

94 Phil. 308

[ G.R. No. L-6589. January 29, 1954 ]

**ELIGIO CARAECLE, PETITIONER, VS. THE COURT OF APPEALS AND FELIX DEL CASTILLO, RESPONDENTS.**

[G.R. No. L-6655, 29 January 1954]

**FELIX DEL CASTILLO, PETITIONER, VS. THE COURT OF APPEALS AND ELIGIO CARAECLE, RESPONDENTS.**

## **D E C I S I O N**

**PADILLA, J.:**

The municipal board of canvassers counted 636 votes cast for Eligio Caraele and 612 for Felix del Castillo, rival candidate for the office of mayor of the municipality of Malangas, Province of Zamboanga, in the general elections held on 13 November 1951 and proclaimed the former elected mayor of the municipality. In due time Felix del Castillo filed his protest against the election of Eligio Caraele, contesting of 39 ballots counted in favor of the latter. In an amended answer, Caraele filed a counter protest contesting 37 ballots cast in favor of Castillo. After hearing, the Court of First Instance of Zamboanga declared that 28 out of the 37 contested ballots were cast lawfully in favor of Castillo and 16 out of 39 in favor of Caraele. By adding 28 admitted for Castillo to 601 votes, the number of uncontested votes counted in his favor, and 16 to 596, the number of uncontested votes counted, in favor of Caraele, the result is 629 votes for Castillo and 612 votes for Caraele and the trial court declared the protestant elected mayor of the municipality of Malangas. Both appealed from the judgment assigning several errors. The Court of Appeals after reviewing the judgment appealed from affirmed it, with the modification that the plurality in favor of the protestant was 2 votes instead of 17. Both

have brought to this Court by certiorari the last judgment for review.

The first error assigned by Eligio Caracle is that ballot marked B-15 of precinct No. 1 should have been counted in his favor, because according to the findings of the Court of Appeals the name written on the line for mayor reads.

“Cebarle,” which sounds like “Caracle.” but in the final computation of votes the Court of Appeals counted it in favor of Felix del Castillo. The latter states that this ballot has never been put in issue, that it is a valid vote for him because the words “Mayor Castillo” appear on the first space for Senators and that Eligio Caracle has never claimed it to be his. This claim of Felix del Castillo cannot be entertained because we have to accept the finding of the Court of Appeals that the name “Cebarle” written on the space for mayor has the same sound as “Caracle.” This vote should, therefore, be counted in favor of Caracle. Besides, the words “Mayor Castillo” written on the first space for Senators, not being the space for mayor and there appearing another person voted for it the last name should prevail.

The second error assigned by Eligio Caracle relates to ballots B-16 of precinct No. 1; A-2 of precinct No. 1-A; and A-4 of precinct No. 7. In ballot B-16 of precinct No. 1 the following words or names appear: “Governor Adaza” on the fifth space for Senators; the word “Mayor” on the third space for councilors; the name “F. del Castillo” on the fourth space for councilors; and the name “L. Ubas” on the sixth space for councilors. There being no person voted for mayor on the space provided for it in the ballot, the word “Mayor” on the third space for councilors and the name “F. del Castillo” on the fourth space for councilors written by the voter sufficiently indicate his intention to vote in favor of F. del Castillo for mayor of the municipality. This vote must be counted in favor of Felix del Castillo as was counted by the trial court and the Court of Appeals on appeal.

The case of *Pimentel vs. Festejo*,<sup>[1]</sup>  
46 Off. Gaz.; 2533, cited by Eligio Caracle, is not applicable,

because there aside from the fact that the name of the candidate was not written on the space for the office for which he was running, the name of the candidates voted for was not preceded by the office for which he was voted. The case of *Kempis vs. Bautista*,<sup>[2]</sup> 46 Off. Gaz., Supp. No. 1, 229, has no application to the ballot under consideration.

As to ballot A-2 of precinct No. 1-A, the Court of Appeals upholds the opinion of the trial court that it is a marked ballot, because the names of the other candidates voted for are written in Roman characters while that of Eligio Caraele is in Arabic. There is no explanation or reason for the voter to write in Arabic the name of candidate Eligio Caraele and to write in Roman characters the names of the other candidates in their proper spaces, except that of identifying his ballot. It cannot be deemed innocent. There is no sufficient reason for altering the opinion of the courts below on this ballot. It should be rejected.

As to ballot A-4 of precinct No. 7, the Court of Appeals is of the opinion that the letters "MBDC" written on the third space for Senators is obviously to mark it contrary to the trial court's ruling. The writing by the voter of these capital letters "MBDC" does not come under the provisions of section 149, pars. 15 and 18, of the Revised Election Code. The writing of the letters "MBDC" on the third space for Senators is clearly for identification purposes and the ballot should be rejected.

The ballots counted in favor of Eligio Caraele and contested by Felix del Castillo as marked are the following: Ballot A-1 of precinct No. 2, where the name of "Mario Jumisal" is written on the last space for councilors which is the signature of the voter as found in the registry list; ballot A-2 of precinct No. 2 marked by the word "Daguit," meaning in English "to swoop," and in Spanish "descender y agarrar la presa al vuelo," appearing on the last space for councilors; ballot A-1 of precinct No. 4 where the words "wala na cag walo rine" appear on the second space for councilors which in English mean "you have lost 8 here" or "you do not have 8 here;" ballot A-6 of precinct No. 4, where the words "Datu Bulac" appear on the first space for

councilors and mean in English “blind datu” or “Datu, the blind;” ballot A-1 of precinct No. 7, where the words “Castillo wala mapatay” appear on the sixth space for Senators and mean in English “Castillo was not killed;” ballot A-2 of precinct No. 7, where the words “Datu Bilat” appear on the first space for councilors, “bilat” meaning in Visayan the genitals of a woman; and ballot A-3 of precinct No. 7, where the words “And Carlos Virgo 17 Lt Inf” appear on the eighth space for Senators, all of which were rejected by the trial court as marked ballots. The Court of Appeals declared said seven votes valid for Eligio Caraecle and in support thereof it invoked the rule laid down in the case of Cailles vs. Gomez, 42 Phil., 496. But that rule (second clause of par. k in the syllabus) has long been abandoned. In subsequent cases,<sup>[1]</sup> the rule is that the writing of impertinent expressions in the ballot invalidates it.

As to the taxing of the costs in the lower court the case of Tabanda vs. Court of Appeals et al., 89 Phil., 76, is authority for the rule that section 180 of the Revised Election Code has not deprived courts of their discretion in the taxing of the costs. Therefore, Felix del Castillo’s contention as to costs is not well taken.

The numbers of uncontested votes are 601 for the protestant and 596 for the protestee. Ballots cast for Caraecle contested by Castillo are 39 and those for Castillo contested by Caraecle are 37. The Court of First Instance of Zamboanga held 28 votes valid in favor of Castillo out of 37 contested ballots and 16 for Caraecle of the 39 contested by Castillo, or a plurality of 17 for Castillo. After deducting ballot B-15 of precinct No. 1 from the total number cast for Castillo the protestant would have 628 votes; and deducting ballot A-4 of precinct No. 7 as marked ballot from, and adding ballot B-15 of precinct No. 1 deducted from that of Castillo to, the total number cast for Caraecle, the protestee would have 612 votes. There is a plurality of 16 votes in favor of Felix del Castillo.

For the reasons stated in this opinion the judgment appealed from is affirmed, with costs against the protestee.

*Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.*

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<sup>[1]</sup> 82 Phil., 545. <sup>[2]</sup> 81 Phil., 477.

<sup>[1]</sup> Lucero vs. De Guzman, 45

Phil., 852; Fausto vs. Villapta, 53 Phil., 166; Villavert vs. Lim, 62

Phil., 178; Cecilio vs. Tomacruz, 62 Phil., 689, 710.

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