

**IN RE WILL OF PAULINA VAZQUEZ VIUDA DE GARCIA, DECEASED.
MABIETA GARCIA, LUISA GARCIA, AND PURIFICACION GARCIA,
APPLICANTS AND APPELLEES, VS. TERESA GARCIA DE BARTOLOME,
OPPOSIT...**

G. R. No. 43367. September 09, 1936

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal from a judgment of the Court of First Instance of Manila allowing the probate of the will of Paulina Vazquez Viuda de Garcia. The will was executed on June 12, 1934. The testatrix died on June 27, 1934. Testamentary proceedings were commenced on July 25, 1934, in the Court of First Instance of Manila for the probate of this will, the petitioners being Marieta, Luisa and Purification Garcia who are among the forced heirs instituted in the will and who are also named as the universal heirs for the residue of the estate left undisposed in the will

The probate of the will was contested on August 29, 1934 by Teresa Garcia, de Bartolome, one of the forced heirs instituted in the will. The grounds for opposition are:

- "Que dicho supuesto testamento no esta otorgado de conformidad con la ley.
- Que la difunta no otorgo ningun testamento el 12 de junio de 1934.
- Que la firma de Paulina Vazquez que aparece en dicho supuesto testamento no es autentica.
- Que en la fecha cuando se otorgo el supuesto testamento la aifunta Paulina Vazquez estaba gravemente enferma de tal forma que el dia 12 de junio de 1934 no tenia la memoria suficiente para poder otorgar un testamento."

Upon the issue drawn by the pleadings and after consideration of the evidence presented, Judge A. Horrilleno, of the Court of First Instance of Manila, admitted the will to probate on the following findings of fact:

"Tor la solicitante declararon Jose Ayala, Vidal Ranoa y Leopoldo San Gabriel, siendo los dos primeros abogados auxiliares en la oficina del abogado Sr. Perfecto Gabriel y el ultimo empleado del mismo bufete. Estas tres personas, declarando como testigos, identificaron el Exhbito A como el original del testamento de la difunta Paulina Vazquez Viuda de Garcia otorgado en la fecha ya mencionada, esto es, 12 de junio de 1934. Declararon tambien que las firmas que aparecen en el, en todas y cada una de las paginas del mismo, son de la testadora y de todos y cada uno de ellos, como testigos instrumentales de dicho testamento Que todos y cada uno de ellos lo firmaron cada uno en presencia del otro y de la testadora, y esta en presencia de todos y cada uno de ellos, en la casa de la testadora, en la calle San Marcelino, Num. 72, de esta ciudad. Que antes de que la testadora lo firmara el testigo Jose Ayala ley6 y explico a la testadora el documento aludido y que terminada la lectura de cada clausula, le preguntaba si la encontraba bien o no, a lo que la testadora contestaba que la encontraba bien. El documento esta escrito en castellano, idioma con el cual esta familiarizada la testadora, y esto lo sabe el testigo Ayala porque hacia los meses de marzo y abril del ano pasado, Paulina Vazquez Viuda

de Garcia estuvo en el bufete del abogado Sr. Perfecto Gabriel, con el fin de hablar con e*ste y el testigo Ayala sobre las disposiciones que debfa contener su testamento, el borrador del cual, una vez preparado, fue enviado por Ayala a la casa de la testadora despues de la semana santa del ano 1934. Al volver la testadora de Baguio en el mes de abril, ella fue otra vez a la oficina del Sr. Gabriel y pidio" que se reformara el borrador en el sentido de condonar una deuda de mil pesos que Teresa Garcia tenfa a favor de la testadora. Reformado as! el testamento el testigo Ayala, a principios del mes de junio, envio el Exhibito A a la casa de la testadora y el 12 del mismo mes la testadora mando aviso a la oficina del abogado Sr. Gabriel de que el testamento estaba de acuerdo con sus deseos y que deseaba formalizarlo aquel dia, por cuya razon el testigo Ayala y sus companeros de oficina Vidal Ranoa y Leopoldo San Gabriel fueron a la casa de aquella en la tarde del 12 de junio en cuya fecha se firm6 el testamento por la testadora v los testigos, como ya queda dicho.

"La Jtestadora firmo el testamento en la sala de su casa, sentada delante de una mesa, estando presentes no solamente los tres testigos instrumentales ya aludidos sino tambten Luisa Garcia, una de las hijas de la testadora. Los tres testigos instrumentales declararon, ademas, que encontraron a la testadora en pleno uso de sus facultades mentales como se demuestra por el hecho de que hablaba inteligentemente al extremo de que encarecio del testigo Ayala a que presentara demanda para el cobro de un credito que ella tenfa contra un tal Paras. La pluma con la cual firmaron la testadora y los testigos instrumentales fue una de fuente, facilitada por Luisa Garcia, porque la que llevaba el testigo Ayala resulto no contener tinta.

* * * * *

"No se ha demostrado por la oposicion que los instrumentales Ayala, Raiioa y San Gabriel tengan interes alguno en el testamento, o en las fersonas que pudieran resuitar favorecidas por su legalization."

A physical examination of the will (Exhibit A) reveals no defect of form or any illegality appearing on the face thereof which will vitiate its extrinsic validity. The will was signed by the testatrix and attested by the three subscribing witnesses, thus:

"En testimonio de lo cual, firmo este mi testamento en presencia de los testigos, en esta Ciudad de Manila, hoy 12 de junio de 1934.

(Fda.) "Paulina Vazquez

"En esta Ciudad de Manila, hoy 12 de junio de 1934, Da. Paulina Vazquez Viuda de Garcia publicd este documento compuesto de tres paginas utiles con la presente como su verdadero testamento y ultima voluntad, firmandolo como su tal testamento al pie del mismo y en el margen izquierdo de sus tres paginas utiles en presencia de no- sotros los testigos, quienes firmamos en la misma forma los unos en presencia de los otros y de la testadora Da. Paulina Vazquez Viuda de Garcia al pie de este atestiguamiento y en el margen izqiliedo de lae tres paginas utiles del presente testamento.

(Fdos.) "JOSE AYALA

"VIDAL RAÑO A

"LEOPOLDO S. GABRIEL"

The three attesting witnesses unanimously testified in detail to the due execution of the will: they identified Exhibit A as the last will and testament executed by the deceased Paulina Vazquez Viuda de Garcia on June 12, 1934; they also identified their signatures and that of the testatrix, all appearing at the end of the will and on the left margin of each and every page thereof; they swore that the will was signed by the testatrix in their presence and that they in turn affixed their signatures thereto in the presence of the testatrix and of each other; and lastly, they were unanimous in their statement that the testatrix was of sound and disposing mind at the time of the execution of the will. Their testimony was corroborated in all im- portant details by the proponent Luisa Garcia who was present when the will was executed.

The oppositor-appellant contends in this appeal that Exhibit A was not executed in conformity with law; that the deceased Paulina Vazquez Viuda de Garcia did not execute any last will and testament on June 12, 1934; and that the said deceased on said date was ill and so weak that she could not have made a will.

The oppositor-appellant called to the stand two witnesses to substantiate her averments. Asuncion Bartolome, a daughter of the oppositor-appellant and who was living with the deceased at the time, testified that in the afternoon of June 12, 1934, she did not see the deceased execute any will; neither did she remember having seen any of the instrumental witnesses in the house at the time. Luz Lopez corroborated Asuncion Bartolome by declaring that in the afternoon of the said date, she went to the house of the testatrix to borrow some money and that during her stay she did not see "a algunos hombres alli" (s. n., p. 20). These two witnesses for the appellant were, however, contradicted by the proponent Luisa Garcia who was present when the will was signed. Luisa Garcia testified further that Asuncion Bartolome was on June 12, 1934, confined in bed suffering from cough and lung trouble and therefore could not have witnessed the execution of the will, and that Luz Lopez was never in the house of the testatrix in the afternoon of said day. Of Luz Lopez the trial judge observes that "era demasiado locuaz, habiendo, ademas, incurrido en serias contradicciones".

After a careful examination of the evidence we find that the same clearly justified the decision of the lower court. Not only did the subscribing witnesses give such a clear, explicit and detailed account of the circumstances surrounding the due execution of the will, but their testimony is straightforward and convincing, and the trial judge who heard them testify properly accepted their testimony. It is the peculiar province of the trial court to resolve questions regarding the credibility of witnesses, and it is a well settled rule that this court "will not interfere with the judgment of the trial court in passing upon the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted." (U. S. vs. Ambrosio, 17 Phil., 295; U. S. vs. Remigio, 37 Phil., 599; People vs. Vidal and Quitan G. R. No. 42481, Jan. 30, 1935 [61 Phil., 1019].)

We find no reason for rejecting the testimony of the attesting witnesses in the present case. No better witnesses could have been presented in support of the due execution of the will. In fact, persons other than the subscribing witnesses to the will may be called upon to prove the due execution of the will and the sanity of the testator only in cases where none of the subscribing witnesses reside in the Philippines or in case one or more of them has been deceased or is insane. (Sees. 631 and 633, Code of Civ. Proa; Cabang vs. Delfinado, 34 Phil., 291; Avera vs. Garcia and Rodriguez, 42 Phil., 145; Unson vs. Abella, 43 Phil., 494.) "Subscribing witnesses are much relied upon to establish due execution of the will; nor can the testimony of persons accidentally present, who had nothing to do with the transaction, be entitled to equal consideration. Though strangers personally to the testator, their concurring testimony alone may well establish the due execution in which they participated; and even in a conflict of evidence great weight is given to their several statements." (Schouler on Wills, Executors and Administrators, sec. 341, p. 432, 5th ed.) By signing a will as witnesses, the persons who thus sign impliedly certify to the truth of the facts which admit to probate, including the sufficiency of execution, the capacity of the testator, the absence of undue influence and the like. (Page on Wills, 2d ed., vol. I, sec. 682, pp. 1130, 1131, and cases cited.) In the present case, two of the subscribing witnesses are lawyers. This fact, together with the circumstance that they were not shown to have any interest in the subject of the litigation, led the trial court to consider their testimony as worthy of credit. The intervention of professional men, especially lawyers, in the preparation and execution of wills, has been given by this court the consideration deserved. (Ozoa vs. Ozoa, G. R. No. 37208, 58 Phil., 928; Serrano de Cabanos vs. Arcebal and Arcebal, G. R. No. 36948, 58 Phil., 919; Im, re Will of Medina, 60 Phil., 391.) In one case it was said: "It is hardly conceivable that any attorney of any standing would risk his professional reputation by falsifying a will and then go before a court and give false testimony." (Sotelo vs. Luzan, G. R. No. 37087, Jan. 27, 1934 [59 Phil., 908].)

That the testatrix was in full possession of her testamentary capacity is fully established by the following testimony of the subscribing witnesses. Jose Ayala declared:

"P.

¿Estaba mal de vista la testadora cuando se firmo el testamento?—R. No, señor.

"P.

¿Podia leer?—R. Si, seiior; podia leer.

"P.

¿Podia leer el castellano?—R. Si, señor." (Vol. I, t. s. n., p. 23.)

Vidal Ranoa declared:

"P.

¿Cuando salio ella del cuarto no estaba acompañada?—R. Estaba acompañada por su hija.

"P.

¿No estaba apoyada?—R. No, señor; ella caminaba sola.

"P.

¿Despues ella se sento a la mesa donde estaban ustedes reunidos?—R. En una silla frente a una mesa." (Vol. II, t. s. n., 16.)

Leopoldo San Gabriel declared also:

"P.

¿En que estado mental estaba Dona Paulina Vazquez entonces al firmarse el testamento?—R. Estaba en su sano juicio.

"P.

¿Con quien hablaba?—R. Con el Sr. Ayala y con el Sr. Vidal Rarioa." (Vol. II, t. s. n., pp. 32, 33.)

The proponent Luisa Garcia who was likewise present when the will was executed testified:

"P.

¿El dia 12 de junio de 1934, su mama de usted podia caminar?—R. Si, señor.

"P.

¿Y donde comia su mama en esos dias, en el comedor o en la habitacion de ella?—R. En el comedor, comia con nosotros." (Vol. IV, t. s. n., p. 22.)

An attesting witness to a will may base an opinion of the testator's mental capacity upon his appearance at the time of executing the will. (*Brownlie vs. Brownlie*, 93 A. L. R., 1041.) The fact that the deceased actually signed her name on the left margin of each and every page of the original and duplicate copy of the will—which she was capable of doing no less than six times and in the most legible writing and without the aid of any other person—is strongly indicative of her testamentary capacity. The only evidence offered by the oppositor to show testamentary incapacity is the testimony of Luz Lopez who described the physical condition of the deceased Paulina

Vazquez Viuda de Garcia as follows: "Ella tenia la vista turbia, no podia ver bien y fa voz af6nica, apenas si podia reconocerme." Even accepting this testimony it does not prove mental or physical incapacity of the testatrix. "Neither senile debility, nor deafness, nor blindness, nor poor memory, is by itself sufficient to establish the presumption that the person suffering therefrom is not in the full enjoyment of his mental faculties, when there is sufficient evidence of his mental sanity at the time of the execution of the will." (Sancho vs. Abella, 58 Phil., 728; See also Hernaez vs. Hernaez, 1 Phil., 689; Bagtas vs. Paguio, 22 Phil., 227; Jocson vs. Jocson, 46 Phil., 701; Torres and Lopez de Bueno vs. Lopez, 48 Phil., 772; Payad vs. Tolentino, 62 Phil., 848, and p. 395, ante.)

The judgment of the lower court admitting the last will and testament (Exhibit A) of Paulina Vazquez Viuda de Garcia to probate is hereby affirmed, with costs against the oppositor-appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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