

EN BANC

[G.R. No. 204637, April 16, 2013]

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

R E S O L U T I O N

REYES, J.:

Before us is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Prohibitory Injunction^[1] assailing the Decision^[2] rendered on October 15, 2012 and Resolution^[3] issued on December 3, 2012 by the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-040 (EP). The Decision dated October 15, 2012 and Resolution dated December 3, 2012 denied herein petitioner Liwayway Vinzons-Chato's (Chato) electoral protest filed before the HRET to challenge the proclamation of herein respondent, Elmer Panotes (Panotes), as the duly elected Representative of the Second District of Camarines Norte.

In the May 10, 2010 elections, Chato and Panotes both ran for the congressional seat to represent the Second District of Camarines Norte. On May 12, 2010, Panotes was proclaimed as the winner for having garnered 51,704 votes. The votes cast for Chato totalled 47,822.

On May 24, 2010, Chato filed an electoral protest claiming that in four of the seven municipalities^[4] comprising the Second District of Camarines Norte, the following irregularities occurred: (a) the Precinct Count Optical Scan (PCOS) machines rejected and failed to count the votes, which if manually counted and visually appreciated, were in fact validly cast for her; (b) the PCOS machines broke down in some clustered precincts (CPs) and the ballots were inserted in contingency machines at later times rendering uncertain the actual inclusion of the votes in the final tally; (c) the protocols prescribed by the Commission on Elections (COMELEC) relative to the installation of the PCOS machines and Canvassing and Consolidation System (CCS), counting of ballots, canvassing and transmission of results, and closing of the voting were either not followed or modified making it possible for the tampering and manipulation of the election results; (d) several compact flash (CF) cards in the PCOS machines were reconfigured on the eve of the May 10, 2010 elections; (e) there were errors or lapses in transmitting results from several PCOS machines to the CCS of the Municipal Boards of Canvassers (MBOCs) resulting to the need to manually insert CF cards into the CCS, but in some instances, the insertions were made after significant and unaccounted lapse of time in cases where before transporting the CF cards to the MBOCs, the members of the Boards of Election Inspectors (BEIs) went home first or did private business; and (f) after the closing of the polls, some CF cards failed to show recorded results.^[5]

On March 21, 2011, the HRET started the initial revision of ballots in 25% of the pilot protested CPs. The revision ended on March 24, 2011. Per physical count, Chato's votes increased by 518, while those cast for Panotes decreased by 2,875 votes. The detailed results follow:[6]

VOTES FOR CHATO				VOTES FOR PANOTES		
Municipalities	Per Election Returns (ERs)	Per Physical Count	Gain or (Loss)	Per Election Returns	Per Physical Count	Gain or (Loss)
Basud	1,735	1,891	156	3,067	2,242	(825)
Daet	3,337	3,704	367	5,229	3,186	(2,043)
Mercedes	779	779	0	1,573	1,573	0
Vinzons	1,628	1,623	(5)	3,224	3,217	(7)
Total	7,479	7,997	518	13,093	10,218	(2,875)

Panotes filed an Urgent Motion to Suspend Proceedings with Motion for Preliminary Hearing to Determine the Integrity of the Ballots and Ballot Boxes Used in the May 10, 2010 Elections in the Contested Precincts of the Second District of Camarines Norte and to Direct the Printing of the Picture Images of the Ballots of the Subject Precincts.[7] Panotes claimed that in Daet and Basud: (a) the top cover of some of the ballot boxes were loose, and ballots, Minutes of Voting (MOV) and ERs can be taken out; (b) when keys were inserted into the padlocks of the ballot boxes, the upper portion of the locks disconnected from the bodies indicating tampering; (c) the packing tape seals, which he was able to put in some of the ballot boxes, were broken or cut, leading to the conclusion that the boxes had been opened prior to the initial revision; (d) some self-locking security seals were not properly attached; and (e) the contents of some of the ballot boxes, such as the MOV and ERs were either missing or in disarray, with the ballots unnecessarily folded or crumpled in the CPs, where the votes cast for him substantially decreased as per physical count when compared to the figures found in the ERs.

On March 22, 2012, the HRET issued Resolution No. 12-079 directing the continuance of the revision of ballots in 75% of the contested CPs. The proceeding commenced on May 2, 2012 and ended on May 9, 2012. The results were:[8]

VOTES FOR CHATO				VOTES FOR PANOTES		
Municipalities	Per Election Returns (ERs)	Per Physical Count	Gain or (Loss)	Per Election Returns	Per Physical Count	Gain or (Loss)
Basud	4,792	5,259	467	4,812	3,163	(1,649)
Daet	12,569	13,312	743	12,856	9,029	(3,827)
Mercedes	8,553	8,554	1	6,166	6,166	0
Vinzons	5,085	5,087	2	4,883	4,883	0
Total	30,999	32,212	1,213	28,717	23,241	(5,476)

As shown above, there was a substantial discrepancy between the figures indicated

in the ERs/Statements of Votes by Precinct (SOVPs) on one hand, and the results of the physical count during the revision, on the other. Thereafter, the HRET issued Resolution No. 11-208 directing the decryption and copying of the picture image files of ballots (PIBs). The proceeding was conducted within the COMELEC premises. However, Chato alleged that the back-up CF card for CP No. 44 of the Municipality of Daet and the CF card for CP No. 29 of the Municipality of Mercedes did not contain the PIBs. Chato filed before the HRET an Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images. The HRET denied Chato's motion through Resolution No. 11-321 issued on June 8, 2011.

Panotes filed before us a petition^[9] assailing HRET Resolution No. 12-079. On her part, Chato instituted a petition^[10] challenging HRET Resolution No. 11-321. We ordered the consolidation of the two petitions, and both were dismissed in a decision which we rendered on January 22, 2013. Panotes' petition was moot and academic since revision was in fact completed. Chato, on the other hand, was not able to present sufficient evidence to prove that the integrity of the CF cards was not preserved.

Going back to HRET Case No. 10-040 (EP), in the 160 protested CPs, there were substantial variances in the figures per machine count as indicated in the ERs, on one hand, and per physical count, on the other, in a total of 69 CPs, 23 of which were in Basud and 46 in Daet. The HRET then tediously compared the paper ballots that were fed to the PCOS machine in these 69 CPs with the corresponding PIBs in the CF cards to resolve the discrepancies. The bar codes at the bottom right of the PIBs were compared with those indicated in the paper ballots. However, the HRET found that while the name of Chato was shaded in some of the paper ballots objected to by Panotes, there were no votes (NV) for congressional representative reflected in the PIBs.^[11] Notably, the number of ballots gained by Chato during the physical count of votes is directly proportional with the number of paper ballots for her objected to by Panotes with NV on the congressional representative line per PIBs.^[12] The HRET likewise observed that per physical count, there was a substantial increase in the number of stray votes by reason of over voting (OV) for congressional representative. The decryption and copying of the PIBs revealed that there were only a few PIBs with OV for the said position.^[13] Panotes' loss per physical count is more or less proportionate with the number of ballots, which Chato claimed as having exhibited stray over voting for the congressional representative line.^[14]

Chato and Panotes presented their respective evidence before the HRET.

Among the evidence offered by Chato were: (a) certified true copies of the Transcript of Stenographic Notes (TSN) of the testimony of Atty. Anne A. Romero-Cortez^[15] (Atty. Cortez) on June 2, 2010 when she explicitly said before the Congress, acting as the Presidential and Vice-Presidential Board of Canvassers, that "for the municipalities of Labo, Vinzons and Basud, there were CF cards that had to be replaced because they were defective"; (b) the testimony of Angel Averia (Averia),^[16] who, during the decryption and copying of the PIBs in the COMELEC premises on April 26, 2011, had allegedly heard COMELEC Director Esther Roxas (Director Roxas) admit that there was no inventory of the CF cards; (c) Panotes' own admission in his Opposition to the Motion to Reiterate the Continuation of

Revision, dated March 22, 2011, to the effect that "the main CF card for CP 44 of the Municipality of Daet is missing and it would appear that the Election Officer submitted the back-up CF card in lieu thereof" but the "back-up CF card did not contain the picture image of the ballots"; and (d) Panotes' admission in the aforesaid Opposition that "in the Municipality of Mercedes, the BEI re-zeroed the results of the elections in CP No. 29," and consequently, the PIBs for these precincts were erased from the CF card's memory.^[17]

Following are among Panotes' claims to establish that in order to tilt the results of the electoral protest in Chato's favor, the paper ballots were tampered after the canvassing, counting and transmission of the voting results in the May 10, 2010 elections were completed: (a) the testimonies of Philip Fabia and Danilo Sibbaluca that "the ballot boxes used in the May 10, 2010 elections could be turned upside down and the bottom portion of the ballot box could be lifted so that the contents could be taken out";^[18] (b) the reports of the HRET Revision Committees stating that in Daet and Basud, some of the padlocks and self-locking security seals in the ballot boxes were either missing or not properly attached, and the MOVs and ERs were likewise nowhere to be found;^[19] (c) the testimony of Benjamina Camino that during the revision, in the matched paper ballots and PIBs, the votes were identical except those for the position of congressional representative;^[20] (d) testimony of Florivida Mago^[21] indicating that in the Random Manual Audit (RMA) conducted on the same day right after the closing of the polls, the team found that out of 420 valid votes counted by the PCOS machine, there was none with an over-vote for the congressional seat line, and there was only a single difference between the automated result and the manual count;^[22] (e) in direct contrast with the RMA team's findings, in the revision report for CP No. 23 of Basud, 99 ballots reflected over-votes for the congressional seat line;^[23] (f) the main CF card for CP No. 44 of Daet had already been retrieved from the ballot box of the municipality's MBOC and its contents decrypted;^[24] (g) even granting for argument's sake that in Mercedes, the BEI re-zeroed the results of the elections in CP No. 29, this has no bearing since the physical count of the ballots jived with the results indicated in the ER;^[25] (h) Chato took out of context Atty. Cortez's testimony before the Congress because what the latter stated was that the defective CF cards were replaced with working ones on May 10, 2010 and not after;^[26] and (i) Atty. Cortez and Director Roxas were not presented as witnesses before the HRET, hence, the statements ascribed to them by Chato do not bear weight.^[27]

The HRET found that out of the 160 contested CPs, there were 91 without substantial variances between the results of the automatic and the manual count. However, in 69 CPs in Basud and Daet, the variances were glaring.

On October 15, 2012, the HRET rendered the herein assailed decision dismissing Chato's electoral protest based on the following grounds:

[T]he settled rule in election contests is that the ballots themselves constitute the best evidence of the will of the voters, but the ballots lose this character and give way to the acceptance of the election returns when it has been shown that they have been [the] subject of tampering, either by substituting them with other official or fake ballots, or by

substantially altering or changing their contents.

Consequently, the votes determined after the revision in the foregoing **69 CPs in Basud and Daet, which yielded a reversal of votes**, cannot be relied upon, as they do not reflect the true will of the electorate. Hence, the Tribunal has to rely on what is reflected in the election returns and/or statement of votes by precinct[,] the same being the best evidence of the results of the election in said precincts in lieu of the altered ballots.

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The votes of the parties per physical count in all the 120 [sic] protested CPs in the concerned district are 40,209 for protestant [Chato] and 33,459 for protestee [Panotes].

Considering that **69 CPs have substantial variances**, the Tribunal decided to disregard the ballots therein, *i.e.*, 18,535 for protestant and 10,858 for protestee, and to consider, instead, the **results in the election returns, *i.e.*, 16,802 for protestant and 19,202 for protestee.**

Hence, only the ballots in the **91 CPs without substantial variances, *i.e.*, 21,674 for protestant and 22,601 for protestee**, had undergone appreciation of ballots. Of the ballots appreciated, the Tribunal **rejected two (2) ballots for protestant and two (2) ballots for protestee**, while it **admitted 176 ballots claimed by the protestant and 183 claimed by the protestee.**

The votes of the parties in the **uncontested municipalities** are **9,338** for protestant and **9,894** for protestee.

Accordingly, the parties' votes, after recount and appreciation and examination of the evidence presented in the 160 protested CPs as well as in the uncontested municipalities, are summarized below:

	[Chato]	[Panotes]
Votes in the 91 revised protested CPs without SV [substantial variance] per recount and appreciation	21,674	22,601
Add: Votes per ER/SOVP in 69 revised protested CPs with SV	16,802	19,202
Less: Rejected Ballots Objected to in the 91 revised protested CPs without SV	(2)	(2)
Add: Admitted PCOS Rejected Ballots Claimed in the 91 revised protested CPs without SV	176	183
Add: Votes in the uncontested municipalities	9,338	9,894
Equals: Total votes of the parties in the congressional district	47,988	51,878