



Republic of the Philippines
Supreme Court
 Baguio City

SUPREME COURT OF THE PHILIPPINES
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EN BANC

EDWIN D. RODRIGUEZ and G.R. No. 255509
MICHAEL T. DEFENSOR,

Present:

Petitioners,

GESMUNDO, *CJ*,
 LEONEN,
 CAGUIOA,
 *HERNANDO,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J.,
 DIMAAMPAO,
 MARQUEZ, and
 **KHO, JR., and
 SINGH, *JJ*.

- versus -

**COMMISSION ON ELECTIONS,
 MARIA JOSEFINA G. BELMONTE,
 GIAN CARLO G. SOTTO,
 WILFREDO B. REVILLAME, and
 ELIZABETH A. DELARMENTE,**

Respondents.

Promulgated:

January 10, 2023

[Signature]

X -----

DECISION

ZALAMEDA, J.:

Any complaint that charges the election offense of vote-buying must be supported by credible evidence that substantiates the elements of the offense. General averments of vote-buying, when accompanied by uncorroborated video clips and screenshots from such video clips, will be adjudged as mere speculation because they cannot substitute for proof

* On leave.
 ** With prior participation.

[Signature]

required to establish probable cause.

The Case

Petitioners Edwin D. Rodriguez and Michael T. Defensor (collectively, petitioners) filed a Petition¹ for *Certiorari* under Rule 64 of the Rules of Court, seeking to annul and set aside Resolution No. 10625² dated 14 November 2019 and Minute Resolution No. 20-0268-14³ dated 17 June 2020 rendered by the Commission on Elections (COMELEC) *En Banc* in E.O. Case No. 19-199. The COMELEC dismissed the Complaint Affidavit⁴ filed by petitioners against respondents Ma. Josefina G. Belmonte-Alimurung⁵ (Belmonte), Gian Carlo G. Sotto⁶ (Sotto), Wilfredo B. Revillame⁷ (Revillame), and Elizabeth Ancheta-Delarmente⁸ (Delarmente) (collectively, respondents) for violation of Sec. 261(a)⁹ of the Omnibus Election Code.¹⁰

Antecedents

Petitioners, Filipinos of legal age and residents of Quezon City, filed a Complaint Affidavit against respondents before the COMELEC. According to petitioners, respondents Belmonte, Sotto, and Delarmente, then candidates for Mayor, Vice-Mayor, and Representative of the First District of Quezon City, respectively, in the May 2019 National and Local Elections, along with

¹ *Rollo*, pp. 3-21. Under Rule 64 in relation to Rule 65 of the Rules of Court.

² *Id.* at 22-29. Signed by Chairperson Sheriff M. Abas and Commissioners Al A. Parreño, Luie Tito F. Guia, Ma. Rowena Amelia V. Guanzon, Socorro B. Inting, Marlon S. Casquejo, and Antonio T. Kho, Jr. (now a Member of the Court).

³ *Id.* at 30-33. Signed by Chairperson Sheriff M. Abas and Commissioners Ma. Rowena Amelia V. Guanzon, Socorro B. Inting, Marlon S. Casquejo, and Antonio T. Kho, Jr. (now a Member of this Court).

⁴ *Id.* at 34-36.

⁵ Also referred to as Ma. Josefina G. Belmonte in various portions of the *rollo*.

⁶ Also referred to as Gian Carlo Jose G. Sotto in various portions of the *rollo*.

⁷ Also referred to as Kuya Wil in various portions of the *rollo*.

⁸ Also referred to as Elizabeth A. Delarmente in various portions of the *rollo*.

⁹ **Section 261. Prohibited Acts.** - The following shall be guilty of an election offense:

(a) Vote-buying and vote-selling. -

(1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.

(2) Any person, association, corporation, group or community who solicits or receives, directly or indirectly, any expenditure or promise of any office or employment, public or private, for any of the foregoing considerations.

¹⁰ Batas Pambansa Blg. 881. Approved: 03 December 1985.

respondent Revillame, a television personality who is known for hosting variety shows such as *Masayang Tanghali Bayan*, *Wowowee*, *Willing Willie*, and *Wowowin*.¹¹ committed the offense of vote-buying during a campaign rally on 11 May 2019. Belmonte and Sotto eventually won as Mayor and Vice Mayor of Quezon City, respectively, in the said elections,¹² and won anew for the same posts in the recently concluded May 2022 National and Local Elections.

The allegations in petitioners' Complaint Affidavit read:

x x x x

2. On May 11, 2019, Ma. Josefina G. Belmonte, Gian Carlo Jose G. Sotto and their party held a campaign rally along Roosevelt Avenue, Pitimini, Quezon City. A stage was put up where they presented their platforms of government. In this rally, they campaigned and solicited the support and votes of Quezon City voters. To attract more voters, celebrities and guests were invited to join them in the rally. Among those who went to the rally was Willie Revillame.
3. Willie Revillame was called on the stage. He went to the stage and addressed the crowd. Also at the stage were Ma. Josefina G. Belmonte, Gian Carlo Jose G. Sotto, and Elizabeth A. Delarmente.
4. With Willie Revillame on the stage were the so-called "*wowowee girls*" who did a production number. While addressing the crowd, Willie Revillame, on multiple occasions, gave cash to the crowd and thereafter endorsed the respondents to the position they were running for. The cash were given to induce the voters to vote Ma. Josefina G. Belmonte, Gian Carlo Jose G. Sotto, and Elizabeth A. Delarmente for Mayor, Vice Mayor, and Congresswoman, respectively. This is in violation of Sec. 261(a) of the Omnibus Election Code x x x.
5. The video taken during the aforesaid campaign rally showed Willie Revillame, in the presence of the respondents giving cash to the people. After giving them cash, Willie Revillame endorsed Ma. Josefina G. Belmonte, Gian Carlo Jose G. Sotto, and Elizabeth A. Delarmente.
6. While the video was being taken, it was simultaneously broadcast live in the Facebook account of Joy Belmonte. A digital versatile disc (DVD) containing the whole video taken during the aforesaid campaign rally and posted live in the Facebook Account of Joy Belmonte is hereto attached as ANNEX "A," while a DVD of the still photos taken from the said video showing Willie Revillame giving cash to the crowd and showing Ma. Josefina G. Belmonte and Gian Carlo Jose G. Sotto with him are hereto attached as

¹¹ *Rollo*, p. 38.

¹² *Id.* at 34.

ANNEX "B". Hard copies of the still photos are hereto attached as ANNEX "B-1" to "B-19".

7. We are executing this Complaint Affidavit to charge Ma. Josefina G. Belmonte, Gian Carlo Jose G. Sotto, Elizabeth A. Delarmente and Wilfredo B. Revillame with vote-buying punishable by Sec. 261(a) of the Omnibus Election Code.¹³

The COMELEC Law Department summarized respondents' defenses as follows:

All respondents categorically deny the charge of vote-buying and sought the outright dismissal of the complaint against them, primarily due to the absence of the elements of the offense of vote-buying and for insufficiency of evidence, thus, no probable cause to charge them. For their part, respondents-candidates Belmonte, Sotto and Delarmente (sometimes referred to as "respondents-candidates") explicitly denied having given money of any amount to voters/crowd during the event, much less, for the purpose of inducing the people to vote for them. But respondent Revillame admitted having given some small amount of cash to the audience but reasoning that it was part of the entertainment show and the fund was sourced out from his personal pocket and not from his co-respondents. Respondent Revillame further stressed that it was not in any way intended to induce the voters or the crowd to vote for his co-respondents who were candidates for local positions in Quezon City in the May 13, 2019 National & Local Elections. It was intended no less as a form of financial assistance for his avid fans mostly minors, senior citizens, etc. for use in buying basic necessities. They assail complainants' capacity to make the serious accusations for not being present during the event where the offense allegedly took place. Also they raised as an issue to the admissibility of the video footage and photographs to support their cause of action absent the testimonies of witnesses who could attest on the circumstance thereof such as the questions as to who, when and where those video footages were taken and the chain of custody thereof and be able to authenticate the genuineness of the contents thereof.

More specifically, other relevant individual defenses of respondents contained in their counter-affidavits adduced, may be summarized as follows:

[Belmonte]

Belmonte claims that the case hurled against her and her co-respondents is nothing more than [a] harassment suit and points out that she did not give money or anything of value to any person during the *miting de avance* in order to induce anyone to vote for her. She stresses that the May 11, 2019 campaign rally or *miting de avance* of candidates of their political party and the entertainment show of co-respondent Revillame are two (2) different events, where the latter entertained the audience only after the campaign rally is over and she, together with the

¹³ Id. at 35-36.

other respondents, were present as mere spectators similar to the other people in the audience. Further, she declares that respondent Revillame entertained the audience in his own show held immediately following the conclusion of the *miting de avance*, hence, all matters relating to the [show's] preparation, nature/segments in the show, logistics and production were all under the control of respondent Revillame's team. Also, she [alleges] that she recalled having been briefly called by Revillame with co-respondent Sotto to the front of the stage and have greeted them in public. She strongly declares that the elements of vote-buying and vote-selling are wanting in this case and that [petitioners] had no evidence or witnesses proving their erroneous contentions, hence the complaint deserves to be dismissed.

[Sotto]

Sotto vehemently denies the accusation against him and asserts that the complaint is frivolous and baseless. He claims that during the campaign rally, he and his co-respondents merely presented their platforms of government before the crowd in Roosevelt, Quezon City and thereafter, solicited their support. Also, he claims [that] since [petitioners] were not present during their campaign rally staged by their political party, they do not have personal knowledge of what actually transpired, during and after the said event and went on to state their allegations are thus hearsay, if not speculations, conjectures and conclusions without any basis in law and in fact. Further, he avers that the video footages and still photos being referred to by [petitioners] to support their complaint are not even admissible in evidence since they did not present as witness the person who took the video and who could authenticate the genuineness of the contents thereof. Furthermore, he declares that the complaint-affidavit does not sufficiently show that a criminal offense or a violation of election laws has been committed, and that the [petitioners] miserably failed to prove the offense of vote-buying since they failed to identify the voters who are allegedly paid and were induced to vote for them. That the public appearance of co-respondent Revillame to host the entertainment show was done after [his] co-respondents and himself had finished their political rally and speeches. He avers that Revillame did not state in any instance that the people of Quezon City must vote for him, Belmonte and Delarmente. Also, he claims that the public statement of respondent Revillame that the money was (sic) given to the audience is for their basic needs, like food and medicines, is a conclusion that they are not required to vote for him and co-respondent-partymates.

[Delarmente]

Delarmente contends that the case filed against her and her co-respondents is just a clear example of harassment. Further, she asserts that there is no basis, factual or legal, that she violated the provision of Section 261(a)(1) of the Omnibus Election Code. Moreover, she claims that the May 11, 2019 event was the *miting de avance* of their political party held [at] Roosevelt Avenue, Quezon City, and the entertainment show of co-respondent Revillame thereafter is a different event held next to that *miting de avance*. She is seeking the dismissal of the complaint against her in view of the absence of the elements of vote-buying under Sec. 261(a)(1)



of the Omnibus Election Code. She cited that rule that the complaint during preliminary investigation must be dismissed, if, *inter alia*, that [sic] the acts and/or omissions alleged in the complaint and/or the supporting affidavits do not sufficiently show that a criminal offense or violation of a penal law has been committed.

[Revillame]

For his part, respondent Revillame or “Kuya Wil” claims, among others, that on May 11, 2019 at 8:00 o’clock in the evening at Roosevelt, Quezon City, he was engaged to perform an entertainment variety show similar to the format of his popular television show “Wowowin” which includes a segment “bigyan ng jacket”, and denies the accusation of vote-buying through the act of giving cash for the purpose of inducing his fans to vote in favor of his co-respondents Belmonte, Sotto and Delarmente. He admits that during the show, other than the jackets, he also gave away small amount of cash to his fans [who] mainly were children, senior citizens, PWDs, and those whom he felt needs financial help for them to buy basic necessities such as rice, milk, medicines, etc., but asserts that those funds came from his own pocket and not from his co-respondents. He asserts that he did not give away money in exchange for votes in favor of co-respondents Belmonte, *et al.*, and that he did not utter any word or imply that the audience should vote for his co-respondents. He stresses that he was there in the Roosevelt rally purely to entertain. He further claims that the elements of the crime of vote-buying are not attendant in this case and also that the criminal intent or *mens rea* to commit the offense is not extant in the case. For said reason, *inter alia*, he sought a dismissal of the complaint.¹⁴

Ruling of the COMELEC

On 11 October 2019, the COMELEC Law Department issued a Memorandum¹⁵ on petitioners’ Complaint Affidavit, which reproduced the recommendation of the Investigating Officer¹⁶ tasked to determine the presence of probable cause to charge respondents for the offense of vote-buying as defined and penalized under Section 261(a)(1) of the Omnibus Election Code.

Based on the allegations, supporting video footage, and photographs presented by petitioners, the Investigating Officer found that petitioners failed to establish, by allegations or evidence, that vote-buying took place and that respondents are probably guilty thereof. Respondents Belmonte,

¹⁴ Id. at 251-252.

¹⁵ See Id. at 22. Signed by Director Maria Norina S. Tangaro-Casingal of the COMELEC Law Department.

¹⁶ Id. at 22-28. Atty. Jubil S. Surmieda, Regional Election Director for the National Capital Region directed Atty. Jovencio G. Balanquit to conduct the preliminary investigation and submit his recommendation. The Law Department received the recommendation on 24 September 2019.

Sotto, and Delarmente admitted to being present in the event but did not give cash to the attendees of respondent Revillame's program. Rather, Revillame gave cash to certain attendees of his program, but without indication that respondents Belmonte, Sotto and Delarmente were aware or gave consent to such acts.

Petitioners' bare allegations in their Complaint Affidavit were declared as insufficient to establish probable cause. Petitioners failed to present corroborative testimony of any witness who may have personal knowledge about the giving of money. The video footage and the still photos showing Revillame giving cash to the audience, without testimonies of the person who took them, as well as the testimonies of the recipients of the money, are hearsay and have weak evidentiary value.

Further, vote-buying, even though penalized by a special law, is considered *mala in se* as it destroys the sanctity of votes. Thus, the criminal intent, or *mens rea*, of giving anything of value to induce the recipient to vote or against a candidate must be established. As respondent Revillame admitted that he made it clear to the audience that he was giving away jackets and money as his way of helping them buy medicine or daily necessities, it cannot be said that he uttered words to induce the audience to vote for respondents Belmonte, Sotto and Delarmente.

The Investigating Officer concluded:

It is well-settled in our jurisdiction that the role and object of preliminary investigation was "to secure the innocent against nasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."

WHEREFORE, CONFORMABLY WITH [THE] FOREGOING PREMISES, the instant complaint docketed in EO Case No. 19-199 against respondents MA. JOSEFINA G. BELMONTE-ALIMURUNG, GIAN CARLO G. SOTTO, ELIZABETH A. DELARMENTE and WILFREDO B. REVILLAME is hereby DISMISSED, for insufficiency of evidence and utter lack of probable cause.¹⁷

After the Investigating Officer's evaluation, the Law Department proceeded to recommend the dismissal of the complaint to the COMELEC *En Banc*. Preliminarily, the Law Department declared that the finding of probable cause needs only to rest on evidence showing the likelihood of commission of a crime. The determination of probable cause does not require authentication of petitioners' submitted video and photographs.¹⁸

¹⁷ Id. at 26-27.

¹⁸ Id. at 27-28.

The Law Department opined that the *miting de avance*, or campaign rally of respondents Belmonte, Sotto and Delarmente, among others, and respondent Revillame's entertainment program were found to be two distinct and separate events. The candidates who spoke in the *miting de avance*, left the venue before Revillame began his program. Respondents Belmonte, Sotto, and Delarmente, who stayed behind, were mere spectators of Revillame's program.¹⁹ The Law Department summarized its recommendations thus:

In sum, the [Petitioners] were unable to present sufficient basis to support their allegations of vote-buying against Respondents Ma. Josefina G. Belmonte, Gian Carlo Jose G. Sotto, Elizabeth A. Delarmente, and Wilfredo B. Revillame. The video and photographs attached as evidence [do] not show any intent on the part of the Respondents to buy votes from the audience. Respondent Revillame was hired by his co-Respondents to give entertainment to the people who stayed after the *miting de avance*. There are no indications that Respondents conspired to commit vote-buying, so much so, with the event happening within the prying full view of the public and their political opponents.

WHEREFORE, the Law Department respectfully recommends the **DISMISSAL** of the Complaint filed against Respondents **MA. JOSEFINA G. BELMONTE[-ALIMURUNG], GIAN CARLO JOSE G. SOTTO, ELIZABETH A. DELARMENTE** and **WILFREDO B. REVILLAME** for violation of Section 261(a)(1) of the Omnibus Election Code for insufficiency of evidence and lack of probable cause.²⁰

In adopting the Law Department's recommendation, the COMELEC *En Banc* in its assailed Resolution No. 10625²¹ dated 14 November 2019 declared:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **adopt** the [R]ecommendation of the Law Department to **dismiss** the case against **Ma. Josefina G. Belmonte[-Alimurung], Gian Carlo G. Sotto, Wilfredo B. Revillame, and Elizabeth A. Delarmente** for alleged violation of Section 261(a)(1) of the Omnibus Election Code for lack of probable cause.

Let the Law Department implement this Resolution.

SO ORDERED.²²

On 19 December 2019, petitioners filed a Motion for Reconsideration:

¹⁹ Id. at 28.

²⁰ Id. at 28. Emphasis in the original.

²¹ Id. at 22-29. Signed by Chairperson Sheriff M. Abas and Commissioners Al A. Parreño, Luie Tito F. Guia, Ma. Rowena Amelia V. Guanzon, Socorro B. Inting, Marlon S. Casquejo, and Antonio T. Kho, Jr. (now a Member of this Court).

²² Id. at 28. Emphasis in the original.

(MR)²³ and alleged that the COMELEC *En Banc* committed grave errors of fact and of law. Belmonte filed her Comment to petitioners' MR on 20 January 2020. The Law Department submitted a Memorandum dated 10 March 2020 which declared that after a thorough re-evaluation of the records of the case, there is no cogent reason to depart from the findings adopted by the COMELEC *En Banc* in Resolution No. 10625. As the issues raised by petitioners merely rehashed the issues previously settled by the COMELEC *En Banc*, the Law Department recommended the denial of petitioners' MR.²⁴ The COMELEC *En Banc* again adopted the Recommendation of the Law Department in its assailed Minute Resolution No. 20-0268-14²⁵ dated 17 June 2020 thus:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to adopt the recommendation of the Law Department to **DENY** the Motion for Reconsideration filed by complainants **EDWIN D. RODRIGUEZ and MICHAEL T. DEFENSOR** for being [a] mere rehash of issues already settled in *En Banc* Resolution No. 10695.

Let the Law Department implement this Resolution.

SO ORDERED.²⁶

Issues

Petitioners come before this Court and raise the following grounds for consideration:

With all due respect, the respondent COMELEC committed error amounting to grave abuse of discretion in dismissing the complaint for violation of Section 261(a)(1) of the Omnibus Election Code considering that:

- (1) the evidence on record is sufficient to establish probable cause;
- (2) the arguments of private respondents, which the COMELEC adopted, are matters best ventilated in the trial proper and not during the preliminary investigation; and
- (3) the questioned resolutions are based on unwarranted assumptions.²⁷

For petitioners, the COMELEC *En Banc*'s assertion that Revillame

²³ Id. at 88-93.

²⁴ Id. at 31-32.

²⁵ Id. at 30-33. Signed by Chairperson Sheriff M. Abas and Commissioners Ma. Rowena Amelia V. Guanzon, Socorro B. Inting, Marlon S. Casquejo, and Antonio T. Kho, Jr. (now a Member of the Court).

²⁶ Id. at 33. Emphasis in the original.

²⁷ Id. at 8-9.

cannot be held guilty of vote-buying due to his popularity and his brand of entertainment, is hasty and one-sided. They submit that, following such logic, any candidate can simply hire a public figure, or an artist, who can distribute money on their behalf.

Respondents Belmonte, Sotto and Delarmente filed their respective Comments.²⁸ The Office of the Solicitor General (OSG) filed a Manifestation in lieu of Comment²⁹ and argued that the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint for violation of Section 261(a)(1) of the Omnibus Election Code filed by petitioners against respondents. According to the OSG, there is probable cause to charge respondents with the offense of vote-buying.³⁰

In its discussion, the OSG countered the COMELEC *En Banc*'s finding that respondents Belmonte, Sotto and Delarmente's *miting de avance* and respondent Revillame's entertainment show are two separate and distinct events.

17. x x x [s]aid event was in reality a political rally that consisted of two parts: The *first* part was that portion wherein the candidates delivered their speeches and presented their platform to the audience for the purpose of soliciting their votes, while the *second* part was the entertainment show provided by respondent Revillame. Clearly, therefore, the entertainment show of respondent Revillame formed part of the party's *miting de avance*. And, given the undeniable capability of respondent Revillame to draw huge crowds and to influence the public in anything, it is not accurate to say that he was merely invited to provide pure entertainment to the audience. On the contrary, he was invited thereto to influence the audience to vote for respondents Belmonte, Sotto, and Delarmente.

x x x x

24. That respondent Revillame did not directly tell the audience to vote for respondents Belmonte, Sotto, and Delarmente is immaterial. His act of calling said respondents to the front of the stage during his show and respondent Belmonte's subsequent declaration of gratitude towards him for supporting their SPB Team strongly evinces the fact that he was endorsing respondent Belmonte and her co-respondents in the elections. Thus, respondent Revillame's entertainment show cannot be considered as separate from the *miting de avance* itself. His act of giving cash and other items of value to the crowd during said event in the presence of respondents Belmonte, Sotto, and Delarmente who did not express any objection thereto, should be construed as a grand scheme to circumvent the prohibition against vote-buying under Section 261(a)(1) of the

²⁸ Id. at 130-165 (Revillame), 166-177 (Belmonte), 178-187 (Delarmente), 191-212 (Sotto).

²⁹ Id. at 262-276.

³⁰ Id. at 267-268.

Omnibus Election Code. However, what cannot be done directly cannot be done indirectly. Thus, in respondents' case, there is probable cause to charge them with vote-buying under the aforesaid law.³¹

The COMELEC *En Banc*, in its Comment, denied the existence of probable cause and asserted that petitioners failed to satisfy the elements of vote-buying. Aside from reiterating that Revillame's entertainment portion was an event separate from the *miting de avance*, the COMELEC *En Banc* pointed out the deficiencies in petitioners' complaint: the alleged acts were neither personally witnessed nor were they recipients of the alleged considerations. Furthermore, there was a lack of affidavits to support their allegations.³²

Ruling of the Court

The Petition lacks merit.

In issuing the challenged resolutions, the COMELEC *En Banc* did not commit grave abuse of discretion in dismissing petitioners' Complaint Affidavit for lack of probable cause. Further, this Court has limited power to review findings of fact made by the COMELEC pursuant to its constitutional authority to investigate and prosecute actions for election offenses. Where there is no proof of grave abuse of discretion, arbitrariness, fraud or error of law, this Court may not review the factual findings of the COMELEC, nor substitute its own findings on the sufficiency of evidence.³³

The Prosecution of the Election Offense of Vote-Buying

Petitioners alleged that respondents committed vote-buying, an election offense, under Section 261(a)(1) of Batas Pambansa Blg. (BP) 881, or the Omnibus Election Code. The said provision states:

Sec. 261. *Prohibited Acts.* — The following shall be guilty of an election offense:

(a) Vote-buying and vote-selling. — (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or

³¹ Id. at 270-272. Citation omitted.

³² Id. at 254.

³³ *Malinias v. Commission on Elections*, 439 Phil. 319, 339 (2002).

offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.

The offense of vote-buying is defined in Section 261(a)(1). The offender commits one of these acts: (1) gives, offers or promises money or anything of value; (2) gives or promises any office or employment, franchise or grant, public or private; (3) makes or offers to make an expenditure, directly or indirectly; and (4) cause an expenditure to be made to any person, association, corporation, entity, or community. It is imperative for the prosecution of the offenses of vote-buying to show intent: (1) to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or (2) to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.

The procedure for the initiation of the prosecution of the election offense of vote-buying, along with the offense of vote-selling, is prescribed in Section 28 of Republic Act No. (RA) 6646,³⁴ or The Electoral Reforms Law of 1987 (Electoral Reforms Law).

Sec. 28. Prosecution of Vote-buying and Vote-selling. — The presentation of a complaint for violations of paragraph (a) or (b) of Section 261 of Batas Pambansa Blg. 881 supported by affidavits of complaining witnesses attesting to the offer or promise by or of the voter's acceptance of money or other consideration from the relatives, leaders or sympathizers of a candidate, shall be sufficient basis for an investigation to be immediately conducted by the Commission, directly or through its duly authorized legal officers, under Section 68 or Section 265 of said Batas Pambansa Blg. 881.

Proof that at least one voter in different precincts representing at least twenty percent (20%) of the total precincts in any municipality, city or province has been offered, promised or given money, valuable consideration or other expenditure by a candidate's relatives, leaders and/or sympathizers for the purpose of promoting the election of such candidate, shall constitute a disputable presumption of a conspiracy under paragraph (b) of Section 261 of Batas Pambansa Blg. 881.

Where such proof affects at least twenty percent (20%) of the precincts of the municipality, city or province to which the public office aspired for by the favored candidate relates, the same shall constitute a disputable presumption of the involvement of such candidate and of his principal campaign managers in each of the municipalities concerned, in the conspiracy.

³⁴ Approved: 05 January 1988.

The giver, offeror, and promisor as well as the solicitor, acceptor, recipient and conspirator referred to in paragraphs (a) and (b) of Section 261 of Batas Pambansa Blg. 881 shall be liable as principals: *Provided*, That any person, otherwise guilty under said paragraphs who voluntarily gives information and willingly testifies on any violation thereof in any official investigation or proceeding shall be exempt from prosecution and punishment for the offenses with reference to which his information and testimony were given: *Provided, further*, That nothing herein shall exempt such person from criminal prosecution for perjury or false testimony.

Section 4 of Rule 34 of the COMELEC Rules of Procedure prescribes the form of the complaint and where to file it.

Sec. 4. *Form of Complaint and Where to File.* — (a) When not initiated *motu proprio* by the Commission, the complaint must be verified and supported by affidavits and/or any other evidence. *Motu proprio* complaints may be signed by the Chairman of the Commission, or the Director of the Law Department upon direction of the Chairman, and need not be verified;

(b) The complaint shall be filed with the Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal. If filed with any of the latter three (3) officials, investigation thereof may be delegated to any of their assistants.

(c) If filed with the Regional Election Directors or Provincial Election Supervisors, said officials shall immediately furnish the Director of the Law Department a copy of the complaint and the supporting documents, and inform the latter of the action taken thereon.

The COMELEC *En Banc* is correct in decreeing that petitioners' Complaint Affidavit, as filed, is insufficient to sustain their allegations of vote-buying under Section 261(a)(1) of the Omnibus Election Code. It is not "supported by affidavits of complaining witnesses attesting to the offer or promise by or of the voter's acceptance of money or other consideration from the relatives, leaders or sympathizers of a candidate" as required under Section 28 of the Electoral Reforms Law. The absence of supporting affidavits shows the frailty of petitioners' Complaint Affidavit and makes it vulnerable to dismissal.³⁵ Submission of self-serving statements, uncorroborated audio and visual recordings, and photographs are not considered as direct, strong, convincing and indubitable evidence.³⁶ Indeed, a complaint, such as that filed by petitioners, must be dismissed for insufficiency of evidence.

The importance of supporting affidavits is further underscored by the

³⁵ See *Bernardo, et al. v. Abalos, Sr., et al.*, 422 Phil. 807, 814 (2001).

³⁶ *Id.* at 813.

first paragraph³⁷ of Section 28 of the Electoral Reforms Law. To comply with its mandate to investigate and prosecute those committing offenses under Section 261(a) of the Omnibus Election Code, the last paragraph of Section 28 of the Electoral Reforms Law vests the COMELEC with the authority to give **transactional immunity** to those who voluntarily give information and willingly testify in any official proceeding for the offenses with reference to which his information and testimony were given.³⁸ This grant of immunity is meant to encourage the recipient (or vote-seller) to come into the open and denounce the culprit-candidate (or vote-buyer) and to ensure the successful prosecution of the criminal case against the latter.³⁹

x x x The immunity statute seeks a rational accommodation between the imperatives of the privilege against self-incrimination and the legitimate demands of government to encourage citizens, including law violators themselves, to testify against law violators. The statute operates as a complete pardon for the offenses to which the information was given. The execution of those statutes reflects the importance of the testimony therefor, and the fact that many offenses are of such character that the only persons capable of giving useful testimony are those implicated in the crimes. Indeed, their origins were in the context of such offenses and their primary use has been to investigate and prosecute such offenses. Immunity from suit is the only consequence flowing from a violation of one's constitutional right to be protected from unreasonable search and seizure, his right to counsel and his right not to be coerced into confessing. By voluntarily offering to give information on violations of Section 261(a) and (b) and testify against the culprits, one opens himself to investigation and prosecution if he himself is a party to any violation of the law. In exchange for his testimony, the law gives him immunity from investigation and prosecution for any offense in Section 261 (a) and (b) with reference to which his information is given. He is, therefore, assured that his testimony cannot be used by the prosecutors and any authorities in any respect, and that his testimony cannot lead to the infliction of criminal penalties on him. The testimony of a voluntary witness in accord with his sworn statement operates as a pardon for the criminal charges to which it relates.

It bears stressing that one may voluntarily give information on violations of Section 261(a) and (b) and execute an affidavit before a complaint is filed with the [COMELEC], or any provincial or city prosecutor. This may be done even during the preliminary investigation or even after an Information is filed, on the condition that his testimony must be in accord with or based on his affidavit. If such witness later refuses to testify or testifies but contrary to his affidavit, he loses his immunity from suit, and may be prosecuted for violations of Section 261(a) and (b) of the Omnibus Election Code, perjury under Article 183 of the Revised Penal Code, or false testimony under Article 180 of the same Code.

³⁷ Approved: 15 February 1993.

³⁸ See *Commission on Elections v. Español*, 463 Phil. 240, 243 (2003).

³⁹ See *Commission on Elections v. Hon. Tugle*, 445 Phil. 665, 671 (2003).

The power to grant exemptions is vested solely on the [COMELEC]. This power is concomitant with its authority to enforce election laws, investigate election offenses and prosecute those committing the same. The exercise of such power should not be interfered with by the trial court. Neither may this Court interfere with the [COMELEC's] exercise of its discretion in denying or granting exemptions under the law, unless the petitioner commits a grave abuse of its discretion amounting to excess or lack of jurisdiction.⁴⁰

It requires more than a mere tenuous deduction to prove the offense of vote-buying. There must be concrete and direct evidence or, at least, strong circumstantial evidence to support the charge of vote-buying.⁴¹ In *Lozano v. Yorac*,⁴² We decreed that the physical presence of a mayoralty candidate during the distribution of the local government's Christmas gifts did not necessarily make the candidate the giver of said gifts. Complainant's witnesses even confirmed that the gift packages clearly indicated that the local government was the giver.⁴³

In similar manner, petitioners' allegation that respondents Belmonte, Sotto, and Delarmente were present when respondent Revillame gave cash to certain persons in the audience hastily concludes that the former were the givers. Revillame presented the affidavits of five recipients of his gifts. One recipient was a resident of Antipolo City and cannot be influenced to vote for Belmonte, Sotto, and Delarmente, who were all candidates for positions in Quezon City. All these affiants-recipients stated that Revillame did not ask them whether they were registered Quezon City voters. What mattered to Revillame was their attendance in the program. They were also unanimous in stating that Revillame, not respondents Belmonte, Sotto, and Delarmente, was the benevolent source of their gifts. That respondents were able to present the affidavits from the recipients of Revillame's gifts starkly contrasts with petitioners' lack of supporting evidence for their allegations.

The testimonies of the alleged vote-sellers are also invaluable in proving the intent of the vote-buyer. Section 261(a) of the Omnibus Election Code explicitly states that intent is an element of the offenses of vote-buying and vote-selling. That the Omnibus Election Code is a special law does not necessarily mean that it is needless to prove intent. We agree with the COMELEC *En Banc* that vote-buying is inherently immoral as it destroys the sanctity of votes and prostitutes the election process.⁴⁴

An act prohibited by a special law does not automatically make it *malum prohibitum*. "When the acts complained of are inherently immoral,

⁴⁰ - *Supra* at note 38 at 260-261.

⁴¹ *Lozano v. Yorac*, 280 Phil. 280, 296 (1991).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Rollo*, p. 253.

they are deemed *mala in se*, even if they are punished by a special law.” The bench and bar must rid themselves of the common misconception that all *mala in se* crimes are found in the Revised Penal Code (RPC), while all *mala prohibita* crimes are provided by special laws. The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act.⁴⁵

Notwithstanding our limited power to review the COMELEC’s findings of fact, We deem that the distinction between the *miting de avance* and the entertainment program was unnecessary for determining respondents’ liability for vote-buying. Section 261(a)(1) of the Omnibus Election Code does not require that the offense be made during a political activity such as a *miting de avance*. This, provided that all the elements of the offense are present, there is no escape from liability even if the vote-buying was done at a distance, whether in terms of time or of physical space, from a political activity.

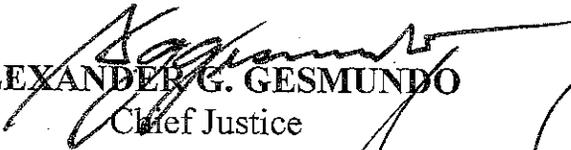
WHEREFORE, the present petition is **DISMISSED**. Resolution No. 10625 dated 14 November 2019 and Minute Resolution No. 02-0268-14 of the Commission on Elections *En Banc* in E.O. Case No. 19-199 are **AFFIRMED**.

SO ORDERED.

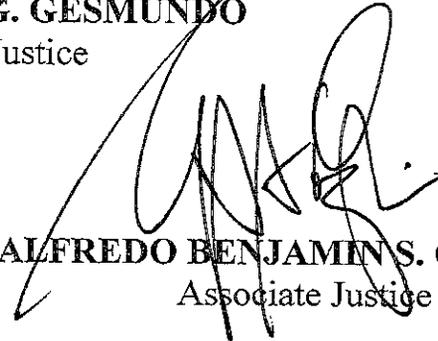

RODIL V. ZALAMEDA
Associate Justice

⁴⁵ *Cardona v. People of the Philippines*, G.R. No. 244544, 06 July 2020 citing *Garcia v. Court of Appeals*, 519 Phil. 591, 596 (2006) and *Dungo v. People*, 762 Phil. 630, 658-659 (2015).

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


MARVIC M.V.F. LEONEN
Associate Justice

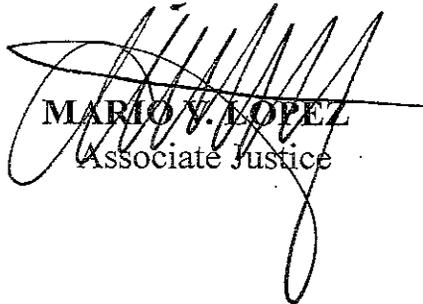

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

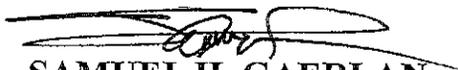
(On Leave)

RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

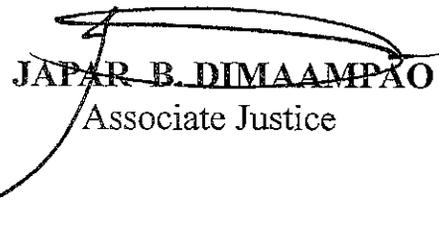

HENRI JEAN PAUL B. INTING
Associate Justice


MARIO Y. LOPEZ
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SAMUEL H. GAERLAN
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RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

(With prior participation)
ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice