

SECOND DIVISION

[G.R. No. 140651, February 19, 2002]

**ESTELITA G. HERRERA, PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

BERNARDINO DAQUIOAG y Bangayan, FLORDELITA DAQUIOAG y Gamata and ESTELITA HERRERA y Garelo, all public school teachers and residents of San Jose, Baggao, Cagayan, were charged in an Information filed by the Provincial Prosecutor of Cagayan for violation of Secs. 217 and 261 (z), Nos. 13, 15 and 21, in relation to Sec. 264, of BP Blg. 881, otherwise known as the Omnibus Election Code.

As found by the trial court, the synchronized elections for the national, provincial and municipal levels were held on 11 May 1992. Responding to the call for electoral vigilance, the Catholic parishioners of Baggao, Cagayan, organized the Parish Pastoral Council for Responsible Voting (PPCRV) to closely observe and monitor the conduct of the elections and to report to the proper authorities violations of the election laws and other pertinent regulations.

In the municipality of Baggao, Cagayan, the seat of government is in Barangay San Jose where the municipal hall, police station, office of the Commission on Elections and the municipal gymnasium are clustered in one (1) compound. Approximately three (3) kilometers from Barangay San Jose are Barangays Mocag and Mabini. During the 11 May 1992 elections, the polling places of Mocag and Mabini were located at Mocag Elementary School which had no electric power supply.

On 12 May 1992 or one (1) day after the synchronized elections, Arnold Alonzo, a PPCRV coordinator, received information that the ballot boxes of Precincts Nos. 35, 37, 37-A, 38, 38-A and 39 were not yet submitted to the Office of the Municipal Treasurer. Upon inquiries made, Arnold Alonzo learned that the spouses Bernardino Daquioag and Flordelita Daquioag were the poll chairmen in Precincts Nos. 38 and 39, respectively. Together with Joelcino Barcena, Alonzo went to the house of the Daquioags and found six (6) ballot boxes there belonging to Precincts Nos. 35, 37, 37-A, 38, 38-A and 39. The ballot boxes had incomplete padlocks and strewn on the table were several tally sheets and election returns. The watchers and the other members of the Board of Election Inspectors were not in the house. When asked why they brought home the ballot boxes, the Daquioags explained that they decided to bring home the ballot boxes since it was already late. Besides, they did not know they needed permission from the COMELEC registrar before they could do so.

Alonzo reported the incident to the COMELEC registrar who immediately formed a team to retrieve the ballot boxes. The ballot boxes were eventually brought to the municipal hall.

After some time, Alonzo learned that the ballot box in Precinct No. 51 was also unaccounted for. A report was made to the COMELEC registrar who again organized a team to retrieve the ballot box. The team, together with Alonzo, proceeded to the house of Estelita Herrera, the poll chairman for Precinct No. 51, and upon arrival, they saw the ballot box open in Herrera's sala. Herrera admitted that she took the ballot box home because she had not yet finished accomplishing some forms that were required to be deposited inside the ballot box.

During the trial, the prosecution presented Arnold Alonzo as its sole witness. After the prosecution rested, the defense filed a demurrer to evidence with leave of court. Upon evaluation of the evidence presented by the prosecution and after finding a *prima facie* case against the accused, the court *a quo* denied the demurrer to evidence. Instead of adducing its evidence, the defense opted to submit the case for resolution.

Convinced that the accused had indeed transferred the ballot boxes from the polling place to their respective houses without authority from the COMELEC, the trial court sentenced the accused to a prison term ranging from one (1) year of *prision correccional* as minimum to four (4) years of *prision correccional* as maximum in addition to disqualification to hold public office and to exercise the right of suffrage.

[1]

In their appeal brief filed with the Court of Appeals, the spouses Bernardino Daquioag and Flordelita Daquioag argued that the prosecution failed to prove their guilt beyond reasonable doubt and that the decision of the court *a quo* was based merely on surmises and conjectures. They posited that with only the testimony of Alonzo to rely on, the court below unfairly sentenced them to imprisonment and disqualification from holding public office and from exercising their right of suffrage.

The Daquioags also claimed that the trial court was without jurisdiction to take cognizance of the case considering the inaction and non-participation of the COMELEC. They maintained that the COMELEC, being the constitutional body mandated by law to prosecute election offenses, had the exclusive power to conduct preliminary investigations. According to the Daquioags, the Office of the Provincial Prosecutor was without authority to investigate and prosecute the case.

As for the petitioner Estelita G. Herrera, she claimed that she did not incur any delay in the transmittal of the ballot box and other election paraphernalia, citing Sec. 217 of the Omnibus Election Code which states in part that "(t)he treasurer and the election registrar, as the case may be, shall on the day after the election, require the members of the board of election inspectors who failed to send the objects referred to herein to deliver the same to him immediately and acknowledge receipt thereof in detail." Although she brought home the ballot box, Herrera argued that the same was returned to the election registrar the day after the elections and prior to any order issued by the registrar or municipal treasurer to return the same.

While Herrera admitted having transferred the ballot box from the polling place to her residence, she disputed the claim made by the prosecution that she did so without authority from the election registrar. According to her, the claim that the ballot box was transferred without authority is a negative assertion and, as such, the burden of proof fell on the prosecution.

The Court of Appeals affirmed the conviction of accused-appellants Bernardino Daquioag and Flordelita Daquioag as well as Estelita G. Herrera.^[2] Citing Sec. 268^[3] of the Omnibus Election Code, the appellate court ruled that the trial court had jurisdiction over the case. It further decreed that the issue raised by the Daquioags was not a question of jurisdiction but one that assailed the authority of the person who filed the Information. This must be alleged in a motion to quash, otherwise the same would be deemed waived.

The Court of Appeals likewise found the evidence presented by the prosecution to have sufficiently established the guilt of accused-appellants beyond reasonable doubt. It was clearly proved that the ballot boxes under their custody were brought to their respective houses without authority from the election registrar and were not immediately turned over to the office of the municipal treasurer.

Accused-appellants' separate motions for reconsideration were denied.^[4] Only accused-appellant Herrera interposed the instant petition for review on certiorari.

Specifically, petitioner Herrera alleges that the Information does not sufficiently charge the offense of which they were convicted. She maintains that the Information charges multiple offenses, to wit: violation of Sec. 217 (*failure to immediately deliver ballot box and other election paraphernalia to the municipal treasurer*), violation of Sec. 261(z), No. 13 (*opening or destroying ballot box or removing or destroying its contents*), violation of Sec. 261(z), No. 15 (*failure to properly account for ballot box, documents and forms*), and violation of Sec. 261(z), No. 21 (*violating the integrity of any official ballot or election return*).

Herrera claims that assuming the ballot box was indeed transferred, still, she could not be properly convicted considering the failure of the prosecution to prove that she was the poll chairman of Precinct No. 51. Neither was it specified in the Information the particular barangay of which she was supposedly the poll chairman nor was there any proof that the transfer of the ballot box from the polling place to her residence was without authority from the COMELEC registrar.

The Office of the Solicitor General asserts that petitioner should have filed a motion to quash the Information if indeed she believed the Information was insufficient. Her failure to move to quash the Information before entering a plea is deemed a waiver of this right. Consequently, petitioner is estopped to enter any objection as regards the sufficiency or insufficiency of the Information.

The Solicitor General maintains that the Information is valid as it complied with Secs. 9 and 10, Rule 110, of the *Rules of Criminal Procedure*. He finds no necessity in specifically alleging that petitioner was the poll chairman of Precinct No. 51 as it is not an essential element of the offense charged.

In reply, petitioner insists she could not have waived her right to question the validity of the Information considering that the issue raised was grounded on no offense charged and not on insufficiency of the Information. She maintains that the election offense referred to in Sec. 217 was for *failure by the members of the Board of Election Inspectors and watchers to immediately deliver the ballot box, supplies and all pertinent papers and documents to the city or municipal treasurer* whereas

the Information charges her with *transferring the ballot boxes, tally sheets, election returns, and other election paraphernalia from the precinct or polling place to her residence*. Petitioner insists that the fact that the election materials were not immediately delivered to the municipal treasurer must be stated and specified in the Information. She recalls that the municipal treasurer was not even mentioned in the Information. She also claims that the situs of Precinct No. 51 must be particularly identified considering that it is an essential element of the offense charged.

The following issues now confront the Court: (a) whether the Information is valid and sufficient; and, consequently, (b) whether petitioner was properly convicted of the offense of which she was charged.

Section 6, Rule 110, of the Revised Rules of Criminal Procedure provides:

Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

In the instant case, the Information reads:

The undersigned Provincial Prosecutor hereby accuses Bernardino Daquioag, Flordelita Daquioag and Estelita Herrera of Violation of Sections 217 and 261 (z), Nos. 13, 15 and 21 in relation to Section 264 of the Omnibus Election Code of the Philippines (Batas Pambansa Bilang 881), as amended, committed as follows:

That on or about May 12, 1992, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Bernardino Daquioag, being then the Poll Chairman of Precinct No. 38, Flordelita Daquioag, being then the Poll Chairman of Precinct No. 38-A and Estelita Herrera being then the Poll Chairman of Precinct No. 51 of Barangays Mabini and Mocag, Baggao, Cagayan, respectively, without authority from the Commission on Elections did then and there willfully, unlawfully and feloniously transfer the ballot boxes, tally sheets, election returns and other election paraphernalia used in the Election of May 11, 1992 from their respective precincts/polling places abovementioned to their respective residences, and while in their respective residences opened the ballot boxes in their possession without authority/Order from the Commission on Elections and failed to account said ballot boxes in their respective possession to the Municipal Treasurer and/or Election Registrar of the Municipality of Baggao immediately after the counting of votes, thus, violating the integrity and sanctity of the ballots and/or election returns used in the Election of May 11, 1992.^[5]

Plainly, the Information states the names of the accused, *i.e.*, Bernardino Daquioag, Flordelita Daquioag and Estelita Herrera, all public school teachers and poll