

CORNELIO DELOS REYES, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROMEO H. VASQUEZ, RESPONDENTS.

G.R. NO. 170070. February 28, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the October 25, 2004 Resolution[1] of the Commission on Elections (COMELEC) Second Division and the September 30, 2005 Resolution[2] of the COMELEC En Banc in EAC No. 90-2002.[3]

The facts are as summarized by the COMELEC and the Metropolitan Trial Court (MeTC), Branch 23, Manila.

In the July 15, 2002 Barangay Elections, Cornelio Delos Reyes (Delos Reyes) and Romeo H. Vasquez (Vasquez) vied for the position of Barangay Chairman of Barangay 414, Zone 42, District 4, Manila (Barangay 414). After the canvass of votes, Vasquez was proclaimed duly elected Barangay Chairman of Barangay 414 with 181 votes as against Delos Reyes's 32 votes.[4]

Delos Reyes filed with the MeTC a Petition for Recount[5] of votes in all the precincts, namely Precinct Nos. 1815-A, 1816-A, 1817-A, and 1818-A on the ground that several votes in his favor were read and counted for Vasquez and that the latter employed threat and intimidation against Delos Reyes's watchers in order to perpetrate election irregularities. Vasquez denied these allegations.[6]

Pursuant to a September 6, 2002 Order of the MeTC, revision proceedings were conducted by a Revision Committee (Committee) composed of Delos Reyes and Vasquez as members and the MeTC Branch Clerk of Court as Chair. The Committee observed that two of the three ballot boxes coming from the disputed precincts had padlocks to which none of the three keys provided by the COMELEC District Office of Manila fit. However, other than this observation, the Committee found nothing more remarkable about the outward physical appearance of the ballot boxes and decided to forcibly open the same. Inside were election paraphernalia in good condition, with COMELEC paper seals still intact. A physical recount was conducted, resulting in the following:

Precinct No. Delos Reyes
Vasquez

- a) 1815-A and 1817-A1 44
20
- b) 1816-A and 1818-A 68
30
- c) 1817-A 1 46

113

100 [sic][7]

However, Vasquez contested 106 ballots[8] with votes cast for Delos Reyes while the latter contested 67 ballots[9] containing votes for Vasquez. Their objections were based on the grounds that some ballots were marked while some contained votes written by only one person.[10]

On October 15, 2002, the MeTC issued a Decision, declaring Delos Reyes the winner, thus:

WHEREFORE, premises considered, the court hereby declares Mr. Cornelio Delos Reyes as the elected winner for the position of Barangay Chairman of Barangay 414, Zone 42, District 4, Manila during the election held on July 15, 2002.

SO ORDERED.[11]

The MeTC based its Decision on the result of the physical recount conducted by the Revision Committee where Delos Reyes garnered 113 votes and Vasquez, 100[12] votes. It did not reject any of the contested ballots for it found no evidence to invalidate them.

Vasquez appealed to the COMELEC, raising the following issues:

- Whether or not the Court erred in -

(a) Declaring Delos Reyes as the duly elected candidate for the position of Barangay Chairman [of Barangay] 414, Zone 42, District 4, Manila despite the absence of evidence to substantiate his claim of threats, intimidation and cheating;

(b) Failing to give weight and probative value to the tally sheets; (Annexes "A," "B," and "C") Certificate of Canvass and Proclamation of winning candidates for Punong Barangay (Annex "D") and letter of the Board of Election Tellers to the Court (Annex "F") in the absence of evidence adduced to claim irregularities in the conduct of election;

- Whether or not the court erred in declaring the validity of the votes counted in favor of Delos Reyes considering that -

(a) The two padlocks protecting two different ballot boxes did not fit with the three keys officially submitted by COMELEC District Office of Manila;

(b) The one hundred six (106) ballots were questioned and or contested by Vasquez on the ground that these were written by one and the same person.

- Whether or not it is imperative for the Honorable Commission to conduct a physical counting of the ballots cast to determine the authenticity of the ballots counted in favor of Delos Reyes which was written by one and the same person.[13]

In its October 25, 2004 Resolution being assailed herein, the COMELEC Second Division, upon examination of all the contested ballots, reversed the findings and conclusion of the MeTC as follows:

1) Exhibits "1", "2", "3", "4", "5", "6", "7", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "20", "21", "22", "38", "2-D", "2-E", "2-F", "2-G", "2-H", "2-I", "2-J", "2-K", "2-L", "2-M", "2-N", "2-O", "2-P", "2-Q", "2-R", "2-S", "2-T", "2-U", "2-V" and "2-W" have all been written by one person. These forty-one (41) ballots with votes for Delos Reyes are therefore considered invalid.

1a) Exhibits "8", "25" and "26" have all been written by one person. These three (3) ballots with votes for Delos

Reyes are therefore considered invalid.

2) Exhibit "C" - in the remaining spaces 2 to 7 for the position of Barangay Kagawad, the name "VICENTE DE LEON" has been written in inordinately large block letters. This was evidently done to facilitate identification of the ballot and the voter. Hence, the ballot is considered marked, and invalidates the vote for Vasquez.

3) Exhibits "C-3", "C-4", "C-5", "C-6", "C-7", "C-8", "C-9", "C-10", "C-11", "C-12", "C-13", "C-14", "C-15", "C-16", "C-17", "C-18", "C-19", "C-20", "C-21", "C-22", [and] "C-23", which are ballots with votes for Vasquez, have three (3) consecutive stars affixed after the name of Vasquez. However, a careful examination would show that these distinguishing marks do not appear to have been written by the voter himself. The "three consecutive stars" appearing on the twenty-one (21) ballots all bear similarity in appearance, stroke and ink-color, indicating that these were written by a single hand. It would therefore appear that the distinguishing marks were placed after the voter concerned had already accomplished and deposited the ballot in the ballot box, and were deliberately made for the purpose of invalidating the ballot. A mark placed on a ballot by a person other than the voter himself does not invalidate the ballot (*Juliano v. Court of Appeals*, 20 SCRA 808). Hence, these ballots are considered valid votes for Vasquez.

4) There are no clear and sufficient reasons or evidence to invalidate the remaining contested ballots. Hence, the same are considered valid.

Based on the above findings, a total of forty-four (44) ballots, all with votes for Delos Reyes, have been invalidated. On the other hand, one (1) ballot with a vote for Vasquez has also been invalidated. After accordingly deducting the invalid votes from the original number of recounted votes of the parties, as determine by the court a quo, we have the following results:

Delos Reyes

No. of votes based on the recount

-

113

Less: Votes declared invalid

-

44

Actual No. of Valid Votes Obtained

-

69

Vasquez

No. of votes based on the recount

-

100 [sic]

Less: Votes declared as invalid

- 1

Actual No. of Valid Votes Obtained

-

99 [14]

The above results therefore show protestee-appellant Vasquez the winner over protestant-appellee Delos Reyes with a plurality of thirty (30)[15] votes.[16]

The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the October 15, 2002 Decision of the Metropolitan Trial Court of Manila - Branch 23, in Election Case No. 00[1]406, is REVERSED AND SET ASIDE. The protestee-appellant Romeo H. Vasquez is hereby DECLARED THE WINNER for the position of Barangay Chairman of Barangay 414, Zone 42, District 4, Manila, during the July 15, 2002 Barangay Elections.

SO ORDERED.[17]

Delos Reyes filed a Motion for Reconsideration which the COMELEC En Banc denied in the assailed September 30, 2005 Resolution.[18]

And so, the present Petition questioning the COMELEC Resolutions on the following grounds:

A. The COMELEC gravely abused its discretion amounting to lack and excess of its jurisdiction in sweepingly invalidating forty-five (45)[19] valid ballots cast by the innocent voters for the petitioner, allegedly as written by one person (WBOP) without any valid and legal justification, particularly Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "20", "21", "22", "38", "2-D", "2-E", "2-F", "2-G", "2-H", "2-I", "2-J", "2-K", "2-L", "2-M", "2-N", "2-O", "2-P", "2-Q", "2-R", "2-S", "2-T", "2-U", "2-V" and "2-W"; and Exhibits "8", [20] "25" and "26";

B. The COMELEC gravely erred in finding that the twenty-one (21) invalid ballots, particularly Exhibits "C-3", "C-4", "C-5", "C-6", "C-7", "C-8", "C-9", "C-10", "C-11", "C-12", "C-13", "C-14", "C-15", "C-16", "C-17", "C-18", "C-19", "C-20", "C-21", "C-22", and "C-23", were found to be valid for private respondent despite the very obvious markings of three successive stars written after his name.[21]

Petitioner Delos Reyes filed his Memorandum on October 30, 2006[22] and private respondent Vasquez, on November 22, 2006.[23]

The petition is partly meritorious.

The will of the voters is embodied in the ballots. To ascertain and carry out such will, their ballots must be read and appreciated according to the rule that every ballot is presumed valid unless there is clear and good reason to justify its rejection.[24] On this matter, the findings of the COMELEC, which exercises original and appellate jurisdiction over election protests involving elective officials in the regional, provincial, city, municipal, and barangay levels, are accorded great respect, if not finality by the Court.[25] The documents and evidence upon which the COMELEC relies for its resolution, and the manner it appreciates said documents and evidence in respect of their sufficiency are ordinarily beyond our scrutiny for the latter is an independent Constitutional body of a level higher than statutory administrative bodies.[26]

The COMELEC, however, is not infallible. If it is shown to have issued findings that are not supported by evidence or are contrary to the evidence, it is deemed to have acted capriciously and whimsically. The Court steps

in to correct its grave abuse of discretion.[27] This is one case in point.

In reversing the MeTC and holding that the votes cast in favor of Delos Reyes in the 44 ballots marked as Exhibits "1" to "22", Exhibit "38", Exhibits "2-D" to "2-W", and Exhibits "8", "25", and "26" were invalid for having been written by one person, the COMELEC merely made a general declaration that there were "xxx no marked differences in the style of the handwritings x x x" [28] on all 44 ballots.

COMELEC's reliance on only one aspect of the handwritings on the ballots is tenuous. In *Silverio v. Clamor*,[29] the Court reversed the trial court which had invalidated certain ballots merely on a finding that the writings thereon have the same general appearance and pictorial effect. Speaking through Justice Jose Bengzon, the Court said:

Now the court a quo invalidated the above eleven ballots, as mentioned, upon the principle of general appearance or pictorial effect. Yet, the very authority referred to and quoted by said court stated that said general resemblance is not enough to warrant the conclusion that two writings are by the same hand x x x:

In order to reach the conclusion that two writings are by the same hand there must not only be present class characteristics but also individual characteristics or "dents and scratches" in sufficient quantity to exclude the theory of accidental coincidence; to reach the conclusion that writings are by different hands we may find numerous likenesses in class characteristics but divergences in individual characteristics, or we may find divergences in both, but the divergence must be something more than mere superficial differences. (Osborn's *Questioned Documents*, p. 244) [30]

In the present case, the finding of the COMELEC fell short of the foregoing standard. It saw no differences in the handwritings on the 44 ballots yet it is silent on whether it discerned in the ballots similarities and divergences in the class and individual characteristics of the handwritings as would conclusively establish that these were made by the same hand. There was therefore an incompleteness in COMELEC's appreciation of the ballots that it acted prematurely when it declared said ballots invalid.

Moreover, the COMELEC referred solely to the ballots to resolve the issue of whether they were prepared by one person. Delos Reyes questions this, arguing that to determine whether the ballots were invalid for having been written by one person, it was not sufficient for the COMELEC to have merely relied on the ballots alone; it should have also consulted the Minutes of Voting and Counting in the contested precincts. [31]

Delos Reyes is correct.

It is true that in election contests, where the correctness of the number of votes of each candidate is at issue, the ballots are the best and most conclusive evidence, unless the same cannot be produced, in which case the election returns would be the best evidence. And when the handwritings on the ballots are the subject matter of the election contest, the best evidence would be the ballots themselves as the COMELEC can examine or compare these handwritings even without assistance from handwriting experts.[32]

However, in election contests involving the issue of whether multiple ballots were written by one person, it is not enough for the COMELEC to merely rely on said ballots. Assisted voting authorized under Section 196 of *Batas Pambansa Blg. 881*[33] is a reality which must be recognized and given effect. Thus, in *Torres v. House of Representatives Electoral Tribunal*,[34] the Court affirmed the procedure adopted by and the findings of the House of Representatives Electoral Tribunal on certain ballots which were disputed for having been written by one person. The Court held:

We find no reason to disturb the Tribunal's appreciation of the ballots contested as written by one person; written by two persons; and as marked ballots. We quote pertinent portions of the Tribunal's resolution

addressing these issues, to wit:

- Ballots object to by the parties
- Multiple Ballots Written by One Person

The Tribunal ruled on the validity of "written by one" ballots only when such are objected to, or even if not objected, are plainly null and void. Taken into consideration is the existence of assisted voting where illiterate or physically disabled voters are allowed to vote with the aid of assistors, it being presumed that identically written ballots were prepared by the assistor, one for himself and the other/s for the illiterate or physically disabled voter/s. The presence of assisted voters was determined from the data reflected in the Minutes of Voting. The number was limited to three (3), unless the assistor was a member of the Board of Election Inspectors, in which case the limitation did not apply. Thus, the pairs or groups of ballots which were prepared by one person and which fall within the limits of assisted voting were admitted, provided the handwriting thereon was similar to the signature of the assistor as appearing in the Minutes of Voting. The rest were rejected. Likewise, where the Minutes of Voting shows that there were no registered illiterate/disabled voters in the precinct or where the uniform handwritings on the pair or group of ballots were not similar to that of the assistor indicated whose signature appeared on the Minutes of Voting, all ballots clearly appearing to have been written by only one person were invalidated. In those instances where the Minutes of the Voting was not available, the Computerized Voter's list was used to determine if there were illiterate voters.[35]

x x x x

More important, in *De Guzman v. Commission on Elections*,^[36] the Court overturned the COMELEC which had perfunctorily rejected seven ballots cast in favor of petitioner therein for having been written by one person. In reversing the COMELEC, we held:

As regards the 7 ballots cast in favor of De Guzman which were rejected as written-by-one in Precinct 27A Mabini, the COMELEC should have considered the data reflected in the Minutes of Voting Precinct No. 47A Mabini. It shows the existence of 24 illiterate or physically disabled voters which necessitated voting by assistors pursuant to Section 196 of B.P. Blg. 881 x x x.^[37]

Indeed, even if it is patent on the face of the ballots that these were written by only one person, that fact alone cannot invalidate said ballots for it may very well be that, under the system of assisted voting, the latter was duly authorized to act as an assistor and prepare all said ballots. To hinder disenfranchisement of assisted voters, it is imperative that, in the evaluation of ballots contested on the ground of having been prepared by one person, the COMELEC first verify from the Minutes of Voting or the Computerized Voter's List for the presence of assisted voters in the contested precinct and take this fact into account when it evaluates ballots bearing similar handwritings. Omission of this verification process will render its reading and appreciation of the ballots incomplete.

In the present case, COMELEC's appreciation of the 44 contested ballots was deficient for it referred exclusively to said ballots without consulting the Minutes of Voting or the Computerized Voter's List to verify the presence of assisted voters in the contested precincts.

Thus, COMELEC acted with grave abuse of discretion in overturning the presumption of validity of the 44 ballots and in declaring them invalid based on an incomplete appreciation of said ballots.

However, under the circumstances obtaining in this case, the Court is barred from ruling on the validity of the 44 contested ballots and restoring them in favor of Delos Reyes. Judicious resolution of this issue will entail scrutiny of the ballots and the Minutes of the Voting, or if not available, the Computerized Voter's List, over which the COMELEC has primary jurisdiction - a function the Court cannot pretend to exercise even for the lofty purpose of

determining in the soonest possible time as to who between Delos Reyes and Vasquez was elected to the position of Barangay Chairman of Barangay 414 during the July 15, 2002 Barangay Elections. The original records of the case are not before this Court. This matter should therefore be remanded to the COMELEC for expeditious and complete evaluation of the subject ballots and Minutes of the Voting or Computerized Voter's List, in accordance with the procedure described above, having in mind that Synchronized Barangay and Sangguniang Kabataan Elections[38] will be held on October 29, 2007.

As to the ruling of the COMELEC sustaining the validity of the 21 ballots known as Exhibits "C-3" to "C-23" in favor of Vasquez, the Court affirms the same. It is axiomatic that a ballot should be counted if it is marked afterwards by some person or persons other than the voter himself for such unauthorized changes should not be permitted to destroy the will of said voter.[38]

WHEREFORE, the petition is PARTIALLY GRANTED. The assailed September 30, 2005 Resolution of the COMELEC En Banc affirming the October 25, 2004 Resolution of the COMELEC Second Division which reversed and set aside the October 15, 2002 Metropolitan Trial Court Decision and declared Romeo H. Vasquez the winner for the position of Barangay Chairman of Barangay 414, Zone 42, District 4, Manila, during the July 15, 2002 Barangay Elections is SET ASIDE and the case is REMANDED to the COMELEC for full appreciation of the 44 ballots (Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "20", "21", "22", "25", "26" and "38"; Exhibits "2-D", "2-E", "2-F", "2-G", "2-H", "2-I", "2-J", "2-K", "2-L", "2-M", "2-N", "2-O", "2-P", "2-Q", "2-R", "2-S", "2-T", "2-U", "2-V", and "2-W") together with the corresponding Minutes of Voting and if not available, the Computerized Voter's List, as discussed in the text of herein Decision.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

Carpio-Morales, Callejo, Sr., and Azcuna, JJ., on leave.

Azcuna, J., on official leave.

[1] Issued by Presiding Commissioner Mehol K. Sadain and Commissioners Florentino A. Tuason, Jr. and Manuel A. Barcelona, Jr., rollo, pp. 30-39.[2] Issued by Chairman Benjamin S. Abalos, Sr. and Commissioners Rufino B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, and Florentino A. Tuason, Jr., id. at 41-46.

[3] Entitled "Cornelio Delos Reyes, Protestant-Appelle, v. Romeo H. Vazquez, Protestee-Appellant." [4] MTC Decision, rollo, p. 47.

[5] Docketed as Civil Case No. 001406-EC.

[6] Supra note 4.

[7] This should be 96 votes.

[8] Exhibits "1" to "38," Exhibits "2," "2-A" to "2-Z," "2-aa" to "2-dd," and 37 other unmarked ballots.

[9] Exhibits "A", "A-1" to "A-16," Exhibits "B", "B-1" to "B-18," and Exhibits "C", "C-1" to "C-30."

[10] Rollo, p. 48.

[11] Id.[12] This should be 96 votes.[13] October 25, 2004 COMELEC Resolution, rollo, pp. 33-34.[14] This

should be 95 votes.[15] This should be 26 votes.[16] Rollo, pp. 36-38.[17] Id. at 39.[18] Id. at 41.[19] This should be forty-four (44). See note 20.[20] Exhibit "8" is twice mentioned.

[21] Petition, rollo, p. 15.

[22] Memorandum for Petitioner, id. at 80.[23] Memorandum for Private Respondent, id. at 105.[24] Section 211, Batas Pambansa Blg. 881 (Omnibus Election Code).[25] *Malabaguio v. Commission on Elections*, 400 Phil. 551, 561 (2000).[26] *Sison v. Commission on Elections*, 363 Phil. 510, 520-521 (1999); *Mastura v. Commission on Elections*, 349 Phil. 423, 429 (1998); *Dagloc v. Commission on Elections*, 463 Phil. 263, 288 (2003).[27] *De Guzman v. Commission on Elections*, G.R. No. 159713, March 31, 2004, 426 SCRA 698, 707-708.[28] Rollo, p. 45.[29] 125 Phil. 917 (1967).[30] Id. at 926.[31] Petition, rollo, p. 18.

[32] *Bautista v. Castro*, G.R. No. 61260, February 17, 1992, 206 SCRA 305, 312.[33] Sec. 196. Preparation of ballots for illiterate and disabled persons. - A voter who is illiterate or physically unable to prepare the ballot by himself may be assisted in the preparation of his ballot by a relative, by affinity or consanguinity within the fourth civil degree or if he has none, by any person of his confidence who belongs to the same household or any member of the board of election inspectors, except the two party members: Provided, That no voter shall be allowed to vote as illiterate or physically disabled unless it is so indicated in his registration record: Provided, further, That in no case shall an assistor assist more than three times except the non-party members of the board of election inspectors. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense.[34] 404 Phil. 125 (2001).[35] Id. at 142-143.[36] *Supra* note 27.[37] Id. at 711.[38] Republic Act No. 9340.[39] *Dojillo v. Commission on Elections*, G.R. No. 166542, July 25, 2006.

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