

DATU BLAH SINSUAT, PETITIONER, VS. SALIPADA K. PENDATUN, COMMISSION ON ELECTIONS, AND THE PROVINCIAL BOARD OF CANVASSERS OF COTABATO, RESPONDENTS.

G.R. No. L-31501. June 30, 1970

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

A petition for the issuance of writs of certiorari, mandamus and prohibition, with prayer for the immediate issuance of a writ of preliminary injunction, filed by petitioner Datu Blah Sinsuat against respondent Salipada K. Pendatun, the Commission on Elections -- herein-after referred to as COMELEC, and the Provincial Board of Canvassers of Cotabato -- hereinafter referred to as BOARD.

The action for certiorari seeks to annul and set aside the resolution of the Comelec, known as Case Resolution No. RR-692, and its accompanying minute resolution, both dated January 19, 1970, in Case No. 692 entitled "Datu Blah Sinsuat vs. Salipada K. Pendatun"[1] insofar as said resolutions sustain the actions of the Board (1) in rejecting and excluding from the canvass 22 election returns from 22 precincts located in the municipalities of Dinaig, Ampatuan, Upi and Maganoy, province of Cotabato; and (2) in including in the canvass 10 election returns from 10 precincts located in the municipalities of Datu Piang and Pikit, also in the province of Cotabato, particularly the election return from precinct No. 15 of Pikit.

The action for prohibition seeks to prohibit respondent Comelec from enforcing the two resolutions mentioned in the preceding paragraph, and also to prohibit respondent Board from giving effect to said resolutions.

The action for mandamus seeks to compel respondent Board to count the 22 election returns that were rejected by the Board, or, "in the alternative, to compel respondent Commission to summon the Members of the Boards of Election Inspectors in these precincts and to order the ballot boxes in question to be brought before it so that the true result of the election can be determined by re-sorting to the ballot box copies of the election returns or to the Tally Sheets, or even to counting the votes in the ballots"[2]; and to compel the respondent Board to reject the 10 election returns that were included in the canvass, hereinbefore adverted to, or, in the alternative, to order respondent Comelec to order the boards of election inspectors in the precincts concerned to prepare genuine election returns, and in the particular case of Precinct No. 15 of Pikit "to order that the ballot box copy be retrieved for the purpose of determining the true result of the count it that is possible"[3].

The petitioner finally prays that after what he seeks in his petition had been granted by this Court, and had been complied with, that respondent Board be directed to proclaim the winner as a result of the canvass.

Upon the filing of the verified petition, this Court issued an order requiring the respondents to answer and at the same time restraining the Comelec from enforcing its resolutions of January 19, 1970 (Case Resolution No. RR-692, and its accompanying minute resolution), and also restraining respondent Board from proceeding with the canvass and proclamation as directed in those resolutions.

In due time respondents Pendatun and Comelec filed their answers to the petition. Respondent Board filed a manifestation, stating that its situation in the present case is similar to that of respondent Comelec, and that it elects not to file an answer. In their answers, both respondents Pendatun and Comelec insist in the correctness of the rulings and orders of the Comelec in the two questioned resolutions.

From the record We find the following facts pertinent to the resolution of the issues involved in this case.

In the national elections held on November 11, 1969, Datu Blah Sinsuat and Salipada K. Pendatun were the official candidates of the Nacionalista Party and of the Liberal Party, respectively, for the office of Representative the lone representative district of Cotabato. There were two other candidates, Apolinario Tolentino and Leopoldo Jalandoni.

By order of the Comelec, the Board canvassed the election returns for the office of Representative at Camp Crame, Quezon City. The canvass started on November 28, 1969 and lasted until December 10, 1969. However, the Board did not proclaim the winner in view of the directive of the Comelec not to make the proclamation in order to enable the parties to appeal to the Comelec from any ruling of the Board relating to the inclusion or the rejection of any election return in connection with the canvass. Upon the termination of the canvass, although no proclamation of the winner would be made, an unofficial tabulation of the votes was made by the Board, and it appeared that candidate Pendatun obtained 76,466 votes as against 71,492 votes for candidate Sinsuat, or a margin of 4,974 votes in favor of the former.

While the canvass was in progress, Pendatun filed petitions with the Comelec praying, among others for the rejection of all the returns in the municipalities of Ampatuan and Maganoy upon the ground that said returns had been prepared at gunpoint. The Comelec restrained the Board from making any proclamation until after the petitions of Pendatun shall have been resolved.

On December 11, 1969 Sinsuat filed with the Comelec a petition questioning, or appealing from, the action of the Board in rejecting the election returns upon the ground of statistical improbability pursuant to the doctrine enunciated in the case of *Lagumbay vs. Comelec, et al.*[4], in the following precincts:

- (1) Dinaig: Precinct No. 37;
- (2) Ampatuan: Precincts Nos. 13-M, 23-A and 23-M;
- (3) Maganoy: Precincts Nos. 4-A, 6-B and 14; and
- (4) Upi: Precincts Nos. 1, 2, 3, 4, 4-A, 5, 6, 6-A, 8, 10, 13, 14, 15, 16, 24-A, 29, 31 and 35.

In the same petition on December 11, 1969 Sinsuat also questioned, or appealed from, the action of the Board in including in the canvass 38 election returns from 38 precincts located in the municipalities of Nuling and Pikit, which were the copies of the election returns furnished the Board by the Provincial Treasurer, upon the ground that the Provincial Treasurers copies were "tampered and spurious" and different from the copies which were "clear, clean, regular and valid" that were furnished the Comelec and the Nacionalista Party[5]. The precincts in question are the following:

- (1) Nuling: Precincts Nos. 7, 8, 9, 10, 12, 14-A, 15, 25, 28, 29, 31, 32, 32-A, 32-B, 33, 35, 36, 37, 38, 39, 39-A, 40 A and 41 (23 returns);
- (2) Pikit: Precincts Nos. 4, 5, 6, 15, 21, 21-A, 26, 29, 33, 34, 40, 41, 42, 43, and 54 (15 returns)

In his petition of December 11, 1969, Sinsuat prayed that the election returns from Dinaig, Ampatuan, Maganoy and Upi, which were rejected upon the ground of statistical improbability be included in the canvass; and that in

lieu of the Provincial Treasurer's copies of the election re-turns for the 23 precincts from Nuling and 15 precincts from Pikit the Comelec copies of the election returns be included in the canvass.

On December 16, 1969 Sinsuat filed a "Supplemental Petition And Appeal" also questioning, or appealing from, the action of the Board in including in the canvass the election returns from 6 precincts of Pikit, namely: Pre-cincts Nos. 10, 16, 27, 31, 33, and 15, upon the ground that said returns were obviously manufactured, because it appears in those returns that there was an excess of votes over the number of voters who voted. In the same supplemental petition Sinsuat questioned, or appealed from the action of the Board in including in the canvass 4 election returns from 4 precincts of Datu Piang, namely: Precincts Nos. 23, 13-A, 14 and 19 upon the ground that those re-turns are statistically improbable under the doctrine laid down in the case of Lagumbay vs. Climaco, *supra*. Likewise, in the same pleading Sinsuat questioned, or appealed from, the action of the Board in rejecting the election returns from Precincts Nos. 6 and 35 of Upi, from Precincts Nos. 4-A, 6-B, and 14 of Maganoy, and from Precinct No. 31 of Dinaig, claiming that the doctrine in the Lagumbay case is not applicable to said returns. In the supplemental petition Sinsuat also alleged that the election return from Precinct No. 54 of M'lang was not in the possession of the Provincial Treasurer and the Board failed to include the same in the canvass. Sinsuat, therefore, prayed the Comelec to order the rejection of the election returns from precincts Nos. 10, 16, 27, 31, 33, and 15 of Pikit, and of the election returns from Precincts Nos. 23, 13-A, 14 and 19 of Datu Piang; the inclusion of the returns from Precincts 6 and 35 of Upi, Precincts Nos. 4-A, 6-B and 14 of Maganoy, and Precinct 31 of Dinaig; and the production of an authentic copy of the return of Precinct No. 54 of M'lang and include the same in the canvass.

In connection with the supplemental petition the Comelec points out in its resolution of January 19, 1970 that Precinct No. 6 of Upi and Precincts Nos. 4-A, 6-B and 14 of Maganoy had already been included in Sinsuat's original petition of December 11, 1969, and with respect to Precinct No. 35 of Upi the Board had actually included the election return of said precinct in its canvass[6].

In his answer to the original petition, filed under date of December 15, 1969, Pendatun insisted in the correctness of the actions of the Board complained of by Sinsuat. However, regarding the 23 election returns from Nuling and the 15 election returns from Pikit which Sinsuat claimed to be the Provincial Treasurer's copies which were tampered with Pendatun manifested in his answer that he interposed no objection to the use of the Comelec copies of the returns in the canvass if said returns appear on their faces to be authentic[7]. By way of a counterclaim Pendatun reiterated his previous petitions for the rejection of all the election returns from the precincts of Ampatuan and Maganoy upon the ground that said returns were prepared at gunpoint; and at the same time he questioned the inclusion by the Board in the canvass of the election returns from the 21 precincts in the municipality of Upi, namely: Precincts Nos. 12, 15-A, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29-A, 32, 33, 34, 36, 37, 38, and 38-A upon the ground that on the face of said returns the same appear to be statistically improbable although crude alterations had been made to break the pattern of uniform 100% voting to avoid the application of the doctrine in the Lagumbay case. Pendatun prayed for the dismissal of Sinsuat's petition; and, on his counterclaim, he prayed that the elections in Maganoy and Ampatuan be declared null and void, so that all the election returns from all the precincts in those two municipalities should be rejected; and that the Board be ordered to reject the election returns from the precincts in Upi mentioned in his counterclaim.

On December 23, 1969 Pendatun likewise filed an answer to the supplemental petition of Sinsuat, traversing the pertinent allegations contained in said supplemental petition, and by way of special and affirmative defenses he alleged that the supplemental petition was defective for not having been verified and for alleging matters which were not new and which could have been incorporated in the original petition.

A hearing was held before the Comelec on December 24, 1969 on the petition and supplemental petition of

Sinsuat and on the counterclaim of Pendatun, which pleadings practically partook of the nature of an appeal from the actions taken by the Board in either including or rejecting certain election returns during the canvass, as the case may be. During the hearing the Comelec examined, in the presence of the counsel for both parties, the copies for the Provincial Treasurer of the election re-turns for the 23 precincts of Nuling and 15 precincts of Pikit which were questioned by Sinsuat as having been tampered with. As a result of the examination of those returns the members of the Comelec and the counsel for both parties actually found the returns to have been tampered with. The Comelec, therefore, required the production of the copies of election returns for the 23 precincts of Nuling and for the 15 precincts of Pikit which were furnished the Comelec. The Comelec examined the Comelec copies one by one, also in the presence of the counsel for both parties. The Comelec found the Comelec copies to be clean and without any alteration, and were serviceable for the canvass. In open court the Comelec promulgated an order which directed the Board to use the Comelec copies of the election returns of the 15 precincts of Pikit and of the 23 precincts of Nuling. The order also required both parties to file simultaneously, until December 26, 1969, their memoranda in support of their respective petition in connection with the petition and supplemental petition filed by Sinsuat. The order further allowed Sinsuat to file an amended petition to include precinct No. 39 of Pikit. In his amended petition Sinsuat claimed that the Provincial Treasurer's copy of the election return for that precinct was also tampered with and the Comelec copy should instead be used in the canvass.

After the promulgation of the resolution mentioned in the preceding paragraph, the counsel of both parties, assisted by the personnel of the Comelec, made a tentative canvass to find out the result after using the Comelec copies of the election returns from the 38 precincts located in Nuling and Pikit. The tentative canvass showed that then votes of Pendatun were reduced by 2,779, leaving him a total of 73,687; whereas the votes of Sinsuat were increased by 668, giving him a total of 72,160 votes. The margin of Pendatun over Sinsuat was thereby reduced from 4,974 to 1,527 votes.

Because of this development, that after using the Comelec copies of the election returns from 38 precincts, above-mentioned, Pendatun still had a margin of some 1,527 votes over Sinsuat, the members of the Comelec were of the view that the matter regarding the application of the doctrine of statistical improbability with regards to election return which were questioned on that ground would be decisive. In this connection, the Comelec says:

"Such being the turn of events as a result of the use of the COMELEC copies for the 23 precincts of NULING and 15 precincts of PIKIT, it became crystal clear that the question of statistical improbability especially in its application to Prec. No. 37 of DINAIG; Prec. Nos. 13-M, 23-A and 23-M of AMPATUAN; Prec. Nos. 1, 2, 3, 4, 4-A, 5, 6, 6-A, 8, 10, 13, 14, 15, 16, 24-A, 29 and 31 of UPI, and its non-application to Prec. Nos. 10, 16, 27, 31, 33, and 15 of PIKIT; and Prec. Nos. 13-A, 14, 19 and 23 of DATU PIANG; has become the crux of the case, resolution of which was completely determinative of the outcome of the elections in the lone congressional district or Cotabato. For this reason, the parties have agreed that the Commission should rule on this particular question for if the action of the Board of Canvassers in applying the doctrine of statistical improbability as enunciated in *Lagumbay vs. Climaco* were to be sustained by the Commission, there would be no further need to pass on the questions involving remaining precincts dispute nor would there be need to rule on the counterclaim and/or appeal of PENDATUN praying for the rejection of the returns in the municipalities of AMPATUAN and MAGANOY and in the 21 precincts of UPI.

"Thus, it had been agreed that the case be submitted for decision on this question of statistical improbability. The parties were then given time to file their respective Memorandum."

On the same day, December 24, 1969, the Comelec directed the Board to reconvene on December 31, 1969 at Camp Crame and to formally recanvass the votes on the basis of the Comelec copies of the returns from those 38 precincts located in Nuling and Pikit.

On January 7, 1970 Sinsuat filed a motion for reconsideration of the Comelec's resolution of December 24,

1969, praying that precinct No. 15 of Pikit be excluded there-from and/or that the Board be ordered to reject the election return for Precinct No. 15 of Pikit. It is alleged in this motion for reconsideration that during the canvass by the Board on December 31, 1969 "it was found out that even the Comelec copy of the return for precinct 15 of Pikit was tampered with and appeared obviously manufactured and/or statistically improbable"[8]. It was further alleged that counsel for Sinsuat had vigorously objected to the admission of the same but the Board had counted and tabulated said return.

On January 19, 1970 the Comelec issued a minute resolution denying Sinsuat's motion for reconsideration of the resolution of December 24, 1969. Pertinent portion of this minute resolution reads as follows:

"Considering the Motion for Reconsideration and/or Appeal dated January 3, 1970 of candidate Datu Blah T. Sinsuat praying that the Resolution of the Commission of December 24, 1969 be reconsidered so as to exclude the Comelec copy of the return for Prec. No. 15 of Pikit, Cota-bato among those to be used by the Board of Canvassers in the recanvass, and the opposition of LP candidate SALIPADA K. PEN-DATUN in his Memorandum dated January 12, 1970, the Commission RESOLVED to deny the Motion for lack of merit."[9]

The foregoing minute resolution is one of the two resolutions that are now being questioned in the pre-sent proceedings before this Court.

Also on January 19, 1970 the Comelec issued Case Resolution No. RR-692[10], the dispositive portion of which reads as follows:

"In view of the foregoing, the Commission RESOLVED:

1) To sustain the action of the Board of Canvassers in rejecting as statistically improbable the election returns for:

DINAIG: Prec. No. 37;

AMPATUAN: Prec. Nos. 13-M, 23-A, and 23-M;

UPI: Prec. Nos. 1, 2, 3, 4, 4-A, 5, 6-A, 8, 10, 13, 14, 15, 16, 24-A, 29 and 31;

"2) To overrule the Board of Canvassers insofar as it ordered the rejection of Prec. No. 6 of UPI it appearing that in this precinct NP candidates PADILLA and PALMARES did not receive any votes and to order the Board of Canvassers, therefore, to include said return in the canvass;

"3) To reiterate its Resolution of December 24, 1969 directing the Provincial Board of Canvassers to use the Comelec copies of the returns for the 23 precincts of Nuling and 15 precincts or PIKIT enumerated in said Resolution;

"4) To uphold the action of the Board of Canvassers in rejecting the returns in Prec. Nos. 6-B and 14 of MAGANOY as statistically improbable;

"5) To order the Board of Canvassers to look for serviceable copies of the returns for Prec. No. 4-A of MAGANOY and Prec. No. 31 of DINAIG and if need be to order the opening of the ballot boxes in said precincts solely for the purpose of retrieving the ballot box copies, and should the Board not succeed in finding a serviceable copy for said precincts, to report to the Commission for further instructions;

"6) To sustain the action of the Board in including in the canvass Prec. Nos. 10, 16, 27, 31, 33 and 1511 of PIKIT since the excess of votes over the number of voters in Prec. No. 16 for PENDATUN is only one and the excess of votes in the other precincts refers to the senatorial candidates;

"7) To sustain the action of the Board in including in the canvass the returns for Prec. Nos. 13-A, 14, 19 and 23 of DATU PIANG where two NP senatorial candidates got the same number of votes as six LP candidates and

there is therefore, no systematic blank-ing of the candidates of the other party;

"8) To order the Board to require the production of serviceable copies of Prec. No. 54 or M'LANG, and if necessary, to order the opening of the ballot box solely for the purpose of retrieving the ballot box copy of said returns. For this purpose, authority is hereby given to the Board to order the opening of the said ballot box if necessary, and should not serviceable copy of said re-turn be found, to report to the Commission for further instructions;

"9) To order the Board of Canvassers to use the Comelec copy of Prec. No. 39 of PIKIT crediting to SINSUAT 49 votes and PENDATUN, 66 votes, the votes they received in clean Comelec copy;

"10) To hold that further hearing on the two Petitions or LP candidate PENDATUN for the rejection or the returns of MAGANOY and AMPATUAN and on his counterclaim for the rejection or the 21 returns or UPI, to wit: Prec. Nos. 12, 15-A, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 29-A, 32, 33, 34, 36, 37, 38 and 38-A would be unnecessary in view of the fact that the disposition of the returns questioned by NP candidate DATU BLAH T. SIN-SUAT in his Appeal as set forth above is already determinative of the outcome or the result of the election in the lone congressional district or Cotabato and the winner in said elections could be proclaimed by the Board of Canvassers on the basis of our instructions herein; and

"11) To direct the Provincial Board of Canvassers of Cotabato to reconvene and complete its canvass of the election returns for the office of representative for the lone district or said province in accordance with the herein resolution, and to proclaim the presumptive winner at 5:00 P.M. or SATURDAY, January 24, 1970, unless restrained by the Supreme Court.

"SO ORDERED"

Not satisfied with the decision or the Comelec, as embodied in the two foregoing resolutions, Sinsuat filed before this Court the instant petition for certiorari, prohibition and mandamus, with preliminary injunction.

Sinsuat now urges that the Comelec erred in its application, or non-application, as the case may be, of the doctrine of statistical improbability as enunciated in the Lagumbay case. In this connection We consider it necessary to restate the doctrine, in order to find out if the Comelec had acted rightly.

This Court, in the Lagumbay case, has classified into two sets the election returns that should be rejected for being statistically improbable and obviously manufactured, as follows:

(1) Those election returns where it appears that the number of registered voters equal the number of ballots used and the number of votes cast and tallied uniformly for all the candidates of one political party, whereas all the candidates of the other party appear to have obtained no vote at all; and

(2) Those election returns where it appears that all the reported votes were cast and tallied uniformly for all the candidates of one political party, whereas the candidates of the other party appear to have obtained no vote at all.

Thus this Court said:

"It appearing therein -- contrary to all statistical probabilities -- in the first set, in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for each and every candidate of the Liberal Party, the party in power; whereas all the candidates of the Nacionalista Party got exactly zero; and in the second set, -- again contrary to all statistical probabilities -- all the reported votes were for candidates of the Liberal Party, all of whom were credited with exactly the same number of votes in each precinct, ranging from 240 in one precinct to 650 in another precinct; whereas, all the candidates of the Nacionalista Party were given exactly zero in all said precincts."

1. We find that of the 22 election returns that were declared by the Comelec as statistically improbable, thereby sustaining the action of the Board in rejecting them, 19 fall under the first set and 3 fall under the second set. Those that fall under the first set are the returns from Precincts Nos. 1, 3, 4, 4-A, 5, 8, 10, 12, 14, 15, 16, 25-A, 29 and 31 of Upi; Precincts Nos. 6-B and 14 of Maganoy; and Precincts Nos. 13-M, 23-A and 23-M of Ampatuan. Those that fall under the second set are the returns from Precincts Nos. 2 and 6-A of Upi and Precinct 37 or Dinaig. Regarding these 22 election returns, the Comelec, in its Case Resolution No. RR-692, dated January 19, 1970, made the following findings:

"In the returns for 17 precincts of UPI, to wit: Prec. Nos. 1, 2, 3, 4, 4-A, 5, 6, 6-A, 8, 10, 13, 14, 15, 16, 25-A, 29 and 31, SINSUAT was credited with all the votes registered or cast in said pre-cincts as against zero for PENDATUN.

"In precincts Nos. 13-M, 23-M, and 23-A of AMPATUAN, SINSUAT received all of the votes registered or cast in said pre-cincts as against zero for PENDATUN.

"In Precinct No. 37 of DINAIG, SINSUAT got 208 votes as against zero for PENDATUN.

"In these 17 precincts of UPI, 3 pre-cincts of AMPATUAN and one precinct of DINAIG, which have a total votes of 4,346 credited to SINSUAT as against zero for PENDATUN, the returns showed a 100% voting for all of the NP candidates from the President, Vice-President, the eight Senatorial candidates, Congressman and the provincial board member¹² and uniform zero votes for all the LP candidates from President down to Congressman, except in Precinct No. 6 of UPI, where NP Senatorial candidates PADILLA and PALMARES did not receive any votes at all. In short, the pattern of voting in said precincts falls squarely within the sphere of the Lagumbay doctrine of 100% registered or cast votes for all the candidates of one party as against zero per cent for each and all the candidates of the other party and the independent candidates. The Commission, therefore, believes that the Board of Canvassers committed no error in rejecting as statistically improbable or obviously manufactured the returns in said precincts."

x x x x

"In Prec. No. 14 of MAGANOY, there were 106 registered voters and all of whom voted. President Marcos, the NP official candidate, got 106 votes, Osmeña, got zero. Diokno, Espina, Palmares, Puyat, Tolentino, and Tamano got 106 votes; Lopez' vote had been tampered with to make it appear in figures as 104 and in words 100; Padilla's vote had been altered also to make it appear to be 100 in words and figures. SINSUAT's vote had also been tampered with to make it appear as 100. It appears, however, that the original votes of all these candidates in words and figures is 106 and the tampering in the votes was made obviously to avoid the application of the doctrine of statistical improbability. The original writings which are still discernible should be read and thus read would show that all the candidates of the NP in these precincts, namely, the President, Vice-President, eight Senators, Congressman and member of the Provincial Board received uniformly the same number of votes as the number of registered votes in these precincts, whereas all the other candidates uniformly got zero. Consequently, the returns for Prec. No. 14 or MAGANOY should be rejected as statistically improbable.

"Similarly, in Prec. No. 6-B of MAGANOY, it appeared that there are 75 registered voters in said precinct. All the candidates of LP received uniformly zero votes. The votes in figures of Espina, Padilla, Palmares, have been changed to 70. Their votes in words, however, had been unchanged. Consequently, since in these returns there is a uniform 100% voting or all the registered votes for all the candidates of the NP and uniform blanking of all the candidates of the LP and the Independent candidates, said returns must also be rejected as statistically improbable.

"Parenthetically, it may be stated here that in the senatorial canvass, the returns for Prec. Nos. 6-B and 14 were rejected for the same reasons."¹³

We have carefully examined the photostat copies of the 22 election returns in question¹⁴, and We find the foregoing observations of the Comelec to be correct, except for the omission of the name of candidate Lorenzo Sumulong which appears as one of the eight NP senatorial candidates who also got 106 votes in the election return of Precinct 14 of Maganoy¹⁵. However, the state-ment in the resolution "that all the candidates of the NP in this precinct namely, the President, the Vice-Pre-sident, eight senators, congressman, member of the pro-vincial board received uniformly the same number of votes as the number of registered votes in these precincts, whereas all the other candidates uniformly got zero" is correct.

It will be noted, as shown in the record, that the Comelec and the Board, in applying the doctrine of sta-tistical improbability, had strictly adhered to the fact-ual premise that there should be 100% voting of the report-ed votes cast and uniformly tallied for all the candidates of one party and a uniform or systematic blanking of all the candidates of the other party. So much so, that the Comelec did not reject the election return of precinct 6 or Upi because it appears in this return that while all the candidates of the Liberal Party received exactly zero, 100% of all the votes cast were uniformly credited to the Nacionalista Party candidates from President down to member of the provincial board (248 votes each), except two can-didates for senator (Padilla and Palmares) who were not credited with any vote (blank - not zero)¹⁶. Likewise the Board did not reject the election return of precinct No. 35 of UPI¹⁷ because it appears therein that all the candidates of the Nacionalista Party from the President down to member of the provincial board, except senatorial candidate Ambrosio Padilla, were each given uniformly 100% of the total votes cast (276 votes) and Liberal Par-ty candidate Gerardo Roxas was also credited with 276 votes, and all the other candidates (including Padilla) were given zero. The reason for not applying the doctrine of statistical improbability on these two election returns (Precs. Nos. 6 and 35 of Upi) is obviously because the factual premise, of 100% voting of the reported votes cast uniformly credited to all candidates of one party as against zero vote for the candidates of the other party, does not obtain in these two election returns. On the other hand, it appears that the election return from Precinct 8-A of Pagalungan was rejected by the Board, upon the ground of statistical improbability as pleaded by Sinsuat, because in this election return it appears that the number of votes reported cast was 100% uniformly credited to all the candidates of the Liberal Party while all the candidates of the Nacionalista Party were each given zero.¹⁸

The doctrine of statistical improbability was enun-ciated by this Court, in the Lagumbay case, in January, 1966. In a number of election cases that came up to this Court after the 1967 and 1969 elections this doctrine had been invoked, but this Court has so far not applied the doctrine because in those cases the factual basis laid down by this court in declaring an election return to be statistically improbable, that is, that 100% of the reported votes cast appear to be uniformly tallied for all the candidates of one party as against zero vote for the candidates of the other party, was not shown. This Court has been very restrictive in the application of the doctrine¹⁹. This attitude of the court was made explicit in the language of Mr. Justice J. B. L. Reyes, in the case of Alonto vs. Comelec²⁰, as follows:

"x x x We do not find in the returns here questioned that uniformity of tallies in favor of candidates belonging to one party, and the systematic blanking of the opposing candidates, that lead us to reject the returns in the Lagumbay case. And in Sangki vs. Comelec, L-28359, Dec. 26, 1967, We have warned against undue expansion of the Lagumbay doctrine without due regard to the factual basis upon which it was based. x x x"

The attitude of this Court is reaffirmed in the most recent case of Ilarde v. Comelec, et al.,²¹ where this Court, in a per curiam decision, said:

"Under Categories A, B-1, B-2 and B-3, petitioner seeks the exclusion of the ques-tioned returns for being statistically im-probable while admitting that they do not fall squarely within the doctrine of statis-tical improbability enunciated in the case of Lagumbay v. Climaco, L-25444, January 31, 1966. The Court finds that the COMELEC adhered to its admonition to canvassers in subsequently decided cases of proceeding with

extreme caution in rejecting returns as obviously manufactured because of statistical improbability, and of viewing the doctrine restrictively so as not to result in the disenfranchisement of innocent voters, and therefore ruled properly against petitioner's urging to expand the doctrine's application. The thrust of all the subsequent cases is to restrict the doctrine of the Lagumbay case to the unique uniformity of tally in favor of candidates and the systematic blanking opposing candidates in the same locality, such as to make the fraud 'palpable from the return itself ... (and) there is no reason to accept it and give it prima facie value', and leading to no other reasonable conclusion than that the returns were obviously manufactured because they were as 'utterly improbable and clearly incredible' as 'to win the sweepstakes ten times.'"²²

Implicit from the aforequoted pronouncements of this Court is the view that if it is shown that in the election return there appears the unique uniformity of tally of all the votes cast in favor of all the candidates belonging to one party and the systematic blanking of all the candidates of the opposing party then the doctrine of statistical improbability enunciated in the Lagumbay case must be applied.

We believe that the situation of the 22 election returns, now in question, fully warrants the application of the doctrine of statistical improbability. In these 22 election returns We have a clear case of the unique uniformity of tallies of all the votes reported cast in favor of all the candidates belonging to one party and the systematic blanking of all the opposing candidates. We have before Us a case where the doctrine laid down in the Lagumbay case is squarely applicable.

2. Sinsuat tries to differentiate the case of the 22 election returns in question from the 50 election returns involved in the Lagumbay case, pointing out that in the Lagumbay case no explanation was offered why even the election inspectors of the Nacionalista Party did not vote for the candidate of the Nacionalista Party, whereas in the case of these 22 election returns there are affidavits of the election inspectors of the Liberal Party explaining why Pendatun obtained zero vote in their respective precincts where these 22 returns came from. On January 29, 1970 Sinsuat attached to the record of this case affidavits alleged to have been executed by Liberal Party Inspectors, poll chairmen and poll clerks, purportedly to show that it was not improbable for him to have garnered all the votes in the precincts where the 22 returns in question came from²³. Pendatun claims that he was not given copies of these affidavits until after the hearing of this case before this Court on January 29, 1970. Pendatun also claims that these affidavits were never formally offered as evidence in the proceedings at Comelec level, and that the supposed affiants were not called to affirm their supposed statements and were not made available for cross-examination by the adverse party. We do not find in the record that these claims of Pendatun are contradicted by Sinsuat.

Sinsuat invokes the decision of this Court in the case of Sangki v. Comelec, et al.²⁴, claiming that in that case this Court did not apply the doctrine of statistical improbability on the election returns where Pendatun as candidate for Governor was credited with all the votes cast in certain precincts in the province of Cotabato in the elections of November 14, 1967 as against gubernatorial candidate Sangki who was given zero vote because Pendatun presented affidavits of Nacionalista Party inspectors explaining why they did not vote for Nacionalista Party official candidate Sangki. We find in the decision, however, that the reason why this Court did not apply the doctrine was because the factual setting of the election returns assailed as statistically improbable in the Sangki case is different from that of the 50 election returns in question in the Lagumbay case. The returns involved in the Sangki case did not reflect a "unique uniformity" of tally of all the votes cast in favor of all the candidates of one party and the systematic blanking of all the candidates of the opposing party, for while it appears in those returns that Sangki obtained zero the other candidates of his party (Nacionalista) obtained scattered votes. Thus, this Court said:

"As we go into the bases for the statistically improbable doctrine hammered out in Lagumbay vs. Climaco, supra, and assess the merits of petitioner's and intervenors' position, we readily read meaningful differences in

factual setting between this case and that of Lagumbay.

"In Lagumbay, the declaration that the election returns therein questioned were 'utterly improbable and clearly incredible,' and thus, should be reject-ed, emphasized that the number of regis-tered voters in about fifty precincts equal the number of ballots reportedly cast and tallied for each and every can-didate of one party only - the Liberal Party. Here, respondent Pendatun points out, which is not denied by petitioner nor intervenors, that the number of re-gistered voters in the questioned pre-cincts of Pagalungan and Pikit is not the same as the number of ballots cast and tallied for the position of Governor, Vice-Governor, and other candidates or the Liberal Party.

"In Lagumbay, too, all the Liberal Party candidates were credited with exact-ly the same number of votes while all the Nacionalista Party candidates received nothing. Here, only candidates Abdullah Sangki and Constanacia Saluda were shown to have received zero votes; other candidates of the Nacionalista Party for other posi-tions voted upon were not blanked in the disputed returns. A fact which stands in bold relief is that candidate Magnolia Antonino for Senator - who is not of the Liberal Party - received in all the ques-tioned precincts a liberal share of the votes.

"In Lagumbay, there was uncertainty as to what happened to the vote of the Nacio-nalista Party inspector in the disputed precincts, because the absence of his vote was unexplained. Here, respondent Pendatun explained, through affidavits of a good number of the Nacionalista Party inspectors them-selves attached to his answer, that some did not vote because they were nor able to regis-ter as voters; that two Nacionalista Party inspectors in Pagalungan did not vote for can-didates Sangki and Saludo but for the Liberal Party candidates for Governor and Vice-Governor because they 'are more qualified than the former two who are foreign to our Muhicipality;' and that other Nacio-nalista Party inspectors believed that the Liberal Party candidates 'are more quali-fied than the Nacionalista Party candidates.' These averments we are constrained to say, reduce this particular point to a question of fact."²⁵

A reading of the last paragraph of the afore-quoted portion of the decision in the Sangki case would apprise one that the offer of affidavits by gubernatorial candi-date Pendatun was not the reason for not applying the doctrine of statistical improbability as laid down in the Lagumbay case, for as this Court said "these averments, we are constrained to say, reduce this particular point to a question of fact"²⁶. In other words, the matter regarding the submission of affidavits to explain the zero vote obtained by an opposing candidate gives rise to a question of credibility of the affidavits of which the Comelec, or any lower tribunal, as the case may be, is more called upon to determine rather than this Court.

In the present case, in connection with the affida-vits presented by Sinsuat, the following is what the Comelec says:

"SINSUAT submitted the affidavits of LP inspectors in several precincts of UPI explaining why they have voted for him, the NP candidate, and not PENDATUN, the LP official candidate. He submitted also the affidavits of several citizens and leaders from UPI and chairmen and poll clerks in these precincts where he got 100% of all the votes and the members of the Board of Inspec-tors of the Municipalities of AMPATUAN, MAGANOY and DINAIG to bolster his contention that it was not impossible for him to get all the votes in the question-ed precincts in said towns.

"On the other hand, PENDATUN contended that in all previous elections where he had run for an elective office, he had consistent-ly obtained substantial votes in the municipality or UPI, AMPATUAN, DINAIG and MAGANOY and therefore, it was unbelievable that he did not receive a single vote in said municipalities. He also claimed that as a matter of fact, in the municipality or UPI, CHRISTIANS, TAUSAGS from JOLO and other natives tribes outnumber the Muslims to which he and SINSUAT belong and the Joloanos of UPI have actually some cause to be resentful against SINSUAT for his harrassments and abuses against them in the past.

"In any event, in the face of this conflicting claims of the parties on the probabilities or improbabilities of SINSUAT garnering all the votes in said four municipalities and the blanking of PENDATUN the Commission believes that the presumption of the return being obviously manufactured in view of its 100% pattern of voting is not overcome by the affidavits submitted by SINSUAT consisting of the affidavits of some LP inspectors and NP and Muslims leaders in said municipalities. On the contrary, the Commission is more inclined to believe that considering that PENDATUN had in the past been elected as senator, governor, congressman and during the last war was one of the outstanding leaders of the resistance movement in Mindanao, a fact of history which the Commission can properly take cognizance of, it would be too much strain on one's credulity to accept that respondent would not have received any single vote in the 17 precincts of UPI, 3 precincts or AMPATUAN and one precinct or DINAIG as mentioned above while his opponent in the same precincts received a total of 4,346 votes when in the past elections he had received substantial votes in said municipalities."²⁷

We have examined the affidavits ourselves and, like the Comelec, we are of the view that those affidavits cannot be given the effect as intended by Sinsuat. We have noted that all the affidavits of the Liberal Party inspectors²⁸ who explained why they voted for Sinsuat and not for Pendatun were made either on November 25, or 26, 1969, even before November 28, 1969 when the canvassing had started. The affidavits of the poll chairmen and poll clerks who stated that the elections in their precincts were peaceful and regular²⁹ were made on November 30, 1969 when the canvassing had hardly started. The wordings of the affidavits cannot but give the impression that the affiants were only made to sign statements already prepared and ready for their signatures. We cannot give weight to affidavits under the circumstances obtaining in this case. Affidavits may be manufactured in the same way that election returns can be manufactured. Affiants may be made to sign affidavits at gunpoint, in the same way that election inspectors can be made to sign election returns at gunpoint. An election case should not be decided on the basis of affidavits that are dubious, even if they are not contradicted by counter-affidavits.

3. Sinsuat likewise maintains that the doctrine of statistical improbability, enunciated in the Lagumbay case, is not applicable to a single office involved in an election. He contends that: "it is the multiple office nature of the election that made it inherently improbable for the returns questioned in Lagumbay to be true. Such a situation cannot exist in a single office election like one at bar; for there is nothing incredible in one candidate getting all the votes in the precinct as against his opponent."³⁰

Sinsuat makes capital of the fact that the Lagumbay case involves a senatorial election where there were eight candidates to be elected. Of course, no particular mention was made about the single office of President, or Vice President, or Representative, in the Lagumbay case because not one of those three offices was involved in said case. Sinsuat loses sight of the fact that in declaring an election return to be statistically improbable, this Court referred to the document as a whole. Thus this Court said:

"It appearing therein that - contrary to all statistical probabilities - in the first set, in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for each and every candidate of the Liberal Party, the party in power; whereas all the candidates of the Nacionalista Party got exactly zero...."³¹

x x x x

"It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates or one party garnered all the votes, each of them receiving exactly the same number, whereas all the eight candidates of the other party got precisely nothing.

"The main point to remember is that there is no blockvoting nowadays."

This Court, in the Lagumbay case, in declaring the election returns therein questioned as statistically improbable "opined that the election result in said precincts as reported was utterly improbable and clearly incredible"; and "where the fraud is so palpable from the returns itself (*res ipsa loquitur* -- the thing speaks for itself), there is no reason to accept it and give it *prima facie* value."

It is clear from the foregoing statements of this Court in the Lagumbay decision that it is the entire election return, which necessarily includes the report of votes obtained by candidates for all offices therein indicated, that is not given *prima facie* value and should be rejected. In other words, where a return is statistically improbable the doubt is cast not only on one office mentioned in the return but on all the offices included therein.

In some cases that came up to this Court involving the office of Mayor, and one case involving the office of Governor, the doctrine of statistical improbability was invoked for the obvious purpose of annulling the election returns³². In none of those cases did this Court apply the doctrine, not because only a single office is involved and the doctrine is not applicable to a single office like that of Governor or Mayor, but because the attendant facts and circumstances in all those cases did not jibe with the factual premise upon which the doctrine of statistical improbability was based in the Lagumbay case. It can be implied from the decisions of this Court that if, in the canvass or election returns in connection with the elections where the office of Governor or of Mayor is involved, it appears in the election returns that all candidates of one party (including the candidate for Governor, or for Mayor) were credited with uniform number of votes reported cast as against the opposing candidates who are all given zero, the doctrine should apply. We fully agree with the observations of the Comelec, in this connection, as follows:

"x x x Although only one is being voted for as Congressman this fact does not make said election an election for a single office because it is being held jointly with the election for President, Vice-President and the eight Senators and only one return is prepared for all said offices after the votes are counted for all the candidates in the proceeding. A fortiori if the only one return (which for this reason may also be called a 'single return') is actually manufactured or fabricated because all the eight Senators of one party have received all the votes, either registered or cast, in a particular precinct, whereas the eight Senatorial Candidates of the other party uniformly got zero, then the return should be considered also manufactured where it appears that the congressional candidate of one party got the same number of votes as the eight senatorial candidates and the Presidential and Vice-Presidential candidates, while the congressional candidates of the other party got zero, together with the Presidential, Vice-Presidential and the eight senatorial candidates of his party. It is illogical to suppose that the same return is manufactured for the senators but not with congressman, that is that it lies for the senatorial results but tells the truth for the congressional result. *Falsus in unum falsus in omnibus*. A manufactured return is no return and should be rejected in toto as distinguished from a tampered return which is a good return but had been altered hence, the need to restore the original entries of the return."

Accordingly, We hold that the Comelec did not err when it upheld the action of the Board in rejecting the 22 election returns in question upon the ground that those returns are statistically improbable and should be considered as election returns that are "obviously manufactured", and, therefore, should be rejected, in accordance with the ruling in the Lagumbay case.

4. In the alternative, Sinsuat urges that assuming that the 22 election returns in question are statistically improbable under the doctrine of the Lagumbay case, the Comelec should not simply annul them outright but it should first strain every effort to determine the true result of the elections from the precincts concerned. The position of Sinsuat is that the Comelec should order the preparation of new returns in lieu of the returns thus rejected. The Comelec, in its Resolution No. RR-692, says that even under its broad powers under the Constitution it does not have the power to order the preparation of a new return where a return was previously made but is found to be manufactured. We agree. The proposition of Sinsuat has no support in law and the

decisions of this Court.

The thrust of the decision in the Lagumbay case is to consider an election return that is statistically improbable as of no value and should be rejected, no votes in the precinct concerned be counted in the canvass, and the recourse of the party affected by the rejection of the return is to file an election protest before the proper court or tribunal. This means that the rejected returns can not be substituted by returns to be made anew by the boards of inspectors upon order of the Comelec. Thus, this Court said:

"Hence, denying prima facie recognition to such returns on the ground that they are manifestly fabricated or falsified, would constitute a practical approach to the Commission's mission to insure free and honest elections."

x x x x

"At any rate, fraud or no fraud, the verdict in these fifty precincts may ultimately be ascertained before the Senate Electoral Tribunal. All we hold now, is that the returns show 'prima facie' that they do not reflect true and valid reports of regular voting. The contrary may be shown by candidate Climaco - in the corresponding election protest."

Sinsuat would have this Court modify the ruling in the Lagumbay case, when he says that the Comelec should strain every effort to determine the true result of the count, and this is to be done by resorting to other copies of the election returns or to the tally sheets inside the ballot boxes, or it may compel the boards of inspectors to gather again and count the votes. We find no law, or jurisprudence construing our election laws, which sanctions this procedure suggested by Sinsuat. On the other hand, We have the decision in the second Pacis case³³ where this Court upheld the action of the Comelec in rejecting an election return which it found that it was prepared at the point of a gun and ordered that no vote should be counted in the precinct where that return came from. This Court said:

"As deserving of serious consideration is the directive of the Comelec rejecting the entries for Mayor in all election return copies for Precinct 22. It will be recalled that in Comelec's resolution of May 11, 1968 it was found that all the four copies of the election returns for this precinct are clean in all respects. x x x But then Comelec found that it was prepared 'at the point of a gun' and that 'other surrounding circumstances belie its authenticity.' x x x

"We must now say that an election return prepared at the point of a gun is no return at all; it is not one notch above a falsified or spurious return. Comelec was correct in ruling that there was no valid return for the office of Mayor at Precinct 22 and that no vote should be counted for said precinct in the canvass of votes for Mayor."³⁴

An election return that is statistically improbable, otherwise called an "obviously manufactured" return, is no return at all, like a return prepared at the point of a gun. Like a gunpoint return, a statistically improbable return is not valid and no vote should be counted for any candidate in the canvass of votes in the precinct where that return comes from.

Sinsuat cites the decisions of this Court in the cases of *Mutuc v. Comelec*³⁵, *Pacis v. Comelec*³⁶, and *Macud v. Comelec*³⁷, to support his submission that the Comelec should not have rejected outright the 22 returns in question but should have strained every effort to find out if the returns are really manufactured or not. We do not find the decisions in these three cases to be in point. Not one of these three cases deals with an election return that was declared statistically improbable. These three cases deal with an election return that was either incomplete, or tampered with, or prepared at gunpoint.

In *Mutuc* what was involved was an election return from precinct 124 of Makati, Rizal that was incomplete

because while it contained the list of the names of the candidates there was no entry of the votes cast for them. The copies of the return furnished the municipal treasurer, the provincial treasurer and the Comelec were similarly incomplete. In this case this Court directed the Comelec to order the board of inspectors of the precinct concerned to open the ballot box of the precinct for the purpose of retrieving therefrom a copy of the election return to be used in the new canvass by the municipal board of canvassers if said ballot box copy had been properly accomplished; or, in the event that said copy is blank or incomplete, to count all the votes cast in said precinct and then accomplish a return based on the count. The ruling in *Mutuc* was applied by this Court in the recent case of *Tiglao v. Comelec*³⁸, which involved the election returns from two precincts of Apalit, Pampanga, where the name of candidate Rogelio Tiglao for the office of Representative was not listed and no vote was credited to him. In this case this Court directed the Comelec to order the boards of inspectors of the two precincts concerned to open the ballot boxes of said precincts, to count the votes for Tiglao only if any, and then accomplish a new election return. It will thus be noted that in *Mutuc* and *Tiglao* the only purpose of having the ballot boxes opened, as ordered by this Court, was to complete the election returns that appear on their faces to be incomplete because no votes were credited to a particular candidate or candidates. The ruling of this Court in these cases is in consonance with Section 150 of the Revised Election Code which provides that immediately after the count the board of inspectors shall make complete and sign a written statement of the count, which shall include, among other things, the total number of votes polled by each candidate, writing out the said number in words and figures. This is a mandatory duty of the boards of inspectors, such that if the boards had not performed their duty accordingly they could be compelled to do so, either by the Court or by the Comelec, and for this purpose the ballot box may be opened in order to refer to the tally sheet or to count the votes of the candidate who is not credited with votes on the face of the election return.

In *Pacis* were involved four election returns, from Precincts 18, 19, 21 and 22 of Sanchez Mira, Cagayan, which were excluded by the municipal board of canvassers in the canvass of votes for the office of municipal mayor in the elections of November 14, 1967. These four election returns were copies for the municipal treasurer or Sanchez Mira, which the latter submitted to the municipal board of canvassers. Of these four copies three appeared to have been tampered with. The Comelec sustained the action of the board or canvassers in excluding those four election returns, because it had earlier been shown to the Comelec that in the early morning following the election day, at the time when the members of the boards of inspectors in these four precincts -- the polling places being all located in the school building of barrio Namuac -- were preparing the election returns they were terrorized and coerced by armed men to change or alter the election returns which they were then preparing, obviously to favor a particular candidate for mayor. In this case this Court ruled that the municipal board of canvassers and the Comelec should not have disregarded these four election returns without first ascertaining if there are other copies of the returns that could be used in the canvass, considering that there are four copies of the official election returns. This Court observed that because the municipal treasurer's and Comelec's copies were allegedly tampered with, the Comelec should have inquired about the copies of the returns for the provincial treasurer, and if these copies are also altered Comelec should get the copies of the election returns inside the ballot boxes. This Court said that "every effort then should be strained to ascertain the existence of serviceable returns from Precincts 18, 19, 21 and 22." And so this Court ordered the Comelec "to conduct an investigation to ascertain the true returns from Precinct 18, 19, 21 and 22 of Sanchez Mira, and thereafter to instruct the board of canvassers to use the true returns for the purpose of canvass in said precincts." Complying with the directive of this Court, the Comelec conducted an investigation. Eventually the Comelec made findings, which were embodied in a resolution: (1) that the ballot box copy of the election return of precinct 18 was intact and clean; (2) that all the copies or the election returns of precincts 19 and 21, including those inside the ballot boxes, had been tampered with, but somehow the Comelec, upon a close examination of the ballots, and by expert testimony of an NBI handwriting expert and testimonies of credible witnesses, was able to ascertain the original entries of the

votes for mayor in those election returns; and (3) that all the copies of the election returns of precinct 22 were clean but were prepared at the point of a gun. The Comelec then instructed the municipal board of canvassers to count the votes for mayor appearing in the ballot box copy or the election return of precinct 18; to count the votes for Mayor as found by the Comelec to be originally entered in the election returns for precincts 19 and 21, without ordering the preparation of new returns; but not to count the votes for mayor appearing in the four copies of the election return for precinct 22 because those copies were prepared at the point of a gun. The board of canvassers canvassed the votes in these four precincts as directed by the Comelec. Again the action of the Comelec and the municipal board of canvassers was questioned before this Court in the second Pacis case.³⁹ We upheld the Comelec in the second Pacis case.

It will be noted in Pacis that in complying with the directive of this Court to secure the serviceable copies of the election returns, the Comelec ordered the opening of the ballot boxes in the four precincts. It was certainly within the power of the Comelec to order the opening of the ballot boxes to retrieve the ballot box copies and determine if they can be used in the canvass, considering that all the copies outside the ballot boxes were considered unserviceable for use in the canvass.⁴⁰ It will be noted, also, that in the directive of this Court to the Comelec to conduct an investigation to ascertain the true returns, this Court did not direct, nor even hinted, that if no serviceable returns could be secured the Comelec may resort to the count of the votes as they appear in the ballots inside the ballot boxes in order to ascertain the true results of the election in those four precincts. Unlike in Mutuc and in Tiglao where this Court ordered the counting of the ballots only for the purpose of completing the election returns in so far as the candidates who were not credited with votes were concerned, in Pacis this Court did not direct the Comelec to count the votes because the election returns involved were complete on their faces. Because the copies of those four returns outside the ballot boxes were impugned as tampered or falsified the Court simply directed the Comelec to secure serviceable copies of the election returns, and in this connection the ballot boxes had to be opened in order to ascertain if the copies of the returns inside the ballot boxes were serviceable. The Comelec could not go farther than to try to secure serviceable copies of the returns. If no serviceable copies could be obtained it can not order the board of inspectors to prepare new election returns based on the tally sheets or on the count of the ballots found inside the ballot boxes. So much so that after the Comelec had found that all the copies of the election returns in precinct 22 were prepared at gunpoint it directed the members of the board of canvassers not to count any vote for mayor in that precinct, and We upheld the action of the Comelec. We did not order the count of the ballots in precinct 22 in order to ascertain the true result of the election in that precinct and the preparation of new election returns. When all the copies of the election return for a particular precinct are found to be unserviceable - either because they are all tampered with, or obviously manufactured or prepared at gunpoint - then no vote from the precinct should be counted at the canvass.

Neither do We find in Macud any ruling of this Court which upholds the proposition or Sinsuat. It is claimed by Sinsuat that in Macud this Court sustained the Comelec in ordering an election return to be accomplished based on the tally sheet. We do not find any statement in the decision regarding this matter. We only find a statement that the board of canvassers used an election return that was prepared by the board of inspectors under the supervision of the representative of the Comelec. The decision makes no mention of the circumstances that brought about the preparation of the election return under the supervision of the Comelec representative. It could be another case of an incomplete return which had to be completed under the supervision of the Comelec representative -- and in this connection the tally sheet might have been consulted.

The 22 election returns now in question are the copies or the election returns corresponding to the Provincial Treasurer or Cotabato, which the latter official submitted to the Board to be used in the canvass. These election returns are not questioned as having been tampered with. There is, therefore, no ground for the Comelec to order the production of the other copies -- the copies corresponding to the municipal treasurer and to the Comelec, or to

order the opening of the ballot boxes for the purpose of retrieving the ballot box copies, to compare them with these 22 election returns in search for "serviceable copies" to be used in the canvass, in consonance with the ruling in the case of *Cauton v. Comelec*, supra.

These 22 election returns are complete on their faces - in the sense that every candidate to be voted for appears listed in each and every such return and opposite the names of the candidates there are entries of the number of votes received, or zero vote, in words and figures, as the case may be. And so, there is also no ground for ordering the opening of the ballot boxes in order to secure the needed data to make these returns complete, in consonance with the ruling of this Court in the cases of *Mutuc v. Comelec*, supra and *Tiglao v. Comelec*, supra.

It is not pretended at all in the present case that discrepancies exist between these 22 election returns and other authentic copies of the same returns, as would warrant a recount of the votes in accordance with the provisions of Section 163 and 168 of the Revised Election Code.

Neither do We find any allegation in the record that the members of the boards of inspectors committed an error in the preparation of these election returns, as would warrant a correction or amendment of the returns under Section 154 of the Revised Election Code.

Sinsuat urges that the Comelec could even order the boards of inspectors to recount the ballots inside the ballot boxes in the precincts where these 22 election returns come from to ascertain the true results of the elections in these precincts, and then order the preparation of new returns. If the ballots inside the ballot boxes are to be counted, as Sinsuat wants done, in order to check if the count of the votes tally with those that are reflected on the election returns in question, then the proceeding would already be in the nature of a full-blown election contest -- a proceeding that the Comelec has no power to initiate, and much less has it the power to decide the true results of the election. Sinsuat would want the Comelec to perform a function which the law and the Constitution does not authorize it to perform. It certainly is not within the broad powers of the Comelec in the enforcement and administration of the laws relative to the conduct of elections to ascertain that every election return reflects the true result of the election in a precinct. The Comelec is concerned only in seeing to it that the election return used in the canvass is one that is not manufactured, nor falsified, nor tampered with, nor prepared under coercion or under circumstances that affects its regularity or genuineness. The task of determining whether an election return reflects the true result of the election in a certain precinct pertains to the proper court of justice or to the proper electoral tribunal, as the case may be, in an election contest that is properly brought before said body.

We have held that canvassing boards will not be compelled to canvass returns that are obviously manufactured.⁴¹ In the case now before Us the Board rejected the 22 election returns because they are obviously manufactured. The Comelec confirmed the action of the Board. We have declared in this decision that both the Board and the Comelec are right in their action. The uselessness of these 22 election returns has therefore been definitely pronounced. A party that relies on election returns that are obviously manufactured, as in the case of the 22 election returns now in question, must suffer the consequences of his own act. After all, the law gives him another recourse, and, that is, to file the corresponding election protest.

We hold, therefore, that the Comelec had not neglected to perform an act which the Constitution and the law specifically enjoin as a duty resulting from office when, after approving the action of the Board in rejecting the 22 election returns in question, it did not order the production of the other copies of those election returns, nor order the opening of the ballot boxes in order to retrieve the ballot box copies, nor order the recount of the votes, for the purpose of determining the true result of the election in the precincts where those 22 election returns came from.

5. It is next contended by Sinsuat that the Comelec erred in upholding the action of the Board in including in the canvass the election returns from precincts Nos. 13-A, 14, 19, and 23 of Datu Piang. It is claimed by Sinsuat that

if the doctrine or statistical improbability is applicable to a single office involved in an election --- like that of Representative -- these four election returns should also be rejected. We cannot sustain the contention of Sinsuat. We do not find in these four election returns the factual basis for the application of the doctrine of statistical improbability, as enunciated in the Lagumbay case, that is, that there should be 100% tally of reported votes cast uniformly credited to all the candidates of one party as against uniform zero votes or systematic blank-ing of the opposing candidates. We find that in these four returns the Liberal Party candidates for President, Vice-President, Representative, and six for Senator (Cases, Ganzon, Liwag, Roxas, Sagun and Ziga), along with two Nacio-nalista Party candidates for Senator (Palmares and Tamano) and Nacionalista Party candidate for member of the provin-cial board in the special election (Ampatuan), all obtained uniform number of votes; as against zero vote given to the Nacionalista Party candidates for President, Vice-President, Representative, six for Senator (Diokno, Espina, Padilla, Puyat, Sumulong, and Tolentino), along with two Liberal Party candidates for Senator (Ilarde and Mañalac) and the Liberal Party candidate for member of the provincial board (Buenaflor). In these four election returns We find NP senatorial candidate Palmares and Tamano credited with the same number of votes as the six LP senatorial candidates; while LP senatorial candidates Ilarde and Mañalac did not get any vote. In the special election for board member NP official candidate Ampatuan garnered all the votes while LP candidate Buenaflor for the same office got no vote. The Board and the Comelec, therefore, did not commit error when they included these four elect-ion returns in the canvass, because the Lagumbay doctrine is not applicable.

We quote with approval the ruling of the Comelec re-garding these four election returns, as follows:

"In the returns for Prec. Nos. 13-A, 14, 19 and 23 of DATU PIANG, it appeared that six LP senatorial candidates got uni-formly the same number of votes as PALMARES and TAMANO, NP senatorial candidates, and ISKAK AMPATUAN, NP official candidate for member of the Provincial Board. For this reason, the Board of Canvassers in-cluded these precincts in the canvass. The Commission upholds the action of the Board in the returns in these precincts since there is no 100% voting for all the candi-dates of the LP as three candidates of the NP, two for Senators and one for member of the provincial board, have received the same number of votes as the LP candidates. As the Supreme Court said in the Alonto case, supra:

'x x x We do not find in the returns here questioned uniformity of tallies in favor of candidates belonging to one party, and the systematic blanking of the opposing candidates, that lead us to reject the returns in the Lagumbay case x x x' "42

Thus, as We have pointed out at the earlier part of this decision, the Comelec did not apply the Lagumbay doctrine to the election return in Precinct 6 of Upi, because in said return it appears that there was no 100% voting for all the candidates of the Nacionalista Party even it all the Liberal Party candidates got zero vote each. All the NP candidates for President down to member of the provincial board uniformly got 248 votes each, except senatorial candidates Padilla and Palmares who was not credited with any vote (blank, not zero). Likewise, the Board did not apply the Lagumbay doctrine to the election return of Precinct 35 of Upi because in said return it appears that all the NP candidates, except sena-torial candidate Padilla, were uniformly credited with 276 votes along with LP senatorial candidate Roxas who was also credited with 276 votes; while all the other candidates, including Padilla, were given zero vote. So, it can be observed that the Board and the Comelec had consistently applied the rule of "uniformity of tallies in favor of candidates belonging to one party, and the systematic blanking or the opposing candidates."43

The action of the Board in not rejecting these four election returns is but in line with the rulings of this Court restrictively applying the Lagumbay doctrine to the factual basis that We have herein adverted to.44

6. It is also contended by Sinsuat that the Comelec erred in upholding the action of the Board in including in the canvass the election returns from Precincts Nos. 10, 16, 27, 31, 33 and 15 of Pikit. It is claimed by Sinsuat that in

these six precincts there has occurred an excess of votes over the number of voters who voted. In his petition, Sinsuat indicates the "excess" votes as follows:

1. In Precinct No. 10 -

No. of registered voters - - - - 154

No. of voters who voted - - - - - 154

Votes counted for Osmeña - - 154

Votes counted for Pendatun - 154

Votes cast for Lopez - - - - - 134

Votes cast for Magsaysay - - - 23

157

Or an excess of 3 votes cast for the candidates for Vice-President, over the 154 voters who voted.

2. In Precinct No. 16 -

No. of voters who voted - - - - - 269

Votes counted for Pendatun - - - 270

or an excess of one vote.

3. Precinct No. 37 -

No. of voters who voted - - - - - 414

Votes counted for Pendatun - - - - 414

but in summing up the votes

counted for the 4 candidates

for members of the provincial

board the total is 442, or an

excess of 28 votes over the

414 votes cast.

4. Precinct No. 31 -

No. of registered voters - - - - - 453

No. of voters who voted - - - - - 447

Votes counted for Pendatun - - - - 447

Votes counted for Senators:

Ganzon - - - - 447 Padilla - - - - - 400

Ilarde - - - - - 447 Cases - - - - - 5

Liwag - - - - - 447 Diokno - - - - - 1
 Mañalac - - - - - 447 Palmares - - - - - 30
 Roxas - - - - - 447 Puyat - - - - - 5
 Sagun - - - - - 447 Sumulong - - - - - 10
 Ziga - - - - - 447 Tamano - - - - - 10
 Tolentino - - - - - 5

TOTAL..... 466

It appears that the total number of votes counted for the senatorial candidates on the right column (above) is 466 or an excess of 19 votes over the number of votes cast.

5. Precinct No. 33-

No. of voters who voted - - - - - 238
 Votes counted for Pendatun - - - - 238
 Votes for Vice-President:
 Lopez - - - - - 152
 Magsaysay - - 87
 239

or an excess of one vote cast for Vice-President over the number of voters who voted.

6. Precinct No. 15 -

In this precinct the election re-turn shows that Pendatun got 700 votes. Sinsuat alleges that on the line of "Ballots found in the compartment for valid ballots" there are written the words "Two Hundred Fifty plus Four Hundred Fifty". Sinsuat further alleges that from the certificate of the election registrar of Pikit, Mr. Bernardo P. Decrepito, dated September 18, 1969 it appears that the number of registered voters in this precinct is 695.45

We agree with the ruling of the Comelec regarding these six election returns, as follows:

"Petitioner SINSUAT claims that the returns in six precincts of PIKIT, to wit: Prec. Nos. 10, 16, 27, 31, 33 and 15 should have been rejected by the Board on the ground that in these precincts there was an excess of votes over those of the number of voters who voted. The Commission, however, notes that, except with respect to Precinct No. 16 where PENDATUN received 270 votes, while the number of voters who voted was only 269, resulting in an excess of one vote, the votes received by PENDATUN did not exceed the number of voters who voted. What actually is claimed to be in excess of the number of registered voters are the votes for the senatorial candidates. Since the Board is canvassing only the congressional votes there is actually no excess of votes in these six precincts, except in Precinct No. 16. Granting that to determine whether there is an excess of votes in these six precincts we have to consider the totality of votes cast for the other candidates, particularly the senatorial candidates, the Commission believes that the excess of votes in these precincts is not very great as to be ruled out as statistically improbable following the doctrine of *State ex rel Mitchel vs. Stevens*, supra. *Alonto vs. Comelec*, 22 SCRA 878 would appear to be more applicable where the court said:

'Nor do we find that the alleged excess of votes cast (detailed and enumerated in the petition) is adequate to

support the conclusion that the re-turns are obviously manufactured for reasons of statistical improbability. x x x' (On page 882)

"The Commission, therefore, believes that the Board committed no error in not rejecting ' the returns from Prec. Nos. 10, 16, 27, 31, 33, and 15 of PIKIT."46

In the recent case of *Ilarde v. Comelec*, supra, petitioner *Ilarde* questioned, the action of the Comelec in not excluding from the canvass those election returns where senatorial candidate Tamano appears to have been credited with votes in excess of the number of registered voters. In upholding the Comelec this Court ruled:

"...The same finding (not statistically improbable) holds true with regard to the instances cited where the COMELEC ruled against the exclusion of some returns questioned by petitioner, since the COMELEC found that the number of votes cast in favor of Tamano were not greatly in excess of the registered number of voters and could be attributed to mistakes or errors of the poll inspectors, while it had rejected other returns where such excess was very great. (*Alonto v. Comelec*, supra)"

7. Sinsuat also questions the action of the Comelec in not ordering the exclusion from the canvass of the Comelec copy of the election return for Precinct 15 of Pikit, upon the ground that it is a tampered return. The action of the Comelec in this connection is embodied in its minute resolution dated January 19, 1970, and this is one of the two resolutions no being questioned before this Court.⁴⁷

To resolve the controversy in connection with this Comelec copy of the election return of Precinct 15 of Pikit, We consider it necessary to state the factual circumstances attending this particular return. The record shows, and this is not disputed, that on November 28, 1969 (the very day, when the canvass started at Camp Crame, Quezon City) counsel for Sinsuat sent a letter to the Comelec requesting that they be allowed to take photostat copies of the Comelec copies of the election returns from precincts in the municipalities of Pikit, Pagaluñgan, Datu Piang, Carmen, and Sultan Sa Barongis. On December 2, 1969 the Comelec, by resolution, granted said request.⁴⁸ Accordingly, photostat copies of the Comelec copies of the election returns from the municipality of Pikit, including that of Precinct 15, were actually taken. During the canvass by the Board at Camp Crame, Sinsuat objected to the use in the canvass of the Provincial Treasurer's copies of the election returns from the municipality of Pikit, among them the Provincial Treasurer's copy for Precinct 15, because, according to Sinsuat, the Provincial Treasurer's copies were tampered with, and he asked the Board that the Comelec copies which were clean and untampered with be used instead. The Board overruled the objection of Sinsuat to the use of the Provincial Treasurer's copies. On December 11, 1969, Sinsuat filed with the Comelec a petition questioning, among others, the action of the Board in including in the canvass the Provincial Treasurer's copies of the election returns from thirty eight precincts located in the municipalities of Nuling and Pikit, upon the ground that the Provincial Treasurer's copies were "tampered and spurious" and different from the Comelec copies of the same election returns which were "clear, clean, regular and valid". Sinsuat prayed that in lieu of the Provincial Treasurer's copies for the 23 precincts of Nuling and 15 precincts of Pikit (which included Precinct 15) the Comelec copies of the election returns for those precincts be used in the canvass. In his answer to that petition of Sinsuat, Pendatun manifested that he interposed no objection to the use of the Comelec copies. A hearing on the petition of Sinsuat was held by the Comelec on December 24, 1969. What transpired during this hearing may best be gathered from the resolution of the Comelec which recites as follows:

"In the hearing before the Commission on December 24, 1969, on the appeal of SINSUAT and the counter-claim of PENDATUN, which actually partook the nature of an appeal, the Commission examined in the presence of counsel of both parties the provincial treasurer's copies of the election returns for the 23 precincts of NULING and 15 precincts of PIKIT questioned by SINSUAT as having been tampered with. Examination of said returns by the members of the Commission and by counsel of both parties confirmed the

tampering. The Commission, therefore, required the production of the Comelec copies which it examined one by one, also in the presence of counsel of both parties. The Commission found the COMELEC copies of the returns for the 23 precincts of NULING and 15 precincts of PIKIT to be without any alterations and were therefore serviceable, so it promulgated in open court the following resolution:

'A. In the matter of the hearing on the Petition of Candidate DATU BLAH SINSUAT, dated December 11, 1969, and the Answer thereto of Congressman SALIPADA K. PENDATUN, dated December 15, 1969; the Supplemental Petition and Appeal of Candidate Datu Blah T. Sinsuat, dated December 16, 1969, and the Answer thereto by Congressman Salipada K. Pendatun dated December 16, 1969. After hearing arguments of counsels for opposing parties on the Basic Petition and Supplemental Petition, the Commission, after ordering the production for examination of the election returns copies for the Provincial Treasurer and the Comelec of the precincts hereinafter treated, RESOLVED as follows:

1. It appearing after an examination of the Provincial Treasurer's copies of the election returns that there exist alterations and/or erasures in the entry of votes for the Office of Congressman which affect the integrity of the said election returns (Provincial Treasurer's copy), while the corresponding Comelec copies thereof, which were likewise examined by the Commission and by counsels for both parties were found to be clean, untampered with, and, therefore, serviceable copies, the Provincial Board of Canvassers of Cota-bato is hereby directed to use the Comelec copies of the election returns of the following precincts in its canvass in lieu of the Provincial Treasurer's copies thereof;

A. PIKIT, Cotabato:

Precincts Nos. 4, 5, 6, 15, 21, 21-A, 26, 29, 33, 34, 40, 41, 42, 43, and 54.' "

X X X

"After the promulgation of the foregoing resolution, the counsel of both parties assisted by some personnel of the Commission made a tentative canvass to find out the outcome of the substitution of the COMELEC copy as basis of the canvass and as a result PENDATUN'S lead was reduced by 2,779 votes leaving him a total of 73,687 votes, whereas SINSUAT'S votes were increased by 668 votes giving him a total of 72,160 votes. The margin of PENDATUN and SINSUAT was thus reduced to 1,527 votes."49

X X X X

On December 31, 1969 the Board, pursuant to the directive of the Comelec, reconvened to recanvass the election returns in accordance with the findings of the Comelec as embodied in its resolution of December 24, 1969, above adverted to. In that recanvass Sinsuat, through counsel, raised for the first time an objection to the inclusion in the canvass of the Comelec copy of the election return of Precinct 15 of Pikit upon the ground that it was a tampered return. The Board, however, disregarded the objection of Sinsuat.

On January 7, 1970 counsel for Sinsuat filed with the Comelec a motion, dated January 3, 1970, "for reconsideration and/or appeal from the order of the Board of Canvassers", and praying "that the resolution of the Honorable Commission on Election dated December 24, 1969 be reconsidered, so that Prec. No. 15 be excluded therefrom and/or that the Provincial Board of Canvassers be ordered to reject the election return for Prec. No. 15 of Pikit, Cota-bato and the votes of Pendatun reflected thereon be removed and deducted from the over-all count made in his favor." The ground for this motion was that it was found out during the recanvass that even the Comelec copy of the election return for Precinct 15 of Pikit was tampered with and appeared obviously manufactured and/or statistically improbable, and that during the recanvass by the Board Blah Sinsuat, through counsel, vigorously objected to the admission of the same, but that the Board had unlawfully counted and tabulated said return for Precinct 15.50 Acting on that motion for reconsideration, the Comelec appointed a

committee composed of Comelec personnel to examine the Comelec copy of the election return for Precinct 15 of Pikit. The committee submitted a report to the Comelec which, among others, states, as follows:

"Observations on Prec. No. 15,

Pikit, Cotabato

"For Prec. No. 15, Pikit, Cotabato, copy for the Comelec, bearing Serial No. 47177, the following observations are made:

"1. On Data on Voters -

"With respect to the entry on the number of voters registered in precinct, it is noted that there are erasures made in the original entry which with a magnifying glass could be read as 692. The words in the original entry 'six hundred ninety-two' six and ninety-two have been erased. Over the word 'six' is written the word 'seven'. In the total number in figures the original entry 692 could also be discerned and over which is superimposed the figure 700. In the entry on the number of voters who actually voted the original entry has been erased but which could still be read as 'two hundred fifty'. It is observed that in the original entry in words, the words 'two' and 'fifty' have been erased and over the word 'two' is superimposed the word 'seven'. In the entry on total number in figures there appears to have been a superimposition over the original entry which could not be appreciated with certainty. The superimposed figures written is 700.

"2. On Data on Ballots -

"In the entry on data on ballots, in the space ballots found in the compartment for valid ballots the original entry appears to have been erased and over which was written the words 'four hundred fifty'. It is also observed that over the superimposed entry is written the words 'two hundred fifty plus'. In the entry on total number in figures the original entry which could be read as 250 has been erased and over which is written the figure 700. In the entry for valid ballots withdrawn from the compartment for spoiled ballots, for having been mistakenly placed therein it appears in the entry on total number in words the word 'none' has been written. However, with respect to the entry in total number in figure the original entry which could be read as 1 appears to have been erased and the figures 0 was written.

"3. For the Office of Representative in the entry for the votes for candidate Salipada Pendatun the original entry appears to have been erased in that the words 'two' and 'fifty' have been erased and over the word 'two' is written the word 'seven'. The original entry could be read however and 'two hundred fifty' as altered reads 'seven hundred'. In the total votes obtained in figures the original entry which could be read as 250 has been erased and over which is written the figure 700.

"The Committee also observes that the election return for Prec. No. 15, Pikit, Cotabato, copy for the Comelec, contains alterations in the entries not only on the data on voters, data on ballots, and votes for the Office of Representative as stated above but also for the Office of President, Vice-President, Senators, and Special Election for Members of the Provincial Board, with respect to the votes of candidates Osmeña, Lopez, Ganzon, Ilarde, Liwag, Mañalac, Padilla, Roxas, Sagun, Ziga and Buenaflor, all of which erasures or alterations are not authenticated by any initials of any members of the Board of Inspectors. It is observed also that both the election returns, copy for Provincial Treasurer and for the Comelec, bear the signatures of the members of the board of inspectors which upon comparison of both copies appears to be similar. The same observation is made with respect to the envelopes and seals of both election returns."51

A hearing on this motion for reconsideration was held before the Comelec on January 9, 1970, with all the three members of the Comelec present. During the hearing the report of the committee that examined the Comelec copy of the election return for Precinct 15 of Pikit was submitted. Counsels for both parties appeared, and manifestations were made by the counsels and also by the members of the Comelec. Without taking any evidence

to ascertain how it happened that the Comelec copy in question came to be tampered, the Comelec, on January 19, 1970, issued a minute resolution denying Sinsuat's motion for reconsideration "for lack of merit".⁵² The Comelec, in its Case Resolution No. RR-692, specifically ordered the Board to use for Precinct 15 of Pikit "the Comelec copy in accordance with the Resolution of the Commission of December 24, 1969".⁵³

It is contended by Sinsuat that the Comelec, in ordering the Board to use in the canvass the Comelec copy of the election return of Precinct 15 of Pikit, "violated its clear duty to direct that only genuine returns be counted".⁵⁴

This Court ordered the counsel for the Comelec to file with the record of this case an enlarged photostat copy of this Comelec copy in question. We have carefully examined this enlarged photostat copy, and We find that there are really very visible erasures and alterations thereon. We have also found the report of the committee appointed by the Comelec to examine this Comelec copy to be correct. The Court is at a loss to understand, how come that, if the original of this photostat copy was the one that was examined by the members of the Comelec, and by the counsels for both parties, on December 24, 1969 that they could not have noticed the erasures and the alterations that now appear on this photostat copy, if those erasures and alterations were actually existing on the original (Comelec copy) that was examined on December 24, 1969. The record shows that on December 2, 1969 Sinsuat was authorized by the Comelec to secure photostat copies of the Comelec copies of the election returns for precincts in Pikit (including Precinct 15) and that he had actually taken photostat copies and had those photostat copies during the canvass by the Board which ended on December 10, 1969. On December 11, 1969 Sinsuat filed a petition with the Comelec precisely assailing as tampered and spurious the Provincial Treasurer's copies of the election returns from 15 precincts in Pikit (including Precinct 15) and prayed that in lieu of the Provincial Treasurer's copies the Comelec copies which were clean and untampered be used in the canvass. In that petition of December 11, 1969 Sinsuat did not make any assertion that the Comelec copy for Precinct 15 of Pikit be not used in the canvass because it was a tampered copy. By that time Sinsuat, or his counsel, must have seen the Comelec copy already and had in fact a photostat copy of the same. And then, on December 24, 1969, during an open hearing, when the members of the Comelec and the counsels for both parties examined the Comelec copies of the election returns from Pikit (which included that of Precinct 15) neither Sinsuat nor his counsel made any objection to the use of that Comelec copy for Precinct 15 upon the ground that it is a tampered copy. After the examination of the Comelec copies by the members of the Comelec and by the counsels for both parties on that day, Sinsuat and his counsel even agreed to the making of a tentative tabulation of votes based on the clean Comelec copies which had then been examined, and these included the copy for Precinct 15 of Pikit. It was only on December 31, during the recanvass, when Sinsuat, for the first time, objected to the use of the Comelec copy in the canvass upon the ground that it is tampered. And We have noted in the very allegation of Sinsuat in his petition before this Court that he admits that on December 24, 1969 the Comelec copies of the election returns from 15 precincts of Pikit were clean and untampered. Thus, in paragraph 9, Section V (The Facts) of his petition Sinsuat makes the following allegation:

"9. During the hearing on December 24, 1969, the respondent Commission indeed found as true the allegations of tampering of the Provincial Board's copies of the election returns from the twenty-three (23) precincts from Nuling and fifteen (15) others from Pikit. So, it ordered the Comelec copy of these returns to be used (See pp. 5-6, Annex 'H') because it found them clean as of then."⁵⁵

What happened to that Comelec copy which the Comelec and the counsel for both parties had examined on December 24, 1969? How come that on December 24, 1969 the Comelec and the counsel for both parties examined and found the Comelec copy of the election return for Precinct 15 of Pikit to be clean and untampered, and yet during the canvass by the Board on December 31, 1969 there appeared a Comelec copy of the election return for that same precinct that was very visibly tampered and altered?

We do not doubt the veracity of the statements in the Comelec resolution of December 24, 1969, as embodied in Case Resolution RR-692 of January 19, 1970, to the effect that when the Comelec copies of the election returns of 15 precincts of Pikit (which included the Comelec copy for Precinct 15) were examined it was found that all said copies were "clean, untampered with, and, therefore, serviceable". But it is also undeniable that when the Board met on December 31, 1969 to recanvass the returns it was found that the Comelec copy of the election return for Precinct 15 bore very visible alterations, or signs of tampering, as shown on the enlarged photostat copy of said election return which is now attached to the record. The Court cannot close its eyes to the realities that appear on this enlarged photostat copy. And so, granting that this Comelec copy was found to be clean and untampered with on December 24, 1969, the logical conclusion is that it was tampered with after December 24, 1969 but before it was submitted to the Board for recanvass on December 31, 1969.

It is Our considered view that when Sinsuat, in his motion of January 7, 1970 for the reconsideration of the Comelec resolution of December 24, 1970, called attention to the fact that the Comelec copy of the election return of Precinct 15 of Pikit was tampered with, the Comelec should have taken steps to ascertain how the tampering came about, because that Comelec copy was found to be "clean and untampered" by the Comelec itself on December 24, 1969. It is not denied that when this Comelec copy was brought before the Comelec during the hearing on January 9, 1970, it appeared to be really tampered with because of the erasures, alterations and superimpositions found therein.

We have said in the case of *Pacis vs. Comelec* supra⁵⁶ that "the purpose of the Election Code 'to protect the integrity of the election and to suppress all evils that may vitiate its purity and defeat the will of the voters' gives Comelec authority to ascertain whether the genuineness of a given election return may be salvaged by an examination of the said return".⁵⁷ Technically, the procedure should be to remand this case to the Comelec to make a specific finding on the matter regarding the erasures, alterations and superimpositions as they now appear on the Comelec copy. But because We have before Us the enlarged photostat copy of the return in question and the report of the committee that examined said return, We believe that what the Comelec had failed to do -- that is, to examine carefully the return and ascertain what had been altered or tampered with -- this Court may as well do in an effort to salvage the genuineness of this election return. We are brushing aside technicality in order to expedite the resolution of the question involved, because this case affects the public interest.

While the original of the Comelec copy of the election return of Precinct 15 of Pikit is not before this Court, We are satisfied that the enlarged photostat copy can serve our purpose in the examination of the return in question. The erasures, alterations, and superimpositions are visible to the naked eye. The original entries that have been erased and superimposed are still discernible. We have minutely examined the photostat copy, and have taken into consideration the report of the committee constituted by the Comelec to examine the Comelec copy of the election return of Precinct 15 of Pikit, and We agree with all its findings, specifically its finding regarding the votes of Pendatun, as follows:

"For the office of Representative in the entry for the votes for candidate Salipada Pendatun the original entry appears to have been erased in that the words 'two' and 'fifty' have been erased, and over the word 'two' is written the word 'seven'. The original entry could be read however and 'two hundred fifty' as altered reads 'seven Hundred'. In the total votes obtained in figures the original entry which could be read 250 had been erased and over which is written the figure 700."

It is Our view that the true entry in the Comelec copy of the election return of Precinct 15 of Pikit of the votes of Pendatun was 250 and not 700; and so, while We uphold the Comelec ruling that the Comelec copy of the election return of Precinct 15 of Pikit be used in the canvass, the Board, however, should credit Pendatun with only 250 votes this precinct.

8. It is stated in the main resolution, appealed from, that the Comelec had no opportunity to examine the election returns from Precincts 4-A of Maganoy and Precinct 31 of Dinaig, and so it could not make a de-finite ruling with respect to those election returns. The resolution also states that the election return from Precinct 54 of M'lang was not included in the canvass of the votes.⁵⁸

Upon motion of Sinsuat, this Court, in a resolution of February 6, 1970, authorized the opening of the ballot box of Precinct 54 of M'lang in order to retrieve therefrom all the copies of the return which were alleged to have been placed by mistake inside the ballot box by the board of inspectors. In the memorandum of data, or report, submitted by Sinsuat to this Court it is stated that per certified copy of the Provincial Treasurer's copy of the election return of Precinct 54 of M'lang there were 35 voters who voted in the precinct, and Pendatun is credited with 5 votes, Sinsuat with 18 votes, and the other candidates with 12 votes. An enlarged photostat copy of the Provincial Treasurer's copy of the election return for this precinct is attached to the record, and is not objected to by Pendatun.⁵⁹ The Board may, therefore, use the Provincial Treasurer's copy of the election return for this precinct in the canvass.

The memorandum of data of Sinsuat also reports that, as certified to by the Comelec, in Precinct 31 of Dinaig there are 123 votes involved, while in Precinct 4-A of Maganoy there are 102 votes involved; but no certification could be issued by the Comelec on the breakdown of the votes in these two precincts due to the unauthorized alterations in the entry of votes cast for the office of Representative both in the Comelec and in the Provincial Treasurer's copies.⁶⁰ There is, therefore, need for the implementation of the order of the Comelec to the Board to look for serviceable copies of the returns for these two precincts, and if need be to open the ballot boxes solely for the purpose of retrieving the ballot box copies, and should the Board not succeed in finding serviceable copies, to report to the Comelec for further instructions.⁶¹

IN VIEW OF THE FOREGOING, with the modification that in using the Comelec copy of Precinct 15 of Pikit the Board should credit respondent Pendatun with only 250 votes, Case Resolution No. RR-692 of respondent Commission on Elections, and its accompanying minute resolution, both dated January 19, 1970, appealed from, are affirmed in all other respects; and the writs of certiorari, mandamus and prohibition prayed for are denied. The restraining order issued by this Court on January 23, 1970 is lifted, and respondent Provincial Board of Canvassers of Cotabato is ordered to immediately convene and implement the orders of respondent Commission on Elections in its Case Resolution No. RR-692 as modified in this decision, complete the canvass of votes cast for the office of Representative of the lone representative district of Cotabato in the elections of November 11, 1969, and thereafter proclaim the winning candidate for the said office.

Petitioner Datu Blah Sinsuat is ordered to pay the costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, and Fernando, JJ., concur.

Barredo, J., with whom Castro, Teehankee, and Villamor, JJ., concur, concurs and dissents in a separate opinion.

[1] Annexes G and H of the petition.

[2] Quoted from petition, page 6 of the record.

[3] Quoted from the petition, page 7 of the record.

[4] G. R. No. L-25444, Jan. 31, 1966; 16 SCRA 175.

[5] Record, p. 42.

[6] Resolution, Annex H, pp. 70-71 of the record.

[7] Pendatun's Answer before Comelec, pp. 52-57 of the record.

[8] Record, pp. 64-65.

[9] Annex G to petition, p. 67 of the record.

[10] Annex H of petition, pp. 68-91 of the record.

11 "The Board to use for Prec. No. 15 the Comelec copy in accordance with the Resolution of the Commission of December 24, 1969."

12 "There was special election for one board member in Cotabato."

13 Pages 8-9 and 16-17 of Resolution, Annex "H" to the petition, on pp. 75-76 and 83-84 of the record.

14 Annexes 1 to 22 inclusive of Pendatun's Answer, pp. 136 to 157 of the record.

15 Annex 6 of Pendatun's Answer, page 141 of the record.

16 Annex 28 of Pendatun's Answer, page 182 of the record. See Paragraph (2) of the dispositive portion of the Resolution, Annex H, page 88 of the record.

17 Annex 28-A of Pendatun's Answer, page 183 of the record.

18 Page 27 of Pendatun's Answer, page 124 of the record.

19 Sangki vs. Comelec, L-28359, Dec. 26, 1967, 21 SCRA 1392; Estrada vs. Comelec, L-28374, Dec. 29, 1967, 21 SCRA 1514; Demafelis v. Comelec, L-28396, Dec. 29, 1967, 21 SCRA 1462; Alonto vs. Comelec, L-28296, Feb. 28, 1968, 22 SCRA 878; Tagoranao v. Comelec, L-28950, March 12, 1968, 22 SCRA 978; Kibad v. Comelec, L-28469, May 7, 1968, 23 SCRA 588; Ilarde v. Comelec, L-31446, Jan. 23, 1970.

20 G. R. No. L-2849, February 28, 1968.

21 G.R. No.L-31446, January 23, 1970.

22 Underscoring supplied.

23 Annexes J to J-11, K to K-13, L to L-2, M and N; pages 228 to 258 of the record.

24 L-28359, Dec. 26, 1967; 21 SCRA 1392.

25 Underscoring, supplied.

26 The "averments" refer to the matters mentioned in the affidavits.

27 See Certification of the results of elections from 1953 to 1967, inclusive, in Cotabato, issued by the Chief of the Statistics and Election Records Division of the Comelec, attached as Annex 1 of Pendatun's Counter-Memorandum, dated Feb. 13, 1970. (Pages 330-331 of the record)

28 Annexes J to J-11, pp. 228 to 239 of the record.

29 Annexes K to K-13, pp. 240 to 251 of the record.

30 Quoted from page 22 of the petition, on page 22 of the record.

31 Underscoring supplied. The word "therein" is underscored to emphasize that the word refers to the whole

election return.

32 Sangki vs. Comelec, supra; Tagoranao vs. Comelec, supra; Kibad vs. Comelec, supra; and several others.

33 Pacis v. Comelec, L-29026, September 28, 1968, 25 SCRA 377.

34 Underscoring supplied.

35 L-28517, February 21, 1968; 22 SCRA 662.

36 L-28455, February 10, 1968, 22 SCRA 539. This is the first Pacis case. The second Pacis is also herein cited.

37 L-28562, April 25, 1968, 23 SCRA 224.

38 L-31566, February 18, 1970.

39 Pacis v. Comelec, L-29026, September 28, 1968; 25 SCRA 377.

40 Cauton v. Comelec, L-15467, April 27, 1967; 19 SCRA 911.

41 Espino v. Zaldivar, L-22325, December 11, 1967; 21 SCRA 1204, 1213, citing Nacionalista Party v. Comelec, 85 Phil., 149, 157-158.

42 Resolution, Annex "H", pp. 82-83 of the record; as corrected by Comelec resolution of January 22, 1970. (See footnote 4a on page 14 of Answer of the Comelec, on page 211 of the record).

43 See footnotes 14 and 15, ante.

44 See cases cited in footnote 17, ante.

45 See petition, pages 33 and 34 of the record.

46 Pages 14 and 15 of Resolution of January 19, 1970, annex "H" to the petition, found on pages 81 and 82 of the record.

47 Annex G of the petition, page 67 of the record.

48 Annex 25, Pendatun's Answer, page 176 of the record. See also Comelec's Answer, pages 198, 219-222 of the record.

49 Case Resolution No. RR-692, Annex "H" of Sinsuat's Petition; pp. 68, 71-74 of the record. Under-scoring supplied.

50 Annex "E" to Sinsuat's Petition, page 64 of the record.

51 Annex "F" to Sinsuat's Petition; page 66 of the record.

52 Annex "G" of Sinsuat's Petition; page 67 of the record. See footnotes 9 and 43, ante.

53 See footnote 2 on page 22 of Case Resolution No. RR-692, Annex "H" of Sinsuat's Petition; page 89 of the record.

54 Citing the decisions of this Court in the cases of Cauton v. Comelec, supra; Espino v. Zaldivar, 21 SCRA, 1204, 1215-1216; and Ong v. Comelec, 22 SCRA, 241-249.)

55 Page 13 of the record. Underscoring supplied.

56 The second Pacis case. See footnote 29, ante.

57 Underscoring supplied.

58 Annex "H" to Sinsuat's Petition, pp. 85, 86, 89 of the record.

59 See pp. 271, 274, 275 and 282 of the record.

60 See pp. 275 and 283 of the record.

61 Page 89 of the record.

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CONCURRING AND DISSENTING OPINION

BARREDO, J.:

The lengthy, intensely searching and painstaking analysis made by Mr. Justice Zaldivar of the eight issues involved in this case commends itself for serious and mature consideration. It is at once a tribute to the sagacity and industry of our esteemed colleague and constitutes another incontestible evidence not only of his passion for seeking the truth but also of his firm determination not to render judgment on any matter unless he is certain of the justice of his decision. He has thoroughly scrutinized all pertinent aspects of the case before Us and has seen to it that all his conclusions are buttressed by all possible arguments that can support them. Accordingly, I find no difficulty in agreeing with and concurring in his resolution of the following issues:

1. That the Lagumbay ruling applies to a single office. Indeed, there is no plausible reason why the doctrine of statistical improbability enunciated in the Lagumbay case, if applicable to a given return, as herein-under explained, should not be applied to a single office involved in the election referred to in the said return. To the very convincing arguments already advanced by Mr. Justice Zaldivar, I can only add one observation to answer the contention of distinguished counsel that even if a return may be false or manufactured as to the senatorial candidates, it does not necessarily follow that it is false also as to the candidates for a single office, in this case, for congress-man.

The true concept of a manufactured return is that it is prepared without regard to the contents of the ballots cast in the precinct. More likely than not, the votes are not counted at all and the return is filled up without any other basis than what the ones preparing it wish to appear therein, or even if a count has been made, the same is completely disregarded, so that if, in fact, the number of votes entered therein purportedly for any candidate happens to be the same as those actually cast for him, such would be a mere coincidence and not a deliberate recording of such votes. In these circumstances, it is easy to see that there could be no basis for giving any of the votes entered in such return any prima facie value separately from the rest thereof. Besides, if the intent and purpose to falsify are there, it is inconceivable that any degree of loyalty to truth can still be left lingering in the minds of the malefactors, particularly when, as in this case, the lone candidate involved belongs to the same party as the senatorial candidates favored by the falsification. It must be emphasized that the only reason why an election return is accorded prima facie status as evidence of the result of the count of the votes in a precinct is because the same is prepared by election inspectors who are specifically entrusted by the election law with the official duty of counting and recording or entering the number of votes received by all the candidates, hence it is

to be pre-sumed prima facie that such official duty has been normally complied with. Therefore, once it is evident that in violation of such official duty, the inspectors have prepared a return that is purely a product of their fancy and not factual, the reason for giving such return prima facie value ceases as to the whole of it and as to all the votes entered therein.

2. That the "excess" of votes must be great to warrant setting aside of return. I also agree that the number of alleged "excess" votes appearing in the returns for Precincts 10, 16, 27, 31 and 33 of Pikit (The return for Precinct 15 is treated elsewhere in this opinion) are not as great as to warrant the application thereto of the Mitchell precedent. I do note that of these five pre-cincts, it is only in Precinct 16 that respondent Penda-tun appears credited with any vote in excess of the number of voters who voted, and, at that, by only one (1) vote. In Precincts 10 and 33, the excess refers to the total of the votes for the two vice-presidential candidates, 3 votes and 1 vote, respectively. In Precinct 37, the excess 28 votes are with reference to the total of the votes for four candidates for member of the provincial board, whereas in Precinct 31, there are only 19 votes appearing to be in excess of the total votes for the senatorial candidates of the two major parties, with Palmares, Sumulong and Tamano getting 24, 4 and 4 excess votes each, respectively. Definitely, under these circumstances, it cannot be said that the results shown by said returns are palpably false, particularly as to the votes of respondent Pendatun. These are instances which can readily be explained as within the area of errors of computation or recording that not very seldom occur due to the excitement and haste that quite often attend the preparation and signing of the returns. They may be grounds for correction but, surely, not of complete setting aside of the returns. This is but a reiteration of the rulings of this Court in *Alonto v. Comelec*, 22 SCRA 878 and *Ilarde v. Comelec*, C. R. No. L-31446, January 23, 1970.

3. That the matters referring to certain precincts should be subject of further action by the Comelec. I also cannot find any reason to disagree with the way Mr. Justice Zaldivar has disposed of the matters relating to Precincts 54 of M'lang, 4-A of Maganoy and 31 of Dinaig. In order to avoid confusion, however, it is perhaps better to clarify that as regards Precinct 54 of M'lang, the decision of this Court is not only to affirm the portions of Comelec Case Resolution No. RR-692 referring to said Precinct, but also to hold that the Provincial Treasurer's copy of the election return for said precinct, photostatic copy of which has been furnished this Court, be used in the canvass herein involved. The dispositive part of the decision should be so understood.

4. As to the use of the Comelec copy of the return for Precinct 15 of Pikit. I am also in agreement with the majority's resolution of the issue regarding the return for Precinct 15 of Pikit. While there may really be some controversy as to what actually was the exact condition of the Comelec copy of the return for said precinct on December 24, 1969 when it was first examined by the Chairman and members of the Commission as well as the parties or their counsel, there can be no doubt as to what appears on the face of said copy as it is now, which in my view is the fact that is decisive. Indeed, it hardly needs any evidence aliunde for it to be demonstrated and thereby determined by this Court.

It is contended by respondent that from the start, the theory of the petitioner has always been that said Comelec copy is clean and untampered and, as a matter of fact, it is of record that such was the agreement and understanding of all the parties and the Comelec commissioners as of said date December 24, 1969. As if to throw the corpse to petitioner's side of the fence, respondent argues now that it was only after petitioner had been permitted to photograph some returns, including the one in question, and after having taken such photographs, which must have been done after December 24th, that petitioner raised for the first time the present issue of alleged tampering of said copy. In other words, respondent is insinuating, if not actually charging, that, if it is true that said return appears now to have evidence of tampering, petitioner cannot be entirely free from suspicion of having had something to do with such tampering. At any rate, the main point of respondent is that inasmuch as

the Comelec has found as a fact that the Comelec copy in question was clean and untampered on December 24, 1969 and petitioner had always been insisting that said copy should be the one used, there is no alternative but to use said copy because petitioner is in estoppel to pretend otherwise.

To be sure, I have no quarrel with the conclusion that the Comelec copy should be used in the canvass. What needs to be clarified is, which of the two numbers of votes for respondent both appearing legible in said copy, 250 and 700, should be considered as the legitimate one for the respondent, it being unquestionable that although as found by the Comelec, the said copy was clean and untampered on December 24th, as it now appears, there are erasures, alterations and superimpositions therein, and as to which of these figures superimpose the other, the only data from which any conclusion can be drawn are those contained in the report of the Comelec committee created for the express purpose of examining the same, which report is textually as follows:

"For Prec. No. 15, Pikit, Cota-bato, copy for the Comelec, bearing Serial No. 47177, the following observations are made:

"1. On Data on Voters -

"With respect to the entry on the number of voters registered in precinct, it is noted that there are erasures made in the original entry which with a magnifying glass could be read as 692. The words in the original entry 'six hundred ninety-two' six and ninety-two have been erased. Over the word 'six' is written the word 'seven'. In the total number in figures the original entry 692 could also be discerned and over which is superimposed the figure 700. In the entry on the number of voters who actually voted the original entry has been erased but which could still be read as 'two hundred fifty'. It is observed that in the original entry in words 'two' and 'fifty' in words, have been erased and over the word 'two' is superimposed the word se-ven'. In the entry on total number in figures there appears to have been a superimposition over the original entry which could not be appreciated with certainty. The superimposed figures written in 700.

"2. On Data on Ballots -

"In the entry on data on ballots, in the space ballots found in the compartment entry appears to have been erased and over which was written the words 'four hundred fifty'. It is also observed that over the superimposed entry is written the words 'two hundred fifty plus'. In the entry on total number in figures the original entry which could be read as 250 has been erased and over which is written that figure 700. In the entry for valid ballots withdrawn from the compartment for spoiled ballots, for having been mistakenly placed there-in it appears in the entry on total number in words the word 'none' has been written. However, with respect to the entry in total number in figure the original entry which could be read as 1 appears to have been erased and the figures 0 was written.

"3. For the Office of Representative in the entry for the votes for candidate Salisada Pendatun the original entry appears to have been erased in that the words 'two' and 'fifty' have been erased and over the word 'two' is written the word 'seven'. The original entry could be read however and 'two hundred fifty' as altered reads 'seven hundred'. In the total votes obtained in figures the original entry which could be read as 250 has been erased and over which is written the figure 700.

"The Committee also observes that the election return for Prec. No. 15, Pikit, Cotabato, copy for the Comelec, contains alterations in the entries not only on the data on voters, data on ballots, and votes for the Office of Representative as stated above but also for the Office of President, Vice-President, Senators, and Special Election for Members of the Provincial Board, with respect to the votes of candidates Osmeña, Lopez, Ganzon, Ilarde, Liwag, Mañalac, Padilla, Roxas, Sagun, Ziga and Buena-flor, all of which erasures or alterations are not authenticated by any initials of any members of the Board of Inspectors. It is observed also that both the election returns, copy for Provincial Treasurer and for the Comelec, bear the signatures of the members of the board of inspectors which upon comparison of both copies appears to be similar. The same

observation is made with respect to the envelopes and seals of both election returns."

" --Annex 'F', Petition, at pp. 2-4, underscoring supplied."

In the light of these facts which I consider to be undisputable because they can be readily perceived in the document itself which has the nature of re-al evidence, (If the Comelec had only granted petitioner's motion that it be re-examined, the mat-ter now in issue would have been settled then and there.) the real issue for the Court to determine is t really whether or not the said Comelec copy should be used. Rather, the questions the Court must decide are: (1) did the Comelec commit a grave abuse of discretion in refusing to re-examine the Comelec copy in question, having in view the tendency of the above-quoted report submitted by the committee it had created to investigate the same, and (2) what was the number of votes for respondent Pendatun shown on said copy when the honorable commissioners ex-amined it on December 24th? Was it 250 or 700? Surely, since the Comelec is certain that the said copy was clean and untampered with at that time, only one of these two figures now appearing therein must have been the one there then. Which was it?

The truth is that on this particular point, there is no direct testimonial evidence extant in the record. I have carefully read the transcript of the proceedings below, portions of which are quoted in the opinion of Mr. Justice Zaldivar. Nowhere therefrom can the above ques-tion be answered. Very importantly to be noted is that what is very clear from the remarks of Commissioner Patajo, sanctioned seemingly by the silence of the other two com-missioners, is that when the said copy was examined by them on December 24th, there were no alterations or era-sures thereon and that the Commissioner was most emphatic in pointing out that the danger in allowing a re-examina-tion of the document lay in the danger that a bad prece-dent would be created whereby the door would be opened for opportunity for parties to make alterations on docu-ments after the Comelec has already examined them and found them to be clean and unaltered. In other words, the position of the Commissioners is that once they have seen a return or a copy thereof and have found it to be clean and untampered, particularly, when they have done so in the presence of the parties, it is improper to ask them to reexamine the same in order to determine whether or not it is in reality a tampered one, on the ground, as We gather it, principally, of estoppel, albeit Mr. Just-ice Zaldivar would add that it would amount to casting doubt as to the integrity and veracity of the commission-ers. What is overlooked, however, is that what was more important does not appear to have been done by the Come-lec or by any of the parties on December 24th and, that is, to make of record what was the "clean and untampered" num-ber of votes of respondent shown in the copy in question when it was examined by all of them on that momentous date of December 24th, whether it was 250 or 700.

If this Court has to be procedurally technical, the proper thing to do is to return this case to the Comelec for a specific finding of fact on this point. Even if it were possible to apply estoppel to petitioner, which We seriously doubt can be done, considering that this is an election case, (but We do not deem it necessary to make here any express holding to that effect) the estoppel should be as to number of votes of respondent which appeared on said copy on December 24th, and that is pre-cisely what the Comelec did not determine when it denied the re-examination. We opt, however, not to insist on procedural technicalities. We hold that the above quoted report of the Comelec committee furnishes enough basis for a safe conclusion which, after all, cannot be altered even if We return this case to the Comelec. Besides, it is still uncertain whether or not the number of votes in-volved in this question will affect the result of the election in question, and since the result in said Pre-cinct 15 is not the only one involved in this case, We feel it is better that this Court resolve the point un-der discussion now even without complying with such technicality.

From the above-quoted report of the Comelec commit-tee, the conclusion is inescapable that the original fi-gures entered on the Comelec copy in question before the same were altered showed that respondent Pendatun obtain-ed only 250 votes. The report is definite to the effect that the number 700 visible therein is a superimposed

one. This is true, not only as to entry of the number of votes for respondent, as already stated, but also as to the number of registered voters, the number of voters who actually voted and the number of ballots found in the compartment for valid ballots. And the obvious super impositions do not appear only over figures but also over the corresponding numbers in words, except as to the entry of the number of ballots found in the compartment for valid ballots, as to which there was not only the superimposition of the words "four hundred fifty" over an erasure, but there is also the detail that the words "two hundred fifty plus" also appear written above the superimposition. The report is also consistent to the effect that all the erased original figures which are still legible indicate that the respective entries read two hundred fifty in words and in figures, not only for the votes of respondent but also for all the other items aforementioned, except the number of registered voters which is 692.

All things considered, no other conclusion is really possible except that the number of votes of respondent originally entered in the Comelec copy for Precinct 15 of Pikit was 250 and that the board of canvassers should use in the canvass this original figure and not the 700 which has been superimposed over it.

5, 6, and 7. The other issues relative to the application of the Lagumbay decision as to pattern of manufactured return. The rest of the issues involve in one way or another the alleged applicability or inapplicability of what is repeatedly being referred to as the Lagumbay doctrine regarding the pattern of voting which denotes manufacturing.

To have a better perspective for our discussion of these issues, it is perhaps best to start with a clarification of what is this that is being repeatedly referred to as the Lagumbay doctrine. In truth, the real doctrine basically involved in these issues is the one laid down in the case of Nacionalista Party vs. Comelec wherein the case of Mitchell vs. Stevens was cited with approval. The Lagumbay decision was only an application of the doctrine already formulated in those previously mentioned cases. Substantially and in essence, the doctrine may be stated as follows: Any election return which on the basis exclusively of data found on its face appears to be obviously and patently false is nothing but a manufactured return which should not be accorded any prima facie value as evidence of the result of the count and should be disregarded in the canvass. Thus, in the Mitchell case, the data appearing in the return of a precinct showing that the votes credited to a candidate was greatly in excess (by over 2,000) of the number of registered voters in said precinct, as shown in the same return itself, was considered as a manufactured return and disregarded in the canvass. In the Lagumbay case, the 100% pattern of voting for all the candidates of one major national party and the complete systematic blanking of all the candidates of the other major national party, appearing on the face of all the returns from 50 precincts, was considered as giving rise to the presumption that said returns were false and manufactured, such a pattern of voting being regarded by this Court as something statistically improbable. In other words, the conclusion of falsity in the Lagumbay case was a mere inference drawn from the utter improbability, statistically speaking, of the pattern of voting shown in the returns therein involved.

There can be no question as to the wisdom and time-liness of the Lagumbay decision. As the Court said, "Hence, denying prima facie recognition to such returns on the ground that they are manifestly fabricated or falsified, would constitute a practical approach to the Comelec's missions to insure free and honest election". (See p. 28 of the main opinion) It is important to note, however, that in spite of this characterization, this Court has taken care not to apply the same ruling in any other case that has come before it since then. This attitude of the Court is evidently due to the fact that the Court is aware that an election return is in itself only a presumptive document embodying no more than a legal presumption of correctness in the appreciation of the ballots and the counting and tallying of the votes made by the inspectors, for if it were not so, and it were, on the other hand, a conclusive document, electoral protests and electoral courts and tribunals would have no reason for being. Hence, the Court has chosen to be very restrictive in holding that a return is manifestly fabricated. After all, the basis of the

Lagumbay doctrine is also nothing more than a presumption arising, if inescapably, from the face of the return itself. The difference between these two presumptions is that whereas the first presumption is a legal one, the second is only one of fact. To set aside the legal presumption of correctness of the count borne by an election return by means alone of a presumption of fact is, of course, something that is obviously delicate and extremely dangerous. From the very nature of these two presumptions, the one of fact has to yield to the legal one, if only because the latter is ordained by law, and this is particularly more logical whenever any reasonable indication exists that the factual presumption may not be altogether valid. Applying these considerations to the case at bar, We hold that the test of statistical improbability applied in the Lagumbay case as basis for the presumption that the returns therein involved were fabricated or manufactured has not been successfully hurdled in this case.

It is indeed not accurate to say that the factual setting of the present case is on all fours with that of Lagumbay. True, the pattern of voting in both cases is identical, but unlike in the Lagumbay case where the Court searched in vain for any explanation of the apparent statistical improbability of the questioned returns, here, in this case, there are explanations which more or less justify the pattern of voting shown in the returns herein involved. These explanations are found not only in the affidavits presented by petitioner and discussed in the appealed resolution but also in the information furnished the Court during the oral argument. Whereas in the Lagumbay case, the Court was left guessing as to what happened to the votes of the Nacionalista inspectors in the precincts where Lagumbay and the other Nacionalista candidates got zero, in the case at bar, there are affidavits of the inspectors concerned as well as of other persons explaining why they did not vote for the Liberal candidates. At the oral argument, circumstances were revealed by petitioner and not sufficiently denied, in my opinion, by respondent indicating that the results appearing in the returns are not improbable.

Respondent suggests, of course, that this Court pay no heed to those explanations. The majority opinion makes a long and admirable discourse on the inadmissibility of the affidavits relied upon by petitioner. It seems to me, however, that respondent's posture in this regard is off tangent. Under the doctrine of manufactured returns, as I have already pointed out above, it is my view that it is not necessary to inquire as to whether or not the explanation offered to destroy the presumption of fabrication is entirely true or not. The only question to determine is whether or not such an explanation is such a reasonable one that if proven to be true, it would be sufficient to offset the presumption of fraud arising from the data on the return. As long as there are indicia of evidence to support the explanation, the better rule is to disregard the presumption of fraud and recognize the legal presumption of regularity in the performance of official duty informing the return and leave it to the corresponding electoral tribunal to determine, as in any other case, whether or not the return is indeed falsified. In other words, since the putting up of a factual presumption against a legal presumption would naturally leave the Court in an uncharted sea of conjectures and because this dangerous venture does not square with the requirements of such a pragmatic matter like the determination of who has been given the popular mandate in an election, it is no doubt the safer course to take that whenever there is anything in the record or from the information duly given to the Court which, if true, can serve to explain a unique or peculiar manner of voting which bears earmarks of presumptive fraud, the effort should not be towards minimizing the explanation, as respondent would want this Court to do, but rather, towards giving due regard to the explanation, if it is feasibly demonstrable and evidence, admissible in character, is shown to be available to prove the same. In short, resort to the presumption of fraud should only be a last recourse.

Apropos to this discussions are the following considerations on which this Court, thru our venerated present Chief Justice, predicated its decision in the recent case of *Rasid Lucman v. Macacuna Dimaporo*, G. R. No. L-31558, May 29, 1970:

"Petitioner impugns the foregoing conclusion upon the ground that: (1) the affidavits for Respondent are inadmissible as hearsay evidence, because the affiants could not be cross-examined, the Commission having

re-fused to summon them, despite timely motions filed by Petitioner; (2) the testimony of the election registrar is unworthy of credence; (3) the affidavits for the Petitioner include those of some members of the PC and CNEA watchers, which are supported by the report of the Special Action Team of the Commission, and, hence, should be accorded much weight; (4) the presumption of regularity is inapplicable to the case at bar; and (5) the returns for Precincts Nos. 3, 4-B and 15 of Balabagan had been excluded by the Commission in its canvass of the returns for senators, as obviously manufactured.

"The first ground relied upon by Petitioner is untenable, for:

"(a) The records show that the Commission had indicated its intention to determine the case on the basis of the affidavits and the documentary evidence introduced by the parties and that it was with such understanding that Respondent filed affidavits in his favor and did not object to those made for Petitioner herein.

"(b) Petitioner's objection would be plausible if the Commission were a court of justice or could determine and settle with finality the issue of fact raised in connection with the returns for the municipality of Balabagan. The Commission has no such authority. Hence, when, upon denial of Petitioner's motions for the issuance of subpoenas to the affiants for Respondent herein, Petitioner instituted Case No. L-31430 of this Court - to compel the Commission, by mandamus, to inter alia, issue the afore-mentioned subpoenas - We forthwith dismissed the petition therein and, soon thereafter, denied Petitioner's motion for reconsideration of our resolution of dismissal of the case.

"Indeed, in connection with the canvass of the returns for the office of member of the House of Representatives for Lanao del Sur, the functions of its Provincial Board of Canvassers is purely ministerial in nature. In fact, in his original petition for exclusion, filed with the Board, petitioner quoted from *Dimafiles v. Comelec* (L-28396, December 29, 1967):

'A canvassing board performs a purely ministerial function - that of compiling and adding the results as they appear in the returns transmitted to it. This is the teaching in *Nacionalista Party v. Commission on Elections*: "the canvassers are to be satisfied of the genuineness of the returns - namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied, x x x they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the elections."

"Equally ministerial, therefore, is the function of the Commission, in the exercise of its supervisory power over said Board, pursuant to our Constitution and laws. (Sec. 2, Article X of the Constitution and section 2 of R.A. No. 180.) There being no law vesting in either the power to decide and settle the question whether the election returns of given precincts have been prepared without counting the votes cast therein, their views in connection therewith, whatever they may be, do not foreclose the subsequent determination of that question in the corresponding election protest, if any. So long as the election returns have been accomplished in due form, the Board, and, on appeal therefrom, the Commission, must include said returns in the canvass.

"(c) *Lagumbay v. Comelec*, supra, presented a peculiar situation. Two (2) sets of returns were involved therein. In the first set, 'in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for each and every candidate of the Liberal Party, the party in power; whereas, all the candidates of the Nacionalista Party got exactly zero; and in the second set x x x all the reported votes were for candidates of the Liberal Party, all of whom were credited with exactly the same number of votes in each precinct; x x x whereas, all the candidates of the Nacionalista Party were given exactly zero in all said precincts.' As a consequence, this Court held that said returns were 'obviously manufactured,' contrary to all statistical probabilities,' 'utterly improbable and clearly incredible.' It should be noted that this was not strictly an issue of fact. Indeed, the main elements essential to its determination appeared on the face of the returns themselves. In other words, there was no dispute as regards such elements. The dispute boiled down to the proper conclusion to be drawn therefrom, and, hence, it partook of the nature of a question of

law. (Joaquin v. Navarro, 93 Phil. 257, 269-27n; Cunanan v. Lazatin, 74 Phil. 719, 724; Luna v. Linatoc, 74 Phil. 15.) What is more, in the view of this Court, that conclusion was clear, obvious, manifest, and indubitable.

"Such is not the situation obtaining in the case at bar. The irregularity pointed out by the Petitioner is denied by Respondent, thereby raising a purely factual question. Instead of settling the same, the affidavits submitted by both parties merely stressed the contentious nature of the issue. Moreover, the same could not have been wiped out or even minimized by the presence and cross-examination of the affiants for Respondent, had they appeared before the Commission. In other words, unlike the condition of the returns involved in the Lagumbay case - which this Court considered incontestable - that existing as regards the returns for Balabagan is clearly a very controversial one, which the Commission has no power to decide with finality.

"(d) The Commission could not, moreover, summon the affiants for Respondent, without granting him the same right to examine the affiants for Petitioner. This would have entailed a full-dress elucidation of the aforementioned issue of fact, which, after all, the Commission cannot settle authoritatively. Worse still, it would create a situation fraught with possibilities, inimical to the spirit of the laws establishing boards of canvassers.

"It is well settled that the same are meant, not only to discharge purely ministerial duties, based upon returns submitted thereto in due form, but, also, to perform this function summarily, so that winning candidates could assume their office on the date set for the commencement of their term. The main role of the Commission in connection therewith is to see to it that such objective be carried out. The theory advanced by petitioner herein would, however, induce the candidates who are likely to lose, on the basis of said returns, to raise questions of fact requiring the introduction of testimonial evidence thereon. If sustained, its effect would be to delay, far beyond the time envisaged by law, the proclamation of the winning candidates and their assumption of office, thereby depriving the people, in the meanwhile, of the representation they are entitled to. Again, there would be an unnecessary duplication of the proceedings peculiar to election protests, with the consequent possibility of having different results and the serious dangers concomitant therewith."

Moreover, in my opinion, the affidavits offered by petitioner are not really as worthless as respondent pictures them to be. The fact that they are of one style or wording is nothing unusual, since in actual practice, the words of an affidavit are not necessarily those of the affiant and when the same matter is to be attested to, almost invariably, the affidavits of several persons appear to be identical *mutatis mutandis*, without minimizing in any significant degrees their intrinsic worth for the purpose for which they have been prepared) and the fact that they were taken even before this case arose only proves that petitioner had anticipated the possibility which has in fact materialized that the pattern of voting in the precincts concerned would be likened to that in the Lagumbay case. It was only natural, therefore, for petitioner to prepare the ground for the position he would take and which he has now taken. That the affidavits seem to be irregular because of abnormalities in the data regarding the residence certificates of the affiants and the numbers of entries in the notarial registers of the notaries public before whom they are supposed to have been subscribed and sworn to, and even the fact that copies thereof were served very late upon respondent's counsel do not really affect their inherent veracity. As a matter of fact, their truthfulness has not been challenged by respondent with any counter-affidavits even up to this date. What is vital is that those affidavits exist un rebutted.

In the Sangki case, this Court held:

"In Lagumbay, there was uncertainty as to what happened to the vote of the Nacionalista Party inspector in the disputed precincts, because the absence of his vote was unexplained. Here, respondent Pendatun explained, through affidavits of a good number of the Nacionalista Party inspectors themselves attached to his answer, that some did not vote because they were not able to register as voters; that two Nacionalista Party inspectors in Pagalungan did not vote for candidates Sangki and Saludo but for the Liberal Party candidates for Governor and Vice-Governor because they 'are more qualified than the former two who are foreign to our

Municipality'; and that other Nacionalista Party inspectors believed that the Liberal Party candidates 'are more qualified than the Nacionalista Party candidates.' These averments, we are constrained to say, reduce this particular point to a question of fact". [21 SCRA 1395-1396] (Underscoring Ours)

The real import of this last statement is that when affidavits are offered in support of an explanation that will do away with the presumption of fabrication, the issue becomes one of actual, and not presumptive, fact, hence, the factual presumption must be laid aside and the issue of fact must be resolved no longer by the board of canvassers nor by the Comelec, but by the appropriate electoral tribunal. As far as the canvassers are concerned, the legal presumption of regularity in the performance of duty of the inspectors must prevail and the return must be read as is.

At this juncture, it is also relevant to consider that by its very nature, the concept of statistical improbability is one that is rather relative, depending on the circumstances of time, place and person as these are judicially cognizable at the moment of its invocation. Before Columbus, the idea that the world is round was almost a heresy. Even more, references to the whole earth in the Holy scriptures, particularly the Old Testament, may not be reconciled with what is actually known as the world to-day. The man on the moon was merely a poetic expression not so long ago. Man's conduct and attitudes vis-a-vis his fellowmen have never been constant. Political ideologies, principles and parties and adherence and loyalties thereto are as variable as the demands of the people's welfare dictate. Alliances among men and nations depend on changes of circumstances not always foreseeable. The United States and Russia were allies in the last world war, only to be apparently irreconcilable enemies today, while Japan whom Americans compelled to surrender as a hated militaristic totalitarian state is presently one of Uncle Sam's closest nephews even in the absorption, at least, apparently, of democratic ideals. In the very area of politics which is under discussion, President Nixon confounded dopesters who foretold political doom for him after his defeat in the gubernatorial elections in California in 1966. Our own President Marcos did an unbelievable feat in winning not only a re-election but by being the first re-electionist to capture Manila, the seat of the opposition. As Senator Tolentino once remarked to this Court, in the politics of our country, what was improbable in 1965 may yet be the thing most probable today. The point is that extreme care must be taken in adopting any presumption of improbability in electoral matters and only whenever every probable or demonstrable possibility has been discarded must it be accepted. Come to think of it, it would not be illogical to realize that the Lagumbay case, adjudged as it was, and ought to be understood as it must be always, as predicated on its own peculiar and particular circumstances, is not only the one of its kind until now but the only one that will ever be.

I need not dwell at length on the other cases discussed by the respondent and also in the majority opinion. Suffice it to say at this point that, as observed by the Mr. Justice Zaldivar, in all of them, this Court refused to apply the doctrine under discussion, for the simple reason that in all of those cases, the statistical improbability alleged to exist had reference to excess of votes which could not be considered really great or to patterns of voting less than 100% for one party and 100% against another. The present case is indeed the first one wherein the pattern of voting is identical to that in the Lagumbay case, but, as I have pointed out earlier, the difference between the two cases lies in that here, unlike in the Laaumbay case, there are indications of substantial and reasonable evidence of facts which if true would remove the props of the factual presumption of improbability.

Anent these explanations, another question that arises is as to whether they must appear on the face of the return itself or they may be based on evidence aliunde or on facts found outside of the return. Of course, it must be the latter, for if the explanation is apparent on the face of the return, then there could not be any seeming or presumed improbability evident in the return itself. Thus in the case of Estrada vs. Navarro, L-28340 and L-28374, December 29, 1967, 21 SCRA 1514, this Court refused to draw the conclusion that the return therein in question was manufactured notwithstanding that the data appearing on its face bore enough indications of excess

votes on the ground that the minutes of voting justified a contrary conclusion. As can be observed, the minutes of voting to which the Court re-ferred was a document distinct from and outside of the re-turn.

This was the same ruling conversely stated in the case of Demafiles v. Comelec, Ts-28396, Dec. 29, 1967, 21 SCRA 1962. In that case, this Court held that the conclusion of statistical improbability must be drawn from data found in the return itself and not from external evidence. It is thus clear that the rejection by this Court of evidence aliunde is not of evidence that would prove an explanation offered to destroy the factual presumption of fraud but of evidence that is intended to serve as basis for such factual presumption. Naturally, this Court had to rule that in the latter case, the evidence cannot be entertained, for the obvious reason that the doctrine of manufactured return refers to a presumption that arises exclusively from data on the face of the return. On the other hand, the Court has allowed evidence aliunde to rebut the factual presumption of fabrication, as in the Estrada case, for the reasons I have already discussed, the most important of which is to remove the basis of the proclamation as far as possible from speculation, and, if necessary, to use only those presumptions which are expressly provided by law. In the Estrada case, supra, this Court said:

"G.R. No. L-28374. This is a petition for review of an order of the Commission on Elections involving the election return in precinct No. 94 of San Juan, Rizal. Petitioner applied to the Commission for an order directing the municipal board of canvassers to reject or disregard the said return on the ground that it was 'clearly manufactured.' Reliance is placed on the decision of this Court in the case of Lagumbay vs. Commission on Elections, G. R. No. L-25444, January 31, 1966. The return in question shows the following data:

"Number of voters registered in precinct Four hundred nine 409

"Number of voters who actually voted Two hundred twenty-nine 229

"Ballots found in compartment for valid ballots Three hundred 300

"The same election return shows the following number of votes received by the various candidates for Mayor, to wit:

Total Votes

Total Votes

Obtained

Obtained

(In words)

(In figures)

1. Domingo Braulio Sto,

- One hundred seven

107

2. Estrada, Joseph

-Eighty two

82

3. Ibuna, Nicanor

- One hundred eight

108

4. Lenon, Enrique

- One

1

"It is claimed by petitioner that the re-turn is obviously manufactured, considering that while there were only 229 voters who actually voted 300 ballots were found in the box for valid ballots. Upon its face the claim would seem clear and irrefutable, for it is mathematically impossible for 229 voters to cast 300 valid votes, or 298 votes in the aggregate for the four contending candidates for the position of Municipal Mayor.

"However, a conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof. The decision in the Lagumbay case speaks of 'inherent improbability' in the data shown on the return. Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disenfranchisement of those who exercised their right of suffrage. In this case there is such an explanation. The minutes of voting prepared and signed by the election inspectors in precinct No. 94 show that the total number who voted is two hundred ninety-nine (299), in both words and figures, and that of the 300 ballots in the box for valid ballots one (1) was found to be marked and placed in the envelope for 'marked ballots'. These minutes of voting constitute an official document, accomplished pursuant to Section 142 of the Revised Election Code. It is a fair presumption that the number of 229 entered in the election return as the number of those who actually voted is a mere clerical error, and that the correct figure is 299 as shown in the minutes of voting. The correctness of this figure is supported by the other entries in the return, and by the fact that the sum total of the votes counted for the four candidates for Municipal Mayor is 298, with one ballot rejected and placed in the envelope for marked ballots.

"Everything considered, we find no justifiable ground on which the return in question may be annulled." (Pp. 1519-1520)

Upon these considerations, it is our considered view and conclusion that the Comelec erred or abused its discretion in sanctioning the rejection by the board of canvassers of the returns of the 22 precincts in question. If I hold that taking all relevant circumstances into account, particularly the explanations offered by petition, this case may be differentiated from the Lagumbay case and so, the said 22 returns should be canvassed as they are.

Coming now to the returns from Precinct 6 of Upi and Precincts 13-A, 14, 19 and 23 of Datu Piang which the Comelec refused to consider as falling within the doctrine of manufactured returns, I have a different view, except as to 23. In the 22 precincts involved in our previous discussion, we held that the Lagumbay doctrine is not applicable because although a pattern of presumptive fraudulent voting is discernible on the faces of the returns therefor, petitioner has offered reasonable and substantial explanations which, in our opinion, suffice to rebut such presumption of fabrication. With regard to the precincts now in question, not a single affidavit has been offered by either of the parties. We note, however, that in Precinct 23, according to Annexes 27 and 27-D of respondent, there was no 100% voting for any party, so the Comelec resolution regarding the same should stand.

The Comelec held that the Lagumbay ruling is not applicable to the said returns only because instead of a 100% voting for all the candidates of one party as against that of another, what appears is that two or three candidates of the Nacionalista Party or the Liberal Party, as the case may be, received the same votes as the candidates of the opposing party, at the sacrifice, of course, of two or three corresponding candidates of the other who were not credited with any vote. To my mind, this pattern of voting is even more statistically improbable than the 100% voting for one party in the Lagumbay case. I maintain that if it is well nigh impossible to make all the voters of one precinct vote for the straight ticket of one party, it is next to impossible to make them vote for a straight ticket of candidates of different party affiliations, particularly if the variations refer exactly to the same candidates. Thus, how can it be believed, in the absence of any factually demonstrable explanation, that each and everyone of the 221 voters who voted in Precinct 19 of Datu Piang had decided to vote uniformly for the presidential and vice presidential candidates of the Liberal Party, the Nacionalista candidate for member of the provincial board and the same six Liberal senatorial candidates, namely, Cases, Ganson, Liwag, Roxas, Sagun and Ziga and abandon the same two other Liberals, Ilarde and Mañalac, in favor of the same two Nacionalista candidates Palmares and Tamano? To top it all, this happened not only in one precinct, but in three precincts.[1]

The voting appearing on the face of the return from Precincts 6 and 35 of Upi follow the same pattern in the reverse. In these returns, there were two Liberal senatorial candidates joined with six Nacionalistas. The same result must follow, except that with respect to Precinct 35, it is to be noted that the objection to the action of the board of canvassers was not prosecuted in the Comelec, much less in this Court.

I, therefore, vote to reverse the ruling of the respondent Comelec as to Precinct 6 of Upi and Precincts 13-A, 14 and 19 of Datu Piang, without prejudice to the parties offering reasonably probable and demonstrable evidence, before the canvass is finished, of any explanation that can overthrow the factual presumption of improbability.

8. May the Comelec order the preparation of another return?

The next question to resolve is one of the gravest importance. Assuming that the Lagumbay doctrine applies to the 22 returns above referred to, can the board of canvassers prepare a certificate of canvass in complete disregard of the possible result of the election in said precincts? In other words, can the board of canvassers omit altogether in its canvass, the votes cast in those precincts? Generalizing the question, should the votes in a precinct be ignored in a canvass only because the return therefor has been so illegally prepared that its contents cannot be given prima facie value or should a proper return be ordered prepared for the purposes of the canvass? If the overall outcome of the election for congressman herein involved cannot be affected by such possible precinct results, it may perhaps be easy to simply say that in the interest of the speedy announcement of the results of the election, it would not be of any legal consequence to pay no attention to the said votes. It is a fact, however, that such result will be very materially altered, so it is imperative that we determine the right answer.

Respondent contends that since in the Lagumbay case the 50 precincts involved were not included in the canvass after the returns therefor were found to have been fabricated, the 22 precincts herein involved should suffer the same fate, as if that decision had established a binding precedent on the matter. The truth, however, is that it did not.

As a matter of fact, strictly speaking, this issue was not passed upon in the Lagumbay decision nor even discussed in it. Respondent's counsel himself observes that it was already in the motion for reconsideration of the minute--without-prejudice-resolution of this Court declaring the questioned returns invalid that Climaco's counsel raised for the first time the issue that instead of merely disregarding the fabricated returns and excluding the precincts concerned from the canvass, the corresponding boards of inspectors should be reconvened and ordered to prepare new returns. As already indicated, however, in the extended opinion of this Court which also

denied Climaco's motion for reconsideration, not even a passing mention was made of this argument. Looking back, we can only say that the Court must have felt inclined to leave things as they were after the promulgation of the minute-without-prejudice-resolution because at the time the motion for reconsideration was resolved on January 31, 1966, Senator Lagumbay had already been proclaimed, in virtue precisely of the said resolution, and had further-more taken the oath and assumed office, and consequently, the whole matter of the legality of his election, including, naturally, this particular question, had already fallen more appropriately within the competence and jurisdiction of the Senate Electoral Tribunal. How then can it be rightly said that in this case the court has no alternative but to follow the Lagumbay "precedent"? To attribute doctrinal value or the effect of a binding precedent to the silence of the Court on a matter of transcendental importance is not in keeping with the dignity and authority supposed to inform decisions of tribunals of last resort. It is extremely improper to speculate regarding the mind of the Court as to matters on which it has not made any express ruling.

Indeed, under these circumstances, it would be tantamount to judicial dereliction for this Court to hold that the door is already closed to this Court to now rule squarely on such a grave issue of far-reaching significance, considering specially that, to paraphrase an observation of Mr. Chief Justice Bengzon in the Lagumbay decision, the point is being pressed upon Us now in a more clear-cut manner, as never before. Withal, what should weigh heavily upon Us as a self-imposed responsibility is that by the trend of our decisions subsequent to the Lagumbay case, this Court has leaned towards a more practical, more expeditious and less technical approach to the solution of electoral cases, with the end in view of striking at the root of all controversies sans non-fundamental technicalities of procedure, thereby effectuating as speedily as possible the apparent will of the electorate and, as importantly, also giving flesh and bone to the necessary power and jurisdiction of the Comelec as the body entrusted by the constitution with the sacred duty of making elections in this country free, peaceful and orderly, and by clear implication, genuine and not a mockery, whenever all these can be achieved by it without encroaching into or corroding the equally constitutionally allocated jurisdiction of the corresponding electoral tribunals. Be it remembered that the Lagumbay case was decided in 1965 and 1966; thereafter, We decided the case of Pacis[2] on February 10, 1968 and hardly two weeks later, on February 21, 1968, that of Mutuc[3]. These are the cases that are really relevant to the present issue, because in them, Our decisions picked up, as it were, from where Lagumbay was unable to proceed because of the jurisdictional reason already stated. It is by the examination of these decisions, including the one lately of Tiglao[4], that we can clearly see the trail We have been since pursuing. Indeed, how did this Court approach the issue now before Us subsequent to Lagumbay?

It is to be admitted that in the second Pacis case, there was no order for the board of inspectors of Precinct 22 to prepare a new return notwithstanding that the return first prepared by them was found to have been filled up at gun point. It is obvious, however, that under the facts of that case, no new count could be made, for the simple reason that the contents of the ballot box involved had already been tampered with. According to the Comelec resolution in that case, "[n]either would it be of any help if the ballot box will be opened and we were to look for other election documents, since the tally sheet and the tally board were missing and the ballot box itself was left open from the morning of November 15, 1967 up to the afternoon of November 16, 1967". Naturally, a new count would not have served any legitimate purpose and would have been improper, even if judicially undertaken (Resolution, Chiongbian vs. Comelec, G. R. No. L-19202, February 20, 1962). Nevertheless, this Court already gave an emphatic indication of the efforts that should be made when copies of the election return are found to be unserviceable. The following words of Mr. Justice Sanchez, speaking for the Court, should never be lost sight of, full of wisdom, principle and practicality, as they are:

"1. Comelec's broad power under the Constitution and the statutes has gained judicial approval. The rationale is that Comelec is entrusted with the 'enforcement and administration of all laws relative to the conduct of elections' and the authority to decide 'all administrative questions, affecting elections' - all of which rest upon

the purpose of Comelec: to insure free, orderly and honest elections. (Sec. 2, Article X, Constitution). Indeed, the diversity of election frauds and anomalies that have been concocted by rival parties, surpassing legislative anticipation and scuttling the prescribed manner of conducting elections, necessitate resort to Comelec's general power of administration and supervision.

"This Court has set down the rule that when returns are obviously manufactured or palpably irregular, the canvassing board may reject them (*Tagoranao vs. Commission on Elections*, L-28590 and *Cota Cornell vs. Commission on Elections*, L-28598, March 2, 1968, 1968A Phil. 806, 813; *Ong vs. Commission on Elections*, L-28415, January 29, 1968, 1968A Phil. 248, 254, citing *Nacionalista Party vs. Commission on Elections*, 85 Phil. 149, 157, 158, and *Lagumbay vs. Climaco*, L-25444, January 31, 1966). The board's decision is open to review by Comelec which has the power to investigate irregularities and to act upon the propriety or legality of the canvass made by the board (*Espino vs. Zaldivar*, L-22325, December 11, 1967, 1967D Phil. 670, 681, 684, and citations therein). But it is to be emphasized, this power to reject returns must be exercised with 'extreme caution' (*Tagoranao vs. Commission on Elections*, supra.). Popular will must not be suppressed at the slightest cause.

"Clean elections', we have said in the first *Pacis* case, 'control the appropriateness of the remedy'. This we will have to underscore once again. Because acts of terrorism or fraud the purpose of which is to destroy the integrity of election returns must have to be discouraged. For, they may eventually defeat the will of the majority and, as Chief Justice Concepcion has emphasized, would 'undermine the foundation of our democracy' (*Ututalum vs. Commission on Elections*, L-25349, December 3, 1965, cited in *Janairo vs. Commission on Elections*, L-28315, December 8, 1967 and *Abes vs. Commission on Elections*, L-28348, December 15, 1967). The purpose of the Election Code 'to protect the integrity of elections and to suppress all evils that may vitiate its purity and defeat the will of the voters' (*Cauton vs. Commission on Elections*, L-25467, April 27, 1967) gives Comelec authority to ascertain whether the genuineness of a given election return may yet be salvaged by an examination of the said return.

"Indeed, hindsight has long confirmed our view that the unscrupulous finds illegal doctoring of election returns as an effective short cut to prevent the proclamation of the true winner and leave him to the long tedious task of an election protest - if the aggrieved party still has the means to undergo the same. Which, as well observed by Chief Justice Bengzon, could only result in a pyrrhic victory (*Lagumbay vs. Climaco*, supra.). Comelec then must strain every effort to ascertain the true returns to be used in the proclamation, a possible alternative being that the victor will be cheated of his victory; the seat that is justly his will be occupied by one rejected at the polls; our democratic institutions will suffer in integrity.

"With these thoughts to guide us, we first look into Precinct 19 (Precinct 18 is no problem).

"Comelec made a thorough investigation concerning the alleged irregularities. It even made use of the services of the NBI to determine the original erased entry for *Pacis* and the testimony of the chairman and poll clerk of the precinct. It was there ascertained that *Negre* obtained 73 votes, to *Pacis*' 89. This is no abuse of discretion on the part of Comelec. If the true result of the voting in Precinct 19 could still be determined, it is within Comelec's power to direct that they be used in the canvass. And this was done." (*Pacis vs. Comelec*, L-29026, supra)

Of similar telling import are the principles stressed by Mr. Justice Sanchez in the first *Pacis* case:

"The December proclamation of *Negre* is open to attack from another direction. The board of canvassers did not include in the canvass the returns from Precincts 18, 19, 21 and 22. It is to be borne in mind that the results of the vote-counting from these four precincts are decisive of the election.

"It is true that in *Espino vs. Zaldivar*, L-22325, December 11, 1967 citing *Nacionalista Party vs. Commission on Elections*, 85 Phil. 149, 158, We declared that the canvassing board will not be compelled to canvass returns which are obviously manufactured. This does not mean however that the board and Comelec,

when faced with this situa-tion, should right away disregard the votes cast in precincts where returns were doctored. There are four copies of official returns. Allegedly both the municipal treasurer's and Comelec's copies were tampered. But it was the duty of the board to report the matter to Comelec. Comelec could then hew to the line drawn in *Cauton vs. Commission on Elections*, 19676 Phil. 248, 233, where this Court declared that, in case the election returns were tampered, 'it is certainly within the power of the Commission on Elections to issue such order as would ascertain the exist-ence of the genuine, authentic and un-tampered election returns'. Comelec could inquire into the copies of the re-turns for the provincial treasurer. And if these copies are not authentic, Co-melec should look into the copies of the returns in the ballot boxes. These should have been done. First. Because exclusion from canvass of returns deci-sive of an election is an act which lends itself to misuse by the board. Second. Sound practice seeks to accom-modate every plausible theory which will discourage if not eliminate, mini-mize if not curb, unlawful proclamation of, and assumption of public trust by, the wrong man. Clean elections control the appropriateness of the remedy." (*Pacis vs. Comelec*, 22 SCRA 539, 554-555)

At this juncture, it should be considered that in elections, the significance of a regular and proper proc-lamation can never be over-emphasized. From the fact alone that such a proclamation gives the person in whose favor it is issued the right to possess and exercise all the prerogatives and attributes of the office in dispute, one can easily see how important it is that every care must be taken so that the proclamation may be as legal and complete as it is humanly possible to make it so. True it is that in the ultimate, the question of who has been duly elected may be decided in a protest, but this is no reason why all controversies affecting the canvass and the returns should immediately be shoved to the electoral tribunals. The final decision of these tribunals, no mat-ter how fast and how correct, cannot replace or supersede the role of a proclamation.

Needless to say, a correct proclamation is as im-portant, if not more so, than the final result of the pro-test, particularly, from the practical standpoint because it is not unusual for the wrong candidate to be proclaimed and the winner of the protest to be able to serve only an insignificant balance of the term for which he has been elected. It is precisely because of these considerations that the election law has elaborate provisions specifying in detail who are to make the canvass and when and how it should be made, stating categorically that such canvass "shall proceed" on the basis of "all the statements" (re-turns) and "all the votes in the province" (Secs. 158 et seq.,-particularly Sec. 160 of the Revised Election Code). In other words, the proclamation is the first proof, re-cognized by law, that a candidate has been elected, that is, that he has garnered the required number of votes to be entitled to the office as against his rivals. This proof cannot have due weight unless it has been properly established; its basis is the canvass; but if the canvass is incomplete, the proof is correspondingly insufficient; and a canvass cannot be complete, unless the returns from all the corresponding precincts are included therein. The purpose of the canvass is to determine the result of the election as shown by the official returns; necessarily, a canvass cannot be reflective of the true vote of the elec-torate unless all the returns are considered and none is omitted. The only exception to this would be when there is no feasible and expeditious way of determining the votes in a precinct, such as when the tally sheet appears to have also been tampered with or manufactured in the same way as the return, or the ballots themselves have either bee actually tampered with or there are indications that the sec-urity and integrity of the same have been destroyed. The validity of these propositions are self-evident.

Thus, eleven days after the first *Pacis* case, on Feb-ruary 21, 1968, in the *Mutuc* case (*supra*), this Court ex-plaind the imperative need for taking all returns into ac-count in the canvass in the following unequivocal terms:

"It is now a settled doctrine that an incomplete canvass of votes is illegal and cannot be the basis of a subsequent proc-lamation (see, e.g., *Demafiles vs. Commis-sion on Elections*, L-28396, Dec. 29, 1967; *Abes v. Commission on Elections*, L-28348, Dec. 15, 1967; *Abendante v. Relato*, 94 Phil. 8 [1953]). Indeed, it is the

ministerial duty of a municipal canvassing body to count the votes cast 'in the same manner as herein-before provided for the provincial board [of canvassers],' (Rev. Election Code, sec. 168) which means to say to count all the votes cast. Thus, section 160 of the Election Code enjoins provincial boards of canvassers as follows:

'As soon as all the statements are before it but not later than fifteen days next following the date of the election, the provincial board of canvassers shall proceed to make a canvass of all the votes in province for national, provincial and city candidates, and upon the completion of the canvass, shall make, as the case may be, separate statements of all the votes received by each candidate x x x' (Italics supplied)

"A municipal board of canvassers must therefore count all the votes cast in the election and, for this purpose, must consider all returns presented to it by the municipal treasurer. If material defects there are in the form of the returns, it must send them back to the corresponding boards of inspectors for correction (Rev. Election Code, sec. 162). If certain precincts have not sent in their returns, the board must send for them, and the fiscal should forthwith institute criminal proceedings against those who may be criminally responsible for the delay (Id. sec. 161). If there is a discrepancy between two authentic copies of an election return and the difference affects the result of the election, the board may ask the proper court of first instance to order a recount of the ballots (Id. secs. 163 and 168).

"All these serve to underscore the need to count all the votes cast in an election. Only when the returns are palpably irregular or obviously manufactured may they be rejected (E. g., *Lagumbay v. Commission on Elections*, L-25444, Jan. 31, 1966, 163 Ct. Rep. Ann. 175; *Nacionalista Party v. Commission on Elections*, 85 Phil. 149 [1949]) but even then the board must exercise 'extreme caution' (*Estrada v. Navarro*, L-28340 & L-28374, Dec. 29, 1967). And where a return is falsified, the board may apply to the Comelec for authority to use another copy which is genuine and authentic (*Ong v. Commission on Elections*, L-28415, Jan. 29, 1968; *Espino v. Zaldivar*, L-22325, Dec. 11, 1967). Why must all the votes be counted when there is a need to finish the canvass on time so that proclamation can be made before the beginning of the term of office? Because to disregard returns is in effect to disenfranchise the voters (*Estrada v. Navarro*, supra, note 8).

The Comelec was, under the circumstances, bereft of power to order the board of canvassers of Makati to disregard the return from precinct 124, even if it noted from its copy (which was likewise blank or incomplete) that the number of votes cast in the precinct (263) was too small to be of any significance to any candidate. This, because the Comelec has no power to decide questions involving the right to vote, (*Nacionalista Party v. Commission on Elections*, supra, note 7) as to disregard a return is in effect to deny the voters their votes."

The above considerations, particularly, this Court's rationalization in the cases of *Pacis* and *Mutuc* should suffice to answer the argument that there is neither law nor jurisprudence supporting the proposition that there should be a new count. The import and implications of this Court's opinions in those cases are so logical and so effectuate of the principles underlying the popular suffrage and electoral processes that one is left to wonder how anyone can ever conceive that the law could be so inadequate as not to provide directly or by necessary implication what should be done with votes that would otherwise be left uncounted and ineffective merely because an attempt intended precise to thwart the correct reporting of the genuine result of the election has been made. It would be tragic to say the least, if the broad powers of the Comelec specially designed in the constitution to prevent, as far as it is humanly possible to do so, any repetition of previous experiences regarding conceivable tricks, artifices and fraudulent practices in elections, were to be construed as short of enabling that body to ascertain by reasonable means the result of the count of votes, if only for purposes of a complete canvass, only because it has been found that, in violation of the particular provisions of the election law and the commission's circulars and regulations, something has been done with all the copies of the return in a given precinct to make them completely unserviceable. Stated differently, to sustain the view that because the return for a precinct has been found to be fabricated or manufactured, the result of the election in it should not be included in the canvass, is the best encouragement to the perpetration of a new "grab-the-proclamation" scheme, namely, manufacture the

return and thereby render useless the votes of the opponent in said precinct sufficient to overturn the result: in which eventually, what this Court intended to achieve in the Lagumbay case would be defeated and the remedy thereby conceived and enunciated would turn out to be worse than the malady. Indeed, the consequent disenfranchisement of electors by nullifying their votes is worse than not allowing them to vote at all, because in the latter case, it is yet uncertain who would have the palm of victory, whereas in annulment, the votes they have actually cast to give their candidate the majority he has obtained are set aside, at least, until after a long, cumbersome and expensive protest and after the truly losing candidate has already enjoyed the Office for sometime.

With these considerations in mind, the challenges that confront Us are clear and ineludible. Are We to pursue the trend of the above decisions or are We going to backtrack? Are We going to capitalize on the trifling distinction that in the Mutuc case, the return was merely blank, while in the present case the returns in question are being held to be manufactured and false? Are We opting to disenfranchise the voters in the 22 pre-cincts in question whose votes can be decisive of the election involved in this case, for no obvious reason of logic or policy at all, and only because nothing of the sort has been done before?

It is alleged that in the Mutuc case, this court held that all that can be done with 'palpably irregular or obviously manufactured' returns is that "they may be rejected", albeit with "extreme caution", and no votes should be counted for the precinct concerned. That is not true. The whole text of the discussion in the Mutuc case above-quoted clearly points towards a single direction, namely, that all efforts must be strained to determine the results of the election in every precinct "because the Comelec has no power to decide the questions involving the right to vote (as) and to disregard a return (or the result in any precinct) is in effect to deny the voters their votes." To rely barely on the statement "Only when returns are palpably irregular or obviously manufactured may they be rejected but even then the board must exercise extreme caution" for the conclusion that no recount can be ordered is to read said statement out of context. It is evident that said statement taken together with the other portions of the opinion does not convey the import that respondent wants to give it - namely, that the only thing that can be legally done is to disregard the questioned return and not to count any votes in the precinct involved.

Then again, in the also recent case of Tiglao v. Comelec, G. R. No. L-31566, February 18, 1970, wherein the name of one candidate was completely omitted in the returns from Precincts 35-A and 36 of Apalit, Pampanga, this Court ordered that "the Comelec should have ordered the boards of inspectors of Precincts 35-A and 36, Apalit, to open the ballot boxes, count the votes for petitioner Tiglao, if any, and make new returns."

Comes now the majority and in a vain effort to evade the necessary consequence of these doctrines rationalizes that while the case of Mutuc involved a return which was blank and in the Tiglao case the questioned returns omitted the name of the candidate Tiglao, the situation in the case at bar is different because here there are returns which are neither blank nor faulted with omission; the returns herein involved are obviously manufactured ones, hence, foregoing precedents do not apply. I must say, with no little disappointment, that this Court has never done this before - try to draw distinctions where none exist. Undeniably, the returns here in question are not identical in form with those in Mutuc and Tiglao, but since when has this Supreme Court ever bothered about dissimilarities in form when the applicability of the same principle is as apparent as logic and morality can ever make it? Never! Indeed, I am fully convinced that the fundamental considerations that propelled the holdings of this Court in Pacis, Mutuc and Tiglao make it imperative and inevitable that We hold that blank returns or ones showing omissions of names of candidates, returns made at gun-point and obviously manufactured or fabricated returns all belong to the same legal category. In all of these instances, it is as if no return at all has been prepared. Consequently, the rule that applies to the first two should also apply to the last two.

The clear implication of the ruling of the majority, as I see it, is that the requirement of Section 160, which, according to this Supreme Court in *Mutuc*, means that all the returns or the returns from all precincts must imperatively be canvassed, as, otherwise, disenfranchisement of the corresponding voters would result, should be considered as legally complied with as long as all such returns are before the canvassers, even if, as in this case, some of the said returns are palpably unserviceable by standards laid down by this Court itself, such as, "obviously manu-factured" and "gun-point" returns and returns all the copies of which appear to have been so erased, altered or forged beyond recognition that none of them can be utilized. In other words, under the majority's theory, where the law speaks of "all" the returns, it contemplates any kind of return, so long as it is fully filled up as to the number of votes of all the candidates, no matter if as so filled up, it is palpably illegal and unserviceable by this Court's own standards. Worse, the only alternative that the majority suggests in such a contingency is to disregard the defective return and count no votes for the precinct concerned. In good conscience, I find it extremely difficult to agree with such a view. I cannot admit that the existing electoral laws and the pertinent constitutional provisions are that bad. My legal knowledge and experience, humble as they are, revolt against the idea that "there is no law or jurisprudence" authorizing any alternative other than to disregard the returns here in question and count no votes - virtually hold there was no election, which only the electoral tribunals can do - in the 22 precincts here involved. That the present laws and constitution have left such an alleged void in the electoral scheme of this country is, to me, a conclusion that is impossible of acceptance. True, Section 163 specifically allows a judicial recount in cases of irreconcilable conflict between copies of the same returns and there is no other provision in the revised Election Code authorizing such a recount, but who is advocating a judicial recount in the present case? It is clear to me that the fact that Section 163 sanctions a judicial recount in its premises, cannot be considered as indicative of any legislative intent to preclude the obligation of the inspectors to prepare another return in substitution of one found to be unserviceable by the Comelec. To start with, the preparation of an appropriate return in such a case does not necessarily entail a re-reading of the ballots. The truth is that in the actual working out of the electoral procedure, the inspectors do not prepare the returns on the basis directly of the ballots; the returns are filled up by reading the result found in the tally sheets. What is wrong then with making the inspectors prepare a new return on the basis of tally sheets? The answer of the majority is that the tally sheets may be as defective as the returns. Definitely, there is no evidence, much less proof to that effect. Why must we decide this case on the basis of conjectures? Is it not our own ruling that every effort must be strained to determine the true result of the count of votes? Why does not the majority want to strain efforts further in this case? In the event the tally sheets in the precincts here in question turn out to be as faulty as the returns, what would be wrong anyway with requiring the inspectors to re-read the ballots? Now, if the integrity of the ballots themselves happen to be questionable, then, perhaps, there would be no other recourse but leave out the corresponding precinct in the canvass. In such a case, I would say that even if the wrong candidate is proclaimed, it would not matter very much because no one is expected to do something that is physically and legally impossible. In conclusion on the point under discussion, I submit that the absence of any provision expressly authorizing a recount of votes when all the copies of the returns are unserviceable is simply explained by the fact that such a remedy is too obviously implicit in the existing laws to require further specific legislation.

It is further argued that in the *Lagumbay* case, after holding that the fifty returns in question were fabricated, this Court ruled that "fraud or no fraud, the verdict in these fifty precincts (therein involved), may ultimately be ascertained before the Senate Electoral Tribunal x x x All we hold now is that x x x the returns x x x do not reflect true and valid reports of regular voting. The contrary may be shown x x x in the corresponding election protest", hence, the same procedure should be followed here by leaving the results in the 22 precincts herein involved to the House Electoral Tribunal in an appropriate election protest. I have already explained that the supposed ruling thus referred to must have been due to the fact that at the time the decision was rendered, the *Lagumbay* case was already within the orbit of the Senate Electoral Tribunal's jurisdiction inasmuch as at that

time, Senator Lagumbay had already been proclaimed as a consequence of the minute-without-prejudice resolution of this Court, taken the oath and assumed office. Be that as it may, the above-quoted statements of this Court in the Lagumbay decision had no specific reference to the argument that there should be a recount.

Besides, it is in the very nature of the electoral process that the same matters affecting the election re-turns may be decided or passed upon at different stages, from different points of view, for different purposes and by different bodies or offices. In the ordinary scheme of this electoral process there are three stages in determining the legitimate result of an election, namely, first, the counting of the votes by the inspectors; second, the canvassing of the returns by the board of canvassers and lastly, in the event of controversy as to the legality and regularity of the elections, the electoral protest. The proper preparation of the returns is undertaken by the board of inspectors and only said board has the power to decide questions regarding what the returns should contain, subject to control of the Comelec and ultimately of this Court, but whatever be the rulings of the board, they have no bearing on the final determination of the true and legal result of the election, said rulings being good only for purposes of preparing the returns for submission to the corresponding officers so that the same may be submitted, in turn, to the board of canvassers. Likewise, as to the canvass, it is the board of canvassers, subject again to supervision and control of the Comelec and the final appellate authority of this Court, that has the exclusive authority to pass on the authenticity of the re-turns, but part and parcel of the duties of the said board is the obligation to see to it that all the corresponding returns are before it; not before then does its power to canvass exist. After the canvass and proclamation have been legally made, the board of canvassers' and the Comelec's functions in regard to canvassing become *functus officio* and the jurisdiction of the electoral tri-bunal ensues, only then but not earlier. Again, all rulings of the Board of Canvassers and the Comelec and this Court at this stage are binding only in so far as the canvass and the proclamation are concerned and have no compulsive bearing on the issue of over-all legality of the election which is left to be determined, in case there is a protest, by the electoral tribunals. Thus, the constitutional conferment upon the House Electoral Tribunal of exclusive jurisdiction as "sole judge of all contests relating to the election, returns and qualifications of the (irrespective) members" of the House of Representatives, should not preclude the board of canvassers and the Comelec from doing and performing all their duties to see to it that a complete and regular canvass is made. In other words, in the scheme of the electoral process, the boards of inspectors, the boards of canvassers and the Comelec as well as the electoral tribunals have their own designated times to deal even on the same matter without any conflict of jurisdiction, each deciding and resolving the matter for specific and distinct purposes.

In the case at bar, there is no issue of legality or irregularity of the voting nor any question of appreciation of ballots. Nobody is claiming that there was no election or that the election in the 22 precincts in question should be annulled. The sole issue here involved refers to the contents of the returns for purposes of canvassing - that is, whether or not they are authentic and can be given *prima facie* value. This question is not likely to be taken up in any ensuing election contest, since there the issue will go beyond the returns to the ballots or votes themselves. Clearly, this matter, by its very nature, belongs to the jurisdiction of the Comelec. There is no reason to waive that jurisdiction. It is insisted, however, that, after all, the ballots may be duly counted by the electoral tribunal and the true results known thereafter. Would that not be too late for the candidate who should have been proclaimed, if the counting were made earlier?

It is suggested that adopting the rule that when there is a manufactured return, the votes in the corresponding precinct should be disregarded would be giving the one who caused the illegality his just desserts. At first glance, this argument does appear to administer poetic justice, but on deeper reflection, one will realize that, as earlier explained, the "manufacturing" may also be done by the other party who would benefit by the complete disregard of the votes in the precinct and not necessarily by the candidate or party that appears favored on the face of the return. Under these circumstances, there is indeed no substitute for what is most normal, logical and legal, which

is none other than to have the inspectors prepare a new return, on the basis of the tally sheet, if found to be regular, otherwise, on a re-count of the ballots, unless the latter are themselves unserviceable.

Fear is expressed that if the Comelec is to be recognized to have the power suggested by petitioner, the likelihood is that many proclamations will be held up because of the necessity of recounting the votes in many precincts in which the returns are unserviceable and thus, greater injury will be caused to public interest by the failure of many elective officials to assume office at the inception of their terms. I believe that such apprehension has very little reason for being. The very fact alone that all concerned are precisely being made aware by Our decisions that this Court will never countenance the unnecessary delay of a proclamation and the unwarranted disregard of the results of the election in any precinct and, further, that We will not hesitate to order the prosecution of the guilty parties, will have the effect of discouraging further ill-conceived schemes to defeat the true vote of the people. Moreover, the proper procedure is really more simple than it is imagined to be. After a return is declared unserviceable for any reason in the law, all that has to be done is for the board of inspectors of the corresponding precinct to meet and prepare a new return, on the basis, as already stated, of either the tally sheet, if it appears to be regular, otherwise, the ballots themselves, a procedure which need not take more than a day or two. Surely, this slight delay is more than made up for by the clear advantages I have already discussed. Given Comelec officials who are properly, imbued with the necessary loyalty to truth, the laws, the constitution and the country, and with this Court clarifying every doubt in the statutes and past jurisprudence, as it should have done here, to the end that the electoral process may be as simple and as fool-proof as human genius can make it within the boundaries laid down by the laws and the Constitution, we can be certain that, even if our burden of work be heavier for sometime or some proclamations may suffer a little delay, earlier is this country going to have more honest and free elections. Withal, even granting that the imagined fear may indeed materialize, I cannot compromise with the pose that this Court must adopt the interpretation that would avoid it, even if it is clear that a construction more in consonance with the intent and spirit of the law is undisputably feasible. We all know that if ever there should be more instances hereafter of unserviceable returns that would necessitate the consequence I advocate, it will be because attempts may be made precisely to defeat the ends we intend to achieve by adopting the interpretation I propose. Is it proper for Us to hold that our construction should yield to such evil design?

The ideal to approach is that every man's vote must count for all purposes for which it is cast, principally, the proclamation and the final outcome of the election; hence, any ruling to the effect that the votes in any precinct should not be counted, even if only for the purposes of the canvass and proclamation, when it is obvious that the alternative to avoid it is still legally open, should be farthest from the mind of this Court, for the simple reason that it will cause irreparable injury to the popular will. To the great comfort of our people, the trend of Our decisions in electoral cases has thrown electoral malefactors into confusion and given the citizenry a well-grounded hope that under the able supervision of the Comelec, proclamations made by boards of canvassers are presently as proximate as human capability can make it to the best determined presumptive results of the elections. It is truly unfortunate and regrettable, that after this Court has advanced so far, the majority cannot now see its way onward, to the great impairment, I believe, of the cause of clean and honest elections and the consequent disenchantment, let Us hope not, of those who only recently had reason to feel that this Court had already traced in Lagumbay, Pacis, Mutuc, Tiglao, and all its other decisions of similar tendencies, an irreversible course towards the most expeditious determination of the question of who should be proclaimed as winner in an election, thereby eliminating as much as possible the chances of error and even mischief in this respect.

ACCORDINGLY, I vote to reverse the two Comelec resolutions now before Us in all respects that they are inconsistent with the foregoing opinion.

[1] In Tagoranao vs. Comelec, only one precinct was involved.

[2] This is the first Pacis case: Pacis vs. Comelec, et al., L-28455, February 10, 1968, 22 SCRA 539; the second is Pacis vs. Comelec, et al., L-29026, September 28, 1968, 25 SCRA 377.

[3] Mutuc, et al. vs. Comelec, et al., L-28517, February 21, 1968, 22 SCRA 662.

[4] Tiglao vs. Comelec, L-31566, February 18, 1970.

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DISSENTING OPINION

TEEHANKEE, J.:

I concur with the extensive concurring and dissenting opinion of Mr. Justice Barredo, and wish to add the following brief comments on the inapplicability of the Lagumbay case:

1. To my mind, the application by the majority of the Lagumbay dictum does not square with the consistent pronouncements of the Court in all subsequently decided cases admonishing boards of canvassers to proceed with extreme caution in rejecting returns as "obviously manufactured" because of statistical improbability and to view the doctrine restrictively so as not to result in the disenfranchisement of innocent voters.

The Court reiterated this restrictive view in two cases decided this year.

In Ilarde vs. Comelec[1] it pointed out that "(T)he thrust of all the subsequent cases is to restrict the doctrine of the Lagumbay case to the unique uniformity of tally in favor of candidates belonging to one party and the systematic blanking of the opposing candidates in the same locality, such as to make the fraud 'pal-pable from the return itself .. (and) there is no reason to accept it and give it prima facie value, and leading to no other reasonable conclusion than that the returns were obviously manufactured because they were as 'utterly improbable and clearly incredible' as to win the sweepstakes ten times." In Lucman vs. Dimaporo[2] the Court cited the "peculiar situation" of the fifty returns ordered excluded from the canvass in Lagumbay as "utterly improbable and clearly incredible." It should be noted that this was not strictly an issue of fact. Indeed, the main elements essential to its determination appeared on the face of the returns themselves. The dispute boiled down to the proper conclusion to be drawn therefrom, and, hence, it partook of the nature of a question of law (cases cited). What is more, in the view of this Court, that conclusion was "clear, obvious, manifest and indubitable." The Court further explicitly ruled, in not applying therein the Lagumbay doctrine, that "unlike the condition of the returns involved in the Lagumbay case -- which this Court considered incontestable -- that existing as regards the returns for Balabagan is clearly a very controversial one, which the Commission has no power to decide with finality."

2. In Sangki vs. Comelec,[3] the Court held that "a no-vote for a particular candidate in election returns is but one strand in the web of circumstantial evidence that those election returns are 'obviously manufactured.' In Lagumbay, that circumstantial evidence was overwhelming." There, the Court declined to reject the returns from

18 precincts of Pagalungan and 11 precincts of Pikit, both of Northern Cotabato, showing that all the votes counted were in favor of Salipada K, Pendatun (then a candidate for gover-nor) while reporting zero votes for his opponent, because inter alia, affidavits of the opposing party's inspectors explaining why they did not vote for their party's candidate were submitted by Pen-datun. The Court ruled that the averments of the inspectors' affi-davits "reduced this particular point to a question of fact", which could only be resolved by the corresponding protest in the proper forum.

3. In the case at bar, affidavits of respondent Pendatun's party inspectors and of the poll chairman and clerks explaining the zero vote for Pendatun as against 4,346 votes for petitioner Sinsuat in the questioned precincts, principally of Upi, his home-town,[4] which stand unrebutted, were this time presented by his opponent, petitioner herein. This must be counter-balanced as against the fact of respondent Pendatun having received all the 5,809 votes cast in the 35 precincts of Pagalungan, his home-town, as against zero vote for petitioner[5] (in the same manner that he garnered all the votes therein against zero vote for his opponents in the 1961, 1965 and 1967 elections).[6] The point is that against such a factual background dealing with hometown votes, any conclusion of statistical improbability on the basis of the Lag-umbay doctrine becomes clearly inapt, because the results shown by the returns cannot be said to be 'utterly improbable and clearly incredible' and a conclusion of their being "obviously manufactured" because of statistical improbability cannot be considered "indubitable and incontestable." Whether by design or otherwise, the other can-didates of the opponent's ticket are systematically blanked or given a few stray votes becomes of no legal significance for purposes of the Lagumbay dictum, because the issue becomes a very contro-versial one of fact, which rules out the summary employment of statistical improbabilities and which is beyond the Comelec's power to decide with finality.

As held by the Court in Estrada vs. Navarro,[7] in canvass proceedings, "(A)ny plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disfranchisement of those who exercised their right of suffrage."

[1] L-31446, Jan. 23, 1970, emphasis supplied.

[2] L-31558, May 29, 1970, emphasis copied.

[3] L-28359, Dec. 26, 1967, 21 SCRA 1392.

[4] Comelec Resolution, Annex H, p. 9.

[5] Annex E, Memorandum of Data.

[6] Annex I, respondent's Counter-Memorandum.

[7] L-28340 and L-28374, Dec. 29, 1967; 21 SCRA 1514.

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