

EN BANC

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

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

R E S O L U T I O N

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.	83	148
21-A-	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.