

**IN RE WILL OF JULIANA NAVARRO, DECEASED. E. P. ESTRELLA,
PETITIONER AND APPELLANT, VS. CONSOLACION RAMOS Y LOYOLA
ET AL., OPPONENTS AND APPELLEES.***G. R. No. 24596. February 26, 1926*

Ponente: ROMUALDEZ, J.

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Considering the motion for reconsideration, and it appearing that due to the amount involved in this case it is not a division case, but one which should be considered by the court in bane, the judgment rendered by one of our divisions' is set aside.[1] The case was submitted to this court in bane and this decision is rendered. The question raised in this case is the probate of a document said to be the will of Juliana Navarro, deceased. The Court of First Instance of Tayabas denied it for the reason that it was not proved that said document contained the necessary requirements for the validity of a will. Two of the attesting witnesses Isidoro C. Mendenilla and Marcelino S. Bautista testified that they did not see the deceased Juliana Navarro sign the document, nor the other witness Inigo B. Apolo, and therefore cannot state positively whether or not the said Juliana Navarro is the one who affixed the signature purporting to be her name.

The petitioner prays for a new trial based on section 113 of the Code of Civil Procedure, supporting his motion to that effect with an affidavit subscribed by the said two witnesses Mendenilla and Bautista, wherein they claim to have testified falsely in said probate proceeding, having been under the influence of liquor. (Exhibit A, pp. 44, 45, Bill of Exceptions.)

The trial court summoned the said two witnesses, Marcelino S. Bautista appearing before the court. The other witness Mendenilla made no appearance, having died, according to information.

The witness Bautista denied the truth of the facts alleged in the said affidavit, Exhibit A, and affirms he subscribed it only because he could not refuse to do so in view of the insistence of the petitioner Estrella, who was his immediate chief in the office of the governor of that province. (PP. 28-43, Bill of Exceptions.)

The contents of the affidavit Exhibit A which supports the motion for the reopening having thus been denied in open court and under oath, the court dismissed the motion.

The first assignment of error consists in the court having denied the appellant's petition that he be permitted to introduce the testimony of the notary public De Mesa, who authorized Exhibit A, and other circumstantial evidence in order to establish the truth of the contents of said affidavit. This evidence was offered in connection with the incident as to whether or not the court, in the exercise of its discretion, ought to have granted the motion for a new trial under the provisions of section 113 of the Code of Civil Procedure. Making use of its discretionary power, the court considered the testimony of the witness Bautista sufficient to decide the motion. The most that the witnesses Eusebio P. Estrella and the notary public would have testified to is that Marcelino S. Bautista in fact made and voluntarily subscribed the affidavit Exhibit A; but said witnesses would not have been able to say whether or not Bautista told the truth in that affidavit, inasmuch as the question is whether or not his testimony in

the principal trial of the case was falsified under the influence of liquor. This is a personal fact which, under the circumstances of the case, said witnesses could not have testified to better than the party himself. Their testimony would not change the result of the case.

Neither would the circumstantial evidence referred to by the appellant have had more weight than the positive and equivocal testimony of Bautista himself given at the hearing of the motion for a new trial, confirming his former testimony given during the trial on the probate of the will. Taking into consideration all of the facts in the case, the trial court did not abuse or exercise undue discretion in denying the motion. The decision of this court in the case of the probate of the will of Dolores Coronel (G. R. No. 17840)[1] is not applicable to the present case. The affidavits presented in support of the motion in that case were contradicted by affidavits of other persons. In this case the affidavit presented in support of the motion for reopening is contradicted, not by other persons, but by the affiant himself. We find no justification in the belief of the counsel for the appellant that the trial court committed an error in holding that the favorable testimony of all the attesting witnesses to a will is necessary in order to probate it, and no other witnesses can be presented to show the due execution thereof. Even if it were proved that Bautista signed Exhibit A absolutely of his own accord, yet, there remain in the record his declarations and those of Mendenilla given during the hearing of the probate of the will, which, even in conjunction with said affidavit Exhibit A, leave a certain trace of illegality in the execution of said document presented for probate.

Furthermore, we notice that in the attestation clause of the will it does not appear that the witnesses signed in the presence of each other. (P. 13, etc., Bill of Exceptions.) The order appealed from is affirmed, with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

[1] Promulgated February 12, 1926, not reported.

[1] Pecson vs. Coronel (43 Phil., 358).

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