internal Revenue (BIR) on 9 October 1979, in the amount of P119,283.63, and (2) the testimony and certification dated 22 November 1979 of Jose Sebastian that the said documents were acknowledged before him on 21 April 1979.[57] Respondents had presented evidence to the effect that Consuelo made an initial payment of P119,283.63 for the Donor's Tax on 9 October 1979, while respondent Ariston, Sr., supplied the deficiency of P2,125.82 on 4 December 1979.

Petitioner claims that the Court of Appeals seriously erred in its finding of fact that Consuelo herself paid the

donor's tax of the properties subject of the donation on 9 October 1979, as the evidence allegedly shows that the Donor's Tax was paid on 4 December 1979, or a month after Consuelo's death.[58] Petitioner thereby calls our attention to his Exhibit "O," a certificate dated 4 December 1979 issued by Mr. Nestor M. Espenilla, Chief of the Transfer Taxes Division of the BIR, confirming the payment of the donor's tax. The certificate reads:

LUNGSOD NG QUEZON

December 4, 1979

TO WHOM IT MAY CONCERN:

This is to certify that MS. CONSUELO C. GOMEZ of 8059 Honradez St., Makati, Metro Manila, paid donor's tax on even date in the amount of P121,409.45 inclusive of surcharge, interest and compromise penalties as follows:

RTR No. 2814499, PTC Conf. Receipt No. 2896956- P119,283.63

RTR No. 2814500/PTC Conf. Receipt No. 2896957- 2,125.82

T o t a l P121,409.45

This certification is issued upon request of Mr. Ariston Gomez, Sr.

(SGD)NESTOR M. ESPENILLA

Chief, Financing, Real Estate and Transfer

Taxes Division

TAN E2153-B0723-A-7[59]

Petitioner highlights the fact that the Revenue Tax Receipts (RTRs) and the Confirmation Receipts for the payments supposedly made by Consuelo on 9 October 1979 and by respondent Ariston, Sr. on 4 December 1979 bore consecutive numbers, despite being issued months apart. Petitioner also points to the fact that the tax was stated in the certification to have been paid "on even date" -- meaning, on the date of the certification, 4 December 1979.

Petitioner presented further the check used to pay the Donor's Tax, which, petitioner himself admits, was signed by Consuelo.[60] Petitioner draws our attention to the words "RECEIVED - BIR, P.T.C. CUBAO BR., NON-NEGOTIABLE, T-10 DEC. 4." Petitioner concludes that Philippine Trust Company Bank, Cubao Branch, received the check on 4 December 1979 as a collection agent of the BIR.

Respondents, on the other hand, presented the following documents to prove payment of the Donor's Tax before the death of Consuelo on 6 November 1979:

- 1) The covering letter to the BIR Commissioner dated 24 September 1979 and prepared by Mariano A. Requija, accountant of Consuelo and Ariston, Jr., which included the Donor's Tax Return for the properties covered by the two Deeds of Donation. The letter was stamped received by the BIR Commissioner on 8 October 1979;[60]
- 2) Another letter dated 24 September 1979 executed by Mariano A. Requija containing the breakdown of the donations received by the BIR on 8 October 1979;[62]
- 3) A schedule of gifts which was also dated 24 September 1979 and which was also received by the BIR on 8 October 1979, enumerating all the donated properties included in the Deeds of Donation.[63]
- 4) The Donor's Tax Return covering the properties transferred in the two Deeds of Donation filed, received, and

received by the BIR Commissioner on 8 October 1979;[64]

5) The 9 October 1979 PCIB Personal Check No. A144-73211 issued by Consuelo in favor of the BIR Commissioner in the amount of P119,283.63.[65]

6) An "Authority to Issue Tax Receipt" issued by the BIR Commissioner on 21 October 1979 for a total amount of P119,283.63.[66]

Before proceeding further, it is well to note that the *factum probandum*[67] petitioner is trying to establish here is still the alleged intercalation of the Deeds of Donation on blank pieces of paper containing the signatures of Consuelo. The *factum probans*[68] this time around is the alleged payment of the Donor's Tax after the death of Consuelo.

Firstly, it is apparent at once that there is a failure of the *factum probans*, even if successfully proven, to prove in turn the *factum probandum*. As intimated by respondents, payment of the Donor's Tax after the death of Consuelo does not necessarily prove the alleged intercalation of the Deeds of Donation on blank pieces of paper containing the signatures of Consuelo.

Secondly, petitioner failed to prove this *factum probandum*.

Ariston, Jr. never testified that Consuelo herself physically and personally delivered PCIB Check No. A144-73211 to the BIR. He instead testified that the check was prepared and issued by Consuelo during her lifetime, but that he, Ariston, Jr., physically and personally delivered the same to the BIR.[69] On the query, however, as to whether it was delivered to the BIR before or after the death of Consuelo, petitioner and respondents presented all the conflicting evidence we enumerated above.

The party asserting a fact has the burden of proving it. Petitioner, however, merely formulated conjectures based on the evidence he presented, and did not bother to present Nestor Espenilla to explain the consecutive numbers of the RTRs or what he meant with the words "on even date" in his certification. Neither did petitioner present any evidence that the records of the BIR Commissioner were falsified or antedated, thus, letting the presumption that a public official had regularly performed his duties stand. This is in contrast to respondents' direct evidence attesting to the payment of said tax during the lifetime of Consuelo. With respect to respondents' evidence, all that petitioner could offer in rebuttal is another speculation totally unsupported by evidence: the alleged fabrication thereof.

Credibility of Jose Sebastian

Petitioner claims that no credence should have been given to the testimony of the notary public, Jose Sebastian, as said Jose Sebastian is the same judge whom this Court had dismissed from the service in *Garciano v. Sebastian*. [70] Petitioner posits that the dismissal of Judge Jose Sebastian from the service casts a grave pall on his credibility as a witness, especially given how, in the course of the administrative proceedings against him, he had lied to mislead the investigator, as well as employed others to distort the truth.

Petitioner further claims that the reliance by the Court of Appeals on the 22 November 1979 Certification by Jose Sebastian is misplaced, considering the questionable circumstances surrounding such certification. Said certification, marked as petitioner's Exhibit "P," reads:

November 22, 1979

HON. ERNANI CRUZ PAÑO
Executive Judge
CFI - Quezon City

Sir:

In connection with the discrepancies noted by the Acting Clerk of Court in my notarial report pertaining to another document submitted to the Notarial Section last July 2, 1979 I have the honor to certify that documents Nos. 401 and 402 referring to Donations Inter Vivos executed by Donor Consuelo C. Gomez in favor of Donees Ma. Rita Gomez-Samson et. al. were signed in my presence by all the parties and their instrumental witnesses on April 21, 1979 in my office. I hereby further certify that said two documents among other documents were reported by me in accordance with law on July 2, 1979, for all legal intents and purposes.

In view of the above, it is respectfully requested that the certified true copies of the said two documents officially requested by one of the Donees be issued.

Very respectfully,
(Sgd.) JOSE R. SEBASTIAN
Notary Public[71]

Petitioner points out that the Certification was made after the death of Consuelo, and claims that the same appears to be a scheme by Jose Sebastian to concoct an opportunity for him to make mention of the subject Deeds of Donation intervivos, "despite the plain fact that the latter had utterly no relation to the matter referred to by Jose Sebastian in the opening phrase of the letter." [72]

It is well to note that, as stated by the Court of Appeals, Jose Sebastian was originally a witness for petitioner Augusto. As such, Rule 132, Section 12, of the Rules of Court prohibits petitioner from impeaching him:

SEC. 12. Party may not impeach his own witness. - Except with respect to witnesses referred to in paragraphs (d) and (e) of section 10, the party producing a witness is not allowed to impeach his credibility.

A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his adverse interest, unjustified reluctance to testify, or his having misled the party into calling him to the witness stand.

The unwilling or hostile witness so declared, or the witness who is an adverse party, may be impeached by the party presenting him in all respects as if he had been called by the adverse party, except by evidence of his bad character. He may also be impeached and cross-examined by the adverse party, but such cross-examination must only be on the subject matter of his examination-in-chief.

This rule is based on the theory that a person who produces a witness vouches for him as being worthy of credit, and that a direct attack upon the veracity of the witness "would enable the party to destroy the witness, if he spoke against him, and to make him a good witness, if he spoke for him, with the means in his hands of destroying his credit, if he spoke against him." [73]

Neither had there been declaration by the court that Jose Sebastian was an unwilling or hostile witness. Jose Sebastian is also neither an adverse party, nor an officer, director nor a managing agent of a public or private corporation or of a partnership or association which is an adverse party. [74]

Be that as it may, even if Jose Sebastian had been declared by the court as an unwilling or hostile witness, the third paragraph of Section 12 as quoted above, in relation to Section 11 [75] of the same Rule, only allows the party calling the witness to impeach such witness by contradictory evidence or by prior inconsistent statements, and never by evidence of his bad character. Thus, Jose Sebastian's subsequent dismissal as a judge would not suffice to discredit him as a witness in this case.

We have also ruled in *People v. Dominguez*, [76] which, in turn cited *Cordial v. People*, [77] that:

(E)ven convicted criminals are not excluded from testifying in court so long as, having organs of sense, they

"can perceive and perceiving can make known their perceptions to others."

The fact of prior criminal conviction alone does not suffice to discredit a witness; the testimony of such a witness must be assayed and scrutinized in exactly the same way the testimony of other witnesses must be examined for its relevance and credibility. x x x. (Emphasis supplied.)

The effect of this pronouncement is even more significant in this case, as Jose Sebastian has never been convicted of a crime before his testimony, but was instead administratively sanctioned eleven years after such testimony. Scrutinizing the testimony of Jose Sebastian, we find, as the trial court and the Court of Appeals did, no evidence of bias on the part of Jose Sebastian. On top of this, Jose Sebastian's testimony is supported by the records of the notarial registry, which shows that the documents in question were received by the Notarial Registrar on 2 July 1979, which was four months before the death of Consuelo on 6 November 1979.

Alleged unusual circumstances
relative to the execution and
notarization of the subject Deeds of
Donation

The last set of circumstantial evidence presented by petitioner to prove the alleged intercalation of the subject Deeds of Donation on two blank papers signed by Consuelo are the following allegedly unusual circumstances relative to the execution and notarization of the said deeds. According to petitioner:

- The signing and acknowledgement of the Deeds of Donation on 21 April 1979 is highly improbable and implausible, considering the fact that Consuelo left the same day for the United States on a pleasure trip;[78]
- The flight time of Consuelo on 21 April 1979 was 11:00 a.m.. And even assuming that the flight time was 1:00 p.m., as contended by respondents, the ordinary boarding procedures require Consuelo to be at the airport at least two hours before flight time, or 11:00 a.m.. Petitioner points out that respondents' alleged time frame (from 7:00 a.m. to 11:00 a.m.) is not enough to accomplish the following acts: respondents and Consuelo leaving Marikina at 7:00 a.m. and arriving at the notary public Jose Sebastian's house at Pag-asa, Q.C. at about 8:00 a.m. to 8:30 a.m.; some "small talk with Jose Sebastian; Jose Sebastian examining the documents; Jose Sebastian having a closed meeting with Consuelo to discuss the documents; Jose Sebastian reading the documents to respondents line by line and asking the latter whether they accepted the donation; Jose Sebastian typing the notarial entries; the parties signing the deeds; Jose Sebastian talking privately with Consuelo, who paid the former in cash for his services; Ariston Gomez, Jr. driving Consuelo and other respondents back to Marikina, and dropping the other respondents at their respective residences; picking up Consuelo's luggage; and Ariston Gomez, Jr. bringing Consuelo to the Manila International Airport;[79]
- It is contrary to human experience for Consuelo and respondents not to make a prior arrangement with the notary public Jose Sebastian and instead take a gamble on his being in his office;[80]
- It is illogical for Consuelo to rush the execution of the donations when she was in fact planning to come back from her pleasure trip shortly, as she did;[81]
- The choice of a notary public from Quezon City is highly suspect, when Consuelo and respondents reside in Marikina. It is also illogical that Consuelo would have chosen a notary public whom she met only on the same day she executed the Deeds, especially when Consuelo had a regular lawyer whose notarial services she availed of only two weeks before her death;[82]
- It is improbable that Consuelo paid Jose Sebastian in cash, for there is no reason for her to carry much cash in peso when she was about to leave for the United States in that same morning;[83]
- Maria Rita's residence certificate was obtained from Manila when she is a resident of Marikina. Also, Maria Rita obtained said residence certificate on 20 April 1979, and yet Maria Rita testified that she was surprised to

know of the donation only on 21 April 1979.[84] Also suspicious are the circumstances wherein Ariston Gomez, Jr. obtained a residence certificate on 17 April 1979, when he testified that he knew of the schedule for signing only on 20 April 1979, and Consuelo had two residence certificates, as she used different ones in the Deeds of Donation and the document notarized two weeks before her death.[85]

- If Consuelo was really frugal, she could have also made a will.[86]
- All the instrumental witnesses of the Deeds of Donation are biased, being themselves either donees of the other Deed of Donation, or a relative of a donee.[87] and
- Respondents were not able to sufficiently and substantially explain the belated transfer of the properties covered by the assailed Deeds of Donation. Petitioner points to Maria Rita's testimony that the real properties were transferred after the death of Consuelo. While respondents assert that the personal properties were transferred to them prior to Consuelo's death, evidence shows otherwise.[88]

This Court does not find anything suspicious in a person wanting to transfer her properties by donation to her loved ones before leaving for abroad via an airplane. While many believe these days that taking the plane is the "safest way to travel," this has not always been the case. The fear that planes sometimes crash, now believed to be irrational, has always been at the back of the minds of air travelers. Respondents maintain in their testimonies before the RTC that the Deeds were completed to the satisfaction of Consuelo only on 20 April 1979. She allegedly wanted to have the documents signed and notarized before she left for abroad.

The claim that the flight time of Consuelo was at 11:00 a.m. is hearsay thrice removed, and thus cannot be given any weight. Petitioner claims that he was told by his twelve-year old son that Consuelo was leaving at 11:00 a.m. on 21 April 1979, such son having learned about this from the maid of Consuelo when the son called Consuelo's house that day.[89] This is in contrast to Maria Rita's positive testimony that the flight time was at 1:00 p.m. on the same day.[90] Maria Rita joined Consuelo in this flight.

As regards petitioner's claim that respondents' alleged time frame in the morning of 21 April 1979 was insufficient, this Court is not convinced. As held by the Court of Appeals, petitioner did not present any proof that it had been impossible to perform those alleged acts within three hours.[91] As argued by respondents, the one-paged documents can be read aloud without difficulty within five to ten minutes each. We can also take judicial notice of the fact that traffic is usually very minimal on Saturday mornings, and was much less of a problem in 1979.

Respondents and Consuelo's decision not to make a prior arrangement with notary public Jose Sebastian does not surprise us either. Respondents explain that, since the telephone lines of Marikina were inefficient in the year 1979, they decided to take a calculated gamble. It is not at all unreasonable to expect that Jose Sebastian would be at his house on a Saturday, at around 8:00 a.m.

With respect to the choice of a notary public from Quezon City, we find the explanation relative thereto satisfying. We quote:

Moreover, ARISTON, JR. disclosed that they could not have gone to the notary public whom his aunt, CONSUELO, knew because she did not want to go to said notary public since our cousins whom she didn't like had access to him and she wanted to keep the execution of the deeds confidential. Thus:

Q: And also you know for a fact that your auntie had a regular Notary Public for the preparation and notarization of legal documents in the name of Atty. Angeles, now Congressman Angeles of Marikina, is that correct?

A: It depends on the frame of time. Yes and No. He was a regular Notary Public, but way before that date. But after that, he fall out of graces of my auntie. He was not anymore that regular.

Q: How long before April 30 did he fall out of graces of your auntie, year before that?

A: I don't specifically remember but what I do know is such confidential document like this, we would not really go to Angeles.

Q: Even for notarization purposes?

x x x x

A: Even for notarization purposes, no sir. This confidential nature, no.

ATTY. FERRY:

Are you saying that your auntie trusted more Sebastian than Angeles?

A: No. He is trusting her own experience about Atty. Angeles.

Q: Are you saying that she had sad experience with Atty. Angeles in connection with the latter's performance of his duty as Notary Public, as a lawyer?

A: That is what she told me.

Q: When was that?

A: She will tell me that regularly.

x x x x

ATTY. FERRY:

Q: Mr. Gomez, you testified last April 6, 1989 that after the execution of the two documents in question dated April 20, 1979, Atty. Angeles fell out of the graces of your auntie and you added that as a consequence, your auntie did not avail of the notarial services of Atty. Angeles when it comes to confidential matters, is that correct?

A: Yes. After that particular execution of the Deed of Donation Inter Vivos, Atty. Angeles especially if the documents are confidential in nature.

Q: You used confidential matters, did your aunt spell out what these confidential matters are?

A: This particular document, Deed of Donation was under the category "confidential".

Q: But did you discuss this, the matter of notarizing this document by Atty. Angeles with your auntie such that she made known to you this falls under confidential matters?

A: Yes we did.

Q: So in other words, you intimated to your auntie that Atty. Angeles would possibly notarized these documents?

A: No.

Q: How did it come about that your auntie gave that idea or information that these documents should be notarized by other notary public other than Angeles, because it is confidential?

A: It came from her.

Q: Yes, did she tell you that?

ATTY. GUEVARRA:

That's what he said. "It came from her".

ATTY. FERRY:

My question is, how did it come about your auntie told you that these two documents are of confidential matters?

A: Well, no problem. I said that it has to be notarized, she said more or less, "ayaw ko kay Atty. Angeles".

Q: She said that?

A: That's correct.

Q: And you were curious to know why she told you that?

A: No. I knew why she told me that. She said that Atty. Angeles....well, my cousins whom she didn't like have access to Atty. Angeles.[92]

The Court of Appeals had fully explained that the belated transfer of the properties does not affect the validity or effects of the donations at all, nor dent the credibility of respondents' factual assertions:

Per our perusal of the records, we find that the defendants were able to sufficiently and substantially explain the reason for the belated transfer of the pertinent properties, i.e., after the death of CONSUELO. Thus, the testimony of MA. RITA revealed, insofar as the real properties are concerned, the following:

"Q: Since you were already aware as you claim that as early as when you went to the States in the company of your auntie, Consuelo Gomez, these 2 parcels of land together with the improvements consisting of a house were transferred to you, you did not exert efforts after your arrival from the States to effect the transfer of these properties?

"A: No, I did not.

"Q: Why?

"A: Well, for delicadeza. My auntie was still alive. I am not that aggressive. Tita Elo told me "akin na iyon" but I did not transfer it in my name. "Siempre nakakahiya."

"Q: That was your reason for not effecting the transfer of the properties in your name?

"A: Yes, that was my reason.

"Q: Did you not know that the deed supposedly executed by Consuelo Gomez was a donation inter vivos, meaning, it takes effect during her lifetime?

"A: I do not know the legal term donation inter vivos. I have also my sentiment. Tita Elo was very close to us but I did not want to tell her: "Tita Elo, ibigay mo Na iyan SA akin. Itransfer mo na sa pangalan ko." It is not my character to be very aggressive.½

In addition, Article 712 of the Civil Code provides:

"ART. 712. Ownership is acquired by occupation and by intellectual creation.

"Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

"They may also be acquired by means of prescription."

Clearly, the issuance of the titles in the names of the defendants is not the mode by which they acquired ownership of the properties, but rather the fact that the same were donated to them. The circumstance that

aforesaid properties were actually transferred in the names of the donees only after the death of the donor, although the deeds of donation were dated April 21, 1979, does not by itself indicate that the said documents were antedated.[93]

Petitioner seems to unduly foreclose the possibility - one which experience tells us is not a rare occurrence at all - that donations are often resorted to in place of testamentary dispositions, often for the purpose of tax avoidance. Such properties usually remain in the donor's possession during his or her lifetime, despite the fact that the donations have already taken effect. Nevertheless, the purpose of utilizing donation as a mode to transfer property is not in issue here.

Finally, the allegations concerning the payment of Jose Sebastian in cash, the suggestion that Consuelo should have also made a will, and the claim that all the instrumental witnesses of the will are biased, are purely speculative.

In sum, all these circumstantial evidence presented by petitioner had failed to comply with the strict requirements in using circumstantial evidence, for which Section 4, Rule 133 of the Rules of Court provides:

SEC. 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

While the above provision seems to refer only to criminal cases, it has been pointed out that in some jurisdictions, no distinction is made between civil and criminal actions as to the quality of the burden of establishing a proposition by circumstantial evidence. In such jurisdictions the rule is generally stated to be that the circumstances established must not only be consistent with the proposition asserted but also inconsistent with any other rational theory.[94]

In all, what petitioner has succeeded in doing is to raise doubts in our minds. Again, while such approach would succeed if carried out by the accused in criminal cases, plaintiffs in civil cases need to do much more to overturn findings of fact and credibility by the trial court, especially when the same had been affirmed by the Court of Appeals.

Leniency in the weighing of petitioner's evidence could only produce a mere equipoise:

When the scales shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant.

Under this principle, the plaintiff must rely on the strength of his evidence and not on the weaknesses of the defendant's claim. Even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action."[95] (Emphasis supplied.)

Petitioner's liability for damages

The last part of the trial court's decision, which was affirmed in toto by the Court of Appeals, involves the award of damages in favor of Ariston, Jr. The trial court held Augusto Gomez and the estate of the late Consuelo "jointly and solidarily liable" for moral and exemplary damages, and attorney's fees.

The trial court held:

The records are clear, that plaintiff was so desperate for evidence to support his charges, that he repeatedly subpoenaed the defendants themselves; at the risk of presenting evidence contradictory to his legal position and which actually happened, when plaintiff subpoenaed Ariston Gomez Jr., Ariston Gomez Sr., and Maria Rita Gomez-Samson, as his witnesses.

All told, the court finds plaintiff was motivated not by a sincere desire to insure the totality of the estate of Consuelo, but rather by his desire to cause injury to defendants, and to appropriate for himself and the rest of the Gomez brothers and nephews, other than the donees, properties which were clearly validly disposed of by Consuelo, via Donations Inter Vivos.[96]

Our own examination of the records of the case, however, convinces us of the contrary. Respondents never assailed the authenticity of petitioner's evidence, and merely presented their own evidence to support their assertions. As previously stated, petitioner's evidence had successfully given us doubts as to the authenticity of the subject Deeds of Donation. While such doubts are not enough to discharge petitioner's burden of proof, they are enough to convince us that petitioner's institution of the present case was carried out with good faith. The subpoenas directed against respondents merely demonstrate the zealous efforts of petitioner's counsel to represent its client, which can neither be taken against the counsel, nor against its clients.

While, as regards the alleged intercalation of the Deeds of Donation on two blank sheets of paper signed by Consuelo, the burden of proof lies with petitioner, the opposite is true as regards the damages suffered by the respondents. Having failed to discharge this burden to prove bad faith on the part of petitioner in instituting the case, petitioner cannot be responsible therefor, and thus cannot be held liable for moral damages.

This Court has also held that, in the absence of moral, temperate, liquidated or compensatory damages, no exemplary damages can be granted, for exemplary damages are allowed only in addition to any of the four kinds of damages mentioned.[97]

The attorney's fees should also be deleted, as it was supposed to be the consequence of a clearly unfounded civil action or proceeding by the plaintiff.

WHEREFORE, subject to the modification of the assailed Decision, the Petition is DENIED. The Joint Decision of the Regional Trial Court of Pasig City in Civil Cases No. 36089 and No. 36090, which was affirmed in toto by the Court of Appeals, is AFFIRMED with MODIFICATION that the following portion be DELETED:

3. That Augusto Gomez and the estate of the late Consuelo Gomez, jointly and solidarily should pay to Ariston Gomez, Jr. the following amounts:

Moral damages of P1,000,000.00;

Exemplary damages of P250,000.00

Attorney's fees of P200,000.00

And costs of suit; with legal interest on all the amounts, except on costs and attorney's fees, commencing from February 15, 1980, until fully paid.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Salvador J. Valdez, Jr. with Associate Justices Mercedes Gozo-Dadole and Amelita G. Tolentino, concurring; rollo, pp. 61-79.

[2] Id. at 81-83.

[3] Id. at 64-67.

[4] Id. at 99.

[5] Id. at 78.

[6] Rollo, pp. 306-307.

[7] Sps. Lagandaon v. Court of Appeals, 352 Phil. 928, 941 (1998); Fuentes v. Court of Appeals, 335 Phil. 1163, 1168 (1997).

[8] These are just five of the many exceptions to the rule that findings of fact of the Court of Appeals are conclusive to the Supreme Court. According to this Court in *The Insular Life Assurance Company, Ltd. v. Court of Appeals* (G.R. No. 126850, 28 April 2004, 428 SCRA 79, 86), the exceptions to the foregoing rule are the following: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[9] *De Luna v. Linatok*, 74 Phil. 15 (1942).

[10] *Buyco v. People*, 95 Phil. 453, 461 (1954).

[11] *De la Cruz v. Sosing*, 94 Phil. 26, 28 (1953).

[12] *Uytiepo v. Aggabao*, 146 Phil. 194, 203 (1970); *Carolina Industries, Inc. v. CMS Stock Brokerage, Inc.*, G.R. No. L-46908, 17 May 1980, 97 SCRA 734, 754.

[13] *Macadangdang v. Court of Appeals*, G.R. No. L-49542, 12 September 1980, 100 SCRA 73, 80; *Ducusin v. Court of Appeals*, 207 Phil. 248, 261 (1983); *Cesar v. Sandiganbayan*, G.R. Nos. 54719-50, 17 January 1985, 134 SCRA 105, 121; *Sacay v. Sandiganbayan*, 226 Phil. 496, 512 (1986); *Manlapaz v. Court of Appeals*, G.R. No. 56589, 12 January 1987, 147 SCRA 236, 239.

[14] TSN, 17 September 1984, p. 6.

[15] TSN, 25 April 1990, p. 2.

[16] Rollo, pp. 489-490.

[17] Id. at 493-495.

[18] Id. at 490-492.

[19] Exhibits "19"; "19-a"; "20"; "21"; "21-a"; "21-b"; "36"; "36-a"; "37"; "37-b to d"; "38"; "38-a to c".

[20] Rollo, p. 495.

[21] Id.

[22] CA Decision, p. 17; Id. at 77.

[23] Supplemental Memorandum, p. 13; Id. at 545.

[24] Id. at 352.

[25] Evidence is positive when a witness affirms that a fact did or did not occur. (V Herrera, REMEDIAL LAW [1999 Ed.], p. 15, citing 2 Moore on Facts, p. 1336.)

[26] Evidence is negative when a witness states that he did not see or know the occurrence of a fact. (Id.)

[27] VI Herrera, REMEDIAL LAW (1999 Ed.), p. 357, citing 4 Jones, Sec. 29:4 (Sixth Ed.); People v. Tan, Jr., 332 Phil. 465, 481 (1996).

[28] See Beaver v. Morson-Knudsen Co., 55 Idaho 275 41 P2d 605 97 ALR 1399; 4 Jones, Sec. 14:31 (Sixth Ed.), cited in V Herrera, REMEDIAL LAW (1999 Ed.), p. 813.

[29] V Herrera, REMEDIAL LAW (1999 Ed.), p. 764, citing VI Wigmore, p. 5.

[30] TSN, 25 April 1990, Francisco Cruz, pp. 9-11; Exhibit "30" of Respondents.

[31] 3 Phil. 213, 219-220 (1904).

[32] 312 Phil. 431, 443 (1995).

[33] G.R. No. 70263, 14 May 1990, 185 SCRA 352, 359.

[34] Rollo, p. 334.

[35] Id.

[36] Id. at 335.

[37] Id.

[38] Id.

[39] Id. at 335-336.

[40] Id. at 336.

[41] Id.

[42] Id.

[43] Id.

[44] Id. at 71-72.

[45] Junquera v. Borromeo, 125 Phil. 1059, 1068 (1967).

[46] Rollo, pp. 533-599.

[47] Rule 131, Section 3(a).

[48] See Civil Code, Article 527.

[49] Mama, Jr. v. Court of Appeals, G.R. No. 86517, 30 April 1991, 196 SCRA 489, 496.

- [50] Exhibits "F", "F-1", "G", and "G-1" of Petitioner.
- [51] TSN, 29 April 1983, pp. 7-60.
- [52] Exhibits "12" and "12-a."
- [53] Exhibit "13."
- [54] Rollo, p. 97; TSN, 1 June 1983, pp. 19-23.
- [55] *People v. Lua*, 326 Phil. 556, 563-564 (1996).
- [56] *Sapu-an v. Court of Appeals*, G.R. No. 91869, 19 October 1992, 214 SCRA 701, 705.
- [57] Rollo, pp. 77-78.
- [58] *Id.* at 310-322.
- [59] Records, Civil Case No. 36090, p. 488.
- [60] Rollo, p. 314.
- [60] Exhibit "2."
- [62] Exhibit "2-a."
- [63] Exhibit "2-b."
- [64] Exhibit "2-c" of Respondents; Exhibit "M" of Petitioner.
- [65] Exhibit "2-e."
- [66] Exhibit "2-d."
- [67] The ultimate fact to be established.
- [68] Evidentiary fact by which the *factum probandum* is established.
- [69] Rollo, p. 401.
- [70] A.M. No. MTJ-89-4-371, 30 March 1994, 231 SCRA 588.
- [71] Records, Civil Case No. 36090, p. 489.
- [72] Rollo, p. 332.
- [73] 4 Jones, p. 193, as quoted by VI Herrera, *REMEDIAL LAW* (1999 Ed.), p. 223.
- [74] Section 12 gives as exception paragraphs (d) and (e) of Section 10, which refers to:
- (d) x x x [A]n unwilling or hostile witnesses; or
- (e) x x x [A] witness who is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party.
- [75] SEC. 11. Impeachment of adverse party's witness. - A witness may be impeached by the party against whom he was called, by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense.

[76] G.R. No. 100199, 18 January 1993, 217 SCRA 170, 179-180.

[77] G.R. No. L-75880, 27 September 1988, 166 SCRA 17, 26.

[78] Rollo, pp. 338-339.

[79] Id. at 339-340.

[80] Id. at 340.

[81] Id. at 341.

[82] Id.

[83] Id. at 342.

[84] Id. at 343-344.

[85] Id. at 344.

[86] Id. at 345.

[87] Id. at 345-346.

[88] Id. at 346-351.

[89] TSN, 16 July 1982, pp. 37-46.

[90] TSN, 29 February 1983, pp. 62-67.

[91] Rollo, p. 73.

[92] Id. at 74-76.

[93] Id. at 70-71.

[94] VI Herrera, REMEDIAL LAW (1999 ed.), p. 402, citing 4 Jones on Evidence (6[th] Ed.), pp. 301-304.

[95] Sapu-an v. Court of Appeals, *supra* note 56 at 705-706.

[96] Rollo, p. 499.

[97] Ventanilla v. Centeno, 110 Phil. 811, 816 (1961); Fores v. Miranda, 105 Phil. 266, 273 (1959); Francisco v. Government Service Insurance System, 117 Phil. 586, 597 (1963).

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