

## EN BANC

[ G.R. No. 167224, September 21, 2007 ]

### NOLITO L. MAÑAGO, PETITIONER, VS. COMMISSION ON ELECTIONS AND NICANOR BIGAY, RESPONDENTS.

#### DECISION

##### QUISUMBING, J.:

This is a petition for certiorari to reverse and set aside the Resolution<sup>[1]</sup> dated January 5, 2004 of the Commission on Elections (COMELEC) in EAC No. 144-2003 and the Resolution<sup>[2]</sup> dated March 2, 2005 denying the motion for reconsideration. The COMELEC had affirmed the Decision<sup>[3]</sup> dated July 9, 2003 of the Municipal Trial Court (MTC) of Mercedes, Camarines Norte, declaring private respondent the duly elected *Punong Barangay* of Barangay Quinapaguian, Mercedes, Camarines Norte.

The facts in this case are as follows.

Petitioner Nolito Mañago and private respondent Nicanor Bigay both ran for *Punong Barangay* of Barangay Quinapaguian, Mercedes, Camarines Norte, during the *Sangguniang Kabataan* and Barangay Elections held on July 15, 2002. The results showed Mañago won with 156 votes over Bigay who garnered 155 votes. Mañago was proclaimed *Punong Barangay*. Bigay then protested Mañago's proclamation in an election protest before the MTC where he prayed for a judicial recount of the ballots in Precinct No. 71-A.

After the revision proceedings, the trial court, in a Decision dated July 9, 2003, found Bigay with a total of 159 votes and Mañago with only 152 votes. The trial court then declared Bigay as the duly elected *Punong Barangay*. The MTC ruled as follows:

WHEREFORE, premises considered, protestant NICANOR BIGAY is declared the true and lawfully elected Punong Barangay of Barangay Quinapaguian, Mercedes, Camarines Norte in the July 15, 2002 barangay election.

No pronouncement as to cost. No damages awarded there being no evidence presented to that effect.

Let copy of this Decision be furnished the Sangguniang Bayan thru its Secretary of Mercedes, Camarines Norte; the local DILG Office; the local Comelec Office; and the Secretary of the Sangguniang Panlalawigan, Daet, Camarines Norte.

SO ORDERED.<sup>[4]</sup>

Aggrieved, Mañago appealed the decision to the COMELEC. He argued that the trial court did not acquire jurisdiction over the case because Bigay allegedly failed to pay the correct amount of filing fees. The COMELEC First Division, however, noted that Bigay made a total payment of One Hundred Fifty Pesos (P150) covered by two receipts: one in the amount of Ninety Pesos (P90) and the other Sixty Pesos (P60).

[5] The COMELEC ruled that the payments adequately answered for the filing fee prescribed under the COMELEC Rules of Procedure.

The COMELEC, although noting that Mañago raised no other issue, also made the following findings and conclusions:

**ON THE BALLOTS OF MAÑAGO CONTESTED BY BIGAY:**

**Exhs. "B-1" and "B-2"** - ink spots smudged the ballots.

The ballots are **VALID**. The ink imprints could have been accidentally made by the voters themselves. It must be remembered that procedurally, voters are made, before being given the ballot, to place their thumb marks on the voting record. It is very possible the ink smudges were the ink residue in the voter's fingers.

*"When smears appear to have been made by the voter's fingers, the ballot is valid."*

All the ballots of MAÑAGO contested by BIGAY are hereby found **VALID**.

**ON THE BALLOTS OF BIGAY CONTESTED BY MAÑAGO:**

**Exh. "M-1"** - An erasure was made by the voter in the entry for kagawad.

The ballot is **VALID**.

The erasure was intended to correct an error in the spelling of the name. Since the erasure was innocent, it did not mark the ballot.

*"Where erasures are innocent and cannot be regarded as marks, the ballot should be counted."*

**Exh. "M-2"** - "P, Bar" was written on the space for Punong Barangay. It was erased. "Bigay, N" was then written on the same slot.

The vote is **VALID**.

*"When in a space in the ballot there appears a name of a candidate that is erased and another clearly written, the vote is valid for the latter."*

**Exh. "M-3"** - "Bigae" was written on the space for Punong Barangay. The written entry was a misspelling of "Bigay", the surname of protestant-appellee. The ballot is **VALID** for Bigay on the basis of the

principle of idem sonans explained thus:

*"A name or surname incorrectly written which when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor."*

**Exh. "M-4"** - "Karate" was voted for in the ballot. In his Certificate of Candidacy, Nicanor Bigay indicated that "Karate" is the nickname by which he is generally or popularly known in the locality. Said nickname therefore sufficiently identified Bigay as the candidate for which the ballot was cast, hence, the vote is **VALID**.

*"...if the nickname used is accompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the same shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname."*

**Exhs. "M-5"[,] "M-6" and "M-7"** - objected to allegedly for being marked. There is nothing on the ballots which could be considered identifying signs. The ballots are clean and regular on their faces, hence **VALID**.

**Exhs. "M-8", "M-10"[,] "M-14"[,] and "M-18"** - sought to be excluded for allegedly having been prepared by two persons are hereby declared **VALID**.

There is no striking dissimilarity noted in the entries on each of the ballots. On the contrary, there was consistency of strokes in the handwritings on each of the ballots thus contested, negating any anomaly in the preparation thereof.

*"In order to reach the conclusion that two writings are by the same hand there must be not only be present class characteristics but also individual characteristics or "dents and scratches" in sufficient quantity to exclude the theory or accidental coincidence: to reach the conclusion that writings are by different hands, we may find numerous likenesses in class characteristics but divergences in individual characteristics or we may find divergences in both, but the divergence must be something more than mere superficial differences."*

**Exhs. "M-9", "M-13", "M-15", "M-16", and "M-17"** - contested as marked ballots because superimpositions were made on several entries, allegedly with the intent to identify the ballots.

The superimpositions perceived as identifying marks were actually retracings of letters in the entries. The same were made for the purpose of stressing the corrections effected in the spelling of the names voted therein. The retracings or superimpositions were innocent, hence, they did not mark the ballots. The ballots are **VALID**.