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FIRST DIVISION

[G.R. No. L-24157. September 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellant, vs.* **ABDUGAFAR ABUBAKAR,** *defendant-appellee.*

SYLLABUS

CRIMINAL LAW; FALSIFICATION BY PUBLIC OFFICER; WHEN COMMITTED BY ELECTION OFFICER.— The court *a quo* was in error in dismissing Criminal Case No. 2674 which charges the accused with an act clearly and expressly punishable under Article 171, paragraph 2 of the Revised Penal Code, but not punished with similar clarity and explicitness, as is legally required in all criminal prosecutions, under the Revised Election Code. So much, so, that had Criminal Case No. 2597 proceeded up to the filing in court of the information of an election offense after the preliminary investigation, the same could have been properly dismissed as not charging an offense expressly punishable under the Revised Election Code, but one which, in accordance with Section 186 of the said Code quoted earlier above, should be punished as provided in other penal laws applicable thereto. Incidentally, it should not matter whether, treated as a common crime, not as an electoral offense, as the aforecited section would lay down the distinction between the two offenses, the penalty imposed by the penal law other than the election statute for the offense charged is heavier or lighter. The court *a quo* seems to have considered this fact of legal consequence as to prompt it to dismiss the case. What is important is that the violation is not left unpunished where, as in the present case, there is a law clearly and explicitly punishing the act, the Revised Penal Code, which should, accordingly, be enforced and applied because the provision of the Revised Election Code is, to say the least, unclear and ambiguous.

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APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Isidro C. Borromeo and *Solicitor Dominador L. Quiroz* for plaintiff-appellant.

Hugo T. Barraquias for defendant-appellee.

D E C I S I O N

DE CASTRO, *J.*:

This is an appeal by the People of the Philippines as plaintiff in Criminal Case No. 2674 of the Court of First Instance of Sulu from the order of said Court dismissing the information on a motion to quash filed by the accused who was therein specifically charged with violation of Article 171, paragraph 2 of the Revised Penal Code which reads:

"ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of *prision mayor* and a fine not to exceed 2,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position shall falsify a document by committing any of the following acts."

"Par. 2. — Causing to appear that persons have participated in an act or proceedings."

The information alleges as follows:

"That on or about the 14th day of November, 1961, National Election Day, in Sitio Tabu Manok, Municipality of Panamao, Province of Sulu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then a public school teacher and the Chairman of the Board of Inspectors of Electoral Precinct No. 3-A, situated in Sitio Tabu Manok, Municipality of Panamao, Province of Sulu, and while in the performance of his election duties as said chairman inside the said polling place, and taking advantage of his said official position, and with intent to violate the provisions of the Revised Penal Code, did then and there wilfully, unlawfully and feloniously sign the name of Ambiting Sahibil, a registered voter in the said electoral precinct who was then out of the province of Sulu, in the list of voters, Election Form No. 11, of said electoral

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precinct and affix his thumbmark opposite the name of the said Ambiting Sahibil in the said list of voters, and thereafter detach an official ballot and fill out the same inside a voting booth and thereafter drop the same ballot into the box for valid ballots, notwithstanding the protest and objections interposed thereto by an inspector of the Liberal party and watcher of the Liberal party in said Precinct No. 3-A, thus causing it to appear that the aforementioned Ambiting Sahibil participated and voted in the said election when in fact he did not so participate or vote."[1]

There can hardly be any ground for doubt that from the recitals of the information, the offense charged therein is that defined and penalized in the above-quoted provision of the Revised Penal Code. What led the court *a quo* to grant the motion to quash, is its belief that the offense charged constitutes an election offense punishable under the Revised Election Code, and therefore not one to be punished under another law, such as the Revised Penal Code. This view was taken by the court *a quo*, obviously because prior to the filing of the information in Criminal Case No. 2674, an information of identical allegations of how the offense charged was committed has been filed in Criminal Case No. 2597. Thus the information in said case reads as follows:

"The undersigned First Assistant Provincial Fiscal accuses Abdugafar Abubakar of a violation of Section 138, in relation with Sections 134 to 139, of Republic Act No. 180, as amended otherwise known as the Revised Election Code, committed as follows:

> "'That on or about the 14th day of November, 1961, National Election Day, in Sitio Tabu Manok, Municipality of Panamao, Province of Sulu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then a public school teacher and the Chairman of the Board of Inspectors of Electoral Precinct No. 3-A, situated in Sitio Tabu Manok, Municipality of Panamao, Province of Sulu, and while in the performance of his election duties as said chairman inside the said polling place, and taking advantage of his said official position, and with intent to violate the provisions of the Revised

[1] Page 1, Record, Criminal Case No. 2674.

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Election Code and the Revised Penal Code, did then and there wilfully, unlawfully and feloniously sign the name of Ambiting Sahibil, a registered voter in the said electoral precinct who was then out of the province of Sulu, in the list of voters of said electoral precinct and affix his thumbmark opposite the name of the said Ambiting Sahibil in the said list of voters, and thereafter detach an official ballot and fill out the same inside a voting booth and thereafter drop the said ballot into the box for valid ballots, notwithstanding the protest and objections interposed thereto by an inspector of the Liberal party and watcher of the Liberal party in said Precinct No. 3-A, thus causing it to appear that the aforementioned Ambiting Sahibil participated and voted in the said election when in fact he did not so participate or vote.'"[2]

The only difference to be noted between the two informations is that in the first information, violation of Section 138, in relation to Sections 134 to 139 of Republic Act No. 180 is charged; whereas, in the second information, what is charged, on identical facts, is violation of Article 171, paragraph 2 of the Revised Penal Code.

The information in Criminal Case No. 2597 was filed on March 1, 1962; but on October 15, 1962, before the preliminary investigation which was being conducted by the Court of First Instance as provided by the electoral code; was terminated; the prosecuting fiscal filed an *Ex-Parte* Motion to Dismiss the Information, which was granted. A more detailed narration of the history of Criminal Case No. 2597 is given by the court *a quo,* in its order now under review, as follows:

"In accordance with the provisions of the Revised Election Code, the Court presided over by the then Honorable Judge Geronimo Marave, conducted the preliminary investigation. The Honorable Judge Geronimo Marave, then presiding Judge issued an order requiring expert's examination by the NBI of the signature "Ambiting Sahibil" and the thumbmark opposite the name appearing in line 7, page 19, of Exhibit "A" to determine whether or not said signature and thumbmark are those of the accused, and also the specimen of the

[2] Pages 2-3, Record, Criminal Case No. 2597.

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thumbmarks and handwriting of the accused so as to have a basis of comparison, and for this purpose the prosecuting Fiscal was authorized in the same order to forward the specimen needed to the NBI for laboratory examination.

"For several times the case was set for arraignment and trial and were also postponed for several times, until on September 27, 1962, when this Court in going over the Record, discovered that the preliminary investigation is not terminated and that the Record does not show any finding by the Court that the accused is probably guilty of the crime charged and that no warrant of arrest for the accused was issued although the Record shows that said accused filed and perfected a bailbond for his provisional liberty. By this discovery, the Presiding Judge addressed and forwarded a communication to the Prosecuting Fiscal informing the latter that the preliminary investigation has not as yet been terminated and that something must be done by his office to effect the termination of the same. In answer to the said communication, the Prosecuting Fiscal filed a manifestation dated October 3, 1962, stating among other things, that in compliance with the order of the Court dated April 27, 1962, appearing on pages 22, 23 and 24 of the Record, the documentary exhibits for expert examination were forwarded by him to the NBI for examination and comparison and that the laboratory examination by the NBI was received by him on June 4, 1962, and by that time the then Honorable Judge Geronimo Marave was no longer the District Judge of Sulu, *having assumed the position of District Judge of Basilan City. Further*, it is stated that to obviate legal technicalities he is ready and willing, either to submit his evidence anew before this Court for preliminary investigation any date the court may deem it necessary to do so or submit the transcript of the stenographic notes of the preliminary investigation and the findings of the NBI for the purpose of establishing probable cause. In said manifestation, the Prosecuting Fiscal prayed that further proceedings in conjunction with the preliminary investigation be set for October 5, 1962, or any date prior thereto.

"Before this Court could set the continuation of the Preliminary Investigation as prayed for by the Prosecuting Fiscal, he filed an *ex-parte* motion to dismiss, appearing on pages 81 to 83 of the Record, Criminal Case No. 2598. This Court giving due course and consideration to the Motion to Dismiss, dismissed the same in an order appearing on page 85 of the Record.

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"After the dismissal of Criminal Case No. 2587, (*sic*) the Prosecuting Fiscal filed Criminal Case No. 2674, 2786, (*sic*) which is now sought to be quashed by the defense."[3]

The court *a quo* dismissed the information on a motion to quash filed by the accused,[4] and for this act of the said court, the People, as appellant, assigns the following error:

"THE LOWER COURT ERRED IN HOLDING THAT THE ALLEGATIONS IN THE INFORMATION TO THE EFFECT THAT DURING THE NATIONAL ELECTIONS HELD ON NOVEMBER 14, 1961, THE DEFENDANT-APPELLEE, AS CHAIRMAN OF THE BOARD OF INSPECTORS OF ELECTORAL PRECINCT NO. 3-A, IN THE MUNICIPALITY OF PANAMAO, PROVINCE OF SULU, VOTED AS AND IN LIEU OF AMBITING SAHIBIL A REGISTERED VOTER IN THE SAID ELECTORAL PRECINCT WHO WAS THEN OUT OF THE PROVINCE OF SULU, THUS CAUSING IT TO APPEAR THAT THE AFOREMENTIONED AMBITING SAHIBIL PARTICIPATED AND VOTED IN THE SAID ELECTIONS WHEN IN FACT HE DID NOT SO PARTICIPATE OR VOTE, 'CONSTITUTE A VIOLATION OF THE PROVISIONS OF THE REVISED ELECTION CODE AND PUNISHABLE UNDER THE SAME.'"

It is the appellant's contention that the facts alleged in the information in question do not constitute an election offense punishable under the Revised Election Code, but one clearly and expressly punishable under the Revised Penal Code. To test the validity of this view, pertinent provisions in both codes should be cited and quoted for ready reference.

Article 10 of the Revised Penal Code provides as follows:

"Article 10. — *Offense not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary."

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[3] Pages 5-7, Order, Appendix A to Appellant's Brief.

[4] Pages 135-142, Record, Criminal Case No. 2674.

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There can be no question that under the aforequoted provision, the election law is a special law. The provision of said law pertinent hereto, reads:

"*Common crimes*: — Acts and omissions relative to elections not punishable under this Code but which constitute common crimes shall be punished as provided in the penal laws applicable thereto." (Sec. 186, Revised Election Code)

From the foregoing provision of the election code, what would be the decisive inquiry for the purpose of the instant appeal is whether the acts alleged in the information are prohibited and punished by the electoral code. The Solicitor General's submission is that they are not so punishable. We agree.

What may be observed with relevance in regard to the pertinent inquiry, as above indicated, is that there is, at most, only an implied prohibition against the act ascribed to the accused — that of representing himself as one, Ambiting Sahibil, a registered voter, and voting in the latter's name, signing and thumbmarking the proper election documents, as to make it appear falsely that it was Ambiting Sahibil who actually voted. There is no provision in the Revised Election Code that expressly and directly prohibits the act of voting in place of another registered voter as if that voter had himself voted in person. As minutely analyzed by the Solicitor General, the pertinent provision of the Revised Election Code (Sec. 138 in relation to Sec. 134 to 137 and Section 139) do not include the acts with which the accused has been charged (pp. 13-16, Appellant's Brief). Thus the Solicitor General observed:

"SECTION 138. — The first sentence of the first paragraph is addressed to any voter or watcher, who is granted the right to challenge any person offering to vote who is not registered in the list or for using the name of another. The second sentence of the same paragraph is directed to the board of inspectors which is enjoined to take the oath of the challenged voter or otherwise satisfy itself as to the truth of the ground of the challenge. Nothing in this paragraph may be said to be a directive to the person challenged to do or not to do a certain act as to be penalized or punished under this section.

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The second paragraph is an instruction to the board to the effect that for the purpose of receiving and counting the vote, it should demand from the person challenged his voter's affidavit or a sworn statement identifying him, which statement shall be attached to the minutes to be made by the poll clerk. Like the first paragraph, the second paragraph does not contain any prohibition against the doing or not doing of a certain act by a person desiring to vote for or voting for another.

Otherwise stated, there is no provision in Section 138 making the acts alleged in the information criminal.

"SECTION 134: — The first sentence speaks of what a voter should do to obtain a ballot. None of the acts required of him is made unlawful. The rest of the section deals with the correlative duties of the inspectors and the poll clerk.

"SECTION 135: — This section prescribes the manner of preparing the ballots. The acts which are expressly made unlawful are: preparing the ballots outside the voting booth; exhibiting the contents of the ballots to any person; erasing any printing from the ballots; intentionally tearing or defacing the ballots; putting on the ballots any distinguishing mark; using carbon paper, paraffin paper, or other means for making a copy of the ballot; and making use of any other means to identify the vote of the voter. None of the acts alleged in the information falls under any of these categories.

"SECTION 136: — The first sentence of the section refers to the surrender by a voter of a voter of a soiled or defaced ballot to the inspector or poll clerk. The rest of the provision is addressed to board of inspectors including the poll clerk. None of the acts alleged in the information is mentioned.

"SECTION 137: — Insofar as a voter is concerned, this section states that after his ballot is filled, he shall stamp his thumb-mark on the corresponding coupon and deliver the folded ballot to the inspector or poll clerk from whom he received it; that he shall affix his signature and the imprint of the thumb of his right hand in the copy of the registry list in the column intended for the purpose, after which he shall depart. None of these relates to the acts charged in the information. The rest of the section refers to the duties of the election inspectors or poll clerk.

"SECTION 139: — The first sentence gives a voter, candidate, or watcher, on the ground of corrupt practices, the right to challenge

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any voter offering to vote. The second sentence enumerates what the challenged voter should state under oath — namely, that he has neither received nor expects to receive, nor has paid, offered or promised to pay, nor has contributed, offered or promised to contribute money or anything of value as consideration for his vote or for the vote of another; that he has not made or received any promise to influence the giving or withholding of any such vote; and that he neither has made any bet nor is interested directly or indirectly in any bet which depends upon the result of the election — so that the challenge will be dismissed. The coverage of this section does not include the acts of which appellant stands accused."

The prevailing doctrines, as enunciated by this Court, support the stand of the Solicitor General. Thus —

"x x x an act will not be held to be a criminal act unless the statute clearly and unmistakenly makes it so. (*U.S. vs. Olsen, et al.*, 36 Phil. 395, 400.)"

"In the Philippine Islands there exist no crimes such as are known in the United States and England as common law crimes. No act constitutes a crime here unless it is made so by law. (*U.S. vs. Taylor*, 28 Phil. 599, 604: Italics supplied.)" (Page 16, Brief.)

The rule of strict construction which should apply in the interpretation of criminal statutes, likewise, strengthens the position of the Solicitor General. Thus —

"Criminal statutes are to be strictly construed. No persons should be brought within their terms who is *not clearly within them*, nor should any act be pronounced criminal which is not clearly made so. (*U.S. vs. Abad Santos*, 36 Phil. 243, 246; Italics supplied.)"

"Under the rule of strict construction, such statutes *will not be enlarged by implication* or intendment beyond the fair meaning of the language used and will not be held to include other offenses and persons than those which are *clearly described and provided for*, although the court may think the legislature should have made them more comprehensive. (59 C.J., 1115-1117; Italics supplied.)"

We are, therefore, constrained to hold that the court *a quo* was in error in dismissing Criminal Case No. 2674 which charges the accused with an act clearly and expressly punishable under

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Article 171, paragraph 2 of the Revised Penal Code, but not punished with similar clarity and explicitness, as is legally required in all criminal prosecutions, under the Revised Election Code. So much, so, that had Criminal Case No. 2597 proceeded up to the filing in court of the information of an election offense after the preliminary investigation, the same could have been properly dismissed as not charging an offense expressly punishable under the Revised Election Code, but one which, in accordance with Section 186 of the said Code quoted earlier above, should be punished as provided in other penal laws applicable thereto.

Incidentally, it should not matter whether, treated as a common crime, not as an electoral offense, as the aforecited section would lay down the distinction between the two offenses, the penalty imposed by the penal law other than the election statute for the offense charged is heavier or lighter. The court *a quo* seems to have considered this fact of legal consequence as to prompt it to dismiss the case. What is important is that the violation is not left unpunished where, as in the present case, there is a law clearly and explicitly punishing the act, the Revised Penal Code, which should, accordingly, be enforced and applied because the provision of the Revised Election Code is, to say the least, unclear and ambiguous. The provision of Section 186 of the Revised Election Code is obviously intended to prevent any law violator, whether his motivation is solely to pervert the electoral process, from escaping the punishment imposed by statute for the act he has committed, for which the election law may have failed to provide, in a clear and explicit way, not by mere implication, appropriate punishment.

It may be well to note that in comparing the two informations repeatedly referred to herein, the respondent court considered "*insignificant*" the difference that the first information mentions the provision of the Revised Election Code and the Revised Penal Code as having been violated, while the second information specifies an article of the Revised Penal Code, as the law violated (page 8, Order, Appendix A to Appellant's Brief). The respondent court must have had in mind the well-settled rule that not the specification of the provision of law violated, but the actual

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recital of the facts in the complaint or information that determines the real nature of the offense charged (*Matilde, Jr. vs. Jabson,* 68 SCRA 456; *People vs. Arnault,* 92 Phil. 252). This rule should have at least had a deterrent effect against the dismissal of the instant case.

It may also be pertinent to observe that the same presiding judge, Hon. Felino D. Abalos, who dismissed the information in Criminal Case No. 2597 on motion of the prosecuting fiscal in the latter's desire to file another information charging violation of Article 171, paragraph (2) of the Revised Penal Code, found the motion to dismiss filed by the fiscal "in order" (p. 85, Record, Criminal Case No. 2597). It is, therefore, hard to see what brought about the change of heart when the respondent court dismissed the present information, which it has, in effect, given the prosecuting fiscal the go-signal to file, as he did file, now Criminal Case No. 2674.

WHEREFORE, the order appealed from is set aside and Criminal Case No. 2674 is ordered reinstated. Let the records of the case be, accordingly, remanded to the court of origin for proper further proceedings. No costs.

SO ORDERED.

Teehankee, Acting C.J., (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.