Supreme Court E-Library

The foregoing likewise supports a finding of treachery. By their own admission, appellants suddenly stabbed the victim, several times with improvised deadly weapons. At the time, the victim was unarmed and completely defenseless.

The crime is Murder qualified by treachery and attended by the generic aggravating circumstance of evident premeditation and the special aggravating circumstance of quasi-recidivism considering that appellants were serving their respective sentences by virtue of final judgments at the time they fatally stabbed the deceased. The penalty thus imposable is the maximum penalty of death without regard to the effect of the mitigating circumstance of accused-appellants' plea of guilty or voluntary surrender.[5] However, due to lack of the necessary votes, the sentence is commuted to *reclusion perpetua.*

WHEREFORE, the judgment under review is hereby modified in that accused-appellants are hereby sentenced to *reclusion perpetua* and the indemnity is increased to P30,000.00. Costs against accused-appellants.

SO ORDERED.

Fernando, C.J., Aquino, Concepcion Jr., Abad Santos, Plana, Escolin, Relova, Gutierrez, Jr., de la Fuente, Cuevas, and *Alampay, JJ.,* concur.

Teehankee, J., in the result.

Makasiar, J., no sufficient proof of evident premeditation - less than 24 hours from argument to kill to execution.

EN BANC

[G.R. No. 55873. February 25, 1985]

ERNESTO G. PEREZ, PEDRO C. GONZALES, ZACARIAS AGNO, REYNALDO AQUINO, AMBROCIO

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[5] Article 160, Revised Penal Code; People *vs.* Bautista, 65 SCRA 460 (1975).

Supreme Court E-Library

BANAWA, JUAN BATHAN, ANASTACIO MANALO, ANTONIO MARALIT, SOTERO PROMENTILLA, and WINEFRED VILLANO, *petitioners, vs.* COMMISSION ON ELECTIONS, NORBERTO SEGUNIAL, PELAGIO M. CARA, RODELITO ANORICO, JUANITO ATIENZA, FRANCISCO CABUNGCAL, VICENTE KASILAO, ELPIDIO MENDOZA, PEDRO RODRIGUEZ, CONRADO ONAL, and MARTIN SALAZAR, *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; ELECTIONS; PRE-PROCLAMATION CONTROVERSY NO LONGER VIABLE AFTER AN ELECTION AND PROCLAMATION IS HELD; ELECTION PROTEST OR *QUO WARRANTO*, PROPER REMEDIES.**— Arcenas *vs.* Commission on Elections, G.R. No. 54039, November 28, 1980, held: "It is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable. As was pointed out in the Venezuela Opinion: 'It would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in review of its appellate jurisdiction, if the matter were passed upon in an election protest or *quo warranto* petition in the proper court or agency, the office involved being that of municipal mayor.'"

2. **ID.; ID.; ID.; VILLEGAS *vs.* COMELEC APPLICABLE TO THE CASE AT BAR.**— An earlier case, Villegas *vs.* Commission on Elections, G.R. No. 52463, September 4, 1980 is *apropos*. For in that case as in this petition, the grounds alleged are more appropriate for an election protest. An election contest is therefore the appropriate remedy. A pre-proclamation controversy is no longer viable. Considering the time that has elapsed, the possibility that after the pre-proclamation controversy an election protest may still be filed, and the imminence of the coming elections for local government officials, it is more in keeping with the letter and spirit of the constitutional provision on suffrage, the intent of which is to ascertain the true expression of the people's will – a voter being a particle of a popular sovereignty – that this petition be dismissed.

Supreme Court E-Library

3. **ID.; ID.; ID.; DISMISSAL OF PETITION FOR CERTIORARI PROPER IN VIEW OF PENDING ELECTION PROTEST.—** There being a pending election protest, there is no need to pass on the legal issues raised, being impressed as it is with a moot and academic aspect.

TEEHANKEE, *J., concurring:*

CONSTITUTIONAL LAW; ELECTIONS; PREVAILING DOCTRINE ADOPTED BY THE COURT MARKS AN ABANDONMENT OF THE *OLFATO* CASE.— The Court's decision reaffirming as the "prevailing doctrine" its host of rulings in the *Venezuela, Arcenas, Villegas,* and *Aguinaldo* cases cited thereon marks an abandonment of the *Olfato* case involving the mayoralty of Tanauan, Batangas, 103 SCRA 741 (1981), wherein this Court, despite the above-cited prevailing doctrine, sustained the Comelec's *volte face* of continuing to entertain the loser's petition for annulment of Mayor Olfato's proclamation notwithstanding that it had previously dismissed the petition since the grounds alleged therefor were proper grounds for election protest and the loser had in fact filed such election protest.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.
Roberto Diokno for private respondents.

D E C I S I O N

FERNANDO, *C.J.:*

It is the procedural due process guarantee that reliance is placed by petitioners in this certiorari and prohibition proceeding. The necessity of an inquiry into the merit of such an approach is obviated by the fact that there is actually an election protest between the same parties.

The petitioners are Ernesto G. Perez who was the official candidate of the Nacionalista Party for Mayor of Sta. Teresita, Batangas; Pedro C. Gonzales for Vice-Mayor; and Zacarias Agno, Reynaldo Aquino, Ambrosio Banawa, Juan Bathan, Anastacio

Supreme Court E-Library

Manalo, Antonio Maralit, Sotero Promentilla and Winefred Villano for members of the Sangguniang Bayan.[1] Private respondents are the official candidates of the Kilusang Bagong Lipunan (KBL) of the same place, namely, Norberto Segunial for Mayor; Pelagio M. Cara for Vice-Mayor; and Rodelito Anorico, Juanito Atienza, Francisco Cabungcal, Vicente Kasilao, Elpidio Mendoza, Pedro Rodriguez, Conrado Onal and Martin Salazar for Members of the Sangguniang Bayan.[2]

The resolution of November 21, 1980 reads in full: "10069. (PP Case No. 153 — Ernesto G. Perez, et al. *versus* Municipal Board of Canvassers, et al.) It appearing from the motion for reconsideration, dated March 4, 1980 and the supplement thereto dated March 20, 1980 filed by the respondents, and the opposition to said motion for reconsideration, dated March 15, 1980, as well as the opposition to the supplemental motion for reconsideration, dated March 22, 1980 and the memorandum for the respondents, dated April 15, 1980, that the matters alleged and charged by the petitioners to the effect that the registration of voters, the balloting and all mechanics relative thereto in the voting centers in Sta. Teresita, Batangas, mentioned therein, during the elections of January 30, 1980, were allegedly attended by fraud and other serious election irregularities, which would further necessitate, among other things, the opening of the ballot boxes, appreciation of the ballots contained therein and extensive examination into the circumstances surrounding the alleged frauds and irregularities, which are vigorously disputed by the respondents; that considering that such charges are the proper subject of an election protest in which all the issues raised by the parties can be fully ventilated before the court where the parties can have all the opportunity to prove their respective charges and defenses in a full-blown hearing of the case on the merits; and that, furthermore, the instant case does not fall squarely within the purview of Sections 172, 173 and 174 of the 1978 Election Code invoked by the petitioners, the Commission hereby [Resolved]

[1] Petition, par. 5.

[2] *Ibid.*

Supreme Court E-Library

to grant the motion for reconsideration dated March 4, 1980 and to dismiss the instant case, without prejudice to the filing of the corresponding election protest by the petitioners before the proper court within ten (10) days from notice hereof. The proclamation dated March 4, 1980 by the municipal board of canvassers of Sta. Teresita, Batangas is hereby reinstated thereby lifting the order setting the same aside."[3]

The resolution of December 10, 1980 reads as follows: "10070. (PP Case No. 153 — Ernesto G. Perez, et al. *versus* Municipal Board of Canvassers, et al., Sta. Teresita, Batangas). Considering that the date March 4, 1980 appearing in the first line of the last paragraph of Item No. 10069 of the Minutes of the Special Session of the Commission held on November 21, 1980 is a typographical/clerical error which should read February 7, 1980, the Commission, on motion duly made and seconded, hereby orders the same to be corrected by changing it to *February 7, 1980*. Let the Law Department furnish the parties or their respective counsels copy of this order immediately. [So Ordered]."[4]

The proclamation by the municipal board of canvassers on February 7, 1980 declared private respondents the winners, while that of March 4, 1980 declared petitioners as the victors. From a cursory reading, however, of respondent Commission on Elections' resolution of November 21, 1980, it is quite readily seen that the dispositive portion ought to refer to the earlier proclamation of February 7, 1980 in favor of private respondents. There was indeed such typographical or clerical error.

The existence of such error becomes even more undeniable from the very title of the November 21 resolution. Thus: "10069. (PP Case No. 153 — Ernesto G. Perez, et al. *versus* Municipal Board of Canvassers, et al.)." Petitioners there, Ernesto G. Perez, is again the petitioner here, along with the other petitioners. The respondents are the private respondents in this petition. With the corrected resolution of December 10, 1980,

[3] Annex A to Petition.

[4] Annex B to Petition.

Supreme Court E-Library

there was an affirmation of their right to continue in office, which all along they had been occupying after their proclamation, except during those few days between December 8, 1980, when petitioners received the erroneous resolution of November 21, 1980 and the date, unspecified in the pleadings, when they received the corrected resolution.

In the petition for review, no mention was made thereafter as to what action was taken by petitioners subsequent to the resolution of December 10, 1980. In the Comment, however, of private respondents it was pointed out that petitioners instead of filing a motion for reconsideration on the ruling of the Commission on Elections, filed an election protest with the Court of First Instance of Batangas, Lemery branch, setting forth the very grounds in this petition.[5] Moreover, at the time of the filing of such Comment, summons had already been issued, answers filed and ballot boxes of the protested voting centers ordered brought to the then Court of First Instance.[6] Apparently. at the time this petition was set for deliberation, such protest was still pending, as no further pleading on such protest had been filed with this Court.

As mentioned at the outset, it is the filing of such election protest that obviates the need for passing upon the question of the alleged denial of procedural due process.

1. In the Comment of the Solicitor General, reference was made to Arcenas *v.* Commission on Elections,[7] specifically this excerpt: "It is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable. As was pointed out in the Venezuela opinion; 'It would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in review of its appellate jurisdiction, if the matter were passed upon in an election protest or *quo warranto* petition in the proper court or agency, the office involved being that of

[5] Comment of Private Respondents, par. 20.

[6] *Ibid.*, par. 21.

[7] G.R. No. 54039, November 28, 1980, 101 SCRA 437.

Supreme Court E-Library

municipal mayor.'"[8] The Arcenas decision was promulgated on November 28, 1980. An earlier case, Villegas *v.* Commission on Elections,[9] is *apropos*. For in that case as in this petition, the grounds alleged are more appropriate for an election protest. An election contest is therefore the appropriated remedy. A pre-proclamation controversy is no longer viable. Considering the time that has elapsed, the possibility that after the pre-proclamation controversy an election protest may still be filed, and the imminence of the coming elections for local government officials, it is more in keeping with the letter and spirit of the constitutional provision on suffrage, the intent of which is to ascertain the true expression of the people's will — a voter being a particle of a popular sovereignty[10] that this petition be dismissed.

2. Moreover, there is reinforcement to the above conclusion. The case was filed on January 7, 1981. Two days earlier, on January 5, 1981, Aguinaldo *v.* Commission on Elections[11] was decided. The governing principle, with reference as to when this Court will assume jurisdiction after proclamation duly made with either a protest or a *quo warranto* as the remedy for the losing party was set forth thus: "Since Venezuela *v.* Commission on Elections, this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or *quo warranto* proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter

[8] *Ibid.*, 440.

[9] G.R. No. 52463, September 4, 1980, 99 SCRA 582.

[10] Cf. Moya *v.* Del Fierro, 69 Phil. 199 (1939).

[11] G.R. No. 53953, January 5, 1981, 102 SCRA 1.

Supreme Court E-Library

then elevated to this Court before such election, the issue thus presented should be resolved."[12] It does not argue against this approach that the clarificatory statement in Aguinaldo was announced two days before the filing of this case, for as shown in the above excerpt, the genesis of the doctrine may be found in Venezuela *v.* Commission on Elections, a 1980 decision.[13] The Aguinaldo doctrine has since then been the prevailing doctrine.[14]

WHEREFORE, there being a pending election protest, there is no need to pass on the legal issues raised, being impressed as it is with a moot and academic aspect. The petition is dismissed. No costs.

Aquino, Concepcion Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., de la Fuente, Cuevas, and *Alampay, JJ.,* concur.

Teehankee, J., files a brief concurrence.

Makasiar, J., concurs in the result.

TEEHANKEE, *J., concurring:*

The Court's decision reaffirms as "the prevailing doctrine" its host of rulings in the *Venezuela, Arcenas, Villegas* and *Aguinaldo* cases cited therein that after an election duly held and a proclamation duly made thereafter, a pre-proclamation controversy should no longer be viable and "it would save the time and energy of the litigants as well as respondent commission,

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[12] *Ibid.*, 3.

[13] G.R. No. 53532, July 25, 1980, 98 SCRA 790.

[14] Cf. Laguda *v.* Commission on Elections, G.R. No. 53747, February 20, 1981, 102 SCRA 857; Agcaoili, Jr. *v.* Santos, G.R. No. 52791, February 26, 1981, 103 SCRA 350; Mitmug *v.* Commission on Elections, G.R. No. 54082, March 24, 1981, 103 SCRA 455; Faderanga *v.* Commission on Elections, G.R. No. 55938, June 26, 1981, 105 SCRA 123; Disini *v.* Commission on Elections, G.R. No. 52502, Dec. 30, 1982, 119 SCRA 511; Resurreccion *v.* Commission on Elections, G.R. No. 57219-20, January 4, 1984, 127 SCRA 1; De Leon *v.* Commission on Elections, G.R. No. 56968, April 30, 1984, 129 SCRA 117.

Supreme Court E-Library

and eventually this Court in review of its appellate jurisdiction, if the matter were passed upon in an election protest or *quo warranto* petition in the proper court or agency..." (at page 4), save only where the controversy was acted upon by the Comelec and was elevated to this Court *before* election day on January 30, 1980, which cases would be resolved by this Court.

It marks, I trust, an abandonment of the *Olfato* case involving the mayoralty of Tanauan, Batangas, 103 SCRA 741 (1981), wherein this Court, despite the above-cited prevailing doctrine, sustained the Comelec's *volte face* of continuing to entertain the loser's petition for annulment of Mayor Olfato's proclamation notwithstanding that it had previously dismissed the petition since the grounds alleged therefor were proper grounds for election protest and the loser had in fact filed such election protest. Mayor Olfato has of course assumed and discharged his official functions as mayor all this while. After four years, the Comelec has yet to resolve the loser's "summary" petition to annul the mayor's proclamation, whereas the regular election protest originally decreed by the Comelec would have taken less time and resolved the dispute with finality.

FIRST DIVISION

[G.R. No. 57575. February 25, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* FRANKIE SORIANO and FERNANDO VALDEZ, *defendants-appellants.*

SYLLABUS

1. **CRIMINAL LAW; MOTIVE; INCONSEQUENTIAL IF ASSAILANT IS IDENTIFIED.**— As to the motive of Appellants, the finding of the Trial Court is that the VICTIM was an enemy