

ESTATE OF THE DECEASED FRANCISCO ARQUIZA. ISIDRA GAAS ET AL., PETITIONERS AND APPELLEES, VS. PILAU FORTICH, ADMINISTRATRIX AND APPELLANT.

G.R. No. 31454. December 28, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

The reopening of the case by the court on its own motion was largely a matter in its discretion and for the orderly administration of justice, and there is no merit in the first assignment of error.

The storm center of this case is whether or not the signature of Francisco Arquiza which appears on Exhibit C is true and genuine.

Exhibit B, which is a certified copy of the archives of the Catholic Church, is as follows:

"I, Father Gregorio Lofranco, Parish Priest of Calape, Province of Bohol, Diocese of Cebu, P. I.

"Certify: That the following entry appears on page 89 of Baptismal Book 8 of this parish:

"Upon the sixth day of November, eighteen hundred and, eighty, in the Church under my charge, I, the undersigned Parish Priest of Calape, solemnly christened and anointed a boy named Federico Arquiza, born at seven o'clock in the morning of the first day of this month, to Francisco Arquiza, single, a normal teacher and a native of La Mercedes, Province of Zamboanga, and Anatolia Asilo, single,- a weaver residing in this town, belonging to clan (Caveseria) No. 35 of Pablo Bulala. Grandparents on the father's side: Francisco Arquiza and Eugenia Sapanta, natives, now deceased. Grandparents on the mother's side: Gregorio Asilo, native, and Cornelia Enriquez, half Spaniard, belonging to the clan (Caveseria) of Pablo Bulala. Godfather: Eusebio Gonzalez, a native farmer who was advised of the spiritual relationship and obligations he contracted. Witnesses of the baptism and of this entry: Romualdo Cuario, a native of this parish, and Hilario Crusit, a native and resident of this town, and chief sexton of this church. In witness whereof, I sign.—FR. BERNARDO MENENDEZ DE LA DOLOROSA.

"I certify that this is a faithful copy of the original, and at the request of the interested party, I sign and issue these presents, in the presbytery of Calape, Bohol, on the ninth day of September, 1927.

(Sgd.) "GREGORIO LOPRANCO

"Parish Priest

"(One 20-cents documentary stamp affixed)

"Seal of the Church."

As to the authenticity of Exhibit C, there was a sharp conflict in the evidence.

Professor Jose I. del Rosario, who qualified as an expert, testified that in his opinion it was a forgery. A. IX Calhoun, the manager of the Cebu branch of the International Banking Corporation, and a man, who through his

business, has had a large experience in the matter of signatures, testified that the signature was true and genuine, and even Professor Bel Rosario admitted that there was a similarity between the writing in the body of Exhibit C and that of the unquestioned signature of Francisco Arquiza of about forty years later.

Upon the question of the signature, the lower court says:

"Although Professor Del Rosario may have given greater study to certain phases of the subject of handwriting than Mr. Calhoun, the court regards the testimony of the latter as more trustworthy in the present case, because Professor Del Rosario is an expert witness by profession and was brought from Manila to Cebu to uphold the theory of the opponent and is no more disinterested than the opponent's attorneys, while Mr. Calhoun is a banker living in Cebu and has absolutely no interest in the present case of the parties thereto. Professor Del Rosario did confine himself to a statement of the facts, and his opinion thereon, with his reasons for his opinion, but his testimony is really a brief for the opponent. In the light of these facts, the court cannot but regard his opinion as strongly biased. It only remains to be added that the court was no more favorably impressed by the unjustifiable structures of the petitioners' attorney upon Professor Del Rosario than by the attempt of the attorney for the opponent to be facetious at the expense of Mr. Calhoun. But quite independently of the opinion of the experts, the court has compared the original of Exhibit C with the many different authentic examples of Francisco Arouiza's writing offered in evidence, and making allowance for variations due to the lapse of many years, the court is satisfied that this document, Exhibit C, was written and signed by Francisco Arquiza."

This analysis of the lower court was confirmed by an ocular inspection of the same Writing by all of the members of this court who are clearly of the opinion that the signature on Exhibit C is the true and genuine signature of Francisco Arquiza.

In that instrument, dated November 7, 1880, Francisco Arquiza declared that he is engaged to marry Anatolia Asilo by whom "I have already had a child by her, named Federico who was born on the first instant." This instrument was found pinned and attached to Exhibit B which, among other things, recites that on the sixth day of November, eighteen hundred and eighty, the Parish Priest christened and anointed a boy named Federico Arquiza, who was born at 7 a. m. on November first, to Francisco Arquiza, single, a normal teacher, and Anatolia Asilo, single, a weaver, and that the witnesses of the baptism and of this instrument were Romualdo Cuario, a native of the Parish, and Hilario Crusit, also a native and chief sexton of the church.

Under the law then existing, these archives of the church, as to the parentage, birth and baptism of Federico Arquiza are authentic, and, in the absence of any other evidence, must be deemed and taken as conclusive of the recitals therein made, all of which are materially strengthened and corroborated by Exhibit C.

In the third assignment of error, it is vigorously contended that the boy, Federico Arquiza, was not a natural son of the deceased, Francisco Arquiza. Here, again, it will be noted that Exhibit C, which was signed by Francisco Arquiza on November 7, 1880, specifically recites "that I have already had a child by her, named Federico who was born on the first instant," and Exhibit B specifically recites that Federico Arquiza was born at 7 a. m. on November first, to Francisco Arquiza, single, a normal teacher, and Anatolia Asilo, single, a Weaver. That is to say, that both the father and the mother were then single, and the fact that the father was a normal teacher, and the mother a weaver, would clearly indicate that there was no valid reason why they could not marry each other. It also appears that the only reason why they were not then married was on account of parental objections.

Law 11 of the Laws of Toro, which were then in force, provides:

"And for the purpose of avoiding doubt as to who are natural children, we order and decree that natural children are those, who, at the time of their birth or conception were of fathers who could have married their mothers properly and justly and without dispensation; provided that the father acknowledged such issue as his

child, although he would not have had the woman with whom he had such relations in his house, or any other one. We decree that the child having the qualifications above mentioned is a natural child."

And the appellant concedes that under this law:

"A child is deemed natural when at the time of its birth or conception, its, parents could have married without dispensation."

In the instant case, the record is conclusive that the father acknowledged Federico Arquiza as his child, and it is also conclusive that at the time of his birth or conception, his parents were single. Even so, the appellant contends that there is no evidence that they could have been then married "without dispensation." Neither is there any evidence that they could not have been married "without dispensation." Conceding that to be true, there is no evidence tending to show that they could not have been married "without dispensation," and in the ordinary course of business, a single man and woman of legal age have the legal right to marry "without dispensation," and the denial of a marriage "without dispensation" is an exception to the general rule.

The finding of the lower court that Federico Arquiza was a natural son of Francisco Arquiza is well sustained by the evidence.

As to the fourth assignment of error, the lower court says:

"The fact that Federico Arquiza was the natural child of Francisco Arquiza and Anatolia Asilo and that he was recognized as such by his father is fully established by the testimony of Melchora Ponce, a pupil of Francisco Arquiza and a schoolmate of Anatolia Asilo, and that of Fernando Bismonte, who taught in the same school with Francisco Arquiza and was messenger of Francisco Arquiza and Anatolia Asilo, and by the testimony of Juana Asilo, a sister of Anatolia Asilo, and that of Potenciana Rianbanansa, a pupil of Francisco Arquiza and a schoolmate of Anatolia Asilo. The authenticity of the baptismal certificate cannot be doubted. The evidence clearly shows that Francisco Arquiza was present when the child was baptized. Furthermore, no one else could have furnished the facts as to his parents, as he was not a native of Calape, but of Zamboanga.

"At the age of thirteen Federico Arquiza was removed by his father from Calape, Bohol, to Oroquieta, Misamis, and there brought up in the house of Francisco Arquiza and educated by him, and acknowledged and treated by Francisco Arquiza as his son. The treatment accorded by Francisco Arquiza to Federico Arquiza in Oroquieta serves to confirm the tacit recognition which he had given his son in Bohol."

That finding is also well sustained by the evidence, and is in all things and respects approved.

As to the fifth assignment of error, the lower court cites and relies upon the case of *Larena and Larena vs. Ruma* (43 Phil., 1017), and says:

"This is not an action to compel the recognition of Federico Arquiza under the provisions of the Civil Code. Such an action is barred. This is a proceeding to obtain a declaration of the rights of the petitioners as the legitimate children of Federico Arquiza to inherit in representation of their father from their grandfather. It was not necessary for Federico Arquiza to bring an action for recognition because he had acquired the status of a recognized natural child under Law 11 of Toro by the tacit recognition of his father. His, vested rights were transmitted to his legitimate children, and they had no need to bring an action against Francisco Arquiza or his heirs to compel the recognition of their father, Federico Arquiza, as the natural son of Francisco Arquiza.

"If Federico Arquiza were still living, he could intervene in these proceedings for the distribution of the estate of his natural father, without the necessity of a proceeding to compel his recognition, as is required by the Civil Code; and Francisco Arquiza having left no legitimate descendants, or ascendants, Federico Arquiza, if he had survived his father, would have been entitled to one-third of the latter's estate."

Article 842 of the Civil Code provides:

"If the testator leaves no legitimate ascendants or descendants, the acknowledged natural children shall be entitled to a third of the estate."

And article 843 provides:

"The rights granted natural children by the preceding articles are transmitted on their death to their legitimate descendants."

The facts found by the trial court and sustained by the evidence bring the appellees within those provisions.

The well written opinion of the lower court in all things and respects is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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