

ROMAN ABAYA, PETITIONER AND APPELLANT, VS. DONATA ZALAMERO, RESPONDENT AND APPELLEE:*G.R. No. 3907. March 12, 1908*

Ponente: TORRES, J.

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On the 6th of August, 1906, Roman Ahaya filed a petition with the Court of First Instance of La Laguna, for the allowance of the will executed by Juan Zalamero, a resident of Pagsanhan, in said province, on the 29th of October, 1905, and produced in court the said will, which was written in the Tagalog dialect. Donata Zalamero opposed the petition, alleging that the will had been executed under pressure and unlawful and improper influence on the part of those who were to benefit thereby, and that it had not been executed and signed in accordance with the provisions of section 618 of the Code of Civil Procedure. A day was appointed for the hearing and in the course of the proceedings the witnesses offered by both parties were examined; on the 10th of January, 1907, the court refused to admit the will of said Juan Zalaniero, as requested by Roman Abaya; Abaya appealed from the decision and moved for a new trial which motion has not been finally acted upon by the court; for this reason the petitioner, now before this court, still insists thereon for the effects of the appeal which he had interposed, and has submitted a certified copy of the proceedings to which the assignment of errors presented by him refers.

Two points are presented. The first is, that Juan Zalamero, while in life, executed his will on the 29th of October, 1905, under unlawful pressure and influence exercised by those who were thereby benefited; and second, that the said will was not executed and signed in accordance with the provisions of section 618 of the Code of Civil Procedure.

After an examination of the facts alleged and the evidence adduced by both parties, and considering the case according to the rules of common sense and sound criticism, it must necessarily be admitted that the weight and pre-ponderance of the evidence prove in a conclusive manner the authenticity and genuineness of the said will as the real and true expression of the will of the testator, Juan Zalamero, and for this reason the first point should have been decided by the court below in a negative sense.

It was not expressly pretended that the said will should be disallowed under the provisions of section 634 of the Code of Civil Procedure, either because the testator was insane or otherwise mentally incapable to execute such instrument at the time of its execution, or because it was procured by undue and improper pressure and influence on the part of the beneficiaries; nor, even if such request had been made, could the nullity of the said will have been judicially declared in view of the lack of satisfactory proof of the presence of such circumstances. Therefore, the court, in order to disallow the petition, had to disregard them and rest the decision upon the allegation that the will was not executed in accordance with the provisions of section 618 of the Code of Civil Procedure.

Notwithstanding the reasons stated in the judgment appealed from, it appears that the will in question was executed with the requirements established by the law in force, and that, therefore, the decision upon the second point should be against the opponents to the petition.

It is shown by the evidence, and by the will itself, that for the reasons set forth by the testator and at his own request, one of the witnesses to the will, Mariano Zaguirre, wrote with his own hand the name and surname of Juan Zalamero, the testator, and in his presence, and that the latter put a cross between them and a note stating that what had been written before the name and surname of the said Juan Zalamero, with the cross placed at the foot thereof, was his testament and contained his last will as stated by him when he directed the execution thereof in the presence of the three witnesses who subscribed it in his presence, and in the presence of each other.

It is true that the witness Mariano Zaguirre, who was requested by the testator to write his name and surname at the end of his will, did not affix his own signature immediately below the name and surname of Juan Zalamero and below the cross placed by the latter with the words "by request of the testator Juan Zalamero;" but in the said will are clearly stated the reasons why it was not signed by the testator himself as also the request he made to the witness Zaguirre, and a repetition thereof was not necessary; further, that this same witness, upon being requested, wrote with his own hand the name and surname of the testator, who afterwards placed the cross between them, stating that it was his testament, all of which was written immediately after the said name and surname of the testator and the cross made by him, and the same was subscribed by the three witnesses in the manner provided by law.

The essential requisites prescribed by the above-mentioned section 618 of the law have been complied with, namely, that three witnesses were present at the execution of the will of Juan Zalamero at the date mentioned therein; that they heard his statement that the said instrument, written and drawn up under his direction, contained his last will; that they saw and witnessed when, at the express request of the testator, and under his direction, the witness, Mariano Zaguirre, wrote at the foot of the will the name and surname of Juan Zalamero, and when the latter put the cross between his written name and surname, each of the witnesses subscribing it at the time and in the presence of each other.

For the reasons hereinbefore set forth it is our opinion that the judgment appealed from should be reversed and that it be declared, as we now do, that the will executed by the late Juan Zalamero while in life, under date of the 29th of October, 1905, was executed in accordance with the law, and that therefore it should be duly admitted in order that it may produce all consequent legal effects, and it is so ordered without any special ruling as to costs.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ.,

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