

## FIRST DIVISION

[ CA – G.R. CR NO. 29022, August 04, 2006 ]

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

### DECISION

**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<sup>[1]</sup> 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<sup>[2]</sup> in Criminal Case No. 9165 charged accused-appellant TINGCHUY with violation of Section 261 (bb) (4), Article XXII of the Omnibus Election Code,<sup>[3]</sup> 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<sup>[4]</sup> in Criminal Case No. 9166 charged accused-appellant TINGCHUY with violation of Section 261 (z) (12), Article XXII of the Omnibus Election Code,<sup>[5]</sup> 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.<sup>[6]</sup>

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<sup>[7]</sup> 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.<sup>[8]</sup>

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<sup>[9]</sup> 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<sup>[10]</sup> on June 17, 2004, which was denied by the trial court in its Order<sup>[11]</sup> dated July 28, 2004.

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

### **Assignment of Error**

In his Brief,<sup>[14]</sup> 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