

**GLICERIA CARANDANG-COLLANTES AND LUZ CARANDANG,
PETITIONERS, VS. FELIX CAPUNO, LEONILA COSICO, LYDIA
CAPUNO, DIOMEDES ALCAN-TARA, SIMEON CAPUNO, DOMINGA
COSICO, GERARDA COSICO, ...**

G.R. No. 55373. July 25, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals in CA-G.R. No. 56397-R entitled "Felix Capuno, et al., plaintiffs-appellees versus Gliceria Carandang-Collantes, et al., defendants-appellants" promulgated August 18, 1980 affirming in toto the decision of the Court of First Instance of Laguna and from the denial of the motion for reconsideration promulgated October 24, 1980.[1]

The facts of the case are as follows. A complaint for annulment of a Donation Inter Vivos executed by the late Josefa Capuno on March 6, 1970, in favor of defendants-appellants (petitioners herein) namely, Gliceria Carandang-Collantes and Luz Carandang, was filed by plaintiffs-appellees (private respondents herein) before the Court of First Instance of Laguna on February 8, 1971 docketed as Civil Case No. SP-927. Four parcels of real property, including a residential house all situated in San Pablo, Laguna were donated under the deed marked Exhibit "A" which reads as follows:

"DONACION INTERVIVOS

DAPAT TALASTASIN NINUMAN, NA:

Ako, JOSEFA DERAYA, lalong kilala sa pangalang Josefa Capuno, ay balo, may sapat na gulang, mamayang Pilipino, naninirahan at may pahatirang sulat sa Lunsod ng San Pablo, sinaysay ko na alang-alang sa aking pagmamahal sa aking mga apo na sina LUZ CARANDANG, dalaga; at GLICERIA CARANDANG, asawa ni Sennen Collantes, kapuwa may sapat na gulang, mamayang Pilipino, naninirahan at may pahatirang sulat sa Lunsod ng San Pablo, ay aking ipinagkaloob ng lubusan (Donation Intervivos) sa nasabi kong apo na sina LUZ CARANDANG at GLICERIA CARANDANG, ang aking Apat (4) na lagay na lupa at isang bahay na itong sumusunod ang siyang kaayusan:

'A residential lot and house of strong materials situated at No. 8, Gen. Malvar St., City of San Pablo.'

TRANSFER CERTIFICATE OF TITLE NO. T-5797

- 'A parcel of land (plan II-2921), with all buildings and improvements, except those herein expressly noted as belonging to other persons, situated in the City of San Pablo, Bounded on the NE., by Calle Marasigan (Gen. Malvar St.) on the SE., by property of Ruperta Deriquito; and the SW., by property of Marcos Rubinag; and on the NW., by properties of Cornelio Belen, Hilario Belen and Juana Cosico . . . containing an area of two hundred eighty seven square meters (287) sq. m. more or less.' Covered by Tax Decl. No. 19787 and assessed at P7,070.00.'

TRANSFER CERTIFICATE OF TITLE NO. T-355

- 'A parcel of land (Lot 2, plan Psu-12078), with all building and improvements, except those herein expressly noted belonging to other persons, situated in the Barrio of San Vicente, City of San Pablo. Bounded on the NE by property of Marcelina Anesta; on the SE. by properties of Lucio Estrallado and (Simeona Estrellado) Fabian Alidio and Simeona Estrellado; on the SW., by property of Gervacio Alvero; and on the NW., by property of Catalino Avanzado . . . containing an area of Seven thousand three hundred and forty three sq. m. (7,343) more or less. Covered by Tax Decl. No. 17205 and assessed at P830.00.'

- A parcel of land situated in Barrio of Sta. Ana, City of San Pablo, planted with 239 fruit bearing coconut trees, with a superficial area of 9,418 sq. m. more or less, Bounded on the N. by Juana Aliasas; on the E. by Ulpiano Deraya; on the S. by Balanga River; on the W., by Andrea Gavino. This parcel of land is covered by Tax Decl. No. 68 and assessed at P1,000.00.'

- A parcel of land situated in Barrio of Sta. Ana, City of San Pablo, planted with 196 fruit-bearing coconut trees and 18 fruit-bearing lanzones trees, with a superficial area of 7,973 sq. m. more or less. Bounded on the N. by Victorino Bautista; on the E. by Manuel Estiva and Josefa Calaguan; on the S. by Barrio Road and on the W. by Victorino Bautista and Francisco Longsod. This parcel of land is covered by Tax Declaration No. 67 and assessed at P1,080.00.'

ang nasabing lupa ay sarili kong pagaari (paraphernal property), malaya at ligtas sa lahat ng sagutin at pagkakautang; na ang parcela blg., 1 & 2 ay may Titulo Torrens kaya nakipagkasundo ako na matala ito ayon sa Batas 496; na ang parcela blg. 3 & 4 ay walang Titulo Torrens at hindi rin nakatala ayon sa Ley Hipotecaria Española kay makipagkasundo ako na matala ito ayon sa Batas 3344;

Na pinatutunayan ko na bukod sa lupang aking ipinagkaloob na ito ay mayroon pa akong mga kabuhayan na sapat na pagkunan ng aking ikabubuhay;

Na kami, LUZ CARANDANG at GLICERIA CARANDANG ay sinasaysay namin na tinatanggap namin ng buong puso ang ipinagkaloob na itong aming lola at nagpapasalamat kami ng walang hanggan.

BILANG KATIBAYAN ay lumagda kami ngayong ika-6 ng Marso, 1970, dito sa Lunsod ng San Pablo.

S/ JOSEFA DERAYA

(Nagkaloob)

S/ LUZ CARANDANG

(Pinagkalooban)

S/ GLICERIA CARANDANG

(Pinagkalooban)

Nilagdaan sa harap nina:

S/ Illegible

SAKSI

S/ Illegible

SAKSI**REPUBLIC OF THE PHILIPPINES)****CITY OF SAN PABLO) S.S.**

In the City of San Pablo, this 6th day of March, 1970, personally appeared Josefa Deraya with Res. Cert. No. A-5469388 issued on March 3, 1970 at San Pablo City and B-737428 issued on April 15, 1969 at San Pablo City and Luz Carandang with RC-A-5467007 issued on February 2, 1970 and Gliceria Carandang with RC-A-5470336 issued on March 3, 1970 both at San Pablo City, the parties who executed the foregoing Donation Intervivos and they acknowledged the same to be their free voluntary act and deed, the parties are Filipinos; as represented, and taxes were paid.

I further certify that this instrument consists of (2) pages signed by the parties and their instrumental witnesses at the above of the dispositive portion of page two and on the left hand margin of page one, refers to the Deed of Donation Intervivos involving four parcels of land and a residential house situated at San Pablo City.

WITNESS MY HAND AND SEAL on the date and at the place first above mentioned.

s/t GERTRUDO B. FLORES

Notary Public

Until Dec. 31, 1971

Doc. No. 234;

Page No. 48;

Book No. XI;

Series of 1970."

Private respondents, plaintiffs-appellees below, alleged in their complaint "4. That upon the death of Josefa Capuno on 8 April 1970, she left as her only heirs plaintiffs herein, Felix Capuno, Lydia Capuno, and Simeon Capuno, being her nephews by her deceased brother Silverio, and Gerardo Capuno and Aniceto Capuno being also her nephews, by her deceased brother Juan Capuno; . . . 6. That the thumbmark appearing on the instrument, allegedly that (of) the deceased Josefa Capuno, was not hers, and granting arguendo, that it was, she did not intend to convey said properties to defendants herein under said deed, her consent thereto having been secured either through undue influence or fraud; there being no relation between them" They then prayed that the donation inter vivos be declared annulled and of no force and effect and they be declared true owners of the properties entitled to the possession thereof and the reasonable value of the fruits realized therefrom from 8 April 1970 up to the time of actual delivery with legal interest thereon until fully paid plus attorney's fees and costs of

litigation.

In their Answer, petitioners, defendants-appellants below, "specifically deny the allegations of par. 6, the truth being that the thumbmarks on the document (Annex "A", Complaint) are actually that of the deceased and that the said document purports to be what it represents and states and the donor's consent thereto was given freely and voluntarily without undue influence, fraud, or any vice which will vitiate the agreement."

As Defenses, defendants plead under par. 8 that "(d)uring practically all their lifetime, defendants have lived with Josefa Capuno who has treated defendants as the former's own blood relatives - in-fact, as her own grandchildren. Considering defendants' relations with, and the services rendered to, Josefa Capuno during her lifetime, it is natural that defendants should be the recipient of the deceased's liberality and generosity;" and under par. 9, "(t)aking into account the services rendered by the defendants during her lifetime, the donation inter vivos (Annex "A", Complaint) actually is based on valuable consideration and, on this further ground, the document accordingly should be upheld as valid." Defendants further set up that plaintiffs have no cause of action and in any event, plaintiffs are guilty of laches. They further allege a counterclaim for punitive damages, a reasonable sum for attorney's fees and expenses of litigation.

Pre-trial was conducted but the parties were unable to reach a settlement; hence the case was tried on the merits and thereafter the Court of First Instance rendered its decision in favor of the private respondents, plaintiffs-appellees below, the dispositive portion of which is as follows:

"WHEREFORE, judgment is hereby rendered declaring: (a) the alleged donation inter vivos attached to the complaint as Annex A null and void; and (b) plaintiffs Felix, Lydia, Simeon, Gerardo, and Aniceto, all surnamed Capuno, as the only surviving legal heirs of the deceased Josefa Capuno and, therefore, entitled to the ownership and possession of the residential house and four (4) parcels of land described in paragraph 3 of the complaint, with costs against defendants."[2]

Petitioners appealed the aforementioned decision to the Court of Appeals which in turn affirmed in toto the same. Petitioners then moved for a reconsideration of the said decision which was, however, denied, through its Resolution dated October 24, 1980, hence the present petition for certiorari before Us. Initially, the petition was denied for lack of merit on the ground that the questions raised are factual and for insufficient showing that the findings of fact by respondent court are unsupported by substantial evidence. However, a Motion for Reconsideration and to Give Due Course to the Petition having been filed and against which respondents filed their Comment, We resolved to give due course to the petition in Our Resolution of January 11, 1982.

In the petition at bar, petitioners contend that:

- The findings of fact of the respondent Court are not conclusive upon the Supreme Court;
- That reversible errors were committed by the respondent court under the ruling laid down in the case of *Macadangdang vs. Court of Appeals* (100 SCRA 73);
- That the baptismal certificates presented by the plaintiff-appellees have no evidentiary value to prove their claimed relationship to their supposed parents and their alleged aunt, Josefa Capuno.

As indicated earlier, the respondent appellate court affirmed in toto the judgment of the trial court, citing and quoting lengthily from the findings of the trial court and rejecting the contention of the defendants-appellants (petitioners herein) that it was the weakness of their evidence upon which the court below rested its conclusion that Josefa Capuno did not execute any document in favor of said defendants-appellants. The appellate court pointed out the basis of its concurrence with the trial court, thus:

"In point of fact, there is the testimony of Aniceto Capuno, wherein he stated that his aunt Josefa Capuno,

indicated to him shortly before her death, how the property donated was to be divided among the nephews and niece of Josefa Capuno. Then, too, Albina Capuno and Lydia Capuno testified that they were taking care of the deceased Josefa Capuno at the Community Hospital in San Pablo City, where the latter was confined from February 23 to March 14, 1970, and were invariably always with her, and during this time there was no document at all executed by the late Josefa Capuno. The testimony of these witnesses for plaintiffs-appellees, in conjunction with the testimony of the witness for defendants-appellants, persuaded the lower court, as We are now persuaded, to find that Josefa Capuno did not, in truth, execute any document donating the property alleged to have been given to defendants-appellants."

In other words, the decisions of both the trial and the appellate courts were based on the testimonies of Aniceto Capuno, Albina Capuno and Lydia Capuno as referred to above, as well as their opinion that the very witness of the petitioners, the notary public who notarized the deed of donation, proved instead the case for the plaintiffs-appellees (private respondents herein) that in truth and in fact Josefa Capuno did not execute the Donation Inter Vivos in favor of defendants-appellants, now the petitioners.

We do not agree with the findings of fact made by the trial court and the appellate court. The same has no factual and legal basis. We find and rule that the judgment assailed is based on misapprehension of facts and respondent court committed grave abuse of discretion.

It must first be noted that the complaint filed by private respondents which was for annulment of the deed of donation inter vivos and attaching a true copy of the instrument marked as Annex "A" alleged two grounds for annulment. The first ground is the allegation that the thumbmark appearing on the instrument was not the thumbmark of the donor, Josefa Capuno. The second ground, or more correctly the alternative ground, is based on the allegation that "granting arguendo that it was, she (Josefa Capuno) did not intend to convey said properties to defendants herein under said deed, her consent thereto having been secured either through undue influence or fraud, there being no relation between them."

The first ground raises the question of the genuineness or authenticity of the thumbmark affixed to the deed of donation. The second raises the issue whether there was undue influence or fraud exercised or committed to obtain the consent of the donor in the execution of the donation.

Under the first issue, the evidence for the private respondents consisted of the testimonies of Aniceto Capuno, Albina Capuno and Lydia Capuno, three of the several private respondents. Specifically, Aniceto Capuno testified that on March 14, 1970, Josefa Capuno told him, "Sito, these lands are the ones which will be inherited by you from me and these four parcels of land will pertain to Felix and his brother" (TSN, p. 12, Nov. 11, 1971). He also declared that on March 17, 1970 at the Perpetual Hospital, Josefa Capuno told him while she was on his lap, "Sito, do (not) forget what I have told you as to what pertains to Felix, Lydia and Simoun and what pertains to you and your brother, and I do not want that you will have an argument on the matter because it is bad and I wish that you should follow that arrangement." (TSN, p. 25, Nov. 11, 1971)

Albina Capuno, wife of witness Aniceto Capuno, testified that from February 23 to March 14, 1970 when Josefa Capuno was treated at the Community Hospital, she did not leave the hospital and did not see Atty. Gertrudo B. Flores during that time and that on March 6, 1970, no document was executed by said Josefa Capuno during her stay thereat (TSN, pp. 14-17, Nov. 14, 1972).

In addition thereto, Lydia Capuno testified that her aunt, Josefa Capuno, knows how to write her name and when asked if she knows how to read, the witness answered: "She (Josefa) could try to read, sir." (TSN, pp. 26-27, Hearing on Feb. 9, 1973)

Since the burden of proof lies on the plaintiffs, private respondents herein, to prove affirmatively the truth of their

allegations in the complaint that the donation, a public instrument duly acknowledged before a notary public, bears a thumbmark which is not that of the donor, and therefore forged, fictitious or fraudulent, it is their duty to present strong, complete and conclusive evidence in support thereof, and not merely by preponderance of evidence.

Plaintiffs have not presented any proof in support of the alleged forgery or fictitiousness of the thumbmark in question, neither by an expert or by comparison with the true thumbprint of the donor, Josefa Capuno. The testimony of Aniceto Capuno that his aunt, Josefa Capuno, had indicated to him shortly before her death the division of the donated properties among the nephews and niece of Josefa is no proof that Josefa did not execute the deed of donation in favor of the defendants. Neither are the declarations of Albina and Lydia Capuno who claimed to be taking care of Josefa at the hospital from February 13 to March 14, 1970 and were always with her, prove that the deed in question was not executed by the donor. For these witnesses are parties to the case, biased and stand to benefit from the annulment of the deed. Their testimonies are inherently weak as against the testimony of the notary public who notarized the document and declared that the document was acknowledged before him and the thumbmark was that of the donor, Josefa Capuno.

We find and rule that the evidence of the plaintiffs in support of the first ground for annulment is insufficient. They have not established the first cause of action by strong, complete and conclusive evidence which is the rule established in this jurisdiction. Thus, in *Lucio Palanca Chilianchin vs. Eusebio Coquingo*, 84 Phil. 714, the Supreme Court held:

"A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaw or defect provided against by law."

In an earlier case, *Centenera vs. Garcia Palicio*, 29 Phil. 470, the Supreme Court, ruling on the degree of proof necessary to sustain a reformation of a written contract, said that the doctrine supported by numerous citations of authority is fairly stated by Mr. Page in his work on Contracts, Volume 2, section 1254, and it quotes as follows:

"The amount of evidence necessary to entitle the party seeking reformation to the relief sought is variously stated. It is always more than a mere preponderance. The evidence must be much clearer than a mere preponderance necessarily as to permit reformation. The usual form of statement is that the evidence must be clear and convincing, though it is said also that it must be clear and satisfactory, 'satisfactory,' 'full, clear, and decisive,' 'clear and precise,' 'clear, precise, and indubitable,' 'clear, cogent,' 'strong and convincing,' 'clear, positive and convincing,' 'clear, convincing, and satisfactory, most clear and convincing,' 'clear and most satisfactory,' 'the clearest and most satisfactory' evidence, the clearest, strongest, and most irrefragable evidence, evidence as strong as if the mistake were admitted or evidence which leaves 'no rational doubt.'"

While the case at bar is not for reformation of contract but is for annulment of a donation to which a fictitious or false thumbmark not belonging to the donor had been affixed thereto, which is a criminal act and may cause the prosecution and conviction of the notary public as well as his disbarment as a lawyer, We hold and rule that the degree of proof required in support of the annulment is that held in the *Chilianchin vs. Coquingo* case, supra, and that is, strong, complete and convincing evidence. Plaintiffs' evidence previously recited herein sorely and sadly fall short of this degree of proof.

With respect to the alternative ground of undue influence or fraud, the codal provision, Articles 1337 and 1338 N.C.C. are clear and explicit in defining that—

"Art. 1337. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person

alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress."

"Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to."

We have searched the entire records of the case, We have examined the pleadings of the parties and We have read the transcript of the testimonies of the witnesses, and We find no allegation whatsoever, much less proof of, the facts or circumstances constituting the undue influence that the donees have improperly taken advantage of, or used their power, if any, over the will of the donor, depriving her of a reasonable freedom of choice. Neither can We find any allegation or proof of concrete facts constituting the supposed fraud. In fact, private respondents have not pointed to Us what undue influence or fraud they have alleged or proved in the case. The mere allegation that the donor and the donees have no relations does not constitute nor show undue influence or fraud. Hence, the second ground for annulment is clearly non-existent.

The records disclose that the defendants presented Attorney Gertrudo B. Flores, the notary public who notarized the deed of donation in question. He testified on direct examination and was cross-examined by opposing counsel, and the trial court, assessing his testimony, said "it (is) hard to believe the document was ratified by the deceased before him or in his presence." The assailed decision quotes the lower court as follows:

"Defendants presented only one witness, Atty. Gertrudo B. Flores, who appeared in the deed of donation as the notary public before whom the deceased Josefa Capuno supposedly acknowledged the document, purportedly to prove its due execution, but this witness miserably failed them, for on cross-examination he involved himself in the numerous contradictions and incoherence and inexplicable lapse of memory that made it hard to believe the document was ratified by the deceased before him or in his presence.

On direct examination, Atty. Flores related that: he notarized the document, Exhibit 1, on March 6, 1970 at the Community Hospital, San Pablo City, where the donor Josefa Capuno was confined; he was fetched by one Algenio; while he was at the hospital, the old woman upon seeing him expressed relief saying, 'Hindi ko alam na ikaw ay notario, kaya ang dokumentong ito ay ipinagawa ko na kay Atty. Gajito's and handed the document to him; upon examining and finding the document already fully prepared, he told the old woman it was hard for him to notarize it in deference to Atty. Gejitos so she told him to just notarize it; she asked him if she could just affix her right thumbmark and he answered yes and then he returned to his office, got a stamp pad, erased the name 'Gajitos' and superimposed his name thereon in ink, and afterwards he returned to the hospital and he signed the document after all the rest of the signatures were affixed; the donor affixed her thumbmark on the left hand margin of the first page and on the second page; present at the hospital at the time aside from himself were the two Carandang's, Luz and Gliceria, and Mario Algenio and one Aliasas; and asked to comment on the testimony of plaintiffs' witness Mrs. Albina Capuno that she did not see Atty. Flores at any time in the Community Hospital, he answered he did not know her and it might be that she just did not see him when he was at the hospital.

His performance under cross-examination leaves much to be desired, so that it would be well to recount here the salient portions of his testimony that do not speak well of his credibility.

- Asked if the deceased Josefa Capuno was lying on bed continuously from the time he first arrived at the hospital until he left he answered 'I think so'. (TSN, pp. 6-7, Sept. 3, 1973)

- Asked if she did not for a moment try to raise herself up by sitting on bed, he said 'she did because she affixed her thumbmark on the document.' (TSN, p. 7, Sept. 3, 1973). But later he stated that he was the one who helped the deceased affix her thumbmark on the document, and he continued 'I held her right thumb to impress her thumbmark because she was raised by the two (2) girls from her bed.' (TSN, pp. 66-67, Sept. 3, 1973), and 'had her seated on the chair and then she affixed her thumbmark with my help.' (TSN, p. 68, Sept. 3,

1973). Note that on direct examination, Atty. Flores stated that 'the donor affixed her thumbmark on the left hand margin of the first page and on the printed name on the second page.' (TSN, p. 10, May 18, 1973)

- Asked if he read the document to the deceased Josefa Deraya, witness answered 'Yes'. (TSN, p. 17, Sept. 3, 1973) To be sure, he was asked the same question a second time, and he again firmly answered, 'Yes'. (TSN, p. 19, Sept. 3, 1973). Then he was confronted with his previous statement to the effect that after reading the document himself, he asked Josefa Capuno if she would like to read it to her and she told him it was already read to her by Atty. Gajitos who prepared the document and to just proceed notarizing it. Asked which of the two statements was true and he said the one read to him so that his statement that he read the document to the deceased was false, and he lamely explained that the incident happened two (2) years ago and he was already 63 years old and quite forgetful. (TSN, pp. 21-23, *ibid*). Then later, he stated that he read the document to the old woman but it seemed to him that she told him it was already read to her by Atty. Gajitos. (TSN, p. 33, *ibid*). As if to clarify he said 'Atty. Javier after I have started reading that document she interrupted me and told me that it was already read to her by Gajitos and I was not able to finish it anymore, as I have told you Atty. Javier she interrupted me. . . . (TSN, p. 34, *ibid*) Shown the document and asked at what point he was interrupted by the deceased, he said he could not remember but he read a portion before he was stopped. (TSN, pp. 36-39, *ibid*) And he could not recall if it was in the first or the second time he went to the hospital that the aborted reading session happened. (TSN, p. 45, *ibid*). But he was not sure as he could not remember, that he was able to read the entire document to the old woman.

- Asked if, during the two occasions that he was in the hospital for one hour he noticed any medical contrivance or apparatus attached to the deceased's body, and his answer was 'I cannot remember.' (TSN, p. 50, *ibid*). He did not look whether she had a suero, he could not remember that. (TSN, pp. 58-59, *ibid*)

- Asked who was the first and the last to sign the document, Atty. Flores was sure the donor was the first, 'but as to the other witnesses I do not remember who was first and who was next or who followed the other one.' He could not remember either who of the two donees signed first. Neither could he remember or tell whether the donees signed ahead of the witnesses or the witnesses ahead of the donees. (TSN, pp. 60-61, *ibid*.)

- Atty. Flores could not tell what writing instrument the donees and the witnesses used, whether a pen or ball pen, and whether they used the same or different writing instrument. (TSN, pp. 61-64, *ibid*.)

This is the kind of evidence that undermines and destroys the very case it is intended to build up. Far from proving the due execution of the contested donation, Atty. Flores' testimony disproved it. After the cross-examination what crystalized in the mind is the fact that the document was not ratified by the supposed donor before him. Its integrity as a public instrument is completely nullified to the point that it became hard to believe it was executed at all by the deceased. According to Atty. Flores when he was about to read the deed of donation or had began reading it, the old woman interrupted him and told him to just notarize the document because it was already read to her by Atty. Gajitos who prepared it, and yet defendants did not present Atty. Gajitos to confirm the alleged fact. As matters stand, there is no competent evidence to show the deceased Josefa Capuno had read or knew the contents of the supposed donation. Not only that; neither of the two defendants donees nor any of the witnesses to the donation came forward to testify to its due execution, if only to repair the damages caused by Atty. Flores' testimony. . . ."

We reject the conclusions of the trial court and the appellate court that "in truth and in fact Josefa Capuno did not execute the donation inter vivos in favor of defendants-appellants." We rule that the supposed contradictions and incoherence and inexplicable lapse of memory in the declarations of Atty. Gertrudo B. Flores, the notary public who notarized the deed of donation, merely refer to trivial, immaterial and minute details which, to Our view, do not affect the essential and vital facts showing the due execution and authenticity of the deed, admittedly a public instrument.

The positions of the donor, whether in her bed lying, or raised by the two girls, or seated in a chair during the

execution and notarization of the deed are immaterial for what is important is the genuineness of the thumbmark of the donor which the notary public positively affirmed to be that of the donor as he helped her affix her thumbmark on the document on the left hand margin and on the printed name on the second page. It is likewise unimportant and of no significance what writing instrument or instruments were used, the order of the persons who signed the deed, whether there were medical contrivances or apparatus attached to the donor's body and what portions were read by him to the donee. These are minor points that do not affect the integrity of the document as a public instrument. The lapses of memory imputed to the notary public may be understood, considering that the notarization took place some three years ago and that during his commission, he must have notarized hundreds of various and assorted documents. The rule is contradictions of a witness on minor details do not destroy the effectiveness of his testimony because they are generally due to an innocent mistake and not to a deliberate falsehood. Persons are easily liable to commit errors in the observation and recollection of minute details of an important occurrence. (Moran, Comments on the Rules of Court, Vol. VI, 1980 ed., pp. 141, 142).

It appears from the evidence in chief of the defendants-appellants (petitioners herein) that the witness, Atty. Gertrudo B. Flores, the notary public before whom the deed of donation was acknowledged, had known very well the donor, Josefa Capuno, being the widow of a late distant relative of Atty. Flores from Sta. Ana, San Pablo City (TSN, p. 6, Hearing on May 18, 1973); that Josefa Capuno had told him (Atty. Flores) that Atty. Gajitos who had originally drafted the deed had read to her the contents of the document (TSN, p. 8, Hearing on May 18, 1973); and that she was in her sound mind and active discernment (TSN, p. 9, Hearing on May 18, 1973).

On the essential and material facts, the testimony of the notary public who is also a lawyer is satisfactory and must be given more credence than the testimonies of the Capuno witnesses which merely implied that the thumbmark on the deed of donation was not affixed by Josefa Capuno since no deed was notarized during her confinement at the hospital. These witnesses are interested in inheriting the properties donated under the questioned document. Assuming that the thumbmark was a fake, then the notary public was responsible therefor or participated in the commission of the criminal act, but there is no showing that the Capunos ever complained or instituted criminal or disciplinary action against him for the falsification which belie private respondents' allegations of forgery.

Considering that the deed of donation is a public instrument and therefore entitled to the presumption of law that official duty has been regularly performed, We must sustain its validity because private respondents have failed to prove the two alleged grounds for the annulment of the donation by strong, complete and conclusive evidence of its falsity or nullity.

We have reviewed and analyzed the evidence presented by the plaintiffs-appellees and We find the same to be weak, flimsy and insufficient to annul the donation. Hence, the complaint must fall and should be dismissed. In not dismissing said complaint, respondent court gravely erred and abused its discretion.

As to the third issue, We find its resolution moot and academic since We have ruled that the deed of donation was valid and may not be annulled.

Assuming that in Special Proceedings No. Sp-296 entitled "IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED JOSEFA CAPUNO", it was therein established that Josefa Capuno died a widow, without any ascendant nor descendant, whether legitimate or otherwise and that her only heirs are her niece, Lydia Capuno, and her nephews, Felix Capuno, Simeon Capuno, Gerardo Capuno, and Aniceto Capuno, who are the plaintiffs, such declaration of heirship cannot affect, prejudice nor reduce the donation since private respondents admit that there are fifteen (15) parcels of land left by the donor, Josefa Capuno, at the time of her death which were not disposed of by virtue of a will or testament. (TSN, pp. 32-33, Hearing on Nov. 11, 1971). The records do

not show the disposition of these fifteen parcels of land. We can presume, however, that they constitute the intestate estate of the deceased, Josefa Capuno, to which private respondents may legally succeed and inherit. The deed of donation inter vivos must, however, be respected.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision of the respondent Court of Appeals (now Intermediate Appellate Court) subject of the instant petition for review, is hereby REVERSED and SET ASIDE, and the complaint for annulment is ordered dismissed. No costs.

SO ORDERED.

Makasiar, J., (Chairman), concurs.

Aquino, J., concurs. Josefa Capuno left fifteen (15) parcels of land at the time of her death on April 8, 1970 (32-33 tsn November 11, 1971). She donated only four parcels to Luz Carandang and Gliceria Carandang who had lived with her since birth (36 tsn). Luz and Gliceria were reared by Josefa Capuno as grandchildren (apo sa palaki) and she took charge of their studies (36-37 tsn). No one among the plaintiffs ever lived with Josefa Capuno (37-38 tsn). Luz and Gliceria rendered services to her. Therefore, it is not surprising that she executed the donation in question.

Concepcion Jr. and Escolin, JJ., in the result.

Abad Santos, J., took no part.

De Castro, J., on sick leave.

[1] Special Sixth Division, Melo, J., ponente; De la Fuente and Nocon, JJ., concurring.

[2] Record on Appeal, pp. 34-35.

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