



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DEXTER BARGADO y MORGADO,
Petitioner,

G.R. No. 271081
[Formerly UDK-17851]

Present:

-versus-

LEONEN, *SAJ.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, Jr., *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JUL 29 2024

X-----X

DECISION

LOPEZ, J., *J.*:

This Court resolves a Petition for Review on *Certiorari*¹ filed by petitioner Dexter Bargado y Morgado (Bargado) assailing the Decision² and Resolution³ of the Court of Appeals (CA) finding him guilty of violating Section 261, paragraph (q) in relation to Section 264 of the Omnibus Election Code, as amended, in further relation to Section 32 of Republic Act No. 7166 and Commission on Elections (COMELEC) Resolution No. 10198, for carrying a firearm in violation of the COMELEC gun ban for the October 2017 barangay elections.

Bargado was charged in an Information that reads as follows:

¹ *Rollo*, pp. 4–20.

² *Id.* at 30–47. The Decision dated August 11, 2022 in CA-G.R. CR No. 44964 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Eduardo S. Ramos, Jr. and Rex Bernardo L. Pascual of the Special Ninth Division, Court of Appeals, Manila.

³ *Id.* at 27–28.

That on October [1], 2017, in the City of Tuguegarao, Province of Cagayan, and within the Jurisdiction of the Honorable Court, the accused-appellant Bargado, without any authority of law or without the necessary documents from the [COMELEC], did then and there, willfully, unlawfully, and feloniously, possess and carry along with him a Caliber .45 firearm which is described as ROCK ISLAND ARMORY, a small arm with Serial No. RIA 1867480 with inserted magazine loaded with seven (7) live ammunition that while members of the [Philippine National Police (PNP)] assigned at Tuguegarao City Police Station were conducting mobile patrol along the vicinity of this city, they received an information that a commotion was in progress along Aguinaldo Street, Centro 02, this city prompting them to proceed at the preferred place; that upon arrival thereat, they saw [Bargado] along the street holding his aforesaid firearm; that the police officers immediately approached [Bargado] and confronted him regarding his firearm; that [Bargado] carried and possessed the firearm outside his residence at a time covered by October 2017 election firearm ban; that the incident also resulted to the confiscation of the firearm with inserted magazine and loaded with seven (7) live ammunition from the possession, control, and custody of [Bargado] by the authorities of the law.

CONTRARY TO LAW.⁴

Bargado filed a Motion to Quash the Information. In the Motion, Bargado argued that: (1) the facts charged do not constitute an offense on the basis that supervening events, namely the lifting of the election gun ban, rendered the incident a non-offense; (2) the criminal action or liability has been extinguished on the basis that the election gun ban was repealed by Republic Act No. 10952, which postponed the 2017 barangay elections, as well as the related COMELEC and Philippine National Police (PNP) issuance; and (3) the officer who filed the Information had no authority to do so, the COMELEC having the exclusive power to prosecute election offenses.⁵

Notably, Republic Act No. 10952, or “An Act Postponing the October 2017 Barangay and Sangguniang Kabataan Elections, Amending for the Purpose Republic Act No. 9164, as amended by Republic Act No. 9340, Republic Act No. 10632, Republic Act No. 10656, and Republic Act No. 10923, and for Other Purposes,”⁶ was enacted on October 2, 2017, or a day after Bargado’s arrest. It states:

Section 1. Date of Election. – There shall be synchronized barangay and Sangguniang Kabataan elections, which shall be held on July 15, 2002. Subsequent synchronized barangay and Sangguniang Kabataan elections shall be held on the last Monday of October 2007 and every three (3) years thereafter: Provided, That the barangay and Sangguniang Kabataan elections on October 23, 2017 shall be postponed to the second Monday of May 2018. Subsequent synchronized barangay and Sangguniang Kabataan

⁴ *Id.* at 31.

⁵ *Id.*

⁶ *Id.* at 109.

elections shall be held on the second Monday of May 2020 and every three (3) years thereafter.

....

Section 9. Repealing Clause. – All other laws, acts, presidential decrees, executive orders, issuances, presidential proclamations, rules and regulations or parts thereof, which are contrary to and inconsistent with any provision of this Act are hereby repealed, amended, or modified accordingly.⁷

Concomitantly, the PNP issued a Memorandum on October 4, 2017, with the subject “Postponement of October 23, 2017 Barangay And SK Elections (BSKE) 2017,” stating as follows:

2. This refers to the Memorandum from COMELEC with subject “Suspension of all activities in relation to the October 23, 2017 Barangay and Sangguniang Kabataan Elections (BSKE)” in connection with the approval of the President on October 2, 2017 of Republic Act No. 10952 entitled, “An Act postponing the October 2017 Barangay and Sangguniang Kabataan Elections, amending for the purpose Republic Act No. 9164, as amended by Republic Act No. 9340, Republic Act No. 10632, Republic Act No. 10656, and Republic Act No. 10923 and other purposes.”

3. In this regard, all Memoranda Operational Guidelines, activities and security operations including COMELEC gun ban and COMELEC checkpoints in region 2 and liaising to COMELEC for the conduct of the October 23, 2017 BSKE are hereby suspended effective this date.

4. For widest dissemination.

JEREMIAS E. AGLUGUB
Police Senior Superintendent⁸

The Regional Trial Court (RTC) denied the Motion to Quash based on the following: (1) Bargado did not deny that he was arrested and charged in court for unlawful acts he committed on October 1, 2017 during an election period; (2) despite the postponement of the barangay elections on October 2, 2017, the firearms ban was still active for those arrested for violations during the gun ban period. The lifting of the gun ban a day after his arrest, did not fall under any of the grounds for the extinguishment of criminal liability; and (3) the Prosecutor’s Office had the authority to file the Information.⁹

During his arraignment, Bargado pleaded not guilty to the charge. Pre-trial and trial on the merits ensued.

⁷ *Id.* at 110.

⁸ *Id.* at 114.

⁹ *Id.* at 32.

For the prosecution, SPO1 Enrique Melad Jr. (SPO1 Melad), a member of the PNP in Tuguegarao City, testified that he was on duty on October 1, 2017 with PO1 Erwin Soriano (PO1 Soriano), when he received a call from the duty operator informing them of a commotion at Hilaria Restaurant.¹⁰ Upon arriving at the scene at 2:00 a.m., he saw Bargado holding a .45-caliber firearm. The gun was loaded with seven live ammunitions.¹¹ He also saw five to six persons at the door of Hilaria Restaurant about to attack Bargado.¹² He then arrested Bargado because of the prevailing gun ban in relation to the barangay elections¹³ and brought him to the Tuguegarao Police Station.¹⁴ At the police station, SPO1 Melad marked the gun using a small knife before handing it to the investigator, PO3 Darwin Ponce (PO3 Ponce). PO3 Ponce then asked Bargado for documents relating to his possession of the gun.¹⁵ Bargado produced his license and permit to carry his firearm.¹⁶ After the investigation, SPO1 Melad brought the gun to the PNP Crime Laboratory for a ballistic examination, where it was received by a certain PO2 Mora.¹⁷

PO1 Soriano¹⁸ and PO3 Ponce corroborated SPO1 Melad's testimony.¹⁹

The defense presented the testimony of Nicolas Andrew Magleo (Magleo), who stated that he was with Bargado and several other persons at Hilaria Restaurant. He went to the police station and reported that eight to 10 persons were mauling Bargado. When the police officers arrived, they arrested Bargado and brought him to the police station. It was only then that Bargado came to know of the election gun ban.²⁰

Phillip Ulysses Castillo (Castillo) testified that he and Magleo went to Hilaria Restaurant that evening to look for Bargado. While they were talking to Bargado, several assailants suddenly kicked and punched him. As there were many attackers, he was brought outside the restaurant where he hid behind a car. When the police officers arrived, they did not arrest the assailants. No lawyer was present during the investigation at the police station.²¹ On cross examination, Castillo admitted that he saw Bargado holding a gun, as stated in the police report. On redirect examination, he averred that he advised Bargado to hide his gun so that the police officers

¹⁰ *Id.* at 80.

¹¹ *Id.*

¹² *Id.* at 85.

¹³ *Id.* at 84.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 98.

¹⁷ *Id.* at 87.

¹⁸ *Id.* at 94–106.

¹⁹ *Id.* at 33.

²⁰ *Id.* at 34.

²¹ *Id.*

would not see it. He narrated that Bargado was arrested because of the commotion and not because of the gun he was holding.²²

Bargado testified that on September 30, 2017, he went to Hilaria Restaurant to look for his friends. When he could not see them, he went outside. Then, eight to 10 persons attacked him. When the police officers arrived, and after checking his identity, he was brought to the police station in Don Domingo. He did not know that there was a COMELEC gun ban and claimed that even the police officers were unaware of it. He was arrested on a Saturday, while an inquest proceeding was conducted on a Sunday, but the police officers came to know of the gun ban only on the following Monday. He related that when he was being mauled, he just wanted to show the people mauling him that “he had something they should be afraid of.” After his release, he did not go for a medical check-up. He showed his firearm license registration and permit to carry his firearm. However, he could not show a COMELEC gun ban exemption.²³

The RTC found that the prosecution proved all the elements of violation of the gun ban. The dispositive portion of the Decision²⁴ stated as follows:

WHEREFORE, judgment is hereby rendered finding Bargado GUILTY beyond reasonable doubt as charged for violation of Section 261, paragraph (q) of [B.P. No.] 881 in relation to Section 264 thereof, otherwise known as the Omnibus Election Code, as amended in further relation to Section 32 of [R.A. No.] 7166 and COMELEC Resolution No. 10198, and sentences him to suffer [the penalty of] imprisonment for a period of one (1) year, and to suffer disqualification to hold public office and deprivation of the right to suffrage.

So ordered.²⁵

Bargado elevated his cause to the CA, which denied his appeal. The CA cited the elements to secure a conviction based on a violation of the prohibitions under the Omnibus Election Code and Republic Act No. 7166 regarding the bearing of firearms during an election period: (a) the person is bearing, carrying, or transporting firearms or other deadly weapons; (b) such possession occurs during the election period; and (c) the weapon is carried in a public place. The CA found that the first and third elements were indisputably present, as the evidence showed Bargado to be in possession of a .45-caliber pistol outside Hilaria Restaurant when he was apprehended by the police officers. As for the second element, the CA was not convinced that

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 73–78. The December 10, 2019 Decision in Crim. Case No. 19224 is penned by Judge Pablo M. Agustin of Branch 10, Regional Trial Court, Second Judicial Region, Tuguegarao City, Cagayan.

²⁵ *Id.* at 78.

the postponement of the election retroactively applied to the gun ban at the time of his arrest. It found as follows:

Contrary to Bargado's argument, it is clear that cessation of the enforcement of prohibited acts, including the gun ban, was effective only on October 4, 2017. Thus, the RTC was correct in stating that despite the postponement of the elections, the gun ban was still effective for those arrested for violations during the gun ban period. In short, Bargado was apprehended for violating the gun ban when the said ban was still subsisting and in effect.²⁶

The dispositive portion of the CA Decision²⁷ stated:

WHEREFORE, the Appeal is DENIED. The December 10, 2019 Decision of the Regional Trial Court, Second Judicial Region, Branch 10, Tuguegarao City, Cagayan, in Criminal Case No. 19224 is AFFIRMED with MODIFICATION as follows:

Accused-appellant Dexter Bargado y Morgado is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year as minimum to two (2) years as maximum, and is hereby DISQUALIFIED for probation. He is further DISQUALIFIED from holding public office and DEPRIVED of the right to suffrage. The subject firearm is CONFISCATED and FORFEITED in favor of the government.

SO ORDERED.²⁸

Hence, Bargado filed the instant Petition.

In this Petition, Bargado raises two main arguments. First, the CA supposedly failed to apply Article 11 of the Revised Penal Code (RPC) when it did not consider that Bargado acted in self-defense when he brought out his firearm amidst the attack of eight to 10 persons. He emphasizes that he did not intend to harm anyone and that he only wanted to drive away the attackers to protect himself. Second, he asserts that the CA erred in failing to appreciate Article 22 of the RPC, given that Republic Act No. 10952 postponed the 2017 elections for which the gun ban was enforced.

In its Comment,²⁹ the Office of the Solicitor General (OSG) argues that the prosecution has sufficiently established Bargado's guilt for violation of the COMELEC gun ban as it was able to prove the elements of the offense: (a) that the person is bearing, carrying, or transporting firearms or other deadly weapons; (b) such possession occurs during the election period; and

²⁶ *Id.* at 40–41.

²⁷ *Id.* at 30–47. The Decision dated August 11, 2022 in CA-G.R. CR No. 44964 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Eduardo S. Ramos, Jr. and Rex Bernardo L. Pascual of the Special Ninth Division, Court of Appeals, Manila.

²⁸ *Id.* at 46.

²⁹ *Id.* at 230–245.

(c) the weapon is carried in a public place. Bargado had the burden to prove his exemption from the requirements of the gun ban. It also argues that Section 261(q) of Batas Pambansa Blg. 881, as amended by Section 32 of Republic Act No. 7166, is a special law that is a *malum prohibitum*, hence good faith and absence of criminal intent are not valid defenses. Regarding the issue on the retroactivity of laws, the OSG reiterates that the gun ban was effective at the time of arrest.

Issue

Whether the CA erred in affirming the conviction of Bargado for violation of Section 261, paragraph (q) in relation to Section 264 of the Omnibus Election Code during the October 2017 election period, despite the subsequent passage of Republic Act No. 10952, which postponed the said elections and repealing “all other laws, acts, presidential decrees, executive orders, issuances, presidential proclamations, rules and regulations or parts thereof, which are contrary to and inconsistent” with the said Act.

This Court’s Ruling

The Petition is impressed with merit.

The question raised pertaining to the relevance of an election postponement to a conviction for an election offense is a purely legal one as it does not require further examination or review of the evidence on record.³⁰ Thus, the issue presented involves a question of law, necessitating this Court’s review.

The prohibition on carrying of firearms is provided in Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, worded as follows:

Section 261. *Prohibited Acts.* - The following shall be guilty of an election offense:

....

(q) *Carrying firearms outside residence or place of business.* -Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless

³⁰ See *Calleja v. Executive Secretary*, G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 21, 2021 [Per J. Carandang, *En Banc*].

authorized in writing by the Commission: *Provided, That* a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

Republic Act No. 7166 later amended Batas Pambansa Blg. 881, and clarified who may bear arms:

Section 32. *Who May Bear Firearms.* - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided, That*, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

Based on these provisions, the prosecution must prove the following elements to secure a conviction: (a) the person is bearing, carrying, or transporting firearms or other deadly weapons; (b) such possession occurs during the election period; and (c) the weapon is carried in a public place.³¹

In this case, petitioner does not dispute the first and third elements. He explicitly admitted during trial that he possessed a firearm at the time of the incident, which he brought out in defense against the persons attacking him:

Cross-examination of Bargado

Prosecutor Jannete A. Garcia (Prosec. Garcia)

Q: You said that you were mauled by 8[(8)] persons?

Bargado:

A: Yes, ma'am.

Q: And you said that you were injured due to such mauling?

A: I was mauled by drunk men.

....

³¹ *Gonzales v. People*, 826 Phil. 190, 200–201 (2018) [Per. Perlas-Bernabe, Second Division].

Q: You said that you were mauled, that was the reason why you brought out a [firearm]?

A: I just feel that I'm in danger so at that time on my way home, that's the solution that I think so that I could defend myself to let the person fear and I have in me something that they fear of (sic).

Q: That means you have with you the [firearm] having confiscated and being identified by the prosecution witness (sic)?

A: Because I surrendered during the arrival of the police to its detention (sic).³² (Emphasis supplied)

It bears emphasizing in this case that Bargado possessed a permit to carry his firearm, barring any issue on the legality of his possession *per se*.

It is the second element that is disputed in this case, the gravamen of Bargado's indictment, where it is not merely his possession of a firearm that would constitute an election offense, but his possession of it during the prohibition of the October 2017 election period.

The commencement, duration, and termination of the election period is provided in Section 3 of Batas Pambansa Blg. 881:

Section 3. Election and campaign periods. - Unless otherwise fixed in special cases by the Commission on Elections, which hereinafter shall be referred to as the Commission, the election period shall commence ninety days before the day of the election and shall end thirty days thereafter.

The period of campaign shall be as follows:

1. Presidential and Vice-Presidential Election - 90 days;
2. Election of Members of the Batasang Pambansa and Local Election - 45 days; and
3. Barangay Election - 15 days.

The campaign periods shall not include the day before and the day of the election.

However, in case of special elections under Article VIII, Section 5, Subsection (2) of the Constitution, the campaign period shall be forty-five days.

The specific dates are provided by the COMELEC for each election. In this case, the subject election day for the Barangay and Sangguniang Kabataan elections was slated on October 23, 2017, with the gun ban in effect for the

³² Rollo, pp. 33-34.

election period from September 23, 2017 to October 30, 2017, as provided by COMELEC Resolution No. 10198.³³

Petitioner argues, however, that the subsequent passage of Republic Act No. 10952, which postponed the October 2017 Barangay and Sangguniang Kabataan elections, should be retroactively applied to his case as it is favorable to the accused, citing Article 22 of the RPC. This provision states:

ARTICLE 22. Retroactive Effect of Penal Laws. — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

In dismissing this argument, the CA applied the general rule of prospectivity in this case:

Contrary to Bargado's argument, it is clear that cessation of the enforcement of prohibited acts, including the gun ban, was effective only on October 4, 2017. Thus, the RTC was correct in stating that despite the postponement of the elections, the gun ban was still effective for those arrested for violations during the gun ban period. In short, Bargado was apprehended for violating the gun ban when the said ban was still subsisting and in effect.³⁴

We find this explanation inadequate in addressing the issues specifically raised in this case, as it prematurely concludes, without elaboration, that the postponement of the elections does not affect those arrested during the gun ban under the originally scheduled election. The principle of retroactivity of penal laws was not, however, taken into consideration.

In this case, petitioner precisely sought an exception to the general rule of prospectivity of laws. This rule is established for the benefit of the accused and is a constitutional safeguard against *ex-post facto* laws.³⁵ In evaluating

³³ Philippine News Agency, *Law enforcers to comply with rules in manning checkpoints*, PHILIPPINE NEWS AGENCY, September 18, 2017, available at www.pna.gov.ph/articles/1009860 (last accessed on June 11, 2024).

³⁴ *Rollo*, pp. 40–41.

³⁵ An *ex post facto* law is one that (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act; (2) aggravates a crime, or makes it greater than it was, when committed; (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful, and (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty. See *Mejia v. Pamaran*, G.R. No. L-56741-41, April 15, 1999. [Per J. Gancayco, *En Banc*].

whether a special set of circumstances merits the application of the general rule or the exception, courts must examine whether the application of the exception will still be consistent with the purpose of the general rule. In applying the exception here, which is the principle of retroactivity, to Republic Act No. 10952, petitioner would ultimately be benefitted as the new law does away with an element of his charge altogether.

Jurisprudence has consistently established that the principle of retroactivity of penal laws that are favorable to the accused is founded on principles of strict justice:

As a general rule, penal laws should not have retroactive application, lest they acquire the character of an *ex post facto* law. An exception to this rule, however, is when the law is advantageous to the accused. According to Mr. Chief Justice Araullo, this is “not as a right” of the offender, “but founded on the very principles on which the right of the State to punish and the commination of the penalty are based, and regards it not as an exception based on political considerations, but as a rule founded on principles of strict justice.”³⁶

Jurisprudence likewise ratiocinates that “[c]onscience and good law justify this exception, which is contained in the well-known aphorism: *Favorabilia sunt amplianda, odiosa restringenda*. As one distinguished author has put it, the exception was inspired by sentiments of humanity, and accepted by science.”³⁷

Further, a review of case law would reveal that the rule on retroactivity applies not just to felonies under the RPC, but also to special laws,³⁸ allowing its application to election-related laws such as in this case. This was established as early as 1923, when this Court recognized the penal nature of Spanish electoral laws for purposes of applying the retroactivity, citing that this is supported “both by reason and by authorities.”³⁹

Hence, given that Article 22 of the RPC is the primary and complete guidance regarding the retroactivity of laws, this Court finds that only three conditions need to be present for it to come into force, which can be summarized in a three-part test: (1) is the new law penal in nature? (2) is the new law favorable to the accused? and (3) is the guilty person not a habitual criminal? An affirmative finding of all three tests should be sufficient for the application of Article 22.

³⁶ *Valeroso v. People*, 570 Phil. 58, 77 (2008) [Per J. R.T. Reyes, Third Division].

³⁷ *Inmates of the New Bilibid Prison v. Secretary Leila de Lima*, 854 Phil. 675, 705 (2019) [Per J. Peralta, *En Banc*].

³⁸ *Id.* at 706.

³⁹ *People v. Parel*, 44 Phil. 437, 441 (1923) [Per J. Ostrand, *En Banc*].

9

For the first part of the test, case law elucidates what constitutes a penal law:

But what exactly is a penal law?

A penal provision or statute has been consistently defined by jurisprudence as follows:

A penal provision defines a crime or provides a punishment for one.

Penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation.

Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission.

Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.

The "penal laws" mentioned in Article 22 of the RPC refer to *substantive* laws, not procedural rules. Moreover, the mere fact that a law contains penal provisions does not make it penal in nature. (Citations omitted)⁴⁰

Based on the above provisions, it is not enough for a law to relate to penalties for the retroactivity principle to apply. The considered law must be substantive in nature, defined by this Court in the following manner in relation to procedural laws:

Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions.⁴¹ (Citation omitted)

As applied to criminal law, a substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from procedural law, which provides or regulates the steps by which one who commits a crime is to be punished.⁴²

⁴⁰ *Id.*

⁴¹ *Estipona v. Lobrigo*, 816 Phil. 789, 808 (2017) [Per J. Peralta, *En Banc*].

⁴² *Bustos v. Lucero*, G.R. No. L-2068, March 8, 1949 [Per J. Tuason, *En Banc*] (Resolution).

Given that Republic Act No. 10952 is the law considered for the application of the retroactivity principle, We consider first whether it is a penal law, and also a substantive one.

While Republic Act No. 10952 neither defines a crime nor prescribes a penalty, appearing on its face to merely postpone the election date, it inextricably relates to the election period for the originally scheduled October 2017 elections. This refers to an element in the prohibited act under Section 261(q) of Batas Pambansa Blg. 881, in relation to Section 32 of Republic Act No. 7166. Section 264 of Batas Pambansa Blg. 881 provides the penalties for election offenses, which includes the possession of a firearm during an election period:

Section 264. Penalties. - Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

In case of prisoner or prisoners illegally released from any penitentiary or jail during the prohibited period as provided in Section 261, paragraph (n) of this Code, the director of prisons, provincial warden, keeper of the jail or prison, or persons who are required by law to keep said prisoner in their custody shall, if convicted by a competent court, be sentenced to suffer the penalty of prison mayor in its maximum period if the prisoner or prisoners so illegally released commit any act of intimidation, terrorism or interference in the election.

Any person found guilty of the offense of failure to register or failure to vote shall, upon conviction, be fined one hundred pesos. In addition, he shall suffer disqualification to run for public office in the next succeeding election following his conviction or be appointed to a public office for a period of one year following his conviction.

As We have earlier discussed, this element of the election period is the crux of the instant allegation of an election offense. The duration of this period, fixed under Batas Pambansa Blg. 881, varies each time according to the promulgated election day.

In the similar case of *Inmates of the New Bilibid v. Secretary Leila de Lima*,⁴³ this Court tackled the constitutionality of the prospective application of

⁴³ 854 Phil. 675 (2019) [Per J. Peralta, *En Banc*].

the new rules for good conduct time allowance (GCTA) under Republic Act No. 10592. In that case, Republic Act No. 10592 did not define a crime or offense, nor did it provide, prescribe, or establish a penalty. Instead, it tackled the issue by focusing the analysis on the beneficial effect of the GCTA to the accused. The rationale was articulated in this wise:

In the case at bar, petitioners assert that Article 22 of the RPC applies because R.A. No. 10592 is a penal law. They claim that said law has become an integral part of the RPC as Articles 29, 94, 97, 98 and 99 thereof. Edago *et al.* further argue that if an amendment to the RPC that makes the penalties more onerous or prejudicial to the accused cannot be applied retroactively for being an *ex post facto* law, a law that makes the penalties lighter should be considered penal laws in accordance with Article 22 of the RPC.

We concur.

While R.A. No. 10592 does not define a crime/offense or provide/prescribe/establish a penalty as it addresses the rehabilitation component of our correctional system, its provisions have the purpose and effect of diminishing the punishment attached to the crime. The further reduction on the length of the penalty of imprisonment is, in the ultimate analysis, beneficial to the detention and convicted prisoners alike; hence, calls for the application of Article 22 of the RPC.⁴⁴ (Citations omitted)

Applying the same reasoning, Article 22 of the RPC applies to the instant case because Republic Act No. 10952, declaring the new election date for the Barangay and Sangguniang Kabataan elections, is inextricably linked to the determination of violations under Section 261 (q) of Batas Pambansa Blg. 881 and Section 32 of Republic Act No. 7166. Stated otherwise, Republic Act No. 10952 substantively affects an element of the prohibited act in question. Similar to the above case, the application of this new election period would be beneficial to petitioner and other similarly situated persons, which is the *raison d'être* of Article 22 of the RPC.

Applying this principle, the period of September 23 to October 30, 2017 *falls outside the duration of an election period as provided by Section 3 of Batas Pambansa Blg. 881*, for there cannot logically be two election periods for a single election. To allow this would be inconsistent with the objectives of Batas Pambansa Blg. 881 and the mandate of the COMELEC, which is to ensure the conduct of a free, orderly, and honest election, necessarily presupposing the holding of an election. Hence, with the passage of Republic Act No. 10952 postponing the October 2017 elections, the period of September 23, 2017 to October 30, 2017 ceased to be an election period, doing away with an element for the conviction of petitioner under Section 261(q) under Batas Pambansa Blg. 881. This is undoubtedly beneficial to petitioner and thus, passes the second test.

⁴⁴ *Id.* at 707-708.

It bears emphasizing that the retroactivity principle to penal laws that are favorable to the accused is proscribed only when the new law expressly provides that it shall be inapplicable to pending actions or existing causes of action. Jurisprudence provides:

We repeat that article 22 of the Penal Code applies to all penal statutes alike and furnishes our only guidance in determining the extent to which a penal statute is retroactive. Unless the statute is taken out of its operation either by express provisions of law or by *necessary* implication, the article applies. There is, as far as we can see, absolutely nothing in Act No. 3030 indicating that it is not subject to exactly the same measure of retroactivity as any other penal statute.⁴⁵

Here, Republic Act No. 10952 does not appear to prohibit such retroactive application, containing a repealing clause providing that “all other laws, acts, presidential decrees, executive orders, issuances, presidential proclamations, rules and regulations or parts thereof, which are contrary to and inconsistent with any provision of this Act are hereby repealed, amended, or modified accordingly.”

The third part of the test—that the accused is not a habitual criminal—is likewise present as the prosecution has not alleged or proven the same.

To conclude, We emphasize that a conviction of an accused must meet the standard of proof that is beyond reasonable doubt, both in fact and in law. This Court has long held:

As to this we can only say that it is our duty to apply the law as we find it; that it is also our duty to observe the rule that the defendant in a criminal case is entitled to the benefit of all reasonable doubts, both as to the facts and as to the law; and that we believe that the interests both of justice and of the public welfare will be best served by this court doing its duty without fear or favor. We should, indeed, be recreant to that duty were we to allow our zeal for the punishment of crime to lead us to distort the language of plain provisions of the law in a sense adversely to the accused. In regard to the present case, we also believe that the disadvantages of the uncertainty and confusion which would eventually result from a forced construction of the law would much more than offset the advantages of securing the convictions and imprisonment for a few months of a relatively small number of infractors of the Election Law.⁴⁶

Given the foregoing, Republic Act No. 10952 must be interpreted in favor of petitioner. Absent an election period, petitioner cannot be held guilty

⁴⁵ *People v. Parel*, 44 Phil. 437, 447 (1923) [Per J. Ostrand, *En Banc*].

⁴⁶ *Id.* at 449.

of violating of Section 261(q) of Batas Pambansa No. 881 in relation to Section 32 of Republic Act No. 7166.

ACCORDINGLY, the Petition is **GRANTED**. The August 11, 2022 Decision and March 30, 2023 Resolution of the Court of Appeals in CA-G.R. CR No. 44964 are **REVERSED and SET ASIDE**. Petitioner Dexter Bargado y Morgado is **ACQUITTED** of violation of Section 261, paragraph (q) of Batas Pambansa No. 881.

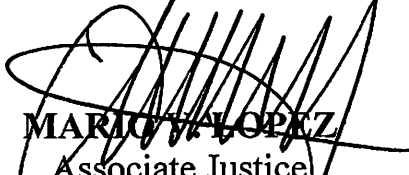
SO ORDERED.


JOSE V. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice

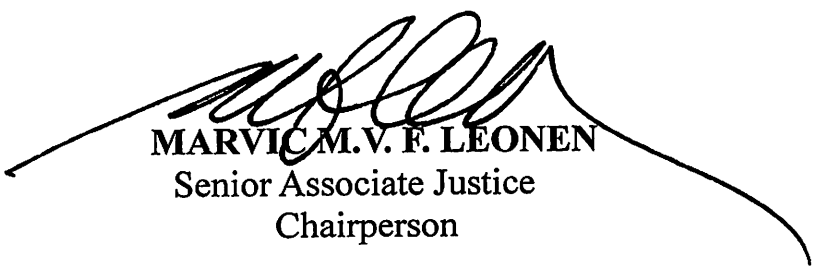

AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

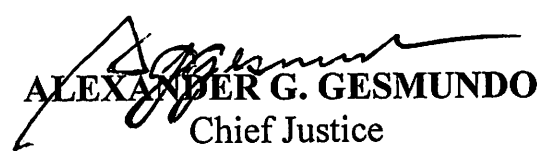
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M. V. F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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