

DANILO FERRER, PETITIONER, VS. COMMISSION ON ELECTIONS AND RAFAEL M. GROSPE, RESPONDENTS.

G.R. No. 139489. April 10, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case before us is a petition for certiorari under Rule 64, 1997 Rules of Civil Procedure, as amended, to nullify the resolution of the Commission on Elections (Comelec), Second Division, promulgated on March 18, 1999 and resolution en banc, promulgated on July 27, 1999 reversing the decision of the Municipal Trial Court, Talavera, Nueva Ecija and declaring respondent Rafael M. Grospe as the duly elected Punong Barangay of Barangay Bantug Hacienda, Talavera, Nueva Ecija.

The facts are as follows:

Petitioner Dante B. Ferrer and private respondent Rafael M. Grospe were candidates for the position of Punong Barangay in Barangay Bantug Hacienda, Talavera, Nueva Ecija during the May 12, 1997 barangay elections.

The final result of the canvassing was as follows:

DANILO B. FERRER - 277 votes

RAFAEL M. GROSPE - 275 votes

Consequently, the Barangay Board of Canvassers proclaimed petitioner Danilo B. Ferrer as the duly elected Punong Barangay by a margin of two (2) votes.

On May 19, 1997, the private respondent filed with the Municipal Trial Court, Talavera, Nueva Ecija an election protest.[1]

The protestant prayed for the re-opening of the ballot boxes of Precinct Nos. 21 and 21-A [Barangay Bantug Hacienda had two (2) precincts only] and that the ballots contained therein be recounted.

The trial court created a revision committee for the purpose of segregating the ballots contested or claimed by the parties. The results were as follows:

Uncontested Ballots

RAFAEL GROSPE

DANILO FERRER

Precinct No. 21 -

168

120

Precinct No. 21-A-

83

148

268

251

Among the eleven (11) ballots claimed by private respondent, eight (8) were credited to him by the trial court.[2]
The court rejected three (3) rejected ballots.[3]

On the other hand, the trial court credited twenty-nine (29) ballots claimed by petitioner.

The final results affirmed the proclamation of petitioner as Punong Barangay with a total votes of 280 against private respondent's 276 votes after adding the corresponding credited ballots in their favor.

In due time, private respondent appealed the decision of the trial court to the Commission on Elections.

The Commission on Elections[4] in finding for the private respondent, arrived at the following conclusions:

1.

Exhibits "E", "I" and "K" which were rejected by the trial court, would be credited in favor of private respondent;

1.1

Exhibits "E" and "I" - "APE GROSPE" was clearly written on the first line for Kagawad leaving the space for Punong Barangay vacant. The Commission applied the neighborhood rule.

1.2

Exhibit "K" - "RAFAEL GROSPE" was written on the second line for Kagawad leaving the space for Punong Barangay vacant. The Comelec applied the intent rule.

2.

Exhibit "2" was not counted in favor of protestee for being written by two (2) distinct persons;

3.

Exhibit "A-16" was rejected as marked ballot because the words "KAMOT CAPITAN" written on the fourth line for councilor are impertinent, irrelevant and unnecessary words or expressions which served no other purpose than to mark the ballot;

4.

Exhibit "13", valid for Danilo B. Ferrer - applying the idem sonam rule and the neighborhood rule. The word "DANIG", sounds similar to petitioner's nickname "DANNY" and the same was written on the first line for Kagawad leaving the space for Punong Barangay vacant;

5.

Exhibits "A-4" to "A-15" were found to be valid albeit the absence of the signature of the BEI Chairman since it did not invalidate the ballots.

From the foregoing findings and conclusion of the Commission on Elections, private respondent ended with a one (1) point lead over the petitioner with the following votes:

On March 23, 1999, petitioner filed with the Commission on Elections a motion for reconsideration, which the Commission dismissed for lack of merit in its resolution[5] promulgated on July 27, 1999.

Hence, this petition.[6]

Petitioner asserts the following grounds:

DANILO B. FERRER

-

278 votes

RAFAEL M. GROSPE

-

279 votes

"1. The findings of the trial court in its appreciation of the contested ballots is in accord with law and jurisprudence as well as familiarity with the traits and idiosyncrasies of the voters of Barangay Bantug Hacienda, Talavera, Nueva Ecija;

"2. The decision of the trial court reflects its exhaustive and painstaking examination and appreciation of the contested ballots." [7]

After a thorough evaluation and examination of the contested ballots, which we visually scrutinized, we make the following findings:

A. For Danilo B. Ferrer

1. Exhibit "A-1" is counted in favor of petitioner since "FERRER" is the surname of petitioner and no other candidate has the same surname.[8]

2. Exhibit "A-2", the vote is valid for "Danilo Ferrer" which was written on the first line for Kagawad leaving the line/space for Punong Barangay vacant under the neighborhood rule.

3. Exhibit A-3, the vote "Prongcoran Danilo Ferrer" is valid for Danilo Ferrer regardless of the designation. There is no showing that the designation/appellation was used to identify the voter as to render the ballot marked.[9]

4. Exhibits "A-4" and "A-16" are valid votes for Danilo Ferrer. Unquestionably, in Exhibit "A-4", the vote "Danilo Ferrer" is valid. The words "Kamot Capitan" written in the fourth line of Kagawad does not invalidate the ballot nor invalidate the vote for Danilo Ferrer. Since the words "Kamot Capitan" do not sufficiently identify the candidate for whom it was intended, the same shall be considered as a stray vote for Kagawad but will not invalidate the whole ballot.

5. Exhibits "A-5" to "A-9", "A-10", "A-14", "A-15" and "1" or a total of nine (9) votes are valid votes in favor of Danilo Ferrer since the votes indicate either the full name of Ferrer or his nickname Danny with his surname Ferrer.[10]

6. Exhibits "11", "A-13", "5" and "8" are valid votes for Danilo Ferrer since the use of nicknames accompanied by the surname is valid and does not annul the vote.[11]

7. Exhibit "A-12", the vote "Danny F" is valid since under the law if the nickname is unaccompanied by the name or surname of the candidate and it is the one by which he was generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname. Moreover, the intent of the voter is to vote for Danilo Ferrer since the initial of his surname is indicated.

8. Exhibit "2", the ballot unmistakably indicates "Danny F" above illegible writings. We rule that these are not written by two (2) persons. Some unlettered voters in their effort and desire to make their will known end up making scribbles on their ballots absent any malice on their part. They are able to produce/write letters. Credit must be given to them. We hold that the voter intended to vote for Danilo Ferrer.

9. Exhibit "3", the ballot is valid for Danilo B. Ferrer. Since there is no other candidate with the same first name, the vote "Danilo" is properly credited to Ferrer.[12]

10. Exhibits "5", "9" and "10", the vote "Danny" is valid in favor of petitioner for the same reason stated above. Under the idem sonam rule, "Danny" is likewise validated.[13]

11. Exhibits "11" and "12", the votes "Danilo Ferrer" are valid in favor of petitioner under the neighborhood rule though the name of the candidate (Ferrer) is written on the first space provided for Kagawad but the space for Punong Barangay was left vacant.

12. Exhibit "13" is considered valid under the neighborhood and idem sonam rule. The word "Danig" could only refer to Ferrer since it sounds like his nickname. The fact that it is written on the first space for Kagawad leaving the space for Punong Barangay unfilled does not invalidate the vote.

13. Exhibits "6", "7" and "4" are valid votes for Danilo Ferrer. Under the neighborhood rule, even if the vote "Danilo Ferrer" or "Daniel Ferrer" is written on the space provided for the name of the barangay, but the space for Punong Barangay is vacant, the same would not invalidate the ballot.[14]

B. For Rafael M. Grospe

1. Exhibits "A", "C" and "J" with votes "Ape" are valid votes for Rafael Grospe since it is his nickname.[15]

2. Exhibit "B" is a valid vote for Rafael Grospe since the vote "RAFAE APE GAOSPE" is unmistakably a vote for the candidate Rafael Grospe whose nickname is Ape.[16]

3. Exhibits "E" and "I" "Ape Grospe" are valid votes for Rafael Grospe following the neighborhood rule, since they are written on the first space provided for the Kagawad and the space for Punong Barangay is left vacant.

4. Exhibits "G" and "H" are valid votes for Rafael Grospe since there is no other candidate for that position with the same first name "Rafael".[17]

5. Exhibit "K" with the vote "Rapael Grospe" written on the second line provided for Kagawad is not valid. The neighborhood cannot apply since it appears that the voter's intention is to vote for Grospe as Kagawad and not as Punong Barangay.

6. Exhibits "D" and "F" are not valid votes for Grospe since "APF" is not his nickname plus the fact that in Exhibit "D", the vote is written between the space provided for Punong Barangay and the name of the Barangay.

To recapitulate, petitioner Danilo B. Ferrer garnered a total of twenty-nine (29) valid votes and no stray vote while respondent Rafael M. Grospe obtained eight (8) valid votes and three (3) stray votes.

Since the main issue at hand is the contested ballots claimed by the parties, the computation shall be based on the number of uncontested ballots after revision at the lower court. Thus, petitioner who garnered 251 uncontested ballots would be credited with 29 valid votes per findings above. He therefore has a total of 280 votes.

On the other hand, private respondent with 268 uncontested ballots shall be credited with 8 valid votes out of the 11 votes claimed, or a total of 276 votes. Exhibits "D", "F" and "K" or 3 votes are declared void as stray votes per discussion above.

WHEREFORE, the Court GRANTS the petition, finding petitioner DANILO B. FERRER to be the duly elected Punong Barangay of Barangay Bantug Hacienda, Talavera, Nueva Ecija with a total of 280 votes against respondent Rafael M. Grospe with a total of 276 votes, or a winning margin of four (4) votes.

The Court SETS ASIDE the resolution of the Commission on Elections En Banc in EAC No. 99-97 promulgated on July 27, 1999, and also SETS ASIDE the Court's resolution of November 22, 1999.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Docketed as Case No. 07-97.

[2] Exhibits "A"; "B"; "C"; "D"; "F"; "G"; "H"; and "J".

[3] Exhibits "E", "I" and "K".

[4] First Division, Julio F. Desamito, Presiding Commissioner and Commissioners Japal M. Guiani and Abdul Gani Marohombsar, members.

[5] Resolution En Banc promulgated on July 27, 1999, EAC No. 99-97, composed of Chairman Harriet O. Demetriou, Commissioners Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liacco Flores, Japal M. Guiani, Luzviminda G. Tancangco and Abdul Gani Marohombsar.

[6] Filed on August 18, 1999, Rollo, pp. 3-14.

[7] Petition, Rollo, pp. 9-10.

[8] Sec. 211(1), Article XVIII, OEC.

[9] Sec. 211(12) (13), Article XVIII, OEC.

[10] Sec. 211 (14), Article XVIII, OEC.

[11] Ibid.

[12] Ibid.

[13] Sec. 211(7), OEC.

[14] Lerias vs. House of Representatives Electoral Tribunal, 202 SCRA 808 (1991)

[15] Sec. 211 (13), OEC.

[16] Ibid.

[17] Sec. 211 (1), OEC.

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