

**EN BANC**

**[ G.R. No. 199149, January 22, 2013 ]**

**LIWAYWAY VINZONS-CHATO, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND ELMER E. PANOTES, RESPONDENTS.**

**[G.R. NO. 201350]**

**ELMER E. PANOTES, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND LIWAYWAY VINZONS-CHATO, RESPONDENTS.**

**D E C I S I O N**

**PERLAS-BERNABE, J.:**

Before us are consolidated cases involving the use of the picture images of ballots as the equivalent of the original paper ballots for purposes of determining the true will of the electorate in the Second Legislative District of Camarines Norte in the May 10, 2010 elections, which was "the maiden run for full automation,"<sup>[1]</sup> as authorized by Republic Act (R.A.) No. 9369<sup>[2]</sup> amending R.A. No. 8436 that called for the adoption of an automated election system in national and local elections.

**The Factual Antecedents**

Liwayway Vinzons-Chato (Chato) renewed her bid in the May 10, 2010 elections as representative of the Second Legislative District of Camarines Norte, composed of the seven (7) Municipalities of Daet, Vinzons, Basud, Mercedes, Talisay, San Vicente, and San Lorenzo, with a total of 205 clustered precincts. She lost to Elmer E. Panotes (Panotes) who was proclaimed the winner on May 12, 2010 having garnered a total of 51,707 votes as against Chato's 47,822 votes, or a plurality of 3,885 votes,<sup>[3]</sup> summarized in the petition<sup>[4]</sup> as follows:

Municipality	No. of votes for Panotes	No. of votes for Chato
Daet	18,085	15,911
Vinzons	8,107	6,713
Basud	7,879	6,527
Mercedes	7,739	9,333
Talisay	5,015	4,190
San Vicente	2,359	2,453
San Lorenzo	2,520	2,695
<b>TOTAL</b>	<b>51,707</b>	<b>47,822</b>

On May 24, 2010, Chato filed an electoral protest before the House of Representatives Electoral Tribunal (HRET), which was docketed as HRET Case No. 10-040, assailing the results in all the 160 clustered precincts in four (4) municipalities, namely: Daet, Vinzons, Basud and Mercedes.<sup>[5]</sup> No counter-protest was interposed by Panotes.

Pursuant to Rule 37 of the 2011 Rules of the HRET, Chato designated forty (40) pilot clustered precincts, equivalent to 25% of the total number of protested clustered precincts, in which revision of ballots shall be conducted. The initial revision of ballots, conducted on March 21 - 24, 2011, showed a substantial discrepancy between the votes of the parties per physical count vis-a-vis their votes per election returns in the following precincts of the Municipalities of Basud and Daet:<sup>[6]</sup>

### **Basud**

Clustered Precinct No.	Votes for Chato			Votes for Panotes		
	Per Election Returns	Per Physical Count	Gain or -Loss	Per Election Returns	Per Physical Count	Gain or -Loss
6	166	183	17	268	164	-104
7	119	134	15	206	85	-121
8	70	81	11	239	133	-106
15	87	105	18	193	100	-93
19	148	191	43	239	138	-101
25	233	261	28	399	251	-148
27	263	287	24	366	214	-152

### **Daet**

Clustered Precinct No.	Votes for Chato			Votes for Panotes		
	Per Election Returns	Per Physical Count	Gain or -Loss	Per Election Returns	Per Physical Count	Gain or -Loss
2	269	295	26	354	157	-197
7	243	275	32	363	2	-361
17	183	202	19	269	36	-233
23	281	318	37	440	334	-106
24	223	261	38	341	227	-114
25	202	229	27	391	343	-48
31	258	284	26	407	305	-102
32	243	267	24	521	511	-10
40	259	293	34	373	96	-277
41	226	260	34	348	54	-294
44	294	313	19	404	357	-47
56	287	309	22	399	320	-79
60	153	182	29	252	77	-175

On March 24, 2011, Panotes lost no time in moving<sup>[7]</sup> for the suspension of the

proceedings in the case, and praying that a preliminary hearing be set in order to determine first the integrity of the ballots and the ballot boxes used in the elections. He further urged that, should it be shown during such hearing that the ballots and ballot boxes were not preserved, the HRET should direct the printing of the picture images of the ballots of the questioned precincts stored in the data storage device for said precincts.

The motion was prompted by certain irregularities<sup>[8]</sup> in the condition of the ballot boxes subject of the revision, which Panotes described as follows:

Outer condition:

- a. The top cover of the ballot box is loose and can be lifted, so the election documents – e.g. ballots, minutes of voting, election returns – can be taken out.
- b. In some ballot boxes, when the key was inserted into the padlock, the upper portion of the lock disconnected from its body, which means that the lock had been previously tampered with.
- c. In the municipalities where Petitioner (Panotes) was able to seal the ballot boxes with packing tape, this tape seal was broken/cut/sliced, which means that the ballot boxes had been opened prior to the initial revision.
- d. Some of the self-locking security seal was not properly attached.

Inner condition:

- a. The contents of the ballot box – e.g. ballots and the documents – were in total disarray, which means that it was tampered with.
- b. Some of the Minutes of Voting and Election Returns were MISSING and only the ballots were found inside the ballot box.
- c. The ballots were unnecessarily folded and/or crumpled in the clustered precincts where the votes of (Panotes) were substantially reduced.

Consequently, in its Resolution<sup>[9]</sup> No. 11-208, the HRET directed the copying of the picture image files of ballots relative to the protest, which was scheduled to commence on April 25, 2011 and everyday thereafter until completion.<sup>[10]</sup> Chato, however, moved<sup>[11]</sup> for the cancellation of the decryption and copying of ballot images arguing *inter alia* that there was no legal basis therefor and that the HRET had not issued any guidelines governing the exercise thereof.

Notwithstanding, the decryption and copying proceeded as scheduled.

Chato then filed an Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images in the Instant Case<sup>[12]</sup> reiterating the lack of legal basis

for the decryption and copying of ballot images inasmuch as no preliminary hearing had been conducted showing that the integrity of the ballots and ballot boxes was not preserved. She cited Section 10(d) of the HRET Guidelines on the Revision of Ballots, which reads:

(d) When it has been shown, in a preliminary hearing set by the parties or by the Tribunal, that the integrity of the ballots and ballot boxes used in the May 10, 2010 elections was not preserved, as when there is proof of tampering or substitutions, the Tribunal shall direct the printing of the picture images of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal shall provide a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or image stored is genuine and not a substitute. It is only upon such determination that the printed picture image can be used for the revision, *(as amended per Resolution of February 10, 2011)*.

Moreover, Chato alleged that the ballot images were taken from polluted Compact Flash (CF) cards. Atty. Anne A. Romero-Cortez (Atty. Cortez), the Camarines Norte Provincial Elections Supervisor, was said to have admitted during canvassing proceedings that the CF cards for the Municipalities of Labo, Vinzons and Basud were defective and had to be replaced. The pertinent portion of the Transcript of Stenographic Notes (TSN) taken during the canvassing proceedings for President and Vice- President held on June 2, 2010 is reproduced hereunder:

REP. VINZONS-Yes, I requested the presence of the other two  
CHATO: members because the information that I gathered would be that there was a time log of about six hours where you would stop the canvassing, and the information that we got from our lawyers there was that there were certain cards that had no memory and had to be reconfigured from some precincts, and that, in the meantime, you stopped the canvassing and resumed after six hours.

ATTY. ROMERO-This is what happened. Because of the  
CORTEZ: municipalities of Labo, Vinzons, and Basud, there were CF cards that had to be replaced because they were defective.

REP. VINZONS-But, that was after the voting had closed, right?  
CHATO: The voting had closed and those cards were defective and you had to replace them.

ATTY. ROMERO-To my recollection, Your Honor, that was during  
CORTEZ: May 10.<sup>[13]</sup>

Panotes, on the other hand, stressed in his Opposition<sup>[14]</sup> to the foregoing motion that the decryption and copying of the ballot images was at the behest of the HRET itself, acting through Atty. Marie Grace T. Javier- Ibay, who formally requested on February 10, 2011 the copying of the picture image files of ballots and election returns in 13 election protests pending before it. Should he then decide to use the

decrypted and copied ballot images, there is nothing in the HRET rules that prohibit the same.

With respect to the allegation that certain defective CF cards were replaced, Panotes argued<sup>[15]</sup> that it was during the election day, May 10, 2010, that the CF cards were found to be not working so they had to be re- configured. Consequently, the voting in some precincts in the Municipalities of Labo, Vinzons and Basud started late, but the voting period was extended accordingly. For this reason, the canvassing before the Provincial Board of Canvassers was halted in order to wait for the transmission of the results from the Municipal Board of Canvassers, which could not be done until each and every clustered precinct was duly accounted for.

The case was subsequently set for preliminary hearing on May 27, 2011 in order to determine the integrity of the CF cards used in the questioned elections.<sup>[16]</sup> In said hearing, Chato presented the following witnesses: (1) Oscar Villafuerte, Vice-Chairman of the Provincial Board of Canvassers of Camarines Norte; (2) Reynaldo Mago, a media practitioner; and (3) Angel Abria, an Information Technology (IT) expert.<sup>[17]</sup>

On June 8, 2011, the HRET issued the assailed Resolution<sup>[18]</sup> No. 11- 321 denying Chato's Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images in the Instant Case on the ground that she failed to show proof that the CF cards used in the twenty (20) precincts in the Municipalities of Basud and Daet with substantial variances were not preserved or were violated. The Tribunal stressed that, since Atty. Cortez was not presented in court to clarify the matter of the alleged replacement of CF cards, it remained unclear whether the replacement was done before or after the elections, and which precincts were involved. Moreover, the testimonies of the witnesses that were actually presented were found to be irrelevant and immaterial.

Significantly, the HRET declared that, although the actual ballots used in the May 10, 2010 elections are the best evidence of the will of the voters, the picture images of the ballots are regarded as the equivalent of the original, citing Rule 4 of the Rules on Electronic Evidence, which reads:

*Sec. 1. Original of an electronic document.* – An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

*Sec. 2. Copies as equivalent of the originals.* – When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if: