

CLEMENTE CALDE, PETITIONER, VS. THE COURT OF APPEALS, PRIMO AGAWIN AND DOMYAAN APED, RESPONDENTS.

G.R. No. 93980. June 27, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review by certiorari of the Decision, dated March 27, 1990, of the Court of Appeals[1] in CA-G.R. CV No. 19071, disallowing probate of the Last Will and Codicil executed by Calibia Lingdan Bulanglang, who died on March 20, 1976.

The records show that decedent left behind nine thousand pesos (P9,000.00) worth of property. She also left a Last Will and Testament, dated October 30, 1972, and a Codicil thereto, dated July 24, 1973. Both documents contained the thumbmarks of decedent. They were also signed by three (3) attesting witnesses each, and acknowledged before Tomas A. Tolete, then the Municipal Judge and Notary Public Ex-Officio of Bauko, Mt. Province.

Nicasio Calde, the executor named in the will, filed a Petition for its allowance before the RTC of Bontoc, Mt. Province, Br. 36.[2] He died during the pendency of the proceedings, and was duly substituted by petitioner. Private respondents, relatives of decedent, opposed the Petition filed by Calde, on the following grounds: that the will and codicil were written in Ilocano, a dialect that decedent did not know; that decedent was mentally incapacitated to execute the two documents because of her advanced age, illness and deafness; that decedent's thumbmarks were procured through fraud and undue influence; and that the codicil was not executed in accordance with law.

On June 23, 1988, the trial court rendered judgment on the case, approving and allowing decedent's will and its codicil. The decision was appealed to and reversed by the respondent Court of Appeals. It held:

"x x x (T)he will and codicil could pass the safeguards under Article 805 of the New Civil Code but for one crucial factor of discrepancy in the color of ink when the instrumental witnesses affixed their respective signatures. When subjected to cross-examination, Codcodio Nacnas as witness testified as follows:

'Q And all of you signed on the same table?

'A Yes, sir.

'Q And when you were all signing this Exhibit 'B' and 'B-1', Exhibit 'B' and 'B-1' which is the testament was passed around all of you so that each of you will sign consecutively?

'A Yes, sir.

'Q Who was the first to sign?

'A Calibia Lingdan Bulanglang.

'Q After Calibia Lingdan Bulanglang was made to sign - I withdraw the question. How did Calibia Lingdan Bulanglang sign the last will and testament?

'A She asked Judge Tolete the place where she will affix her thumbmark so Judge Tolete directed her hand or her thumb to her name.

'Q After she signed, who was the second to sign allegedly all of you there present?

'A Jose Becyagen.

'Q With what did Jose Becyagen sign the testament, Exhibit 'B' and 'B-1'?

'A Ballpen.

'Q And after Jose Becyagen signed his name with the ballpen, who was the next to sign?

'A Me, sir.

'Q And Jose Becyagen passed you the paper and the ballpen, Exhibit 'B' and 'B-1' plus the ballpen which used to sign so that you could sign your name, is that correct?

'A Yes, sir.

'Q And then after you signed, who was the next to sign the document, Exhibit 'B' and 'B-1'?

'A Hilario Coto-ong.

'Q So you passed also to Hilario Coto-ong the same Exhibit 'B' and 'B-1' and the ballpen so that he could sign his name as witness to the document, is it not?

'A Yes, sir.

'Q And that is the truth and you swear that to be the truth before the Honorable Court?

ATTY. DALOG:

He already testified under oath, Your Honor.

COURT:

Witness may answer.

'A Yes, sir.

"For his part, Obanan Ticangan likewise admitted during cross-examination in regard to the codicil that:

'Q When you signed Exhibit 'D' and 'D-1', did you all sign with the same ballpen?

'A One.'

"Such admissions from instrumental witnesses are indeed significant since they point to no other conclusion than that the documents were not signed by them in their presence but on different occasions since the same ballpen used by them supposedly in succession could not have produced a different color from blue to black and from black to blue. In fact, the attestation clause followed the same pattern. The absurd sequence was repeated when they signed the codicil, for which reason, We have no other alternative but to disallow the Last Will and Codicil. Verily, if the witnesses and testatrix used the same ballpen, then their signatures would have been in only one color, not in various ones as shown in the documents. Moreover, the signatures, in different colors as they are, appear to be of different broadness, some being finer than the others, indicating that, contrary to what the testamentary witnesses declared on the witness stand, not only one ballpen was used, and,

therefore, showing that the documents were not signed by the testatrix and instrumental witnesses in the presence of one another. x x x" (Rollo, pp. 44-46. Citations omitted.)

Petitioner unsuccessfully moved for reconsideration of the impugned Decision. His motion was denied by the respondent court in its Order, dated May 24, 1990.

Thus, this appeal by petitioner who now puts in issue the correctness of the respondent court's conclusion that both decedent's will and codicil were not subscribed by the witnesses in the presence of the testator and of one another, contrary to the requirements of Article 805 of the Civil Code. He contends that:

"1. THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISION OF THE SUPREME COURT BY CONCLUDING BASED ON PURE SPECULATION OR SURMISES AND WITHOUT REGARD TO THE TESTIMONY OF JUDGE TOLETE WHICH IS AN EVIDENCE OF SUBSTANCE THAT THE WILL AND THE CODICIL OF THE LATE CALIBIA LINGDAN BULANGLANG WERE SIGNED BY HER AND BY HER INSTRUMENTAL WITNESSES ON DIFFERENT OCCASIONS;

"2. THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT BY DISREGARDING THE PROBATIVE VALUE OF THE ATTESTATION CLAUSES OF THE LAST WILL AND TESTAMENT AND THE CODICIL OF THE LATE CALIBIA LINGDAN BULANGLANG."

The petition must fail.

The question in the case at bench is one of fact: whether or not, based on the evidence submitted, respondent appellate court erred in concluding that both decedent's Last Will and Testament, and its Codicil were subscribed by the instrumental witnesses on separate occasions. As a general rule, factual findings of the Court of Appeals are considered final and conclusive, and cannot be reviewed on appeal to this court. In the present instance, however, there is reason to make an exception to that rule, since the finding of the respondent court is contrary to that of the trial court, viz.:

"x x x (Private respondents) pointed out however, that the assertions of petitioner's witnesses are rife with contradictions, particularly the fact that the latter's signatures on the documents in issue appear to have been written in ballpens of different colors contrary to the statements of said witnesses that all of them signed with only one ballpen. The implication is that the subscribing witnesses to the Will and Codicil, and the testatrix did not simultaneously sign each of the documents in one sitting but did it piecemeal -- a violation of Art. 805 of the Code. This conclusion of the (private respondents) is purely circumstantial. From this particular set of facts, numerous inferences without limits can be drawn depending on which side of the fence one is on. For instance, considering the time interval that elapsed between the making of the Will and Codicil, and up to the filing of the petition for probate, the possibility is not remote that one or two of the attesting witnesses may have forgotten certain details that transpired when they attested the documents in question. x x x" (Rollo, pp. 36-37.)

A review of the facts and circumstances upon which respondent Court of Appeals based its impugned finding, however, fails to convince us that the testamentary documents in question were subscribed and attested by the instrumental witnesses during a single occasion.

As sharply noted by respondent appellate court, the signatures of some attesting witnesses in decedent's will and its codicil were written in blue ink, while the officers were in black. This discrepancy was not explained by petitioner. Nobody of his six (6) witnesses testified that two pens were used by the signatories on the two documents. In fact, two (2) of petitioner's witnesses even testified that only one (1) ballpen was used in signing

the two testamentary documents.

It is accepted that there are three sources from which a tribunal may properly acquire knowledge for making its decisions, namely: circumstantial evidence, testimonial evidence, and real evidence or autoptic proference. Wigmore explains these sources as follows:

"If, for example, it is desired to ascertain whether the accused has lost his right hand and wears an iron hook in place of it, one source of belief on the subject would be the testimony of a witness who had seen the arm; in believing this testimonial evidence, there is an inference from the human assertion to the fact asserted. A second source of belief would be the mark left on some substance grasped or carried by the accused; in believing this circumstantial evidence, there is an inference from the circumstance to the thing producing it. A third source of belief remains, namely, the inspection by the tribunal of the accused's arm. This source differs from the other two in omitting any step of conscious inference or reasoning, and in proceeding by direct self-perception, or autopsy.

"It is unnecessary, for present purposes, to ask whether this is not, after all, a third source of inference, i.e., an inference from the impressions or perceptions of the tribunal to the objective existence of the thing perceived. The law does not need and does not attempt to consider theories of psychology as to the subjectivity of knowledge or the mediateness of perception. It assumes the objectivity of external nature; and, for the purposes of judicial investigation, a thing perceived by the tribunal as existing does exist.

"There are indeed genuine cases of inference by the tribunal from things perceived to other things unperceived -- as, for example, from a person's size, complexion, and features, to his age; these cases of a real use of inference can be later more fully distinguished x x x. But we are here concerned with nothing more than matters directly perceived -- for example, that a person is of small height or is of dark complexion; as to such matters, the perception by the tribunal that the person is small or large, or that he has a dark or light complexion, is a mode of acquiring belief which is independent of inference from either testimonial or circumstantial evidence. It is the tribunal's self-perception, or autopsy, of the thing itself.

"From the point of view of the litigant party furnishing this source of belief, it may be termed Autoptic Proference." [3] (Citations omitted.)

In the case at bench, the autoptic proference contradicts the testimonial evidence produced by petitioner. The will and its codicil, upon inspection by the respondent court, show in black and white -- or more accurately, in black and blue -- that more than one pen was used by the signatories thereto. Thus, it was not erroneous nor baseless for respondent court to disbelieve petitioner's claim that both testamentary documents in question were subscribed to in accordance with the provisions of Art. 805 of the Civil Code.

Neither did respondent court err when it did not accord great weight to the testimony of Judge Tomas A. Tolete. It is true that his testimony contains a narration of how the two testamentary documents were subscribed and attested to, starting from decedent's thumbmarking thereof, to the alleged signing of the instrumental witnesses thereto in consecutive order. Nonetheless, nowhere in Judge Tolete's testimony is there any kind of explanation for the different-colored signatures on the testaments.

IN VIEW WHEREOF, the instant Petition for Review is DENIED. The Decision of respondent Court of Appeals, dated March 27, 1988, in CA-G.R. CV No. 19071 disallowing the Last Will and Testament, and the Codicil thereto, of the decedent Calibia Lingdan Bulanglang is AFFIRMED IN TOTO. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Through its Second Division, composed of Associate Justices Jose A.R. Melo (ponente and chairman), Antonio M. Martinez, and Nicolas P. Lapeña.

[2] Presided by Judge Artemio B. Marrero. The case was docketed as SPL. PROC. CASE NO. 295.

[3] J.H. WIGMORE, A Treatise On The Anglo-American System Of Evidence In Trials At Common Law, Vol. 4, Sec. 1150, pp. 237-8 (1940).

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