

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ANDRES O. FERRER, DEFENDANT AND APPELLEE.

G. R. No. L-8957. April 29, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from an order of the Court of First Instance of Pangasinan, the dispositive part of which states:

Five (5) days after receipt of a copy of this Order by the prosecution, the information in this case shall be deemed quashed and the bond for the provisional release of the accused deemed cancelled and released, unless in the meantime the prosecution amends the information so as to allege sufficient facts constituting an offense under section 61 of our Revised Election Code.

The information held defective by the trial court reads as follows:

The undersigned Provincial Fiscal of Pangasinan and the Provincial Fiscals of Nueva Seija and Butanes, on special detail in Pangasinan by Administrative Orders Nos. 6 and 13, dated January 12 and 27, 1954, respectively, of the Secretary of Justice, accuse Andres G. Ferrer of the offense of violation of Sections 51 and 54 in relation to Sections 183, 184 and 185 of the Revised Election Code, committed as follows:

That on or about the 10th day of November, 1953, (Election Day), and for sometime prior thereto, in the municipality of Binmaley, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Andres G. Ferrer, being then and there a Foreign Affairs Officer, Class III, Department of Foreign Affairs, and a classified civil service officer, duly qualified and appointed as such, did then and there wilfully, unlawfully, feloniously and knowingly, in utter disregard and defiance of the specific and several legal prohibitions on the subject, and in disregard of the civil service rules and regulations, induce, influence, sway and make the electors vote in favor of the candidates of the Liberal Party in the following manner, to wit: (1) that sometime before the elections on November 10, 1953, the said accused, Andre's G. Ferrer, delivered a Speech during a political rally of the Liberal Party in Barrio Caloocan Norte, Binmaley, Pangasinan, inducing the electors to vote for the candidates of the Liberal Party but more particularly for President Quirino and Speaker Perez; that during said political meeting the said accused caused to be distributed to the people who attended said meeting cigarettes and pamphlets concerning the Liberal Party; and (2) that the said accused, Andres G. Ferrer, sometime prior to the last elections campaigned in the Barrio of Caloocan Norte, of the said municipality of Binmaley, going from house to house and induced the electors to whom he distributed sample ballots of the Liberal Party to vote for the candidates of said Party.

Contrary to sections 51 and 34 in relation to Sections 183, 184 and 185 of Republic Act No. 180, as amended. (Crim. Case No. 20320.)

The defendant moved to quash the information on the ground that it charges more than one offense and that the facts alleged in the information do not constitute a violation of either section 51 or section 54 of the Revised Election Code.

The trial court is of the opinion that causing cigarettes or pamphlets concerning the Liberal Party to be distributed

to the people who attended a political meeting, charged against the defendant, does not constitute a violation of section 51 of the Revised Election Code, because it is not giving "food" for tobacco is not food; nor does it constitute a violation of that part of section 51 which makes unlawful the contributing or giving, directly or indirectly, of money or things of value, because the information merely charges the defendant with having caused cigarettes, etc. to be distributed, and it does not state that the cigarettes belonged to the defendant and were being given away by him as his contribution for electioneering purposes. True, cigarettes are not food, but they have and are of value and the charge that the defendant caused cigarettes and pamphlets concerning the Liberal Party to be distributed to the people who attended a political meeting mentioned in the information is a sufficient allegation that he gave or contributed things of value for electioneering purposes. If the cigarettes did not belong to him, that is a matter of defense. The trial court is also of the opinion that the defendant is not a classified civil service officer or employee, because to be such it is necessary that he be assigned in the Department of Foreign Affairs under section 6, Republic Act. No. 708 and if and when thus assigned he will for purposes of civil service law and regulations, be considered as first grade civil service eligible," and that even if the prosecution could establish that the defendant at the time of the commission of the violation charged was assigned in the Department of Foreign Affairs under the section just mentioned, still such assignment would not make him a classified civil service officer embraced within the provisions of section 54 of the Revised Election Code^ for, according to the trial court, section 670 of the Revised Administrative Code provides that the classified civil service embraces all persons not expressly declared to be in the unclassified civil service and section 671 enumerates the persons embraced in the unclassified civil service; and concludes that the defendant is in the unclassified civil service under section 671, paragraph b, of the Revised Administrative Code, because the defendant was appointed by the President first as Foreign Affairs Officer, Class III, Department of Foreign Affairs, and later on as Vice-Consul, the last appointment having been duly confirmed by the Commission on Appointments, and that the assignment or detail in the Department of Foreign Affairs would make him by mere legal fiction a first grade civil service eligible under section 6, Republic Act No. 708.

The reason advanced by the trial court are defense matters. The allegation in the information that the defendant is "a classified civil service officer, duly qualified and appointed as such, "for purposes of the motion to quash, is deemed admitted. The trial court cannot go beyond the allegations of the information.

Nevertheless, the information is defective, because it charges two violations of the Revised Election Code, to wit: section 51 to which a heavier penalty is attached, and section 54 for which a lighter penalty is provided. And the prosecuting attorneys had that in mind when at the end of the information filed by them they stated: "Contrary to Sections SI and 54 in relation to Sections 183, 184 and 185 of Republic Act No. 180, as amended." Causing cigarettes which are things of value to be distributed, made unlawful by section 51 and punished by section 183, cannot be deemed a necessary means to commit the lesser violation of section 54 were the penalty attached to it taken into consideration. The rule in the case of *People vs. Buenviaje*, 47 Phil., 536, cited and invoked by the State, has no application to the case, because there the defendant, who was not a duly licensed physician, gave medical assistance and treatment to a certain person and advertised himself and offered services as a physician by means of cards and letterheads and advertisements in the newspapers, the latter being a means to commit the former, and both violations are punishable with the same penalty, whereas in the present case causing cigarettes or things of value to be distributed by the defendant to the people who attended a political meeting is a violation distinct from that of electioneering committed by a classified civil service officer or employee. The former has no connection with the latter.

If the penalty provided for violation of sections 51 and 54 were the same as in the case of the violation of the Medical Law, the rule in the case of *People vs. Buenviaje*, supra, might be invoked and applied.

That a violation of section 51 is distinct from that of section 54 is further shown by the fact that a violation of the former may be committed by any candidate, political committee, voter or any other person, whereas a violation of the latter may only be committed by a justice, judge, fiscal, treasurer or assessor of any province, officer or employee of the Army, member of the national, provincial, city, municipal or rural police force, and classified civil service officer or employee.

Under the information in question, if the charges be proved, the defendant may be convicted and sentenced under either section or both. The rule enjoining the charging of two or more offenses in an information has for aim to give the defendant the necessary knowledge of the charge to enable him to prepare his defense. The State should not heap upon the defendant two or more charges which might confuse him in his defense.

The order appealed from is affirmed, not upon the grounds relied upon by the trial court, but on the ground that the information charges two different violations, without pronouncement as to costs.

Bengzon, Montemayor, Reyes, A., Bautista, Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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