

EN BANC

[G.R. No. 142038, September 18, 2000]

ROLANDO E. COLUMBRES, PETITIONER, VS. COMMISSION ON ELECTIONS AND HILARIO DE GUZMAN, JR., RESPONDENTS.

DECISION

BUENA, J.:

This petition for certiorari seeks the nullification of the COMELEC *En Banc* Resolution dated January 25, 2000 which affirmed the Resolution of the Second Division setting aside the decision of the Regional Trial Court of Dagupan City, Branch 40 in Election Case No. D- 31-98 annulling the election and proclamation of private respondent Hilario de Guzman, Jr. as Mayor of San Jacinto, Pangasinan in the May 11, 1998 elections.

Petitioner Rolando Columbres and private respondent Hilario de Guzman, Jr. were candidates for the position of Mayor of San Jacinto, Pangasinan during the May 11, 1998 elections. After canvassing, the Municipal Board of Canvassers proclaimed private respondent with 4,248 votes as against petitioner's 4,104 votes. Subsequently, petitioner filed an election protest with the Regional Trial Court docketed as Election Case No. D-31-98. Petitioner contested 42 precincts and prayed for the revision of ballots in the said precincts.

On December 7, 1998, the trial court rendered its decision, declaring petitioner as the duly elected mayor of San Jacinto, Pangasinan with 4,037 votes against 3,302 votes of private respondent.

Private respondent appealed the decision to the respondent COMELEC. The case was docketed as COMELEC EAC No. A-20-98 and raffled to the COMELEC Second Division.

On October 5, 1999, the Second Division promulgated its Resolution reversing and setting aside the decision rendered by the Regional Trial Court and, instead, affirmed the election and proclamation of private respondent. Private respondent was declared to have won by sixty-nine (69) votes.

Petitioner filed a motion for reconsideration with respect to the ruling of the COMELEC Second Division, validating 120 marked ballots in favor of private respondent, despite absence of evidence, to prove that the marks have been placed on the ballots by third persons other than the voters themselves. Petitioner likewise moved for a reconsideration of the decision with respect to the 111 ballots found by the trial court to have been written by two persons, but not so ruled upon by the Second Division, again in favor of private respondent. Lastly, petitioner claimed that the Second Division erred in totally disregarding his other objections and therefore urged the COMELEC EN BANC to review the findings of the Second Division.

On January 25, 2000, the respondent COMELEC *En Banc* issued its Resolution denying petitioner's motion for reconsideration and affirming the ruling of the Second Division.

In resolving petitioner's Motion for Reconsideration, the respondent COMELEC *En Banc*, in the herein assailed Resolution, said:

"xxx Protestant-appellee alleges that there were 124 ballots which were written by two (2) persons, and as such they should all be annulled. Instead, the Commission (Second Division) annulled only 13 ballots while validating 111 ballots in favor of protestee-appellant Hilario de Guzman, Jr. Movant contends that the 13 ballots commonly invalidated by both the COMELEC (Second Division) and the trial court as having been written by two persons were no different from the 111 ballots validated by the Commission (Second Division) but invalidated by the trial court.

"x x x

x x x

x x x

"xxx The finding by the Commission (Second Division) that the 111 questioned ballots were written by the same person is a finding of fact that may not be the subject of a motion for reconsideration. Movant protestant-appellee is not challenging the sufficiency of the evidence in this instance but the appreciation thereof by the Commission (Second Division)."^[1]

"xxx Movant protestant-appellee (also) contends that there were 120 ballots erroneously validated by the Commission (Second Division) which were admittedly marked. *He argues that whenever ballots contain markings very obvious and visible on their faces, the presumption is that the said markings on the ballots were placed thereat by the voter themselves - thus nullifying the said ballots.* Stated otherwise, protestant-appellee argues that the purported markings on the questioned ballots are presumed to have been placed there by the voters themselves and, unless proven otherwise, nullifies the ballots.

"We disagree. The movant is relying on an erroneous and misleading presumption. The rule is that no ballot should be discarded as marked unless its character as such is unmistakable. The distinction should always be between marks that were apparently, carelessly, or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification of the ballot, which invalidate it. (Cacho vs. Abad, 62 Phil. 564). The marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter (Valenzuela vs. Carlos, 42 Phil. 428). In other words, a mark placed on the ballot by a person other than the voter himself does not invalidate the ballot as marked. (Tajanlangit vs. Cazenias, 5 SCRA 567)"^[2]

Hence, the present petition.