

THIRD DIVISION

[G.R. No. 244544, July 06, 2020]

**AMALIA G. CARDONA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CARANDANG, J.:

The instant Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the Decision^[2] dated February 9, 2017 and the Resolution^[3] dated December 14, 2018 of the Court of Appeals (CA) in CA- G.R. CR No. 02354. The assailed Decision and Resolution affirmed the Judgment^[4] dated December 6, 2013 and the Resolution^[5] dated March 17, 2014 of the Regional Trial Court (RTC) of Baybay City, Leyte, Branch 14. The RTC's Judgment and Resolution found petitioner Amalia G. Cardona (Cardona) guilty of violating Section 23(a)^[6] and (c)^[7] of Republic Act No. (R.A.) 7166^[8] in relation to Section 195^[9] of Batas Pambansa Bilang 881 otherwise known as the "Omnibus Election Code" (OEC).

Facts of the Case

On February 27, 2002, an Information^[10] was filed against Cardona. The Information states:

That on or about the 14th day of May 2001 in the Municipality of Mahaplag, Leyte Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the Chairman of the Board of Election Inspectors for Poll Precinct No. 8A, for the May 14, 2001 National and Local Elections, did then and there willfully (*sic*), unlawfully and feloniously require, instruct and order the registered voters of said precinct to sign or affix their signatures at the back of their official ballots against their will, thereby intentionally putting in said ballot a distinguishing mark and using means to identify the vote of the voters.

CONTRARY TO LAW.^[11]

The Information was a result of an Affidavit-Complaint^[12] filed by a certain Glenn H. Bartolini (Bartolini) – a mayoral candidate for Mahaplag, Leyte who lost during the May 14, 2001 elections.

When arraigned, Cardona entered the plea of not guilty.^[13] Trial was conducted.

The prosecution presented the following witnesses: (1) Natividad Lopez Ganton; (2) Bonifacio Cagol Dupal; (3) Constanica Malate Alterado; (4) Teodoro Vitualla Alombro; (5) Yolanda Duquiatan Bergado; (6) Diogracia Mipaña Samorin; (7) Macaria Renegado Tomulac; and (8) Victoria Villason Refe. Cardona's defense was based solely on her testimony.^[14]

The prosecution witnesses were all voters of Poblacion Mahaplag, Leyte. They were assigned to precinct 8-A in Mahaplag Central School where Cardona was assigned as the chairperson of the Board of Election Inspectors (BEI). Some of the witnesses stated that Cardona insisted that they (*i.e.*, the voters) sign at the back of the ballot because it is the new law.^[15] The witnesses testified that they were made to sign the dorsal portion of their ballot after they cast their votes. Some added that Cardona instructed them to sign upon discovering that they voted for Bartolini.^[16]

Cardona admitted that she allowed some of the voters to sign the dorsal portion of the latter's ballots on May 14, 2001. However, Cardona said that she instructed the voters to sign immediately upon receipt of the ballot and not after the voters have cast their votes.^[17] She explained that she had the voters sign at the back of their respective ballots because she experienced a "mental black-out."^[18] She realized her mistake before lunch break, or around 11 a.m.^[19] Cardona then clarified the proper procedure with a certain Teresita Cartilla, a BEI chairperson in a nearby precinct.^[20] Upon learning of her mistake, Cardona ordered the ballot box's closure and requested the poll clerk to go the Commission on Election's (COMELEC) Registrar to ask what could be done to correct the mistake.^[21] The Registrar simply ordered her to write the incident in the minutes.^[22] Thereafter, Cardona continued with the voting and did not let any subsequent voter sign at the back of the ballots.^[23] Cardona clarified that she did not do it on purpose.^[24]

Ruling of the Regional Trial Court

In its Judgment^[25] dated December 6, 2013 the RTC found Cardona guilty of the charges against her. The dispositive portion of the RTC's Decision reads:

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused guilty beyond reasonable doubt of the offense charged, and she [is] hereby condemned to suffer an indeterminate penalty of Two (2) to Four (4) years of imprisonment without benefit of probation.

Further, accused is ordered disqualified to hold public office and to exercise her right to suffrage in accordance to (*sic*) Section 264 of the Omnibus Election Code.

SO ORDERED.^[26]

In convicting Cardona, the trial court relied on Cardona's admission that she allowed

the first few batches of voters to sign the latter's names at the back of their respective ballots.^[27] Because of such admission, the burden of evidence shifted to Cardona. The RTC held that Cardona failed to prove her claim that she had a mental block and that she immediately corrected her mistake.^[28] It noted that this was Cardona's second time to be the chairperson of a BEI and that "she attended lectures on the conduct of election proceedings."^[29]

The RTC disregarded Cardona's claim of good faith because she was accused of committing an election offense under the OEC – a law that the RTC ruled as *mala prohibitum*.^[30]

Aggrieved, Cardona appealed^[31] the Judgment of the RTC with the CA.

Ruling of the Court of Appeals

In its Decision^[32] dated February 9, 2017, the CA affirmed the conviction with modification as to the penalty imposed. The dispositive portion of the Decision states:

WHEREFORE, the appeal is hereby DENIED. The Judgment of the RTC, Branch 14, Baybay City, Leyte, in Criminal Case No. 02-03-27 is hereby AFFIRMED with MODIFICATION that Amalia G. Cardona is sentenced to an indeterminate imprisonment of one (1) year as minimum to two (2) years as maximum. The Judgment is affirmed in all other respects.

SO ORDERED.^[33]

In affirming the conviction, the appellate court reiterated the RTC's pronouncement that violation of Section 23(a) and (c) of R.A. 7166 in relation to Section 195 of the OEC is a *malum prohibitum*, hence, Cardona's intent was immaterial.^[34] Cardona's voluntary admission was not considered as a mitigating circumstance. However, the CA lowered the penalty imposed on Cardona in view of the circumstances surrounding the case.^[35]

The CA junked Cardona's attempt to have the criminal proceedings nullified because of the private prosecutor's active participation during trial. Citing Rule 34,^[36] of the 1993 COMELEC Rules of Procedure, the CA concluded that a private prosecutor is allowed to appear in the criminal case to recover any civil liability due his/her client.

As Cardona's Motion for Reconsideration^[37] was denied in a Resolution^[38] dated December 14, 2018, Cardona filed the instant petition for review.^[39]

Respondent, through the Office of the Solicitor General (OSG), filed a Comment^[40] dated October 30, 2019 and sought the outright dismissal of the petition due to a defective verification and certification of non-forum shopping. The OSG explained that Cardona was convicted on the strength of the prosecution's evidence and not

because of Cardona's judicial admission.^[41] While the OSG argued that Section 195 of the OEC is *malum prohibitum* where intent is immaterial, it also claimed that Cardona should have proven her defense of experiencing a mental blackout as a justifying circumstance.^[42]

In her Reply, Cardona insists that: (1) there was no defect in her Verification and Certification of Non-Forum Shopping; (2) conviction was not proper because (a) it was the voter who placed a distinguishing mark on the ballot; (b) she did not induce the voters to affix their signatures; (c) the prosecution did not include the voters as principal by direct/active participation; and (d) none of the supposedly marked ballots were identified and presented during trial; and (3) the burden of proof did not shift to Cardona because the prosecution failed to prove Cardona's guilt beyond reasonable doubt.

Ruling of the Court

We find the petition meritorious. Cardona should be acquitted of the crime charged.

This Court notes the OSG's prayer to dismiss the instant petition in view of the petitioner's defective verification and certification against forum shopping. Given that the merits of the instant petition and Cardona's liberty at stake, this Court deems it best to set aside the procedural flaw in the interest of substantial justice. We have repeatedly held that "rules of procedure are used to only help secure, not override substantial justice."^[43]

Another procedural issue is the private prosecutor's active participation during trial.

The CA's citation of Rule 34 of the 1993 COMELEC Rules of Procedure is incorrect. Rule 34 pertains to the prosecution of election offenses *via* a preliminary investigation before the COMELEC or those authorized under Section 4(b)^[44] of the said Rules. Here, Cardona questioned the private prosecutor's participation during trial before the RTC. The applicable rule is Section 5 ^[45] Rule 110 of the Rules of Court as amended by A.M. No. 02-2-07-SC. Under Section 5, the private prosecutor may prosecute the case upon a written authority of the Chief of the Prosecution Office or Regional State Prosecutor with the trial court's approval. Cardona admits that the Assistant City Prosecutor deputized the private prosecutor to prosecute the criminal case.^[46] Therefore, the criminal proceeding was regularly conducted.

The RTC and the CA found Cardona guilty of violating Section 23(a) and (c) of R.A. 7166 in relation to Section 195 of the OEC.

Section 23(a) and (c) of R.A. 7166 states:

Section 23. *Officials Ballots.* – (a) Ballots for national and local elections regular or special, plebiscites and referenda, shall be of uniform size and shall be provided by the Commission. They shall be printed in black ink on which security paper with distinctive, clear and legible watermarks that will readily distinguish it from ordinary paper. Each ballot shall be in the shape of a strip with stub and detachable coupon containing the

serial number of the ballot, and a space for the thumbmark of the voter on the detachable coupon. It shall bear at the top of the voter on the detachable coupon. It shall bear at the top of the middle portion thereof the coat-of-arms of the Republic of the Philippines, the word "Official Ballot," the name of the city or the municipality and province in which the election is to be held, the date of the election, and the following notice in English: "Fill out this ballot secretly inside the voting booth. Do not put any distinct mark on any part of this ballot."

x x x x

(c) There shall not be anything printed or written on the back of the ballot except as provided in Section 24^[47] of this Act.

On the other hand, Section 195 of the OEC provides:

Section 195. *Manner of preparing the ballot.* – The voter, upon receiving his folded ballot, shall forthwith proceed to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the individual candidate for whom he desires to vote.

No voter shall be allowed to enter a booth occupied by another, nor enter the same accompanied by somebody, except as provided for in the succeeding section hereof, nor stay therein for a longer time than necessary, nor speak with anyone other than as herein provided while inside the polling place. It shall be unlawful to prepare the ballot outside the voting booth, or to exhibit its contents to any person, or to erase any printing from the ballot, or to intentionally tear or deface the same or put thereon any distinguishing mark. It shall likewise be unlawful to use carbon paper, paraffin paper, or other means for making a copy of the contents of the ballot or make use of any other means to identify the vote of the voter.

Under Section 262^[48] of the OEC, a violation of Section 195 constitutes an election offense. The penalty for committing an election offense under the OEC is punishable "with imprisonment of not less than one year but not more than six years and shall not be subject to probation." ^[49] Furthermore, the person found guilty will also be: (1) disqualified to hold public office; and (2) deprived of the right of suffrage.

Given the gravity of the penalty imposed, it must be determined whether all marks made on the ballot (outside of those prescribed under Section 23(a) and (c) of R.A. 7166 and Section 195 of the OEC automatically constitute an election offense.

This Court rules in the negative.

The RTC incorrectly convicted Cardona because of Cardona's admission that she