



Republic of the Philippines
 Supreme Court
 Manila
 EN BANC

FERDINAND V. SEVILLA,
 Petitioner,

G.R. No. 227797

Present:

CARPIO, *J.*,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,*
 CAGUIOA,
 TIJAM,*
 REYES, A., JR.,
 GESMUNDO,*
 REYES, J., JR., and
 HERNANDO,* *JJ.*

- versus -

COMMISSION ON ELECTIONS and
RANIE B. GUPIT,
 Respondents.

Promulgated:

November 13, 2018*

X ----- X

DECISION

CARPIO, *J.*:

The Case

For resolution is a petition for certiorari¹ dated 7 November 2016 filed by Ferdinand V. Sevilla (petitioner) assailing the Resolution² of the Commission on Elections (COMELEC) En Banc dated 13 October 2016 denying petitioner's motion for reconsideration of the Resolution³ of the COMELEC First Division dated 17 September 2015 in EAC (BRGY) No. 178-2014.

* On official leave.

¹ Under Rule 64, in relation to Rule 65, of the Rules of Court.

² *Rollo*, pp. 35-44.

³ *Id.* at 26-34.

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.

⁴ Id. at 36.

⁵ Id.



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 results⁹ 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 credited in favor of the protestant. "Nanie" has a sound similar to "Ranie", the protestant's name and the protestant's surname starts with G or Gupit. In <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"	Affirmed. 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

⁶ Id. at 66-67.

⁷ Id. at 37.

⁸ Id.

⁹ Id. at 30-33.



		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	intention of the voter. ¹¹
BALLOT FOR PROTESTEE-APPELLANT			
F	STRAY	In this ballot, the name of the protestee was written 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 and carry into effect the intention of the voter, if it could be determined with reasonable certainty. However, in this ballot and	Affirmed. There is no cogent reason to disturb the findings of the Trial Court. ¹³

¹⁰ Id. at 63.

¹¹ Id. at 30.

¹³ Id. at 31.

		<p>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. Invalid vote for protestee.¹²</p>	
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</p>

¹² Id. at 50-51.

¹⁴ Id. at 55.

			[K]agawad slots (sic) are written using a continuous stroke. The "I" and "F" are structurally different in the respective slots. ¹⁵
II	STRAY	In this ballot, unclear letters were written [in] the slot for Punong Barangay leaving some unnecessary markings in the 3 rd to 7 th slots for Barangay Kagawad. Section 211, par. 14 of the Omnibus Election Code provides that: " <i>Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as [a] stray vote but shall not invalidate the whole ballot.</i> " Stray ballot. ¹⁶	Affirmed – There is no cogent reason to disturb the findings of the Trial Court. ¹⁷

The dispositive portion of the Resolution of the COMELEC First Division dated 17 September 2015 reads:

WHEREFORE, premises considered, the Commission (*First Division*) RESOLVES to DENY the appeal and AFFIRM the Decision dated 30 April [2014] of the 3rd Municipal Circuit Trial Court-Jabonga & Kitcharao, Agusan del Norte.

SO ORDERED.¹⁸

Aggrieved, on 5 October 2015, petitioner filed a motion for reconsideration before the COMELEC En Banc alleging that the Resolution of the COMELEC First Division dated 17 September 2015 was not supported by sufficient evidence and that it was contrary to law. In his motion for reconsideration, petitioner averred the following: (1) the COMELEC First Division did not actually review and examine the best evidence, *i.e.*, the ballots themselves; (2) the four questioned ballots, *i.e.*, Exhibit "F," "R-4," "I," and "II," were incorrectly appreciated; (3) petitioner actually won by three votes; (4) the resolution under scrutiny failed to state clearly and distinctly the

¹⁵ Id. at 32-33.

¹⁶ Id. at 60.

¹⁷ Id. at 33.

¹⁸ Id.

facts and the laws on which it is based; and (5) the COMELEC First Division issued a writ of preliminary injunction in SPR (BRGY) No. 70-2014, which involves the same parties.¹⁹

The Ruling of the COMELEC En Banc

On 13 October 2016, the COMELEC En Banc issued a Resolution denying the motion for reconsideration of petitioner for lack of merit and affirming the Resolution of the COMELEC First Division dated 17 September 2015.²⁰

Citing Section 1, Rule 19 of the COMELEC Rules of Procedure, the COMELEC En Banc noted that the following are the grounds for the filing of a motion for reconsideration: (1) the evidence is insufficient to justify the decision, order, or ruling; and (2) the decision, order, or ruling is contrary to law. According to the COMELEC En Banc, a careful assessment of the subject motion for reconsideration reveals that none of the aforesaid grounds were sufficiently established by petitioner.²¹

Contrary to petitioner's allegations, the COMELEC En Banc held that a mere perusal of the resolution under scrutiny reveals that the findings of the COMELEC First Division were supported by law and jurisprudence. It held that the COMELEC First Division properly laid down the guidelines it used in the appreciation of the contested ballots and quoted the relevant facts and rulings of the MCTC which it affirmed.²²

Considering that petitioner questioned the appreciation of the COMELEC First Division of the four contested ballots, the COMELEC En Banc conducted its own appreciation of such ballots, *viz.*:

EXHIBIT	OBJECTION	COMELEC EN BANC RULING
I	STRAY	<p>VALID. The decision of the MCTC and resolution of the Commission (<i>First Division</i>) [are] affirmed.</p> <p>The ballot is validly credited to Protestant-Appellee based on the <i>Idem Sonans</i> Rule. Under the said rule, when a name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be</p>

¹⁹ Id. at 40-41.

²⁰ Id. at 44.

²¹ Id. at 41.

²² Id. at 41-42.



		<p>counted in his favor.</p> <p>The name written in the questioned ballot clearly sounds like the name of the Protestant-Appellee, thus, the ballot is validly credited to him.</p>
F	STRAY	<p>STRAY. The decision of the MCTC and resolution of the Commission (<i>First Division</i>) [are] affirmed.</p> <p>The ballot cannot be considered in favor of the Protestee-Appell[ant] considering that his nickname does not appear in the space provided for <i>Punong Barangay</i> as well as there is a name already written in that space. Considering that the name written in the <i>Punong Barangay</i> does not belong to any candidate vying for the said position, under Section 211 of the Omnibus Election Code, the vote should be considered [a] stray vote.</p> <p>The argument of Protestee-Appellant that he should be credited the vote based on the neighborhood and intent rule[s] since his name is written above the printed words of "<i>Punong Barangay</i>" cannot be given weight since there is a name written in the space provided for <i>Punong Barangay</i>, even if it does not belong to any candidate vying for the said position.</p>
R-4 FOR PROTESTEE-APPELLANT	WRITTEN BY TWO	<p>INVALID. The decision of the MCTC and resolution of the Commission (<i>First Division</i>) [are] affirmed.</p> <p>The ballot is clearly written by two different persons as there is patent dissimilarity in the strokes used in the ballot. It is clear that the penmanship for <i>Punong Barangay</i> is distinctly different from the penmanship of those written [for] <i>Barangay Kagawad</i>. The name of the candidate for <i>Punong Barangay</i> was in all caps and straightly written except for the last name[,] while those for <i>Barangay Kagawad</i> was (sic) written in italics or in slanting position and not in all caps.</p>
II	STRAY	<p>STRAY. The decision of the MCTC and resolution of the Commission (<i>First Division</i>) [are] affirmed.</p> <p>The name written in the slot for <i>Punong Barangay</i> is not legible. Under Section 211 of the OEC, any vote containing initials only or</p>

		<p>which is <i>illegible</i> or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.</p> <p>Further, this Commission is amused on how the Protestee-Appellant was able to find “EB” and “Y” in the said ballot[,] because this Commission does not find any of the letters stated by Protestee-Appellant in the slot for <i>Punong Barangay</i>.²³</p>
--	--	--

With respect to the issuance of a writ of preliminary injunction by the COMELEC First Division in a related case, the COMELEC En Banc ruled that such is immaterial, because it did not and should not affect the ruling in the instant case. It stressed that the issues involved in the present case are distinct and different from the issues in SPR (BRGY) No. 70-2014.²⁴

Unsatisfied, petitioner filed the instant petition before this Court.

The Issues

Petitioner raises the following issues:

1. WHETHER OR NOT PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN VALIDATING EXH. “I” AS [A] VALID VOTE FOR PRIVATE RESPONDENT ALLEGEDLY UNDER [THE] IDEM SONANS RULE WHEN IT WHIMSICALLY CONSIDERED NANIE AS IDEM SONANS OF RANIE[,] DESPITE THE CANDID[A]CY OF NESTOR BALLAGA AS KAGAWAD WHOSE NICKNAME IS ALSO NANIE.

2. WHETHER OR NOT PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING AS [A] STRAY VOTE EXH. “F,” NOTWITHSTANDING THAT PETITIONER’S NICKNAME OF “EBOY” IS WRITTEN ABOVE THE PRINTED POSITION OF PUNONG BARANGAY AND THE NAME ALE WRITTEN THEREON IS NOT THE NICKNAME OF ANY OTHER CANDIDATE, HENCE, UNDER THE NEIGHBORHOOD AND INTENT RULES, EXH. “F” SHOULD BE A VALID VOTE FOR PETITIONER.

²³ Id. at 42-43.

²⁴ Id. at 43.

3. WHETHER OR NOT PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN INVALIDATING x x x EXH. "R-4" FOR BEING WRITTEN BY TWO PERSONS (WBT) WHEN IT WHIMSICALLY AND CAPRICIOUSLY DISREGARDED THE PRINCIPLE OF TWO KINDS OF WRITINGS AND INTENT RULE, AND THE DISTINCT SIMILARITIES OF THE WRITINGS [ON] THE BALLOT.²⁵

The Court's Ruling

The Court finds the instant petition bereft of merit.

Appreciation of the Contested Ballots

It is a well-established principle that, in a special civil action for certiorari, petitioner has the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent issuing the impugned order, decision, or resolution.²⁶ A petition for certiorari under Rule 64, in relation to Rule 65, of the Rules of Civil Procedure is limited to the resolution of jurisdictional issues. Indeed, the office of a petition for certiorari is not to correct simple errors of judgment.²⁷ Grave abuse of discretion arises when there is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, such as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. It occurs when a court or tribunal violates the Constitution, the law, or existing jurisprudence.²⁸

The will of the voters is embodied in the ballots. In order to ascertain and carry out such will, their ballots must be read and appreciated according to the rule that every ballot is presumed valid, unless there is clear and good reason to justify its rejection. In relation to the aforesaid, the findings of the COMELEC, which exercises original and appellate jurisdiction over election protests involving elective officials in the regional, provincial, city, municipal, and *barangay* levels, are accorded great respect, if not finality by the Court. In fact, the documents and evidence upon which the COMELEC relies for its resolution as well as the manner it appreciates the sufficiency of said documents and evidence are ordinarily beyond the scrutiny of the Court for the COMELEC is an independent constitutional body of a level higher than statutory administrative bodies. However, the COMELEC is not infallible, such that if it is shown to have issued findings that are not supported by

²⁵ Id. at 13.

²⁶ *Maturan v. Commission on Elections*, G.R. No. 227155, 28 March 2017, 821 SCRA 587, 597.

²⁷ *Juan v. Commission on Elections*, 550 Phil. 294, 302 (2007).

²⁸ *Albania v. Commission on Elections*, G.R. No. 226792, 6 June 2017, 826 SCRA 191, 200.



evidence or are contrary to the evidence, then it is deemed to have acted capriciously and whimsically. At such point in time, the Court will not hesitate to step in and correct the grave abuse of discretion committed by the COMELEC.²⁹

Given the abovementioned, petitioner has the burden of showing caprice and arbitrariness on the part of the COMELEC En Banc whose exercise of discretion is being assailed. Petitioner particularly alleges in the instant petition that the COMELEC En Banc acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it credited the ballot marked as Exhibit “I” in favor of private respondent and did not credit the ballots marked as Exhibits “F” and “R-4” in his favor. However, after carefully evaluating the facts and evidence in this case, the Court fails to find any action on the part of the COMELEC En Banc that constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.

A thorough review of the evidence on record reveals that there is no cogent reason to disturb the factual findings of the COMELEC En Banc. In the instant case, the Resolution of the COMELEC En Banc dated 13 October 2016 denying petitioner’s motion for reconsideration of the Resolution of the COMELEC First Division dated 17 September 2015 was based on the evidence on record and the ballots were appreciated in accordance with the applicable provisions under Batas Pambansa Blg. 881 or the Omnibus Election Code of the Philippines (Omnibus Election Code) as well as existing jurisprudence. Thus, the Court does not find any ground to disturb the COMELEC En Banc’s findings as the same are in consonance with law and jurisprudence.

It is important to emphasize that factual findings of the COMELEC which are supported by substantial evidence are generally binding on the Court.³⁰ As held in the case of *Typoco v. Commission on Elections*:³¹

x x x. The findings of fact of administrative bodies, when supported by substantial evidence, are final and non-reviewable by courts of justice. This principle is applied with greater force when the case concerns the COMELEC, because the framers of the Constitution intended to place the poll body — created and explicitly made independent by the Constitution itself — on a level higher than statutory administrative organs.

To repeat, the Court is not a trier of facts. The Court’s function, as mandated by the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it simply erred or has a different view. Time and again, the Court has held that a petition for *certiorari* against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process, because the

²⁹ *Delos Reyes v. Commission on Elections*, 545 Phil. 739, 748 (2007).

³⁰ *Salazar v. Commission on Elections*, 550 Phil. 395, 401 (2007).

³¹ 628 Phil. 288 (2010).



COMELEC is presumed to be most competent in matters falling within its domain.³² (Citations omitted)

Petitioner contends that the intention to vote for private respondent was absent in the ballot marked as Exhibit “I” and hence, should be considered as a stray vote.³³ The Court begs to differ. The COMELEC En Banc correctly credited the contested ballot in favor of private respondent based on the *Idem Sonans* Rule.³⁴ The aforesaid rule states that when a name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in such candidate’s favor.³⁵ The *Idem Sonans* Rule is particularly provided for under Section 211(7) of the Omnibus Election Code, *viz*:

Section 211. *Rules for the appreciation of ballots.* – In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter’s will:

x x x x

7. A name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor.

In the present case, the name “Nanie G” written on the space allotted for *Punong Barangay* in the questioned ballot was validly credited to private respondent. “Nanie” undoubtedly sounds like the name of private respondent, *i.e.*, “Ranie”. Moreover, the surname of private respondent, *i.e.*, Gupit, starts with a G. While the Court notes that there was a candidate for *Barangay Kagawad* under the name of “Nanie” Ballangca y Gubat, such fact alone is insufficient to invalidate the ballot. As pointed out by the COMELEC First Division, counting the questioned ballot in favor of private respondent is in line more with the basic principle that the primary objective of ballot appreciation is to discover and give effect to, rather than frustrate, the intention of the voter.³⁶

With respect to the ballot marked as Exhibit “F,” petitioner alleges that it should have been counted in his favor based on the Neighborhood and Intent Rules.³⁷ The Neighborhood Rule states 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

³² *Id.* at 305-306.

³³ *Rollo*, p. 16.

³⁴ *Id.* at 42.

³⁵ *Batalla v. Commission on Elections*, 615 Phil. 805, 830 (2009).

³⁶ *Rollo*, p. 30.

³⁷ *Id.* at 17.

as valid for said candidate.³⁸ On the other hand, the Intent Rule originates from the principle that, in the appreciation of the ballot, the objective should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty.³⁹ The COMELEC En Banc rightly ruled that both the Neighborhood and Intent Rules find no application in the present case, considering that there was a name written in the space provided for *Punong Barangay* and regardless of the fact that such name does not belong to any candidate vying for the said position. Section 211(19) of the Omnibus Election Code states that any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote. Hence, the vote was properly considered by the COMELEC En Banc as a stray vote.

Petitioner alleges that the ballot marked as Exhibit “R-4” should have been appreciated in his favor, because such was accomplished by only one person.⁴⁰ The applicable rule, with respect to the contested ballot, is the Written by Two Rule. According to the aforesaid rule, ballots which clearly appeared to have been filled by two persons before being deposited in the ballot box are null and void, in the absence of evidence *aliunde* that the second handwriting was placed on the ballot after it was deposited in the ballot box, since the presumption is that the entries on the ballot were made prior to the casting of the vote. It further holds that, where it appears that there is a marked disparity or dissimilarity between the handwriting in one part of the ballot and the handwriting in another part and that the votes had clearly not been written by the same hand, the ballot will be rejected.⁴¹ Contrary to the stand of petitioner, a review of the contested ballot clearly shows that such was written by two different persons. As properly held by the COMELEC En Banc, the penmanship for *Punong Barangay* was distinctly different from the penmanship of those written for *Barangay Kagawad*. The COMELEC En Banc rightly ruled that such glaring dissimilarity can be seen by the fact that the name of the candidate for *Punong Barangay* was in all caps and straightly written, except for the last name, while those for *Barangay Kagawad* was written in italics and not in all caps.⁴² Hence, the COMELEC En Banc rightly did not credit the subject ballot in favor of petitioner.

Issuance of a Writ of Preliminary Injunction in SPR (BRGY) No. 70-2014

Petitioner posits once more the issuance of a writ of preliminary injunction by the COMELEC First Division in another case involving the same parties, *i.e.*, SPR (BRGY) No. 70-2014. The Court, however, agrees with the ruling of the COMELEC En Banc that such is immaterial, because the issues involved in the present case are distinct and different from the issues in the other mentioned case.

³⁸ *Batalla v. Commission on Elections*, supra note 35, at 825.

³⁹ *Batalla v. Commission on Elections*, supra note 35, at 825.

⁴⁰ *Rollo*, p. 18.

⁴¹ *Torres v. House of Representatives Electoral Tribunal*, 404 Phil. 125, 143 (2001).

⁴² *Rollo*, p. 43.



Application for Provisional Injunctive Relief

In an application for provisional injunctive relief, it is incumbent on the applicant to establish the actual and existing right sought to be protected. The applicant must likewise prove that there is an urgent need for the writ to be issued, in order to prevent grave and irreparable injury. Failure to establish the aforementioned requisites will warrant the Court's denial of the application. In the present case, petitioner failed to establish such requisites.⁴³

To support his application for provisional injunctive relief, petitioner stresses that only one vote separates the parties and thus, "the victory of private respondent and the loss of petitioner are certainly not convincingly clear."⁴⁴ Petitioner further alleges that, because the issues raised in the instant petition are of a serious character, the interest of justice and equity will not be served if such issues will be rendered moot and academic by the premature execution of the Resolution of the COMELEC First Division dated 17 September 2015 and the Resolution of the COMELEC En Banc dated 13 October 2016.⁴⁵ Petitioner merely relies on the aforesaid bare allegations to support his application for provisional injunctive relief. He has not shown that he has a clear and unmistakable right to be protected or a right *in esse* much less that there is a material and substantial invasion of such right and that there is an urgent and paramount necessity for the writ to prevent the infliction of irreparable injury. The Court notes that the issuance of a writ of preliminary injunction is regarded as an "extraordinary event," being a "strong arm of equity or a transcendent remedy."⁴⁶ The power to issue such a writ "should be exercised sparingly, with utmost care, and with great caution and deliberation."⁴⁷

Conclusion

In summary, the Court holds that the COMELEC En Banc did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in crediting the ballot marked as Exhibit "I" in favor of private respondent and not crediting the ballots marked as Exhibits "F" and "R-4" in favor of petitioner. To reiterate, grave abuse of discretion connotes a capricious and whimsical exercise of judgment amounting to lack or excess of jurisdiction, or an arbitrary and despotic exercise of power because of passion or personal hostility. The grave abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law. The aforementioned does not obtain in the present case.⁴⁸

⁴³ *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, G.R. No. 207938, 11 October 2017.

⁴⁴ *Rollo*, pp. 20-21.

⁴⁵ *Id.* at 21.

⁴⁶ *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, *supra*, citing *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 342 (2011).

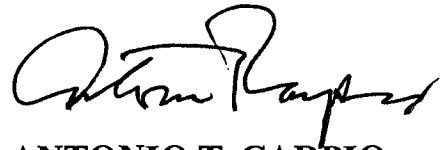
⁴⁷ *Id.* at 345.

⁴⁸ *Albania v. Commission on Elections*, *supra* note 28.

h

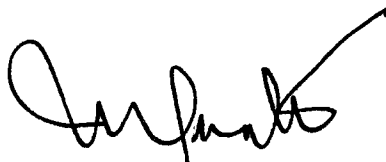
WHEREFORE, the petition for certiorari is **DISMISSED**. The Resolution of the COMELEC First Division dated 17 September 2015 and the Resolution of the COMELEC En Banc dated 13 October 2016 are **AFFIRMED**.

SO ORDERED.

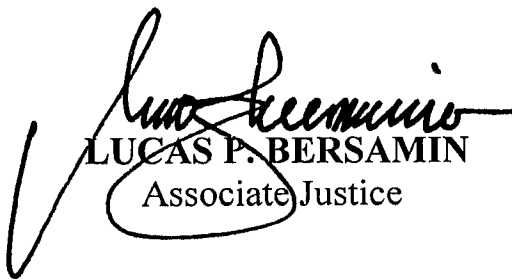


ANTONIO T. CARPIO
Senior Associate Justice

WE CONCUR:



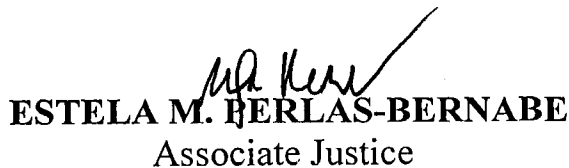
DIOSDADO M. PERALTA
Associate Justice



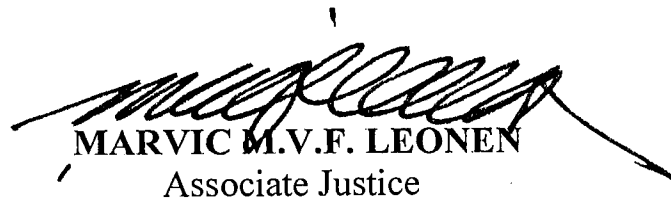
LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

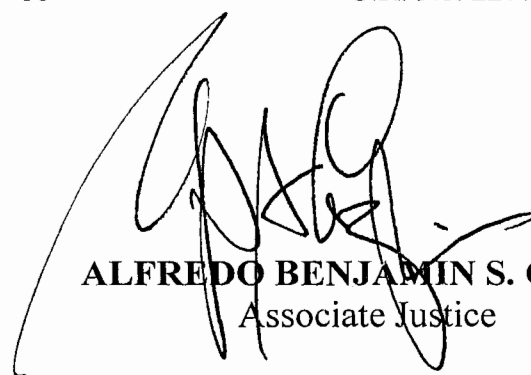


ESTELA M. BERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

(on official leave)
FRANCIS H. JARDELEZA
Associate Justice



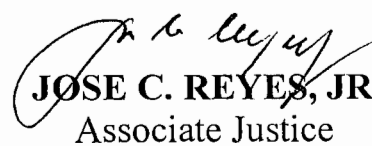
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(on official leave)
NOEL GIMENEZ TIJAM
Associate Justice



ANDRES B. REYES, JR.
Associate Justice

(on official leave)
ALEXANDER G. GESMUNDO
Associate Justice

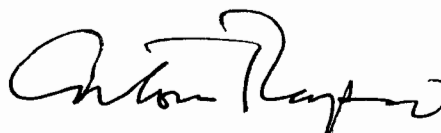


JOSE C. REYES, JR.
Associate Justice

(on official leave)
RAMON PAUL L. HERNANDO
Associate Justice

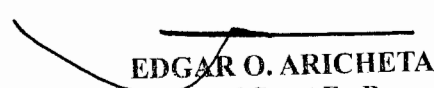
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court