

EN BANC

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

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

D E C I S I O N

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 7th 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", "IIII", "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