

[G.R. No. L-6496. January 27, 1954]

LEOPOLDO R. JALANDONI, PROTESTANT AND APPELLEE, VS. DEMETRIO N. SARCON, PROTESTEE AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

Demetrio N. Sarcon and Leopoldo R. Jalandoni were candidates for the office of Mayor of Midsayap, Province of Cotabato, and had been voted for as such in the elections held on November 13, 1951. In the canvass made by the Municipal Board of Canvassers, Sarcon obtained 3,181 votes and Jalandoni 3,088 votes, and as a result the former was proclaimed elected. In due time, the latter filed an election protest in the Court of First Instance of Cotabato.

The trial court, upon petition of protestant, directed the National Bureau of Investigation to examine all the ballots contained in the white boxes as well as the stubs contained in the boxes for spoiled ballots, the corresponding voter's affidavits and lists of voters, and all the pads containing the stubs of ballots used, of precincts Nos. 19 and 34 of Midsayap, to determine if the ballots cast in said precincts were genuine, or were cast by persons other than the legitimate voters. Angel H. Gaffud, examiner of said Bureau, made the examination as directed and submitted his report to the court.

During the trial, the protestant, through counsel, introduced as part of his evidence the certificate of candidacy he had filed as required by law but its admission was objected to on the ground that his motion of protest does not contain any allegation that he has filed any certificate, but the objection was overruled and the certificate

was admitted in evidence. Upon the conclusion of the trial, the court rendered judgment nullifying 226 ballots cast for the protestee and declaring the protestant as the mayor elect with a majority of 133 votes.

The case was originally taken to the Court of Appeals, but, as appellant has raised as one of the errors that the lower court had no jurisdiction to try the case because the motion of protest does not allege sufficient jurisdictional facts, it was later certified to this Court.

Appellant contends that the motion of protest does not contain jurisdictional facts because it fails to state that the protestant is a candidate voted for in the elections held on November 13, 1951 and that he has presented the required certificate of candidacy. He claims that these allegations are essential and the failure to include them in the motion of protest operates to divest the court of its jurisdiction over the case.

We agree with counsel that courts of first instance, when taking cognizance of election protests, act as courts of special jurisdiction. In this sense they have a limited jurisdiction. They can only act when the pleadings aver jurisdictional facts. As this court aptly said:

“The Court of First Instance has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the motion of protest. There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. * * * Such court cannot, by any supposed analogy to ordinary proceedings, exercise any power beyond that which the legislature has given.” (Tengco vs. Jocson, 43 Phil., 715.) But we disagree with counsel that the motion of protest in the present case does not allege facts sufficient to confer jurisdiction upon the lower court.

Among the important allegations appearing in the motion of protest are that protestant is a qualified elector and one of the registered

candidates voted for in the general elections held on November 13, 1951, that, in accordance with the certificate of canvass of the Municipal Board of Canvassers, the protestee received 3,181 votes and the protestant 3,088 votes, and on December 3, 1951, the protestee was declared elected to the office of Mayor of Midsayap. In our opinion, these allegations substantially comply with the law and are sufficient to confer upon the court the requisite jurisdiction. It is true that the motion of protest does not in so many words state that protestant has presented his certificate of candidacy, or that he is a candidate for the office of Mayor of Midsayap, but all these allegations are clearly inferred or deducible from the facts expressly alleged therein for it cannot be denied that one cannot be a registered candidate unless he has duly filed the required certificate of candidacy for the office he seeks to be a candidate. This is a requirement which must needs be met before a person can be eligible or be voted for (section 31, Revised Election Code). This is also the interpretation placed by the Senate Electoral Tribunal on the words "registered candidate" in a case involving a similar issue (*Sanidad vs. Vera et al.* case No. 1, Senate Electoral Tribunal). Indeed, to countenance the plea of appellant would be to defeat an otherwise good cause through a mere technical objection, which is the duty of the courts to prevent, for "It has been frequently decided, and it may be stated as a general rule recognized by all the courts, that statutes providing for election contests are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by merely technical objections. To that end immaterial defects in pleadings should be disregarded and necessary and proper amendments should be allowed as promptly as possible." (*Hayfrom vs. Mahoney*, 18 Am. St. Rep., 757, 763; *McCrary on Elections*, 3rd ed., sec. 396; *Galang vs. Miranda*, 35 Phil., 269.) As a corollary, it should be stated that the lower court did right in allowing the presentation in evidence of the certificate of candidacy of protestant which is necessary to establish a material jurisdictional fact.

Let us now come to the merits of the case. Note that the ballots disputed by appellant are those cast in precincts Nos. 19 and 34, and

that these were all examined as ordered by the court by Angel H. Gaffud, a handwriting expert of the National Bureau of Investigation. The ballots disputed among those cast in precinct No. 19 amount to 306 of which 226 were found to be spurious. And among those cast in precinct No. 34 those disputed amount to 200 ballots, and of these 53 were found also to be spurious. The handwriting expert classified the first batch into 14 groups, and basing his opinion on the striking similarities of the handwriting found in each group, he gave the opinion that the 226 ballots had been written by one and the same hand. The second batch was classified into 10 groups and following the same process he reached the same conclusion. The lower court concurred in this opinion as regards the 226 ballots but disagreed with regard to the 53. It found that these 53 ballots were all written in, Maro characters, and considering that these characters were not known to the handwriting expert, it entertained doubt as to the veracity of his findings. This doubt the court resolved in favor of the protestee and counted them in his favor.

Counsel for appellant disagrees with these findings concerning the 226 ballots and, pointing out the individual characteristics of the writer of each ballot shown by his habit of writing, "such as his slant, the proportional heights of his one spaced to his two spaced letters, or to one another; the pressure of writing, the spacing, the penlift of the writer, the crossing of his "t's," the dotting of his 'i's', his habitual initial and terminal strokes, whether they are blunt or flying, the loops of his letters, his speed in writing, and the use of capital letters", he now vehemently contends that the ballots in question cannot be considered as having been written by one and the same hand. And to make his opinion more impressive and factual he made his own grouping of the ballots and proceeded to compare one with the other pointing out certain differences which in his opinion tend to destroy the findings of the handwriting expert and of the trial court. In view of these conflicting opinions, and in order to reach a conclusion as close as may be possible to the truth, we have examined these ballots one by one and have found that, with the exception of 15 ballots which appear to have been written by different persons, the

findings of the handwriting expert are correct and should be sustained. For the purposes of this decision, and in order that the characteristics of the writing may be better appreciated, we have placed the ballots in small groups within the classification made by the handwriting expert and the following are the reasons supporting our conclusion:

Group I

Forty-five ballots (Exhibits A; A-1; A-4; A-10; A-14; A-25; A-36; A-42; A-62; A-63; A-9; A-12; A-30; A-34; A-35; A-37; A-46; A-49; A-50; A-52; A-53; A-66; A-67; A-72; A-74; A-81; A-85; A-86; A-90; A-91; A-94; A-96; A-97; A-100; A-102; A-103; A-107; A-109; A-110; A-2; A-3; A-15; A-93; A-45 and A-101) were undoubtedly written by only one person. While there is an attempt to disguise the handwriting by using different writing instruments, as indelible pencil, lead pencil and blue-colored pencil, and by varying the slant of the writing, pen pressure and spelling form, formation of letters and habits are clearly noticeable. In all these ballots, except one or two, one cannot help but notice the peculiar form of the capital letter T in "Tadio" and "Tan". Except the first ballot, the M in "Mantel" has four "legs". The capital letter C in "Cambronero" and "Carlos" has a peculiar formation, that is, the initial stroke begins from below, has a loop on top and is brought down with the usual curve. The capital F in "Flores", the capital S in "Sarcon", and the capital R in "Roguiiton" are similar in practically all these ballots. Zulueta was voted for in all these ballots as "Suluezeta", or "Suluezta", or "Suluezela" having forgotten to place the cross-bar in the t, "Suluezat", and the terminal "a" is separate from the "t",. a practice habitual to the writer.

Twelve ballots (Exhibits A-6; A-8; A-16; A-39; A-40; A-43; A-51; A-54; A-58; A-61; A-70; and A-73). These were clearly written by same person who wrote the above 45 ballots. The characteristic formations of the

capital letters M in “Martel”, C in “Cambronero” and “Carlos”, T in “Tan” and “Tadio” and R in “Roganton” in the above 45 ballots are all found in these 12 ballots. In all these ballots the name of Zulueta begins with capital Z in printed form. The terminal letter “a” is separate from the “t” just like the 45 ballots above.

Fourteen

ballots (Exhibits A-13; A-19; A-20; A-21; A-22; A-26; A-29; A-41; A-44; A-55; A-57; A-75; A-76 and A-87). In all these ballots one hand wrote the votes for Senators with indelible pencil, without any attempt to disguise the penmanship. Another hand, which is the same one that wrote the above-mentioned 45 ballots, wrote in lead pencil the votes for the provincial and municipal officials, with the usual characteristic formation of the capital letters M in “Mantel”, C in “Cambronero” and “Carlos”, R in “Roganton” and T in “Tadio” and “Tan”.

Eleven

ballots (Exhibits A-5; A-7; A-32; A-38; A-60; A-69; A-71; A-77; A-78; A-80; and A-106). One hand wrote the votes for senators in all these 11 ballots, but different from the hand that wrote the above 14 ballots. This writer is a more accomplished writer. He tried to disguise his writing in 3 of these ballots (Exhibits A-5; A-78 and A-80) by making his letters smaller, but this is betrayed by his usual formation of the capital letter Z in “Zulueta” which is the same in all the ballots. He also wrote in the last 2 ballots the votes for members of the Provincial Board. The rest of the votes in these 11 ballots was written by another hand, the same that wrote the 45 ballots, *supra*, as shown by the capital letters M in “Mantel”, C in “Cambronero” and “Carlos”, T in “Tadio” and “Tan”, R in “Roganton”, B in “Bangas” and Y in “Yerno”. He tried to disguise his handwriting in the last ballot by changing his slant.

Three ballots (Exhibits A-27; A-31 and A-84). These were prepared by the same person who wrote the 45 ballots, *supra*, with an indelible pencil. The usual characteristics of his writing as already described are present, like the C in “Cambronero” and “Carlos”, F in “Flores”, R in “Roganton” and others.

Six ballots

(Exhibits A-68; A-79; A-92; A-99; A-33; and A- 56). The first four ballots were each prepared by different voters and could have been regular were it not for the insertion of the name of candidate Carlos Tan in the space for special election by the same guilty hand that invalidated all the ballots discussed. But this cannot invalidate them. In the last two ballots, "Sarcon" and "Yerno" in the spaces for Mayor and Vice-Mayor, respectively, were written by the same guilty hand as shown by the capital letter C in "Carlos", T in "Tan" and Y in "Yerno". These two ballot are, therefore, invalid.

Five ballots, (Exhibits A-23; A-59; A-64; A-89 and A-105).

The

voter in the first ballot voted only for "Borra" and "Cambronero"; in the second, the voter voted only for "Quirino" and "Roganton", in the third the voter voted for "Sarcon," "Yerno" and four councilors; in the fourth the voter voted for "Zulueta", "Borra" and "Cambronero" and in the last voted for seven councilors from line 2 to 8. With the exception of the third ballot, the name "Sarcon" was written by the same guilty hand and should therefore be declared invalid. Only the third is valid.

Three ballots (Exhibits A-11; A-24 and A-83).

Similarly, these three ballots were tampered by the same guilty hand. The first 2 ballots were voted in Arabics while the third voted only for "Kimpo" in blue pencil. The guilty hand wrote "Carlos Tan" and the other writing as can be seen by his characteristic capital letters "C" and "T".

Two ballots (Exhibits A-98 and A-48). These were each prepared by two hands. "Zulueta" in both ballots were written by one hand, the same person who wrote this word in the 11 ballots, *supra*. This hand wrote also the rest, written in blue-colored pencil, in the second ballot. The rest of the writing in the first ballot was written by the same guilty hand that prepared the 45 ballots, *supra*.

Two

ballots (Exhibits A-17 and A-47). These two ballots were each prepared by 2 hands. "Carlos Tan" was written in both ballots by the same guilty person in the 45 ballots, *supra*, but the name "Sarcon" was written by the same hand in the two ballots.

Four ballots (Exhibits A-82; A-95; A-104 and A-108). These were prepared by the same guilty hand that prepared the 45 ballots, *supra*. He tried to disguise his writing but he could not escape judgment by one who has become used to his letter formation.

Three

ballots (Exhibits A-18; A-65 and A-88). A careful scrutiny of these ballots shows that nothing in them indicates that they have been tampered with. They are valid.

Group II

Thirty ballots (Exhibits B to B-30, inclusive, with the exception of B-28). They were all prepared by only one individual, the same person who wrote the votes for Senators in the group of 11 ballots, *supra*, of Group I. The writer made an attempt to disguise his handwriting which may be classified into three groups, as follows: first group, Exhibits B; B-1; B-7; B-8; B-10; B-12; B-15; B-16; B-17; B-18; B-22; B-24; B-25; B-26; acid B-27; second group, Exhibits B-2; B-3; B-4; R-5; B-9; B-13; B-19; and B-21; and third group, Exhibits B-6; B-11; B-14; B-20; B-23; B-29 and B-30. The first group may be described as the writer's ordinary handwriting with his usual slant; in the second group, he changed his slant making it a little bit vertical; and in the third group, he made his letters smaller but in his usual slant. The writer is an accomplished one. He comouflaged his handwriting ty using lead, indelible and blue-colored pencils, but this did not vitally change his habitual form. His formation of capital Y in "Yerno" in all the ballots, except a few, is eye-catching, in that, it starts with a flourish from below. This is also true in his capital V in "Villareal". One can easily notice his

formation of Z hi “Zulueta”, K in “Kimpo”, M in “Mantel”, C in “Cambronero” and T in “Tadio” and “Tan”. They are all alike in all the ballots.

One ballot (Exhibit B-28). This is void because the writings therein were written by three different hands. This is apparent by a mere examination of the ballot.

Group III

Seventeen ballots (Exihibits C to C-16, inclusive).

They were all written by one and the same person. The general appearance of the handwriting in all the ballots shows that the writing's therein were made hurriedly, but the writer did not attempt to disguise his penmanship. The ballots may be grouped into three: first group Exhibits C; C-1; C-2; C-3; C-6; C-9; C-10; C-11; C-12 and C-14 were all written in lead pencil; second group, Exhibits C-4; C-5; C-7; C-8; C-13; and C-15; all written in blue-colored pencil; and the last group, Exhibit C-16, written in indelible pencil.

Group IV

Nine ballots (Exhibits D to D-8, inclusive). They were all written by one hand with apparently the same indelible pencil. No attempt was made to disguise the handwriting. The most Distinguishing characteristic of the handwriting is the upward flourish in all terminal letters of the names of the candidates, especially the terminal letter “o” in “Yermo”, “Cambronero” and “Kimpo”.

Group V

Eight ballots (Exhibits E-1; E-4; E-5; E-6; E-11- E-12; E-13 and E-16). They were all written by one hand. The similar formation of the following capital letters betray the fraud committed:

S in "Sarcon", Y in "Yermo"; B in "Bengson" and "Borra", R in "Rogenton" and "Randing"; F in "Flores" and V in "Villareal". In all the ballots, the capital letter C in "Cuenco" and "Cambronero" were written like a small letter c.

Four ballots (Exhibits E-9; E-18; E-21 and E). They were written by the same person who wrote the 8 ballots in the preceding paragraph. The writing was disguised by the writer changing his slant, making it vertical and using different pencils. But the characteristic formation of his capital letters Y in "Yermo", F in "Flores", V in "Villareal", R in "Ragonton" and "Rand'ng" are unmistakably present.

Four ballots (Exhibits E-10; E-17; E-19 and E-20). They were all written by one hand using a blue-colored pencil. The writing in all the ballots is very similar with the same light pen pressure. The heavier downward stroke in the terminal "1" in "Laurel", "Mantel" and "Villareal" is glaringly noticeable.

Three ballots (Exhibits E-3; E-7 and E-14). They were written by the same hand that wrote the 8 ballots, *supra*.

The writing in these ballots was disguised by making the letters a little bigger than the group referred to. But the same letter formation can be found in these ballots.

Two ballots (Exhibits E-2 and E-15). They were written by one person. This is apparent by a mere examination of the ballots. His letter formation and slant are alike in both ballots.

Three ballots (Exhibits E-8; E-22 and E-23).

Nothing in these ballots shows that they were tampered with. They were each written by different voters. They are valid.

Group VI

Four ballots (Exhibits F to F-3). They were all

written by one and the same person, the first ballot, in indelible pencil, and the last three in blue-colored pencil. The handwriting in these 4 ballots is very much alike. Even the spelling of the senators vote for in these 4 ballots is the name "Luarel" for. Laurel, "Zuelta" for Zulueta, and "Locin" for Locsin.

Group VII

Two ballots (Exhibits G and G-1). They were each written by two hands. One hand wrote the name "Sarcon" in both ballots, while the Arabic votes in each ballot were written by two different persons. This is apparent by a mere examination of the ballots. These ballots are, therefore, void.

Group VIII

Eight ballots (Exhibits H and H-7, inclusive). They were all written by one person using a blue-colored pencil. The handwriting in these ballots is all identical, the writer having made no attempt to disguise his penmanship. This is apparent by a mere examination of the ballots.

Group IX

Seven ballots (Exhibits 1-1 to 1-7, inclusive). They were all written by only one individual who tried to disguise his handwriting by using indelible, lead and blue-colored pencils. But his attempt ia belied by his identical formation of the four-legged capital M in "Mantel", the capital letter "D" in "D. Sarcon" and "D. Mantel" in 4 of the ballots, capital letter Z in "Zuleta" and L in "Loosing" and "Laurel". - His attempt is further exposed by his wrong spelling of Zulueta as "Zuleta" and Locsin as "Locsing" which are found in all the ballots.

One ballot (Exhibit 1-8). This was written by at least two hands. One hand wrote the names "Sarcon" and "Yermo" in the spaces for Mayor and Vice-Mayor, respectively. One can immediately detect that the writer of these names is more accomplished than the hand that wrote the votes for senators, members of provincial board and councilors.

One ballot (Exhibit 1.) This appears to be good. There is nothing to indicate that it was tampered with.

Group X

Two ballots (Exhibit J and J-2). They were written by one individual. The handwriting in both ballots is identical in all respects

The name of Carlos Tan was written in both ballots as one word.

One ballot (Exhibit J-1). The handwriting in this ballot appears to be different from that in the other ballots and there is nothing to indicate that it was tampered with.

Group XI

Two ballots (Exhibit K and K-1). They were written by one hand. No attempt to disguise the writing was made and the similarity of the penmanship in both ballots is very apparent. These two are void.

Group XII

Two ballots (Exhibits L and L-1). These two ballots were written by two different persons. The dissimilarities between the handwriting in both ballots are more striking than any similarity that can be seen. The slant, letter distances, stroke, penlift and pen

pressure are different. These two ballots are, therefore, valid.

Group XIII

One ballot (Exhibit M). This was written by two persons. One hand wrote the senatorial candidates from line 3 to 7, while the rest was written by another. The first hand is the same one that wrote the senatorial candidate in the group of 14 ballots, *supra*, under Group I. The slant, pen pressure and terminal strokes are different from the second hand.

One ballot (Exhibit M-1). This was written by the same person who wrote the votes for provincial and municipal officials in the ballot discussed in the preceding paragraph. The letter formation slant and the penlift in "Yermo" are identical.

Group XIV

Two ballots (Exhibits N and N-1). They were written by one and the same person. No attempt to disguise the writing was made. The sizes of the letters, spacing, alignment and letter formations in both ballots are identical. These two ballots are, therefore, void.

In *resume*, we find that of the 226 ballots declared spurious by the lower court, 15 are legitimate and should be cast in favor of the protestee. These ballots are Exhibits A-68; A-79; A-92; A-99; A-64; A-18; A-65; A-88; E-8; E-22; E-23; I; J-I; L and L-1. The findings of the lower court as to the balance of 211 ballots should be sustained. Deducting this number from the votes awarded to the protestee by the Board of Canvassers, we have that the protestant has won the election with a majority of 118 votes.

Wherefore, with the above, modification, we hereby affirm the decision appealed

from,without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Labrador, JJ., concur.

Date created: October 03, 2014