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FIRST DIVISION

[G.R. No. 120787, October 13, 2000]

CARMELITA G. ABRAJANO, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

R E S O L U T I O N

KAPUNAN, J.:

On January 4, 1993, the Regional Trial Court (RTC) of Manila convicted petitioner Carmelita Gilbuena-Abrajano of Bigamy,[1] which conviction was subsequently affirmed by the Court of Appeals (CA). Petitioner pleaded her innocence before this Court, but we denied her petition for review. After taking a second hard look, we now grant her a new trial.

The facts upon which petitioner's conviction rests, as gathered from the decisions of the courts below, are as follows:

The killing of Atty. Jose J. Alfane of the Citizens Legal Assistance Office (CLAO) on June 11, 1983 prompted the National Bureau of Investigation (NBI) to look into the possible complicity of Atty. **Carmelita** Gilbuena-Abrajano, a lawyer from the same office. During the investigation, CLAO furnished the NBI with a Memorandum dated July 21, 1983 addressed to the Minister of Justice and signed by Atty. Marcial Lagunzad, CLAO Officer-in-Charge. The Memorandum recommended the termination of Carmelita's services for immorality, among other grounds. Attached as annexes to the Memorandum were several documents, including certified copies of two marriage contracts. The first marriage contract,[2] dated January 3, 1968, was by and between Mauro Espinosa, the principal suspect in the killing of Atty. Alfane, and a certain **Carmen** Gilbuena. The second,[3] dated June 21, 1974, was by and between Roberto Abrajano and **Carmelita** Gilbuena. Likewise attached to the Memorandum was Carmelita's Personal History Statement that she had previously submitted to the Ministry of Justice.

From these documents, the NBI concluded that a prima facie case for bigamy against petitioner existed. They inferred that Atty. **Carmelita** Gilbuena, who contracted marriage with Roberto Abrajano on June 21, 1974, is the same person as **Carmen** Gilbuena who married Mauro Espinosa on January 3, 1968, since:

First, Carmelita and Carmen have the same set of parents (Filomeno Gilbuena and Adelaida Juangco), as stated in both Carmelita and Carmen's respective marriage contracts.

Second, Carmelita declared in her Personal History Statement, which she had previously submitted to the Ministry of Justice, that her date of birth is November 9, 1948. When Carmen married Mauro Espinosa on January 3, 1968, Carmen, according to their marriage contract, was 19 years and 1 month old, then about the

same age as Carmelita.

Third, in the same Personal History Statement, Carmelita listed her brothers and sisters, none of whom was named "Carmen."

Charged with bigamy before the Manila RTC, petitioner attempted to dispel the theory that she and Carmen Gilbuena are the same person. In her testimony, she claimed that Carmen is her half-sister, the daughter of her father with another woman. Petitioner also offered in evidence a Birth Certificate[4] to prove that her true name is "Carmelita."

Petitioner likewise presented Josefina L. dela Cruz, a document examiner from the Philippine National Police Crime Laboratory. Ms. dela Cruz examined the signature of Carmen Gilbuena appearing in the marriage contract dated January 3, 1968, and that of Carmelita Gilbuena in the marriage contract dated June 21, 1974, as well as petitioner's specimen handwritings. From said examination, Ms. dela Cruz concluded that the signature appearing in the marriage contract of Carmen Gilbuena, on one hand, and the signature of Carmelita appearing in the marriage contract dated June 21, 1974, on the other, were made by two different persons.

The RTC was not impressed with petitioner's defense, however. The fact that Carmen Gilbuena had approximately the same age and set of parents as that of the accused, as reflected in the two marriage certificates, was deemed by the RTC as too much of a coincidence. It concluded that Carmen and Carmelita are indeed one and the same person.

The trial court faulted petitioner for not presenting corroborative evidence to prove the existence of Carmen Gilbuena. Further, the failure of the accused to refute the contents of the Memorandum recommending her dismissal from the Ministry of Justice for contracting a second marriage while the first was still subsisting was also deemed by the trial court as an admission by silence.

The RTC did not put too much stock on the findings of petitioner's handwriting expert, holding that:

> x x x inasmuch as the specimen handwritings submitted by the accused are undated, and there is absolutely no showing on their faces that they were indeed written by the accused herself sometime in the past, said specimen handwritings are at most self-serving that this Court would not swallow them hook, line and sinker. They are handwritings made on pieces of documents, their origin of which were not explained to the satisfaction of the Court. Their credibility as the handwriting of the accused is not at all shown other than the mere assertion of the accused herself.
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> For the reason that said specimen handwritings were not fully established to be that of the accused written on or at the time the questioned signature was also written, the "significant divergences in handwriting movement, stroke, structures, quality of line, pen lift, spacing and other individual handwriting characteristics" would naturally be found by the Document Examiner.

> An examination by this Court of the signature reading "Carmen J. Gilbuena" on Exhibit "B" and the signature reading "Carmelita J. Gilbuena" on Exhibit "D" shows that there is a visible general resemblance between the two signatures. The general resemblance which the Court observes is still visible, notwithstanding the gap of about 6 years between the time the first signature was affixed and that of the second. In the case of Alcos vs. Intermediate Appellate Court, 162 SCRA 823, it was ruled that the Court can by itself also examine questioned documents.[5]

Consequently, the RTC found petitioner guilty of Bigamy and sentenced her to suffer the penalty of imprisonment for six (6) years and one (1) day to eight (8) years of *prision mayor*.

In a Decision dated May 11, 1995, the Court of Appeals affirmed the decision of the RTC. Petitioner's motion for reconsideration was denied for lack of merit in a Resolution dated June 22, 1995.

Petitioner sought the reversal of the Court of Appeals' decision and resolution by filing a petition for review on August 14, 1995 in this Court.

The Court, in a Resolution dated September 20, 1995, denied the petition thus:

> Considering the allegations, issues and arguments adduced in the petition for review on *certiorari* of the decision and resolution of the Court of Appeals, the Court Resolved to **DENY** the petition for being factual and for failure of the petitioner to sufficiently show that the respondent court had committed any reversible error in rendering the questioned judgment.[6]

Subsequently, on January 31, 1996, the Court issued a resolution stating:

> It appearing that a copy of the resolution of September 20, 1995 denying the petition for review on certiorari addressed to counsel for petitioner was returned unserved with notation "unclaimed," the Court Resolved to consider aforesaid resolution as *SERVED*.[7]

On February 23, 1996, this Court's resolution denying the petition for review became final and executory. Entry of judgment was made on April 12, 1996.[8]

Apparently unaware of the resolution denying her petition and of the subsequent entry of judgment, petitioner on July 15, 1996 filed a motion for leave to admit the supplemental petition attached therewith.

The Court, in a Resolution[9] dated August 5, 1996, denied the motion for leave to admit supplemental petition in view of the denial of the petition, and the entry of judgment. Considering the denial of the motion for leave, the Court merely noted without action petitioner's supplemental petition.

On August 6, 1996, petitioner moved for a reconsideration of the September 20, 1995 Resolution denying her petition. On September 18, 1996, the Court issued a resolution[10] noting without action said motion since entry of judgment was already

made.

On January 7, 1998 petitioner filed an "Omnibus Motion," which the Court, on March 4, 1998, also resolved to note without action.

On the same date, the Office of then Chief Justice Andres R. Narvasa received a letter from petitioner reiterating her innocence and praying for the Chief Justice's kind intercession. On March 11, 1998, the Court, without setting aside the entry of judgment, resolved to require the Solicitor General to comment on petitioner's letter. After several motions for extensions, the Solicitor General complied, and filed his Comment. This was followed by a Reply from petitioner.

We shall resolve petitioner's Omnibus Motion.

Petitioner prays that the Court vacate the entry of judgment and set aside the judgment of conviction on grounds of reasonable doubt. In the alternative, she asks that the Court remand the case to the trial court so that petitioner may prove her innocence by means of additional evidence.

Petitioner's prayer to vacate the entry of judgment is granted.

Before the latest revision of the Rules of Civil Procedure, Section 8, Rule 13[11] read as follows:

> *Completeness of service.* - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time. (Underscoring supplied.)

Aguilar vs. Court of Appeals[12] restated the well-settled principles relating to this provision:

> The general rule is that service by registered mail is complete upon actual receipt thereof by the addressee. The exception is where the addressee does not claim his mail within five (5) days from the date of the first notice of the postmaster, in which case the service takes effect upon the expiration of such period.
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> Inasmuch as the exception only refers to constructive and not actual service, such exception must be applied upon conclusive proof that a first notice was duly sent by the postmaster to the addressee. Not only is it required that notice of the registered mail be sent but that it should also be delivered to and received by the addressee. Notably, the presumption that official duty has been regularly performed is not applicable in the situation. It is incumbent upon a party who relies on constructive service or who contends that his adversary was served with a copy of a final order or judgment upon the expiration of five days from the first notice of registered mail sent by the postmaster to prove that the first notice was sent and delivered to the addressee.

> The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery was made. The mailman may also testify that the notice was actually delivered.

Aguilar also illustrated how these principles operate by citing previous cases:

> In *Barrameda v. Castillo*, we again faulted the trial court for applying the presumption as to constructive service `literally and rigidly, and failing to require the adverse party to present the postmaster's certification that a first notice was sent to opposing party's counsel and that notice was received. The envelope containing the unclaimed mail was presented in court. On its face, the envelope bore the notation "Returned to sender. Reason: Unclaimed.' On the back-side of the envelope bore the legend `City of San Pablo, Philippines, Jan. 29, 1966' with the dates `2-3-66 and 2-9-66,' and `R to S, notified 3/3/66.' We stated that the mere exhibition in court of the envelope containing the unclaimed mail is not sufficient proof that a first notice was sent.
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> In *De la Cruz v. De la Cruz*, we held as error the trial court's mere reliance on the notations on the envelope of the returned order consisting of `R & S,' `unclaimed' and the stamped box with the wordings `2nd notice' and `last notice' indicating that the registered mail was returned to sender because it was unclaimed in spite of the notices sent by the postmaster to the addressee. No other proof of actual receipt of the first notice was presented in court.
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> In another case, *Johnson & Johnson (Phils.), Inc. v. Court of Appeals*, petitioners assailed the following resolution of the appellate court:
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> > Considering that the copy of the resolution dated November 29, 1990 served upon counsel for respondent was returned unclaimed on January 3, 1991, and afterwards the same copy sent to the private respondent itself at given address was likewise returned unclaimed on February 28, 1991, the Court RESOLVED to DECLARE service of the said resolution upon the private respondent complete as of February 28, 1991, pursuant to Sec. 8, Rule 13, Rules of Court.
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> We held that the Court of Appeals erred in ruling that therein petitioner had been duly served with a copy of the assailed resolution, as there was utter lack of sufficient evidence to support the appellate court's conclusion. Nothing in the records showed how, when, and to whom the delivery of the registry notices of the registered mail addressed to petitioner was made and whether said notices were received by the petitioner. The envelope containing the unclaimed mail merely bore the notation `return to sender: unclaimed' on its face and `Return to: Court of Appeals' at the back. We concluded that the respondent court should not have relied solely on these notations to support the presumption of constructive service, and accordingly, we sent aside the questioned