

THIRD DIVISION

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

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

DECISION

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

5. 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