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Wilfredo V. Lapitan
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Division Clerk of Court
Third Division

JUL 16 2019

Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

ATTY. BERNARDO
CONSTANTINO,
Petitioner,

T. G.R. No. 225696

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A.B., JR.,
HERNANDO, and
CARANDANG,* JJ.

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
April 8, 2019

Wilfredo V. Lapitan

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DECISION

LEONEN, J.:

For a notary public to be found guilty of falsifying a notarial will, the prosecution must prove that he or she has falsified or simulated the signatures of the testator or the instrumental witnesses to make it appear that they participated in the execution of the document when they did not.

This resolves a Petition for Review on Certiorari¹ assailing the January 19, 2016 Decision² and June 9, 2016 Resolution³ of the Court of Appeals in CA-G.R. CR No. 36327. The Court of Appeals affirmed the

* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

¹ Rollo, pp. 5-25.

² Id. at 27-41. The Decision was penned by Associate Justice Ma. Luisa C. Quijano-Padilla, and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan of the Thirteenth Division, Court of Appeals, Manila.

³ Id. at 43-44. The Resolution was penned by Associate Justice Ma. Luisa C. Quijano-Padilla, and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan of the Thirteenth Division, Court of Appeals, Manila.

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Regional Trial Court November 28, 2013 Judgment⁴ finding Atty. Bernardo T. Constantino (Atty. Constantino) guilty of falsification of a public document under Article 171(2) of the Revised Penal Code.

On May 27, 2008, an Information was filed against Atty. Constantino and Teresita C. Saliganan (Saliganan), charging them with falsification of a public document.⁵ The Information read:

That on or about September 9, 2001 in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ATTY. BERNARDO CONSTANTINO taking advantage of his being a notary public for Laoag City and Ilocos Norte, together with TERESITA C. SALIGANAN, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously cause to appear in the LAST WILL AND TESTAMENT executed by Severino C. Cabrales in favor of the accused TERESITA C. SALIGANAN, known as Doc. No. 15909, Page No. 71, Book No. XXXI, Series of 2001 of the Notarial Register of Atty. BERNARDO CONSTANTINO, a notary public for Laoag City and Province of Ilocos Norte, that SEVERINO C. CABRALES participated in the execution of the LAST WILL AND TESTAMENT, when in fact he did not so participate, and making it appear that the testator Severino Cabrales and the attesting witnesses, Dr. Eliezer Asuncion, Mary Balintona and Dr. Justino Balintona acknowledge the Last Will and Testament before Atty. Bernardo Constantino while in truth they never appeared to acknowledge the same.⁶

On June 13, 2008, warrants of arrest were issued against Atty. Constantino and Saliganan. On September 24, 2008, Atty. Constantino filed a Motion for Recognizance in Lieu of Bail as he was unable to post the required bond of ₱24,000.00.⁷

In its October 28, 2008 Order, the Regional Trial Court denied the Motion. Atty. Constantino, through his wife Editha, was able to post bail on August 23, 2010. Saliganan, however, remained at large.⁸

On arraignment, Atty. Constantino pleaded not guilty to the crime charged. Thus, trial on the merits ensued.⁹

According to the prosecution, sometime in June 1998, Severino Cabrales (Severino), the father of Saliganan, suffered a stroke and was rushed to the hospital, where he was confined for two (2) weeks. When he

⁴ Id. at 45–61. The Judgment was penned by Presiding Judge Francisco R. D. Quilala of Branch 14, Regional Trial Court, Laoag City.

⁵ Id. at 45.

⁶ Id.

⁷ Id. at 45 and 58.

⁸ Id. at 45.

⁹ Id. at 46.

was discharged, he returned to the family home in Laoag City. There, Saliganan stayed and took care of Severino until his death on December 6, 2003.¹⁰

On February 8, 2005, a Petition for Probate of Severino's alleged Last Will and Testament was filed before the Regional Trial Court of Laoag City.

Upon learning of the probate proceedings, Fernando Cabrales (Fernando), a son of Severino, secured a copy of the purported Last Will and Testament. He claimed that the signature in the document was not Severino's. The document was notarized by Atty. Constantino and registered in Book No. 31, Page No. 71 of Atty. Constantino's Notarial Register, series of 2001. The witnesses who signed it were Rosalinda Cu (Cu), Dr. Justino Balintona and his wife Mary Balintona (the Balintona Spouses), and Dr. Eliezer John Asuncion (Dr. Asuncion).¹¹

The Joint Acknowledgment in the Last Will and Testament read:

JOINT ACKNOWLEDGMENT

BEFORE ME, a notary public for and in the City of Laoag, Philippines, this 9th day of September, 2001, personally appeared:

The testator, SEVERINO CABRALES, with Community Tax Certificate No. 06002287 dated January 2, 2001, issued in Laoag City;

Witness, DR. JUSTINO G. BALINTONA, with Community Tax Certificate No. _____ dated _____[;]

Witness, MRS. MARY B. BALINTONA, with Community Tax Certificate No. 06030819 dated April 10, 2001[;]

Witness, DR. ELIEZER ASUNCION, with Community Tax Certificate No. 08214902 dated January 6, 2001;

Witness, MRS. ROSALINDA F. CU, with Community Tax Certificate No. 06022789 dated 03, 18, 2001[;] (*sic*)

All known to me to be the same persons who signed the foregoing will, the first as testator and the last four as instrumental witnesses, and they respectively acknowledged to me that they signed the same as their own free act and deed.

This Will consists of three (3) pages, including this page of the acknowledgment, and has been signed on the left hand margin of the first and third pages and above their respective names on the second page, by the testator and his witnesses and sealed with my notarial seal.

¹⁰ Id. at 28-29.

¹¹ Id. at 29. The Court of Appeals spelled Eliezer as "Elizer."

IN WITNESS HEREOF, I have hereunto set my hand the, [sic] month, year and place above written.

[sgd]
BERNARDO T. CONSTANTINO
Notary Public¹²

Fernando immediately spoke to Dr. Asuncion, who told him that Rene Ferrer, Jr. (Ferrer), Saliganan's son-in-law, had gone to his clinic and asked him to sign the document. Dr. Asuncion did as asked, having known Ferrer as a member of his motorcycle club. He also told Fernando that only he, Ferrer, and some patients were present when he signed the document.¹³

In his defense, Atty. Constantino alleged that Severino had been of sound mind and could walk with a cane when he started visiting Atty. Constantino to prepare his Last Will and Testament. Atty. Constantino had advised him to bring a listing of his assets and properties, with which Severino complied.¹⁴

Atty. Constantino further alleged that when he asked Severino why he was executing a will, Severino told him that he wanted his only child, Saliganan, to have his properties since Fernando was going around claiming to be his son. Atty. Constantino claimed that Severino had also admitted promising to bequeath Fernando all his properties in Solsona, Ilocos Norte, provided that Saliganan approve of it.¹⁵

Atty. Constantino further narrated that in the morning of September 9, 2001, he brought three (3) typed copies of the Last Will and Testament to Severino's house for signing. Together in the room were Severino, Atty. Constantino, his wife Editha and son Bernard Christian, the Balintona Spouses, Cu, Saliganan, and one (1) other person.¹⁶

Atty. Constantino stated that Severino's hands were trembling as he attempted to sign the first page of the document, so he asked Saliganan to hold his wrist to sign all three (3) copies. The three (3) instrumental witnesses present—the Balintona Spouses and Cu—then signed the document, after which Atty. Constantino affixed his signature. Upon seeing a stamp pad nearby, Atty. Constantino asked Severino if he would like to place his thumbmark on the documents. Severino agreed and again asked Saliganan to assist him.¹⁷

¹² Id. at 54. The trial court noted that the Joint Acknowledgment does not contain Dr. Balintona's Community Tax Certificate Number and its date of issuance; thus, it was left blank.

¹³ Id. at 29.

¹⁴ Id. at 30.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 31.



Addressing the absence of Dr. Asuncion, whose name was indicated as an instrumental witness, Atty. Constantino assured Severino that only three (3) witnesses were needed for the document. He then allegedly instructed Severino to leave the document as it was and “not make any erasures or crossing-out on it [in] order not to make it dirty.”¹⁸ Atty. Constantino took a copy of the document and gave the other two (2) to Severino.¹⁹

On his way out, Atty. Constantino alleged that Saliganan took his copy of the document, telling him that Dr. Asuncion had already arrived. Sometime later, Saliganan returned the copy, but Atty. Constantino stated that he did not check if Dr. Asuncion had signed it.²⁰

In its November 28, 2013 Judgment,²¹ the Regional Trial Court found Atty. Constantino guilty beyond reasonable doubt of falsification of a public document under Article 171(2) of the Revised Penal Code. It pointed out that while only a photocopy of the allegedly falsified document was presented, the parties nonetheless did not dispute its execution.²² The trial court, however, found that the prosecution failed to establish that Severino had not been of sound mind when the Last Will and Testament was executed.²³

Nonetheless, the trial court found Atty. Constantino liable for making it appear that Dr. Asuncion appeared before him and witnessed the execution of the Last Will and Testament. It ruled that Atty. Constantino should have been aware of the legal consequences to leaving Dr. Asuncion’s name on the document despite his absence.²⁴

Likewise, the trial court cited the 2004 Rules on Notarial Practice, which prohibited notaries public from notarizing incomplete documents or false information. It pointed out that removing Dr. Asuncion’s name from the document was easy and could have been accomplished within minutes. Thus, it did not give credence to Atty. Constantino’s defense that he instructed Severino not to make any markings on the document.²⁵

Moreover, the trial court considered Atty. Constantino’s failure to immediately surrender to authorities as indicative of his guilt, as he only

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 45–61.

²² Id. at 50–51.

²³ Id. at 52–53.

²⁴ Id. at 54–56.

²⁵ Id. at 56–58.

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posted bail two (2) years after warrants of arrest had been issued.²⁶

The dispositive portion of the Regional Trial Court Judgment read:

WHEREFORE, the accused Atty. Bernardo Constantino is found GUILTY beyond reasonable doubt of Falsification of Public Document under Article 171 (2) of the Revised Penal Code and is sentenced to an indeterminate penalty ranging from two years of *prision correccional* as minimum to eight years and one day of *prision mayor* as maximum. He is also ordered to pay a fine of three thousand pesos (₱3,000.00). Costs against the said accused.

SO ORDERED.²⁷

Atty. Constantino appealed before the Court of Appeals.²⁸

In its January 19, 2016 Decision,²⁹ the Court of Appeals affirmed the Decision of the Regional Trial Court.

Agreeing with the trial court, the Court of Appeals found that Atty. Constantino could have easily removed Dr. Asuncion's name if he believed in good faith that only three (3) witnesses were needed. Instead, the Court of Appeals pointed out that Atty. Constantino made it appear as if Dr. Asuncion were present before him as a witness. It also noted his testimony that he knew Dr. Asuncion would still want to sign the document, which was why he gave his copy to Saliganan. It held that Atty. Constantino should have checked the copy when it was returned to him.³⁰

The Court of Appeals, likewise, affirmed the trial court's finding that Atty. Constantino's failure to immediately surrender was a manifestation of his guilt, as he had no persuasive reason to do so.³¹

Atty. Constantino moved for reconsideration, but his Motion was denied in the Court of Appeals June 9, 2016 Resolution.³² Hence, he filed this Petition.³³

²⁶ Id. at 58.

²⁷ Id. at 61.

²⁸ Id. at 32.

²⁹ Id. at 27-41.

³⁰ Id. at 36.

³¹ Id. at 39.

³² Id. at 43-44.

³³ Id. at 5-25. Respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment (*rollo*, pp. 93-111) on November 14, 2016. This Court did not order petitioner to reply to the Comment; nonetheless, he filed a Reply (*rollo*, pp. 113-121) on January 11, 2017. Both pleadings were noted by this Court in its February 13, 2017 Resolution (*rollo*, p. 123).

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Petitioner claims that it would have been difficult for him to remove Dr. Asuncion's name at the time of signing. Due to his muscular dystrophy, he had to be accompanied by his wife and two (2) sons to climb to the second floor of the house. Additionally, there was no typewriter, clerk, or typist in Severino's house for the corrections to be done. Petitioner also alleges that he wanted the notarization to be made in Severino's residence to honor the testator's wish. Then and there, he asserts, he notarized the document to avoid going up the steep stairway again.³⁴

Petitioner argues that precisely due to his physical condition, he has relied on his secretary to file the office documents. As such, he was not able to check the Last Will and Testament when Saliganan returned it to his secretary. While he admits that he had been negligent for failing to cross out Dr. Asuncion's name in the document, he asserts that it should not be taken against him, but on Dr. Asuncion, who admitted to signing the document without reading it.³⁵

Petitioner, likewise, explains that his failure to immediately surrender was due to his failing health and his wife being abroad to take care of their two (2) daughters. He alleges that as litigation had started in 2008, Saliganan assured him on the phone not to worry as she was trying to settle the case as a family misunderstanding, which was why he did not pay attention to the case.³⁶

The Office of the Solicitor General, on the other hand, claims that petitioner raises questions of fact improper in a Rule 45 petition.³⁷ Maintaining that there was no error in the finding of guilt, it asserts that all the elements of the crime of falsification of a public document under Article 171(2) of the Revised Penal Code were duly proven by the evidence on record.³⁸ However, it requests that this Court impose with leniency any penalty it will have ruled due to petitioner's advanced age and physical condition.³⁹

In rebuttal, petitioner contends that there are recognized exceptions to Rule 45 that apply to this case, considering that his conviction was "overtly based on conjectures, presumptions[,] and speculations, not proof beyond reasonable doubt[.]"⁴⁰

³⁴ Id. at 11-12.

³⁵ Id. at 13-14.

³⁶ Id. at 18-19.

³⁷ Id. at 98-99.

³⁸ Id. at 100-108-A.

³⁹ Id. at 109.

⁴⁰ Id. at 117.

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The issue for this Court's resolution is whether or not the prosecution has proven beyond reasonable doubt that petitioner Atty. Bernardo T. Constantino was guilty of falsifying a public document under Article 171(2) of the Revised Penal Code.

Before this issue can be passed upon, however, this Court must first address the procedural question of whether the Petition presents questions of fact not cognizable in a petition for review on certiorari under Rule 45 of the Rules of Court.

I

The Constitution guarantees that an accused is presumed innocent until the contrary is proven.⁴¹ Thus, every conviction requires no less than proof beyond reasonable doubt. Rule 133, Section 2 of the Rules of Court provides:

SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The burden of proof rests with the prosecution. Guilt must be founded on the strength of the prosecution's evidence, not on the weakness of the defense.⁴² Reasonable doubt on the evidence presented will result in an acquittal. In *People v. Capili*:⁴³

Proof beyond reasonable doubt is needed to overcome the presumption of innocence. Accused-appellant's guilt must be proved beyond reasonable doubt[;] otherwise, the Court would be left without any other recourse but to rule for acquittal. Courts should be guided by the principle that it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.⁴⁴

In criminal cases, courts must evaluate the evidence in relation to the elements of the crime charged. Thus, the finding of guilt is always a question of fact.⁴⁵

⁴¹ CONST., art. III, sec. 14(2).

⁴² See *People v. Macasinag*, 255 Phil. 279 (1989) [Per J. Cruz, First Division].

⁴³ 388 Phil. 1026 (2000) [Per J. Melo, En Banc].

⁴⁴ Id. at 1037 citing *People v. Reyes*, 158 Phil. 342 (1974) [Per J. Fernando, Second Division] and *People vs. Maliwanag*, 157 Phil. 313 (1974) [Per J. Esguerra, First Division].

⁴⁵ See *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

The Petition before this Court, however, is one filed under Rule 45 of the Rules of Court. Rule 45 mandates that only questions of law may be raised in a petition for review on certiorari.⁴⁶ Thus, this Court generally gives great respect to the factual findings of the trial court, which had the opportunity to observe the witnesses' demeanor during trial and assess their testimonies.⁴⁷

Considering that criminal cases involve the constitutional right to liberty and the constitutional guarantee of the presumption of innocence, appeals of criminal cases before this Court are not necessarily treated in the same manner as appeals in civil cases. In *Ferrer v. People*:⁴⁸

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.⁴⁹

Appeals of criminal cases confer upon the reviewing court full jurisdiction and render it competent to examine the records, revise the judgment from which an appeal arose, increase the penalty, and cite the appropriate penal law provision.⁵⁰

Thus, this Court may still review the factual findings of the trial court "if it is not convinced that [such findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses."⁵¹ Significant facts and circumstances may have been overlooked, which, if properly considered, could affect the result of the case.⁵²

Here, however, the factual findings are not disputed. Severino executed a Last Will and Testament on September 9, 2001, which was notarized by petitioner. The Joint Acknowledgment indicated that the Balintona Spouses, Cu, and Dr. Asuncion were all present as witnesses and personally appeared before petitioner. This makes it appear that Dr. Asuncion signed the document in the presence of petitioner when, in reality, he did not. It was later discovered that Dr. Asuncion signed it *after* it had been notarized. Neither party disputes this sequence of events.

⁴⁶ RULES OF COURT, Rule 45, sec. 1.

⁴⁷ *People v. Macasinag*, 255 Phil. 279, 281 (1989) [Per J. Cruz, First Division].

⁴⁸ 518 Phil. 196 (2006) [Per J. Austria-Martinez, First Division].

⁴⁹ *Id.* at 220 *citing Aradillos v. Court of Appeals*, 464 Phil. 650 (2004) [Per J. Austria-Martinez, Second Division].

⁵⁰ *Lamsen v. People*, G.R. No. 227069, November 22, 2017, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63743>> [Per J. Perlas-Bernabe] *citing People v. Comboy*, 782 Phil. 187 (2016) [Per J. Perlas-Bernabe, First Division].

⁵¹ *People v. Macasinag*, 255 Phil. 279, 281 (1989) [Per J. Cruz, First Division].

⁵² *People v. Ortiz*, 334 Phil. 590, 601 (1997) [Per J. Francisco, Third Division].

The prosecution's theory, however, is that a falsity in a public document occurred because petitioner failed to delete Dr. Asuncion's name in the Joint Acknowledgment. Petitioner's main defense, on the other hand, is that he ordered the testator, Severino, not to delete Dr. Asuncion's name. This Court is, thus, confronted with the legal question of whether petitioner, as a notary public, falsified a public document, punishable under Article 171(2) of the Revised Penal Code, when he failed to delete Dr. Asuncion's name in the Joint Acknowledgment upon notarization.

II

Before one can be held criminally liable for falsification of public documents, it is essential that the document allegedly falsified is a public document.

Public documents are defined in *Cacnio v. Baens*⁵³ as "those instruments authorized by a notary public or by a competent public official with all the solemnities required by law[.]"⁵⁴ By this definition, any notarized document is considered a public document.

Rule 132, Section 19 of the Rules of Court, however, provides:

SECTION 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public *except last wills and testaments*; and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis supplied)

Notarization confers a public character upon private documents so that, for the purposes of admissibility in court, no further evidence is required to prove the document's authenticity.⁵⁵ The notary public swears to the truth of the document's contents and its due execution. In *Antillon v.*

⁵³ 5 Phil. 742 (1906) [Per J. Torres, En Banc].

⁵⁴ Id. at 745.

⁵⁵ See *Joson v. Baltazar*, 271 Phil. 880 (1991) [Per J. Feliciano, Third Division].

Barcelon.⁵⁶

The principal function of a notary public is to authenticate documents. When a notary public certifies the due execution and delivery of a document under his hand and seal he thereby gives such a document the force of evidence.

....

Indeed, one of the very purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given in evidence without further proof of their execution and delivery.⁵⁷

Thus, notaries public are cautioned to take due care in notarizing documents to ensure the public's confidence in notarized documents. In *Ramirez v. Ner*.⁵⁸

A notarial document is by law entitled to full faith and credit upon its face, and for this reason notaries public must observe the utmost care to comply with the elementary formalities in the performance of their duties. Otherwise the confidence of the public in the integrity of this form of conveyancing would be undermined.⁵⁹

Under the Rules on Evidence, notarized documents are clothed with the presumption of regularity; that is, that the notary public had the authority to certify the documents as duly executed. A last will and testament, however, is specifically excluded from the application of Rule 132, Section 19 of the Rules of Court. This implies that when the document being presented as evidence is a last will and testament, further evidence is necessary to prove its due execution, whether notarized or not.

A last will and testament is a "species of conveyance whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate after his death."⁶⁰ A notarial will is one that is "acknowledged before a notary public by a testator and the attesting witnesses[.]"⁶¹ Moreover, Article 806 of the Civil Code provides:

ARTICLE 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be

⁵⁶ 37 Phil. 148 (1917) [Per J. Johnson, First Division].

⁵⁷ Id. at 153 citing 29 Cyc., 1076; *Bradley v. Northern Bank*, 60 Ala., 252; John's American Notaries, sec. 168; *Bowman v. Wettig*, 39 Ill., 416; and *Harrington v. Fish*, 10 Mich., 415.

⁵⁸ 128 Phil. 221 (1967) [Per J. Makalintal, En Banc].

⁵⁹ Id. at 224.

⁶⁰ *Caneda v. Court of Appeals*, 294 Phil. 801, 810 (1993) [Per J. Regalado, First Division] citing *Riera v. Palmanori*, 40 Phil. 116 (1919) [Per J. Street, First Division] and CIVIL CODE, art. 810.

⁶¹ Id.

required to retain a copy of the will, or file another with the office of the Clerk of Court.

This acknowledgment is embodied in an attestation clause at the end of the instrument. An attestation clause, in *Caneda v. Court of Appeals*,⁶² is:

. . . that part of an ordinary will whereby the attesting witnesses certify that the instrument has been executed before them and to the manner of the execution of the same. It is a separate memorandum or record of the facts surrounding the conduct of execution and once signed by the witnesses, it gives affirmation to the fact that compliance with the essential formalities required by law has been observed. It is made for the purpose of preserving in a permanent form a record of the facts that attended the execution of a particular will, so that in case of failure of the memory of the attesting witnesses, or other casualty, such facts may still be proved.⁶³

By this definition, the formalities required by law to prove a notarial will's authenticity do not pertain to the notarization, but to the *attestation and subscription* of the testator and the attesting witnesses. In *Caneda*, this Court further explained:

[T]he subscription of the signatures of the testator and the attesting witnesses is made for the purpose of authentication and identification, and thus indicates that the will is the very same instrument executed by the testator and attested to by the witnesses.

Further, by attesting and subscribing to the will, the witnesses thereby declare the due execution of the will as embodied in the attestation clause. The attestation clause, therefore, provides strong legal guaranties for the due execution of a will and to insure the authenticity thereof. As it appertains only to the witnesses and not to the testator, it need be signed only by them. Where it is left unsigned, it would result in the invalidation of the will as it would be possible and easy to add the clause on a subsequent occasion in the absence of the testator and the witnesses.⁶⁴

Hence, an authentic attestation clause must not only contain the names of the instrumental witnesses. Mere mention of their names in the attestation clause will not accurately represent the fact of their attestation and subscription. Instead, the instrumental witnesses must also *sign* the instrument before it is notarized by the notary public.

⁶² 294 Phil. 801 (1993) [Per J. Regalado, First Division].

⁶³ Id. at 811–812 citing *Testate Estate of Paula Toray v. Abaja*, 87 Phil. 139 (1950) [Per J. Reyes, En Banc]; *Vda. de Ramos, et al. v. Court of Appeals et al.*, 171 Phil. 354 (1978) [Per J. Guerrero, First Division]; and *Leynez v. Leynez*, 68 Phil. 745 (1939) [Per J. Laurel, First Division].

⁶⁴ Id. at 812-813 citing *Testate Estate of Paula Toray v. Abaja*, 87 Phil. 139 (1950) [Per J. Reyes, En Banc]; *Gonzales v. Gonzales de Carungcong*, 90 Phil. 444 (1951) [Per C.J. Paras, En Banc]; *Echevierria v. Sarmiento*, 66 Phil. 611 (1938) [Per J. Concepcion, En Banc]; *Abangan v. Abangan*, 40 Phil. 476 (1919) [Per J. Avanceña, First Division]; and *Cagro v. Cagro*, 92 Phil. 1032 (1953) [Per C.J. Paras, En Banc].

Here, petitioner was found guilty beyond reasonable doubt of violating Article 171(2) of the Revised Penal Code. The provision reads:

ARTICLE 171. *Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister.* — The penalty of *prisión mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

....

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate[.]

There is falsification of a public document when the public document is simulated “in a manner so as to give it the appearance of a true and genuine instrument, thus, leading others to errors as to its authenticity[.]”⁶⁵ Moreover, “[w]hat is punished in falsification of public document is principally the undermining of the public faith and the destruction of truth as solemnly proclaimed therein.”⁶⁶

When a notary public falsifies a public document, his or her act effectively undermines the public’s trust and reliance on notarized documents as evidence. Thus, he or she is held criminally liable for the offense when the falsity committed leads others to believe the document was authentic when it is not.

In falsification of public documents under Article 171(2) of the Revised Penal Code, the prosecution must prove that these elements exist:

1. That the offender is a public officer, employee, or notary public.
2. That he takes advantage of his official position.
3. That he falsifies a document by causing it to appear that persons have participated in any act or proceeding.
4. That such person or persons did not in fact so participate in the proceeding.⁶⁷

Here, the first element has already been proven since both the prosecution and the defense stipulate that petitioner is a notary public. The

⁶⁵ *Goma v. Court of Appeals*, 596 Phil. 1, 13 (2009) [Per J. Velasco, Jr., Second Division] citing *Re: Fake Decision Allegedly in G.R. No. 75242*, 491 Phil. 539 (2005) [Per J. Callejo, Sr., En Banc].

⁶⁶ *Id.* citing *Lastrilla v. Granda*, 516 Phil. 667 (2006) [Per J. Puno, Second Division]; *Lumancas v. Intas*, 400 Phil. 785 (2000) [Per J. Bellosillo, Second Division]; and *Luague v. Court of Appeals*, 197 Phil. 784 (1982) [Per J. Abad Santos, Second Division].

⁶⁷ *Id.* at 10 citing 2 L.B. REYES, THE REVISED PENAL CODE (15th ed., 2001).

second element is presumed when the alleged falsity committed by the notary public pertains to the notarization, since only notaries public have the duty and authority to notarize documents.

Thus, the elements that remain to be proven by the prosecution are: (1) that petitioner falsified a document “by causing it to appear that persons have participated in any act or proceeding”; and (2) that “such person or persons did not in fact so participate in the proceeding.”⁶⁸

The due execution of a notarized will is proven through the validity of its attestation clause. The prosecution must prove that either the testator could not have authored the instrument, or the instrumental witnesses had no capacity to attest to the due execution of the will. This requires that the notary public must have falsified or simulated the signatures appearing on the attestation clause.

Here, petitioner was found to have falsely certified in the Joint Acknowledgment that Dr. Asuncion was an instrumental witness to the execution of Severino’s Last Will and Testament since he did not sign it in petitioner’s presence.

The trial court and the Court of Appeals, however, disregarded one crucial detail from its finding of facts: Dr. Asuncion signed the Joint Acknowledgment *after* it was notarized by petitioner.

Based on the findings of the trial court, at the time petitioner notarized the Last Will and Testament, only three (3) witnesses had signed it. The trial court, however, did not make any finding that petitioner had falsified the participation of the three (3) witnesses who attested and subscribed to its due execution. It likewise found that Dr. Asuncion signed the document at the urging of Saliganan’s son-in-law, Ferrer, and that petitioner seemed unaware that Dr. Asuncion later signed the document. Dr. Asuncion also admitted that his signature was genuine and that he was aware of what he was signing.

Since Dr. Asuncion did not sign the Joint Acknowledgment before it was notarized, *he cannot be considered as having attested and subscribed to its due execution at the time of its notarization.* Thus, when petitioner certified that the persons who attested and subscribed to the document were present before him, there could have been no falsity. It was not petitioner who made it appear that Dr. Asuncion participated in the execution of the Joint Acknowledgment, but Ferrer and Dr. Asuncion himself. Petitioner, therefore, must be acquitted.

⁶⁸ Id.

Nonetheless, while petitioner's acts may be inadequate to find him criminally liable, he may still be liable for administrative sanctions.

Petitioner's failure to cross out Dr. Asuncion's name when he notarized the Joint Acknowledgment has allowed Dr. Asuncion to still sign the document despite not having participated in its due execution. This is the mischief being guarded against in disallowing notaries public to notarize incomplete documents. Rule XI, Section 1(b)(9), in relation to Rule IV, Section 5⁶⁹ of the 2004 Rules on Notarial Practice, states:

RULE XI

Revocation of Commission and Disciplinary Sanctions

SECTION 1. Revocation and Administrative Sanctions. — . . .

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

....

(9) executes a false or incomplete certificate under Section 5, Rule IV[.]

To be sure, the incidents here occurred in 2001, or before the 2004 Rules on Notarial Practice was promulgated. While the previous Notarial Law⁷⁰ did not contain a provision on false and incomplete certificates, this Court has already cautioned notaries public from notarizing incomplete documents even before the applicability of the 2004 Rules on Notarial Practice. In *Bote v. Eduardo*:⁷¹

Respondent [notary public] was . . . negligent when he notarized the deed with unfilled spaces and incomplete entries, making uncertified and fraudulent insertions easy to accomplish. Notarization is not an empty, meaningless, routinary act. It is invested with such substantial public interest that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity. For this reason, notaries must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.⁷²

⁶⁹ RULES ON NOTARIAL PRACTICE (2004), Rule IV, sec. 5 provides:

SECTION 5. False or Incomplete Certificate. — A notary public shall not:

(a) execute a certificate containing information known or believed by the notary to be false.

(b) affix an official signature or seal on a notarial certificate that is incomplete.

⁷⁰ REV. ADM. CODE (1917), title IV, ch. II.

⁷¹ 491 Phil. 198 (2005) [Per J. Quisumbing, First Division].

⁷² Id. at 203 citing *Tabas v. Mangibin*, 466 Phil. 296 (2004) [Per J. Quisumbing, Second Division]; *Zaballero v. Montalvan*, 473 Phil. 18 (2004) [Per J. Tinga, Second Division]; and *Ocampo-Ingcoco v. Yrreverre, Jr.*, 458 Phil. 803 (2003) [Per J. Callejo, Sr., Second Division].

WHEREFORE, the Petition is **GRANTED**. The January 19, 2016 Decision and June 9, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36327 are **REVERSED** and **SET ASIDE**. Petitioner Atty. Bernardo T. Constantino is **ACQUITTED** of the crime of falsification of a public document, and the bail bond posted for his provisional liberty is ordered canceled.

Let a copy of this Decision be furnished to the Office of the Bar Confidant for the filing of the appropriate administrative action.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice
Chairperson



ANDRES B. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

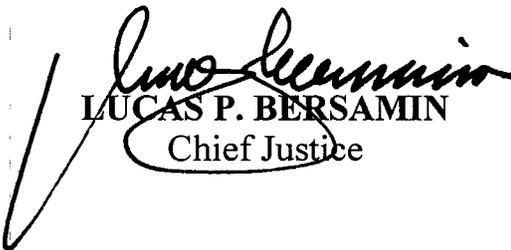
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPIDAN
Division Clerk of Court
Third Division
JUL 16 2019