

WILLIAM P. ONG, PETITIONER, VS. COMMISSION ON ELECTIONS AND ISAGANI B. RIZON, RESPONDENTS.

G.R. No. 144197. December 13, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case before us is a petition for certiorari and prohibition with preliminary injunction, temporary restraining order or status quo ante order^[1] assailing the resolution of the Commission on Elections (Comelec) en banc promulgated on August 15, 2000, reversing the decision of the Regional Trial Court, Lanao del Norte,^[2] declaring protestee (herein petitioner) as the duly elected mayor of the municipality of Baroy, Lanao del Norte.^[3]

The facts are as follows:

Petitioner William P. Ong and respondent Isagani B. Rizon were candidates for the position of mayor of the municipality of Baroy, Lanao del Norte during the May 11, 1998 local elections. On May 13, 1998, the municipal board of canvassers proclaimed William P. Ong as the winner with a margin of fifty-one (51) votes, as follows:

WILLIAM P. ONG - 4,472 votes

ISAGANI B. RIZON - 4,421 votes

On May 22, 1998, respondent filed with the Regional Trial Court, Lanao del Norte an election protest^[4] contesting petitioner's votes in five (5) clustered precincts.^[5] Only the ballot boxes for two (2) precincts, namely: Precincts 8A and 28A/28A1 were opened since respondent waived the revision of the ballots in the other precincts.

On March 25, 1999, the trial court rendered a decision annulling forty-five (45) votes for petitioner while invalidating two (2) votes for respondent. Petitioner's lead was reduced to eight (8) votes over that of respondent, to wit:

WILLIAM P. ONG - 4,427 votes

ISAGANI B. RIZON - 4,419 votes^[6]

In time, respondent appealed the trial court's decision to the Comelec.^[7] On February 1, 2000, the Comelec, Second Division^[8], promulgated a resolution declaring that the trial court committed serious reversible errors in its appreciation of the contested ballots and invalidated sixty-three (63) votes for petitioner and eight (8) votes for respondent. The final result of its examination of the ballots showed that respondent led by a margin of four (4) votes, as follows:

WILLIAM P. ONG - 4,409 votes

ISAGANI B. RIZON - 4,413 votes^[9]

On February 7, 2000, petitioner moved for reconsideration of the above resolution.^[10]

On August 15, 2000, the Comelec en banc^[11] promulgated a resolution affirming the Second Division's resolution but reduced by one (1) vote the lead of respondent over petitioner. The final result showed that:

WILLIAM P. ONG - 4,411 votes

ISAGANI B. RIZON - 4,414 votes^[12]

Hence, this petition.^[13]

Petitioner contends that the Comelec en banc resolution, aside from being patently illegal, was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. On the whole, the petition disputed the sixty one (61) invalidated ballots of petitioner and seven (7) ballots of respondent.

A thorough evaluation and visual examination of the contested ballots reveal the following findings:

In Exhibits "A", "C", "N" and "OO" of Precinct 8A, slot No. 1 for senators contained the name "NIKKI" and all the other spaces for senators were left blank. The name "NIKKI" was written in print and the rest were written in script.

In the same manner, in Exhibit "C" and "II", the name "NORMAN" was written on slot No. 1 for senators. In Exhibit "UU" of Precinct 28A/28A1 contained the name "SINA" was written on the slot No. 1 for senators. In Exhibit "B", the vote for Ong was in bold letters while the rests were written in different strokes.

Comelec invalidated all the above described ballots for being marked and written by two persons.

We find that Comelec grievously erred ousting itself of jurisdiction for grave abuse of discretion in invalidating the ballots, including the votes for Ong.

The law is clear:

"Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, comma, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes or strains, shall not invalidate the ballot."^[14]

The rule is in favor of the validity of the ballot, not otherwise. The term "unless" imports an exception rather than the general rule. This was enunciated in *Tajanlangit vs. Cazenaz*,^[15] where we ruled that:

"X x x. The use of two kinds of writing appearing in this ballot is a good example of the exception provided for in paragraph 18, section 149 of the Revised Election Code, which provides that unless it should clearly appear that it has been deliberately put by the voter to serve as identification mark, the use of two or more kinds of writing shall be considered innocent and shall not invalidate the ballot." (Underlining ours)

The printed name "NIKKI" does not show any intention on the part of the voters to identify or distinguish themselves. Therefore, the ballots are not considered marked. The name "NIKKI" only showed that it was the voters' intention to emphasize and stress their adulation for a senator with the name "NIKKI", rather than to identify themselves. The votes are stray for the senatorial candidates but will not invalidate the entire ballot.

In the same manner, the appearance of print and script writings in a single ballot does not necessarily imply that two persons wrote the ballot. The strokes of print and script handwriting would naturally differ but would not automatically mean that two persons prepared the same. A visual examination of the ballots belies the claim that these ballots were prepared by two persons. In the absence of any deliberate intention to put an identification mark, the ballots must not be rejected. We held that:

"Ballot Exhibit N.—This ballot was rejected by the Court of Appeals as marked because the names of the candidates from the second space for members of the provincial board down to the 7[th] place for councilors were written in capital letters while those of other candidates were written in small letters, the court concluding that the use of two forms of writing can only mean an intent to identify the voter. We disagree with this conclusion. Under Section 149, paragraph 18, of the Revised Election Code, the use of two or more kinds of writing cannot have the effect of invalidating the ballot unless it clearly appears that they had been deliberately put by the voter to serve as identification mark. Here such intent does not appear. The case in point in Hilao vs. Bernardo, G. R. No. L-7704, December 14, 1954, wherein it was held that the use of ordinary and printed forms of writing in a ballot is but a mere variation which does not invalidate the ballot. This ballot should, therefore, be counted for Ferrer."[16]

In Exhibits "B", "P", "Z", "JJ" and "KK" of Precinct 8A, "Big J" was written before the names of senatorial candidates Legarda, Cayetano, Barbers and before the name of William Ong in the space for mayor.

In Exhibits "M", "R", "T", "X", "AA" and "EE" of Precinct 8A, letters "FPJ" were written.

In Exhibits "JJJ" and "SSS" of Precinct 28A/28A1, the letters "RJ" were written on the first slot for senators.

In Exhibit "TTT" of Precinct 28A/28A1, the word "SENATORS" was written on the first slot for senators.

In Exhibit "WWWW" of Precinct 28A/28A1, the name "KRIS" was written on the senatorial slot.

The above ballots must be appreciated in favor of Ong. There is no showing that the words/letters/names written therein have been intentionally placed to identify the voters. Notice that these markings are appellations or nicknames of famous showbiz personalities who might have been mistaken as candidates. At most, these may be considered as stray votes for the position where they were written, as provided in Sec. 211 (19), Omnibus Election Code, to wit:

"19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot."

The primordial principle in the appreciation of the ballots is to respect, not to frustrate the will of the electorate.

With regard to Exhibits "D" to "L", "O", "Q", "S", "Y", "U", "V", "W", "BB", "CC", "DD", "GG", "HH", "II", "LL", "MM" and "NN" of Precinct 8A and Exhibits "A", "E" to "I", "L", "N", "O", "EEEE", "P", "Z", "DD", "KK", "LL", "QQ", "VV", "YY", "AAA", "BBB", "EEE", "HHH", "III", "KKK", "LLL", "QQQ", "WWW", "BBBB", "DDDD", "GGGG", "HHHH", "KKKK", "MMMM", "NNNN", "RRRR" and "UUUU" of Precinct 28A/28A1 the ballots have no defect and are hereby declared valid. A close examination of the ballots reveals that the ballots are clean and valid in favor of candidate Ong.

Findings of the Comelec in Exhibits "FF" of Precinct 8A and Exhibits "D", "GG", "HH", "III", "J", "XXX", "K", "U", "FFF", "M", "W", "AA", "AAAA", "CC", "MM", "RR", "NNN", "EE", "TT", "FF" "JJ", "SSSS", "NN", "SS", "ZZ", "PPPP", "CCC", "DDD", "PPP", "UUU", "CCCC", "XXXX", "YYYY", "QQQQ" and "VVVV" of Precinct 28A/28A1 are correct and the ballots are invalidated for being marked.

There are in the above ballots distinct initials and words such as "DLR", "DOLLIN", "DOLLINS", "GINA", "EVA", "SOSANG TORIS", "SABANG BULAC", "CORY", "GREECE", "GRACES", "LOS", "LUZ", "BONG", "ELIN", "ROSE", "ALONG RARO", "BONOO", "ALONG" "PONBI", "ROVEN GATA", "NORMAN", "RIC", "VIA", "AMEN", "NANIG", "SABAS", "MIMIG" and "LOLOY TORRES" written on spaces for different positions. These writings can only be construed as an intention to mark and identify the ballots since these words were repeatedly written and in other instances, two or three of these words were written on a single ballot.[17]

These words are impertinent, irrelevant, unnecessary and clearly show the voter's purpose to identify the ballots or voters. As held in *Gadon vs. Gadon*[18], the unexplained presence of prominent letters and words written with remarkably good hand marked the ballots and must be considered invalid.

Comelec also correctly ruled that Exhibits "Q", "GGG", "OO", "PP" and "WW" of Precinct 28A, 28A1 are valid votes for Ong. "LIM", "APEC" and "DAYO" are names of candidates which were written on spaces where they should not be written as they were not candidates for said position. For instance, "APEC" is a party list candidate but was written on the space intended for senatorial candidates. As such, the same shall be considered as stray vote but shall not invalidate the whole ballot.

Section 211 (19) of the Omnibus Election Code provides that:

"19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot." (Underlining supplied)

Thus, the finding of the Comelec that these ballots are valid for Ong is affirmed.

In the same manner, Exhibits "R", "S", "T", "V" and "X" of Precinct 28A, 28A1 were correctly held to be valid votes for Ong under the Neighborhood Rule since the space for mayor remained unaccomplished or not filled up.

However, the Court is constrained to reverse the Comelec finding that Exhibits "Y" and "XX" of Precinct 28A, 28A1 were valid for Ong. Considering that there was no candidate for senator with the name "PACETE" or "PACITE", such writings served to identify the ballots. The ballots are, therefore, invalid for Ong.

In Exhibit "BB" of Precinct 28A, 28A1, the term "None that I know" written on the space for party list does not render the ballot marked. The term simply implies that the voter did not know any candidate or did not wish to vote for any candidate to the position. Thus, the Comelec correctly ruled that the ballot is valid for Ong.

Exhibits "MMM" and "OOOO" of Precinct 28A, 28A1 wherein the words "ANG TINGOG NG BARANGAY" and "PARE KO", respectively, were written, are valid. The phrases were mere appellations of affection and friendship that do not invalidate the whole ballot.

Exhibit "OOO" of Precinct 28A, 28A1 where the names of the candidates for councilors were repeated in the first four lines for Senators do not render the ballot marked. The Comelec was correct in upholding the validity of the ballot since it was obviously shown by the penmanship that the voter was unlettered and that there was no intention to identify the ballot.

Under the rule of IDEM SONANS, Exhibits "RRR", "TTTT" and "VVV" of Precinct 28A, 28A1 may not be invalidated. "LORNA" and "RECADO" sound similar to the names of senatorial candidates such as Loren Legarda and Ricardo Gloria.[19]

The erasures in Exhibits "YYY" and "JJJJ" of Precinct 28A, 28A1 would not invalidate the ballot absent any showing that another person wrote the name of Ong after the erasure was made. In fact, the rules on appreciation of ballots provide that:

"When in a space in the ballot there appears a name of candidate that is erased and another clearly written, the vote is valid for the latter."[20]

Incorrect spelling of a candidate's name does not invalidate the ballot. The Comelec was not correct when it ruled that Exhibit "ZZZ" of Precinct 28A, 28A1 was invalid considering that the voter "appeared to be literate." Even the most literate person is bound to commit a mistake in spelling.

Exhibit "FFFF" of Precinct 28A, 28A1 where "X-MEN" was written on the space for party-list representative would not invalidate the whole ballot. The word "X-MEN" invalidates the vote for the party list representative but the ballot itself is valid. Hence, the vote for Ong on the ballot must be credited in his favor.

The Comelec found no defect in Exhibits "1" to "11", "13" to "19", "21", "22", "23", "25", "26", "27", "29" and "31" to "37" of Precinct 8A and Exhibits "1", "2", "4" to "11", "13" to "26", "28" to "31" and "33" to "40" of Precinct 28A, 28A1. A careful examination of the ballots confirms the finding that they have no defects. Therefore, the finding is hereby affirmed and the ballots are declared valid for Rizon.

Contrary to the finding that Exhibits "12", "24" and "28" of Precinct 8A were marked with the appearance of the letters "D", "L", "R", a physical examination of the same belies the finding. The same do not contain the letters "D", "L", "R" and are without defect and should be adjudicated in favor of Rizon.

The same is true with Exhibit "20" of Precinct 8A. There is no sticker "VFP" pasted on the ballot. The same should be credited in favor of candidate Rizon.

Exhibit "30" of Precinct 8A, where the name "LITO" in big bold letters occupies all the spaces for councilor should be invalidated inasmuch as there is evident intent to mark the ballot.

"Exhibit "3" of Precinct 28A, 28A1 where "TIRBOG" is written on the space for governor is not a marked ballot. Absent any showing that the word/name "TIRBOG" meant to identify the ballot or the voter, the ballot remains valid. The same can be said for Exhibits "27" and "32" of Precinct 28A, 28A1 where numbers were written after the names of some candidates and the word "CRIS" appears on the first slot for senators, respectively. The voter obviously did not have the intention to mark the ballot. These ballots should be counted in favor of candidate Rizon.

Exhibit "12" of Precinct 28A, 28A1 with initial "DLR" on it is invalid. The initial "DLR" serves no other purpose than to mark the ballot as it is unnecessary, impertinent and irrelevant. This is different from Exhibits "12", "24" and "28" of P-8A.

Hereunder is a summary of the findings.

Prec.

8A

SUMMARY OF FINDINGS

ONG

1.

Exhibits "A", "C", "N" and "OO" (4 ballots)

Writings partly in script and in print do not invalidate the ballot. Printed name "NIKKI" was used to emphasize the voters' adulation for a senator with that name. VALID FOR ONG

4

2.

Exhibits "B", "P", "Z", "JJ" and "KK" (5 ballots)

"Big J" appearing before the names of senatorial candidates Legarda, Cayetano and Barbers and before the name of Ong does not invalidate the ballot. It was not used to identify the voter. VALID FOR ONG

5

3.

Exhibits "D", "E", "F", "G", "H", "I", "J", "K" and "L" (9 ballots)

Comelec finding that the ballots have no defect and thus valid for Ong is affirmed. VALID FOR ONG

9[*]

4.

Exhibits "M", "R", "T", "X", "AA" and "EE" (6 ballots)

Ballots which contain the three letters F.P.J. are not marked ballots. VALID FOR ONG

6

5.

Exhibits "O" and "Q" (2 ballots)

Comelec finding that the ballots have no defect and thus valid for Ong is affirmed. VALID FOR ONG

(2)[*]

6.

Exhibits "S" and "Y" (2 ballots)

Comelec finding that the ballots have no Defect and thus valid for Ong is affirmed. VALID FOR ONG

(2)[*]

7.

Exhibits "U", "V", "W", "BB", "CC" and "DD" (6 ballots)

Comelec finding that the ballots have no defect and thus valid for Ong is affirmed. VALID FOR ONG

(6)[*]

8.

Exhibit "FF"(1 ballot)

Comelec finding that the ballot was defective and thus invalid for Ong is affirmed. INVALID FOR ONG

(-1)[*]

9.

Exhibit "GG", "HH", "II", "LL", "MM" And "NN"

(6 ballots)

Comelec finding that the ballots have no defect and thus valid for Ong is affirmed. VALID FOR ONG

(6)[*]

Prec.

28A

28A-1

SUMMARY OF FINDINGS

ONG

1.

Exhibit "A"

(1 ballot)

Comelec finding that the ballot has no defect and thus valid for Ong is affirmed. VALID FOR ONG

(1)*

2.

Exhibit "B"

(1 ballot)The ballot is not a marked ballot and not written by two persons. VALID FOR ONG

1

3.

Exhibits "C" and "II"(2 ballots)

Comelec finding that the ballots were marked ballots and written by two persons is affirmed. INVALID FOR ONG

(-2)[*]

4.

Exhibits "D", "GG", "HH" and "III"

(4 ballots)

Words "DOLLIN" and "DOLLINS" written on the first senatorial slot are irrelevant, unnecessary and impertinent words meant to identify the voters. Comelec finding that the same were invalid for Ong is affirmed. INVALID FOR ONG

(-4)

5.

Exhibits "E", "F", "G", "H" and "I"

(5 ballots)

Comelec finding that the ballots have no defect and thus valid for Ong is affirmed. VALID FOR ONG

(5)[*]

6.

Exhibits "J" and "XXX"

(2 ballots)

The word "GINA" written on the senatorial slot is unnecessary, irrelevant and impertinent. Comelec finding is affirmed. INVALID FOR ONG

(-2)[*]

7.

Exhibits "K", "U" and "FF"

(3 ballots)

The words "EVA". "SOSANG TORIS" and "SABANG BULAC" served to identify the voter. Comelec finding that the ballots were marked is affirmed. INVALID FOR ONG

(-3)[*]

8.

Exhibits "L", "N", "O" and "EEEE"

(4 ballots)

Comelec finding that the ballots have no defects and thus valid for Ong is affirmed. VALID FOR ONG

(4)[*]

9.

Exhibits "M" and "W"

(2 ballots)

Comelec finding that the ballots have defects and thus invalid for Ong is affirmed. INVALID FOR ONG

(-2)[*]

10.

Exhibit "P"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG.

(1)[*]

11.

Exhibits "Q" and "GGG"

(2 ballots)

Comelec finding that the word "LIM" written on the senatorial slot should be treated merely as a stray vote is affirmed. VALID FOR ONG

(2)[*]

12.

Exhibits "R", "S", "T", "V" and "X"

(5 ballots)

Applying the Neighborhood Rule, Comelec finding that the ballots were without defects is affirmed. VALID FOR ONG

(5)[*]

13.

Exhibits "Y" and "XX"(2 ballots)The words

"PACITE" and "PACETE" written on the first senatorial slot are markings that invalidated the ballot. Comelec finding is reversed. INVALID FOR ONG

-2

14.

Exhibit "Z"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

15.

Exhibits "AA" and "AAAA"

(2 ballots)

Comelec finding that the ballots were defective is affirmed. INVALID FOR ONG

(-2)[*]

16.

Exhibit "BB"

(1 ballot)

Comelec finding that the words "None that I know" on the space for party list did not mark the ballot is affirmed.

VALID FOR ONG

(1)[*]

17.

Exhibits "CC", "MM", "RR" and "NNN"

(4 ballots)

The words "LOS" and "LUZ" written on different slots marked the ballots. Comelec finding that the ballots were marked is affirmed. INVALID FOR ONG

(-4)[*]

18.

Exhibit "DD"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

19.

Exhibits "EE" and "TT"

(2 ballots) The name "BONG" written on the no. 1 space for senators served to identify the voters. Comelec finding that the ballots were marked is affirmed. INVALID FOR ONG

(-2)[*]

20.

Exhibit "FF"

(1 ballot)

The words "ELIN" and two names of vice-presidential candidates written on the senatorial slots marked the ballots. Comelec finding that the ballots were marked is affirmed. INVALID FOR ONG

(-2)[*]

21.

Exhibits "KK" and "LL"

(2 ballots)

Comelec finding that the ballots have no defect is affirmed. VALID FOR ONG

(2)[*]

22.

Exhibits "JJ" and "SSSS"

(2 ballots)

The name "ROSE" on the first line intended for senators marked the ballots. Comelec finding is affirmed. INVALID FOR ONG

(-2)[*]

24.

Exhibit "NN"

(1 ballot)

The names of non-candidates written on the ballot marked the ballot. Comelec finding is affirmed. INVALID FOR ONG

(-1)[*]

25.

Exhibits "OO" and "PP"

(2 ballots)

The word "APEC" is a stray vote but does not invalidate the vote for Ong. Comelec finding is affirmed. VALID FOR ONG

(2)[*]

26.

Exhibit "QQ"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

27.

Exhibit "SS"

(1 ballot)

Comelec finding that the ballot is defective because of the name "NORMAN" which was written twice on the same slot is affirmed. INVALID FOR ONG

(-1)[*]

28.

Exhibit "UU"

(1 ballot)

The ballot is not marked and not written by two persons. VALID FOR ONG

1

29.

Exhibit "VV"(1 ballot)Comelec finding that the

ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

30.

Exhibit "WW"

(1 ballot)

Comelec finding that the name "DAYO" is a stray vote is affirmed. VALID FOR ONG

(1)[*]

31.

Exhibit "YY"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

32.

Exhibits "ZZ" and "PPPP"

(2 ballots)

Comelec finding that the name "RIC" written after the name William Ong and after the name of candidate Ruben Gayta marked the ballot is affirmed. INVALID FOR ONG

(-2)[*]

33.

Exhibits "AAA" AND "BBB"

(2 ballots)

Comelec finding that the ballots have no defect is affirmed. VALID FOR ONG

(2)[*]

34.

Exhibits "CCC", "DDD" and "PPP"

(3 ballots)

The word or name "VIA" is irrelevant, unnecessary and impertinent. Comelec finding that the ballots were marked is affirmed. INVALID FOR ONG

(-3)[*]

35.

Exhibits "EEE", "HHH" and "III"

(3 ballots)

Comelec finding that the ballots have no defect is affirmed. VALID FOR ONG

(3)[*]

36.

Exhibits "JJJ" and "SSS"

(2 ballots)

The letters "RJ" on the first slot for senators did not render the ballots as marked ballots. Comelec finding is affirmed. VALID FOR ONG

(2)[*]

37.

Exhibits "KKK" and "LLL"

(2 ballots)

Comelec finding that the ballots are not defective is affirmed. VALID FOR ONG

(2)[*]

38.

Exhibit "MMM"

(1 ballot)

The statement "ANG TINGOG NG BARANGAY" written below the name of Ong is merely an appellation of affection. Comelec findings is affirmed. VALID FOR ONG

(1)[*]

39.

Exhibit "OOO"

(1 ballot)

The repetition of the name of a candidate for councilor in the first four lines for senators does not invalidate the ballot. Comelec findings is affirmed. VALID FOR ONG

(1)[*]

40.

Exhibit "QQQ"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

41.

Exhibits "RRR" and "TTTT"

(2 ballots)

Under the rule of IDEM SONANS, the name "LORNA" written on the senatorial slot does not invalidate the ballots. Comelec finding is affirmed. VALID FOR ONG

(2)[*]

42.

Exhibit "TTT"

(1 ballot)

The word "SENATORS" written on the first slot of senator does not mark the ballot. VALID FOR ONG

(1)

43.

Exhibit "UUU"

(1 ballot)

The words or names "NOEL", "ALONG RARO", "ENCARNACION JUP", "NARDO HOYOHOY" AND "LANE LARGO" are impertinent, unnecessary and irrelevant. Comelec finding is affirmed. INVALID FOR ONG

(-1)[*]

44.

Exhibit "VVV"

(1 ballot)

Comelec finding that "RECADO" under the rule IDEM SONANS does not invalidate the vote is affirmed. VALID FOR ONG

(1)[*]

45.

Exhibit "WWW"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)*

46.

Exhibit "YYY"

(1 ballot)

There is no clear evidence that another person wrote the name of Ong. Erasures do not invalidate the ballot. VALID FOR ONG

1

47.

Exhibit "ZZZ"

(1 ballot)

The name "VECINTE" was merely a wrong spelling which does not invalidate the ballot. VALID FOR ONG

1

48.

Exhibit "BBBB"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

49.

Exhibits "CCCC", "XXXX" and "YYYY"

(3 ballots)

The writing "AMEN" on the first slot for senators is impertinent, irrelevant and unnecessary. Comelec finding is affirmed. INVALID FOR ONG

(-3)[*]

50.

Exhibit "DDDD"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

51.

Exhibit "FFFF"

(1 ballot)

"X-MEN" written on the space for party list representative does not invalidate the ballot. VALID FOR ONG

1

52.

Exhibits "GGGG" and "HHHH"

(2 ballots)

Comelec finding that the ballots have no defect is affirmed. VALID FOR ONG

(2)[*]

53.

Exhibit "JJJJ"

(1 ballot)

Comelec finding that erasures must not be taken as identification is affirmed. VALID FOR ONG

(1)[*]

54.

Exhibit "KKKK"

(1 ballot)

Comelec finding that the ballot has no defect is affirmed. VALID FOR ONG

(1)[*]

55.

Exhibit "LLLL"

(1 ballot)

Comelec finding that the ballot was written by two persons is affirmed. INVALID FOR ONG

(-1)[*]

56.

Exhibits "MMMM" and "NNNN"

(2 ballots)

Comelec finding that the ballots have no defect is affirmed. VALID FOR ONG

(2)[*]

57.

Exhibit "OOOO"

(1 ballot)

Comelec finding that the words `PARE KO" are words of appellation is affirmed. VALID FOR ONG

(1)[*]

58.

Exhibit "QQQQ"

(1 ballot)

Comelec finding that the words or names "NANIG", "SABAS" and "MIMIG" which are non-candidates marked the ballot is affirmed. INVALID FOR ONG

(-1)*

59.

Exhibits "RRRR" and "UUUU"

(2 ballots)

Comelec finding that the ballots have no defect is affirmed. VALID FOR ONG

(2)[*]

60.

Exhibit "VVVV"

(1 ballot)

Comelec finding that the names "ALONG" and "LOLOY TORRES" who were non-candidates marked the ballot is affirmed. INVALID FOR ONG

(-1)[*]

61.

Exhibit "WWWW"

(1 ballot)

The name "KRIS" in the senatorial does not mark the ballot. VALID FOR ONG

1

Number of votes to be credited to ONG =

22

Number of votes to be deducted from ONG =

2

Prec.

8A

SUMMARY OF FINDINGS

RIZON

1.

Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10" and "11"

(11 ballots)

Comelec finding that the ballots have no defect and thus valid for Rizon is affirmed. VALID FOR RIZON

(11)[*]

2.

Exhibits "12", "24" and "28"

(3 ballots)

The ballots do not contain the letters DLR. VALID FOR RIZON

3

3.

Exhibits "13", "14", "15", "16", "17", "18" and "19"

(7 ballots)

Comelec finding that the ballots have no defect and thus valid for Rizon is affirmed. VALID FOR RIZON

(7)[*]

4.

Exhibit "20"

(1 ballot)

There is no marking on the ballot. VALID FOR RIZON

1

5.

Exhibits "21", "22", "23", "25", "26", "27", "29", "31", "32", "33", "34", "35", "36" and "37"

(14 ballots)

Comelec findings that the ballots have no defect and thus valid is affirmed. VALID FOR RIZON

(14)[*]

6.

Exhibit "30"

(1 ballot)

The name "LITO" written in big bold letters occupying all the spaces for councilor marked the ballot. INVALID FOR RIZON

-1

Prec.28

A28A-1

SUMMARY OF FINDINGS**RIZON**

1.

Exhibits "1" and "2"

(2 ballots)

Comelec finding that the ballots have no defect and thus valid is affirmed. VALID FOR RIZON

(2)[*]

2.

Exhibit "3"

(1 ballot)

The ballot has no marking. VALID FOR RIZON

-1

3.

Exhibits "4" to "11"

(8 ballots)

Comelec finding that the ballots have no defect and thus valid is affirmed. VALID FOR RIZON

(11)[*]

4.

Exhibit "12"

(1 ballot)

The ballot contains initials "DLR." Comelec finding that the ballot has no defect is reversed. INVALID FOR RIZON

-1

5.

Exhibit "12" to "26"

(15 ballots)

Comelec finding that the ballots have no Defect is affirmed. VALID FOR RIZON

(14)[*]

6.

Exhibit "27"

(1 ballot)

There are no markings found in the ballot. VALID FOR RIZON

1

7.

Exhibits "28" to "31"

(4 ballots)

Comelec finding that the ballots have no defect and thus valid for Rizon is affirmed. VALID FOR RIZON

(4)[*]

8.

Exhibit "32"

(1 ballot)

There are no markings in the ballot. No name "Cris" appearing in the ballot. VALID FOR RIZON

1

9.

Exhibits "33" to "40"

(8 ballots)

Comelec finding that the ballots have no defect and thus valid for Rizon is affirmed. VALID FOR RIZON

(8)[*]

Number of votes to be credited to RIZON =

7

Number of votes to be deducted from RIZON =

2

From a total of 4,411 votes of Ong per Comelec findings, a total of another twenty (20) shall be added²³ as per above findings which gives him a total of 4,431 votes.

From a total of 4,414 votes of Rizon per Comelec findings, a total of five (5) votes shall be added²⁴ as per above findings which gives him a total of 4,419.

Consequently, candidate William P. Ong won by a margin of twelve (12) votes.

WHEREFORE, the Court hereby REVERSES and SETS ASIDE the Resolution dated August 15, 2000 of the

Commission on Elections en banc declaring respondent Isagani B. Rizon as the winner in the May 11, 1998 elections.

In lieu thereof, Court hereby PROCLAIMS petitioner William P. Ong as the duly elected mayor of the municipality of Baroy, Lanao del Norte in the May 11, 1998 elections, with a margin of twelve (12) votes.

The status quo order issued on August 29, 2000, is made permanent.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Under Rule 64 of the 1997 Rules of Civil Procedure, as amended.

[2] In Election Case No. 07-431.

[3] Petition, Annex "J", Rollo, pp. 165-208.

[4] Docketed as Election Case No. 07-431.

[5] Precincts 8A (Poblacion), 28A/28A1 (Brgy. Pangi), 32A/32A1/33A1 (Brgy. Raw-an Point), 14A/15A (Brgy. Dacu), 20A/20A1 (Brgy. Libertad) and 40A (Brgy. Salong).

[6] Petition, Annex "C", Rollo, pp. 42-58.

[7] Docketed as EAC No. A-12-99.

[8] Composed of Presiding Commissioner Julio F. Desamito, as ponente, Commissioners Japal M. Guiani and Luzviminda G. Tancangco, members.

[9] Petition, Annex "D", Rollo, pp. 59-74.

[10] Petition, Annex "E", Rollo, pp. 75-97.

[11] Composed of Chairman Harriet O. Demetriou, as ponente, Commissioners Julio F. Desamito, Teresita Dy-Liacco Flores, Luzviminda G. Tancangco, Ralph C. Lantion, Rufino S. Javier and Mehol K. Sadain.

[12] Petition, Annex "J", Rollo, pp. 165-208.

[13] Petition filed on August 17, 2000, Rollo, pp. 3-35.

[14] Sec. 211 (22), Art. XVIII, Omnibus Election Code.

[15] 115 Phil. 568 [1962].

[16] Ferrer vs. de Alban, 101 Phil 1018, 1020-1021 [1957].

[17] Delgado vs. Tiu, 105 Phil. 835, 839 [1959].

[18] 9 Phil. 652 [1908].

[19] Section 211 (7), Omnibus Election Code.

[20] Section 211 (9), Ibid.

[21] Twenty two (22) valid ballots less two (2) invalid ballots.

[22] Seven (7) valid ballots less two (2) invalid ballots.

[*] Votes will no longer be included or excluded, as the case may be, in the final computation since the same were already considered in the Comelec total.

[*] To be deducted from the total votes in the Comelec findings.

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