

JOSE C. LUCIANO, PETITIONER, VS. MAXIMO ESTRELLA, TEOTIMO GEALOGO, JUSTINO VENTURA, PEDRO ISON, IGNACIO BABASA, BERNARDO NONATO, PROVINCIAL FISCAL B. JOSE CASTILLO, COURT OF FIR...

G.R. No. L-31622. August 31, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Original petition for quo warranto, certiorari, prohibition and injunction filed with this Court by Jose C. Luciano, as Acting Mayor of Makati, Rizal, to forestall the alleged impending usurpation by suspended mayor Maximo Estrella of the position he is presently occupying; and to question the validity of the orders of the Court of Appeals granting new trial to the respondents who were convicted in Criminal Case No. 18821 of the Court of First Instance of Rizal, and ordering the remand of the records of said criminal case to the latter court for further proceedings.

Pertinent to the issue in this case are the following facts:

On 18 January 1969, Maximo Estrella, Teotimo Gealogo, Justino Ventura, Pedro Ison, Ignacio Babasa, Bernardo Nonato, Eduardo S. Francisco, Cirilo Delmo, Jose San Mateo, Lutgardo Ambrosio, Ciriaco Alano, Gualberto San Pedro, Jose Gutierrez, Franco A. Gutierrez were charged with violation of Sections 3-G and 4-B of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) in an information reading as follows:

"That on or about July 26, 1967, and for sometime prior and subsequent thereto, in the Municipality of Makati, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Maximo Estrella, then the Municipal Mayor of Makati, Rizal; Teotimo Gealogo, Justino Ventura, Pedro Ison, Ignacio Babasa, Bernardo Nonato, then Municipal Councilors of Makati, Rizal; Eduardo Francisco, then Municipal Treasurer of Makati, Rizal; Cirilo Delmo, then Assistant Municipal Treasurer of Makati, Rizal; Lutgardo Ambrosio, then Chief of Traffic Control Bureau, Makati Police Department; Ciriaco Alano, then confidential Private Secretary to the Municipal Mayor; Gualberto San Pedro, then Provincial Auditor of the Province of Rizal; Jose Gutierrez and Franco A. Gutierrez, owner and/or representatives of the JEP Enterprises, respectively, conspiring, and confederating together, did, then and there, willfully, unlawfully and feloniously, on behalf of the Municipal Government of Makati, Rizal, enter into a contract or transaction with the JEP Enterprises, represented by Jose Gutierrez and Franco A. Gutierrez, for the delivery and installation by the JEP Enterprises to the Municipal Government of Makati, Rizal of fifty-nine (59) units of traffic deflectors valued at ONE THOUSAND FOUR HUNDRED AND TWENTY-SIX PESOS AND FIFTY CENTAVOS (P1,426.50) each unit, that thirty-four (34) units were delivered, installed and paid for by the Municipality of Makati in favor of the JEP Enterprises in the amount of FORTY-EIGHT THOUSAND EIGHT HUNDRED FORTY ONE PESOS (P48,841.00), less ten percent (10%) retention, which contract or transaction is manifestly and grossly disadvantageous to the Municipal Government of Makati, Rizal, to the damage and prejudice of the latter.

"That Jose Gutierrez and Franco C. Gutierrez, being the owner, manager and/or representatives of the JEP Enterprises, being private persons, did knowingly induce or cause the above-mentioned public officials and officers to enter into the aforementioned contract or transaction."

After due trial, during which the parties presented their respective documentary and testimonial evidence, the court rendered Judgment on 17 May 1969, finding that the contract for the purchase of 59 units of traffic deflectors at P1,436.50 per unit, was mani-festly and grossly disadvantageous to the municipality of Makati, Rizal, and that it was made possible through a sham bidding and a series of falsifications participated in by most of the accused. Thus, accused Mayor Maximo Estrella, Councilors Teotimo Gealogo, Justino Ventura, Pedro Ison, Ignacio Babasa and Bernardo Nonato, Municipal Treasurer Eduardo Francisco, Provincial Auditor Gualberto San Pedro, Chief of Police Jose San Mateo, and Traffic Control Bureau Chief Lutgardo Ambrosio were pronounced guilty as charged, and each was sentenced to a prison term of 6 years, with perpetual disqualification to hold public office. Thereupon, the Provincial Sheriff was ordered to remove said public officials from office pursuant to the provisions of Republic Act 3019.[1] Accused Franco A. Gutierrez, Cirilo Delmo and Ciriaco Alano[2] were acquitted for insufficiency of evidence. On the same day, 17 May 1961, Mayor Estrella and Councilors Gealogo, Ventura, Ison, Babasa and Nonato perfected their appeal to the Court of Appeals, where the case was docketed as CA-G. R. No. 10250-CR.

On 28 November 1969, appellants Estrella, et al., filed in the Court of Appeals a motion for new trial, based allegedly on newly discovered and material evidence. The evidence referred to consisted of the testimony of Acting Provincial Auditor Conrado S. Declaro, who allegedly discovered in the latter part of May, 1969, or after the appealed decision had been promulgated, that when the contract for the purchase of the deflectors was entered into, the municipality of Makati, Rizal, had an overdraft and, therefore, had no funds available to cover such purchase; and that the contract (Exhibit "E") does not have the necessary certification by the municipal treasurer as to the availability of funds therefor. The motion for new trial was accompanied by an affidavit of Auditor Declaro to that effect, and a joint affidavit by appellants stating that they learned of the state of the municipality's finances only on 24 July 1969 when so informed by Declaro.

Required by the Court of Appeals to comment on the motion, the Solicitor General, representing appellee People of the Philip-pines, in effect offered no objection to the granting of the motion for new trial, opining that favorable action thereon would do no violence to judicial processes. Consequently, on 31 January 1970, the Court of Appeals, taking note that the circumstances pointed out by Auditor Declaro were not, and could not have been, known to the appellants; that the trial judge who rendered the appealed judgment had already previously granted a new trial to two other accused who did not appeal (Lutgardo Ambrosio and Jose San Mateo), and that the subject matter of the prosecution is one of first im-pression and of serious consequences, granted the motion for new trial and ordered the remand of the case to the court a quo for new trial. Also, at the instance of the appellants, another resolution was promulgated by the appellate court on 9 February 1970 declaring the order (granting new trial) final and directing the immediate remanding of the records of the case to the lower court. On 13 February 1970, herein petitioner filed the present petition for the purposes earlier stated; and, as prayed for, this Court issued writs of preliminary injunction against the Court of Appeals, the Provincial Fiscal of Rizal and the Court of First Instance of Rizal, to restrain enforcement of the disputed orders of the appellate court, and the holding of new trial.

The petition questions the legality of the grant of a new trial by the Court of Appeals, as being contrary to law and established jurisprudence, averring that the alleged newly discovered evidence could have been discovered even before the decision of the Court of First Instance by exercise of due diligence; that said evidence is not of such character as would change the result when taken in connection with the evidence already on record. Petitioner further avers that the motion and grant of new trial and the remand of the records to the court below before the

expiration of the standard 15 days set by the Rules, were part of a plan to secure a reinstatement of the accused to the positions they formerly held, and the ouster of petitioner from his post as Acting Mayor of Makati.

Answering the petition, the Solicitor General, on 23 February 1970, sided with the petitioner and pleaded that there was no showing that the alleged newly discovered evidence sought to be presented will be likely change the result of the case; that the facts and circumstances surrounding the contract entered into by appellants-movants for the supply of traffic deflector mirrors, such as the fact that they were shown to be grossly overpriced and totally useless for the purpose for which they were acquired, that the law on public bidding was not followed, the accused's undue haste in pushing the transaction through, the paying of the voucher before it was signed by the treasurer, the failure of the accused to see the deflectors themselves, and the appropriation of money for the purchase before the award was made, show the guilt of the accused despite the averred nullity of the contract of purchase without the treasurer's previous certificate of availability of funds. The Solicitor General further pleaded that for a violation of Section 3 (g) of the Anti-Graft Law (Republic Act No. 3019) it is not necessary that the contract therein mentioned be perfectly valid and binding, so long as the transaction entered into in behalf of the Government be manifestly and grossly disadvantageous. He prayed that the Court of Appeals' order for new trial be vacated.

Private respondents Estrella, Gealogo, et al., denied any intent to reassume their offices unless authorized by the courts; pleaded that they filed a motion for their reinstatement in the Court of First Instance, on 14 February 1970, only to stop speculations that they would take over their respective offices without judicial authorization; and that the petition had no cause of action for quo warranto and petitioner had no personality whatsoever to object to the motion for new trial, not being a party to the criminal case wherein it was granted; that petitioner is not the offended party in said criminal case, nor could he question or appeal from the grant of new trial, since the fiscal and the Solicitor General are the ones authorized to represent the People, and these had not opposed the new trial. They further alleged that the court of Appeals' order for new trial and for the immediate entry thereof were proper and legal, the People having favorably endorsed the new trial. As special defenses, they claimed that the petitioner had neither personality to institute the proceedings nor has any cause of action; that only the People of the Philippines could do so; that the grant of new trial has become final and executory; and that certiorari and prohibition are not a substitute for timely appeal.

We consider it unnecessary, at present, for brevity's sake, to render an opinion on the question of petitioner Luciano's personality to institute these proceedings in view of the Solicitor General's answer to the petition, practically adopting the latter and praying for the vacating of the questioned resolutions of the Court of Appeals, granting the motion for new trial of private respondents Estrella, et al., and remanding the records to the court of origin without awaiting the expiration of the normal period of 15 days prescribed by the Rules for the finality of said orders. Said answer on behalf of the Republic is and should be treated as its own petition for certiorari. The Solicitor General, in representation of the Republic, the prosecutor and complainant in Criminal Case No. 18821 of Branch VI of the Court of First Instance of Rizal, has unquestionable personality to assail the grant of new trial therein. This the other respondents concede. It is no objection to the application for a prerogative writ that the Solicitor General had previously expressed no objection to the respondents' motion for new trial, as filed in the Court of Appeals, for nothing bars the Solicitor General from changing opinion upon a more detailed and thorough consideration of the facts and the law; and, anyway, it is a well known and settled rule in our jurisdiction that the Republic or its government, is usually not estopped by mistake or error on the part of its officials or agents.^[3] Moreover, the correctness, validity and legality of a grant of new trial in a criminal case do not depend upon the consent of the parties thereto, but upon the grant being made conformably to the prescriptions of the Rules of Court and the applicable jurisprudence.

Neither is the action taken by the Solicitor General in this case barred by the lack of a seasonable appeal or of an apposite motion to reconsider the questioned resolutions of the Court of Appeals. In so far as they vacated the judgment of conviction rendered by the court of origin and decreed a new trial, said orders resolved no questions with finality; they were in fact interlocutory, and, therefore were not independently appealable (Rule 41, section 2; Rule 122, section 1, Revised Rules of Court). This Court has ruled that a grant of new trial is not appealable since it is not a final judgment.[4] As to the non-filing of a motion for reconsideration, the Court of Appeals itself foreclosed this remedy by ordering the remand of the records to the court of origin even before the 15-day period for finality had expired.

Finally, in *People vs. Bocar* (97 Phil. 398), this Court upheld as proper the filing of a certiorari and prohibition case to question a trial court's order granting a motion for new trial. Explaining the action taken by this Court, we said in that case:

"To avoid any misapprehension and to explain why we entertained the present petition for certiorari and prohibition with preliminary injunction over an order granting a motion for new trial, it should be stated that in civil cases the granting of a new trial is considered a mere interlocutory order not subject to appeal or special civil action. The reason is that the party dissatisfied with the order granting new trial may, after judgment, appeal from the same and include in his appeal the supposed error committed in the issuance of the interlocutory order. However, in a criminal case like the present, that theory or procedure of appeal in due time may not be practical or satisfactory for the reason that at the conclusion of the new trial, the trial court deciding the case anew, may acquit the defendant and thereafter the prosecution would have no more opportunity of bringing before the appellate court the question of the legality or illegality of the order granting a new trial because the defendant acquitted may plead double jeopardy." (Cas. cit. at page 414).

We now proceed to the main issue in these proceedings: was the grant of a new trial for allegedly newly discovered evidence granted improvidently and in grave abuse of discretion?

We answer the question in the affirmative, because the action of the Court of Appeals was not in conformity with the applicable provisions of Rule 124, in connection with Rule 121 and Rule 53.

By Section 13 of Rule 124,

"SEC. 13. Motion for new trial. -- At any time after the appeal from the lower court has been perfected and before the judgment of the appellate court convicting the accused becomes final, the latter may move for a new trial on the ground of newly discovered evidence material to his defense, the motion to conform to the provisions of section 3, Rule 121."

The motion for new trial of respondents Estrella, et al., accused in the court below is anchored on Section 2 (b) of Rule 121, i.e., that new and material evidence has been discovered which (1) the defendant could not with reasonable diligence have discovered and produced at the trial; and (2) which if introduced and admitted would probably change the judgment.

Now, it will be recalled that the proffered new evidence consisted of the testimony of auditor Conrado Declaro, substantially to the effect that after testifying at the trial in the court of origin he discovered for the first time that the Municipality of Makati had an overdraft and, therefore, did not have the necessary funds to cover such purchase; that upon examination of the contract itself, it was found to be without the necessary certification of the municipal treasurer regarding availability of funds therefor; that the execution of the contract without such certificate of the municipal treasurer renders the contract null and void, pursuant to Sections 607 and 608 of the Revised Administrative Code; that the foregoing information was relayed by Declaro to respondents only in July, 1969, or after the promulgation of the decision in the criminal case and the said respondents had perfected their appeal to the Court of Appeals.

Measured against the recognized standards on newly-discovered evidence, the above testimony of the auditor clearly falls short of the requirement for the holding of a new trial.

First, because for the purposes of the Rules, Declaro's detection of the sad condition of the municipality's finances can hardly be called a newly-discovered fact. The financial position of the municipality in 1967 is a matter that the then incumbent Provincial Auditor of Rizal and Municipal Treasurer of Makati, who were accused together with the herein respondents in Criminal Case No. 18821, should have known all along and could have presented during the hearing of the case. In fact, it was stated in Declaro's affidavit, attached to the motion for new trial, "that actually the Municipal Treasurer used trust funds of the municipality to partially pay" (Affidavit, paragraph 5) for the articles initially delivered (P43,956.90, for the 34 units delivered, at P1,436.50 each less 10% retention),^[5] thereby indicating that said municipal official was actually aware of the lack of available and uncommitted funds to cover the purchase. That must even be the reason why he did not certify that there were available funds for the purpose: because he knew that there were none. And it is unconceivable that the other accused did not discover this fact at the time. Besides, it may be pointed out that for the duration of the criminal case, i.e., from 18 January 1969 when the information was filed in court up to 17 May 1969 when the decision was rendered, respondents were occupying their respective positions as mayor and councilors of the municipality of Makati. They could have obtained with facility the information about the financial condition of the municipal government when the questioned contract was entered into had they wanted to. This, how-ever, they failed to do, and nothing appears in the records to explain such failure. In one case,^[6] not even the detention of the accused was considered sufficient justification for his failure to present the alleged new testimonies, this Court reasoning that he could have secured and presented the "new" witnesses during the original trial, through his relatives and friends, or through compulsory process. As it is, the evidence now relied upon by the respondents Estrella, et al., amounts to no more than forgotten proof, the belated uncovering of which would not justify an order to conduct a new trial.^[7]

Second, herein respondent municipal officials were charged with violation of Republic Act 3019 under its Section 3(g), or specifically, for having entered, on behalf of the government, into a contract or transaction manifestly and grossly disadvantageous to the government. It is not at all difficult to see that to determine the culpability of the accused under such provision, it need only be established that the accused is a public officer; that he entered into a contract or transaction on behalf of the government; and that such contract or transaction is grossly and manifestly disadvantageous to that government. In other words, the act treated thereunder partakes of the nature of a *malum prohibitum*; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which Republic Act 3019 was enacted, which is the repression of certain acts of public officers and private persons constituting graft or corrupt practices or which may lead thereto.^[8] Note that the law does not merely contemplate repression of acts that are unlawful or corrupt per se, but even of those that may lead to or result in graft and corruption. Thus, to require for conviction under the Anti-Graft and Corrupt Practices Act that the validity of the contract or transaction be first proved would be to enervate, if not defeat, the intention of the Act. For what would prevent the officials from entering into those kinds of transactions against which Republic Act 3019 is directed, and then deliberately omit the observance of certain formalities just to provide a convenient leeway to avoid the clutches of the law in the event of discovery and consequent prosecution? In the present case, assuming *arguendo* that the absence of certification by the municipal treasurer as to availability of covering funds would materially affect the validity of the contract, that matter would be immaterial to the determination of respondents' liability under Republic Act 3019; so that the discovery of such fact would not constitute a proper ground to support a motion for the reopening and retrial of the case.

But the improvidence of the action taken by the Court of Appeals goes further than the disregard of the specific

requirements that newly discovered evidence should meet to justify granting a new trial. It goes deeper. Section 17 of Rule 124, provides that -

"SEC. 17. Application of certain rules in civil to criminal cases. -- -The provisions of Rules 46 to 56 relating to pro-cedure in the Court of Appeals and in the Supreme Court in original as well as appealed civil cases shall, in so far as they are applicable and not in-consistent with the provisions of this rule, be applied to criminal cases."

One of the rules thus made applicable to criminal cases is Rule 53, Section 2 of which requires that in granting or refusing a new trial "the Court of Appeals shall consider the new evidence together with that adduced in the Court below" (emphasis supplied). The purpose is clearly to have the new evidence weighed in conjunction with the old, in order to ascertain whether the new proofs tendered would probably change the result, as required by Section 2(b) of Rule 121. Nowhere in the questioned resolution does it appear that both the "new" and the "old" evidence were considered jointly. In fact, the Court of Appeals could not then have done so, for the petitioner avers, and it is not denied, that when the motion for new trial was filed, the testimony of the witnesses at the original trial was not yet transcribed.

With these violations of the Rules of Court thus made patent, we have no alternative but to conclude that the grant of the motion for new trial by the Court of Appeals was made, not only in error, but with grave abuse of discretion amounting to excess of jurisdiction. We are left with no alternative but to disavow and set aside the actuations of the Appeals Court.

WHEREFORE, the writ prayed for is granted and the order of the Court of Appeals granting a new trial for newly discovered evidence in its Case CA-G. R. No. 10250-CR, as well as its order remanding the records of the case to the court of origin, are hereby revoked and set aside. The Court of Appeals is consequently instructed to recall and proceed with said criminal case until its termination in con-formity with the applicable law and rules of court.

The preliminary writs of injunction heretofore issued are made permanent.

SO ORDERED. Costs against private respondents Estrella, Gealogo, Ventura, Ison, Babasa and Nonato to be paid by them jointly and severally in favor of the Republic of the Philippines.

Concepcion, C.J., Dizon, Makalintal, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Zaldivar and Makasiar, JJ., took no part.

Villamor, J., abstains.

[1] Vide Luciano vs. Provincial Governor, L-30306, 29 June 1969, 28 SCRA 517.

[2] In the copy of the trial court's decision submitted to this Court, there was no mention of Jose Gutierrez, one of the accused in the case (Annex "B", Petition).

[3] United Christian Missionary Society vs. SSS, L-26712-16, 27 December 1969, 30 SCRA 982; Rodriguez, Inc. vs. Collector of Internal Revenue, L-23041, 31 July 1969, 28 SCRA 1199; Republic vs. PLDT Co., L-18841, 27 January 1969, 26 SCRA 620; Republic vs. Go Bon Lee, L-11499, 29 April 1961, 1 SCRA 1166.

[4] Veloso vs. Pacheco, 1 Phil. 271; Herman vs. Crossfield, 7 Phil. 261.

[5] Annex D, page 64, Rollo.

[6] People vs. Penesa, 81 Phil. 398.

[7] People vs. Evaristo, L-14520, 26 February 1965, 13 SCRA 172; People vs. Penesa, supra; also Suva vs.

Corpus, L-18397, 29 November 1962, 6 SCRA 699; Sy Ha vs. Galang, L-18513, 27 April 1963, 7 SCRA 797; Necesito vs. Paras, L-10605, 11 September 1958.

[8] Section 1, Republic Act 3019.

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CONCURRING AND DISSENTING OPINION

ZALDIVAR, J.:

I concur in the dispositive portion of the re-resolution penned by my worthy colleague, Mr. Justice Teehankee, in so far, as it orders the annulment and the setting aside of all proceedings and the decision of the Court of First Instance of Pampanga in its Election Cases Nos. 3653, 3654, 3655, 3656, 3657 and 3659 in connection with the correction of the election returns in six precincts of San Luis, Pampanga, as it orders the said court to hear anew the correction proceedings with due notice to the candidates affected and to have before it all copies of the election re-turns sought to be corrected, and in that connection as it orders the opening of the ballot boxes in the precincts concerned and conduct a summary and arithmetical recounting of the ballots pertaining to the candidates, and thereafter to issue the appropriate resolution on the basis of the evidence before it.

My concurrence, however, should be understood as simply agreeing in the resulting effect of the resolution, to remedy a situation brought about by the unusual, circumstances that attended the attempted correction of the election returns in six precincts of the municipality of San Luis, Pampanga, in connection with the national elections of November 11, 1969. These unusual circumstances are as follows:

1. The results of the election held on November 11, 1969, in precincts Nos. 9, 15, 16, 18, 19, 20 and 21 of San Luis, Pampanga became known to the public right on the day after the elections, as stated in the election returns, the copies of which, in every polling place of the above-mentioned precincts, were duly distributed, as required by law, -- that is, one copy was deposited in the ballot box, one copy furnished the municipal treasurer of San Luis, one copy was sent to the provincial treasurer of Pampanga, and one was sent to the Comelec.
2. When the provincial board or canvassers of Pampanga met on December 11, 1969 to canvass the election returns from all the precincts in the second representative district of Pampanga, candidate Rogelio Tiglaio questioned the validity, and sought the exclusion from the canvass, of the election returns (copies for the Provincial Treasurer) from seven precincts of San Luis, upon the alleged ground that they were prepared at gun point. This matter was brought to the attention of the Comelec, and the Comelec did not entertain the claim of Tiglaio that those election returns were prepared at gun point. A tentative tabulation of the result of the election for Representative in the second representative district of Pampanga indicated that candidate Cornelio Sanga had a lead some 247 votes over candidate Tiglaio. Because of certain controversies regarding election returns, aside from those seven returns from San Luis, it was not until January 26, 1970 when the Comelec issued a resolution resolving the questions raised and ordered that the canvass should be finished and the proclamation of the winning candidate be made on January 30, 1970.
3. On January 27, 1970, or the day after the Comelec had issued its resolution, there were filed with the Court of

First Instance of Pampanga seven petitions for the correction of the election returns in Precincts Nos. 9, 15, 16, 18, 19, 20 and 21 of San Luis, Pampanga. Except for the petition for correction of the election return for precinct 9 which was signed only by the Chairman and the poll clerk, all the other petitions were signed by all the members of the boards of inspectors for those precincts. It is noteworthy that in spite of the fact that the six precincts in question were located in different places in San Luis, the allegations in the petitions were more or less uniform to the effect that after the canvassing and counting of the ballots armed men entered the polling place, fired shots in the air and the people watching the proceedings scampered for safety, that despite the commotion and confusion the members of the boards of inspectors did their best to comply with their duty of preparing the election returns, but in the course of the confusion and commotion they made the mistake of crediting candidate Tiglao with much less votes than what he had really obtained. The petitions made no mention of any mistake in entering in the election returns the votes obtained by the other candidates. Let it be noted that the petitions for correction were made on January 27, 1970, or more than two months and a half after the elections, and the petitions contained allegations which contradicted the previous claim of candidate Tiglao that the election returns in those precincts were prepared at gun point.

4. The hearings on the petitions for correction were held ex parte before Judge Honorio Romero of the Court of First Instance of Pampanga, right on the day following the filing of those petitions, and the other candidates for Representative were not given notice of the hearing.

5. The election returns sought to be corrected were never brought before the hearing Judge, and the Judge ordered the correction of those returns without having seen, much less examined, the returns sought to be corrected.

6. The hearing Judge based his order of correction, solely on the testimony of one witness for each precinct -- who was the chairman of the respective polling place.

7. The election returns, as finally ordered corrected show that only the votes of candidate Tiglao were corrected, such that his votes which originally appeared in the election return before it was corrected had been increased, whereas the votes of candidate Sanga and the other candidates listed on the election returns remained the same. As a result of the correction of the six election returns,[1] candidate Tiglao was credited with 292 additional votes in those six precincts, or so many votes as to exceed by 45 votes the lead of candidate Sanga who, in the tentative canvass before the filing of the petitions for correction, had a lead of 247 votes.

8. As finally ordered corrected, it appeared on the six election returns, in summing up in every precinct the number of voters who voted and the votes obtained by all the candidates for Representative, that there were 273 more votes that were cast for candidates for Representative than the number of voters who actually voted in those precincts.

Under the circumstances I have above related, I can not help but arrive at a conclusion, nay a conviction, that the petitions for the correction of those six election returns were merely a device resorted to by the supporters of candidate Tiglao in order that the lead of 247 votes of candidate Sanga could be overcome and that the correction proceedings are anomalous, irregular, and illegal. That is why I concur with the majority that the proceedings and the decision of the Court of First Instance of Pampanga in connection with the correction of those six election returns should be set aside and annulled. The returns as ordered corrected in the proceedings, to me, are worthless and must not be included in the canvass. However, because it is necessary that the winning candidate for Representative in the second district of Pampanga has to be proclaimed on the basis of election returns that reflect more or less the true result of the elections in those six precincts of San Luis, it becomes necessary that a recourse be had to the arithmetical count of the ballots inside the ballot boxes in those precincts, if it is shown that those ballot boxes and the contents therein have not been tampered with.

It is my view, however, that the expedient re-sorted to by this Court of opening the ballot boxes in order to ascertain the correct count of the votes cast in the six precincts in question is not contemplated in Section 154 of the Revised Election Code in the matter regarding correction of election returns. The procedure now adopted by this Court should only be considered as a special or extraordinary remedy in order to prevent an injustice, or to prevent a mockery of the elections held in the six precincts of San Luis, Pampanga, now in question. I believe that the procedure of ordering the opening the ballot box and count the votes in correction proceedings under Section 154 of the Revised Election Code should not be taken as a precedent in the construction or interpretation of said Section 154.

Section 154 of the Revised Election Code provides as follows:

"Alterations in the statement. - After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of the statements, unless it be so ordered by a competent court."

It is my considered view that what is contemplated in the above-quoted section of the Revised Election Code are honest mistakes committed by the members of the board of inspectors in the course of making the entries required by law in the election return, because as this Court has said "Mistakes of all sorts are too common in human experience to justify any one in denying the possibility of honest error...; and it was in contemplation of the possibility of such errors that the lawmakers provided for their correction with judicial approval".[2] It can be gathered from a reading of the provision of Section 154 that before the announcement by the board of inspectors of the result of the election in the polling place the members of the board can make all the corrections in the election returns prepared by them that may be necessary in order to make the entries in the election returns reflect the true and correct result of the election. But it is also the duty of the members of the board of inspectors that upon the completion of the statements of the election returns, the chairman of the board shall orally and publicly announce the total number of votes polled in said election, in the said precinct by each and everyone of the candidates, naming them for each one of the offices,[3] and that after the announcement of the result of the election in the polling place the board shall place one of the copies of the election return in the box for valid ballots, deliver one to the municipal treasurer, send another copy by registered mail to the provincial treasurer, and another, likewise by registered mail, to the Commission on Elections,[4] and after the publication of the result of the election and before leaving the polling place it shall be the duty of the board of inspectors to issue a certificate of the number of votes received by a candidate, or by the opposing candidates, for a national or provincial office, for city councilor or for mayor or vice-mayor, to the watchers who may request them. All the members of the board shall sign the certificate.[5] But after the announcement of the result of the election in the polling place it can happen that the members of the board of inspectors would discover that they committed a mistake -- an honest one -- such as an error in crediting the number of votes for a particular candidate or a difference in the number of votes written in figures and the number written in words, and the like, and they consider it necessary to correct the honest mistakes. But because they have already announced the result of the election in the polling place they cannot make this correction by themselves, even if they all agree. They can do this only by authority of the court. It has been held that "Where the board of inspectors has announced the result of the election in a polling place its powers and duties end, and it may not withdraw the returns, add to, change or alter them and make new returns, unless it be so ordered by a competent court." [6]

I believe that the mistake or error contemplated in Section 154 must be an honest one, and it is a mistake that is common and known to all the members of the board of inspectors -- that is why the petition to the court for that authority to make true correction must be by unanimous consent of all the members of the board of inspectors. It is also my view, that the correction that all the members of the board of inspectors would ask the court to authorize must relate to errors, mistakes, commissions or oversight that all the members of the board of inspectors

came to discover or to find out, and agreed upon by all or them, soon after the publication or the result of the election in the polling place or within a reasonable time thereafter and before the canvass of the votes by the board of canvassers. I would also add that once such petition for correction is filed with the competent court, the court should immediately conduct a hearing ex parte and satisfy himself from the evidence presented, which should consist or at least the testimonies of all the members of the board of inspectors, whether the correction prayed for should be authorized or not. Indeed, the Judge should have before him the election return that is sought to be corrected, as it would be irregular, not to say absurd, for a Judge to order the correction or so important a document as an election return, where the public has an interest, without even looking at the document. The proceeding for the correction election return forms part of the pre-proclamation proceedings which should be done with dispatch in order that the winning candidate in an election is proclaimed with the least delay. The court should act with dispatch, in the exercise of its sound discretion, whether to authorize the correction or not. Once the Judge has acted one way or the other, - either to authorize or not to authorize, the correction, the proceeding must end there, except perhaps if it can be shown that the judge had acted in such a capricious or whimsical manner as to warrant an action by way of certiorari to correct his actuation.

I do not agree with the majority of this Court that a Judge in correction proceedings under Section 154 may go to the extent of having the ballot box opened and make an arithmetical count of the votes cast in favor of the candidates. I wish to repeat that the correction contemplated in Section 154 of the Revised Election Code refers to the correction of honest errors, mistakes or oversight on the part of all the members of the board of inspectors and agreed to by all of them. Certainly this section does not contemplate a correction of an election return under circumstances that indicate bad faith on the part of the parties interested in the correction. This bad faith becomes specially obvious if the correction is sought long after the elections are over and a tentative canvass of the votes had already been made by the board of canvassers, as had happened in the case at bar. The court must consider the circumstances attending the filing of the petition for correction, and should exercise its discretion, whether to authorize the correction or not, promptly and firmly. As this Court has said in the case of *Estrada vs. Navarro*[7] "the proceeding for correction is a summary one, is not supposed to raise controversial issues, and does not call for a recount or revision of the ballots themselves, either of which contemplates a different remedy."

I am afraid that the majority opinion in the Resolution has so construed Section 154 of the Revised Election Code in a manner that amounts to judicial legislation, which, I believe, this Court should not do. I have misgivings that the application of Section 154 of the Revised Election Code as stated in the rationale of the resolution will open the door, in future elections, to practices that will delay rather than expedite the proclamation of the winning candidates in an election, if not altogether frustrate the election of candidates who really are the choice of the electorate.

[1] Precincts 9, 15, 16, 19, 20 and 21. The Court set aside the decision of the First Instance of Pampanga abided by the finding of the Comelec in so far as the election return for Precinct 18 was concerned.

[2] *Dizon vs. Provincial Board of Canvassers of Laguna*, 52 Phil. 47, 54.

[3] Section 151, Revised Election Code.

[4] Section 152, Revised Election Code

[5] Section 153, *Ibid*.

[6] *State ex rel. Robinson vs. Hutcheson*, 171 X. S.W. 2d. 182.

[7] G. R. No. L-28374, December 29, 1967; 21 SCRA 1514.

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