

NOBIO SARDANE, PETITIONER, VS. THE COURT OF APPEALS AND ROMEO J. ACOJEDO, RESPONDENTS.

G.R. No. L-47045. November 22, 1988

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f51339aff1c3/>

REGALADO, J.:

The extensive discussion and exhaustive disquisition in the decision[1] of the respondent Court[2] should have written *finis* to this case without further recourse to Us. The assignment of errors and arguments raised in the respondent Court by herein private respondent, as the petitioner therein, having been correctly and justifiedly sustained by said court without any reversible error in its conclusions, the present petition must fail.

The assailed decision details the facts and proceedings which spawned the present controversy as follows:

"Petitioner brought an action in the City Court of Dipolog for collection of a sum of P5,217.25 based on promissory notes executed by the herein private respondent Nobio Sardane in favor of the herein petitioner. Petitioner bases his right to collect on Exhibits B, D, E, F, and G executed on different dates and signed by private respondent Nobio Sardane. Exhibit B is a printed promissory note involving P1,117.25 and dated May 13, 1972. Exhibit C is likewise a printed promissory note and denotes on its face that the sum loaned was P1,400.00. Exhibit D is also a printed promissory note dated May 31, 1977 involving an amount of P100.00. Exhibit E is what is commonly known to the layman as 'vale' which reads: 'Good for: two hundred pesos (Sgd) Nobio Sardane'. Exhibit F is stated in the following tenor: 'Received from Mr. Romeo Acojedo the sum Pesos: Two Thousand Two Hundred (P2,200.00.) ONLY, to be paid on or before December 25, 1975. (Sgd) Nobio Sardane.' Exhibit G and H are both 'vales' involving the same amount of one hundred pesos, and dated August 25, 1972 and September 12, 1972 respectively.

"It has been established in the trial court that on many occasions, the petitioner demanded the payment of the total amount of P5,217.25. The failure of the private respondent to pay the said amount prompted the petitioner to seek the services of lawyer who made a letter (Exhibit I) formally demanding the return of the sum loaned.' Because of the failure of the private respondent to heed the demands extrajudicially made by the petitioner, the latter was constrained to bring an action for collection of sum of money.

"During the scheduled day for trial, private respondent failed to appear and to file an answer. On motion by the petitioner, the City Court of Dipolog issued an order dated May 18, 1976 declaring the private respondent in default and allowed the petitioner to present his evidence *ex-parte*. Based on petitioner's evidence, the City Court of Dipolog rendered judgment by default in favor of the petitioner.

"Private respondent filed a motion to lift the order of default which was granted by the City Court in an order dated May 24, 1976, taking into consideration that the answer was filed within two hours after the hearing of the evidence presented *ex-parte* by the petitioner.

"After the trial on the merits, the City Court of Dipolog rendered its decision on September 14, 1976, the dispositive portion of which reads:

'IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the

defendant as follows:

(a)

Ordering the defendant to pay unto the plaintiff the sum of Five Thousand Two Hundred Seventeen Pesos and Twenty-five centavos (P5,217.25) plus legal interest to commence from April 23, 1976 when this case was filed in court; and

(b)

Ordering the defendant to pay the plaintiff the sum of P200.00 as attorney's fee and to pay the cost of this proceeding."^[3]

Therein defendant Sardane appealed to the Court of First Instance of Zamboanga del Norte which reversed the decision of the lower court by dismissing the complaint and ordered the plaintiff-appellee Acojedo to pay said defendant-appellant P500.00 each for actual damages, moral damages, exemplary damages and attorney's fees, as well as the costs of suit. Plaintiff-appellee then sought the review of said decision by petition to the respondent Court.

The assignment of errors in said petition for review can be capsulized into two decisive issues, firstly, whether the oral testimony for the therein private respondent Sardane that a partnership existed between him and therein petitioner Acojedo are admissible to vary the meaning of the abovementioned promissory notes; and, secondly, whether because of the failure of therein petitioner to cross-examine therein private respondent on his sur-rebuttal testimony, there was a waiver of the presumption accorded in favor of said petitioner by Section 8, Rule 8 of the Rules of Court.

On the first issue, the then Court of First Instance held that "the pleadings of the parties herein put in issue the imperfection or ambiguity of the documents in question", hence "the appellant can avail of the parol evidence rule to prove his side of the case, that is, the said amount taken by him from appellee is or was not his personal debt to appellee, but expenses of the partnership between him and appellee".

Consequently, said trial court concluded that the promissory notes involved were merely receipts for the contributions to said partnership and, therefore, upheld the claim that there was ambiguity in the promissory notes, hence parol evidence was allowable to vary or contradict the terms of the represented loan contract.

The parol evidence rule in Rule 130 provides:

"Sec. 7. Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) Where a mistake or imperfection of the writing or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;

(b) When there is an intrinsic ambiguity in the writing."

As correctly pointed out by the respondent Court the exceptions to the rule do not apply in this case as there is no ambiguity in the writings in question, thus:

"In the case at bar, Exhibits B, C, and D are printed promissory notes containing a promise to pay a sum certain in money, payable on demand and the promise to bear the costs of litigation in the event of the private

respondent's failure to pay the amount loaned when demanded extrajudicially. Likewise, the vales denote that the private respondent is obliged to return the sum loaned to him by the petitioner. On their face, nothing appears to be vague or ambiguous, for the terms of the promissory notes clearly show that it was incumbent upon the private respondent to pay the amount involved in the promissory notes if and when the petitioner demands the same. It was clearly the intent of the parties to enter into a contract of loan for how could an educated man like the private respondent be deceived to sign a promissory note yet intending to make such a writing to be mere receipts of the petitioner's supposed contribution to the alleged partnership existing between the parties?

"It has been established in the trial court that the private respondent has been engaged in business for quite a long period of time -- as owner of the Sardane Trucking Service, entering into contracts with the government for the construction of wharfs and seawall; and a member of the City Council of Dapitan (TSN, July 20, 1976, pp. 57-58). It indeed puzzles us how the private respondent could have been misled into signing a document containing terms which he did not mean them to be. x x x "

xxx xxx xxx

"The private respondent admitted during the cross-examination made by petitioner's counsel that he was the one who was responsible for the printing of Exhibits B, C and D (TSN, July 28, 1976, p. 64). How could he purportedly rely on such a flimsy pretext that the promissory notes were receipts of the petitioner's contribution?"[4]

The Court of Appeals held, and We agree, that even if evidence aliunde other than the promissory notes may be admitted to alter the meaning conveyed thereby, still the evidence is insufficient to prove that a partnership existed between the private parties hereto.

As manager of the basnig Sardaco, naturally some degree of control over the operations and maintenance thereof had to be exercised by herein petitioner. The fact that he had received 50% of the net profits does not conclusively establish that he was a partner of the private respondent herein. Article 1769(4) of the Civil Code is explicit that while the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, no such inference shall be drawn if such profits were received in payment as wages of an employee. Furthermore, herein petitioner had no voice in the management of the affairs of the basnig. Under similar facts, this Court in the early case of *Fortis vs. Gutierrez Hermanos*,[5] in denying the claim of the plaintiff therein that he was a partner in the business of the defendant, declared:

"This contention cannot be sustained. It was a mere contract of employment. The plaintiff had no voice nor vote in the management of the affairs of the company. The fact that the compensation received by him was to be determined with reference to the profits made by the defendant in their business did not in any sense make him a partner therein. x x x "

The same rule was reiterated in *Bastida vs. Menzi & Co., Inc., et al.*[6] which involved the same factual and legal milieu.

There are other considerations noted by respondent Court which negate herein petitioner's pretension that he was a partner and not a mere employee indebted to the present private respondent. Thus, in an action for damages filed by herein private respondent against the North Zamboanga Timber Co., Inc. arising from the operations of the business, herein petitioner did not ask to be joined as a party plaintiff. Also, although he contends that herein private respondent is the treasurer of the alleged partnership, yet it is the latter who is demanding an accounting. The advertence of the Court of First Instance to the fact that the casco bears the name of herein petitioner disregards the finding of the respondent Court that it was just a concession since it was he who obtained the engine used in the Sardaco from the Department of Local Government and Community Development. Further, the use by the parties of the pronoun "our" in referring to "our basnig", "our catch", "our deposit", or "our boseros"

was merely indicative of the camaraderie, and not evidentiary of a partnership, between them.

The foregoing factual findings, which belie the further claim that the aforesaid promissory notes do not express the true, intent and agreement of the parties, are binding on Us since there is no showing that they fall within the exceptions to the rule limiting the scope of appellate review herein to questions of law.

On the second issue, the pertinent rule on actionable documents in Rule 8, for ready reference, reads:

"Sec. 8. How to contest genuineness of such documents. - When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for the inspection of the original instrument is refused."

The record shows that herein petitioner did not deny under oath in his answer the authenticity and due execution of the promissory notes which had been duly pleaded and attached to the complaint; thereby admitting their genuineness and due execution. Even in the trial court, he did not at all question the fact that he signed said promissory notes and that the same were genuine. Instead, he presented parol evidence to vary the import of the promissory notes by alleging that they were mere receipts of his contribution to the alleged partnership.

His arguments on this score reflect a misapprehension of the rule on parol evidence as distinguished from the rule on actionable documents. As the respondent Court correctly explained to herein petitioner, what he presented in the trial Court was testimonial evidence that the promissory notes were receipts of his supposed contributions to the alleged partnership which testimony, in the light of Section 7, Rule 130, could not be admitted to vary or alter the explicit meaning conveyed by said promissory notes. On the other hand, the presumed genuineness and due execution of said promissory notes were not affected, pursuant to the provisions of Section 8, Rule 8, since such aspects were not at all questioned but, on the contrary, were admitted by herein petitioner.

Petitioner's invocation of the doctrines in *Yu Chuck, et al. vs. Kong Li Po*,^[7] which was reiterated in *Central Surety & Insurance Co. vs. C. N. Hodges, et al.*^[8] does not sustain his thesis that the herein private respondent had "waived the mantle of protection given him by Rule 8, Sec. 8". It is true that such implied admission of genuineness and due execution may be waived by a party but only if he acts in a manner indicative of either an express or tacit waiver thereof. Petitioner, however, either overlooked or ignored the fact that, as held in *Yu Chuck*, and the same is true in other cases of identical factual settings, such a finding of waiver is proper where a case has been tried in complete disregard of the rule and the plaintiff having pleaded a document by copy, presents oral evidence to prove the due execution of the document and no objections are made to the defendant's evidence in refutation. This situation does not obtain in the present case hence said doctrine is obviously inapplicable.

Neither did the failure of herein private respondent to cross-examine herein petitioner on the latter's sur-rebuttal testimony constitute a waiver of the aforesaid implied admission. As found by the respondent Court, said sur-rebuttal testimony consisted solely of the denial of the testimony of herein private respondent and no new or additional matter was introduced in that sur-rebuttal testimony to exonerate herein petitioner from his obligations under the aforesaid promissory notes.

On the foregoing premises and considerations, the respondent Court correctly reversed and set aside the appealed decision of the Court of First Instance of Zamboanga del Norte and affirmed in full the decision of the City Court of Dipolog City in Civil Case No. A-1838, dated September 14, 1976.

Belatedly, in his motion for reconsideration of said decision of the respondent Court, herein petitioner, as the private respondent therein, raised a third unresolved issue that the petition for review therein should have been dismissed for lack of jurisdiction since the lower Court's decision did not affirm in full the judgment of the City Court of Dipolog, and which he claimed was a sine qua non for such a petition under the law then in force. He raises the same point in his present appeal and We will waive the procedural technicalities in order to put this issue at rest.

Parenthetically, in that same motion for reconsideration he had sought affirmative relief from the respondent Court praying that it sustain the decision of the trial Court, thereby invoking and submitting to its jurisdiction which he would now assail. Furthermore, the objection that he raises is actually not one of jurisdiction but of procedure.[9]

At any rate, it will be noted that petitioner anchors his said objection on the provisions of Section 29, Republic Act 296 as amended by Republic Act 5433 effective September 9, 1968. Subsequently, the procedure for appeal to the Court of Appeals from decisions of the then courts of first instance in the exercise of their appellate jurisdiction over cases originating from the municipal courts was provided for by Republic Act 6031, amending Section 45 of the Judiciary Act effective August 4, 1969. The requirement for affirmance in full of the inferior court's decision was not adopted or reproduced in Republic Act 6031. Also, since Republic Act 6031 failed to provide for the procedure or mode of appeal in the cases therein contemplated, the Court of Appeals en banc provided therefor in its Resolution of August 12, 1971, by requiring a petition for review but which also did not require for its availability that the judgment of the court of first instance had affirmed in full that of the lower court. Said mode of appeal and the procedural requirements thereof governed the appeal taken in this case from the aforesaid Court of First Instance to the Court of Appeals in 1977.[10] Herein petitioner's plaint on this issue is, therefore, devoid of merit.

WHEREFORE, the judgment of the respondent Court of Appeals is AFFIRMED, with costs against herein petitioner.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Gutierrez, H. E., J., with the concurrence of Serrano, M. and Batacan, D. Fl., JJ.

[2] Special Fifth Division, CA-G.R. No. SP-06464-R, Romeo J. Acojedo, Petitioner, vs. Nobio Sardane and Hon. Dimalanes B. Buissan, in his capacity as Judge of the Court of First Instance of Zamboanga del Norte, Respondents.

[3] Rollo, 62-65.

[4] Rollo, 71-74.

[5] 6 Phil. 100 (1906).

[6] 58 Phil. 188 (1933).

[7] 46 Phil. 608 (1924).

[8] 38 SCRA 159 (1971).

[9] See *Manila Railroad Co. vs. Attorney-General*, 20 Phil. 523 (1911).

[10] For the present procedure, see Sec. 22 B.P. 129; Pars. 20, 21 and 22 (b) of the Interim or Transitional Rules and Guidelines.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.