Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TEODORO C. TORTONA, RODRIGO C. TORTONA, PEDRO C. TORTONA, ERNESTO C. TORTONA, AND PATRICIO C. TORTONA, Petitioners, -versus- **JULIAN C. GREGORIO, FLORENTINO GREGORIO, JR., ISAGANI C. GREGORIO, CELEDONIA G. IGNACIO, TEODOCIA G. CHAN, LEONILA G. CAAMPUED, CONCORDIA G. MIJARES, ROMEO C. GREGORIO, EDNA S. TAN, NELIA S. REYES, CECILIA S. FRIEDMAN, LAMBERTO SUANTE, JULIUS SUANTE, ENRICO SUANTE, FELIPE SUANTE, CESAR SUANTE, CORAZON YASAY-GREGORIO, DONALDO Y. GREGORIO, ELMER Y. GREGORIO, AND ROY JOHN Y. GREGORIO,** Respondents.	**G.R. No. 202612** Present: VELASCO, JR., *J., Chairperson,* BERSAMIN, LEONEN, MARTIRES, and GESMUNDO, *JJ.* **Promulgated:** January 17, 2018

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DECISION

LEONEN, *J.*:

Documents acknowledged before a notary public are presumed to have been duly executed. This presumption may be contradicted by clear

and convincing evidence. A notarized Deed of Absolute Sale where the thumbmark of a party is shown to be a forgery is void.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Court of Appeals July 9, 2012 Decision[2] in CA-G.R. CV No. 91767 be reversed and set aside. This assailed Decision reversed and set aside the May 31, 2005 Decision[3] of the Regional Trial Court of Bacoor, Cavite, which ruled in favor of then plaintiffs, now petitioners, in their action for recovery of real property with damages against then defendants, now respondents.

This case is an offshoot of a Deed of Absolute Sale allegedly entered into by sisters Rufina Casimiro (Rufina), the purported seller, and Rafaela Casimiro (Rafaela), the purported buyer. Petitioners are the heirs of Rufina, while respondents are the heirs of Rafaela.[4]

During their lifetime, Rufina and Rafaela co-owned with their other siblings two (2) parcels of land.[5] They shared in equal, undivided 1/10 shares of a parcel located in Longos, Bacoor, Cavite, covered by Original Certificate of Title (OCT) No. O-923. They also shared in equal, undivided 1/5 shares of a second parcel in Talaba, Bacoor, Cavite, covered by Transfer Certificate of Title (TCT) No. T-10058.[6]

When Rufina was still alive, she regularly collected her respective 1/10 and 1/5 shares in the income of the two (2) properties. After her death, petitioners continued to collect and receive their mother's share.[7]

Sometime in 1997, petitioners filed a complaint for recovery of real property with damages. They alleged that their cousin Emilio Casimiro (Emilio) offered them a *balato*[8] of ₱50,000.00 for the sale of the first parcel to the Department of Public Works and Highways. Surprised, they asked why they were not instead given their 1/10 share in the proceeds of the sale. To this, Emilio allegedly replied that according to respondents,[9] the two (2) properties had already been sold by Rufina to Rafaela during their lifetime.[10]

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1 *Rollo*, pp. 7–30.

2 Id. at 31–43. The Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon and Abraham B. Borreta of the Seventeenth Division, Court of Appeals, Manila.

3 Id. at 44–49. The Decision, docketed as Civil Case No. BCV 97-183, was penned by Judge Novato T. Cajigal.

4 Id. at 45.

5 Id. at 111–112, Memorandum for the Petitioners.

6 Id. at 44.

7 Id. at 111–112.

8 Id. at 112, Petitioners' Memorandum. "Vicassan's Tagalog-English Dictionary defines the word *'balato'* 'as a small amount of money given away in goodwill'."

9 The Heirs of Rafaela are Julian C. Gregorio, Florentino Gregorio, Jr., Isagani C. Gregorio, Celedonia G. Ignacio, Teodocia G. Chan, Leonila G. Caampued, Concordia G. Mijares, Romeo C. Gregorio, Edna S. Tan, Nelia S. Reyes, Cecilia S. Friedman, Lamberto Suante, Julius Suante, Enrico Suante, Felipe

Petitioners proceeded to the Office of the Registry of Deeds to verify the supposed sale. They learned that OCT No. O-923, covering the first parcel, had already been cancelled on account of a Deed of Absolute Sale allegedly executed by Rufina and Rafaela on February 14, 1974. It appeared that Rufina also sold her 1/5 share over the second parcel covered by TCT No. T-10058. It also became apparent that some time after the sales of the two (2) parcels, respondents executed a Declaration of Heirship and Extrajudicial Partition. Consequently, Rufina's 1/10 and 1/5 shares in the first and second parcels were added to the shares of the respondents, as Rafaela's heirs, thereby increasing their shares to 2/10 and 2/5, respectively.[11]

Petitioners underscored that their mother was illiterate, not even knowing how to write her own name. They alleged that she only affixed her thumbmark on documents, and whenever she did so, she was always assisted by at least one (1) of her children. Thus, they asserted that if the sales to Rafaela were genuine, they should have known about them.[12]

In support of their allegations, they presented during trial some documents,[13] collectively identified as the standard documents, supposedly bearing the authentic thumbmarks of their mother. These standard documents also showed that at least one (1) of them assisted her in executing each document.[14]

Petitioners likewise presented as witness National Bureau of Investigation fingerprint examiner Eriberto B. Gomez, Jr. (Gomez), who conducted an examination to determine the genuineness of the questioned thumbmarks in the Deed of Absolute Sale.[15] He noted that he compared the questioned thumbmarks with the genuine thumbmarks of Rufina in the standard documents. In his Technical Investigation/Identification Report FP Case No. 2000-182-A dated July 13, 2000 (First Report),[16] Gomez noted that "the purported thumbmarks of Rufina Casimiro in the alleged Deed of Absolute Sale . . . [were] not identical with her standard thumbmarks in [the standard documents]" and concluded that "the thumbmarks appearing in the . . . Deed of Absolute Sale . . . were not impressed by Rufina Casimiro."[17]

Suante, Cesar Suante, Corazon Yasay-Gregorio, Donaldo Y. Gregorio, Elmer Y. Gregorio, and Roy John Y. Gregorio. *See rollo,* p. 7.

10 *Rollo,* pp. 44–45.

11 Id. at 45.

12 Id.

13 Id. at 47. These documents were: *Kasulatan sa Bilihan ng Lote* dated February 19, 1979; *Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa* dated March 31, 1982; Rufina Casimiro's Residence Certificate dated July 21, 1971; and a receipt issued by the Rural Bank of Zapote.

14 Id. at 45.

15 Id. at 46–47.

16 Id. at 15.

17 Id. at 47.

In another report dated May 2, 2001 (Second Report), Gomez observed that the thumbmarks on the standard documents appeared to be "faint, blurred and lacking the necessary ridge characteristics to warrant positive identification."[18] During a subsequent hearing, however, he clarified that "while the standard thumbmarks lack the 'necessary ridge characteristics to warrant positive identification,[']' 'all the standard are all in the same finger print pattern' and 'they are also in agreement of the flow of ridges of all the standard.'"[19]

In its May 31, 2005 Decision,[20] the Regional Trial Court concluded that the Deed of Absolute Sale was a forgery and ruled in favor of the petitioners. It found as credible the First Report, which positively showed that the questioned thumbmarks in the Deed of Absolute Sale were not Rufina's:

> This Court has examined the said thumbmarks and is convinced and satisfied that they are very different from her standard thumbmarks in the documents Exhibits "F", "G", and "H". This difference is further enhanced in the enlarged photographs of these thumbmarks (Exhibit "J"). It is clear by the naked eyes that Rufina's thumbmarks in the questioned Deed of Absolute Sale (Exhibit "D") are really the "circle type" while those of the standard thumbmarks in Exhibits "F", "G" and "H" are the loop type as the NBI expert technically described them. As the Supreme Court ruled in People vs. Abatayo, 87 Phil. 794, 798, "Thumbmarks never lie". "A comparison of both the differences and similarities in the questioned thumbmarks (signatures) should have been made to satisfy the demands of evidence" (Licarte vs. CA, G.R. No. 128899; June 8, 1995).[21]

The dispositive portion of its Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Declaring the thumbmarks of Rufina Casimiro in the Deed of Absolute Sale dated February 14, 1974, Doc. No. 73, Page 16, Book 1, Series of 1974 of the notarial registry of Atty. Arcadio Espiritu of Bacoor, Cavite (Exhibit "D") as forged and hence, null and void and inexistent.
>
> 2. Declaring the Deed of Declaration of Heirship and Extrajudicial Partition dated August 15, 1996 (Exhibit "E") null and void insofar as the adjudication of the one-tenth (1/10) share of Rufina Casimiro over the lot situated in Longos, Bacoor, Cavite, covered by OCT No. O-923; and the one-fifths (1/5) share of Rufina Casimiro in the lot situated in Talaba, Bacoor, Cavite, covered by TCT No. T-10058 both of the Registry of

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18 Id. at 16–17.
19 Id. at 17. Petition for Review on Certiorari.
20 Id. at 44–49.
21 Id. at 47.

> Deeds for the Province of Cavite (Exhibits "A" and "B"), both in favor of the Heirs of Rafaela Casimiro.
>
> 3. The Register of Deeds of the Province of Cavite is hereby ordered to cancel TCT No. T-741726, and to revert to the cancelled OCT No. O-923 and to cancel Entry No. 8449-75 appearing on TCT No. T-10058, which is the annotation of the questioned Deed of Absolute Sale (Exhibit "D") that has been declared herein as null and void and inexistent.
>
> The claim for damages is hereby DENIED for lack of merit.
>
> SO ORDERED.[22]

The Court of Appeals reversed and set aside the ruling of the Regional Trial Court.[23] It found that the Deed of Absolute Sale was a notarized document and had in its favor the presumption of regularity. It also emphasized Gomez's second examination, which appeared to indicate that the thumbmarks in the standard documents prevent "positive identification."[24] Thus, according to the Court of Appeals, the Regional Trial Court's conclusions were suspect. It held that, ultimately, petitioners failed to prove "by clear and convincing evidence" that the thumbmarks found on the Deed of Absolute Sale were forged.[25]

The Heirs of Rufina then filed the present Petition.

For resolution is the sole issue of whether or not the Deed of Absolute Sale allegedly executed by Rufina Casimiro, as seller, and Rafaela Casimiro, as buyer, is void, as Rufina Casimiro never consented to it and with her apparent thumbmarks on it being fake.

The Court of Appeals gravely erred in reversing the ruling of the Regional Trial Court. The Petition must be granted and the Regional Trial Court May 31, 2005 Decision must be reinstated.

I

The matter of the authenticity of Rufina Casimiro's thumbmarks is a factual issue resting on the evidence presented during trial. Factual issues are normally improper in Rule 45 petitions as, under Rule 45 of the 1997 Rules of Civil Procedure,[26] only questions of law may be raised in a petition

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22 Id. at 48–49.
23 Id. at 31–43.
24 Id. at 128.
25 Id. at 42.
26 RULES OF COURT, Rule 45, sec. 1:
Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial

for review on certiorari. However, the rule admits of exceptions. In *Pascual v. Burgos*:[27]

> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.
>
> However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:
>
> > (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact 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; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.
>
> These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.[28] (Citations omitted)

Several exceptions exist in this case. Most evident is how the findings and conclusions of the Court of Appeals conflict with those of the Regional Trial Court. More significant than these conflicting findings, this Court finds the Court of Appeals' appreciation of evidence to be grossly misguided. Contrary to the Court of Appeals' findings, a more circumspect consideration of the evidence sustains the conclusion that Rufina's purported thumbmarks were false and merely simulated to make it appear that she had consented to the alleged sale to her sister, Rafaela.

Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[27] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 10–11 [Per J. Leonen, Second Division].

[28] Id. at 10–11.

II

Notarization enables a notary public to ascertain the voluntariness of the party's act and to verify the genuineness of his or her signature.[29] Through notarization, the public and the courts may rely on the face of the instrument, without need of further examining its authenticity and due execution. It is an act that is imbued with public interest. In *Nunga v. Atty. Viray*:[30]

> [N]otarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of the authenticity thereof. A notarial document is by law entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[31]

Notarized documents enjoy the presumption of regularity. They are accorded evidentiary weight as regards their due execution:

> Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.[32]

However, any such presumption is disputable. It can be refuted by clear and convincing evidence to the contrary:

> It is true that notarized documents are accorded evidentiary weight as regards their due execution. Nevertheless, while notarized documents enjoy the presumption of regularity, this presumption is disputable. They can be contradicted by evidence that is clear, convincing, and more than merely preponderant.[33] (Citations omitted)

The contentious Deed of Absolute Sale in this case is a notarized document.[34] Thus, it benefits from the presumption of regularity. The burden of proving that thumbmarks affixed on it by an ostensible party is

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29 *Aquino v. Manese*, 448 Phil. 555 (2003) [*J.* Carpio Morales, Third Division].
30 366 Phil. 155 (1999) [J. Davide, Jr., En Banc].
31 Id. at 160–161.
32 *Basilio v. Court of Appeals*, 400 Phil. 120, 124 (2000) [J. Pardo, First Division] *citing Loyola v. Court of Appeals*, 383 Phil. 171 (2000) [J. Quisimbing, Second Division].
33 *Heirs of Trazona v. Heirs of Cañada*, 723 Phil. 388, 397 (2013) [C.J. Sereno, First Division].
34 *Rollo*, p. 46.

false and simulated lies on the party assailing its execution.[35] It is then incumbent upon petitioners to prove by clear and convincing evidence that the seller's thumbmarks, as appearing on the Deed of Absolute Sale, are forged and are not their mother's.

Petitioners successfully discharged this burden.

With the aid of an expert witness, they contrasted Rufina's apparent thumbmarks on the Deed of Absolute Sale with specimen thumbmarks on authentic documents. They demonstrated disparities that lead to no other conclusion than that the thumbmarks on the contentious Deed of Absolute Sale are forged. In contrast, respondents merely harped on a disputable presumption, and sought to affirm this presumption through the self-serving testimony of the notary public, whose very act of notarizing the Deed of Absolute Sale is the bone of contention, whose credibility was shown to be wanting, and who is himself potentially liable for notarizing a simulated document. They also endeavored to undermine petitioners' expert witness by dismissively characterizing him as "just an ordinary employee."[36]

III

Rule 130, Section 49 of the Revised Rules on Evidence specifies that courts may admit the testimonies of expert witnesses or of individuals possessing "special knowledge, skill, experience or training":

> Section 49. *Opinion of expert witness.* — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

Testimonies of expert witnesses are not absolutely binding on courts. However, courts exercise a wide latitude of discretion in giving weight to expert testimonies, taking into consideration the factual circumstances of the case:

> Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they choose upon such testimonies in accordance with the facts of the case. *The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study or observation of the matters about which he testifies, and any other*

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35 *Basilio v. Court of Appeals*, 400 Phil. 120, 124 (2000) [J. Pardo, First Division] *citing Sumbad v. Court of Appeals*, 368 Phil. 52 (1999) [J. Mendoza, Second Division].

36 *Rollo*, p. 98.

> *matters which serve to illuminate his statements.* The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect (20 Am. Jur., 1056-1058). The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[37] (Emphasis supplied)

This analysis applies in the examination of forged documents:

> Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. These handwriting experts can help determine fundamental, significant differences in writing characteristics between the questioned and the standard or sample specimen signatures, as well as the movement and manner of execution strokes.[38]

Respondents here assail the qualification of National Bureau of Investigation fingerprint examiner Gomez, pejoratively branding him as "just an ordinary employee."[39] In support of this dismissive casting of Gomez, respondents noted that he performed such functions as securing fingerprints from applicants for National Bureau of Investigation clearances and taking fingerprints of people involved in crimes.[40]

Evidence is concerned with "ascertaining . . . the truth respecting a matter of fact."[41] It is concerned with what can be objectively established and relies on verifiable actualities. Opinions are, by definition, subjective. They proceed from impressions, depend on perception, and are products of personal interpretation and belief. Hence, opinions are generally inadmissible as evidence.[42]

Opinions, when admissible, must have proper factual basis. They must be supported by facts or circumstances from which they draw logical

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37 *Salomon v. Intermediate Appellate Court,* 263 Phil. 1068, 1077 (1999) [J. Medialdea, First Division].
38 *Spouses Ulep v. Court of Appeals,* 509 Phil. 227, 240 (2005) [J. Garcia, Third Division].
39 *Rollo,* p. 98.
40 Id.
41 RULES OF COURT, Rule 128, sec. 1.
42 RULES OF COURT, Rule 130, sec. 48–50:
Section 48. General rule. — The opinion of a witness is not admissible, except as indicated in the following sections.
Section 49. Opinion of expert witness. — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.
Section 50. Opinion of ordinary witnesses. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —
(a) the identity of a person about whom he has adequate knowledge;
(b) A handwriting with which he has sufficient familiarity; and
(c) The mental sanity of a person with whom he is sufficiently acquainted.
The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.

inferences. An opinion bereft of factual basis merits no probative value. *People v. Malejana*[43] stated the following regarding expert opinions:

> The probative force of the testimony of an expert does not lie in a mere statement of the theory or opinion of the expert, but rather *in the aid that he can render to the courts in showing the facts which serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded.*[44] (Emphasis supplied, citation omitted)

The witness rendering an opinion must be credible,[45] in addition to possessing all the qualifications and none of the disqualifications specified in the Revised Rules on Evidence.[46] In the case of an expert witness, he or she must be shown to possess knowledge, skill, experience, or training on the subject matter of his or her testimony.[47] On the other hand, an ordinary witness may give an opinion on matters which are within his or her knowledge or with which he or she has sufficient familiarity.[48]

The testimony, too, must be credible in itself. In *Borguilla v. Court of Appeals*,[49] this Court said:

> Evidence to be believed must not only proceed from the mouth of a credible witness, it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[50]

The availability of direct evidence affects the viability of opinions. If there is a direct evidence to prove the fact in issue, an opinion may be rendered unnecessary. For instance, in *Cebu Shipyard and Engineering Works, Inc. v. William Lines*,[51] where the origin of a fire was at issue, this Court held that there was no need for the judge to consider expert opinion:

> [T]here is no need for the judge to resort to expert opinion evidence. In the case under consideration, the testimonies of the fire experts were not the only available evidence on the probable cause and origin of the fire. There were witnesses who were actually on board the vessel when the fire occurred. Between the testimonies of the fire experts who merely based

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43 515 Phil. 584 (2006) [J. Azcuna, Second Division].
44 Id. at 596.
45 *See Borguilla v. Court of Appeals*, 231 Phil. 9 (1987) [J. Paras, Second Division].
46 *See Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic*, 707 Phil. 109 (2013) [J. Villarama, Jr., First Division].
47 RULES OF COURT, Rule 130, sec. 49.
48 RULES OF COURT, Rule 130, sec. 50.
49 231 Phil. 9 (1987) [J. Paras, Second Division].
50 *Borguilla v. Court of Appeals,* 231 Phil. 9, 22 (1987) [J. Paras, Second Division].
51 366 Phil. 439 (1999) [J. Purisima, Third Division].

> their findings and opinions on interviews and the testimonies of those present during the fire, the latter are of more probative value.[52]

Contrary to respondents' dismissiveness towards Gomez, his performance of such tasks as taking fingerprints, even if, for a time it was his main duty, does not, per se, discount competence. A history of performing this function does not negate any "special knowledge, skill, experience or training" that Gomez possesses. Despite respondents' protestations, it remains that Gomez personally scrutinized and compared Rufina's disputed thumbmarks in the contested Deed of Absolute Sale with her authentic thumbmarks in the standard documents and detailed his findings in the First Report to which he testified before the Regional Trial Court. He expounded on his findings in the Second Report and clarified, contrary to what respondents and the Court of Appeals harp on, that the findings detailed in it are not in conflict with or otherwise discount the conclusions stated in the First Report.

Incidentally, this case is not the first instance that this Court sustained Gomez's competence and credibility. In *Rojales v. Dime*,[53] this Court relied on the examination conducted by Gomez to determine the genuineness of the thumbmark appearing on the *pacto de retro* subject of that case. *Rojales*' demonstration of Gomez's competence and credibility is worth reproducing at length:

> Petitioner avers that the [Court of Appeals] erred in relying on the NBI Fingerprint Examination. She alleges that the opinion of one claiming to be an expert is not binding upon the court.
>
> There is nothing on record that would compel this Court to believe that said witness, Fingerprint Examiner Gomez, has improper motive to falsely testify against the petitioner nor was his testimony not very certain. His testimony is worthy of full faith and credit in the absence of evidence of an improper motive. His straightforward and consistent testimonies bear the earmarks of credibility.
>
> Gomez testified during direct and cross examination, the process of examination of the fingerprints and his conclusion:
>
> ATTY: BELMI:
>
> Q: Will you kindly tell the court what was the result of your examination?
> A: After having thorough examination, comparison and analysis, the thumbmark appearing on the [Pacto] de Retro and the right thumbmark appearing on the original copy of PC/INP Fingerprint form taken by

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[52] Id. at 454–455.

[53] G.R. No. 194548, February 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/194548.pdf> [J. Peralta, Third Division].

SPO3 Marcelo Quintin Sosing were impressed by one and the same person.

. . . .

Q: How do you go about this comparison to determine whether that thumbmark [was] impressed by the same person?
A: We must locate the three elements of comparing, the number 1 is type of fingerprint pattern.

. . . .

A: There are three elements, after knowing the fingerprint pattern and they are of the same fingerprint the next step is to know the flow of the rages of the fingerprint pattern or the shape.

. . . .

Q: Then what is next?
A: After number 2, the last is the most important one because you must locate the number of ridges of characteristics and their relationship with each other because it is the basis of identification of the fingerprint.

Q: Meaning the description of the ridges?
A: Yes, sir, the identification features appearing on the fingerprint.

Q: What did you see?
A: I found that there were 13 identical points to warrant the positive identification.

Q: [Those] 13 points [are] more than enough to determine whether those thumbmark[s] [are] done by one and the same person?
A: Yes, sir.

. . . .

Q: Where did you base your conclusion that the thumbprint on the Pacto de Retro Sale over and above the name Juana Vda. de Rojales is genuine thumbprint of the same person?
A: Well, we only respon[d]ed to the request of the court to compare with the thumbprint appearing on the Pacto de Retro Sale to that of the fingerprint appearing on the thumbprint form.

Q: You mean to say you were provided with the standard fingerprint of the subject?
A: Yes, sir.

. . . .

COURT:

Q: Now, with this photograph blown-up, you have here 13 points, will you please explain to the court how these

13 points agree from that standard to that questioned document?
A: I found 2x4 bifurcation, it means that single rage splitting into two branches.
Q: You pointed out?
A: I found the bifurcation on the standard that corresponds exactly to the bifurcation which I marked number 1 in both photograph[s].

Q: From the center?
A: As to the number and location with respect to the core, I found that both questioned and standard coincide.
. . . .

Q: Now, but the layer does not change in point 1, how many layer from the core?
A: From the core, there are 4 intervening layers from number 1 to number 2 and it appears also the questioned 4 intervening layers between number 1 and number 2, so, the intervening rages between ends of th[ese] characteristics are all both in agreement.
. . . .

ATTY. SALANGUIT:

Q: Can you say that based on the questioned thumbmark, you would be able to arrive an accurate evaluation between the questioned thumbmark and standard thumbmark?
A: Yes, [ma'am].

Q: Even if the questioned thumbmark is a little bit blurred as to the standard thumbmark?
A: [Even though] the questioned thumbmark is a little bit blurred but still the ridge characteristics [are] still discernible.

Q: You are telling us that among many people here in the world, nobody have the same thumbmark as another person and that include the thumbmark of a twins?
A: Yes, [ma'am].[54]

This Court finds no reason to favorably consider respondents' attempt at undermining Gomez's competence.

The credibility of an expert witness does not inhere in his or her person. Rather, he or she must be shown to possess knowledge, skill, experience, or training on the subject matter of his or her testimony.[55] In *First Nationwide Assurance Corp. v. Court of Appeals*,[56] where the identity

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[54] Id. at 9–11.
[55] RULES OF COURT, Rule 130, sec. 49.
[56] 376 Phil. 701 (1999) [J. Panganiban, Third Division].

of the vehicle in question was in issue, this Court considered these factors in assessing the credibility of the expert witness:

> We note that Sergeant Agadulin is a police officer who has adequate knowledge, training and experience to perform macro-etching examinations. His assertions on this technical matter are, as the [Court of Appeals] noted, in the nature of expert testimony. Additionally, as a public officer, he is presumed to have regularly performed his duty. In the absence of controverting evidence, his testimony is entitled to great weight and credence.[57] (Citation omitted)

Standards outlined in American jurisprudence illustrate frameworks and standards for appraising expert testimonies.

In the 1923 case of *Frye v. United States*,[58] James Alfonso Frye was convicted of second-degree murder by the lower court after he was disallowed to introduce expert testimony relating to the results of systolic blood pressure deception test. The United States Supreme Court, in sustaining the lower court, explained:

> The rule is that the opinions of experts or skilled witnesses are admissible in evidence in those cases in which the matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it, for the reason that the subject-matter so far partakes of a science, art, or trade as to require a previous habit or experience or study in it, in order to acquire a knowledge of it. When the question involved does not lie within the range of common experience or common knowledge, but requires special experience or special knowledge, then the opinions of witnesses skilled in that particular science, art, or trade to which the question relates are admissible in evidence.
>
> Numerous cases are cited in support of this rule. Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained *general acceptance in the particular field in which it belongs.*
>
> We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made.[59] (Emphasis supplied)

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57 Id. at 712.
58 54 App. D.C. 46, 293 F. 1013 (1923).
59 Id.

In 1993, the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* departed from the Frye standard and articulated a new framework for assessing the admission of expert testimony.[60] In that case, plaintiffs Jason Daubert and Eric Schuller attributed their serious birth defects to the drug Bendectin, manufactured by defendant Dow Chemical Company. They submitted expert testimonies on animal studies showing a link between Bendectin and malformations, pharmacological studies, and reanalysis of previously published epidemiological studies. The district court ruled in favor of the defendant and stated that scientific evidence is admissible only if the principle upon which it is based is "sufficiently established to have general acceptance in the field to which it belongs."[61] The Ninth Circuit Court affirmed this Decision after finding that the plaintiffs' evidence had not yet been accepted as reliable technique by scientists who had an opportunity to scrutinize and verify the methods.

However, the United States Supreme Court remanded the case after finding the Frye standard to be mooted by the adoption of the Federal Rules of Evidence, Rule 702, which stated:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The United States Supreme Court observed that Rule 702 did not require "general acceptance" of the Frye standard before expert testimony is admitted. Instead of following the strict Frye standard, it placed on the judge the duty to act as "gatekeeper" when faced with a proffer of expert scientific testimony. Thus, the judge must make a preliminary determination of whether or not the offered testimony is scientific knowledge and whether or not it will assist the trier of fact to understand or determine a fact in issue. The following are the standards that should be considered by the judge:

> Many considerations will bear on the inquiry, including whether the theory or technique in question can be (and has been) tested, whether it has been subjected to peer review and publication, its known or potential error rate, and the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within a relevant scientific community.[62]

However, the standards are not exclusive:

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60 509 US 579, 113 S.Ct. 2786 (1993).
61 Id.
62 Id.

> The inquiry is a flexible one, and its focus must be solely on principles and methodology, not on the conclusions that they generate. Throughout, the judge should also be mindful of other applicable Rules.[63]

Thus, the United States Supreme Court remanded the case for the application of its enumerated standards.

In this case, the Regional Trial Court's May 31, 2005 Decision detailed the circumstances leading to the National Bureau of Investigation's examination of the contentious Deed of Absolute Sale, respondents' incessant attempts at preventing the examination, and how Gomez took the witness stand and presented his findings. The Regional Trial Court's recollection indicates, most notably, that Gomez was not handpicked by petitioners. Rather, following petitioners' request, Gomez appeared to have been designated by the National Bureau of Investigation itself to conduct the examination. Thus, any such determination of Gomez's expertise was not borne by petitioners' innate preference for him or of their insistence upon him, but by the National Bureau of Investigation's own confidence in him. This institutional reposition of confidence can only bolster Gomez's credibility:

> To prove that their mother's thumbmarks on the disputed deed of absolute sale were forged, plaintiffs filed a motion to refer the questioned document to the National Bureau of Investigation (NBI) for examination. An Order was issued by this Court directing the Office of the Registry of Deeds for the Province of Cavite to submit to this Court the original copy of the said title and upon receipt of the same ordered the Branch Clerk of Court to transmit the same to the NBI. An Omnibus Motion was filed by the defendants informing this Court that the questioned document was already lost and/or missing pursuant to the Certification dated April 5, 2000 issued by the Office of the Registry of Deeds for the Province of Cavite (Exh. 8). Hence, the order to transmit the questioned document became unavailing and academic. That notwithstanding, the Branch Clerk of Court transmitted the questioned document to the NBI. Defendants insinuated that the original questioned document came from an illegitimate and spurious source. However, it was explained by a representative of the registry, Mr. Agusto Vasquez, that the registrar asked him to bring the questioned document to the Court and the same was received by one of the employees of the Court. Further, the said issue has been resolved by this Court in its Order dated August 14, 2000, pertinent portion of which states that:
>
> > "Therefore, the allegations (sic) of the defendants that the said document came from a spurious [source] is without any basis. This Court assures the defendants and/or any litigant for that matter that this Court will not allow spurious document[s] to be admitted by this Court.

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[63] Id.

> WHEREFORE, the Omnibus Motion filed by the defendants is hereby DENIED for lack of merit."
>
> As basis of the comparison[,] plaintiffs presented, the Kasulatan sa Bilihan ng Lote dated February 19, 1979 (Exhibit "F"); Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa dated March 31, 1982 (Exhibit "G"); and the Residence Certificate of Rufina Casimiro dated July 21, 1971 (Exhibit "H") and a receipt issued by the Rural Bank of Zapote (Exhibit "H-1"), which documents contained the genuine thumbmarks of Rufina Casimiro.
>
> A fingerprint examiner of the NBI, Eriberto B. Gomez, Jr., took the witness stand. He testified that pursuant to the order of this Court he conducted an examination to determine the genuineness of Rufina Casimiro's thumbmarks on the questioned Deed of Absolute Sale by comparing them with her genuine thumbmarks as appearing on Exhibits "F", "G" and "H". These documents, containing the genuine thumb marks of Rufina Casimiro were executed on the dates prior to and after the execution of the questioned documents. Mr. Gomez prepared enlarged photographs of the questioned and standard thumbmarks of Rufina Casimiro for better examination and comparison (Exhibit "J"). After examining these thumbmarks, Mr. Gomez concluded in his Technical Investigation/Identification Report FP Case No. 2000-182-A (Exh. "I") that the purported thumbmarks of Rufina Casimiro in the alleged Deed of Absolute Sale (Exhibit "D") are not identical with her standard thumbmarks in Exhibits "F", "G" and "H" and that the thumbmarks appearing in the said Deed of Absolute Sale (Exhibit "D") were not impressed by Rufina Casimiro.[64]

IV

Heirs of Gregorio v. Court of Appeals,[65] outlined standards for establishing forgery:

> As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery. A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results.[66] (Citation omitted)

Here, petitioners submitted for comparison three (3) standard documents bearing the genuine thumbmarks of Rufina: (1) *Kasulatan sa*

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64 *Rollo*, pp. 46–47.
65 360 Phil. 753 (1998) [J. Purisima, Third Division].
66 Id. at 763.

Bilihan ng Lote (Exhibit "F"); (2) *Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa* (Exhibit "G"); and (3) the Residence Certificate of Rufina (Exhibit "H").[67] After examination, Gomez submitted to the Regional Trial Court his Technical Investigation/Identification Report FP Case No. 2000-182 dated July 13, 2000:

> 6. RESULT OF EXAMINATION: After having a thorough examination, comparison and analysis, questioned thumbmarks mentioned in item nos. 5A and 5B are found not identical with the standard thumbmarks mentioned in item nos. 5C, 5D[,] and 5E.
>
> 7. OPINION: In view of the foregoing result of the examination, questioned thumbmark mentioned in item nos. 5A and 5B were not impressed by Rufina Casimiro.[68]

This Report could not be any clearer. The questioned thumbmarks on the Deed of Absolute Sale do not belong to Rufina. The questioned thumbmarks were of the "circle type" while the genuine thumbmarks of Rufina were of the "loop type."[69]

Upon personally perusing the documents, Regional Trial Court Judge Novato T. Cajigal (Judge Cajigal) reached a similar conclusion:

> This Court has examined the said thumbmarks and is convinced and satisfied that they are very different from her standard thumbmarks in the documents Exhibits "F", "G"[,] and "H". This difference is further enhanced in the enlarged photographs of these thumbmarks (Exhibit "J"). It is clear by the naked eyes that Rufina's thumbmarks in the questioned Deed of Absolute Sale (Exhibit "D") are really the "circle type" while those of the standard thumbmarks in Exhibits "F", "G"[,] and "H" are the loop type as the NBI expert technically described them. As the Supreme Court ruled in People vs. Abatayo, 87 Phil. 794, 798, "Thumbmarks never lie". "A comparison of both the differences and similarities in the questioned thumbmarks (signatures) should have been made to satisfy the demands of evidence" (Licarte vs, CA, G.R. No. 128899; June 8, 1995).[70]

Judge Cajigal's observations and conclusions are in keeping with the settled principle that judges exercise independent judgment in appraising the authenticity of a signature, or of a fingerprint placed in a signature's stead:

> A judge must therefore conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its

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67 *Rollo*, p. 47.
68 Id. at 15–16.
69 Id. at 47.
70 Id.

> authenticity and this cannot be done without the original copy being produced in court.[71]

V

In reversing the Regional Trial Court, the Court of Appeals emphasized Gomez's Second Report, which indicated that faint and blurred features of the thumbmarks appearing on the standard documents prevented "positive identification."[72] Thus, it concluded that "no comparison may be made between the thumbmarks found in the Deed [Absolute of Sale] and those found in the standard documents."[73]

However, the Court of Appeals failed to consider that Gomez clarified that all the requisites for comparing the thumbmarks—(1) fingerprint patterns, (2) flow of ridges, and (3) location and relationship of their characteristics—had been satisfied. He specifically stated that first, "[a]ll the standard [thumbmarks] are all in the same fingerprint pattern";[74] second, "they are also in agreement [as to] the flow [of] ridges";[75] and third, there is no discrepancy as to their ridge characteristics[76]:

> ATTY. CORTEZ
>
> Q Can you tell us, Mr. Witness, the requirements before you can render an opinion in the identity of the standard thumbmark?
>
> WITNESS
>
> A Well, in comparing the prints there are three requirements, (1) to determine the type of the finger prints pattern; (2) the flow of the ridges; (3) the location of each characteristics and their relationship to each other, sir.
>
> ATTY. CORTEZ
>
> Q Now with respect to the first requirements (sic) that you mentioned "the general pattern"?
>
> . . . .
>
> ATTY. CORTEZ
>
> Q Would you say that this standard thumbmark, what can you say about the general pattern of the thumbmark?
>
> WITNESS

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71 *Mendoza v. Fermin,* 738 Phil. 429, 442 (2014) [J. Peralta, Third Division].
72 *Rollo*, p. 127.
73 Id. at 38 and 40.
74 Id. at 127.
75 Id. at 128.
76 Id. at 128–129.

A *All the standard are all in the same finger print pattern, sir.*

ATTY. CORTEZ

Q How about the second requirements (sic) which is the flow of the ridges, what can you say about this standard?

WITNESS

A *Well, they are also in agreement of the flow [of] ridges of all the standard, sir.*

ATTY. CORTEZ

Q And how about the third requirements, the number of ridge characteristics?

WITNESS

A The number of the ridge characteristics because [of] the none clarity (sic) of th[ese] characteristics. I only locate[d] one or two points and it is not sufficient for positive identification. I must locate seven or more ridge characteristics to warrant positive identification, sir.

ATTY. CORTEZ

Q But will you agree, Mr. Witness that with respect to this point, there is no discrepancy among the standard thumbmark?

WITNESS

A Well, if I have not meet (sic) all the requirements then I cannot make an opinion regarding the identification of the standard finger print, sir.

ATTY. CORTEZ

Q My question is not about the identity. My question is pertaining to any discrepancy or any disagreement?

WITNESS

A *There is none, sir.*[77] (Emphasis supplied)

The faint and blurred features of the thumbmarks appearing on the standard documents may have made them less than ideal. Still, Gomez explained that they remained to be sufficiently consistent, and therefore, suitable for a comparison with the thumbmarks appearing on the disputed Deed of Absolute Sale. Gomez, too, was particular in rejecting respondents' counsel's suggestion that the Second Report should "supersede"[78] the First Report:

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77 Id. at 127–129.

78 Id. at 129.

ATTY. DELA CUEVA

Q Mr. Witness, this document now marked as Exh. "K" which we are adopting as our Exh. "6" was prepared by you subsequently to a previous report which is now marked as Exh. "I", does this report supersede your previous report, Mr. Witness?

WITNESS

A No, Sir.[79]

Thus, Gomez was steadfast on the findings he detailed in his First Report. The First Report already established that the questioned thumbmarks appearing on the Deed of Absolute Sale were not Rufina's, as their genuineness is belied by thumbmarks appearing on the authentic, standard documents. Despite the flaws in the thumbmarks appearing in the standard documents, the inherent deficiencies of the thumbmarks affixed in the Deed of Absolute Sale remain.

VI

Respondents' lone witness was Atty. Arcadio Espiritu (Atty. Espiritu), the notary public who notarized the Deed of Absolute Sale.[80] Atty. Espiritu asserted that the parties to the Deed of Absolute Sale personally appeared before him and that Rufina affixed her thumbmarks in his presence.[81]

However, Atty. Espiritu's credibility is highly questionable. It was established during trial that he notarized an Affidavit of Self-Adjudication in favor of a certain Victor Guinto (Guinto), where Guinto declared that he was the sole heir of his deceased sister, to the exclusion of their other siblings.[82] This was despite Atty. Espiritu's personal knowledge, as a longtime neighbor of Guinto's family, that there were other brothers and sisters.[83] During trial, he even admitted that "he was not 'concerned about the truth and falsities of entries in the document.'"[84]

The Regional Trial Court's observations are on point. It was right to not lend credence to Atty. Espiritu's testimony:

> Thus, the presumption of regularity in the execution of notarial documents [cannot] apply in this case, despite the testimony of the notary public who notarized the said Deed of Absolute Sale, whose credibility is

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79 Id. at 129–130.
80 Id. at 45–46.
81 Id. at 93–97.
82 Id. at 21–22.
83 Id.
84 Id. at 22.

> in itself doubtful considering his admission that he prepared and notarized an affidavit of self-adjudication of inherited properties from a deceased sister (Exhibit "M") inspite (sic) of his personal knowledge that the affiant was not the sole heir of the said deceased, who has other surviving brothers and sisters as they were once his neighbors in Zapote, Bacoor, Cavite. No amount of testimonial evidence could ever alter or detract from the cold physical fact that the questioned thumbmarks are not identical with the standard thumbmarks. Testimonial evidence cannot prevail over physical facts.[85]

VII

Petitioners were able to discharge their burden of proving forgery by clear and convincing evidence. Petitioners themselves recounted in a straightforward manner that their mother, being illiterate, never dealt with her properties without the assistance of any of her children.[86] To attest to this, they presented documents bearing the thumbmarks of their mother, where it appeared that at least one (1) of them was present to assist her.[87] These same documents, when compared with the contentious Deed of Absolute Sale, demonstrated the falsity of the thumbmarks appearing on the latter. Respondents' cause may have been supported by the general presumption that notarized documents were duly executed; however, this presumption must crumble in light of the significantly more compelling evidence presented by petitioners. As against petitioners' evidence, all that respondents presented was the testimony of the notarizing lawyer, whose own acts are clouded with suspicion.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The July 9, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 91767 is **REVERSED** and **SET ASIDE**. The May 31, 2005 Decision of the Regional Trial Court, Branch 19, Bacoor, Cavite in Civil Case No. BCV 97-183 is **REINSTATED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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85 Id. at 47–48.
86 Id. at 114–115.
87 Id. at 45.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPUTAN
Division Clerk of Court
Third Division
MAR 07 2018