

EN BANC

[G.R. No. 106560, August 23, 1996]

**FLOREZIL AGUJETAS AND SALVADOR BIJIS, PETITIONERS, VS.
COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

TORRES, JR., J.:

Petitioners Florezil Agujetas and Salvador Bijis, former Chairman and Vice-Chairman, respectively of the Provincial Board of Canvassers for the Province of Davao Oriental assail the decision of the public respondent Court of Appeals which affirmed the decision of the Regional Trial Court of Mati, Davao Oriental finding them guilty as charged for failure to proclaim a winning elected candidate. The dispositive portion of the Court of Appeals decision^[1] in CA-G.R. CR No. 09689 reads:

"WHEREFORE, the decision appealed from is AFFIRMED with a modification in that the actual damages of P50,000.00 are hereby reduced to P40,000.00 and the moral damages P100,000.00 awarded to Erlinda Irigo are deleted. Costs *de officio*.

"SO ORDERED."

The antecedents:

In the fateful evening of January 21, 1988, the Provincial Board of Canvassers for the Province of Davao Oriental, composed of 1.) the Provincial Election Supervisor Florezil Agujetas, as Chairman, 2.) Provincial Prosecutor Salvador Bijis, as Vice Chairman, and 3.) Division Superintendent of Public Schools in said province, Benjamin Miano,^[2] as member, proclaimed the winners for Governor, Vice-Governor, and Provincial Board Members for Davao Oriental in the January 18, 1988 election. The candidates proclaimed were:

PROCLAIMED CANDIDATES

Name	No. of Votes
For Governor:	
Leopoldo Lopez	59,309 votes
Francisco Rabat	51,191 votes
For Vice-Governor:	
Modesto Avellanosa	46,353 votes
Josefina Sibala	54,083 votes

For Provincial
Board Members

1. Cirilo R. Valles	42,394 votes
2. Ma. Elena Palma Gil	41,557 votes
3. Antonio Alcantara	39,104 votes
4. Dr. Capistrano Roflo	37,301 votes
5. Orlando Rodriguez	34,914 votes
6. Alfredo Abayon	34,191 votes
7. Justina Yu	32,360 votes
8. Pedro Pena	30,679 votes

The eighth board member proclaimed, Pedro Pena, garnered 30,679 votes when another candidate for the Board, Erlinda Irigo, got 31,129 or 450 more votes than Pena.

Before the proclamation was made, when the certificate of canvass and proclamation statements of winning candidates were finished, a verbal protest was lodged by Mrs. Maribeth Irigo Batitang, daughter of candidate Irigo and her designated representative during the canvassing proceedings, addressed to the Tabulation Committee.

At 8:00 o'clock in the morning of January 22, 1988, the Board resumed its session and undertook the following activities:

"1. Opening of Ballot Box No. CA-301596 and sealed by Metal Seal No. 204767 at exactly 10:25 a.m.

"2. Continued preparing all reports called for submissions to COMELEC, Regional Office and Manila.

"3. Reconciliation of entries in the tally sheets. (Exhs. "E" and "E-1")

Considering, however, that the protest was verbal and not officially brought to the attention of the Provincial Board of Canvassers during official session, the same was not given appropriate official recognition. (Exh. "7-B", p. 2, Minutes of Provincial Board of Canvassers, January 21, 1988)

The following day, January 23, 1988, Board Member Candidate Erlinda V. Irigo filed her written protests^[3] with the Board of Canvassers. (Exh. "F")

Meanwhile, Francisco Rabat, a losing gubernatorial candidate in Davao Oriental filed with the COMELEC a complaint against the three board members for violation of BP 881 (Omnibus Election Code) and RA 6646 (The Electoral Reform Law of 1987). After a preliminary investigation was conducted by the COMELEC, criminal charges were filed against the Board Members. The pertinent portions of the information in

Criminal Case No. 1886 for Violation of 2nd Paragraph of Section 231 in Relation to Section 262 of the Omnibus Election Code read:

"That on or about January 21, 1988, in the Municipality of Mati, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused as Chairman, Vice-Chairman and Third Member, respectively, of the Provincial Board of Canvassers of Davao Oriental in the January 18, 1988 elections, conspiring with, confederating together and mutually helping one another, did, then and there, willfully and unlawfully fail to proclaim Erlinda Irigo as elected Sangguniang Panlalawigan Member candidate who obtained 31,129 votes, the eighth highest number of votes cast in said province but instead proclaimed candidate Pedro Pena who obtained only 30,699 votes."

"CONTRARY TO LAW"^[4]

After trial on the merits, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, Criminal Cases Nos. 1885 and 1887 are hereby DISMISSED, with costs de oficio, and the accused considered acquitted. Their bail bonds are ordered canceled and released.

"In Criminal Case No. 1886, the Court finds the accused Florezil Agujetas, Salvador Bijis and Benjamin Miano GUILTY beyond reasonable doubt as principals for violation of Section 231, second paragraph, of Batas Pambansa Blg. 881, as amended, otherwise known as the "Omnibus Election Code of the Philippines", and hereby sentences each of them to ONE (1) YEAR IMPRISONMENT which shall not be subject to probation. In addition, they are sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. Said accused are ordered to pay, jointly and severally, Erlinda Irigo the amounts of P50,000.00 as actual damages, P15,000.00 as and for attorney's fees, and P100,000.00 as moral damages, plus the costs of the proceedings.

"Let copies hereof be furnished the Honorable Chairman, Commission on Elections, and the Honorable Secretaries of Justice and Education, Culture and Sports.

"SO ORDERED." (pp. 43-44, Decision)

The three accused appealed to the Court of Appeals which rendered the decision assailed in this petition.

Petitioners impute to the respondent court the following errors:

I

The Court of Appeals erred in affirming the decision of conviction because:

- a. It is the failure to make a proclamation on the basis of the Certificate of Canvass, and not mere erroneous proclamations, which is punishable under Sec. 262 in relation to Sec. 231 (2) of the Omnibus Election Code.
- b. A protest made to the verification/tabulation committee does not constitute a protest to the Board of Canvassers itself.
- c. The *functus officio* rule is applicable to the present case.
- d. Credence should not have been given to hearsay testimony to establish the alleged protest to the Board of Canvassers.

II

The Court of Appeals erred in awarding damages to a person who is not a party to the case.

We find the petition without merit.

On the first assigned error, the issue hinges on the question of what is being penalized by the pertinent provision of the Omnibus Election Code. Petitioners argue that they are not liable under the said law because they complied with all the requirements of Sec. 231 of the Omnibus Election Code - 1. a certificate of canvass was prepared, 2. the same was duly supported by a statement of votes of each of the candidates, and 3. it was *on the basis* of the certificate of canvass that the winners were proclaimed. Only, the certificate was erroneous.

According to petitioners, the Omnibus Election Code does not punish the preparation of an incorrect certificate of canvass, nor an erroneous proclamation made by the Board; what it does punish is that, having thus prepared the corresponding certificate, the board for some reason fails to make the corresponding proclamation on the basis thereof.

On the other hand, the People's counsel maintains that petitioners' challenges on this particular issue is a question of semantics, a mere play of words; for while the prosecution maintains that there was a failure to proclaim the winning candidate, petitioners on the other hand, counter that there was merely an erroneous proclamation of the losing candidate; that petitioners forget that in proclaiming an erroneous winner they actually failed to proclaim the winning candidate, in this case, Erlinda Irigo. Respondents further argue that the situation presented by petitioners would not exculpate them from criminal responsibility for, whichever way the matter may be looked into, whether as erroneous proclamation of a losing candidate or failure to proclaim the winning candidate, the result is the same - the winning candidate was not proclaimed, and hence, injustice is the end result.

We agree with the respondents.

The second paragraph of Section 231 of the Omnibus Election Code reads:

"The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes and received by

each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay. Failure to comply with this requirement shall constitute an election offense."

To go by the explanation as proposed by the petitioner would be tantamount to tolerating and licensing boards of canvassers to "make an erroneous proclamation" and still be exculpated by just putting up the inexcusable defense that the "foul-up resulted from the erroneous arrangement of the names of candidates"^[5] in one municipality or that "the basis of their proclamation was the erroneous ranking made by the tabulation committee." That would be a neat apology for allowing the board to be careless in their important task by simply claiming that they cannot be held liable because they did their "duty" of proclaiming the winning candidates on the basis of the certificate of canvass - even "erroneous" certificates - which they made.

At this point, it is appropriate to quote certain portions of the Resolution in IPD Case No. 88-100, disposing of the complaint filed with the COMELEC issued by Regional Election Director Resurreccion Borra of Region XI, in relation to the preliminary investigation conducted by him on said case. Director Borra testified on this resolution^[6] (Exh. "Z") under cross-examination by the prosecution, certain portions of which are material to the case:

"But there is one incontrovertible fact that the respondents miserably failed to dispute. This undeniable fact is conveniently ignored by Respondents' Memorandum. In the exhibits of the complainant, the computerized tabulation of votes based from the statements of votes by precinct in each of the 121 Municipalities of Davao Oriental for all of the 600 precincts and even admitted by the Respondents that *there was no error* in the tabulation of votes in CA 26-A. Erlinda V. Irigo got 31,129 votes and Pedro T. Pena only 30,679 votes or a margin of 450 votes by Irigo over Pena. From the ranking, Irigo would have been ahead of Pena, and she should have been No. 8 in the winning list of 8 candidates instead of Pena. But in the Certificate of Canvass of Votes and Proclamation of Winning Candidates for Provincial Offices, Pedro T. Pena was included as No. 8 in the winning list and proclaimed as No. 8 Member of the Sangguniang Panlalawigan of Davao Oriental by the Provincial Board of Canvassers.

xxx

xxx

xxx

"The Complainant, in presenting the computerized summary tabulation of votes for each precinct per municipality of the Province, admitted that the PBC prepared the statements of votes. x x x The statements of votes (CE 26-A) should have been the basis for the proclamation of the winning candidates for Provincial Offices. Complainant's documentary and testimonial evidences showed that the PBC proclaimed Pedro Pena who was not among those candidates who obtained the 8 highest number of votes cast in the province per municipality by precinct which violated the legal requirement of the 2nd paragraph of Section 231 of BP No. 881 as amended.