

EN BANC

[G.R. No. 227797, November 13, 2018]

FERDINAND V. SEVILLA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RANIE B. GUPIT, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

For resolution is a petition for certiorari^[1] dated 7 November 2016 filed by Ferdinand V. Sevilla (petitioner) assailing the Resolution^[2] of the Commission on Elections (COMELEC) En Banc dated 13 October 2016 denying petitioner's motion for reconsideration of the Resolution^[3] of the COMELEC First Division dated 17 September 2015 in EAC (BRGY) No. 178-2014.

The Resolution of the COMELEC First Division dated 17 September 2015 affirmed the Decision of the Municipal Circuit Trial Court (MCTC) dated 30 April 2014 annulling the proclamation of Ferdinand V. Sevilla (petitioner) and declaring Ranie B. Gupit (private respondent) as the duly elected *Punong Barangay* of Barangay Poblacion, Kitcharao, Agusan del Norte, during the 28 October 2013 Barangay Elections (2013 Barangay Elections).

The Facts

Petitioner and private respondent were candidates for *Punong Barangay* of Barangay Poblacion, Kitcharao, Agusan del Norte, during the 2013 Barangay Elections. After the canvass of results, petitioner was proclaimed the winning candidate. Petitioner received 466 votes, while private respondent garnered 465 votes. Notably, there was a margin of only one vote. Private respondent contested his defeat by filing an election protest before the MCTC challenging the results of the election in four clustered precincts, to wit: (1) Precinct No. 4 (7A-8A); (2) Precinct No. 5 (8B-10A); (3) Precinct No. 6 (9A); and (4) Precinct No. 7 (11A and 11B). Accordingly, the revision of the contested ballots followed.^[4]

On 30 April 2014, based on its appreciation of the contested ballots, the MCTC rendered a Decision annulling the proclamation of petitioner and declaring private respondent as the duly elected *Punong Barangay* of Barangay Poblacion, Kitcharao, Agusan del Norte. It ruled that private respondent obtained 464 valid votes, while petitioner received 463 valid votes.^[5] It held the following:

x x x, this Court finds Protestant Gupit as the winner for the position of Punong Barangay in Barangay Poblacion, Kitcharao, Agusan del Norte, during the October 28, 2013 Barangay Elections, as shown by the Election and Revision Results, thus:

Clustered Precinct Number	Votes of Protestant	Votes of Protestee
4 (7A-8A)	168	135
5 (8B-10A)	132	121
6 (9A)	53	92
7 (11A and 11B)	111	115
Total	464	463

WHEREFORE, Protestant Ranie B. Gupit having obtained the plurality of Four Hundred Sixty Four (464) votes as against the Four Hundred Sixty Three (463) votes of Protestee Ferdinand V. Sevilla, this Court declares Protestant Gupit as the winner for the position of Punong Barangay in Barangay Poblacion, Kitcharao, Agusan del Norte.

x x x x

SO ORDERED.^[6]

On 10 June 2014, petitioner appealed the Decision of the MCTC dated 30 April 2014 with the Electoral Contest Adjudication Department of the COMELEC assailing the MCTC's appreciation of the contested ballots. Petitioner particularly questioned the following actions of the MCTC: (1) crediting the ballot marked as Exhibit "I" in favor of private respondent; and (2) not crediting the ballots marked as Exhibits "F," "R-4," and "II" in favor of petitioner.^[7]

The Ruling of the COMELEC First Division

On 17 September 2015, the COMELEC First Division rendered a Resolution denying the appeal of petitioner and affirming the Decision of the MCTC dated 30 April 2014. The COMELEC First Division made its own appreciation of the contested ballots.^[8] The results^[9] of the aforesaid are as follows:

BALLOT FOR PROTESTANT-APPELLEE			
EXHIBIT	OBJECTION	TRIAL COURT RULING	COMELEC FIRST DIVISION RULING
I	STRAY	Nanie G. should be	Affirmed.

		<p>credited in favor of the protestant. "Nanie" has a sound similar to "Ranie", the protestant's name and the protestant's surname with the starts with G or Gupit. In name "Nanie" <i>idem sonans</i> rule, a name or surname incorrectly written which if read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor (Section 211 (7), B.P. Blg. 881). During the 2013 Barangay Election[s] [,] only the protestant has the name similar to "NANIE" that ran as [P]unong [B]arangay; Nestor "Nanie" Ballaga ran as [B]arangay [K]agawad. We can also apply the ruling in <i>Gonzaga v. Seno</i> (G.R. No. L-20522, 23 April 1963) in which the Supreme Court ruled that the initial of the nickname of the candidate may be used together with the surname of the candidate for the purpose of identifying the candidate for whom the voter votes. Valid ballot for the protestant.^[10]</p>	<p>Though we note that there was a candidate for Barangay Kagawad, with the name "Nanie Ballangca y Gubat, counting the Questioned Ballot for protestant-appellee, however, is more in keeping with the basic principle that the cardinal objective of ballot appreciation is to discover and give effect to, rather than frustrate[,], the intention of the voter.^[11]</p>
BALLOT FOR PROTESTEE-APPELLANT			
F	STRAY	In this ballot, the name of the protestee was written	Affirmed.

at the center-heading of the ballot, while the name "ALE" was written on the space for Punong Barangay. The neighborhood rule is a settled rule stating that where the name of a candidate is not written in the proper space in the ballot, but is preceded by the name of the office for which he is a candidate, the vote should be counted as valid for said candidate. Such rule is usually applied in consonance with the intent rule which stems from the principle that in the appreciation of the ballot, the object should be to ascertain of the ballot, the object should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty. However, in this ballot and while the protestee's nickname was written above the office to which he is a candidate, the space for [P]unong [B]arangay was not left blank by the voter. Instead, he/she wrote: "ALE" who is not a [P]unong [B]arangay candidate. Therefore, pursuant to paragraph 19, Section 211 of B.P. Blg. 881, the vote is considered stray.

There is no cogent reason to disturb the findings of the Trial Court.^[13]

		Invalid vote for protestee. ^[12]	
R-4 FOR PROTESTEE-APPELLANT	WRITTEN BY TWO	<p>x x x This Court finds that the respective ballots written by the respective voter due to similarity of handwriting strokes except the ballot marked as Exhibit "R-4" in which the style in writing the name of the protestee is different from the writing style use[d] in writing the names of the [B]arangay [K]agawads. The name of the protestee was written in all capital letters and all upright positions[,] while for the [B]arangay [K]agawad, only the first letters of the[ir] respective names and surnames were capitalized and all the letters are leaning to the right side evidencing that two (2) persons wrote on the ballot. Five (5) ballots are valid for protestee, while one (1) is invalid.^[14]</p>	<p>Affirmed.</p> <p>There is no cogent reason to disturb the findings of the Trial Court. The difference of the writing styles, strokes[,] and terminals in the slots for [P]unong [B]arangay and [B]arangay [K]agawad is glaringly obvious, specifically the way the letters "E," "F," "R," and "I" (sic) are written. The ["R"] in the slot for [P]unong [B]arangay has a loop created by the intersection of the second and final strokes[,] while no such loop exists in the slots for [B]arangay [K]agawad.</p> <p>In addition, the "E" in the slot for [P]unong [B]arangay is written with four different strokes[,] while the "[E]s" in the [B]arangay [K]agawad slots (sic) are written using a continuous stroke. The "I" and "F" are structurally different in the respective slots.^[15]</p>
II	STRAY	<p>In this ballot, unclear letters were written [in] the slot for Punong Barangay leaving some unnecessary markings in the 3rd to 7th slots for</p>	<p>Affirmed – There is no cogent reason to disturb the findings of the Trial Court.^[17]</p>