

FLOREZIL AGUJETAS AND SALVADOR BIJIS, PETITIONERS, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 106560. August 23, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

Petitioners Florezil Agujetas and Salvador Bijis, former Chairman and Vice-Chairman, respectively of the Provincial Board of Canvassers for the Province of Davao Oriental assail the decision of the public respondent Court of Appeals which affirmed the decision of the Regional Trial Court of Mati, Davao Oriental finding them guilty as charged for failure to proclaim a winning elected candidate. The dispositive portion of the Court of Appeals decision[1] in CA-G.R. CR No. 09689 reads:

"WHEREFORE, the decision appealed from is AFFIRMED with a modification in that the actual damages of P50,000.00 are hereby reduced to P40,000.00 and the moral damages P100,000.00 awarded to Erlinda Irigo are deleted. Costs de officio.

"SO ORDERED."

The antecedents:

In the fateful evening of January 21, 1988, the Provincial Board of Canvassers for the Province of Davao Oriental, composed of 1.) the Provincial Election Supervisor Florezil Agujetas, as Chairman, 2.) Provincial Prosecutor Salvador Bijis, as Vice Chairman, and 3.) Division Superintendent of Public Schools in said province, Benjamin Miano,[2] as member, proclaimed the winners for Governor, Vice-Governor, and Provincial Board Members for Davao Oriental in the January 18, 1988 election. The candidates proclaimed were:

PROCLAIMED CANDIDATES

Name No. of Votes

For Governor:

Leopoldo Lopez 59,309 votes

Francisco Rabat 51,191 votes

For Vice-Governor:

Modesto Avellanosa 46,353 votes

Josefina Sibala 54,083 votes

For Provincial Board Members

1. Cirilo R. Valles 42,394 votes
2. Ma. Elena Palma Gil 41,557 votes
3. Antonio Alcantara 39,104 votes
4. Dr. Capistrano Roflo 37,301 votes
5. Orlando Rodriguez 34,914 votes
6. Alfredo Abayon 34,191 votes
7. Justina Yu 32,360 votes
8. Pedro Pena 30,679 votes

The eighth board member proclaimed, Pedro Pena, garnered 30,679 votes when another candidate for the Board, Erlinda Irigo, got 31,129 or 450 more votes than Pena.

Before the proclamation was made, when the certificate of canvass and proclamation statements of winning candidates were finished, a verbal protest was lodged by Mrs. Maribeth Irigo Batitang, daughter of candidate Irigo and her designated representative during the canvassing proceedings, addressed to the Tabulation Committee.

At 8:00 o'clock in the morning of January 22, 1988, the Board resumed its session and undertook the following activities:

- "1. Opening of Ballot Box No. CA-301596 and sealed by Metal Seal No. 204767 at exactly 10:25 a.m.
- "2. Continued preparing all reports called for submissions to COMELEC, Regional Office and Manila.
- "3. Reconciliation of entries in the tally sheets. (Exhs. "E" and "E-1")

Considering, however, that the protest was verbal and not officially brought to the attention of the Provincial Board of Canvassers during official session, the same was not given appropriate official recognition. (Exh. "7-B", p. 2, Minutes of Provincial Board of Canvassers, January 21, 1988)

The following day, January 23, 1988, Board Member Candidate Erlinda V. Irigo filed her written protests^[3] with the Board of Canvassers. (Exh. "F")

Meanwhile, Francisco Rabat, a losing gubernatorial candidate in Davao Oriental filed with the COMELEC a complaint against the three board members for violation of BP 881 (Omnibus Election Code) and RA 6646 (The Electoral Reform Law of 1987). After a preliminary investigation was conducted by the COMELEC, criminal charges were filed against the Board Members. The pertinent portions of the information in Criminal Case No. 1886 for Violation of 2nd Paragraph of Section 231 in Relation to Section 262 of the Omnibus Election Code read:

"That on or about January 21, 1988, in the Municipality of Mati, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused as Chairman, Vice-Chairman and Third Member, respectively, of the Provincial Board of Canvassers of Davao Oriental in the January 18, 1988 elections, conspiring with, confederating together and mutually helping one another, did, then and there, willfully and unlawfully fail to proclaim Erlinda Irigo as elected Sangguniang Panlalawigan Member candidate who obtained 31,129 votes, the eighth highest number of votes cast in said province but instead proclaimed candidate Pedro Pena who obtained only 30,699 votes."

"CONTRARY TO LAW"[4]

After trial on the merits, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, Criminal Cases Nos. 1885 and 1887 are hereby DISMISSED, with costs de oficio, and the accused considered acquitted. Their bail bonds are ordered canceled and released.

"In Criminal Case No. 1886, the Court finds the accused Florezil Agujetas, Salvador Bijis and Benjamin Miano GUILTY beyond reasonable doubt as principals for violation of Section 231, second paragraph, of Batas Pambansa Blg. 881, as amended, otherwise known as the "Omnibus Election Code of the Philippines", and hereby sentences each of them to ONE (1) YEAR IMPRISONMENT which shall not be subject to probation. In addition, they are sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. Said accused are ordered to pay, jointly and severally, Erlinda Irigo the amounts of P50,000.00 as actual damages, P15,000.00 as and for attorney's fees, and P100,000.00 as moral damages, plus the costs of the proceedings.

"Let copies hereof be furnished the Honorable Chairman, Commission on Elections, and the Honorable Secretaries of Justice and Education, Culture and Sports.

"SO ORDERED." (pp. 43-44, Decision)

The three accused appealed to the Court of Appeals which rendered the decision assailed in this petition.

Petitioners impute to the respondent court the following errors:

I

The Court of Appeals erred in affirming the decision of conviction because:

- a. It is the failure to make a proclamation on the basis of the Certificate of Canvass, and not mere erroneous proclamations, which is punishable under Sec. 262 in relation to Sec. 231 (2) of the Omnibus Election Code.
- b. A protest made to the verification/tabulation committee does not constitute a protest to the Board of Canvassers itself.
- c. The functus officio rule is applicable to the present case.
- d. Credence should not have been given to hearsay testimony to establish the alleged protest to the Board of Canvassers.

II

The Court of Appeals erred in awarding damages to a person who is not a party to the case.

We find the petition without merit.

On the first assigned error, the issue hinges on the question of what is being penalized by the pertinent provision of the Omnibus Election Code. Petitioners argue that they are not liable under the said law because they complied with all the requirements of Sec. 231 of the Omnibus Election Code - 1. a certificate of canvass was prepared, 2. the same was duly supported by a statement of votes of each of the candidates, and 3. it was on the basis of the certificate of canvass that the winners were proclaimed. Only, the certificate was erroneous.

According to petitioners, the Omnibus Election Code does not punish the preparation of an incorrect certificate of canvass, nor an erroneous proclamation made by the Board; what it does punish is that, having thus prepared the

corresponding certificate, the board for some reason fails to make the corresponding proclamation on the basis thereof.

On the other hand, the People's counsel maintains that petitioners' challenges on this particular issue is a question of semantics, a mere play of words; for while the prosecution maintains that there was a failure to proclaim the winning candidate, petitioners on the other hand, counter that there was merely an erroneous proclamation of the losing candidate; that petitioners forget that in proclaiming an erroneous winner they actually failed to proclaim the winning candidate, in this case, Erlinda Irigo. Respondents further argue that the situation presented by petitioners would not exculpate them from criminal responsibility for, whichever way the matter may be looked into, whether as erroneous proclamation of a losing candidate or failure to proclaim the winning candidate, the result is the same - the winning candidate was not proclaimed, and hence, injustice is the end result.

We agree with the respondents.

The second paragraph of Section 231 of the Omnibus Election Code reads:

"The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes and received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay. Failure to comply with this requirement shall constitute an election offense."

To go by the explanation as proposed by the petitioner would be tantamount to tolerating and licensing boards of canvassers to "make an erroneous proclamation" and still be exculpated by just putting up the inexcusable defense that the "foul-up resulted from the erroneous arrangement of the names of candidates"[5] in one municipality or that "the basis of their proclamation was the erroneous ranking made by the tabulation committee." That would be a neat apology for allowing the board to be careless in their important task by simply claiming that they cannot be held liable because they did their "duty" of proclaiming the winning candidates on the basis of the certificate of canvass - even "erroneous" certificates - which they made.

At this point, it is appropriate to quote certain portions of the Resolution in IPD Case No. 88-100, disposing of the complaint filed with the COMELEC issued by Regional Election Director Resurreccion Borra of Region XI, in relation to the preliminary investigation conducted by him on said case. Director Borra testified on this resolution[6] (Exh. "Z") under cross-examination by the prosecution, certain portions of which are material to the case:

"But there is one incontrovertible fact that the respondents miserably failed to dispute. This undeniable fact is conveniently ignored by Respondents' Memorandum. In the exhibits of the complainant, the computerized tabulation of votes based from the statements of votes by precinct in each of the 121 Municipalities of Davao Oriental for all of the 600 precincts and even admitted by the Respondents that there was no error in the tabulation of votes in CA 26-A. Erlinda V. Irigo got 31,129 votes and Pedro T. Pena only 30,679 votes or a margin of 450 votes by Irigo over Pena. From the ranking, Irigo would have been ahead of Pena, and she should have been No. 8 in the winning list of 8 candidates instead of Pena. But in the Certificate of Canvass of Votes and Proclamation of Winning Candidates for Provincial Offices, Pedro T. Pena was included as No. 8 in the winning list and proclaimed as No. 8 Member of the Sangguniang Panlalawigan of Davao Oriental by the Provincial Board of Canvassers.

xxx xxx xxx

"The Complainant, in presenting the computerized summary tabulation of votes for each precinct per municipality of the Province, admitted that the PBC prepared the statements of votes. x x x The statements of

votes (CE 26-A) should have been the basis for the proclamation of the winning candidates for Provincial Offices. Complainant's documentary and testimonial evidences showed that the PBC proclaimed Pedro Pena who was not among those candidates who obtained the 8 highest number of votes cast in the province per municipality by precinct which violated the legal requirement of the 2nd paragraph of Section 231 of BP No. 881 as amended.

"The respondents were not able to explain their failure to comply with the requirement that (sic) the basis for the proclamation of Pena when he was not among the eight candidates who obtained the highest number of votes as evidenced by the statements of votes. In fact they admitted that the basis was not the statement of votes but the erroneous ranking by the Tabulators. x x x"[7]

It appears from the foregoing resolution of Director Borra that it was difficult to make a mistake in selecting the 8 candidates with the highest votes for purposes of making the certificate of canvass because there was no error in the tabulation of votes as CE Form No. 26-A (which is the statement of votes) shows that Erlinda V. Irigo got 31,129 votes and Pedro T. Pena only 30,679 votes. The mistake could only be made through utter carelessness, if not made deliberately. This situation only illustrates that the questioned provision cannot be construed in the manner as argued by petitioners for it would defeat the purpose and spirit for which the law was enacted, i.e., to achieve the holding of free, orderly, honest, peaceful and credible elections. In *Lino Luna vs. Rodriguez*,^[8] the court observed:

"Experience and observations taught legislature and courts that, at the time of a hotly contested election, the partisan spirit of ingenious and unscrupulous politicians will lead them beyond the limits of honesty and decency and by the use of bribery, fraud and intimidation, despoil the purity of the ballot and defeat the will of the people at the polls. Such experience has led the legislature to adopt very stringent rules for the purpose of protecting the voter in the manner of preparing and casting his ballot to guard the purity of elections." "The infinite ingenuity of violent spirit in evading the rules and regulations of elections and the use of bribery, fraud and intimidation has made necessary the establishment of elaborate and rigid rules for the conduct of elections. The very elaborateness of these rules has resulted in their frequent violation and the reports of the courts are replete with cases in which the result of an election has been attacked on the ground that some provisions of the law have not been complied with. Presumably, all the provisions of the election laws have a purpose and should be observed."

On the second assigned error, petitioners contend that assuming *ex gratia argumenti* that the protest made by candidate Irigo's daughter Maribeth Irigo Batitang was the verbal protest contemplated under Sec. 245 of the Omnibus Election Code, such fact could not be deemed to be a protest made to the Board of Canvassers itself; and that the failure of the member of the verification/tabulation committee concerned to apprise the Board prior to the proclamation cannot be taken against the members of the Board.

We find the above contentions untenable. As aptly stated by Director Borra in his aforementioned resolution:

"The timely verbal protest of the daughter-watcher of Mrs. Erlinda Irigo did not trigger on the part of the PBC (Provincial Board of Canvassers) the responsible action of verifying the basis of the protest. The 3 Members of the PBC could not attribute to the Committee on Tabulation the blame for their errors as the PBC members themselves were the ones who certified under oath the said Certificate of Proclamation and the Tabulation Committee members were totally under their direct supervision and control."

Petitioners also raised the issue that it was only after the proclamation had been made that the Board was informed of the fact that an error may have been committed in the tabulation; and that however, having discharged its function of making the canvass and proclamation of the winning candidates, the Board of Canvassers became *functus officio* and could no longer correct the erroneous proclamation.

As to this issue, suffice it to state that whether or not "the Board of Canvassers became functus officio" after it proclaimed the winning candidates, is beside the point. What matters is whether or not petitioners committed an election offense. Besides, as stated earlier, Mrs. Irigo's watcher made a timely verbal protest to the Tabulation Committee.

Petitioners further contend that Maribeth Irigo Batitang, the daughter of candidate Irigo and her designated representative during the canvassing proceedings, was never presented as a witness; that Erlinda Irigo, upon whose testimony the trial court relied heavily to establish the fact of protest, was not present during the canvassing proceedings; that Mrs. Irigo's testimony on this point is inadmissible as being hearsay and should not have been considered by the trial court; that no other evidence having been adduced with respect to the protest allegedly made by Irigo's representative, such fact should be deemed as not having been established; and that there was thus no basis, therefore, for the respondent Court of Appeals to hold that the Board was deemed to have been constructively informed of the verbal protest and that the members thereof were liable for having failed to act on the basis thereof.

We are not persuaded. Even if we tentatively grant that Mrs. Irigo's testimony is hearsay evidence, there is still ample evidence which proves that the Board was deemed to have been informed of the verbal protest and that the members thereof were liable for having failed to act on the basis thereof.

The resolution[9] of Director Borra quoted the questions and answers during the preliminary investigation. The import of those deliberations show that petitioner Agujetas, as Chairman of the Provincial Board of Canvassers, admitted that the tabulation committee was under the supervision of the Board.[10] As regards petitioner Bijis, Vice Chairman of the Board, he admitted that he signed the minutes of the Board to the effect that on January 22, 1988 in the morning after the proclamation, the Board's business was "reconciliation of entries in the tally sheet,"[11] thus showing that the proclamation in question had been made even before the votes were reconciled on the tally sheets. And as to accused Miano, Secretary of the Board, he admitted having stated in the minutes[12] that an oral complaint was made by Mrs. Batitang, representative of Erlinda Irigo, but that the complaint was lodged with the tabulation committee and not with the Board; and that he did not care to examine the partial results for each provincial candidate, including Erlinda Irigo and Pedro Pena.[13]

An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof.[14]

On the last error assigned by petitioners, they maintain that the present case was filed by Francisco Rabat, the losing gubernatorial candidate in the Province of Davao Oriental; that Mrs. Irigo never joined the Complaint as a party-plaintiff at any stage of the proceedings; that she was merely presented as a witness; and thus, for the court to have awarded damages to Mrs. Irigo was a patent error. We find petitioners' allegations untenable. Except where the law specifically provides the contrary, a complaint that a public crime has been committed may be laid by any competent person.[15] The Omnibus Election Code does not specifically provide that a particular person must file the complaint and hence, the complaint filed by Francisco Rabat is valid.

The counsel for the people points out and we agree-

"Even an offended party not mentioned in the Information may claim the civil liability during the trial if he has not waived it.[16]

"In the case at bar, Erlinda Irigo clearly, was the party offended or the person whose rights were trampled upon, by the indecent haste with which petitioners proclaimed Teodoro Pena (sic) as the winner of the 8th seat of the Sangguniang Panlalawigan.

"The persistence of Erlinda Irigo's lawyers to participate, as in fact they participated, in the proceedings a quo as private prosecutors over the vehement objections of petitioners' counsel clearly indicates that Erlinda Irigo intended to claim damages from petitioners." [17]

In *U.S. v. Heery*, [18] this court held that "If the injured party has not expressly waived the civil liability of the accused nor reserved his right to file a separate civil action, it is error for the court to refuse a request of the injured party during the course of the criminal prosecution to submit evidence of his damages." Thus, the arguments of the petitioners notwithstanding, respondent court did not err in awarding damages to Mrs. Irigo.

After the People's counsel has filed respondents' comment, petitioners filed their Reply wherein they raised for the first time (not even in their Petition), the issue that the crime under which petitioners were convicted no longer exists because Republic Act Nos. 6646 (the Electoral Reforms Law of 1987) and 7166 (Electoral Reforms Law of 1991) were subsequently approved on January 5, 1988 and November 26, 1991, respectively; that these two laws amended the Omnibus Election Code by deleting certain provisions thereof or adding new ones; and that among those amended was Section 231, which was modified by Section 28 of RA No. 7166 by removing the specific manner by which the proclamation of winning candidates by the Board of Canvassers should be made and thereby, in effect, repealing the second paragraph of Sec. 231 of the old Omnibus Election Code under which Petitioners had been convicted.

Points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal. [19] However, since RA 7166 was enacted after the trial court had rendered its decision, and while the case was already pending appeal in the Court of Appeals, and in order to settle the issue once and for all, this court will make a clear-cut ruling on the issue.

Sec. 231 of the Omnibus Election Code (Batas Pambansa Blg. 881) was not expressly repealed by R.A. 7166 because said Sec. 231 is not among the provisions repealed by Sec. 39 of R.A. 7166 which we quote:

"Sec. 39. Amending and Repealing Clause. - Sections 107, 108 and 245 of the Omnibus Election Code are hereby repealed. Likewise, the inclusion in Section 262 of the Omnibus Election Code of the violations of Sections 105, 106, 107, 108, 109, 110, 111 and 112 as among election offenses is also hereby repealed. This repeal shall have retroactive effect.

"Batas Pambansa Blg. 881, Republic Act No. 6646, Executive Order Nos. 144 and 157 and all other laws, orders, decrees, rules and regulations or other issuances, or any part thereof, inconsistent with the provisions of this Act are hereby amended or repealed accordingly."

The statement "All laws or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly," certainly is not an express repealing clause because it fails to identify or designate the act or acts that are intended to be repealed. If repeal of particular or specific law or laws is intended, the proper step is to so express it. [20]

Neither is there an implied repeal of Sec. 231 by the subsequent enactment of RA 6646 and RA 7166.

While Sec. 28 of RA 7166, like Sec. 231 of the Omnibus Election Code (BP 881) pertains to the Canvassing by the Boards of Canvassers, this fact of itself is not sufficient to cause an implied repeal of the prior act. [21] The provisions of the subject laws are quoted below for comparison:

"Sec. 231. - Canvass by the board. - The board of canvassers shall meet not later than six o'clock in the afternoon of election day at the place designated by the Commission to receive the election returns and to immediately canvass those that may have already been received. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns

from other polling places within its jurisdiction. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to the mass media and other interested parties. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.

"The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes and received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city municipality or barangay. Failure to comply with this requirement shall constitute an election offense.

"Subject to reasonable exceptions, the board of canvassers must complete their canvass within thirty-six hours in municipalities, forty-eight hours in cities and seventy-two hours in provinces. Violation hereof shall be an election offense punishable under Section 264 hereof.

"With respect to the election for President and Vice-President, the provincial and city boards of canvassers shall prepare in quintuplicate a certificate of canvass supported by a statement of votes received by each candidate in each polling place and transmit the first copy thereof to the Speaker of the Batasang Pambansa. The second copy shall be transmitted to the Commission, the third copy shall be kept by the provincial election supervisor or city election registrar; the fourth and the fifth copies to each of the two accredited political parties. (Sec. 169, 1978 EC)."[22]

"Sec. 28. Canvassing by Provincial, City, District and Municipal Boards of Canvassers. - (a) The city or municipal board of canvassers shall canvass the election returns for President, Vice-President, Senators and members of the House of Representatives and/or elective provincial and city or municipal officials. Upon completion of the canvass, it shall prepare the certificate of canvass for President, Vice-President, Senators and Members of the House of Representatives and elective provincial officials and thereafter, proclaim the elected city or municipal officials, as the case may be.

"(b) The city board of canvassers of cities comprising one or more legislative districts shall canvass the election returns for President, Vice-President, Senators, Members of the House of Representatives and elective city officials. Upon completion of the canvass, the board shall prepare the certificate of canvass for President, Vice-President, and Senators and thereafter, proclaim the elected Members of House of Representatives and city officials.

"(c) (1) In the Metro Manila Area, each municipality comprising a legislative district shall have a district board of canvassers which shall canvass the election returns for President, Vice-President, Senators, Members of the House of representatives and elective municipal officials. Upon completion of the canvass, it shall prepare the certificate of canvass for President, Vice-President, and Senators and thereafter, proclaim the elected Members of the House of Representatives and municipal officials.

"(2) Each component municipality in a legislative district in the Metro Manila Area shall have a municipal board of canvassers which shall canvass the election returns for President, Vice-President, Senators, xxx

"(3) The district board of canvassers of each legislative district comprising two (2) municipalities in the Metro Manila Area shall canvass the certificates of canvass for President, Vice-President, xxx

"(d) The provincial board of canvassers shall canvass the certificates of canvass for President, Vice-President, Senators, Members of the House of Representatives and elective provincial officials as well as plebiscite results, if any plebiscite is conducted simultaneously with the same election, as submitted by the board of canvassers of municipalities and component cities. Upon completion of the canvass, it shall prepare the certificate of canvass for President, Vice-President and Senators and thereafter, proclaim the elected Members

of the House of Representatives and provincial officials as well as the plebiscite results, if any." [23]

While the two provisions differ in terms, neither is this fact sufficient to create repugnance. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. [24] "It is necessary, says the court in a case, [25] before such repeal is deemed to exist that it be shown that the statutes or statutory provisions deal with the same subject matter and that the latter be inconsistent with the former. There must be a showing of repugnance clear and convincing in character. The language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice." [26] For it is a well-settled rule of statutory construction that repeals of statutes by implication are not favored. [27] The presumption is against inconsistency or repugnance and, accordingly, against implied repeal. [28] For the legislature is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes. [29]

In the case at bar, the needed manifest indication of legislative purpose to repeal is not present. Neither is there any inconsistency between the two subject provisions. The explanation of a legal scholar [30] on the subject, particularly on Section 1 of BP 881 is enlightening:

"The Omnibus Election Code of the Philippines is Batas Pambansa Blg. 881, which was enacted into law on December 3, 1985. It codified all previous election laws. It has undergone some amendments, basically by the 1987 Constitution, Republic Act No. 6646, otherwise known as "The Electoral Reform Law of 1987," and Republic Act No. 7166, providing for synchronized national and local elections on May 11, 1992.

"The Omnibus Election Code is the basic law on elections. While legislations have been enacted every time an election for elective officials is scheduled, the Omnibus Election Code remains the fundamental law on the subject and such pieces of legislations are designed to improve the law and to achieve the holding of free, orderly, honest, peaceful and credible elections."

Consistently, while Article 22 of the Revised Penal Code provides that penal laws shall have retroactive effect insofar as they favor the person guilty of a felony xxx, this provision cannot be applied to benefit the petitioners because Section 231 of BP 881 [31] was not repealed by subsequent legislations, contrary to petitioners contention that Section 231 was so repealed by R.A. Nos. 6646 and 7166.

ACCORDINGLY, the petition is DENIED for lack of merit and the assailed decision of the respondent Court of Appeals is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, CJ., Padilla, Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

Davide, Jr., J., no part. Complaint against petitioner Aguetas was initiated when I was a COMELEC Chairman.
Panganiban, J., no part. Private complainant Erlinda Inigo was a former client in the antecedent election case.
Hermosisima, Jr., J., on leave.

[1] Penned by Associate Justice Jesus M. Elbinias concurred in by Associate Justices Nathanael P. de Pano, Jr., and Angelina S. Gutierrez.

[2] Accused Benjamin Miano, who was represented by a different counsel, filed with this court, a separate petition for review docketed as G.R. No. 107215 which was dismissed on October 27, 1992 for failure to submit a

certification that no other action or proceeding involving the same issues raised in this case has been filed or is pending before any court, tribunal or agency, pursuant to Circular 28-91.

[3] The matter of erroneous proclamation of Pedro P. Pena instead of Erlinda V. Irigo as the winning candidate for the 8th slot as Board Member of the Province of Davao Oriental was elevated to the attention of, and duly rectified by, the COMELEC Head Office, Manila.

[4] Original Record, pp. 1-2, Information filed by Jose P. Balbuena, OIC-Manager, Law Department, COMELEC.

[5] Petition, p. 12, Rollo, p. 13.

[6] Resolution issued by Director Borra in IPD Case No. 88-100, preparatory to the filing of Crim. Case No. 1886 against petitioners with the RTC of Mati, Davao Oriental; Exh. "Z", Folder of Exhibits.

[7] Exh. "Z", pp. 12, 14-15, Resolution issued by Regional Election Director Resurreccion Z. Borra, in IPD Case No. 88-100.

[8] 39 Phil. 208, 213-214.

[9] Exh. "Z", Folder of Exhibits.

[10] Exh. "Z", p. 16.

[11] Exh. "Z", p. 17.

[12] Minutes of the Provincial Board of Canvassers of Davao Oriental, held on January 21, 1988, Exh. D-1, Folder of Exhibits.

[13] Exh. "Z", p. 19.

[14] Sec. 4, Rule 129 of the New Rules on Evidence.

[15] U.S. vs. Yu Tuico, 34 Phil. 209; U.S. vs. Narvas, 14 Phil. 410.

[16] Despavellor, CA 53 O.G. 7297.

[17] Comment, p. 16, Rollo, p. 86.

[18] 25 Phil. 600.

[19] Tay Chun Suy vs. Court of Appeals, 229 SCRA 151.

[20] Iloilo Palay & Corn Planters' Assn., Inc. vs. Feliciano, G.R. No. 24022, March 3, 1965, 13 SCRA 377; City of Naga v. Agna, G.R. No. 36049, May 31, 1976, 71 SCRA 176.

[21] Valera vs. Tuason, 80 Phil. 823.

[22] Section 231, Batas Pambansa Bilang 881, otherwise known as the Omnibus Election Code.

[23] Section 28, Republic Act No. 7166.

[24] Iloilo Palay & Corn Planters Assn., Inc. v. Feliciano, supra.

[25] Villegas v. Subido, G.R. No. 31711, Sept. 30, 1971, 41 SCRA 190; Jalandoni v. Endaya, G.R. No. 23894, Jan. 24, 1974, 55 SCRA 261.

[26] Statutory Construction by Ruben Agpalo, 1990 ed., pp. 287-288.

[27] Valdez v. Tuason, 40 Phil. 943.

[28] Iloilo Palay & Corn, Planters Assn., Inc. vs. Feliciano, supra.

[29] U.S. vs. Palacio, 33 Phil. 208.

[30] Former Commissioner of the Commission on Elections, Ruben E. Agpalo in his Comments on the Omnibus Election Code.

[31] More specifically, that failure to proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay shall constitute an election offense.

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