



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

JAIME C. REGIO,

Petitioner,

G.R. No. 204828

Present:

- versus -

**COMMISSION ON ELECTIONS and
RONNIE C. CO,**

Respondents.

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,*
BRION,
PERALTA,*
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, JJ.

Promulgated:

DECEMBER 03, 2013

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DECISION

VELASCO, JR., J.:

The Case

This Petition for Certiorari filed under Rule 64, in relation to Rule 65, seeks to nullify and set aside the Resolution dated December 7, 2012 of the Commission on Elections (COMELEC) *En Banc* in EAC (BRGY-SK) No. 161-2011. The assailed Resolution reversed and set aside the Resolution of the COMELEC First Division dated August 23, 2011, which, in turn, affirmed the May 4, 2011 Decision in Election Case No. 02480-EC of the Metropolitan Trial Court (MeTC), Branch 4 in Manila.

* On official leave.

The Facts

Petitioner Jaime C. Regio (Regio) and private respondent Ronnie C. Co (Co), among other candidates, ran in the October 25, 2010 *barangay* elections in *Barangay* 296, Zone 28, District III of the City of Manila for the position of *punong barangay*.

Immediately following the counting and canvassing of the votes from seven clustered precincts in the adverted *barangay*, Regio, who garnered four hundred seventy-eight (478) votes, as against the three hundred thirty-six (336) votes obtained by Co, was proclaimed winner for the contested post of *punong barangay*. The detailed tally of the votes per precinct, as reflected in the Statement of Votes, is as follows:¹

Candidate	Clustered Precinct Number				Total
	1302A 1303A	1304A 1305A	1306A	1307A 1307B	
Co, Ronnie C.	76	113	48	99	336
Regio, Jaime C.	171	151	73	83	478

On November 4, 2010, Co filed an election protest before the MeTC. He claimed, among other things, that the Board of Election Tellers (BET) did not follow COMELEC Resolution No. 9030, as it: (1) did not permit his supporters to vote; (2) allowed “flying voters” to cast votes; and (3) ignored the rules on appreciation of ballots, resulting in misreading, miscounting, and misappreciation of ballots. Additionally, he alleged that Regio committed vote-buying, and engaged in distribution of sample ballots inside the polling centers during the day of the elections.²

Of the seven clustered precincts (CPs) initially protested, Co would later exclude CP Nos. 1304A and 1305A from the protest. During the preliminary conference, the trial court allowed the revision of ballots. The revision of ballots occurred on January 13-14, 2011.³ Per the report of the revision committee, the number of votes obtained by both candidates in the contested precincts, as shown below, indicated a substantial recovery on the part of Co:

Candidate	Clustered Precinct Number				Total
	1302A 1303A	1304A 1305A	1306A	1307A 1307B	
Co, Ronnie C.	<u>160</u>	--	<u>63</u>	98	321
Regio, Jaime C.	<u>86</u>	--	<u>62</u>	84	232

¹ *Rollo*, p. 70.
² *Id.* at 85.
³ *Id.* at 71.

During his turn to present evidence, Co limited his offer to the revision committee report, showing that he garnered the highest number of votes.

Regio, on the other hand, denied that the elections were tainted with irregularities. He claimed that the results of the revision are products of post-elections operations, as the ballots were tampered with, switched, and altered drastically to change the results of the elections. He presented as witnesses the following: poll watchers Evangeline Garcia, Cezar Regio, and Ruben Merilles, who all testified that there were no instances of electoral fraud, irregularities, and anomalies during the day of the elections. Presented too were volunteers Love Agpaoa and Romy Que, who belied allegations of miscounting, misreading, and misappreciation of the ballots during the counting, and Dominador Dela Cruz, Chairperson of the BET for CP Nos. 1302A/1303A, as well as Erlina Hernandez, Chairperson of the BET for CP No. 1306A, who both testified that they followed the rules and regulations in conducting the elections in *Barangay 296*, and that each ballot was correctly tabulated.⁴

The results of the revision notwithstanding, the trial court, in its Decision of May 4, 2011, dismissed Co's protest and declared Regio as the duly-elected *punong barangay* of *Barangay 296*. It disposed of the case, as follows:

WHEREFORE, the proclamation of protestee Jaime C. Regio as the duly elected "Punong Barangay" or "Barangay Chairman" of Barangay 296, District III, Manila by the Barangay Board of Canvassers is affirmed by this court. The election protest filed by the protestant Ronnie C. Co is dismissed for lack of merit.⁵

According to the trial court, before it can accord credence to the results of the revision, it should first be ascertained that the ballots found in the box during the revision are the same ballots deposited by the voters. In fine, the court "should first be convinced that the ballots counted during the revision have not been tampered with before it can declare the ballots a) as superior evidence of how the electorate voted, and b) as sufficient evidence to set aside the election returns. For the ballots to be considered the best evidence of how the voters voted, their integrity should be satisfactorily established."⁶

Invoking *Rosal v. COMELEC*,⁷ the trial court ruled that Co failed to sufficiently show that the integrity of the contested ballots had been preserved. It then cited the presumption that election returns are genuine,

⁴ Id. at 71-72.

⁵ Id. at 83.

⁶ Id. at 73.

⁷ G.R. Nos. 168253 & 172741, March 16, 2007, 518 SCRA 473.

and that the data and information supplied by the board of election inspectors are true and correct.⁸ The trial court said:

A closer scrutiny of the premise made by the protestant will reveal that he is trying to prove the misreading, miscounting, and misappreciation of ballots by introducing as evidence the marked difference of the results of the revision and of the results in the election returns. This premise is too presumptuous. The marked difference cannot be used to prove the misreading, miscounting, and misappreciation of ballots because the misreading, miscounting, and misappreciation of ballots is precisely what the protestant needs to prove to justify the marked difference in the results. Prudence dictates that the protestant should first explain where this huge discrepancy is coming from before using it as evidence. In other words, the misreading, miscounting, and misappreciation of ballots should be proven by other independent evidence.

Without any evidence, the allegation of misreading, miscounting, and misappreciation of ballots remains a mere allegation without any probative value.⁹

Traversing the allegations of post-elections tampering, the trial court rejected Co's allegation that the ballot boxes were properly locked and sealed. In fact, the trial court said, the envelope containing the ballots for CP Nos. 1302A/1303A was glued on both sides, prompting protestee's revisor to comment that the envelope appears to be re-pasted and tampered. In CP No. 1306A, the report stated that the ballots were not placed in a sealed envelope.¹⁰

Corollarily, the trial court stated the observation that Regio has presented credible witnesses to prove that there were no irregularities or anomalies during the casting and counting of votes.

Aggrieved, Co filed an appeal before the COMELEC, arguing that the trial court erred:

- 1.) In disregarding the result of the physical count of the revised ballots found in Precinct Nos. 1302A/1303A and 1306A;
- 2.) In declaring that the protestant appellant was not able to sufficiently show that the integrity of the contested ballots in Precinct Nos. 1302A/1303A and 1306A was preserved;
- 3.) In declaring that protestant-appellant was not able to overcome the presumption of regularity of the election, counting, and canvassing proceedings in the protested precincts of Barangay 296, Manila;
- 4.) In declaring that the votes obtained by the parties in Precinct Nos. 1302A/1303A and 1306A as reflected in their respective Election Returns are [the] true and actual results of the elections;
- 5.) In giving weight to the incredulous and conflicting testimonies of the obviously biased witnesses of the protestee-appellee;

⁸ Cf. RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, Rule 13, Sec. 6.

⁹ *Rollo*, pp. 75-76.

¹⁰ *Id.* at 77.

- 6.) In refusing to lend credence to the testimony of the expert witness from the Commission on Elections that the ballots obtained from Precinct Nos. 1302A/1303A and 1306A are genuine ballots; and
- 7.) In refusing to appreciate the contested and revised ballots for Precinct Nos. 1302A/1303A and 1306A and the appreciation of the contested ballots found in Precinct No. 1307A/1307B.¹¹

In a Resolution dated August 23, 2011, the COMELEC First Division¹² dismissed the appeal, noting, as the MeTC did, that Co failed to show that the integrity of the ballots in question was in fact preserved. Echoing the trial court, the COMELEC First Division ruled that the absence of any report or record of tampering of the ballot boxes does not preclude the possibility of ballot tampering.¹³ It also affirmed the rejection of Co's reliance on the revision committee report as proof that no post-election tampering occurred. The COMELEC First Division observed:

We note that protestant-appellant did not offer any evidence to prove his claims of misreading, miscounting, and misappreciation of the ballots; he posits that the variance between the election results according to the election documents and the revision of the ballots is in itself enough to prove his allegations of misreading, miscounting, and misappreciation of the ballots by the Board of Election Tellers. Protestant-appellant begs the question instead of laying support to his claims.

x x x x

Since it could not divine the will of the electorate from the ballots, the trial court had no other recourse other than to rely on the available election documents. And, We cannot fault the trial court for doing so when there was no question as to the election documents' authenticity and validity.

Protestant-appellant harps that the election documents are "mere by-products of the electoral fraud committed to benefit (protestee-appellee) including but not limited to **misreading, miscounting, and misappreciation of ballots by the Chairpersons of the Board of Election Tellers in order to increase the votes of the Protestee-Appellee and decrease the votes that should have been properly credited to Protestant-Appellant Co.**" (emphasis in the original)

As previously mentioned, protestant-appellant's assertion is specious x x x. The records of the case is bereft of any evidence supporting protestant-appellant's claims of electoral fraud and, thus, We concur with the trial court stating, "(w)ithout any evidence, the allegation of misreading, miscounting, and misappreciation of ballots remains a mere allegation without probative value."¹⁴

The COMELEC First Division noted that Co could have, but did not, presented testimonies of witnesses to substantiate his claims of electoral fraud, albeit he attached affidavits of various witnesses in his protest. The

¹¹ Id. at 87-88.

¹² Composed of Commissioners Rene V. Sarmiento, Armando C. Velasco, and Christian Robert S. Lim.

¹³ *Rollo*, p. 90.

¹⁴ Id. at 91-93.

affidavits, the COMELEC First Division said, asserted, in one form or another, the electoral malfeasance or misfeasance allegedly committed by the BET. In dismissing the arguments of Co for his failure to present evidence, the COMELEC commented, “[I]t appears that protestant-appellant [Co] rested on laurels after seeing the result of the physical count of the revised ballots and the conclusion of the Technical Examination. In fine, protestant-appellant proverbially lost the war for want of a nail.”¹⁵ The *fallo* of the COMELEC First Division Resolution reads:

WHEREFORE, premises considered, the Commission (*First Division*) **RESOLVED**, as it hereby **RESOLVES**, to **DENY** the protestant’s Appeal for **LACK OF MERIT**. The Decision dated 04 May 2011 by Metropolitan Trial Court – Branch 04 City of Manila is hereby **AFFIRMED**.¹⁶

Co then filed a Motion for Reconsideration. In its assailed December 7, 2012 Resolution, the COMELEC *En Banc*¹⁷ reconsidered the August 23, 2011 Resolution of the First Division, and accordingly declared Co as the duly elected *punong barangay*. Vital to the *En Banc*’s disposition is its finding that the ballots subjected to revision were genuine. The *En Banc* found:

x x x [W]e find merit in appellant’s motion for reconsideration. For, protestant [Co] has sufficiently established that no untoward incident had attended the preservation of the ballots after the termination of the proceedings of the Board of Election Tellers or from the time the custody of the ballot boxes is transferred from the BET to the City Treasurer and finally to the trial court. Protestee who cried post-election fraud is duty-bound to establish that the genuine ballots found inside the boxes were compromised and tampered at any time during that period and before the revision. However, no such proof has been adduced by protestee except the discrepancy between the figures in the ERs and the physical count on revision. But then, said discrepancy could have been caused by errors in the transposition of the numbers from the ballots to the ERs during the canvassing and not due to tampering.

As earlier intimated, the discrepancy could be attributed to ER manipulation during the canvassing and not because of the tampering of the ballots which were already found by an expert and independent body to be genuine and authentic.¹⁸

The *fallo* of the COMELEC *En Banc*’s Resolution reads:

WHEREFORE, premises considered, the Commission **RESOLVED** as it hereby **RESOLVES** to reconsider its Resolution dated August 23, 2011 and proclaim protestant-appellant as the duly elected Punong Barangay of Barangay 296, District III, Manila.¹⁹

¹⁵ Id. at 95.

¹⁶ Id. at 96.

¹⁷ Signed by Chairperson Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias Yusoph, and Maria Gracia Cielo M. Padaca. Commissioners Armando C. Velasco and Christian Robert S. Lim dissented and voted to affirm the Resolution of the First Division.

¹⁸ *Rollo*, pp. 59-60.

¹⁹ Id. at 69.

Thus, the present recourse, on the argument that the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it arbitrarily set aside the Decision of the MeTC and the Resolution of the COMELEC First Division, in the choice between the revision results in the protested precincts and the official vote count recorded in the election returns. Petitioner further argues that the COMELEC gravely abused its discretion when it demanded from protestee direct proof of actual tampering of ballots to justify consideration of the use of the election returns in determining the winning candidate in the elections. In fine, petitioner questions the ruling of the COMELEC giving precedence to the results of the revision over the official canvassing results.

The Issues

I.

WHETHER THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT CO HAD SUCCESSFULLY DISCHARGED THE BURDEN OF PROVING THE INTEGRITY OF THE BALLOTS SUBJECTED TO REVISION.

II.

WHETHER THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE RULING OF THE COMELEC FIRST DIVISION, TO THE EFFECT THAT PETITIONER REGIO IS THE DULY-ELECTED PUNONG BARANGAY.

The Court's Ruling

At the outset, it must be noted that the protest case is dismissible for being moot and academic. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Generally, courts will not determine a moot question in a case in which no practical relief can be granted.²⁰ In *Malaluan v. COMELEC*,²¹ this Court settled the matter on when an election protest case becomes moot and academic:

When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor **the term of which had expired**, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value. (emphasis added)

In the case now before the Court, the position involved is that of a *punong barangay*. The governing law, therefore, is Republic Act No. (RA) 9164, as amended by RA 9340. Sec. 4 of the law states:

²⁰ *Baldo v. COMELEC*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 311

²¹ 324 Phil. 676, 683 (1996).

Sec. 4. Assumption of Office. - The term of office of the barangay and sangguniang kabataan officials elected under this Act shall commence on August 15, 2002, next following their elections. The term of office of the barangay and sangguniang kabataan officials elected in the October 2007 election and subsequent elections **shall commence at noon of November 30 next following their election.** (emphasis added)

The court takes judicial notice of the holding of *barangay* elections last October 28, 2013. Following the elections, the new set of *barangay* officials already assumed office as of noon of November 30, 2013. It goes without saying, then, that the term of office of those who were elected during the October 2010 *barangay* elections also expired by noon on November 30, 2013. In fine, with the election of a new *punong barangay* during the October 28, 2013 elections, the issue of who the rightful winner of the 2010 *barangay* elections has already been rendered moot and academic.

Notwithstanding the mootness of the case, We find the need to decide the petition on its merits, in view of the finding of the COMELEC *En Banc* that protestant Co should have been declared the winner for the post of *punong barangay* for the term 2010-2013. We find that the grave abuse of discretion committed by the COMELEC *En Banc*, specifically in ignoring the rules on evidence, merits consideration. Still in line with the Court's decision in *Malaluan*²² to the effect that the Court can decide on the merits a moot protest if there is practical value in so doing, We find that the nullification of the COMELEC *En Banc*'s Resolution is in order, due to its gross contravention of established rules on evidence in election protest cases.

We shall discuss the issues jointly, related as they are to the finding of the COMELEC *En Banc* giving primacy to the results of the revision proceedings over the results of the canvassing as reflected in the election returns.

The doctrine in *Rosal v. COMELEC*²³ and considering the results of the revision vis-à-vis the results reflected in the official canvassing

In *Rosal*, this Court summarized the standards to be observed in an election contest predicated on the theory that the election returns do not accurately reflect the will of the voters due to alleged irregularities in the appreciation and counting of ballots. These guiding standards are:

(1) The ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and suspicion of change, abstraction or substitution;

²² Id.

²³ Supra note 7.

(2) The burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant;

(3) Where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end;

(4) It is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or likelihood thereof shifts to the protestee; and

(5) Only if it appears to the satisfaction of the court of COMELEC that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns.

In the same case, the Court referred to various provisions in the Omnibus Election Code providing for the safe-keeping and preservation of the ballots, more specifically Secs. 160, 217, 219, and 220 of the Code.

Rosal was promulgated precisely to honor the presumption of regularity in the performance of official functions. Following *Rosal*, it is presumed that the BET and Board of Canvassers had faithfully performed the solemn duty reposed unto them during the day of the elections. Thus, primacy is given to the official results of the canvassing, even in cases where there is a discrepancy between such results and the results of the revision proceedings. It is only when the protestant has successfully discharged the burden of proving that the re-counted ballots are the very same ones counted during the revision proceedings, will the court or the Commission, as the case may be, even consider the revision results.

Even then, the results of the revision will not automatically be given more weight over the official canvassing results or the election returns. What happens in the event of discrepancy between the revision results and the election returns is that the burden of proof shifts to the protestee to provide evidence of actual tampering of the ballots, or at least a likelihood of tampering. It is only when the court or the COMELEC is fully satisfied that the ballots have been well preserved, and that there had been no tampering of the ballots, that it will accord credibility to the results of the revision.

In *Varias v. COMELEC*, the Court said:

The *Rosal* ruling, to be sure, does not involve issues merely related to the appreciation or calibration of evidence; its critical ruling is on the propriety of relying on the revision of ballot results instead of the election returns in the proclamation of a winning candidate. In deciding this issue, what it notably established was a critical guide in arriving at its conclusion

– the need to determine whether the court or the COMELEC looked at the correct considerations in making its ruling.²⁴

This Court had long stated that “[u]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all. Well done is always better than well said.”²⁵ This is really what the *Rosal* doctrine is all about. The *Rosal* doctrine ensures that in election protest cases, the supreme mandate of the people is ultimately determined. In laying down the rules in appreciating the conflicting results of the canvassing and the results of a revision later made, the Court has no other intention but to determine the will of the electorate.

The *Rosal* doctrine is also supplemented by A.M. No. 07-4-15-SC,²⁶ establishing the following disputable presumptions:

SEC. 6. *Disputable presumptions.* - The following presumptions are considered as facts, unless contradicted and overcome by other evidence:

(a) On the election procedure:

- (1) The election of candidates was held on the date and time set and in the polling place determined by the Commission on Elections;
- (2) The Boards of Election Inspectors were duly constituted and organized;
- (3) Political parties and candidates were duly represented by pollwatchers;
- (4) Pollwatchers were able to perform their functions; and
- (5) The Minutes of Voting and Counting contains all the incidents that transpired before the Board of Election Inspectors.

(b) On election paraphernalia:

- (1) Ballots and election returns that bear the security markings and features prescribed by the Commission on Elections are genuine;
- (2) The data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct; and
- (3) The allocation, packing and distribution of election documents or paraphernalia were properly and timely done.

(c) On appreciation of ballots:

- (1) A ballot with appropriate security markings is valid;
- (2) The ballot reflects the intent of the voter;
- (3) The ballot is properly accomplished;
- (4) A voter personally prepared one ballot, except in the case of assistants; and

²⁴ G.R. No. 189078, February 11, 2010, 612 SCRA 386, 407.

²⁵ *Pangandaman v. COMELEC*, G.R. No. 134340, November 25, 1999, 319 SCRA 287.

²⁶ RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, took effect on May 15, 2007.

(5) The exercise of one's right to vote was voluntary and free.

Private respondent Co has not proved that the integrity of the ballots has been preserved

Applying *Rosal*, viewed in conjunction with A.M. No. 07-4-15-SC, this Court rules that the COMELEC *En Banc* committed grave abuse of discretion in ruling that private respondent had successfully discharged the burden of proving that the ballots counted during the revision proceedings are the same ballots cast and counted during the day of the elections. That is the essence of the second paragraph in the *Rosal* doctrine.

It is well to note that the respondent Co did not present any testimonial evidence to prove that the election paraphernalia inside the protested ballot boxes had been preserved. He mainly relied on the report of the revision committee. There was no independent, direct or indirect, evidence to prove the preservation of the ballots and other election paraphernalia.

This leads Us to no other conclusion but that respondent Co failed to discharge his burden under the *Rosal* doctrine. With no independent evidence to speak of, respondent Co cannot simply rely on the report of the revision committee, and from there conclude that the report itself is proof of the preservation of the ballots. What he needs to provide is evidence independent of the revision proceedings. Without any such evidence, the Court or the COMELEC, as the case may be, will be constrained to honor the presumption established in A.M. No. 07-4-15-SC, that the data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct.

Respondent Co admits having, under the *Rosal* doctrine, the burden of proving the preservation of the ballots, and corollarily, that their integrity have not been compromised before the revision proceedings. He, however, argues that he had successfully discharged that burden. And how? *First*, he pointed out that from the moment the various BETs placed the counted official ballots inside the ballot boxes until they were transported for canvassing, and until they were transmitted to the Election Officer/City Treasurer of Manila for storage and custody, no irregularities or ballot-box snatching were reported; neither was there any news or record of ballot box tampering in the protested precincts. *Second*, no untoward incident or irregularity which may taint or affect the integrity of the ballot boxes was ever reported when they were transported to the storage area of the trial court. *Third*, the storage place of the ballot boxes was at all times tightly secured, properly protected, and well safeguarded. *Fourth*, all the protested ballot boxes were properly locked and sealed. *Fifth*, the petitioner never questioned or raised any issue on the preservation of the integrity of the protested ballot boxes. And *sixth*, the Technical Examination Report signed

by the COMELEC representative confirmed the genuineness, authenticity, and integrity of all the ballots found during the revision.²⁷

We hold, however, that the foregoing statements do not, by themselves, constitute sufficient evidence that the ballots have been preserved. Respondent Co cannot simply rely on the alleged absence of evidence of reports of untoward incidents, and from there immediately conclude that the ballots have been preserved. What he should have presented are concrete pieces of evidence, independent of the revision proceedings that will tend to show that the ballots counted during the revision proceedings were the very same ones counted by the BETs during the elections, and the very same ones cast by the public. He cannot evade his duty by simply relying on the absence of reports of untoward incidents that happened to the ballot boxes. At best, this reliance on the condition of the ballot boxes themselves is speculative; at worst, it is self-serving. Without presenting to the court any evidence outside of the proceedings, respondent Co as protestant may simply claim that the ballot boxes themselves are the proof that they were properly preserved. This goes contrary to the doctrine in *Rosal*.

The respective custodians of the ballot boxes, from the time they were used in the elections until they were delivered to the court, were not, to stress, presented in court. They could have testified as to the security afforded the ballot boxes while in their custody. Moreover, no witness at all was presented by respondent Co during the proceedings in the trial court. The Court reminds respondent Co that the trial court's consideration of the case is confined to whatever evidence is presented before it. This is amply stated in Rule 13, Sec. 2 of A.M. No. 07-4-15-SC:

Sec. 2. Offer of evidence. – The court shall consider no evidence that has not been formally offered. Offer of evidence shall be done orally on the last day of hearing allowed for each party after the presentation of the last witness. The opposing party shall be required to immediately interpose objections thereto. The court shall rule on the offer of evidence in open court. However, the court may, at its discretion, allow the party to make an offer of evidence in writing, which shall be submitted within three days. If the court rejects any evidence offered, the party may make a tender of excluded evidence.

Unfortunately for respondent Co, the witnesses whose affidavits he attached to his Protest were never presented during trial. While he again raised the tenor of these affidavits in his Comment filed before Us, those cannot be considered anymore due to his failure to present them before the trial court. Respondent cannot simplistically insist on the consideration of said affidavits, the trial court not having been given the opportunity to observe their testimonies, and petitioner not having been accorded the opportunity to cross-examine them. The fact that respondent attached the affidavits in his Protest does not mean that the trial court is bound to consider them, precisely because they have not been formally offered before

²⁷ Private Respondent Ronnie Co's Comment to the Petition, pp. 5-7, Rollo, pp. 143-145

the court. The attachments to the Protest will not be considered unless formally offered.

The Court notes that respondent Co has offered no explanation whatsoever why he failed to present his witnesses. Nevertheless, he would have this Court consider as evidence their purported testimonies. This would be incongruously unfair to petitioner, who endeavored to prove his case by presenting evidence before the trial court.

Neither can respondent Co disclaim responsibility on the argument that the petitioner never raised as an issue the preservation of the ballot boxes. Inherent in all election protest cases is the duty of the protestant to provide evidence of such preservation. The failure of the protestee to raise that as an issue will not *ipso facto* mean that protestant need not present evidence to that effect.

Moreover, the Technical Examination Report, is not, without more, evidence of preservation. The Report merely states that the ballots are genuine. What the protestant should endeavor to prove, however, in presenting evidence of preservation, is not that the ballots themselves are genuine or official, but that they are the very same ones cast by the electorate. The Report cannot possibly determine that. While it may be that the ballots themselves are official ballots, there is still a dearth of evidence on whether or not they were the same official ballots cast by the public during the elections. The Report, therefore, cannot be considered as evidence of the preservation, as required by *Rosal*.

The fact of preservation is not, as respondent Co claims, “incontrovertible.” In fact, there is total absence of evidence to that effect. The incontrovertible fact is that private respondent, during the proceedings before the trial court, did not present any independent evidence to prove his claim. Without any independent evidence, the trial court, the COMELEC, as well as this Court, is constrained to affirm as a fact the disputable presumption that the ballots were properly counted during the counting and canvassing of votes.

In sum, We find that the COMELEC gravely abused its discretion in ruling that private respondent had discharged the burden of proving the integrity of the ballots. We rule, on the contrary, that there is utter lack of evidence to that effect.

Petitioner need not prove actual tampering of the ballots


Corollarily, the COMELEC *En Banc* had ruled that petitioner, as protestee, failed to adduce evidence that the ballots found inside the ballot boxes were compromised and tampered. This strikes us as baseless and a clear departure from the teachings of *Rosal*.

The duty of the protestee in an election contest to provide evidence of actual tampering or any likelihood arises only when the protestant has first successfully discharged the burden of proving that the ballots have been secured to prevent tampering or susceptibility of change, abstraction or substitution. Such need to present proof of tampering did not arise since protestant himself failed to provide evidence of the integrity of the ballots.

A candidate for a public elective position ought to familiarize himself with election laws, pertinent jurisprudence, and COMELEC resolutions, rules and regulations. Alternatively, he should have an experienced and knowledgeable election lawyer to guide him on the different aspects of elections. Sans competent legal advice and representation, a victory in the elections may turn out to be a crushing defeat for the candidate who actually got the nod of the electorate. Unfortunately for respondent Co, he committed several miscues that eventually led to his debacle in the instant election protest.

WHEREFORE, premises considered, this Petition for Certiorari is **GRANTED**. The Resolution dated December 7, 2012 of the COMELEC *En Banc* in EAC (BRGY-SK) No. 161-2011 is hereby **NULLIFIED** and **SET ASIDE**. The Resolution of the COMELEC First Division dated August 23, 2011, affirming the Decision in Election Case No. 02480-EC of the MeTC, Branch 4 in Manila is hereby **REINSTATED**.

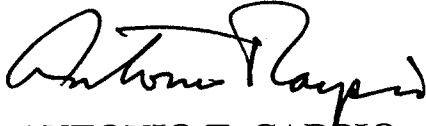
SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

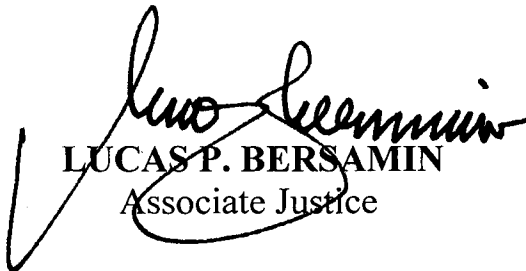

MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice


(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice

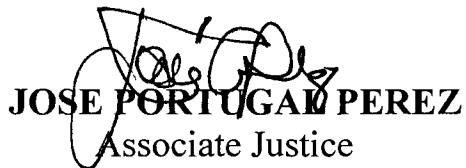
(On official leave)
DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



MARIA LOURDES P. A. SERENO
Chief Justice