

EN BANC

[G.R. NO. 166931, February 22, 2007]

RANILO A. VELASCO, PETITIONER, VS. COMMISSION ON ELECTIONS AND BENIGNO C. LAYESA, JR., RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for the writs of certiorari and prohibition to set aside the Resolution^[1] dated 10 February 2003 of the Commission on Elections (COMELEC) Second Division and the Resolution dated 18 January 2005 of the COMELEC *En Banc* in an election protest case involving the office of the Punong Barangay of Sta. Ana, San Pablo City.

The Facts

Petitioner Ranilo A. Velasco (petitioner) and respondent Benigno C. Layesa, Jr. (respondent) were two of the four candidates for Punong Barangay of Sta. Ana, San Pablo City in the 15 July 2002 barangay elections. After the canvassing of votes, the Barangay Board of Canvassers proclaimed petitioner winner with 390 votes. Petitioner's nearest rival, respondent, received 375 votes.

Claiming that some votes cast in his favor were erroneously excluded from the canvassing, respondent filed an election protest in the Municipal Trial Court in Cities, San Pablo City (trial court). Respondent prayed for the revision of 26 ballots from four precincts.^[2]

Petitioner initially moved to dismiss the case but, in an Amended Answer, counterclaimed for the revision of ballots cast in another precinct.^[3]

The Ruling of the Trial Court

In its Decision dated 23 August 2002, the trial court declared the election results tied, with petitioner and respondent each obtaining 390 votes. On the uncontested ballots, the trial court found that petitioner and respondent received 389 and 375 votes, respectively. After revision of the contested ballots, the trial court credited 15 more votes to respondent and one more vote to petitioner, thus leaving petitioner and respondent with 390 votes each. The trial court ordered the drawing of lots to break the tie and determine the winner.^[4]

Petitioner appealed to the COMELEC, contending that the trial court erred in crediting respondent with 15 more votes. Petitioner's appeal was raffled to the

The Ruling of the COMELEC Second Division

In its Resolution dated 10 February 2003, the COMELEC Second Division affirmed the trial court's ruling, applying in its appreciation of some ballots the "neighborhood rule."

Petitioner and respondent both sought reconsideration. In his motion, petitioner limited his objection to five ballots, namely:

- Exhibit "9" with the name "JR=LAYESA" written on the left uppermost portion of the ballot, beside the seal of the Republic of the Philippines, with the space for Punong Barangay left unfilled;
- Exhibits "7," "8," and "10" with respondent's name written on the first space for Barangay Kagawad, leaving blank the space for Punong Barangay. Further, in Exhibit "10," the word "JR.LAYESCharman" is also found on the top right portion of the ballot, above the instructions to the voter.
- Exhibit "13" with respondent's name written above the instructions to the voter with the space for Punong Barangay left unfilled.

Petitioner contended that: (1) Exhibit "9" is a stray ballot because the name "JR=LAYESA" was written by another person and, at any rate, such was written "too far away" from the space provided for Punong Barangay for the "neighborhood rule" to apply; (2) Exhibit "13" is also a stray ballot because respondent's name was not written on the space provided for Punong Barangay; (3) Exhibits "7" and "8" were prepared by only one person; and (4) Exhibit "10" is a marked ballot because respondent's name, or that which sounds like it, was written twice.

For his part, respondent contended that the ballot admitted in evidence as Exhibit "A," with the word "ANET" (petitioner's nickname) written above the space for Punong Barangay, is a marked ballot. Further, respondent claimed that the vote cast in the ballot marked Exhibit "4" should be credited to him as his name is found in the second line for Kagawad.

The Ruling of the COMELEC *En Banc*

In its Resolution^[5] dated 18 January 2005, the COMELEC *En Banc* denied reconsideration of the Second Division's ruling. Traversing the matters petitioner raised in his motion, the COMELEC *En Banc* held that (1) the Second Division properly credited respondent with the votes cast for him in Exhibits "9" and "13" under the "neighborhood rule"; (2) Exhibits "7" and "8" were not prepared by one person; and (3) Exhibit "10" is not a marked ballot.

On the contentions respondent raised in his motion for reconsideration, the COMELEC *En Banc* ruled that Exhibit "A" is not a marked ballot and that the vote for petitioner was properly credited in his favor under the "neighborhood rule." The

COMELEC *En Banc* further ruled that Exhibit "4" cannot be credited to respondent as intent to vote for respondent cannot be ascertained.^[6]

Hence, this petition

Petitioner has narrowed the scope of his appeal to three ballots - Exhibits "9," "10," and "13." Petitioner reiterates his contention below that the votes cast for respondent in these ballots are stray and should not have been credited to respondent under the "neighborhood rule."^[7]

The Issue

The issue is whether the COMELEC correctly credited respondent with the votes cast in the three ballots in question.

The Ruling of the Court

The petition is partly meritorious. The vote cast for respondent in Exhibit "10" is valid while those in Exhibits "9" and "13" are stray.

On the Appreciation of Ballots with Misplaced Votes

The votes contested in this appeal are all **misplaced votes**, *i.e.*, votes cast for a candidate for the wrong or, in this case, inexistent office. In appreciating such votes, the COMELEC applied the "neighborhood rule." As used by the Court, this nomenclature, loosely based on a rule of the same name devised by the House of Representatives Electoral Tribunal (HRET),^[8] refers to an exception^[9] to the rule on appreciation of misplaced votes under Section 211(19) of Batas Pambansa Blg. 881 (Omnibus Election Code) which provides:

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.^[10] (Emphasis supplied)

Section 211(19) is meant to avoid confusion in the minds of the election officials as to the candidates actually voted for and to stave off any scheming design to identify the vote of the elector, thus defeating the secrecy of the ballot which is a cardinal feature of our election laws.^[11] Section 211(19) also enforces Section 195 of the Omnibus Election Code which provides that in preparing the ballot, each voter must "fill his ballot by writing in the proper place for each office the name of the individual candidate for whom he desires to vote."^[12]

Excepted from Section 211(19) are ballots with (1) a general misplacement of an entire series of names intended to be voted for the successive offices appearing in the ballot;^[13] (2) a single^[14] or double^[15] misplacement of names where such names were preceded or followed by the title of the contested office or where the voter wrote after the candidate's name a directional symbol indicating the correct office for which the misplaced name was intended;^[16] and (3) a single misplacement of a name written (a) off-center from the designated space,^[17] (b)

slightly underneath the line for the contested office,^[18] (c) immediately above the title for the contested office,^[19] or (d) in the space for an office immediately following that for which the candidate presented himself.^[20] In these instances, the misplaced votes are nevertheless credited to the candidates for the office for which they presented themselves because the voters' intention to so vote is clear from the face of the ballots.^[21] This is in consonance with the settled doctrine that ballots should be appreciated with liberality to give effect to the voters' will.

The Foregoing Rule and Exceptions Applied to the Case

Exhibit "10"

In this ballot, the voter wrote respondent's name twice ↑ on the upper right side of the ballot above the instructions to the voter and on the first line for Sangguniang Barangay Kagawad, leaving blank the space for Punong Barangay. Both names are followed by the word "Charman."

The COMELEC correctly credited respondent with the vote cast for him in this ballot following the exception to Section 211(19) of ballots with a single misplaced name followed by the title of the contested office. The voter's repetition of respondent's name in the first line for Sangguniang Barangay Kagawad followed by the word "Charman" renders the vote valid. The voter's intent to cast his vote for respondent as Punong Barangay or barangay chairman is obvious when he wrote the word "Charman" - which can only stand for "[Barangay] Chairman" - after respondent's name.

Exhibits "9" and "13"

As described, the voter in Exhibit "9" wrote respondent's name on the left uppermost portion of the ballot, beside the seal of the Republic of the Philippines. In Exhibit "13," the voter also wrote respondent's name in the upper portion of the ballot, above the instructions to the voter but below the words "San Pablo City." In both ballots, the voters left unfilled the space for Punong Barangay but each wrote a name in the first line for Sangguniang Barangay Kagawad (Ronel O. Gutierrez in Exhibit "9" and Volter Estreleado in Exhibit "13").^[22]

The Court holds that the votes for respondent in these ballots are stray and cannot be counted in his favor.

Respondent's name is not found on or near any of the lines corresponding to the offices of Punong Barangay or Sangguniang Barangay Kagawad - the offices in contention in the 15 July 2002 barangay elections. Instead, respondent's name is found outside of where these lines begin and end, namely, beside the seal of the Republic of the Philippines on the topmost portion of the ballot (Exhibit "9") and above the instructions to the voter, underneath the words "San Pablo City" (Exhibit "13"). Section 211(19), which treats misplaced votes as stray, speaks of a vote for a candidate "for an **office** for which he did not present himself." Thus, there is more reason to apply this rule here as the votes in Exhibits "9" and "13" do not even relate to any office.

Nor do the votes in question fall under any of the exceptions to Section 211(19) enumerated above. Exhibits "9" and "13" are not similar or analogous to ballots with a general misplacement of a series of names; a single or double misplacement of names preceded or followed by the title of the contested office or by a symbol indicating the correct office to which the vote was intended; or a single misplacement of a name written off-center, under the correct line, immediately above the name of the contested office, or in the space for an office immediately following that for which the candidate presented himself. Indeed, unlike these exceptions where the voters' mistake or confusion is evident from the face of the ballot, Exhibits "9" and "13" present an unusual case of extremes - while respondent's name was written way off its proper place, the names of persons who were presumably candidates for Sangguniang Barangay Kagawad were properly placed, without the slightest deviation, in the first of the seven lines for that office.

This gives only two possible impressions. First, that the voters in these two ballots knew in fact where to write the candidates' names, in which case the votes for respondent written way off its proper place become stray votes. Second, the voters' manner of voting was a device to identify the ballots, which renders the ballots invalid. We adopt the more liberal view - that the misplaced votes in Exhibits "9" and "13" are stray votes under Section 211(19), thus, leaving the ballots valid.

Significantly, the chances of voter confusion generated by the appearance of the ballot are not as high in the 15 July 2002 barangay elections as in other elections involving local and national officials. In the 15 July 2002 elections, the ballots contained only one column consisting of blank lines or spaces for the offices of Punong Barangay and Barangay Kagawad (7 lines). In contrast, the ballots used in the 10 May 2004 local and national elections contained two columns: the first consisted of blank lines or spaces for the offices of President, Vice-President, Senators (12 lines), and Party-List Representative while the second consisted of blank lines for the offices of Representative, Governor, Vice-Governor, members of the Sangguniang Panlalawigan (4 lines), Mayor, Vice-Mayor, and members of the Sangguniang Bayan (8 lines). This is a material factor which dissuades us from indulging in presumptions of mistake or confusion to explain the misplaced votes in Exhibits "9" and "13."

This Court is ever mindful of the need, under our republican form of government, to give full expression to the voters' will as indicated in the ballots. This explains the numerous exceptions we have carved out of Section 211(19). However, liberality in ballot appreciation ends where subversion of the legislature's will begins. Congress enacted Sections 195 and 211(19) precisely to guard against the extreme irregularity Exhibits "9" and "13" present. Thus, we here draw the line between permissible deviations from Sections 195 and 211(19) and flagrant disregard of an elementary rule in voting under our present electoral system.

Accordingly, the votes in Exhibits "9" and "13" are deducted from the total number of votes credited to respondent, leaving a total of 388 votes in his favor. As petitioner's total number of votes remains unchanged at 390 votes, he is the duly elected Punong Barangay of Sta. Ana, San Pablo City.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the Resolution dated 10 February 2003 of the Commission on Elections Second Division and the Resolution