Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, ATTY. ANNA LIZA R. JUAN-BARRAMEDA, MISCHAELLA SAVARI, and MARLON SAVARI,
Petitioners,

- versus -

RUFINO RAMOY and DENNIS PADILLA,
Respondents.

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G.R. No. 212738

Present:

GESMUNDO, *C.J.*,
Chairperson,
CAGUIOA,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:

MAR 09 2022

DECISION

GAERLAN, *J.*:

This petition for review on *certiorari*[1] filed by petitioners Atty. Anna Liza R. Juan-Barrameda, Mischaella Savari, and Marlon Savari (petitioners) under Rule 45 of the 1997 Rules of Civil Procedure seeks to annul and set aside the Decision[2] dated September 27, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 128470, and its Resolution[3] dated May 27, 2014 denying the motion for reconsideration thereof. The assailed issuances granted the petition for *certiorari* therein filed by respondents Rufino Ramoy and Dennis Padilla (respondents) and reversed and set aside the Orders[4] dated February 15, 2012 and November 28, 2012 of the Regional Trial Court (RTC) of Quezon City, Branch 101.

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1 *Rollo*, Vol. I, pp. 13-60.

2 Id. at 66-82. Penned by Associate Justice Priscilla J. Baltazar-Padilla (a former Member of this Court), with Associate Justices Rosalinda Asuncion-Vicente (retired) and Ramon A. Cruz, concurring.

3 Id. at 156-157. Penned by Associate Justice Priscilla J. Baltazar-Padilla ((a former Member of this Court), with Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz, concurring.

4 Id. at 198-200, 201-203.

Antecedents

The petitioners served as pollwatchers during the 2010 Barangay Elections.[5]

On October 25, 2010, a complaint was filed by petitioners Mischaella and Marlon against one Paul Ramones Borja (Borja). The complaint alleged that Borja, an organizer and community leader of the Totoy del Mundo Movement, solicited votes and distributed election paraphernalia inside the polling place.[6]

On January 17, 2011, petitioners Mischaella and Marlon filed another complaint, this time charging herein respondents with five (5) others, who were then candidates during the Barangay elections, for acting in conspiracy with Borja.[7]

In a Joint Supplemental Complaint Affidavit[8] dated January 17, 2011, petitioners Mischaella and Marlon were joined by petitioner Juan-Barrameda.

On the basis of such complaints, Assistant City Prosecutor Irene S. Resurreccion of Quezon City (ACP Resurreccion) issued a Resolution[9] on February 18, 2011, finding probable cause for the filing of criminal information against the respondents, along with the five (5) other defendants charged in the January 17, 2011 complaint and Borja (collectively, defendants), *viz.*:

> WHEREFORE, in view of the foregoing, undersigned respectfully recommends the filing of the herein attached information against all respondents with the Regional Trial Court, to wit:
>
> (1.) Two (2) counts of violation of Sec. 80 of the Omnibus Election Code for the premature campaign last September 25, 2010 and October 10, 2010.
>
> (2.) One Count of Soliciting and Campaigning on the very day of the election on October 25, 2010 punishable under Sec. 261 (k) in relation to Art. 266, cc (g) and in further relation to Sec. 192 of the Omnibus Election Code.[10]

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5 Id. at 66.
6 Id. at 66-67.
7 Id. at 67.
8 Id. at 216-234.
9 Id. at 137-141.
10 Id. at 141.

Thus, three (3) criminal Informations[11] were filed before the RTC of Quezon City, Branch 101, the accusatory portions of which read:

Criminal Case No. Q-11-169067

That on or about the 25th day of October 2010, in Quezon City, Philippines, the above-named accused, conspiring and confederating with and mutually helping one another, did then and there willfully, unlawfully and criminally solicit votes and undertake propagandas on the day of election for Barangay Officials inside the polling place of Placido del Mundo Elementary School, Barangay Talipapa, this City for the following candidates in said barangay, all members of the Totoy del Mundo Movement, to wit: Totoy Del Mundo-Kapitan, Kgd. RL Hapatinga-Kagawad, Kgd. Ric Galguerra-Kagawad, Kgd. Kaka delos Santos-Kagawad, Kgd. Dennis Padilla- Kagawad, Kgd. Rufing Ramoy- Kagawad, Ernesto Gotos, "Erning" – Kagawad & Oscar Oca Ramirez- Kagawad, by then and there soliciting votes for said candidates and distributing election paraphernalias and leaflets of the Totoy Del Mundo movement, in violation of said law.

CONTRARY TO LAW.[12]

Criminal Case No. Q-11-169068

That on or about the period of September 25, 2010, and before the onset of the campaign period allowed by COMELEC, in Quezon City, Philippines, the above-named accused, conspiring and confederating with and mutually helping one another, did then and there willfully, unlawfully and criminally engage in a partisan political activity by campaigning and soliciting votes for the Totoy del Mundo Movement, within Barangay Talipapa of Quezon City and by visiting the houses of voters and thereafter holding a meeting for the purpose of soliciting votes for their favor, in violation of said law.

CONTRARY TO LAW.[13]

Criminal Case No. Q-11-169069

That on or about the period of October 10, 2010, and before the onset of the campaign period allowed by COMELEC, in Quezon City, Philippines, the above-named accused, conspiring and confederating with and mutually helping one another, did then and there willfully, unlawfully and criminally engage in a partisan political activity by campaigning and soliciting votes for the Totoy del Mundo Movement, within Barangay Talipapa of Quezon City and by visiting the houses of voters and thereafter holding a meeting for the purpose of soliciting votes for their favor, in violation of said law.

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11 Id. at 143-147.
12 Id at 144.
13 Id at 146.

CONTRARY TO LAW.[14]

Subsequently, the respondents, joined by their co-defendants, filed a motion seeking reconsideration of the February 18, 2011 Resolution of ACP Resurreccion. They likewise filed a petition for review before the Department of Justice (DOJ) assailing the same Order. In view thereof and as prayed for by the respondents, their arraignment was deferred by the RTC.[15]

On August 21, 2011, the defendants filed an Omnibus Motion before the RTC seeking to quash the subject Informations on the grounds that they charge more than one offense and that the facts stated therein do not constitute an offense.[16] The respondents adopted the defendants' motion in their Manifestation dated September 30, 2011.[17]

Meanwhile, or on January 30, 2012, the DOJ issued a Resolution denying the respondents and their co-defendants' petition for review.[18]

In an Order[19] dated February 15, 2012, the RTC denied the Omnibus Motion. The RTC held that the subject Informations are unequivocal in that the respondents and their co-defendants are charged only of unlawful electioneering and partisan political activity outside the campaign period. The RTC explained that the use of the word "and" in the Information that is subject of Criminal Case No. Q-11-169067 does not imply the commission of another offense but merely denotes the continuity of actions taken in furtherance of unlawful electioneering, the alleged criminal act.[20]

Only herein respondents sought reconsideration of the RTC's Order dated February 15, 2012. However, their Motion for Reconsideration was denied by the RTC in its Order[21] dated November 28, 2012. As set in the same Order, the respondents and their co-defendants were arraigned on December 4, 2012.[22]

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14 Id at 148.
15 Id. at 70.
16 Id.
17 Id.
18 Id. at 71.
19 Id. at 198-200.
20 Id. at 200.
21 Id. at 201-203.
22 Id. at 71.

The respondents then filed a petition for *certiorari* under Rule 65 with the CA assailing the Orders dated February 15, 2012, and November 28, 2012, of the RTC. [23]

On September 27, 2013, the CA rendered the herein assailed Decision,[24] the dispositive portion of which reads:

> **WHEREFORE,** the instant petition is **GRANTED**. The assailed Orders of the Regional Trial Court of Quezon City, Branch 101 dated February 15, 2012 and November 28, 2012 are **REVERSED AND SET ASIDE.** Accordingly, the Motion to Quash the Informations in Criminal Cases Nos. Q-11-169068, Q-11-169069 and Q-11-169067 is GRANTED and the said Informations are hereby **QUASHED.**
>
> **SO ORDERED.**[25]

In its decision, the CA held that the respondents' arraignment did not render the case moot and academic as the motion to quash was filed prior thereto.[26] The CA also refused to dismiss the petition on account of the respondents' alleged failure to attach all pertinent pleadings; adjudging that the appeal does not involve a determination of the respondents' guilt but merely the validity of the Informations filed against them, as such, not all pleadings before the RTC are required to be attached in the petition for *certiorari*.[27]

Of the grounds raised by the respondents in their Motion to Quash, the CA found merit only in one ground, *i.e.,* that the subject Informations charge more than one offense.[28]

The Informations in Criminal Cases Nos. Q-11-169068 and Q-11-169069 which charged the respondents of partisan political activity outside the campaign period was allegedly committed by "campaigning and soliciting votes for the Totoy del Mundo Movement" **and** "visiting the houses of voters and thereafter holding a meeting for the purpose of soliciting votes for their favor." According to the CA, the use of the word "and" does not connote continuity; rather, it indicated that two separate offenses were committed. The CA noted that under Section 79 of the Omnibus Election Code, the acts cited are two different *modes* in which a

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23 Id. at 66.
24 Supra note 2.
25 *Rollo*, Vol. I, p. 81.
26 Id. at 73.
27 Id. at 73-74.
28 Id. at 78-81.

partisan political activity may be committed, in effect therefore, the respondents are charged with two (2) counts of Section 80 of the Code.[29]

With respect to the Information in Criminal Case No. Q-11-169067, the CA similarly ruled that it charged the respondents with two offenses, namely: "1) soliciting votes on the day of the election inside the polling place; and 2) staying inside the polling place on the day of the election when they were neither allowed nor authorized to do so."[30] The CA opined that these acts are covered by two provisions of the Omnibus Election Code – Sections 261 cc (6) and Section 192 – and should as such be treated as different offenses.[31]

Finding that the subject Informations charge more than one offense, the CA concluded that the RTC committed grave abuse of discretion in denying the respondents' motion to quash.[32]

The petitioners filed a Motion for reconsideration, but the same was denied by the CA in its Resolution[33] dated May 27, 2014.

Thus, this petition for review on *certiorari* under Rule 45 of the Rules of Court, whereby petitioners allege the following the grounds in support thereof:

> I.
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> With all due respect, the Honorable Court of Appeals committed reversible error in not finding that the Trial Court is justified in issuing the assailed Orders dated 15 February 2012 and 28 November 2012 as per established laws and jurisprudence.
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> II.
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> With all due respect, the Honorable Court of Appeals committed reversible error when it quashed the criminal information in criminal case no. Q-11-169067 on the ground that it allegedly charges more than one offense, despite the correct ruling of the Trial Court that the information only charges one (1) offense, which is unlawful electioneering.
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> III.
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> With all due respect, the Honorable Court of Appeals committed reversible error when it quashed the criminal Information for criminal case nos. Q-11-169068 and Q-11-169069 on the ground that it allegedly charges more than one offense, despite the correct ruling of the Trial Court that the use of the word 'AND' did not imply the commission of another

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29 Id. at 78-79.
30 Id. at 79.
31 Id. at 79-81.
32 Id. at 81.
33 Supra note 3.

offense but merely to denote the continuity of actions taken in furtherance of an alleged criminal act.

IV.

With all due respect, the Honorable Court of Appeals committed reversible error in ruling that the Trial Court committed grave abuse of discretion amounting to lack or excess of jurisdiction considering that the filing of the petition for certiorari was improper and the case should proceed with the trial on the merits in accordance with law and jurisprudence.

V.

With all due respect, the Honorable Court of Appeals committed reversible error in not finding that Respondents' Petition for Certiorari should have been dismissed outright for failure to comply with the mandatory requirement of a sworn certification of non-forum shopping and deliberately did not attach pertinent pleadings in violation of Sections 1 and 2, Rule 65 and Section 3, Rule 46 of the Revised Rules of Court.[34]

Succinctly, the Court must resolve the issue of whether or not the CA erred in ordering the quashal of the subject Informations on the ground that they charge more than one offense.

Pursuant to the Court's Resolution[35] dated February 3, 2021, the Office of the Solicitor General (OSG) filed its Manifestation and Motion[36] on July 15, 2021 reiterating its earlier conformity to the filing of the instant petition for review and entering its appearance as counsel for petitioner People of the Philippines.[37]

Ruling of the Court

The petition is ***partly*** **meritorious.**

Parameters of the Court's review of interlocutory orders.

An order denying a Motion to Quash is interlocutory in nature and is not appealable. In general, the same cannot even be the proper subject of a special civil action for *certiorari* in view of the availability of other remedies in the ordinary course of law. "The remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign

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34 *Rollo*, Vol. I, pp. 31-33.
35 Id., Vol. II, p. 1286.
36 Id at 1292-1294.
37 Id. at 1217-1219, 1292-1294.

as error the denial of the motion to quash."[38] However, when special or exceptional reasons obtain, immediate resort to filing of a petition for *certiorari* may be allowed.[39]

> A special civil action for *certiorari* under Rule 65 is not the same as an appeal. In an appeal, the appellate court reviews errors of judgment. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action, where the reviewing court has jurisdiction only over errors of jurisdiction. [40]

In this regard, it is important to underscore the limitation in the mode of review of interlocutory orders as it dictates the context within which the Court resolves the instant petition for review on *certiorari*. Rule 45 limits the Court to review questions of law raised against the assailed CA decision. Hence, without disregarding the rule that an interlocutory order cannot be the subject of an appeal, the Court examines the CA decision from the prism of whether it correctly determined the presence of or absence of grave abuse of discretion when it issued the interlocutory order.[41]

In view of the attendant circumstances, particularly the novel aspects of this case, which will be illustrated further on in this decision, it would be more favorable for this Court to entertain this appeal. It also bears to note that this case has been pending for a long time. The subject Orders of the RTC were issued in 2012; the assailed rulings of the CA were promulgated in 2013 and 2014; and the instant petition for review was filed in 2015. Given the considerable lapse of time that this case has been pending, it would serve no useful purpose for the Court to dismiss the instant case on technicality alone. Speedy disposition presents a special and important consideration in this case.

The Informations in Criminal Case Nos. Q-11-169068 and Q-11-169069 must be quashed as the facts charged do not constitute an offense.

In adjudging that each of the Information in Criminal Case Nos. Q-11-169068 and Q-11-169069 charges more than one offense, the CA rationalized that the acts constitutive of the crime of premature campaigning are covered by two separate paragraphs in Section 79, *i.e.*, (1) and (5). It explained that these are two separate modes and constitute two (2) separate

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38 *Enrile, et al. v. Judge Manalastas, et al.*, 746 Phil. 43, 48 (2014).
39 *Soriano, et al. v. People, et al.*, 609 Phil. 31, 47 (2009).
40 *Philippine National Bank v. Gregorio*, 818 Phil. 321, 334 (2017).
41 Cf. *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1, 9 (2012).

crimes. The CA noted that the use of the word "and" does not connote continuity, but rather, separation, theorizing that:

> If the purpose of the information was to charge [respondents] of only one offense and their visitation of houses and holding of meetings were only in furtherance of their act of campaigning and soliciting votes, the informations should have used the words "by", "thru" or any other word of equivalent meaning instead of the word "and".[42]

Foremost, the Court disagrees with the aforementioned disquisition. Under prevailing laws and jurisprudence, premature campaigning is no longer punishable. It is for this reason that the Informations in Criminal Case Nos. Q-11-169068 and Q-11-169069 must be quashed on the ground that the facts charged do not constitute an offense.[43]

In Criminal Case Nos. Q-11-169068 and Q-11-169069, the respondents were charged with two (2) counts of violation of Section 80 of the Omnibus Election Code or premature campaigning. Except with respect to the date of commission, the Informations identically recite the crime of premature campaigning to have been committed as follows: "engage[d] in a partisan political activity by campaigning and soliciting votes for the Totoy del Mundo Movement, within Barangay Talipapa of Quezon City and by visiting the houses of voters and thereafter holding a meeting for the purpose of soliciting votes for their favor."[44]

Section 80 of the Omnibus Election Code punishes election campaign or partisan political activity outside the campaign period as defined under Section 79(b) of the same Code, *viz.*:

> Sec. 79. *Definitions.* – As used in this Code:
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> x x x x
>
> b. The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:
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> 1. Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;
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> 2. **Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of**

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42 *Rollo*, Vol. I, p. 78.
43 RULES OF COURT, Rule 117, Section 3(a).
44 *Rollo*, Vol. I, pp. 146, 148.

> **soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;**
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> 3. Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;
>
> 4. Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or
>
> 5. **Directly or indirectly soliciting votes, pledges or support for or against a candidate.**
>
> x x x x Emphasis supplied.

From the foregoing, the essential elements for violation of Section 80 of the Omnibus Election Code are: (1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; (3) the act is done outside the campaign period.[45]

In relation to the second element, Section 79(a) of the Omnibus Election Code defines a "candidate" as "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties." Notwithstanding such definition, a person is considered as a "candidate" only at the start of the campaign period for which the certificate of candidacy is filed. The provision further qualifies that unlawful acts or omissions applicable to a candidate shall take effect only upon the start such of the campaign period.[46] In this sense therefore, there can be no scenario in which premature campaign may be committed, as there can be no "candidate" prior to the campaign period.

The Court in *Penera v. COMELEC, et al.*,[47] explained that legislative intent prevents the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. This is because the only purpose for the early filing of certificates of candidacy is to give ample time for the printing of official ballots.[48] Furthermore, the Court expounded-

> It is a basic principle of law that any act is lawful unless expressly declared unlawful by law. This is especially true to expression or speech, which Congress cannot outlaw except on very narrow grounds involving clear, present and imminent danger to the State. The mere fact that the law

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45 *Penera v. COMELEC, et al.*, 620 Phil. 593, 610 (2009).
46 Section 13, Republic Act No. 9369 amending Section 15, Republic Act No. 8346.
47 Supra note 45.
48 Id. at 618.

does not declare an act unlawful ipso facto means that the act is lawful. Thus, there is no need for Congress to declare in Section 15 of RA 8436, as amended by RA 9369, that political partisan activities before the start of the campaign period are lawful. It is sufficient for Congress to state that "any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period." The only inescapable and logical result is that the same acts, if done before the start of the campaign period, are lawful.

In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. x x x

x x x **The plain meaning of this provision is that the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful.**

The law does not state, as the assailed Decision asserts, that partisan political acts done by a candidate before the campaign period are unlawful, but may be prosecuted only upon the start of the campaign period. Neither does the law state that partisan political acts done by a candidate before the campaign period are temporarily lawful, but becomes unlawful upon the start of the campaign period. This is clearly not the language of the law. Besides, such a law as envisioned in the Decision, which defines a criminal act and curtails freedom of expression and speech, would be void for vagueness.

Congress has laid down the law — a candidate is liable for election offenses only upon the start of the campaign period. This Court has no power to ignore the clear and express mandate of the law that "any person who files his certificate of candidacy within [the filing] period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy." Neither can this Court turn a blind eye to the express and clear language of the law that "any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period."

The forum for examining the wisdom of the law, and enacting remedial measures, is not this Court but the Legislature. This Court has no recourse but to apply a law that is as clear, concise and express as the second sentence, and its immediately succeeding proviso, as written in the third paragraph of Section 15 of RA 8436, as amended by RA 9369.[49] (Emphasis supplied)

As stated in *Penera,* a review of legislative deliberations in the passage of the Omnibus Election Code and R.A. No. 9369, does not lend guidance with respect to the rationale behind the definition and enumeration of prohibited acts; thus, the Court cannot speculate and is left to apply the

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49 Id. at 618-620.

law as stated. Otherwise stated, the limitation with respect to how a candidate may be held liable for the offense of premature campaigning, irrespective of the motivation is a policy determination which the Court cannot overturn without offending the Constitution and the principle of separation of powers.[50]

In accordance with the foregoing, the Informations in Criminal Case Nos. Q-11-169068 and Q-11-169069 insofar as the facts alleged therein refer to the offense of premature campaigning under Section 80 of the Omnibus Election, which under the state of present law is "impossible" to commit, must be quashed. Consequently, there is no longer any reason for the Court to make a determination if these Informations each charge more than one offense.

The Information in Criminal Case No. Q-11-169067 must be upheld.

Proceeding with the Information in Criminal Case No. Q-11-169067, in resolving whether the same charges more than one offense, the words used in describing the acts constitutive of the crime, are not, of themselves, controlling or determinative of the issue. Rather, the primary consideration is whether the facts alleged in the information, viewed generally, constitute or refer to the elements of a single crime or of two or more distinct and separate offenses.

In evaluating a motion to quash an information on the ground of duplicity of offenses under Section 3(f), Rule 117 of the Revised Rules of Criminal Procedure, an examination must be had on the averments in the information. The question is, whether hypothetically admitting material allegations in the information, they would establish the elements of two or more offenses.[51]

It must be noted, nonetheless, that the said test is merely a preliminary assessment in that an affirmative response does not mean that the information must automatically be quashed. There are ensuing complications that must likewise be taken into consideration.

Jurisprudence settled that a single act or incident might offend two or more entirely distinct and unrelated provisions of law, which results in the filing of several charges.[52] Conversely, multiple acts could refer to a single

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50 Cf. *Congressman Garcia v. The Executive Secretary, et al.*, 602 Phil. 64,76-77 (2009).
51 Cf. *Los Baños v. Pedro*, 604 Phil. 215, 227 (2009).
52 *Soriano, et al. v. People, et al.*, supra note 39 at 42.

criminal transgression and as such is not duplicitous, as when the acts alleged refer to different modes in which an offense may be committed but arose out of a single criminal impulse.[53]

The petitioner in this appeal, submits that the allegations denote a continuity in the acts done in furtherance of the alleged criminal act.

Indeed, the performance of criminal acts may result in either multiple offenses, each constituting an independent crime or a single offense which may either be embraced in the concept of either a *complex crime, composite crime,* or a *continuing crime.*

A complex crime is defined by Article 48 of the Revised Penal Code (RPC), *viz.*:

> **ARTICLE 48.** Penalty for Complex Crimes. — When a single act constitutes two or more crimes, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The provision demonstrates the concept of "ideal plurality or *concurso ideal"* in the concurrence of crimes.[54]

In a complex crime, two or more crimes are committed, but in the eyes of the law there is only one criminal resolution; thus, there is only one crime and only one penalty is imposed.[55] A complex crime is either: a) a compound crime or *delito compuesto* which arise when a single act constitutes two or more grave or less grave felonies, or b) a complex proper or *delito complejo* when an offense is a necessary means for committing another offense.[56]

Aside from these, there is also what is called as a *special complex crime.* Although similar in terminology, it is different from the *complex crime* that is provided for under Article 48 of the RPC. A *special complex crime* is one that is defined and given a specific penalty under the Code.[57]

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53 *Jurado v. Suy Yan*, 148 Phil. 677, 686 (1971).

54 In *Gamboa v. CA*, 160-A Phil. 962, 964 (1975), the Court distinguished "real plurality" and "ideal pluarilty." "Ideal plurality" or "concurso ideal" occurs when a single act gives rise to various infractions of law. "Real plurality" or "concurso real", on the other hand, arises when the accused performs an act or different acts with distinct purposes and resulting in different crimes which are juridically independent.

55 *People v. Nelmida*, 694 Phil. 529, 581 (2012).

56 Id. citing *Gamboa v. CA*, 80 Phil. 962, 970 (1975).

57 *People v. Jugueta*, 783 Phi. 806, 842-843 (2016), citing *People v. Laog*, 674 Phil. 444, 465 (2011) and *People v. Barros*, 315 Phil. 314, 336 (1995) (Regalado, J., Separate Opinion).

Similar to complex crime, in a *special complex crime* two or more crimes are committed but the law expressly treats them as a single indivisible and unique offense as the acts are a product of a single criminal impulse.[58] It is legislative wisdom which treats and classifies the attendant crimes as a unique offense, that is, a *special complex crime*.

On the other hand, in a continuing crime or *delito continuado*, a series of acts is committed, each of which is a crime of itself but there is also only a single crime. In which case, although there are diverse acts, in the eyes of the law, they merely constitute a partial execution of a single crime as there is only a single criminal resolution.[59]

A continuing crime is also referred to as a transitory crime. Jurisprudence on the matter instructs that a continuing crime has two variations. In the *first*, there are series of acts each material and essential to the crime that occur in different locations. In which case, the court where any of the essential ingredients of the crime took place has the jurisdiction to try the case.[60] For instance, in the crime of estafa, the element of deceit takes place where a worthless check is issued and delivered, which may be different from where the damage was inflicted upon the check's dishonor by the drawee bank.[61] Under the *second* type, all the elements occurred in a single place but the very nature of the offense committed is such that the violation of the law is deemed continuing. An example of this is the crime of libel where the libelous matter is published or circulated from one province to another. [62]

The Court's discussion in the recent case of *Ambagan v. People*[63] is instructive in determining whether a series of criminal acts may be embraced within the concept of a continuing crime. In *Ambagan,* the Court held that judging from jurisprudence on the subject, the uniform view is that in order to be considered as a *continuing crime*, the multiple acts must be committed at or about the same time; must constitute a singular penal law violation; and are impelled by one criminal intent or resolution. These factors must be taken into consideration in relation to the facts attendant in the case.[64]

In addition to the foregoing, it is noteworthy that the concept of continuing crime has been applied only when the acts complained of are crimes punishable by the RPC; jurisprudence for instance had the occasion

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58 *People v. Broniola*, 762 Phil. 186, 191-192 (2015).
59 *People v. Ambagan*, G.R. No. 233443-44, November 28, 2018, citing *Gamboa v. CA*, supra note 54 at 964.
60 *Parulan v. Director of Prisons*, 130 Phil. 641, 644 (1968).
61 *Cabral v. Bracamonte*, G.R. No. 233174, January 23, 2019.
62 Supra note 60 at 644-645.
63 Supra note 59.
64 Id.

to rule that the crimes of estafa,[65] kidnapping,[66] rebellion,[67] and robbery,[68] are continuing offenses under certain circumstances.

The applicability of continuing crimes to transgressions under the RPC is straightforward because the crimes under the RPC are generally, *mala in se,* that is, they are wrong in themselves. In these crimes, the intent of the offender is crucial.[69] In a continuing crime, it is the singularity or multiplicity of this criminal intent that determines the penalty to be imposed, without any regard to the number of criminal transgressions.

In contrast, offenses punishable by special penal laws are generally *mala probihita,* in which case, the intent of the offender is immaterial. When an act is declared illegal by law, the intent of the offender in committing the same is immaterial.[70]

In crimes which are *mala prohibita* what need not be proved is criminal intent, that is, intent to commit the crime. [71] In such cases, criminal intent is conclusively presumed to exist from the commission/omission of an act prohibited by law[72] and therefore need not be proved. In order to hold the offender guilty or accountable for the offense it is sufficient that there is a conscious intent to perpetrate the act prohibited by the special law. The essence of *mala prohibita* is voluntariness in the commission of the act constitutive of the crime.[73]

As more clearly elucidated by Justice Regalado in the case of *People v. De Gracia,*[74]

> But is the mere fact of physical or constructive possession sufficient to convict a person for unlawful possession of firearms or must there be an intent to possess to constitute a violation of the law? This query assumes significance since the offense of illegal possession of firearms is a *malum prohibitum* punished by a special law, in which case good faith and absence of criminal intent are not valid defenses.

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65 *Morillo v. People, et al.,* 775 Phil. 192, 209 (2015) citing *Nieva, Jr. v. CA,* 338 Phil. 529, 541-542 (1997)

66 *Parulan v. Rodas and Reyes,* 78 Phil. 855, 861 (1947).

67 *Umil v. Ramos,* 187 SCRA 311, 318 (1990).

68 *People v. De Leon,* 608 Phil. 701, 721-722 (2009).

69 *Dungo, et al. v. People,* 762 Phil. 630, 658 (2015).

70 Id.

71 *People v. De Gracia,* 304 Phil. 118, 129-130 (1994).

72 See *People v. Quijada,* 328 Phil. 505, 548-549 (1996) (J. Hermosisima, Jr., Concurring Opinion) citing *The State v. McBrayer,* 98 N.C., 623.

73 *People v. De Gracia,* supra note 71 at 130.

74 Id.

> **When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law.** Intent to commit the crime and intent to perpetrate the act must be distinguished. **A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.**
>
> In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession, without criminal intent, is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused. Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.
>
> Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon, such as Presidential Decree No. 1866. Thus, although there is physical or constructive possession, for as long as the *animus possidendi* is absent, there is no offense committed.[75] (Emphasis supplied. Citations omitted)

However, it must be noted that not all crimes punishable by the RPC are *mala in se.* In the same way, not all offenses punishable under special laws are *mala prohibita.*

In the case of *Dungo v. People*,[76] the Court clarified that not all *mala in se* crimes are found in the RPC, there are those which are provided for under special penal laws such as plunder, which is penalized under R.A. No. 7080, as amended. Likewise, there are *mala prohibita* crimes in the RPC, such as technical malversation.[77]

In fine, the classification of a crime into *mala in se* and *mala prohibita* is not determined solely on the law which punishes them. Rather, the primordial consideration is "the inherent immorality or vileness of the

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75 Id. at 129-130.
76 Supra note 69.
77 Id. at 658-659.

penalized act."[78] If the punishable act or omission is fundamentally immoral, then it is a crime *mala in se.* If not, but the same is nonetheless penalized by a statute based on legislative wisdom to promote public policy, then it is *mala prohibita.*[79]

Applied, the Information in Criminal Case No. Q-11-169067 charged the respondents with an election offense under Section 261 cc (6) of the Omnibus Election Code committed by soliciting votes in favor of a candidate within the polling place, and under Section 192 of the same Code, by unlawfully entering and staying inside the polling place.

The relevant provisions of the Code read:

> **Sec. 261. Prohibited Acts.** - The following shall be guilty of an election offense:
>
> cc. **On candidacy and campaign:**
>
> x x x x
>
> 6. Any person who solicits votes or undertakes any propaganda, on the day of election, for or against any candidate or any political party within the polling place or within a radius of thirty meters thereof.
>
> **Sec. 192. Persons allowed in and around the polling place.** - During the voting, no person shall be allowed inside the polling place, except the members of the board of election inspectors, the watchers, the representatives of the Commission, the voters casting their votes, the voters waiting for their turn to get inside the booths whose number shall not exceed twice the number of booths and the voters waiting for their turn to cast their votes whose number shall not exceed twenty at any one time. The watchers shall stay only in the space reserved for them, it being illegal for them to enter places reserved for the voters or for the board of election inspectors or to mingle and talk with the voters within the polling place.

An examination of the prohibited acts shows that they are *mala prohibita,* and therefore cannot be considered as a continuing crime. The offenses involved are unlawful campaign and unlawful/unauthorized presence at the polling place. The election offense of unlawful campaign under Section 261 cc (sub-par.6) of the Omnibus Election Code is committed when on the day of the election, a person solicits votes or undertakes any propaganda for or against any candidate or political party within the polling place or within a radius of thirty meters thereof. The operative act is the solicitation or the performance of any propaganda, in or within the proximity of the polling place. Whereas under Section 192 of the

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78 Id.
79 Id.

Omnibus Election Code, the crime is consummated when a person, not otherwise allowed, steps foot into a polling place. No other condition is required. Mere presence inside the polling place constitutes a violation of the law. Verily, the acts punished under the said law are not inherently abhorrent or evil. The proscription against the performance of these acts is an expression of legislative policy and an exercise of plenary police power in order to preserve the secrecy and sanctity of votes;[80] and aimed towards the objective of holding a free, orderly, honest, peaceful and credible elections.[81]

Nevertheless, it is manifest that when the act of unlawful campaign is performed inside a polling place, unlawful presence at the polling place is consummated simultaneously, on the same occasion, and by the same act.[82] In this sense therefore, the offender's presence inside the polling place becomes a component, or an essential element in the offense of unlawful campaign and ceases to be a separate crime.

While the rationale between the two prohibitions vary, their elements overlap in such a way that one can be deemed as absorbed by the other.

The doctrine of absorption is a principle peculiar in criminal law. In order for the doctrine to apply, the crimes must be punished by the same statute and the trial court must have jurisdiction over both offenses.[83] Likewise, in relation to the previous disquisition, the acts must not constitute separate counts of violation of the crime.

In applying the doctrine of absorption, although there have been multiple violations, that crime that is ascertained to be an inherent part, an element, or that is made in furtherance of the other crime is not treated as a separate offense but is deemed included in the other crime. The crime which the offender originally or primarily intended to commit absorbs the offense which is executed in its furtherance.[84]

To illustrate, the Court has applied the doctrine of absorption in the crime of rebellion; in that common crimes, such as murder, and offenses under special laws which are perpetuated in furtherance of the political offense, are not penalized as distinct crimes. They are deemed part and parcel of the rebellion itself.[85] The Court has determined that the crime of rebellion by its very nature, is essentially a crime of masses or multitudes

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80 Cf. *COMELEC v. Hon. Tagle*, 445 Phil. 665, 670-671 (2003).
81 Cf. CONSTITUTION, Article IX (C), Section 4.
82 Cf. *Ponce-Enrile v. Judge Amin*, 267 Phil. 603, 612 (1990).
83 *Lt. Gonzales v. Gen. Abaya*, 530 Phil. 189, 213-214, (2006).
84 Cf. *Ponce-Enrile v. Judge Amin*, supra note 82 at 608.
85 *People v. Lovedioro*, 320 Phil. 481, 488 (1995) citing *Ponce-Enrile v. Judge Amin*, supra note 82 at 610-611.

involving crowd action which cannot be confined within predetermined bounds. Consequently, all acts committed in pursuance thereof are absorbed in the crime itself because they acquire a political character.[86]

For clarity, the accusatory portion in Criminal Case No. Q-11-169067 is hereby reproduced, *viz.*:

> That on or about the 25th day of October 2010, in Quezon City, Philippines, the above-named accused, conspiring and confederating with and mutually helping one another, did then and there willfully, **unlawfully and criminally solicit votes and undertake propagandas on the day of election for Barangay Officials inside the polling place** of Placido del Mundo Elementary School, Barangay Talipapa, this City for the following candidates in said barangay, all members of the Totoy del Mundo Movement, to wit: Totoy Del Mundo-Kapitan, Kgd. RL Hapatinga-Kagawad, Kgd. Ric Galguerra-Kagawad, Kgd. Kaka delos Santos-Kagawad, Kgd. Dennis Padilla- Kagawad, Kgd. Rufing Ramoy- Kagawad, Ernesto Gotos, "Erning" – Kagawad & Oscar Oca Ramirez- Kagawad, by then and there soliciting votes for said candidates and distributing election paraphernalias and leaflets of the Totoy Del Mundo movement, in violation of said law.
>
> CONTRARY TO LAW.[87] (Emphasis and underscoring supplied)

From the allegations in the Information, the act which results in the violation of two provisions under the Omnibus Election Code is a single act. In which case, there is only one crime as the respondents, in entering the polling place, had but one primary intention- the promotion of the election of their candidates. The gravamen of the offense defined by Section 261 cc (6) of the Omnibus Election Code is the performance of acts aimed to promote the election or defeat of a particular candidate inside or within the proximity of a polling place. This is aimed to prevent the exertion of undue influence to voters, a potential threat to the sanctity of ballots, and operates to the disadvantage of opposing candidates. With these objectives, when the crime is performed inside the polling place, "unlawful or unauthorized presence" in the same place becomes inherent, as it is a means and an element of committing the election offense of unlawful campaign; and cannot be separated therefrom. Consequently, the subject information in Criminal Case No. Q-11-169067, cannot be quashed for alleged duplicity under Section 3(f), Rule 117 of the Revised Rules of Criminal Procedure.

The quashal of the Informations in Criminal Cases Nos. Q-11-169068 and Q-11-169069 inures to the

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86 *People v. Lovedioro*, id.

87 *Rollo*, Vol. I, p. 144.

benefit of all the accused, even those who did not appeal.

Considering the foregoing determination, the Court finds it relevant to discuss the effect of this decision to the rest of the accused who did not file an appeal from the Orders of the RTC. To recall, of the eight (8) people charged in the RTC, only two (2) herein respondents, interposed an appeal.

Evidently, there is no issue with respect to Criminal Case No. Q-11-169067, considering that this Court's disposition is similar with that of the RTC. However, with respect to the Court's ruling that the Informations in Criminal Cases Nos. Q-11-169068 and Q-11-169069 should be quashed on the ground that the facts charged do not constitute an offense, there is a need to make a definitive pronouncement as to the status of the rest of the accused who did not appeal.

Section 11(a), Rule 122 of the Revised Rules of Criminal Procedure provides:

> **Section 11.** *Effect of appeal by any of several accused.* —
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;
>
> x x x x

The provision, as worded, seems to apply only to appeals from a judgment or final order.[88] This interpretation is based on the fact that an interlocutory order, as mentioned early on in this decision, is not the proper subject of appeal nor of a special civil action for *certiorari.* The proper remedy from an interlocutory order is to proceed to trial and raise the issue as an assignment of error in the appeal of the final judgment.[89] The Court, however, sees no obstacle in extending the application of the foregoing provision in controversies wherein an appeal of an interlocutory order may be entertained by the courts, as in the case at bar.

Flowing from the constitutional guarantee of presumption of innocence, the rule is that every ambiguity with respect to the construction of the law and the rules, should be liberally construed in favor of the

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88 RULE 122, Section 1.

89 *Enrile, et al. v. Judge Manalastas, et al.*, supra note 38 at 48, *Galzote v. Briones, et al.*, 673 Phil 165, 172 (2011).

accused.[90] While the Order subject of this case is not final, the fact that the same has been ruled upon in favor of the respondents, with the requirements of due process met as the private complainants were heard on all stages of these proceedings, there is no reason for the Court not to extend the same to the rest of the accused who did not appeal particularly as the basis for their indictment is the same. The two (2) criminal Informations which the Court orders nullified in this appeal, are premised on an act of conspiracy committed by the respondents and their co-defendants. Basically, the acts alleged in these two (2) Informations are interwoven and related to the point of inseparability. Ultimately, all the accused are joined in the same Informations, therefore, the violation with respect to the constitutional right of the accused to information brought about by the duplicity of offenses charged in the said Informations obtains not only in favor of the respondents but as well to the rest of the accused who did not appeal.

WHEREFORE, the instant petition for review on *certiorari* is **PARTLY GRANTED.** The Decision dated September 27, 2013 of the Court of Appeals in CA-G.R. SP No. 128470, and its Resolution dated May 27, 2014 are modified as follows:

1. The Informations in Criminal Case Nos. Q-11-169068 and Q-11-169069 are **QUASHED** and the criminal cases against all the accused therein are **DISMISSED**;

2. The Motion to Quash the Information in Criminal Case No. Q-11-169067 is **DENIED**. With respect thereto, the Orders dated February 15, 2012 and November 28, 2012 of the Regional Trial Court of Quezon City, Branch 101 are **REINSTATED**. Accordingly, let Criminal Case No. Q-11-169067 be **REMANDED** to the trial court for further proceedings.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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90 *People v. PO1 Sullano*, 827 Phil. 613, 625 (2018).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice