

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN M. TINGCHUY, ACCUSED-APPELLANT.

Ponente: ROXAS, J.

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ROXAS, J.:

Legal Principles in this Case:

The election offense under Section 261 (z) (12), Article XXII of the Omnibus Election Code penalizes that person who “destroys, substitutes or takes away from the possession of those having legal custody” any election form or document or ballot box which necessarily includes the list of voters which is an important election document.

The Case

During the barangay elections, a candidate for barangay captain was charged with two (2) violations of the Omnibus Election Code: (1) for allegedly entering the polling precinct and conducting himself in a disorderly manner which disrupted the proceedings of the Board of Election Tellers; and (2) for allegedly crumpling and tearing the list of voters which he took from the door of the precinct where it was posted.

After hearing, the trial court acquitted accused-appellant of the first charge which was “disorderly” acts in the precinct, but convicted accused of the second charge which was “destroying” the list of voters. Accused-appellant interposed this appeal.

The Facts

This is an appeal from the April 16, 2004 Joint Decision[1] of the Regional Trial Court (RTC) of Batangas City, Branch 7, in Criminal Case Nos. 9165-9166, which convicted accused-appellant Ruben M. Tingchuy (TINGCHUY) of violation of Section 261 (z) (12) of the Omnibus Election Code.

On October 13, 1997, Atty. Jose P. Balbuena, Director IV, Law Department of the Commission on Elections in Intramuros Manila filed two (2) Informations with the RTC of Batangas City, Branch 7, docketed as Criminal Case Nos. 9165 and 9166.

The Information[2] in Criminal Case No. 9165 charged accused-appellant TINGCHUY with violation of Section 261 (bb) (4), Article XXII of the Omnibus Election Code,[3] committed as follows:

“That on or about May 12, 1997 which was a Barangay Election Day, in Batangas City, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who was then a candidate for Barangay Captain of Barangay Banaba West of said City during the May 12, 1997 Barangay Elections, suddenly surfaced inside the polling place of clustered Precinct Nos. 55A and 55A-1, located at the Banaba West Elementary School, of said City, and in the presence or within the hearing of the Board of Election Tellers, did then and there, willfully and unlawfully, conduct himself in such a disorderly manner which disrupted and interrupted the proceedings of the Board of Election Tellers of Precinct Nos. 55A and 55A-1.

CONTRARY TO LAW.”

On the other hand, the Information[4] in Criminal Case No. 9166 charged accused-appellant TINGCHUY with violation of Section 261 (z) (12), Article XXII of the Omnibus Election Code,[5] committed as follows:

“That on or about May 12, 1997 which was a Barangay Election Day, in Batangas City, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who was then a candidate for Barangay Captain of Barangay Banaba West of said City, without legal authority, suddenly surfaced inside the polling place of Clustered Precinct Nos. 55A and 55A-1 acting in a belligerent and bellicose manner, did, then and there, willfully and unlawfully, crumple (sic) and tear the List of Voters of Precinct Nos. 55A and 55A-1, an election document being used in said barangay elections.

CONTRARY TO LAW.”

When arraigned on November 25, 1997, accused-appellant TINGCHUY, with the assistance of his counsel de parte, Atty. Percival M. de Mesa, pleaded not guilty to the charges.[6]

During trial, it was established that at about 8:30 in the morning of May 12, 1997, while the barangay elections were being conducted, accused-appellant TINGCHUY, who was then a candidate for barangay chairman of Barangay Banaba West, Batangas City, removed and crumpled the list of voters[7] posted at the door of voting Precinct Nos. 55A and 55A-1 in Banaba West Elementary School.

Thereafter, accused-appellant TINGCHUY went inside the polling place and approached the table of the Board of Election Tellers (BET), which was composed of Arsenia Macatangay, as Poll Chairman, Francisco de Guzman, as 2nd member and Poll Clerk, and Gina Garcia, as 3rd member. Accused-appellant TINGCHUY then threw the list of voters on the BET’s table saying, “this is wrong, this is wrong!” A heated altercation subsequently ensued between accused-appellant TINGCHUY and Arsenia Macatangay. As a result thereof, some registered voters of that precinct failed to cast their votes. Said incident was duly reported on the Minutes of Voting and Counting of Votes.[8]

Accused-appellant TINGCHUY admitted that he removed one of the two lists of voters posted at the door of voting Precinct Nos. 55A and 55A-1, but alleged that he did it with the conformity of Arsenia Macatangay, the Poll Chairman. He denied that he crumpled the list of voters and alleged that the list he handed to Arsenia Macatangay was clean and not crumpled.

Assailed Decision of the RTC

On April 16, 2004, the RTC of Batangas City, Branch 7, rendered the assailed Joint Decision[9] in Criminal Case Nos. 9165-9166, acquitting accused-appellant TINGCHUY of the first charge which is “disorderly acts” which is allegedly a violation of Section 261 (bb) (4), but convicting him of the second charge which is “crumpling” the list of voters, which is allegedly a violation of Section 261 (z) (12) of the Omnibus Election Code, the dispositive portion of which Joint Decision provides as follows:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered ACQUITTING the accused of the crime defined and penalized under Section 261 (bb) (4) of the Omnibus Election Code.

However, the prosecution having established the guilt of the accused beyond reasonable doubt, he is found GUILTY of violating Section 261 (z) (12) and sentences him to suffer the straight penalty of one (1) year. In addition, he shall suffer disqualification to hold public office and deprivation of the right of suffrage.

The costs are assessed against the accused.

SO ORDERED.”

Accused-appellant TINGCHUY filed a motion for reconsideration[10] on June 17, 2004, which was denied by the

trial court in its Order[11] dated July 28, 2004.

Hence, accused-appellant TINGCHUY filed a notice of appeal[12] on August 5, 2004, which was given due course by the trial court in its Order[13] dated August 6, 2004.

Assignment of Error

In his Brief,[14] accused-appellant TINGCHUY assigned this lone error:

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THAT THE ACT OF THE ACCUSED IN REMOVING ONE OF THE TWO LISTS OF NEW VOTERS FROM THE DOOR OF THE PRECINCT IS PUNISHABLE UNDER SECTION 261 (Z) (12) OF THE OMNIBUS ELECTION CODE.

The Ruling of this Court

Appeal is meritorious.

The trial court must be consistent in its rulings on the two Informations before it.

The trial court cannot acquit the accused of one charge for “disorderly” acts in the precinct during election day and convict the same accused in another charge, for the same incident and election day, for being destructive in having “destroyed” the list of voters through “crumpling” of that list of voters. By any language, “destroying” is a “disorderly act”. Accused has already been acquitted of “disorderly acts” in the same incident and in the same election day.

It was not duly proven beyond reasonable doubt that accused-appellant TINGCHUY deliberately “destroyed” the List of Voters posted at the door of the precinct. The election offense under Section 261 (z) (12), Article XXII of the Omnibus Election Code expressly penalizes one who “destroys, substitutes or takes away from the possession of those having legal custody” election forms or documents or ballot boxes and the mere “removal (of one list of two lists of voters) from the door” does not constitute “destruction”. Since accused was already acquitted in the first charge of “disorderly acts”, it would be incompatible or inconsistent, or downright contradictory, for the same trial court to still convict accused in the second charge of the same “disorderly act” of “destroying” the list of voters through accused’s “crumpling” the list of voters.

Besides, the argument becomes too petty because it is to be expected that the list of voters on voting day, would be crumpled ... nay, very crumpled, because hundreds of voters have to look for names in that list, and these voters have to turn the pages while the list is hanging on the door, many times, amidst jostling and even three or four rushing together through the pages, in a frenzied manner to beat not only the heat of the day but also the wait in the long lines for that list of voters. In this case at bench, the worst that the accused did was “remove” the list of voters from the door and bring it to the election officials present, but that itself is not a crime or offense. Accused did not take away the list of voters from the election officials, because the election officials even testified that accused-appellant actually “handed” the list to them while complaining and pointing out to the election officials present the mistakes in the list, which too is not a crime or offense. How else could he point out the discrepancies other than bring the list to the election officials. Accused-appellant did not “take away” the list of voters from the election officials but instead “handed it” to them after getting it from the door and these election officials could have easily hang up the list of voters again at the door if they so wished. What is persuasive is that the trial court acquitted the accused of the first charge: “disorderly manner as to interrupt or disrupt the work or proceedings to the end of preventing said body from performing its functions, either partly or totally”. If We were to affirm the conviction in the second charge, that would be contradictory to accused’s having been found innocent of disorderly conduct in the first charge where he was acquitted. The trial court could not conclude in the second charge that accused “destroyed” the list of voters because his removal could not be interpreted as

“destroying” or “crumpling” which actions are “disorderly actions” and accused had already been acquitted of any disorderly acts.

Section 261 (z) (12) of Article XXII of the Omnibus Election Code provides as follows:

“Section 261. Prohibited Acts. ? The following shall be guilty of an election offense:

(z) On voting:

(12) Any person who, without legal authority, destroys, substitutes or takes away from the possession of those having legal custody thereof, or from the place where they are legally deposited, any election form or document or ballot box which contains official ballots or other documents used in the election.”

It is only natural to expect that the List of Voters would be crumpled because many people look through it for their names as early as six o’ clock in the morning for the opening at seven o’clock because the list of voters is usually posted early in the morning in most precincts and the list is usually stapled to the door and hundreds of names appear on such list. The list of voters, which is a document referred to in Section 261 (z) (12), Article XXII of the Omnibus Election Code, was not destroyed or taken away by accused-appellant. As a matter of course, the list of voters is to be expected to be crumpled and even torn. The trial court, to be consistent, if it acquits accused of “disorderly acts”, it cannot turn around and convict the accused for the same incident for another variety of “disorderly acts” such as “crumpling” of the voters list.

The Fallo

WHEREFORE, premises considered, the April 16, 2004 Joint Decision of the Regional Trial Court of Batangas City, Branch 7, in Criminal Case Nos. 9165-9166, is hereby REVERSED and SET ASIDE and accused-appellant Ruben M. Tingchuy is hereby ACQUITTED of the charge of having violated Section 261 (z) (12), Article XXII of the Omnibus Election Code.

SO ORDERED.

Reyes, (Chairman) and De Guia-Salvador, JJ., concur.

[1] Original Records, p. 623.

[2] Original Records of Criminal Case No. 9165, p. 1.

[3] “Any person who, in the presence or within the hearing of any board of election inspectors or board of canvassers during any of its meetings, conducts himself in such a disorderly manner as to interrupt or disrupt the work or proceedings to the end of preventing said body from performing its functions, either partly or totally.”

[4] Original Records of Criminal Case No. 9166, p. 1.

[5] “Any person who, without legal authority, destroys, substitutes or takes away from the possession of those having legal custody thereof, or from the place where they are legally deposited, any election form or document or ballot box which contains official ballots or other documents used in the election.”

[6] Original Records, p. 54.

[7] Exhibits “C,” “C-1,” “C-2,” “C-3” and “C-4.”

[8] Exhibits “A” and “4.”

[9] Original Records, p. 623.

[10] Original Records, p. 643.

[11] Original Records, p. 650.

[12] Original Records of Criminal Case No. 9166, p. 51.

[13] Original Records of Criminal Case No. 9166, p. 52.

[14] Rollo, p. 66.

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