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FIRST DIVISION

[G.R. No. L-37453. May 25, 1979]

RIZALINA GABRIEL GONZALES, *petitioner, vs.* **HONORABLE COURT OF APPEALS and LUTGARDA SANTIAGO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE NOT REVIEWABLE.** — The factual findings of the Court of Appeals are not reviewable the same being binding and conclusive on the Supreme Court, particularly where the premises are borne by the record or based upon substantial evidence. Assignments of errors involving factual issues cannot be ventilated in a review of the decision of the Court of Appeals because only legal question may be raised.

2. **CIVIL LAW; SUCCESSION; WILLS; ATTESTING WITNESSES; QUALIFICATIONS.** — Under the law, there is no mandatory requirement that the witnesses testify initially at any time during the trial as to his good standing in the community, his reputation for trustworthiness and reliability, his honesty and uprightness in order that his testimony may be believed and accepted by the trial court. It is enough that the qualifications enumerated in Article 820 of the Civil Code are complied with, such that the soundness of his mind can be shown by or deduced from his answers to the questions propounded to him, that his age (18 years or more) is shown from his appearance, testimony, or competently proved otherwise, as well as the fact that he is not blind, deaf or dumb and that he is able to read and write to the satisfaction of the court, and that he has none of the disqualifications under Article 821 of the Civil Code.

3. **ID.; ID.; ID.; ATTESTING WITNESSES ARE NOT CHARACTER WITNESSES.** — The instrumental witnesses are not character witnesses for they merely attest the execution of a will or testament and affirm the formalities attendant to said execution. The rulings concerning character witnesses in naturalization

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proceedings are not applicable to instrumental witnesses to wills executed under the Civil Code.

4. **ID.; ID.; ID.; CREDIBLE WITNESSES MEAN COMPETENT WITNESSES.** — "Credible witnesses" mean competent witnesses and not those who testify to facts from or upon hearsay. In the strict sense, the competency of a person to be an instrumental witness to a will is determined by the statute, that is Art. 820 and 821, Civil Code, whereas his credibility depends on the appreciation of his testimony and arises from the belief and conclusion of the court that said witness is telling the truth. It is not necessary to introduce prior and independent proof of the fact that the witnesses are "credible witnesses," that is, that they have a good standing in the community and reputed to be trustworthy and reliable.

5. **ID.; ID.; ID.; NOTARIAL WILLS, NATURE OF.** — A notarial will duly acknowledged by the testatrix and the witnesses before a notary public is a public document executed and attested through the intervention of the notary public and as such public document is evidence of the facts in clear, unequivocal manner *therein expressed. It has in its favor the presumption of* regularity. To contradict all these, there must be evidence that is clear, convincing the more than merely preponderant.

6. **ID.; ID.; ID.; ATTESTATION CLAUSE; PURPOSE.** — The attestation clause which the attesting witness signed is the best evidence as to date of signing because it preserves in permanent form a recital of all the material facts attending the execution of the will. This is the very purpose of the attestation clause which is made for the purpose of preserving in permanent form, a record of the facts attending the execution of the will, so that in case of failure in the memory of the subscribing witnesses, or other casualty they may still be proved.

7. **ID.; ID.; ID.; PHOTOGRAPHER NOT REQUIRED FOR EXECUTION OF WILL.** — The law does not require a photographer for the execution and attestation of the will. The fact that an attesting witness mistakenly identified the photographer scarcely detracts from her testimony that she was present when the will was signed because what matters here is not the photographer but the photograph taken which clearly portrays the attesting witnesses and her co-witnesses.

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8. REMEDIAL LAW; EVIDENCE; TESTIMONY; NOT AFFECTED BY MINOR INCONSISTENCIES. — The discrepancy in the description of the typewriter used by the notary which he described as "elite" which to him meant big letters which are of the type in which the will was typewritten but which was identified by an experts as "pica," and the mistake by the instrumental witness in mentioning the name of the photographer-these are unimportant details which could have been affected by the lapse of time and the treachery of human memory such as by themselves would not alter the probative value of the testimonies of the witnesses on the true execution of the will, for it cannot be expected that the testimony of every person will be identical and coinciding with each other with regard to details in an incident and that witnesses are not expected to remember all details.

9. ID.; CIVIL PROCEDURE; APPEAL; FINDINGS OF FACT OF TRIAL COURT; RULE NOT EXCEPTION. — The right of the Court of Appeals to review, alter and reverse the findings of the trial court where the appellate court, in reviewing the evidence has found that facts and circumstances of weight and influence have been ignored and overlooked and the significance of which have been misinterpreted by the trial court, cannot be disputed. Findings of facts made by the trial court, particularly when they are based on conflicting evidence whose evaluation hinges on questions of credibility of contending witnesses lies particularly within the province of trial courts and generally, the appellate court should not interfere with the same, unless the trial court has overlooked and misinterpreted the facts and circumstances established in the record.

10. ID.; ID.; ID.; EXCEPTION TO THE RULE THAT JUDGMENT OF COURT OF APPEALS IS CONCLUSIVE AS TO FACTS. — Among the exceptions to the rule that the judgment of the Court of Appeals is conclusive as to the facts and cannot be reviewed by the Supreme Court are: (1) when the conclusion as a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of

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the case and the same is contrary to the admissions of both appellant and appellee.

11. CIVIL LAW; SUCCESSION; WILLS; DUE EXECUTION; WHEN ESTABLISHED. — Where the three instrumental witnesses, who constitute the best evidence of the will-making, as well as the lawyer who prepared it and who thereafter notarized it have testified in favor of the will, and where all of them are disinterested witnesses who stand to received no benefit from the testament, and the signatures of the witnesses and the testatrix have been identified on the will and there is no claim whatsoever and by any one, much less the petitioner that they are not genuine, the decision holding that the will was executed in accordance with the formalities required by law should be affirmed.

APPEARANCES OF COUNSEL

Francisco D. Rilloraza, Jr. for petitioner.
Angel A. Sison for private respondent.

D E C I S I O N

GUERRERO, *J.*:

This is a petition for review of the decision of the Court of Appeals, First Division,[1] promulgated on May 4, 1973 in CA-G. R. No. 36523-R which reversed the decision of the Court of First Instance of Rizal dated December 15, 1964 and allowed the probate of the last will and testament of the deceased Isabel Gabriel.

It appears that on June 24, 1961, herein private respondent Lutgarda Santiago filed a petition with the Court of First Instance of Rizal docketed as Special Proceedings No. 3617, for the probate of a will alleged to have been executed by the deceased Isabel Gabriel and designating therein petitioner as the principal beneficiary and executrix.

[1] Penned by then Acting Presiding Justice Juan P. Enriquez, concurred in by Associate Justices Mateo Canonoy and Ramon C. Fernandez.

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There is no dispute in the records that the late Isabel Andres Gabriel died as a widow and without issue in the municipality of Navotas, province of Rizal, her place of residence, on June 7, 1961 at the age of eighty-five (85), having been born in 1876. It is likewise not controverted that herein private respondent Lutgarda Santiago and petitioner Rizalina Gabriel Gonzales are nieces of the deceased, and that private respondent, with her husband and children, lived with the deceased at the latter's residence prior and up to the time of her death.

The will submitted for probate, Exhibit "F", which is typewritten and in Tagalog, appears to have been executed in Manila on the 15th day of April, 1961, or barely two (2) months prior to the death of Isabel Gabriel. It consists of five (5) pages, including the pages whereon the attestation clause and the acknowledgment of the notary public were written. The signatures of the deceased Isabel Gabriel appear at the end of the will on page four and at the left margin of all the pages. The attestation clause, which is found on page four, reads as follows:

"*PATUNAY NG MGA SAKSI*

"*Kaming mga nakalagdang mga saksi o testigo na ang aming mga tinitirahan ay nakasulat sa gawing kanan at kahilira ng aming mga pangalan sa ibaba nito, ay pagpapatutuo na ipinakilala, ipinaalam at ipinahayag sa amin ni Isabel Gabriel na ang kasulatang ito na binubuo ng Limang Dahon* (Five Pages) *pati na ang dahong ito, na siya niyang TESTAMENTO AT HULING HABILIN, ngayong ika 15 ng Abril, 1961, ay nilagdaan ng nasabing testadora na si Isabel Gabriel ang nasabing testamento sa ibaba o ilalim ng kasulatan na nasa ika apat na dahon* (page four) *at nasa itaas ng patunay naming ito, at sa kaliwang panig ng lahat at bawat dahon* (and on the left hand margin of each and every page), *sa harap ng lahat at bawat isa sa amin, at kami namang mga saksi ay lumagda sa harap ng nasabing testadora, at sa harap ng lahat at bawat isa sa amin, sa ilalim ng patunay ng mga saksi at sa kaliwang panig ng lahat at bawa't dahon ng testamentong ito.*"

At the bottom thereof, under the heading "Pangalan," are written the signatures of Matilde D. Orobia, Celso D. Gimpaya and Maria R. Gimpaya, and opposite the same, under the heading "Tirahan," are their respective places of residence, 961 Highway

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54, Philamlife, for Miss Orobia, and 12 Dagala St., Navotas, Rizal, for the two Gimpayas. Their signatures also appear on the left margin of all the other pages. The will is paged by typewritten words as follows: "*Unang Dahon*" and underneath "(Page One)," "*Ikalawang Dahon*" and underneath "(Page Two)", etc., appearing at the top of each page.

The will itself provides that the testatrix desired to be buried in the Catholic Cemetery of Navotas, Rizal in accordance with the rites of the Roman Catholic Church, all expenses to be paid from her estate; that all her obligations, if any, be paid; that legacies in specified amounts be given to her sister, Praxides Gabriel *Vda. de* Santiago, her brother Santiago Gabriel, and her nephews and nieces, Benjamin, Salud, Rizalina (herein petitioner), Victoria, Ester, Andres, all surnamed Gabriel, and Evangelina, Rudyardo, Rosa, Andrea, Marcial, Numancia, Verena, all surnamed Santiago. The herein private respondent Lutgarda Santiago, who was described in the will by the testatrix as "*aking mahal na pamangkin na aking pinalaki, inalagaan at minahal na katulad ng isang tunay na anak*" and named as universal heir and executor, were bequeathed all properties and estate, real or personal, already acquired, or to be acquired, in her (testatrix's) name, after satisfying the expenses, debts and legacies as aforementioned.

The petition was opposed by Rizalina Gabriel Gonzales, herein petitioner, assailing the document purporting to be the will of the deceased on the following grounds:

1. that the same is not genuine; and in the alternative
2. that the same was not executed and attested as required by law;
3. that, at the time of the alleged execution of the purported will, the decedent lacked testamentary capacity due to old age and sickness; and in the second alternative
4. that the purported will was procured through undue and improper pressure and influence on the part of the principal beneficiary, and/or of some other person for her benefit.

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Lutgarda Santiago filed her Answer to the Opposition on February 1, 1962. After trial the court *a quo* rendered judgment, the summary and dispositive portions of which read:

"Passing in summary upon the grounds advanced by the oppositor, this Court finds:

"1. That there is no iota of evidence to support the contention that the purported will of the deceased was procured through undue and improper pressure and influence on the part of the petitioner, or of some other person for her benefit;

"2. *That there is insufficient evidence to sustain the contention* that at the time of the alleged execution of the purported will, the deceased lacked testamentary capacity due to old age and sickness;

"3. That sufficient and abundant evidence warrants conclusively the fact that the purported will of the deceased was not executed and attested as required by law;

"4. That the evidence is likewise conclusive that the document presented for probate, Exhibit 'F' is not the purported will allegedly dictated by the deceased, executed and signed by her, and attested by her three attesting witnesses on April 15, 1961.

"WHEREFORE, Exhibit 'F', the document presented for probate *as the last will and testament of the deceased Isabel Gabriel, is hereby* DISALLOWED."

From this judgment of disallowance, Lutgarda Santiago appealed to respondent Court, hence, the only issue decided on appeal was whether or not the will in question was executed and attested as required by law. The Court of Appeals, upon consideration of the evidence adduced by both parties, rendered the decision now under review, holing that the will in question was signed and executed by the deceased Isabel Gabriel on April 15, 1961 in the presence of the three attesting witnesses, Matilde Orobia, Celso Gimpaya and Maria Gimpaya, signing and witnessing the document in the presence of the deceased and of each other as required by law,[2] hence allowed probate.

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[2] Annex "B", Petition; *Rollo*, Vol. I, pp. 81-101.

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Oppositor Rizalina Gabriel Gonzales moved for reconsideration[3] of the aforesaid decision and such motion was opposed[4] by petitioner-appellant Lutgarda Santiago. Thereafter, parties submitted their respective Memoranda,[5] and on August 28, 1973, respondent Court, Former Special First Division, by Resolution[6] denied the motion for reconsideration stating that:

"The oppositor-appellee contends that the preponderance of evidence shows that the supposed last will and testament of Isabel Gabriel was not executed in accordance with law because the same was signed on several occasions, that the testatrix did not sign the will in the presence of all the instrumental witnesses did not sign the will in the presence of each other.

"The resolution of the factual issue raised in the motion for reconsideration hinges on the appreciation of the evidence. We have carefully re-examined the oral and documentary evidence of record. There is no reason to alter the findings of fact in the decision of this Court sought to be set aside.[7]

In her petition before this Court, oppositor Rizalina Gabriel Gonzales contends that respondent Court abused its discretion and/or acted without or in excess of its jurisdiction in reversing the findings of fact and conclusions of the trial court. The Court, after deliberating on the petition but without giving due course resolved, in the Resolution dated Oct. 11, 1973 to require the respondents to comment thereon, which comment was filed on Nov. 14, 1973. Upon consideration of the allegations, the issues raised and the arguments adduced in the petition, as well as the Comment[8] of private respondent thereon, We denied the

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[3] Annexes "H" and "I", Petition; *Rollo*, Vol. I, pp. 108-154.

[4] Annex "K", Petition; *Rollo*, Vol. I, pp. 167-198.

[5] Annexes "L" and "M", Petition; Rollo, Vol. I, pp. 199-248.

[6] Penned by Associate Justice Ramon C. Fernandez, and concurred in by Associate Justices Cecilia Muñoz Palma and Mateo Canonoy.

[7] Annex "N", Petition; *Rollo*, Vol. I, pp. 250-251.

[8] *Rollo*, Vol. II, pp. 270-312.

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petition by Resolution on November 26, 1973,[9] the question raised being factual and for insufficient showing that the findings of fact by respondent Court were unsupported by substantial evidence.

Subsequently, or on December 17, 1973, petitioner Rizalina Gabriel Gonzales filed a Motion for Reconsideration[10] which private respondent answered by way of her Comment or Opposition[11] filed on January 15, 1974. A Reply and Rejoinder to Reply followed. Finally, on March 27, 1974, We resolved to give due course to the petition.

The petitioner in her brief makes the following assignment of errors:

I. The respondent Court of Appeals erred in holding that the document, Exhibit "F" was executed and attested as required by law when there was absolutely no proof that the three instrumental witnesses were credible witnesses.

II. The Court of Appeals erred in reversing the finding of the lower court that the preparation and execution of the will Exhibit "F", was unexpected and coincidental.

III. The Court of Appeals erred in finding that Atty. Paraiso was not previously furnished with the names and residence certificates of the witnesses as to enable him to type such data into the document Exhibit "F".

IV. The Court of Appeals erred in holding that the fact that the three typewritten lines under the typewritten words "*Pangalan*" and "*Tinitirahan*" were left blank shows beyond cavil that the three attesting witnesses were all present in the same occasion.

V. The Court of Appeals erred in reversing the trial court's finding that it was incredible that Isabel Gabriel could have

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[9] *Rollo*, Vol. II, p. 317.

[10] *Rollo*, Vol. II, pp. 323-354.

[11] *Rollo*, Vol. II, pp. 363-385.

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dictated the will, Exhibit "F", without any note or document, to Atty. Paraiso.

VI. The Court of Appeals erred in reversing the finding of the trial court that Matilde Orubia was not physically present when the will, Exhibit "F" was allegedly signed on April 15, 1961 by the deceased Isabel Gabriel and the other witnesses Celso Gimpaya and Maria Gimpaya.

VII. The Court of Appeals erred in holding that the trial court gave undue importance to the picture takings as proof that the will was improperly executed.

VIII. The Court of Appeals erred in holding that the grave contradictions, evasions, and misrepresentations of witnesses (subscribing and notary) presented by the petitioner had been explained away, and that the trial court erred in rejecting said testimonies.

IX. The Court of Appeals acted in excess of its appellate jurisdiction or has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the power of supervision.

X. The Court of Appeals erred in reversing the decision of the trial court and admitting to probate Exhibit "F", the alleged last will and testament of the deceased Isabel Gabriel.

It will be noted from the above assignments of errors that the same are substantially factual in character and content. Hence, at the very outset, We must again state the oft-repeated and well-established rule that in this jurisdiction, the factual findings of the Court of Appeals are not reviewable, the same being binding and conclusive on this Court. This rule has been stated and reiterated in a long line of cases enumerated in *Chan vs. CA* (L-27488, June 30, 1970, 33 SCRA 737, 743)[12] and

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[12] The citation of authorities which begins with *Mamuyac vs. Abena*, 67 Phil. 289 (1939) lists some 35 leading cases up to *Ramirez Tel. Corp. vs. Bank of America*, L-22614, Aug. 29, 1969, 29 SCRA 191.

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Tapas vs. CA (L-22202, February 27, 1976, 69 SCRA 393),[13] and in the more recent cases of *Baptista vs. Carillo and CA* (L-32192, July 30, 1976, 72 SCRA 214, 217) and *Vda. de Catindig vs. Heirs of Catalina Roque* (L-25777, November 26, 1976, 74 SCRA 83, 88). In the case of *Chan vs. CA*, this Court said:

"x x x from *Guico v. Mayuga*, a 1936 decision, the opinion being penned by the then Justice Recto, it has been well-settled that the jurisdiction of this Court in cases brought to us from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive. More specifically, in a decision exactly a month later, this Court, speaking through the then Justice Laurel it was held that the same principle is applicable, even if the Court of Appeals was in disagreement with the lower court as to the weight of the evidence with a consequent reversal of its findings of fact. x x x"

Stated otherwise, findings of facts by the Court of Appeals, when supported by substantive evidence are not reviewable on appeal by *certiorari*. Said findings of the appellate court are final and cannot be disturbed by Us particularly because its premises are borne out by the record or based upon substantial evidence and what is more, when such findings are correct. Assignments of errors involving factual issues cannot be ventilated in a review of the decision of the Court of Appeals because only legal questions may be raised. The Supreme Court is not at liberty to alter or modify the facts as set forth in the decision of the Court of Appeals sought to be reversed. Where the findings of the Court of Appeals are contrary to those of the trial court, a minute scrutiny by the Supreme Court is in order, and resort to duly-proven evidence becomes necessary. The general rule We have thus stated above is not without some recognized exceptions.

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[13] *De Garcia vs. Court of Appeals*, 37 SCRA 129 (1971); *Bunyi vs. Reyes*, 39 SCRA 504 (1971); *Napolis vs. Court of Appeals*, 43 SCRA 301 (1972); *Talosig vs. Vda. de Nieba*, 43 SCRA 472 (1972); *Evangelista and Co. vs. Abad Santos*, 51 SCRA 416 (1973); *Tiongco vs. de la Merced*, 58 SCRA 89 (1974).

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Having laid down the above legal precepts as Our foundation, We now proceed to consider petitioner's assignments of errors.

Petitioner, in her first assignment, contends that the respondent Court of Appeals erred in holding that the document, Exhibit "F", was executed and attested as required by law when there was absolutely no proof that the three instrumental witnesses were credible witnesses. She argues that the requirement in Article 806, Civil Code, that the witnesses must be credible is an absolute requirement which must be complied with before an alleged last will and testament may be admitted to probate and that to be a credible witness, there must be evidence on record that the witness has a good standing in his community, or that he is honest and upright, or reputed to be trustworthy and reliable. According to petitioner, unless the qualifications of the witness are first established, his testimony may not be favorably considered. Petitioner contends that the term "credible" is not synonymous with "competent" for a witness may be competent under Article 820 and 821 of the Civil Code and still not be credible as required by Article 805 of the same Code. It is further urged that the term "credible" as used in the Civil Code should receive the same settled and well-known meaning it has under the Naturalization Law, the latter being a kindred legislation with the Civil Code provisions on wills with respect to the qualifications of witnesses.

We find no merit to petitioner's first assignment of error. Article 820 of the Civil Code provides the qualifications of a witness to the execution of wills while Article 821 sets forth the disqualification from being a witness to a will. These Articles state:

"Art. 820. Any person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code.

"Art. 821. The following are disqualified from being witnesses to a will:

(1) Any person not domiciled in the Philippines,

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(2) Those who have been convicted of falsification of a document, perjury or false testimony.

Under the law, there is no mandatory requirement that the witness testify initially or at any time during the trial as to his good standing in the community, his reputation for trustworthiness and reliableness, his honesty and uprightness in order that his testimony may be believed and accepted by the trial court. It is enough that the qualifications enumerated in Article 820 of the Civil Code are complied with, such that the soundness of his mind can be shown by or deduced from his answers to the questions propounded to him, that his age (18 years or more) is shown from his appearance, testimony, or competently proved otherwise, as well as the fact that he is not blind, deaf or dumb and that he is able to read and write to the satisfaction of the Court, and that he has none of the disqualifications under Article 821 of the Civil Code. We reject petitioner's contention that it must first be established in the record the good standing of the witness in the community, his reputation for trustworthiness and reliableness, his honesty and uprightness, because such attributes are presumed of the witness unless the contrary is proved otherwise by the opposing party.

We also reject as without merit petitioner's contention that the term "credible" as used in the Civil Code should be given the same meaning it has under the Naturalization Law where the law is mandatory that the petition for naturalization must be supported by two character witnesses who must prove their good standing in the community, reputation for trustworthiness and reliableness, their honesty and uprightness. The two witnesses in a petition for naturalization are character witnesses in that being citizens of the Philippines, they personally know the petitioner to be a resident of the Philippines for the period of time required by the Act and a person of good repute and morally irreproachable and that said petitioner has in their opinion *all the qualifications necessary to become a citizen of the* Philippines and is not in any way disqualified under the provisions of the Naturalization Law (Section 7, Commonwealth Act No. 473 as amended).

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In probate proceedings, the instrumental witnesses are not character witnesses for they merely attest the execution of a will or testament and affirm the formalities attendant to said execution. And We agree with the respondent that the rulings laid down in the cases cited by petitioner concerning character witnesses in naturalization proceedings are not applicable to instrumental witnesses to wills executed under the Civil Code of the Philippines.

In the case at bar, the finding that each and everyone of the three instrumental witnesses, namely, Matilde Orobia, Celso Gimpaya and Maria Gimpaya, are competent and credible is satisfactorily supported by the evidence as found by the respondent Court of Appeals, which findings of fact this Tribunal is bound to accept and rely upon. Moreover, petitioner has not pointed to any disqualification of any of the said witnesses, much less has it been shown that anyone of them is below 18 years of age, of unsound mind, deaf or dumb, or cannot read or write.

It is true that under Article 805 of the New Civil Code, every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more *credible* witnesses in the presence of the testator and of one another. While the petitioner submits that Article 820 and 821 of the New Civil Code speak of the *competency of a witness* due to his qualifications under the first Article and none of the disqualifications under the second Article, whereas Article 805 requires the attestation of three or more credible witnesses, petitioner concludes that the term *credible* requires something more than just being *competent* and, therefore, a witness in addition to being competent under Articles 820 and 821 must also be a credible witness under Article 805.

Petitioner cites American authorities that competency and credibility of a witness are not synonymous terms and one may be a competent witness and yet not a credible one. She exacerbates that there is no evidence on record to show that the instrumental witnesses are credible in themselves, that is,

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that they are of good standing in the community since one was a family driver by profession and the second the wife of the driver, a housekeeper. It is true that Celso Gimpaya was the driver of the testatrix and his wife Maria Gimpaya, merely a housekeeper, and that Matilde Orobia was a piano teacher to a grandchild of the testatrix. But the relation of employer and employee much less the humble social or financial position of a person do not disqualify him to be a competent testamentary witness. (*Molo-Pekson and Perez-Nable vs. Tanchuco, et al.*, 100 Phil. 344; Testate Estate of Raymundo, Off. Gaz., March 18, 1941, p. 788).

Private respondent maintains that the qualifications of the three or more credible witnesses mentioned in Article 805 of the Civil Code are those mentioned in Article 820 of the same Code, this being obvious from that portion of Article 820 which says "may be a witness to the execution of a will mentioned in Article 805 of this Code," and cites authorities that the word "credible" insofar as witnesses to a will are concerned simply means "competent." Thus, in the case of *Suntay vs. Suntay*, 95 Phil. 500, the Supreme Court held that "Granting that a will was duly executed and that it was in existence at the time of, and not revoked before, the death of the testator, still the provisions of the lost will must be clearly and distinctly proved by at least two credible witnesses. '*Credible witnesses*' *mean competent witnesses and not those who testify to facts from or upon hearsay*." (italics supplied).

In *Molo Pekson and Perez-Nable vs. Tanchuco, et al.*, 100 Phil. 344, the Supreme Court held that "Section 620 of the same Code of Civil Procedure provides that any person of sound mind, and of the age of eighteen years or more, and not blind, deaf, or dumb and able to read and write, may be a witness to the execution of a will. This same provision is reproduced in our New Civil Code of 1950, under Art. 820. The relation of employer and employee, or being a relative to the beneficiary in a will, does not disqualify one to be a witness to a will. The main qualification of a witness in the attestation of wills, if other qualifications as to age, mental capacity and literacy are present, is that said witness must be credible, that is to say, his

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testimony may be entitled to credence. There is a long line of authorities on this point, a few of which We may cite:

"A 'credible witness' is one who is not disqualified to testify by mental incapacity, crime, or other cause. Historical Soc. of *Dauphin County vs. Kelker,* 74 A. 619, 226 Pa. 16, 134 Am. St. Rep. 1010." (Words and Phrases, Vol. 10, p. 340).

"As construed by the common law, a 'credible witness' to a will means a 'competent witness.' Appeal of Clark, 95 A. 517, 114 Me. 105, Ann. Cas. 1917A, 837." (*Ibid,* p. 341).

"Expression 'credible witness' in relation to attestation of wills means 'competent witness'; that is, one competent under the law to testify to fact of execution of will. Vernon's Ann. Civ. St. art. 8283. *Moos vs. First State Bank of Uvalde,* Tex. Civ. App. 60 S.W. 2nd 888, 889." (*Ibid,* p. 342)

"The term 'credible', used in the statute of wills requiring that a will shall be attested by two credible witnesses means competent; witnesses who, at the time of attesting the will, are legally competent to testify, in a court of justice, to the facts attested by subscribing the will, the competency being determined as of the date of the execution of the will and not of the time it is offered for probate. *Smith vs. Goodell,* 101 N.E. 255, 256, 258 Ill. 145." (*Ibid.*)

"'Credible witnesses', as used in the statute relating to wills, means competent witnesses — that is, such persons as are not legally disqualified from testifying in courts of justice, by reason of mental incapacity, interest, or the commission of crimes, or other cause excluding them from testifying generally, or rendering them incompetent in respect of the particular subject matter or in the particular suit. *Hill vs. Chicago Title & Trust Co.,* 152 N.E. 545, 546, 322 Ill. 42." (*Ibid.*, p. 343)

In the strict sense, the competency of a person to be an instrumental witness to a will is determined by the statute, that is Art. 820 and 821, Civil Code, whereas his credibility depends on the appreciation of his testimony and arises from the belief and conclusion of the Court that said witness is telling the truth. Thus, in the case of *Vda. de Aroyo v. El Beaterio del Santissimo Rosario de Molo,* No. L-22005, May 3, 1968, the Supreme Court held and ruled that: "Competency as a witness is one

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thing, and it is another to be a credible witness, so credible that the Court must accept what he says. Trial courts may allow a person to testify as a witness upon a given matter because he is competent, but may thereafter decide whether to believe or not to believe his testimony."

In fine, We state the rule that the instrumental witnesses in order to be competent must be shown to have the qualifications under Article 820 of the Civil Code and none of the disqualifications under Article 821 and for their testimony to be credible, that is worthy of belief and entitled to credence, it is not mandatory that evidence be first established on record that the witnesses have a good standing in the community or that they are honest and upright or reputed to be trustworthy and reliable, for a person is presumed to be such unless the contrary is established otherwise. In other words, the instrumental witnesses must be competent and their testimonies must be credible before the court allows the probate of the will they have attested. We, therefore, reject petitioner's position that it was fatal for respondent not to have introduced prior and independent proof of the fact that the witnesses were "credible witnesses," that is, that they have a good standing in the community and reputed to be trustworthy and reliable.

Under the second, third, fourth, fifth, sixth, seventh and eighth assignments of errors, petitioner disputes the findings of fact of the respondent court in finding that the preparation and execution of the will was expected and not coincidental, in finding that Atty. Paraiso was not previously furnished with the names and residence certificates of the witnesses as to enable him to type such data into the document Exhibit "F", in holding that the fact that the three typewritten lines under the typewritten words "*pangalan*" and "*tinitirahan*" were left blank shows beyond cavil that the three attesting witnesses were all present in the same occasion, in holding credible that Isabel Gabriel could have dictated the will without note or document to Atty. Paraiso, in holding that Matilde Orobia was physically present when the will was signed on April 15, 1961 by the deceased Isabel Gabriel and the other witnesses Celso Gimpaya and Maria Gimpaya, in holding that the trial court

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gave undue importance to the picture takings as proof that the will was improperly executed, and in holding that the grave contradictions, evasions and misrepresentations of the witnesses (subscribing and notary) presented by the petitioner had been explained away.

Since the above errors are factual, We must repeat what We have previously laid down that the findings of fact of the appellate court are binding and controlling which We cannot review, subject to certain exceptions which We will consider and discuss hereinafter. We are convinced that the appellate court's findings are sufficiently justified and supported by the evidence on record. Thus, the alleged unnaturalness characterizing the trip of the testatrix to the office of Atty. Paraiso and bringing all the witnesses without previous appointment for the preparation and execution of the will and that it was coincidental that Atty. Paraiso was available at the moment impugns the finding of the Court of Appeals that although Atty. Paraiso admitted the visit of Isabel Gabriel and of her companions to his office on April 15, 1961 was unexpected as there was no prior appointment with him, but he explained that he was available for any business transaction on that day and that Isabel Gabriel had earlier requested him to help her prepare her will. The finding of the appellate court is amply based on the testimony of Celso Gimpaya that he was not only informed on the morning of the day that he witnessed the will but that it was the third time when Isabel Gabriel told him that he was going to witness the making of her will, as well as the testimony of Maria Gimpaya that she was called by her husband Celso Gimpaya to proceed to Isabel Gabriel's house which was nearby and from said house, they left in a car to the lawyer's office, which testimonies are recited in the respondent Court's decision.

The respondent Court further found the following facts: that Celso Gimpaya and his wife Maria Gimpaya obtained residence certificates a few days before Exhibit "F" was executed. Celso Gimpaya's residence certificate No. A-5114942 was issued at Navotas, Rizal on April 13, 1961 while Maria Gimpaya's residence certificate No. A-5114974 was issued also at Navotas, Rizal on April 14, 1961. The respondent Court correctly observed

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that there was nothing surprising in these facts and that the securing of these residence certificates two days and one day, respectively, before the execution of the will on April 15, 1961, far from showing an amazing coincidence, reveals that the spouses were earlier notified that they would be witnesses to the execution of Isabel Gabriel's will.

We also agree with the respondent Court's conclusion that the excursion to the office of Atty. Paraiso was planned by the deceased, which conclusion was correctly drawn from the testimony of the Gimpaya spouses that they started from the Navotas residence of the deceased with a photographer and Isabel Gabriel herself, then they proceeded by car to Matilde Orobia's house in Philamlife, Quezon City to fetch her and from there, all the three witnesses (the Gimpayas and Orobia) passed by a place where Isabel Gabriel stayed for about ten to fifteen minutes at the clinic of Dr. Chikiamco before they proceeded to Atty. Cipriano Paraiso's office.

It is also evident from the records, as testified to by Atty. Paraiso, that previous to the day that the will was executed on April 15, 1961, Isabel Gabriel had requested him to help her in the execution of her will and that he told her that if she really wanted to execute her will, she should bring with her at least the Mayor of Navotas, Rizal and a Councilor to be her witnesses and that he (Atty. Paraiso) wanted a medical certificate from a physician notwithstanding the fact that he believed her to be of sound and disposition mind. From this evidence, the appellate court rightly concluded, thus: "It is, therefore, clear that the presence of Isabel Gabriel and her witnesses Matilde Orobia, Celso Gimpaya and Maria Gimpaya including the photographer in the law office of Atty. Paraiso was not coincidental as their gathering was pre-arranged by Isabel Gabriel herself."

As to the appellate court's finding that Atty. Paraiso was not previously furnished with the names and residence certificates of the witnesses as to enable him to type such data into the document Exhibit "F", which the petitioner assails as contradictory and irreconcilable with the statement of the Court that Atty. Paraiso was handed a list (containing the names of

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the witnesses and their respective residence certificates) immediately upon their arrival in the law office by Isabel Gabriel and this was corroborated by Atty. Paraiso himself who testified that it was only on said occasion that he received such list from Isabel Gabriel, We cannot agree with petitioner's contention. We find no contradiction for the respondent Court held that on the occasion of the will-making on April 15, 1961, the list was given immediately to Atty. Paraiso and that no such list was given the lawyer in any previous occasion or date prior to April 15, 1961.

But whether Atty. Paraiso was previously furnished with the names and residence certificates of the witnesses on a prior occasion or on the very occasion and date in April 15, 1961 when the will was executed, is of no moment for such data appear in the notarial acknowledgment of Notary Public Cipriano Paraiso, subscribed and sworn to by the witnesses on April 15, 1961 following the attestation clause duly executed and signed on the same occasion, April 15, 1961. And since Exhibit "F" is a notarial will duly acknowledged by the testatrix and the witnesses before a notary public, the same is a public document executed and attested through the intervention of the notary public and as such public document is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear, convincing and more than merely preponderant. (*Yturalde vs. Azurin,* 28 SCRA 407). We find no such evidence pointed by petitioner in the case at bar.

Likewise, the conclusion of the Court of Appeals in holding that the fact that the three typewritten lines under the typewritten words "*pangalan*" and "*tinitirahan*" were left blank shows beyond cavil that the three attesting witnesses were all present in the same occasion merits Our approval because this conclusion is supported and borne out by the evidence found by the appellate court, thus: "On page 5 of Exhibit "F", beneath the typewritten words "names", "Res. Tax Cert.," "date issued" and "place issued" the only name of Isabel Gabriel with Residence Tax Certificate No. A-5113274 issued on February 24, 1961 at

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Navotas, Rizal appears to be in typewritten form while the names, residence tax certificate numbers, dates and places of issuance of said certificates pertaining to the three (3) witnesses were personally handwritten by Atty. Paraiso. Again, this coincides with Atty. Paraiso's testimony that he had earlier advised Isabel Gabriel to bring with her at least the Mayor and a Councilor of Navotas, Rizal to be her witnesses for he did not know beforehand the identities of the three attesting witnesses until the latter showed up at his law office with Isabel Gabriel on April 15, 1961. Atty. Paraiso's claim—which was not controverted that he wrote down in his own hand the date appearing on page 5 of Exhibit "F" dissipates any lingering doubt that he prepared and ratified the will on the date in question."

It is also a factual finding of the Court of Appeals in holding that it was credible that Isabel Gabriel could have dictated the will, Exhibit "F", without any note or document to Atty. Paraiso as against the contention of petitioner that it was incredible. This ruling of the respondent court is fully supported by the evidence on record as stated in the decision under review, thus: "Nothing in the record supports the trial court's unbelief that Isabel Gabriel dictated her will without any note or document to Atty. Paraiso. On the contrary, all the three attesting witnesses uniformly testified that Isabel Gabriel dictated her will to Atty. Paraiso and that other than the piece of paper that she handed to said lawyer she had no note or document. This fact jibes with the evidence — which the trial court itself believed was unshaken — that Isabel Gabriel was of sound disposing memory when she executed her will.

Exhibit "F" reveals only seven (7) dispositions which are not complicated but quite simple. The first was Isabel Gabriel's wish to be interred according to Catholic rites; the second was a general directive to pay her debts if any; the third provided for ₱1,000.00 for her sister Praxides Gabriel Vda. de Santiago and ₱2,000.00 for her brother Santiago Gabriel; the fourth was a listing of her 13 nephews and nieces including oppositor-appellee Rizalina Gabriel and the amount for each legatee; the fifth was the institution of the petitioner-appellant, Lutgarda Santiago as the principal heir mentioning in general terms seven

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(7) types of properties; the sixth disposed of the remainder of her estate which she willed in favor of appellant Lutgarda Santiago but prohibiting the sale of such properties to anyone except in extreme situations in which even the sale must be made to close relatives; and the seventh was the appointment of the appellant Santiago as executrix of the will without bond. The technical description of the properties in paragraph 5 of Exhibit F was not given and the numbers of the certificates of title were only supplied by Atty. Paraiso."

It is true that in one disposition, the numbers of the Torrens titles of the properties disposed and the docket number of a special proceeding are indicated which Atty. Paraiso candidly admitted were supplied by him, whereupon petitioner contends that it was incredible that Isabel Gabriel could have dictated the will Exhibit "F" without any note or document to Atty. Paraiso, considering that Isabel Gabriel was an old and sickly woman more than eighty-one years old and had been suffering from a brain injury caused by two severe blows at her head and died of terminal cancer a few weeks after the execution of Exhibit "F". While we can rule that this is a finding of fact which is within the competency of the respondent appellate court in determining the testamentary capacity of the testatrix and is, therefore, beyond Our power to revise and review, We nevertheless hold that the conclusion reached by the Court of Appeals that the testatrix dictated her will without any note or memorandum appears to be fully supported by the following facts or evidence appearing on record. Thus, Isabel Gabriel, despite her age, was particularly active in her business affairs as she actively managed the affairs of the movie business Isabelita Theater, paying the aparatistas herself until June 4, 1961, 3 days before her death. She was the widow of the late Eligio Naval, former Governor of Rizal Province and acted as co-administratrix in the Intestate Estate of her deceased husband Eligio Naval. The text of the will was in Tagalog, a dialect known and understood by her and in the light of all the circumstances, We agree with the respondent Court that the testatrix dictated her will without any note or memorandum, a fact unanimously testified to by the three attesting witnesses and the notary public himself.

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Petitioner's sixth assignment of error is also benefit of merit. The evidence, both testimonial and documentary is, according to the respondent court, overwhelming that Matilde Orobia was physically present when the will was signed on April 15, 1961 by the testatrix and the other two witnesses, Celso Gimpaya and Maria Gimpaya. Such factual finding of the appellate court is very clear, thus: "On the contrary, the record is replete with proof that Matilde Orobia was physically present when the will was signed by Isabel Gabriel on April 15, 1961 along with her co-witnesses Celso Gimpaya and Maria Gimpaya. The trial court's conclusion that Orobia's admission that she gave piano lessons to the child of the appellant on Wednesdays and Saturdays and that April 15, 1961 happened to be a Saturday for which reason Orobia could not have been present to witness the will on that day — is purely conjectural. Witness Orobia did not admit having given piano lessons to the appellant's child every Wednesday and Saturday without fail. It is highly probable that even if April 15, 1961 were a Saturday, she gave no piano lessons on that day for which reason she could have witnessed the execution of the will. Orobia spoke of occasions when she missed giving piano lessons and had to make up for the same. Anyway, her presence at the law office of Atty. Paraiso was in the morning of April 15, 1961 and there was nothing to preclude her from giving piano lessons on the afternoon of the same day in Navotas, Rizal."

In addition to the testimony of Matilde Orobia, Celso Gimpaya and Maria Gimpaya that Matilde was present on April 15, 1961 and that she signed the attestation clause to the will and on the left-hand margin of each of the pages of the will, the documentary evidence which is the will itself, the attestation clause and the notarial acknowledgment overwhelmingly and convincingly prove such fact that Matilde Orobia was present on that day of April 15, 1961 and that she witnessed the will by signing her name thereon and acknowledged the same before the notary public, Atty. Cipriano P. Paraiso. The attestation clause which Matilde Orobia signed is the best evidence as to the date of signing because it preserves in permanent form a recital of all the material facts attending the execution of the will. This is the

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very purpose of the attestation clause which is made for the purpose of preserving in permanent form, a record of the facts attending the execution of the will, so that in case of failure in the memory of the subscribing witnesses, or other casualty they may still be proved.(Thompson on Wills, 2nd ed., Sec. 132; *Leynez vs. Leynez*, 68 Phil. 745).

As to the seventh error assigned by petitioner faulting the *Court of Appeals in holding that the trial court gave undue* importance to the picture-takings as proof that the will was improperly executed, We agree with the reasoning of the respondent court that: "Matilde Orobia's identification of the photographer as "Cesar Mendoza", contrary to what the other two witnesses (Celso and Maria Gimpaya) and Atty. Paraiso said that the photographer was Benjamin Cifra, Jr., is at worst a minor mistake attributable to lapse of time. The law does not require a photographer for the execution and attestation of the will. The fact that Miss Orobia mistakenly identified the photographer as Cesar Mendoza scarcely detracts from her testimony that she was present when the will was signed because what matters here is not the photographer but the photograph taken which clearly portrays Matilde Orobia herself, her co-witnesses Celso Gimpaya and Maria Gimpaya, Isabel Gabriel and Atty. Paraiso." Further, the respondent Court correctly held: "The trial court gave undue importance to the picture-takings, jumping therefrom to the conclusion that the will was improperly executed. The evidence, however, heavily points to only one occasion of the execution of the will on April 15, 1961 which was witnessed by Matilde Orobia, Celso Gimpaya and Maria Gimpaya. These witnesses were quite emphatic and positive when they spoke of this occasion. Hence, their identification of some photographs wherein they all appeared along with Isabel Gabriel and Atty. Paraiso was superfluous."

Continuing, the respondent Court declared: "It is true that the second picture-taking was disclosed at the cross examination of Celso Gimpaya. But this was explained by Atty. Paraiso as a reenactment of the first incident upon the insistence of Isabel Gabriel. Such reenactment where Matilde Orobia was admittedly no longer present was wholly unnecessary if not pointless. What

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was important was that the will was duly executed and witnessed on the first occasion on April 15, 1961," and We agree with the Court's rationalization in conformity with logic, law and jurisprudence which do not require picture-taking as one of the legal requisites for the execution or probate of a will.

Petitioner points to alleged grave contradictions, evasions and misrepresentations of witnesses in their respective testimonies before the trial court. On the other hand, the respondent Court of Appeals held that said contradictions, evasions and misrepresentations had been explained away. Such discrepancies as in the description of the typewriter used by Atty. Paraiso which he described as "elite" which to him meant big letters which are of the type in which the will was typewritten but which was identified by witness Jolly Bugarin of the N.B.I as "pica", the mistake in mentioning the name of the photographer by Matilde Orobia to be Cesar Mendoza when actually it was Benjamin Cifra, Jr. — these are indeed unimportant details which could have been affected by the lapse of time and the treachery of human memory such that by themselves would not alter the probative value of their testimonies on the true execution of the will, (*Pascual vs. dela Cruz,* 28 SCRA 421, 424) for it cannot be expected that the testimony of every person will be identical and coinciding with each other with regard to details of an incident and that witnesses are not expected to remember all details. Human experience teach us "that contradictions of witnesses generally occur in the details of certain incidents, after a long series of questionings, and far from being an evidence of falsehood constitute a demonstration of good faith. Inasmuch as not all those who witness an incident are impressed in like manner, it is but natural that in relating their impressions, they should not agree in the minor details; hence the contradiction in their testimony." (*Lopez vs. Liboro*, 81 Phil. 429).

It is urged of Us by the petitioner that the findings of the trial court should not have been disturbed by the respondent appellate court because the trial court was in a better position to weigh and evaluate the evidence presented in the course of the trial. As a general rule, petitioner is correct but it is subject to well-established exceptions. The right of the Court of Appeals

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to review, alter and reverse the findings of the trial court where the appellate court, in reviewing the evidence has found that facts and circumstances of weight and influence have been ignored and overlooked and the significance of which have been misinterpreted by the trial court, cannot be disputed. Findings of facts made by trial courts particularly when they are based on conflicting evidence whose evaluation hinges on questions of credibility of contending witnesses lies peculiarly within the province of trial courts and generally, the appellate court should not interfere with the same. In the instant case, however, the Court of Appeals found that the trial court had overlooked and misinterpreted the facts and circumstances established in the record. Whereas the appellate court said that "Nothing in the record supports the trial court's unbelief that Isabel Gabriel dictated her will without any note or document to Atty. Paraiso;" that the trial court's conclusion that Matilde Orobia could not have witnessed anybody signing the alleged will or that she could not have witnessed Celso Gimpaya and Maria Gimpaya sign the same or that she witnessed only the deceased signing it, is a conclusion based not on facts but on inferences; that the trial court gave undue importance to the picture-takings, jumping therefrom to the conclusion that the will was improperly executed and that there is nothing in the entire record to support the conclusion of the court *a quo* that the will-signing occasion was a mere coincidence and that Isabel Gabriel made an appointment only with Matilde Orobia to witness the signing of her will, then it becomes the duty of the appellate court to reverse findings of fact of the trial court in the exercise of its appellate jurisdiction over the lower courts.

Still the petitioner insists that the case at bar is an exception to the rule that the judgment of the Court of Appeals is conclusive as to the facts and cannot be reviewed by the Supreme Court. Again We agree with the petitioner that among the exceptions are: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact

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are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee. (*Roque vs. Buan, et al.*, G.R. No. L-22459, Oct. 31, 1967; *Ramos vs. Pepsi Cola Bottling Co.*, G.R. No. L-22533, Feb. 9, 1967; *Hilario, Jr. vs. City of Manila*, G.R. No. L-19570; Sept. 14, 1967).

Petitioner's insistence is without merit. We hold that the case at bar does not fall within any of the exceptions enumerated above. We likewise hold that the findings of fact of the respondent appellate court are fully supported by the evidence on record. The conclusions are fully sustained by substantial evidence. We find no abuse of discretion and We discern no misapprehension of facts. The respondent Court's findings of fact are not conflicting. Hence, the well-established rule that the decision of the Court of Appeals and its findings of fact are binding and conclusive and should not be disturbed by this Tribunal and it must be applied in the case at bar in its full force and effect, without qualification or reservation. The above holding simply synthesizes the resolutions We have heretofore made in respect to petitioner's previous assignments of error and to which We have disagreed and, therefore, rejected.

The last assignments of error of petitioner must necessarily be rejected by Us as We find the respondent Court acted properly and correctly and has not departed from the accepted and usual course of judicial proceedings as to call for the exercise of the power of supervision by the Supreme Court, and as We find that the Court of Appeals did not err in reversing the decision of the trial court and admitting to probate Exhibit "F", the last will and testament of the deceased Isabel Gabriel.

We rule that the respondent Court's factual findings upon its summation and evaluation of the evidence on record is unassailable that: "From the welter of evidence presented, we are convinced that the will in question was executed on April 15, 1961 in the presence of Matilde Orobia, Celso Gimpaya and Maria Gimpaya signing and witnessing the same in the presence of each other as required by law. "Specifically, We

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affirm that on April 15, 1961 the testatrix Isabel Gabriel, together with Matilde Orobia, Celso Gimpaya and his wife Maria Gimpaya, and a photographer proceeded in a car to the office of Atty. Cipriano Paraiso at the Bank of P.I. Building, Manila in the morning of that day; that on the way, Isabel Gabriel obtained a medical certificate from one Dr. Chikiamko which she gave to Atty. Paraiso upon arriving at the latter's office and told the lawyer that she wanted her will to be made; that Atty. Paraiso asked Isabel Gabriel to dictate what she wanted to be written in the will and the attorney wrote down the dictation of Isabel Gabriel in Tagalog, a language known to and spoken by her; that Atty. Paraiso read back to her what he wrote as dictated and she affirmed their correctness; the lawyer then typed the will and after finishing the document, he read it to her and she told him that it was alright; that thereafter, Isabel Gabriel signed her name at the end of the will in the presence of the three witnesses Matilde Orobia, Celso Gimpaya and Maria Gimpaya and also at the left-hand margin of each and every page of the document in the presence also of the said three witnesses; that thereafter Matilde Orobia attested the will by signing her name at the end of the attestation clause and at the left-hand margin of pages 1, 2, 3 and 5 of the document in the presence of Isabel Gabriel and the other two witnesses, Celso Gimpaya and Maria Gimpaya; then, Celso Gimpaya signed also the will at the bottom of the attestation clause and at the left-hand margin of the other pages of the document in the presence of Isabel Gabriel, Matilde Orobia and Maria Gimpaya; that Maria Gimpaya followed suit, signing her name at the foot of the attestation clause and at the left-hand margin of every page in the presence of Isabel Gabriel, Matilde Orobia and Celso Gimpaya; that thereafter, Atty. Paraiso notarized the will as Page No. 94, Book No. IV, Series of 1961, in his Notarial Register. On the occasion of the execution and attestation of the will, a photographer took pictures, one Exhibit "G", depicting Matilde Orobia, the testatrix Isabel Gabriel, Celso Gimpaya, Maria Gimpaya and Atty. Paraiso, taken on said occasion of the signing of the will, and another, Exhibit "H", showing Matilde Orobia signing the will on a table with Isabel Gabriel, Celso Gimpaya and Maria Gimpaya sitting around the table. Atty.

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Paraiso, after finishing the notarial act, then delivered the original to Isabel Gabriel and retained the other copies for his file and notarial register. A few days following the signing of the will, Isabel Gabriel, Celso Gimpaya and another photographer arrived at the office of Atty. Paraiso and told the lawyer that she wanted another picture taken because the first picture did not turn out good. The lawyer told her that this cannot be done because the will was already signed but Isabel Gabriel insisted that a picture be taken, so a simulated signing was performed during which incident Matilde Orobia was not present.

Petitioner's exacerbation centers on the supposed incredibility of the testimonies of the witnesses for the proponent of the will, their alleged evasions, inconsistencies and contradictions. But in the case at bar, the three instrumental witnesses who constitute the best evidence of the will-making have testified in favor of the probate of the will. So has the lawyer who prepared it, one learned in the law and long in the practice thereof, who thereafter notarized it. All of them are disinterested witnesses who stand to receive no benefit from the testament. The signatures of the witnesses and the testatrix have been identified on the will and there is no claim whatsoever and by anyone, much less the petitioner, that they were not genuine. In the last and final analysis, the herein conflict is factual and We go back to the rule that the Supreme Court cannot review and revise the findings of facts of the respondent Court of Appeals.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby AFFIRMED, with costs against the petitioner.

SO ORDERED.

Teehankee (Chairman), Makasiar, De Castro, and *Melencio-Herrera, JJ.*, concur.

Fernandez, J., member of the First Division, took no part.