

ERNESTO VILLALON, PETITIONER, VS. THE COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF KIBAWE, BUKIDNON AND ARTURO SERIÑA, RESPONDENTS.

G.R. No. L-32008. August 31, 1970

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/61bcb0a27989/>

BARREDO, J.:

Petition for (1) certiorari to annul and set aside the resolution of the respondent Commission on Elections, Comelec for short, numbered RR-704 and dated May 21, 1970, declaring as "obviously manufactured and should, therefore, be rejected and not used as basis of the canvass" the election return for Precinct 20 of Kibawe, Bukidnon, for purposes of the election of the Mayor of said municipality in November, 1967; (2) prohibition to enjoin said Comelec and the Municipal Board of Canvass-ers of the said municipality from enforcing and/or im-plementing the said resolution; and (3) mandamus to compel the said Comelec and Municipal Board of Canvassers to order used and/or use as basis of the said canvass the so-called Comelec copy of the said return wherein peti-tioner is credited with 525 votes and respondent Seriña with 76 votes for the position of Mayor and, thereafter, to proclaim petitioner as the duly elected Mayor of Ki-bawe, Bukidnon.

In the exercise of its authority underscored in the decision of this Court in a previous case between the same parties in relation to the disputed results in the same Precinct 20 aforementioned,[1] the Comelec conducted hearings purported to determine the genuineness of the copies of the election return for said precinct and came out with the following legally relevant findings and con-clusions:

"When the Commission examined the copies of the election return for Pre-cinct 20, Kibawe, Bukidnon for the COMELEC, the municipal treasurer, bal-lot box, the provincial treasurer as well as the advance copy and the copy for the Liberal Party, it found that the data on voters and the data on ballots were not accomplished and that in all said copies, except the provin-cial treasurer's copy, VILLALON was credited with 525 votes in words and figures and SERIÑA 76 votes. In the provincial treasurer's copy, VILLA-LON got 225 votes and SERIÑA 76 votes although the word 'two' in the words 'Two Hundred twenty five' appeared to be retraced and that the letters 'wo' were written with a sharper pencil and were of darker shade than the first letter which appeared either as a 't' or an 'f'."

"After examining all copies of the returns submitted to the Commission (COMELEC, municipal treasurer, ballot box, provincial treasurer, Liberal Party and advance copy), the Commis-sion has reached the conclusion that the returns as prepared by the board of inspectors before they were tam-pered by third persons credited VILLALON with 525 votes in words and figures, SERIÑA with 76 votes, Inghog with 41 votes and Sunico with zero votes. The provincial treasurer's copy was tam-pered by a person other than a member of the board of inspectors. The COME-LEC copy which actually is the origi-nal of the seven copies is a clean copy although it is obvious that par-ticularly with respect to the candi-dates for the office of mayor the names of the candidates were written with a different kind of pencil than that with which the votes received by the candidates in words and figures were written, a fact which suggests the possibility that the votes of the candidates for mayor in words and figures were written by a different person at a time other than when the

names of the candidates were written. The municipal treasurer's copy and the copy for the ballot box appeared to be the duplicates of the COMELEC copy, that is to say, that the names of the candidates for the office of mayor and the votes received by them in words and figures were written with the same strokes as those which wrote on the COMELEC copy and on the same occasion. While the same is also true with respect to the provincial treasurer's copy an attempt was made subsequently by a third party to alter the votes of VILLALON from 525 to 225, the reduction of VILLALON's votes by 300 being critical and decisive because it would reverse the result of the election in favor of candidate SERIÑA.

"COMELEC copy which is a clean copy confirms the entries in the municipal copy which appeared to be merely a duplicate of the COMELEC copy and, therefore, for purposes of canvassing of the results of the election for the office of mayor of Kibawe, the municipal treasurer's copy would ordinarily be the one to be used as the basis of the canvass. However, the Commission is constrained to reject the municipal treasurer's copy and the COMELEC and the ballot box copies on the ground that they are obviously manufactured. The Commission also rejects the provincial treasurer's copy because the same had been tampered with insofar as the candidates for the office of mayor are concerned. The reasons for our finding that the returns as prepared by the board of inspectors; namely, the COMELEC, the municipal treasurer, ballot box copy and the provincial treasurer's copy before it was altered are as follows:

"The Commission notes that with exception of VILLALON, none of the candidates in the 1967 election received more than 315 votes. For Senator, the highest number of votes received was 266 by Lorenzo Teves; for Vice-Governor, 303 by Angelo Lopez; for Provincial Board Member, 285 by Rodano Anjudal; for Vice-Mayor, 276 votes; and for Councilor, 272 Inura and Bitakura.

"The four gubernatorial candidates received a total of 367 votes; the four vice-gubernatorial candidates received 359 votes while the four vice mayoralty candidates received a total of 361 votes. It will be thus noted that for these positions of Provincial Governor, Vice-Governor and Vice-Mayor, not more than 367 voters voted."

"x x x Statistical probabilities based on common experience are that the candidates for Governor, Vice-Governor, Mayor and Vice-Mayor of the same party would be receiving almost the same number of votes and any variation in their votes would not be very much. These probabilities would be more true in Precinct 20 which showed senatorial candidates of the Nacionalista Party receiving votes as follows: TEVES, 266; ROY, 265; BENI-TEZ, 262; PEREZ, 257; PELAEZ, 256; LAU-REL, 252; ESPINA, 240; and VELOSO, 199. The topnotcher among the Liberal candidates was BENIGNO AQUINO with 85 votes. So even granting that this precinct is a Nacionalista bailiwick, even without referring to the Minutes of Voting, the 525 votes given to VILLALON would be statistically improbable."

"x x x To clarify, the finding of the Commission that the returns for Precinct 20 were obviously manufactured and statistically improbable is based primarily on the fact that with exception of VILLALON, none of the candidates in the 1967 election received more than 315 votes; that the total number of votes for the office of Provincial Governor, Vice-Governor and Vice-Mayor are only 367, 359 and 361, respectively; that the minutes of the voting showed that only 419 official ballots were used and 550 ballots were received in the precinct; and that the tally sheet showed that VILLALON got very much less than 525 votes. All these facts and circumstances in the taut ensemble indisputably establish the falsity of the return insofar as the number of votes of VILLALON of 525 votes in Precinct 20, Kibawe, is concerned."

Its other findings and conclusion are as follows:

"Thus the omission of the data on voters and the data on ballots in the return becomes meaningful and so is the conduct of the chairman of the board of inspectors in systematically avoiding service of subpoena to appear before the Commission. The omission by the board of inspectors to fill the data on voters and the data on ballots was evidently deliberate and made with the objective in mind of making it possible for said board to give VILLALON a number of votes greatly in excess of the number of official ballots used in the precinct

without being discovered. As the returns now show, the total number of votes credited by the board of inspectors to the four candidates which is 642 exceeds by 98 the number of ballots received in the precinct and by 223 number of ballots used. This discrepancy the Commission believe to be excessive and for this reason the Commission is constrained in the interest of clean elections to rule that municipal treasurer's copy, COMELEC copy and the ballot box copy of the returns are falsified or obviously manufactured. In short, the clean copies of the returns as prepared by the board of inspectors, namely, municipal treasurer's copy, COMELEC copy and ballot box copy, are obviously manufactured and should therefore be rejected. Ironically, the alteration or tampering that was made on the provincial treasurer's copy was an attempt by the adherents of the opponents of VILLALON to counteract the manufacturing of the return made by the board of inspectors in favor of VILLA-LON.

"Similarly, the fact noted earlier that the votes in words and figures of the candidates for mayor were written by another person with lead pencil on an occasion different than when the names of the candidates for mayor were written with indelible pencil becomes very suspicious. Said fact tend to indicate that after the names of the candidates for mayors were written down, the votes of the candidates were deliberately withheld and not entered in the return and that it was only after the result from other precincts were reported that the votes of said candidates were written and VILLALON was given just enough number of votes to assure him at least the proclamation as the winning candidate."

The decisive issue for Our resolution in the pre-sent case is whether or not on the basis of the findings and conclusions of Comelec first above-quoted, excluding those in the quotations immediately preceding this paragraph, this Court can hold that respondent Comelec gravely abused its discretion or acted in excess of jurisdiction in holding that the return here in question is an obviously manufactured one and consequently ordering that the same be not considered in the canvass of the votes for the herein contested position of Mayor of Kibawe, Bukidnon.

Tagoranao vs. Comelec, L-28598, March 12, 1968, 22 SCRA 978, is clear authority for the rule that in any case where it is alleged that an election return is statistically improbable and, therefore, obviously manufactured, the case must rise or fall on the basis of inferences that may be drawn, in the light of common experience, exclusively from the data found on the face of the return and evidence aliunde may not be considered in this regard. The facts of that case were:

"The election return of Precinct 2 is blank with respect to the data on the number of voters who registered and number of voters who actually voted, as well as on the data on the number of ballots received by the Board of Inspectors and the number of ballots used in the voting, although, the plebiscite return of Precinct 2 prepared by the same Board of Inspectors states that the number of voters who registered is 375 and the same number of voters voted. On the basis of 375 as the number of voters registered in the precinct, there are still more votes credited to candidates for mayor, because, as stated in the decision of the Commission of January 3, 1968 a total of 389 votes were credited for all the candidates for mayor or an excess of 14 votes over the number of voters registered, assuming that all said voters voted.

"There is one more patent fact appearing on the face of said election return of Precinct 2 which shows that this election return is obviously manufactured, namely, the votes for senators as they are hereunder reproduced.

'Benitez, Helena 375

'Espinosa, Emilio 375

'Katigbak, Maria K. 375

'Perez, Leonardo 375

'Rodrigo, Francisco 375

'Pelaez, Emmanuel 370

'Teves, Lorenzo 370

'Veloso, Fernando 370

'Uzman, Asaas 300

As shown above, five senatorial candidates received exactly the same votes of 375 each. What is more, three of these candidates, namely -- Katigbak and Rodrigo are Liberals. No more convincing proof than this could be produced to prove that this election return is manufactured. For it is indeed statistically improbable that the alleged 375 registered voters, claimed to have all voted, should one and all equally and in the same manner vote for three Nacionalista candidates and two Liberal candidates for senator. This is contrary to all records and experience in elections. And then, there are nine candidates, including Asaas Usman, who received votes ranging from 300 to 375, or a total number of votes credited for these nine candidates of 3,265. But the maximum total number of votes that could be cast by the 375 voters, assuming that all of them voted and that each of them cast his vote for eight candidates for senators, will be only 3,000 votes. But here, the total number of votes credited for the aforesaid nine candidates for senator is 3,265, thereby producing an excess of 265 votes credited for senator. The foregoing facts appearing on the face of said election return itself show that the election return is obviously manufactured."

and upon these facts We ruled thus:

"What we said in *Demafiles v. Commission on Elections* is here applicable with equal propriety and vigor. The return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certification of the election registrar, or with the Comelec record of the number of ballots issued to precinct 2, or with plebiscite return that a discrepancy appears. In other words, the defect is not apparent and therefore the return is by no means 'obviously manufactured' - if 'manufactured' it is - so as to justify its exclusion. This is not to belittle the claim that more votes were cast than there were voters. Perhaps that is true. The point simply is that this question should be threshed out in an election protest.

"This Court has heretofore held that a canvassing board may apply to the Comelec for authority to use another copy of an election return where the one before it is falsified or where it is so incomplete that the number of votes cast for each candidate cannot be determined. But here the problem is not that posed by a return that does not speak the truth but, possibly, if we are to believe Mangondato, that presented by ballots which have been fraudulently dropped in the ballot box and there commingled with the genuine ones. For all that we know a count of the ballots will confirm the statement in the return that 366 votes were actually cast for Tagoranao in precinct 2, in which even the integrity of the return will have been established. Whether the 366 votes were cast through fraud and other irregularities, as both Mangondato and Comell claim and as the Comelec found, is altogether a different matter. That question would require proof and, necessarily, time, which the need for the prompt proclamation of elected officials would not permit.

"On the other hand, to reject the return, as Mangondato urges, would be to disfranchise voters. It bears strong emphasis to state here that canvassing boards must exercise 'extreme caution' in rejecting returns and then may do so only when the returns are palpably irregular."

The pertinent portions of the decision of this Court in *Demafiles vs. Comelec*, L-28396, December 29, 1967, 21 SCRA 1467, referred to in *Tagoranao* read:

"First, a canvassing board performs a purely ministerial function - that of compiling and adding the results as they appear in the returns transmitted to it. That is the teaching in *Nacionalista Party v. Commission on*

Elections: (85 Phil., 149, 157-158[1949]) 'the canvassers are to be satisfied of the genuineness of the returns - namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the elections' (Id., at 157-158). Thus, they cannot pass upon the validity of an election return, much less exclude it from the canvass on the ground that the votes cast in the precinct from whence it came are illegal. (*Abendante vs. Relato*, 94 Phil. 8 [1953]).

"But the exclusion of the return in this case is sought to be justified on the ground that it is 'obviously manufactured' because, contrary to the statement therein that there were 195 registered voters, of whom 188 voted, the certificate of the local election registrar states that only 182 voters had registered on October 30, 1967. *Lagumbay v. Commission on Elections* (L-25444, January 31, 1966) is cited in support of this view. In *Lagumbay*, the returns were palpably false as it was indeed statistically improbable that 'all the eight candidates of one party garnered all the votes each of them received exactly the same number, whereas all the eight candidates of the other party got precisely nothing. In other words, the aid of evidence aliunde was not needed, as 'the fraud (being) so palpable from the return itself (*res ipsa loquitur* - the thing speaks for itself), there is no reason to accept it and give it prima facie value.

"On the other hand, the return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certificate of the election registrar that a discrepancy appears as to the number of registered voters. The return therefore is by no means 'obviously manufactured' so as to justify its exclusion."

The so-called *Lagumbay* doctrine of statistical improbability relied upon by respondents has never been followed in any subsequent case except *Sinsuat vs. Pendatun, et al.*, L-31501, June 30, 1970, wherein by a vote of 7-3, this Court ruled that the factual basis of 100% pattern of voting in the precincts therein in question was on all fours with that in the *Lagumbay* case, in spite of the opinion to the contrary of the writer hereof, joined by Justices Castro and Teehankee. Incidentally, that decision is the subject of a motion for reconsideration and is not yet final. Withal, *Sinsuat* is not a case of alleged excess votes. In fact, in said case, this Court overruled the portions of Comelec's resolution applying the doctrine of statistical improbability to the returns in a number of precincts which showed votes in excess of the number of registered voters or of voters who voted. Indeed, in all cases of alleged excess votes, particularly *Tagoranao* and *Demafiles*, We have consistently held that the *Lagumbay* ruling should not be unduly expanded beyond its precise factual setting.[2] In *Estrada vs. Navarro*, G. R. No. L-28374, December 29, 1967, We went as far as to resort to the minutes of voting, a document outside of the return, in order to explain away an alleged case of excess votes, because 'a conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof. The decision in the *Lagumbay* case speaks of 'inherent improbability' in the data shown on the return. Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disenfranchisement of those who exercised their right of suffrage."

Respondents argue, however, that precisely, this *Estrada* case supports their position that evidence aliunde may be taken into account in cases of this nature. The contention is not entirely correct. It is true that in said case, We took into account evidence outside of the return, consisting of the minutes of voting, but this was done for the purpose of showing that the factual presumption of statistical improbability did not hold, there being an explanation borne by an election document related closely to the return and prepared contemporaneously therewith of the alleged excess of votes seemingly deducible from data found on the face of the return, and not to serve as basis or evidence of the alleged statistical improbability, for as already stated, never have We ever allowed evidence aliunde for the latter purpose. Otherwise stated, as the rule of Our jurisprudence now stands, a conclusion of statistical improbability may be drawn only from what appears on the face of a return, but evidence

aliunde may be admitted to over-come the same. This is why We cannot consider the findings and observations of respondent COMELEC quoted earlier which do not refer to matters appearing within the four corners of the return, the same being incompetent, even if somehow relevant, for the purpose for which it is intended. Even Comelec itself admits it cannot be done. In its resolution under appeal, it observed: "This, of course, is merely theorizing and should not be understood that the conclusions and findings of the Commission are in any way, based thereon."

Respondents further invite attention to their allegation that the supposed excess votes here number around two hundred. No matter: in Tagoranao, the apparent excess was two hundred sixty-five votes. The reason is that even if, mathematically, it appears that there is an excess, there is still no way of determining decisively on the face of the return the exact number of ballots actually cast, which is what is controlling, for, as a matter of actual fact, more ballots may have been really cast and if, in violation of Section 145 of the Revised Election Code prescribing the procedure for separating excess ballots and prescribing thus:

"SEC. 145. Excess ballots. - Before proceeding to count the votes the board of inspectors shall count the ballots in the box for valid ballots without unfolding them or exposing their contents, except so far as to ascertain that each ballot is single, and shall compare the number of ballots in the box with the number of voters who have voted. If there are excess ballots they shall be replaced in the box and thoroughly mingled therein; and one of the inspectors designated by the board, without seeing the ballots and with his back to the box, shall publicly draw out as many ballots as may be equal to such excess and, without unfolding them, place them in a package which shall be marked 'EXCESS BALLOTS' and which shall be sealed and signed by the members of the board. The package shall be placed in the box for valid votes, but its contents shall not be read in the counting of votes. If, in the course of the examination, any ballots shall be found folded together before they were deposited in the box, they shall be placed in the package for excess ballots. In case ballots with their detachable numbers be found in the box, such numbers shall be removed and deposited in the box for spoiled ballots, and, if ballots with the words 'spoiled' be found in the box, such ballot shall likewise be placed in the box for spoiled ballots."

the board of inspectors count them nevertheless without separating the excess, it does not lie in the hands of the canvassers to make any correction; they must read the return as is; the corresponding courts and tribunals can take care of the rest. This is not to sanction an irregularity; We are just reconciling the possibility of error either in counting the ballots or in noting their right number, which boards of inspectors are not far from committing. The presumption of regularity ordained by law must be used in reference to all the data appearing in the return, so that in case of conflict between any of them, one or the other must be conceded to be the result of honest error, unless the contrary conclusion is strongly and convincingly evident.

In Tagoranao as here, the spaces for the data on the number of registered voters in the precinct, the number of voters who voted and the number of ballots received were left blank. How is one to know how many actually voted? Even if there were any figures in said spaces, still We would not say there is "most convincing proof" of excess votes which would authorize the conclusion that the pertinent return is "obviously manufactured", "utterly improbable and clearly incredible" and should be disregarded in the canvass, thereby resulting in the elimination from the count of the honest votes cast therein. Even conceding that there are such excess votes, the function of separating the honest ones from the dishonest does not devolve upon the Comelec, as that would necessarily involve a determination of the right to vote which is expressly excluded by the Constitution from Comelec's jurisdiction, and much less upon the boards of inspectors. Such authority belongs exclusively to the electoral tribunals or to the courts, in respect to local elections.

We might just as well clarify here that in the matter of alleged excess votes, the precedent is not exactly Lagumbay. Much less Sinsuat. Lagumbay dealt exclusively with 100% pattern of voting with complete blanking

out of the opposing party, not excess votes. The first reference to excess votes as a factor in de-termining the genuineness of election returns was made in this jurisdiction in the earlier case of *Nacionalista Party vs. Comelec*, 85 Phil. 149, wherein 18 Am. Jur. was cited, and, in turn, this cited *State ex rel. Mitchell vs. Stevens*, 33 Am. Rep. 175 in which the factual back-ground was as follows:

"This is an action of mandamus, to compel the defendants, as canvassing board of the county of Harper, to canvass and declare the result of they election held in November last for county officers, and on the question of the location of the county seat. The defendants, for one ground of de-fense, return that there were only about 800 legal voters in said coun-ty at the date of said election, whereas the returns as made show a vote of 2,947 purporting to have been polled, and that therefore at least 2,147 of such votes were fraud-ulent and illegal, and that by reason thereof it is impossible to de-termine and declare the will of the people or the true result of such election. A motion has been made to strike out this portion of the return, and upon that motion the case is sub-mitted to us. This motion is made in no technical spirit, but as counsel agree, that there may be a speedy de-termination of the substantial ques-tions involved. And we meet counsel in the same spirit. Our general knowledge of matters and events assures us that in an outlying and frontier coun-ty like Harper, there is no such num-ber of legal voters, and hence that the return of the commissioners that the large majority of such apparent vote is illegal and fraudulent is sub-stantially correct."

and the Supreme Court of Kansas, thru Mr. Justice Brewer held:

"The question therefore presented is not whether, when there have been, or are charged to have been, here and there, illegal votes received, or le-gal votes rejected, or fraudulent or irregular practices on the part of the officers in any one or more voting precincts, the county board has a right to inquire into the merits of such votes, or the conduct of such officers, but whether, when there are sent in to the canvassing board returns showing such an enormous number of votes as to be perfectly obvious that they are not true returns of legal votes actually cast, but simply manufactured evidences of an attempt to defeat the popular will, this court will, by mandamus, compel the board to accept as true these fraudulent returns and canvass, and declare the result as though they even prima facie showed the actual vote. Counsel for relator rely upon the case of *Lewis v. Commissioners*, 16 Kans. 102, in which this court decided that the duty of a canvassing board is substantially ministerial, and that it is not to reject returns regular in form and genuine, on the ground that illegal votes were received, or other frauds practiced at the elect-ion; that such matters are to be in-quired into by a tribunal for contest-ing elections, or in quo warranto pro-ceedings; while the defendants rely on the case of *State v. Marston* 6 Kans. 524, in which this court, after a canvass had been made, refused to compel, by mandamus, the commissioners to move their records and keep their office at the place declared by the canvass to be the chosen county seat, on the ground that just such an out-rage as appears in this case had been committed in the election. We are clearly of the opinion that the principle of the latter case must control this. It was said in that case, as it has been said in others, that 'the writ of mandamus lies, to a great ex-tent, within the discretion of the court where the application is made.' Now, while canvassing is a ministerial duty, yet it would be a singular exer-cise of its discretion for a court whose duty it is to uphold purity, justice, and honest dealing, to give even appar-ent sanction to such an outrage so gross and so manifest. A canvass is a prima facie recognition of the truth of the returns. Compelling a canvass is compelling a prima facie recognition of these returns as true statements of the votes cast. But these returns are manifestly rotten and worthless, and the truth is not in them. They do not fail of absolute truth through mere mis-take or error. They are an intentional and immense lie. They are without values in any proceeding or in any court, as evidence of votes cast, for while legal and honest votes were cast, yet no court is under obligation to attempt to sift the grain of truth from the mass of falsehood. It is urged that indivi-duals were candidates for office at this election, and that unless a canvass be made there is no way of determining who is elected, and the incumbents thus continue to hold offices which they are not entitled to hold, and for which the people have chosen other persons; that these candidates may be in no manner implicated in the wrong, and hence they should not be deprived of the emoluments of the offices to which they are elected. There may be a hardship in this, but if the returns are not true, how will they show who is elected? If a party can base his right to an office upon nothing other than that which is so manifestly untrue,

he can hardly ever expect to obtain or hold it. If it be said that this wrong may only have occurred in the returns from certain precincts, and that the others should have been canvassed, we reply that no such question is here presented. The answer presents the matter as a whole, and as though the wrong was universal. Perhaps if they are returns from any precincts not deserving of this condemnation, they should be canvassed, and the result both as to officers and county seat declared therefrom. Perhaps on the basis of such unimpeached returns the various successful candidates may by direct proceeding establish their right to office. It will be time enough to consider those questions when properly before us. All we now decide is, that at no stage of the proceedings will this court lend its sanction to an outrage so gross and flagrant as that disclosed by the answer, and never by mandamus compel any other tribunal to accept and recognize as true that which is so manifestly a deliberate and prepared lie."

Excess votes then is not a matter of statistical improbability; it is plain mathematical impossibility, if all the relevant facts are extant in the return. In any event, the decisive point is the number of alleged excess votes. As can be seen above, in the Mitchell case, which was the basis of the Lagumbay decision, the proportion of the excess votes to the maximum of votes actually possible was more than 8 to 21 or 2 to 5, and, in exact figures, the excess was at least 2,147 over only 800 possible legal votes. It was on this mathematical basis that the court drew the conclusion that the returns were "manifestly rotten and worthless, and the truth is not in them. They do not fail of absolute truth through mere mistake or error." The test, We may say, is whether the number of excess votes is within the margin of possible error or mistake, which, cannot be so categorized if not honest. The fact that the number of votes which appear to have been credited to petitioner of 525 is unusually big compared with the highest number of votes among all the other candidates in said precinct in the 1967 elections of 315, even if added to the other fact that the total of the votes for all the candidates; for Governor and Vice-Governor were only 367 and 359, respectively, do not, to Our mind, sufficiently exclude the possibility of error in any of such entries. What is worse for private respondent, if he take into account what appears in the tally sheet, the original of which has been submitted to this Court by Comelec, the logical conclusion would be that the entry of petitioner's votes in the return must have been based on this tally sheet, there being no clear and indubitable evidence that the said tally sheet has been tampered with. We have carefully examined the said original tally sheet and while some of the points raised by respondents in connection therewith may be quite well taken, We are not ready to hold that they are as clear and convincing as would justify Us to conclude, at this stage of this electoral controversy, that the return has lost its quality of being prima facie correct. It is in the electoral protest alone that this matter may be definitely and appropriately resolved.

IT RESULTS that herein petition must be granted; respondent Comelec's Resolution No. RR-704 of May 21, 1970 is hereby annulled and set aside, the same being contrary to law, and Comelec is hereby ordered to cause the respondent Municipal Board of Canvassers of Kibawe, Bukidnon to include in the canvass of the votes for Mayor of said town the Comelec copy of the election return for Precinct 20 showing that petitioner obtained 525 votes and respondent Serina 76 votes, and the respondent Municipal Board of Canvassers is also hereby ordered to act in accordance with the above instruction to be issued by respondent Comelec and this decision, with costs against respondent Serina.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Castro, Fernando, Teehankee, and Villamor, JJ., concur.

Dizon, J., did not take part.

Zaldivar, J., reserves his vote.

[1] Villalon vs. Comelec, L-29394, Sept. 30, 1969, 29 SCRA 671.

[2] Alonto vs. Comelec, G. R. No. L-28490, February 28, 1968, 22 SCRA 878; Kibad vs. Comelec, G.R. No. L-28469, May 7, 1968, 23 SCRA 588; Sangki vs. Comelec, G. R. No. L-28359, December 26, 1967, 21 SCRA

1392.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.