

MANOLO P. FULE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

G.R. No. 79094. June 22, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision of respondent Appellate Court, which affirmed the judgment of the Regional Trial Court, Lucena City, Branch LIV, convicting petitioner (the accused-appellant) of Violation of Batas Pambansa Big. 22 (The Bouncing Checks Law) on the basis of the Stipulation of Facts entered into between the prosecution and the defense during the pre-trial conference in the Trial Court. The facts stipulated upon read:

"a) That this Court has jurisdiction over the person and subject matter of this case;

"b) That the accused was an agent of the Towers Assurance Corporation on or before January 21, 1981;

"c) That on January 21, 1981, the accused issued and made out check No. 26741, dated January 24, 1981 in the sum of P2,541.05;

"d) That the said check was drawn in favor of the complaining witness, Roy Nadera;

"e) That the check was drawn in favor of the complaining witness in remittance of collection;

"f) That the said check was presented for payment on January 24, 1981 but the same was dishonored for the reason that the said checking account was already closed;

"g) That the accused Manolo Fule has been properly identified as the accused party in this case."

At the hearing of August 23, 1985, only the prosecution presented its evidence consisting of Exhibits "A", "B" and "C".

At the subsequent hearing on September 17, 1985, petitioner-appellant waived the right to present evidence and, in lieu thereof, submitted a Memorandum confirming the Stipulation of Facts. The Trial Court convicted petitioner-appellant.

On appeal, respondent Appellate Court upheld the Stipulation of Facts and affirmed the judgment of conviction.[1]

Hence, this recourse, with petitioner-appellant contending that:

"The Honorable Respondent Court of Appeals erred in affirming the decision of the Regional Trial Court convicting the petitioner of the offense charged, despite the cold fact that the basis of the conviction was based solely on the stipulation of facts made during the pre-trial on August 8, 1985, which was not signed by the petitioner, nor by his counsel."

Finding the petition meritorious, we resolved to give due course.

The 1985 Rules on Criminal Procedure, which became effective on January 1, 1985, applicable to this case since the pre-trial was held on August 8, 1985, provides:

"SEC. 4. Pre-trial agreements must be signed. — No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel" (Rule 118) [Italics supplied]

By its very language, the Rule is mandatory. Under the rule of statutory construction, negative words and phrases are to be regarded as mandatory while those in the affirmative are merely directory (*McGee vs. Republic*, 94 Phil. 820 [1954]). The use of the term "shall" further emphasizes its mandatory character and means that it is imperative, operating to impose a duty which may be enforced (*Bersabal vs. Salvador*, No. L-35910, July 21, 1978, 84 SCRA 176). And more importantly, penal statutes whether substantive and remedial or procedural are, by consecrated rule, to be strictly applied against the government and liberally in favor of the accused (*People vs. Terrado*, No. L-23625, November 25, 1983, 125 SCRA 648).

The conclusion is inevitable, therefore, that the omission of the signature of the accused and his counsel, as mandatorily required by the Rules, renders the Stipulation of Facts inadmissible in evidence. The fact that the lawyer of the accused, in his memorandum, confirmed the Stipulation of Facts does not cure the defect because Rule 118 requires both the accused and his counsel to sign the Stipulation of Facts. What the prosecution should have done, upon discovering that the accused did not sign the Stipulation of Facts, as required by Rule 118, was to submit evidence to establish the elements of the crime, instead of relying solely on the supposed admission of the accused in the Stipulation of Facts. Without said evidence independent of the admission, the guilt of the accused cannot be deemed established beyond reasonable doubt.

Consequently, under the circumstances obtaining in this case, the ends of justice require that evidence be presented to determine the culpability of the accused. When a judgment has been entered by consent of an attorney without special authority, it will sometimes be set aside or reopened (*Natividad vs. Natividad*, 51 Phil. 613 [1928]).

WHEREFORE, the judgment of respondent Appellate Court is REVERSED and this case is hereby ordered RE-OPENED and REMANDED to the appropriate Branch of the Regional Trial Court of Lucena City, for further reception of evidence.

SO ORDERED.

Yap (C. J.), Fernan, Narvasa, Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Medialdea, JJ., concur.

Gutierrez, Jr., J., on leave.

Paras, J., took no part.

[1] Per Justice Gloria C. Paras; Justices Jose C. Campos, Jr. and Conrado T. Limcaoco, concurring.

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