

## EN BANC

[ G.R. NO. 166639, April 24, 2007 ]

### ROGELIO P. JUAN PETITIONER, VS. COMMISSION ON ELECTIONS AND SALVADOR C. DEL MUNDO, RESPONDENTS.

#### D E C I S I O N

##### NACHURA, J.:

This is a petition for certiorari and prohibition<sup>[1]</sup> seeking the reversal of the Commission on Elections ("COMELEC") *En Banc* Resolution dated January 25, 2005, affirming with modification the ruling of the COMELEC Second Division<sup>[2]</sup> ("Second Division") in an election protest involving the office of the *Punong Barangay* of Barangay Talipapa, Novaliches, Quezon City. The Second Division reversed the Decision dated May 15, 2003 of Branch 38 of the Metropolitan Trial Court of Quezon City.<sup>[3]</sup>

##### *The Facts*

Petitioner Rogelio P. Juan and respondent Salvador C. Del Mundo were both candidates for the position of *Punong Barangay* of Barangay Talipapa, Novaliches, Quezon City, in the July 15, 2002 synchronized *barangay* and *sangguniang kabataan* elections. Petitioner was proclaimed the winner by a margin of 1,083 votes.<sup>[4]</sup> Claiming massive electoral fraud and dissatisfied with the results, respondent filed an election protest before the trial court.<sup>[5]</sup> Respondent sought the recount of ballots in all of the seventy-two (72) precincts of Barangay Talipapa.

In his Answer, petitioner denied respondent's claim, contending that the election was clean and credible and that the respondent did not object to the tabulation made by the Board of Election Tellers (BET). Correlatively, petitioner filed a counter-protest.

The trial court scheduled the recounting of ballots. In the course thereof, on October 16, 2002, petitioner moved to stop the recount because before they were opened, some ballots boxes had broken and/or unlocked plastic seals. Petitioner claimed that the integrity of the ballots contained therein had been compromised and the recount would not faithfully reflect the true will of the people. After requiring the parties to submit their respective memoranda, the trial court denied the said motion since it was premature to conclude that fraudulent acts were indeed committed. The trial court proceeded with the recount.

##### *The Ruling of the Trial Court*

On May 15, 2003, the trial court dismissed the election protest filed by respondent and proclaimed petitioner the duly elected *Punong Barangay* of Barangay Talipapa,

Novaliches, Quezon City. The trial court held that petitioner won the election by garnering 3,102 votes over respondent's 2,576 votes, or a winning margin of 526 votes. The trial court noted that both parties made claims and objections as to the ballots. However, they failed to formally offer the said contested ballots in evidence.  
[6]

Respondent appealed to the COMELEC. The appeal, docketed as EAC No. 116-2003, was raffled to the Second Division.

*The Ruling of the COMELEC*

In its Resolution dated January 30, 2004, the Second Division granted respondent's appeal, reversed the trial court's Decision, declared respondent as the duly elected *Punong Barangay* of Barangay, Talipapa, and ordered petitioner to peacefully vacate the contested office.  
[7] The Second Division found respondent to have won the election by 1,241 votes.  
[8] The Second Division made the following findings:

For respondent Salvador Del Mundo:

Total Number of Votes

As Per Physical Count -----	2,576
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Add: Valid Claimed Ballots -----	20
-----	
Less: Marked Ballots -----	<u>16</u>
-----	
TOTAL VALID VOTES -----	2,580

For petitioner Rogelio Juan:

Total Number of Votes

As Per Physical Count -----	3,102
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Add: Valid Claimed Ballots -----	32
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Less: Ballots Found To Be Written by One Person (WBOP) -----	1,261
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Less: Ballots Found To be Written by Two Persons (WBTP) -----	6
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Less: Marked Ballots -----	<u>528</u>
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TOTAL VALID VOTES -----	1,339
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Petitioner moved to reconsider. However, in a Resolution dated January 25, 2005, the COMELEC *En Banc*, denied the petitioner's motion, annulled his proclamation and affirmed the Second Division's ruling with modification as to the number of votes obtained, holding that respondent won over the petitioner by fifty-six (56) votes.<sup>[9]</sup> Thus:

**FOR SALVADOR C. DEL MUNDO**

Number of Votes per Physical Count	2,576
Less: Invalid Votes	<u>- 16</u>
	2,560
Add: Valid Claims	+ 20
Add: Result from Precinct 2858- A	<u>36</u>
<b>TOTAL</b>	<b>2,616</b>

**FOR ROGELIO P. JUAN**

Number of Votes per Physical Count	3,102
Less: Valid Votes	<u>-607</u>
	2,495
Add: Valid Claims	+ 32
Add: Result from Precinct 2858-A	<u>33</u>
<b>TOTAL</b>	<b>2,560</b>

Hence, this petition based on the following grounds:

1. THE COMELEC GRAVELY ABUSED ITS DISCRETION WHEN IT INVALIDATED THE BALLOTS OF JUAN ON THE GROUND THAT THEY WERE "MARKED BALLOTS" DESPITE UNCONTROVERTED EVIDENCE THAT THE "MARKINGS" FOUND ON THESE BALLOTS WERE THE RESULTS OF POST ELECTION OPERATION IN THIRTY- SEVEN (37) REVERSAL PRECINCTS<sup>[10]</sup> WHEREIN THE BALLOT BOXES AND THE CONTENTS THEREOF WERE TAMPERED WITH THE CLEAR INTENTION OF INVALIDATING THE SAID BALLOTS OF JUAN.
2. IT WAS GRAVE ABUSE OF DISCRETION FOR THE COMELEC TO INVALIDATE THE BALLOTS OF JUAN ON THE GROUND THAT SUCH BALLOTS WERE WRITTEN IN PAIRS BY ONE OR TWO PERSONS WHEN ON THEIR FACES THEY WEE CLEARLY WRITTEN BY DIFFERENT PERSONS, EXCEPT FOR THOSE FAKE BALLOTS INTRODUCED DURING THE POST ELECTION OPERATION THAT TAMPRED THE BALLOT VOXES AND THE CONTENTS OF THE AFORESAID THIRTY SEVEN (37) REVERSAL PRECINCTS.<sup>[11]</sup>

Petitioner contends that the testimonies of 107 public school teachers as chairpersons and members of the BET attest that: (1) they observed no markings in the contested ballots or that the same were prepared by one or two persons, and that there were no irregularities in the appreciation thereof in the precinct level;<sup>[12]</sup> (2) the contested ballots were results of post-election operations intended to invalidate the petitioner's votes as evidenced by the condition of the ballot boxes in

the reversal precincts showing that the same were violated;<sup>[13]</sup> and, (3) as such, the ballots can no longer be relied upon, hence, the uncontested election returns should be the basis in determining the election results.<sup>[14]</sup>

On the other hand, respondent contends that: (1) the instant petition has no basis since the appreciation of contested ballots involves a question of fact best left to the determination of the COMELEC ; (2) the petitioner's allegation of post-election operations is not supported by evidence and partake of a factual determination; and , (3) the best evidence in determining the results are the ballots, in the absence of any evidence that the ballots were indeed tampered or substituted.<sup>[15]</sup>

Moreover, the COMELEC through the Office of the Solicitor General (OSG) claims that the petitioner failed to prove his allegation of post-election operations and that the testimonies of the said BET chairpersons and members do not establish the commission of the same. Thus, the OSG submits that the COMELEC did not commit grave abuse of discretion in issuing the assailed resolutions.<sup>[16]</sup>

On February 1, 2005, this Court issued a Resolution requiring the parties to observe the status quo prevailing before the issuance of the COMELEC's assailed resolutions.<sup>[17]</sup>

### *The Court's Ruling*

The petition is bereft of merit.

A ballot indicates the voter's will. There is no requirement that the entries in the ballot be written nicely or that the name of the candidate be spelled accurately. In the reading and appreciation of ballots, every ballot is presumed valid unless there is a clear reason to justify its rejection. The object in the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.<sup>[18]</sup> When placed in issue, as in this case, the appreciation of contested ballots and election documents which involves a question of fact, is best left to the determination of the COMELEC.

As to the allegations that the "markings" on the ballots cast for the petitioner were the result of post-election operations in the 37 reversal precincts, this Court abides by the COMELEC findings that the said allegations were not supported by evidence.

The petitioner argues that the testimonies of the 107 public school teachers of the BET attest that they observed no markings in the contested ballots or that the same were prepared by one or two persons, and that there were no irregularities in the appreciation thereof in the precinct level. However, this Court observed that the representative sample of the said testimonies, i.e. the *Sinumpaang Salaysay* of Myrna R. Jaucian dated February 4, 2004,<sup>[19]</sup> would show that the same is an affidavit in prepared form, with the affiant only writing her name, precinct number, and affixing her signature thereon. This only implies that the testimonies of the said 107 teachers of the BET consisted only of the very same prepared *Sinumpaang Salaysay* with only the affiants affixing their own signatures. Further, as correctly observed by the COMELEC *En Banc*, the markings on the ballots were so subtly made that they would have escaped the scrutiny of the teachers serving as BET, and that only upon close comparison with the other ballots did the flaws became