

JOSE M. YORAC, PETITIONER, VS. LUIS F. MAGALONA, RESPONDENT.

G.R. No. 15285. September 19, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition filed by Jose M. Yorac to review the decision of the Court of Appeals, reversing that of the Court of First Instance of Negros Occidental, and declaring therein protestee-appellant (herein respondent) Luis F. Magalona, the elected mayor of Saravia, Negros Occidental in the general elections held on November 10, 1955.

After the petition was duly admitted and given due course, and the parties had filed their respective briefs, the case was considered submitted for decision on March 7, 1960.

On May 16, 1961, respondent Magalona moved for the dismissal of this appeal on the ground that it has already become moot, the case being an election protest involving the office of municipal mayor in connection with the elections of November, 1955, the term of which had expired in December, 1959.

Petitioner filed an opposition contending that the issue presented before this Court are very important and novel that they necessitate a ruling which would add to our electoral jurisprudence; that the parties having already filed their respective briefs, the appeal should not be dismissed; and that the dismissal of the appeal before a decision could be rendered by this Court would leave "no decision in this case, because said decision appealed from was already vacated upon perfection of this appeal." We find the opposition without merit.

The issues raised in the appeal mainly refer to appreciation of ballots and the question of law involved is unsubstantial that no useful purpose will be served by deciding the case on the merits at this stage or at the time the case was submitted for decision on March 7, 1960, considering that even then the term of the office subject of this appeal had already expired. And, while it is true that the perfection of an appeal technically operates to vacate the judgment appealed from, the dismissal of the appeal before it is finally decided by the appellate court does not result in the total deletion or wiping out of the judgment of the court a quo. On the contrary, by specific provision of the Rules of Court, the decision of the lower court shall stand as though no appeal had ever been taken, and become enforceable. (Sec. 2, Rule 52.)

As the dismissal of the appeal after the briefs are filed rests upon the discretion of the court^[1] and, as heretofore pointed out, there would be no practical value that a decision on the merits be made in this case, the present appeal is hereby dismissed for being moot, without costs in this instance. So ordered.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] See *Krivenko vs. Register of Deeds*, 79 Phil., 461.

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