

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICTORINO CARINO ET AL., DEFENDANTS. DANIEL OBIAS AND VICTORINO CARIÑO, APPELLANTS.

G. R. No. 33413. September 16, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellants, Victorino Carino and Daniel Obias, together with Mariano V. Delgado, who was acquitted, were tried in the Court of First Instance of Camarines Sur for a violation of the Election Law, upon the following complaint :

"That on or about June 5, 1928, in the municipality of Goa, Province of Camarines Sur, Philippine Islands, and within the jurisdiction of this court, the aforementioned accused, being election inspectors duly appointed in precinct No. 4 of said municipality for the general election held on that date, did wilfully, unlawfully, feloniously, and knowingly, with the sole purpose of favoring one Vicente Oliquino, falsify the copies of the election returns in said precinct sent to the provincial and municipal treasurers, sign them and with the full knowledge of falsifying the results of the election the accused made it appear therein that the said Vicente Oliquino had obtained 110 lawful votes for the office of councilor, when as a matter of fact, and which the defendants positively knew, as indeed they stated in the other copy of the election returns which was placed in the valid ballot box, that the said Vicente Oliquino obtained only 67 lawful votes in said precinct. That these frauds were discovered in connection with the election protest filed against said Vicente Oliquino in civil case No. 4562, in which, by order of the court, the ballot boxes for said precinct No. 4 were opened on October 10, 1928.

"Contrary to law."

In view of the evidence adduced, the trial court convicted Victoriano Carino and Daniel Obias of the crime charged and sentenced them to six months' imprisonment, a fine of P200 each, with subsidiary imprisonment in case of insolvency, to pay the costs, and to be deprived of the right of suffrage, besides being disqualified to hold a public office for a period of seven years.

Victorino Carino and Daniel Obias have appealed to this court, and their counsel now contends that the trial court erred (1) in finding that the evidence has proved the appellants guilty beyond a reasonable doubt, and (2) in not holding that the action has prescribed.

The important question raised in this appeal deals with the prescription of the crime charged in the information, i. e., falsification of the copies of the election returns sent to the provincial and municipal treasurers.

Section 2660E of the Revised Administrative Code, which treats of prescription, provides:

"Prescription.—Offenses resulting from violations of this article shall prescribe one year after their commission; but if the discovery of such offenses is incidental to judicial proceeding in any election contest, the term of prescription shall commence only when such proceedings terminate."

This is a new provision of the Election Law, which was only introduced by Act No. 3387. It states that as a general rule the year begins to run from the commission of the offenses mentioned, but as such commission may remain unknown until discovered in connection with an election contest, the law adds that in such a case, the year begins when such proceedings terminate.

We find a similar provision in our Penal Code in article 131, which reads: "The period of prescription shall commence to run from the day on which the crime is committed; or, if not known at the time, from the day of its discovery and the beginning of the judicial proceedings for investigation and punishment."

In both laws, what determines the beginning of prescription is the knowledge of the commission of the crime, for without it there could be no prosecution and punishment. The Election Law does not specify who is to have such knowledge; but in view of the fact that the prosecution of public offenses is undertaken by the fiscal in the name of the People, we are of opinion that the knowledge of the commission of the crime by any voter is sufficient to indicate the beginning of prescription. This is so because the voter who is especially interested in complying with the provisions of the Election Law, is in duty bound to report the offense to the fiscal, that the latter may institute the proper proceedings.

The difference between the Election Law and the Penal Code in the matter of prescription consists in this, that according to the Code, if the commission of the crime is unknown, prescription begins upon its discovery and the commencement of judicial investigation looking to its punishment; whereas according to the Election Law, if the discovery of the offense is incidental to judicial proceeding in any election contest, prescription begins when such proceeding terminates.

Now then, when was the falsification of the election returns, with which the appellants are charged, in connection with the general election of 1928 in precinct No. 4 of the municipality of Goa, Camarines Sur, first known? According to the Attorney-General, this offense was discovered only when the ballot boxes were opened by an order of the court on October 10, 1929; whereas the defense contends that the crime came to light before the filing of the election contest on June 16, 1928. The motion of protest, among other things, alleged:

"That according to the canvass and publication made by the boards of election in the four precincts of the municipality of Goa, Camarines Sur, in the election of June 5, 1928, the contestee Vicente Oliquino only obtained a total of 256 votes, contestee Eustaquio Buena 207 votes, and contestee Perpetuo Oliver 310 votes only, but through falsification of the returns in the four precincts of Goa and through the operation vulgarly known as a *cargada* the contestees Vicente Oliquino, Eustaquio Buena, and Perpetuo Oliver obtained 356, 367, and 366 votes, respectively, according to the count made by the municipal council of Goa as a municipal board of canvassers, on June 8, 1928, and said contestees Vicente Oliquino, Eustaquio Buena, and Perpetuo Oliver were proclaimed councillors-elect of Goa, by the aforementioned municipal board of canvassers of Goa on said date, June 8, 1928; that according to the canvass and publication made by the boards of election in the four precincts of Goa at the last election, the contestant Nemesio Beltran obtained 366 votes, contestant Nazario Rodriguez, 359, and contestant Severo Oroseo, 340 votes, but at the municipal canvass made by the municipal council of Goa on the aforementioned date, they were recorded as having obtained fewer votes than the contestees Vicente Oliquino, Eustaquio Buena, and Perpetuo Oliver, and therefore the said contestants were not proclaimed to have been elected to the office of councilors by said municipal board of canvassers."

That election contest was decided by the Court of First Instance of Camarines Sur on October 13, 1928 in favor of the contestants, and the contestees did not appeal. The election inspectors of precinct No. 4 of Goa mentioned in that contest are the defendants in the present action.

The allegations quoted above show that the contestants, before filing their protest with the court, had knowledge of the commission of fraud by the election inspectors, here defendants, in preparing the copies of the returns

(Exhibits G and H) forwarded to the provincial and municipal treasurers, and they even knew the means employed by said election inspectors to increase the votes of their candidates for councilor: Vicente Oliquino, Eustaquio Buena, and Perpetuo Oliver. Otherwise, how could the contestants have alleged under oath that the election inspectors, here defendants, committed the fraud upon which their protest was based?

We believe that the publicity with which the count of the votes is made by the board of inspectors, in accordance with section 464 of the Election Law, permits the candidates, their watchers, and other persons interested in the election to know the number of votes awarded to the candidates for each office, especially as the law prescribes that while the chairman of the board of inspectors and the other inspector of the opposing party may read out the names of the persons voted for, the secretary of the board is to write on the blackboard the votes obtained by each candidate, while the other inspector writes down the same votes upon a form prepared by the chief of the executive bureau for that purpose. There can be no doubt that the watchers of the contestants in precinct No. 4 of the said municipality of Goa, knew that the candidates for councillor, Oliquino, Buena, and Oliver had obtained fewer votes than said contestants, and what must have been their surprise upon seeing later on that Oliquino, Buena, and Oliver won the elections for councillors. This knowledge on the part of the contestants' watchers, and possibly of the candidates themselves, corroborated by the contents of the returns forwarded to the provincial and municipal treasurers, constituted prima facie evidence with which to investigate the falsification committed by the election inspectors, with a view to punishing them. It is clear that the copy of the returns put into the ballot box is decisive evidence of the falsification committed in the preparation of the two copies of the returns marked Exhibits G and H; but it was not indispensable to the institution of a criminal case against the aforementioned inspectors, since the Attorney-General could, at all events, present as a portion of his evidence the contents of the ballot boxes of precinct No. 4 of the municipality of Goa. (*Rafols vs. Court of First Instance and Provincial Fiscal of Cebu*, 47 Phil., 736.) Granting this, we are of opinion, and so hold, that the discovery in question was not incidental to judicial proceeding in said election contest, but, that, even before the filing of the motion of protest, the contestants and their election watchers, with knowledge of the falsification committed by the inspectors, in connection with the count of the votes and the preparation of the election returns on June 6, 1928, had sufficient reason to denounce such falsification to the fiscal. Therefore, the general rule established in the aforecited section 266(H) of the Administrative Code is applicable to this case, that is, that the year for the prescription of the crime charged in the information began to run when the offense was committed. And inasmuch as the falsification of the election returns Exhibits G and H took place on June 6, 1928, it is evident that the information filed on July 22, 1929, is outside of the year provided by law.

Wherefore, the judgment appealed from is reversed, and the appellants Daniel Obias and Victorino Cariño absolved from the information, with costs de officio. So ordered.

Avanceña, C. J., Street, Romualdez, Villa-Real, and Imperial, JJ., concur,

JOHNSON, J.:

I reserve my vote.

MALCOLM and OSTRAND, JJ.:

We dissent and are of the opinion that the judgment should be affirmed.

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