

ARSENIA B. GARCIA, PETITIONER, VS. HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS

G.R. NO. 157171. March 14, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.

This petition seeks the review of the judgment of the Court of Appeals in CA-G.R. CR No. 24547[1] that affirmed the conviction of petitioner by the Regional Trial Court[2] of Alaminos City, Pangasinan, Branch 54, for violation of Section 27(b) of Republic Act No. 6646.[3]

Based on the complaint-affidavit of Aquilino Q. Pimentel, Jr., who ran in the 1995 senatorial elections, an information dated March 30, 1998, was filed in the Regional Trial Court of Alaminos, charging Herminio R. Romero, Renato R. Viray, Rachel Palisoc and Francisca de Vera, and petitioner, with violation of Section 27(b). The information reads:

That on or about May 11, 1995, which was within the canvassing period during the May 8, 1995 elections, in the Municipality of Alaminos, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Election Officer Arsenia B. Garcia, Municipal Treasurer Herminio R. Romero, Public School District Supervisor Renato R. Viray, Chairman, Vice-Chairman, and Member-Secretary, respectively, of the Municipal Board of Canvassers of Alaminos, Pangasinan, tabulators Rachel Palisoc and Francisca de Vera, conspiring with, confederating together and mutually helping each other, did, then and there, willfully, and unlawfully decrease[d] the votes received by senatorial candidate Aquilino Q. Pimentel, Jr. from six thousand nine hundred ninety-eight (6,998) votes, as clearly disclosed in the total number of votes in the one hundred fifty-nine (159) precincts of the Statement of Votes by Precincts of said municipality, with Serial Nos. 008417, 008418, 008419, 008420, 008421, 008422 and 008423 to one thousand nine hundred twenty-one (1,921) votes as reflected in the Statement of Votes by Precincts with Serial No. 008423 and Certificate of Canvass with Serial No. 436156 with a difference of five thousand seventy-seven (5,077) votes.

CONTRARY TO LAW.[4]

In a Decision dated September 11, 2000, the RTC acquitted all the accused for insufficiency of evidence, except petitioner who was convicted as follows:

x x x

- And finally, on the person of Arsenia B. Garcia, the Court pronounces her GUILTY beyond reasonable doubt, of the crime defined under Republic Act 6646, Section 27 (b) for decreasing the votes of Senator Pimentel in the total of 5,034 and in relation to BP Blg. 881, considering that this finding is a violation of Election Offense, she is thus sentenced to suffer an imprisonment of SIX (6) YEARS as maximum, but applying the INDETERMINATE SENTENCE LAW, the minimum penalty is the next degree lower which is SIX (6) MONTHS; however, accused Arsenia B. Garcia is not entitled to probation; further, she is sentenced to suffer disqualification to hold public office and she is also deprived of her right of suffrage.

The bailbond posted by her is hereby ordered cancelled, and the Provincial Warden is ordered to commit her person to the Bureau of Correctional Institution for Women, at Metro Manila, until further orders from the court.

No pronouncement as to costs.

IT IS SO ORDERED.[5]

Petitioner appealed before the Court of Appeals which affirmed with modification the RTC Decision, thus,

WHEREFORE, foregoing considered, the appealed decision is hereby affirmed with modification, increasing the minimum penalty imposed by the trial court from six (6) months to one (1) year.

SO ORDERED.[6]

The Court of Appeals likewise denied the motion for reconsideration. Hence, this appeal assigning the following as errors of the appellate court:

I

ON THE FIRST AND SECOND GROUNDS RELIED UPON BY THE RESPONDENT COURT, NAMELY, THAT IT COULD NOT HAVE BEEN SECRETARY VIRAY WHO DECREASED THE VOTES OF COMPLAINANT PIMENTEL SINCE HE MERELY RELIED ON WHAT THE PETITIONER DICTATED, AND THAT IT COULD NOT HAVE ALSO BEEN THE TABULATORS BECAUSE PETITIONER WAS THE ONE WHO READ THE ADDING [MACHINE] TAPE.

II

ON THE THIRD GROUND, NAMELY, THAT PETITIONER DID NOT PRODUCE THE TAPES DURING THE TRIAL BECAUSE IF PRODUCED, IT IS GOING TO BE ADVERSE TO HER.

III

ON THE FOURTH GROUND, NAMELY, THAT THE PETITIONER WAS THE ONE WHO ENTERED THE REDUCED FIGURE OF 1,921 IN THE CERTIFICATE OF CANVASS (COC), Exh. "7", WHEN THE DUTY WAS THAT OF THE SECRETARY OF THE BOARD.

IV

THE REDUCTION OF THE VOTES OF CANDIDATE PIMENTEL WAS CLEARLY NOT WILLFUL OR INTENTIONAL.[7]

Petitioner contends that (1) the Court of Appeals' judgment is erroneous, based on speculations, surmises and conjectures, instead of substantial evidence; and (2) there was no motive on her part to reduce the votes of private complainant.

Respondent on the other hand contends that good faith is not a defense in the violation of an election law, which falls under the class of mala prohibita.

The main issue is, Is a violation of Section 27(b) of Rep. Act No. 6646, classified under mala in se or mala prohibita? Could good faith and lack of criminal intent be valid defenses?

Generally, mala in se felonies are defined and penalized in the Revised Penal Code. When the acts complained of are inherently immoral, they are deemed mala in se, even if they are punished by a special law.[8] Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed. On the other hand, in crimes that are mala prohibita, the criminal acts are not inherently immoral but become

punishable only because the law says they are forbidden. With these crimes, the sole issue is whether the law has been violated.[9] Criminal intent is not necessary where the acts are prohibited for reasons of public policy.[10]

Section 27(b) of Republic Act No. 6646[11] provides:

SEC. 27. Election Offenses.— In addition to the prohibited acts and election offenses enumerated in Sections 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense:

x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

x x x

Clearly, the acts prohibited in Section 27(b) are mala in se.[12] For otherwise, even errors and mistakes committed due to overwork and fatigue would be punishable. Given the volume of votes to be counted and canvassed within a limited amount of time, errors and miscalculations are bound to happen. And it could not be the intent of the law to punish unintentional election canvass errors. However, intentionally increasing or decreasing the number of votes received by a candidate is inherently immoral, since it is done with malice and intent to injure another.

Criminal intent is presumed to exist on the part of the person who executes an act which the law punishes, unless the contrary shall appear.[13] Thus, whoever invokes good faith as a defense has the burden of proving its existence.

Records show that the canvassing of votes on May 11, 1995 before the Board of Canvassers of the Municipality of Alaminos, Pangasinan was conducted as follows:

- After the votes in the 159 precincts of the municipality of Alaminos were tallied, the results thereof were sealed and forwarded to the Municipal Board of Canvassers for canvassing;
- The number of votes received by each candidate in each precinct was then recorded in the Statement of Votes with appellant, in her capacity as Chairman, reading the figures appearing in the results from the precincts and accused Viray, in his capacity as secretary of the Board, entering the number in the Statements of Votes as read by the appellant. Six Statements of Votes were filled up to reflect the votes received by each candidate in the 159 precincts of the Municipality of Alaminos, Pangasinan.
- After the number of votes received by each candidate for each precincts were entered by accused Viray in the Statements of Votes, these votes were added by the accused Palisoc and de Vera with the use of electrical adding machines.
- After the tabulation by accused Palisoc and de Vera, the corresponding machine tapes were handed to appellant who reads the subtotal of votes received by each candidate in the precincts listed in each Statement of Votes. Accused Viray [then] records the subtotal in the proper column in the Statement of Votes.
- After the subtotals had been entered by accused Viray, tabulators accused Palisoc and de Vera added all the subtotals appearing in all Statement of Votes.
- After the computation, the corresponding machine tape on which the grand total was reflected was handed to appellant who reads the same and accused Viray enters the figure read by appellant in the column for grand total in the Statement of Votes.[14]

Neither the correctness of the number of votes entered in the Statement of Votes (SOV) for each precinct, nor of

the number of votes entered as subtotals of votes received in the precincts listed in SOV Nos. 008417 to 008422 was raised as an issue.

At first glance, however, there is a noticeable discrepancy in the addition of the subtotals to arrive at the grand total of votes received by each candidate for all 159 precincts in SOV No. 008423.[15] The grand total of the votes for private complainant, Senator Aquilino Pimentel, was only 1,921 instead of 6,921, or 5,000 votes less than the number of votes private complainant actually received. This error is also evident in the Certificate of Canvass (COC) No. 436156 signed by petitioner, Viray and Romero.[16]

During trial of this case, petitioner admitted that she was indeed the one who announced the figure of 1,921, which was subsequently entered by then accused Viray in his capacity as secretary of the board.[17] Petitioner likewise admitted that she was the one who prepared the COC (Exhibit A-7), though it was not her duty. To our mind, preparing the COC even if it was not her task, manifests an intention to perpetuate the erroneous entry in the COC.[17]

Neither can this Court accept petitioner's explanation that the Board of Canvassers had no idea how the SOV (Exhibit "6") and the COC reflected that private complainant had only 1,921 votes instead of 6,921 votes. As chairman of the Municipal Board of Canvassers, petitioner's concern was to assure accurate, correct and authentic entry of the votes. Her failure to exercise maximum efficiency and fidelity to her trust deserves not only censure but also the concomitant sanctions as a matter of criminal responsibility pursuant to the dictates of the law.[19]

The fact that the number of votes deducted from the actual votes received by private complainant, Sen. Aquilino Pimentel, Jr. was not added to any senatorial candidate does not relieve petitioner of liability under Section 27(b) of Rep. Act No. 6646. The mere decreasing of the votes received by a candidate in an election is already punishable under the said provision.[20]

At this point, we see no valid reason to disturb the factual conclusions of the appellate court. The Court has consistently held that factual findings of the trial court, as well as of the Court of Appeals are final and conclusive and may not be reviewed on appeal, particularly where the findings of both the trial court and the appellate court on the matter coincide.[21]

Public policy dictates that extraordinary diligence should be exercised by the members of the board of canvassers in canvassing the results of the elections. Any error on their part would result in the disenfranchisement of the voters. The Certificate of Canvass for senatorial candidates and its supporting statements of votes prepared by the municipal board of canvassers are sensitive election documents whose entries must be thoroughly scrutinized.[22]

In our review, the votes in the SOV should total 6,998.[23]

As between the grand total of votes alleged to have been received by private complainant of 6,921 votes and statement of his actual votes received of 6,998 is a difference of 77 votes. The discrepancy may be validly attributed to mistake or error due to fatigue. However, a decrease of 5,000 votes as reflected in the Statement of Votes and Certificate of Canvass is substantial, it cannot be allowed to remain on record unchallenged, especially when the error results from the mere transfer of totals from one document to another.

WHEREFORE, the instant petition is DENIED. The assailed Decision of the Court of Appeals sustaining petitioner's conviction but increasing the minimum penalty in her sentence to one year instead of six months is AFFIRMED.

SO ORDERED.

Carpio, Carpio Morales and Tinga, JJ., concur.

[1] Rollo, pp. 101-115. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Teodoro P. Regino, and Juan Q. Enriquez, Jr. concurring.

[2] Id. at 60-99.

[3] SEC. 27. Election Offenses.—In addition to the prohibited acts and election offenses enumerated in Sections 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense:

x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

x x x

[4] Records, pp. 1-2.

[5] Rollo, pp. 98-99.

[6] Id. at 114.

[7] Id. at 20, 26 & 30.

[8] Luis B. Reyes, The Revised Penal Code, Book One, 55 (13th ed).

[9] See *United States v. Go Chico*, No. 4963, 15 September 1909, 14 Phil 128, 134.

[10] *Ibasco v. Court of Appeals*, G.R. No. 117488, 5 September 1996, 261 SCRA 449, 454 citing *People v. Conosa*, C.A. 45, O.G. 3953.

[11] "The Electoral Reforms Law of 1987". An Act Introducing Additional Reforms in the Electoral System and for Other Purposes (5 January 1988).

[12] *Domalanta v. Commission on Elections*, G.R. No. 125586, 29 June 2000, 334 SCRA 555, 564.

[13] *United States v. Apostol*, No. 5126, 2 September 1909, 14 Phil 92, 93; Rules of Court, Rule 131, Sec. 3, par. (b).

[14] Rollo, p. 105.

[15] Records, p. 342.

[16] Rollo, p. 106.

[17] Id. at 87.

[17] Id. at 90-91.

[19] Id. at 97-98.

[20] Id. at 113.

[21] *Sps. Lagandaon v. Court of Appeals*, G.R. Nos. 102526-31, 21 May 1998, 290 SCRA 330, 342; *Engineering*

& Machinery Corporation v. Court of Appeals, G.R. No. 52267, 24 January 1996, 252 SCRA 156, 163.

[22] Domalanta v. Commission on Elections, *supra* note 12, at 563.

[23] See Exhibit A-1 to A-6, records, pp. 39-45.

Statement of Votes Votes Based on SOV Subtotals Votes per SOV

008417 1,131 1,174

008418 1,068 1,068

008419 1,139 1,139

008420 864 864

008421 1,137 1,171

008422 1,090 1,090

008423 492 492

TOTAL 6,921 6,998

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