G.R. No. L-7704

**[ G.R. No. L-7704. December 14, 1954 ]**

**RAFAEL B. HILAO, PETITIONER, VS. TEODULO Q. BERNADOS RESPONDENT.**

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

**BAUTISTA ANGELO, J.:**
This is a petition for review of a decision of the Court of Appeals declaring respondent duly elected mayor of Tanay, Rizal, with a total of 1,413 votes, as against a total of 1,410 votes for petitioner, or majority of 3 votes.

Rafael B. Hilao and Teodulo Q. Bernados were registered candidates' for the office of mayor of Tanay, Rizal, in the general elections held on November 13, 1951. After canvassing the votes, the municipal board of canvassers found that Hilao received a total of 1,420 votes as against 1,416 votes of Bernados and proclaimed Hilao elected by a majority of 4 votes.

Bernados filed an election protest before the Court of First Instance of Rizal contesting the results in Precincts 1, 4, 5, and 10; to which Hilao filed a counter-protest contesting the results in Precincts 2, 4, 5, 7, and 15.

After trial, the court rendered its decision on January 5, 1953 dismissing the protest and declaring Hilao elected by a majority of 2 votes, but, upon being shown that a mistake was committed in Precinct No. 6 in the computation of the number of votes adjudicated to Hilao, the court modified the decision declaring Hilao elected by a majority of 12 votes. Taken to the Court of Appeals by virtue of the appeal interposed by Bernados, the latter, in a. decision rendered on March

23, 1954, reversed the decision of the lower court declaring Bernados elected by a majority of 3 votes. Hilao interposed the present petition for review.

As stated by counsel for petitioner, the only question which is presented to this Court for determination hinges on the appreciation of the ballots in the protested and counter-protested precincts. This means that the findings of fact of the Court of Appeals with regard to the evidence aliunde submitted by both parties are no longer open for review, the function of this Court being limited to determining if the appreciation made of said ballots by the Court of Appeals, apart from the evidence alluded, was made in accordance with law and the rulings of this Court.

Petitioner contends that the Court of Appeals, in wiping out the majority of 12 votes given to him by the court of origin and in declaring respondent elected by a majority of 3 votes, acted not only contrary to law but in disregard of the decisions of this Court, and in this instance he disputes its findings on the following ballots; Exhibits TB-37, TB-135, TB-31, TB-40, TB-18, RH-25, RH-342, RH-344, RH-32, RH-257, RH-192, RH-256, RH-185, TB-41, RH-29, RH-167, and RH-341.

On the other hand, respondent contends that the Court of Appeals erred in not considering in his favor ballot s 'TB-19, TB-20, TB-21, TB-22, and TB-23, and he makes this assignment of error to offset that made by petitioner and bolster up his contention that the decision appealed from should be "maintained.

We will now proceed to analyze the disputed ballots one by one to see if the errors pointed out are well taken.

*BALLOTS CONTESTED BY PETITIONER*

Pallet TB-37. This ballot, was rejected by the Court of Appeals as a marked ballot because the candidates for councilors were voted for in. the spaces for senators and the candidates for senators were voted for in the spaces for councilors, and the only reason advanced for its rejection is that the voter appears to be intelligent and could not

have innocently committed the mistake of writing in wrong places the names of the candidates and, therefore, this interchange of names must have been deliberately resorted to for the only purpose of identifying his ballot. We believe this finding to be an error, for, under paragraph 13 of Section 149 of the Revised Election Code, sail votes can only be considered as stray votes and as which they do not invalidate the whole ballot. Such interchange of voles shall be considered innocent unless it should clearly appear that the intention of the writer is to mark the ballot. Such is not the case. This ballot should, therefore, be counted for Hilao.

Ballot TB-135. This was rejected as' a marked ballot because the voter wrote the name of Bernados on the last space for senators, he being a candidate for mayor. This is the only ground for its rejection. This is also an error. Following the same ruling we have stated above, this vote can only be considered as stray vote which does not invalidate the whole ballot. This ballot should be counted for Hilao.

Ballot TB-31. This ballot was objected to by Bernados the ground that it was prepared and signed by a voter by the name of Ruperto M. Celles, it being his contention that "Celles Ferto" written on the sixth space for councilors was the signature of said voter. Respondent presented evidence to prove his contention, but the court of origin found that the hand which wrote the words "Celles Ferto" on the ballot cannot be that of the voter considering his handwriting characteristics, and accordingly admitted the ballot for Hilao. But the Court of Appeals, while admitting the correctness of the findings of the lower court, concluded that the only reason why the voter wrote said words cannot be other than his desire to identify his vote, and rejected the ballot. If there is no dispute as to the finding that the words "Celles Ferto" do not represent the name or the signature of voter Ruperto M. Celles, the logical conclusion is that it is a name written on the ballot, for someone who is not candidate, and as such it should be considered as a stray vote. The writing of this name cannot be considered as distinguishing mark in the absence of a clear showing to the contrary. This ballot should be counted for Hilao.

Ballot TB-40. This ballot was objected to on the ground that it was prepared by two different hands.This ballot was rejected by the Court of Appeals because it found that it was filled up by two different persons. The court said: “Either the elector voted only for senators and another person filled up the proper spaces for local official or vice versa. The names of the senators are written pi a slanting; and flawless manner, while those for local officials are written hastily and recklessly. It would even appear that 2 different pencils were used.” We have explained carefully this ballot and found this appreciation correct. This ballot should be rejected.

Ballot TB-18. This is one of the 13 ballots with coupons detached found deposited in the red box for spoiled ballots in Precinct “To. 3. Also found deposited in said red box were 6 ballots with coupons attached. The Court of Appeals found that in this precinct 200 voters voted, 206 ballots were used, 200 detached coupons found in the red box, and 187 ballots actually found in the white box for valid ballots, and made the following comment; “If the ballots with their Coupons attached were in fact considered spoiled, under the provisions of Section J36, the respective 6 voters must have been given one more ballot each, and this explains the fact that while only 200 electors voted, 206 ballots were Used. Again, if the 13 ballots with their coupons detached were in fact considered spoiled pursuant to Section 137, the respective 13 voters might not have been given another pallet each, ‘and this explains why only 187 ballots were found in the white box for valid ballots.” Notwithstanding this comment, however, the Court of Appeals considered ballot TB-18 merely as a marked ballot, and not as a spoiled ballot, as shown by the fact that it was marked at the back as a marked ballot. And considering that this ballot does not suffer from many defects which will render it invalid, the same wad counted as a. good vote for Bernados.

We find this conclusion correct. In the first place, this is one of the 13 ballots found in the red box and for which no extra ballot was given to the voter, and so it cannot be considered .a spoiled ballot. In the second place, if it were a spoiled ballot, it would have been marked as such by the inspectors and their statement should bear their

signature, as required, by Section 136 of the Revised Election Code. This was not done and instead the inspectors marked it as a marked ballot. And in the third place, this ballot was found in the red box without its coupon. This shows that the same the used by the voter. These factors are sufficient to overcome the presumption of the law that it is a spoiled ballot, (Section 147, 'Revised Election Code), and must have been only erroneously placed in the red box. This ballot should be counted for Bernados.

Ballots RH-25 and RH-342. These two ballots were objected to because on the last spaces for councilors the name Jeon Ka. Tongohan was written with additional epithets. Thus, in ballot RH-25 "Leon Bakitong Pasikat" was written on the sixth line for councilors whereas in ballot RH-342 "Leon Baliw Tongohan" was also written on the sixth line for councilors, and it is contended that the additional epithets were written by the electors with the only purpose of identifying the ballots., It was proven that Tongohan was a conspicuous local politician and. the campaign manager and most aggressive orator of Hilao, and consequently a bitter political enemy of Bernados, but it was well-known, that he was not a candidate for my office. The Court of Appeals refused to reject these two ballots alleging that the purpose of the voters who prepared them in voting for Tongohan the epithets affixed to his name was only to cast aspersions on him and not identify their ballots. And this is "now assigned as error considering the ruling made by the Court of Appeals in connection with two other ballots, RH-27 and RH-347, wherein the name of Leon Ka. Tongohan appears written on the same spaces for councilors but without any additional epithets and yet, despite this fact, the court rejected them as marked ballots on the simple ground that the placing of the name Leon Ka. Tongohan on the ballots, who is not a candidate for any office, should be interpreted as desire on the part of the voter to identify the ballot.

While there apparently appears a contradiction in the ruling of the Court of Appeals, in the appreciation of the four ballots above adverted to, however, in our opinion, it did not err in admitting ballots RH-25 and BE-342 for Bernados because the name of Leon Ka.

Tongohan, with additional epithet, which appears written on said ballots should only be considered as stray vote which does not have the effect of invalidating them. As we have already stated, the writing of the name of a person who is not a candidate for an office on the ballot cannot be considered as a distinguishing mark unless proof to that effect appears clear. This should be distinguished from the cases cited by counsel for petitioner[1]
because in said cases the irrelevant epithets were affixed to the names of persons who were candidates, which is not the case here. Tongohan was not a candidate and so his vote should merely be treated as a. stray vote. The Court of Appeals may have committed a mistake in rejecting ballots RH-27 and RH-347, but this error cannot now be corrected because said ballots are not involved in this appeal.

Ballot RH-344. In this ballot, the voter wrote "Catapusan si Hilao" (meaning "I place Hilao last") in the last space for councilor. The Court of Appeals admitted this ballot for Bernados saying "that the voter put the foolish remark on the last line for councilor to give vent to his desire to tell Kilao that it was the end of his political career", and that "his intention was not to place such remark in order to identify his vote." We believe that this ruling is incorrect for such expression was irrelevant and unnecessary. That expression was undoubtedly written as distinguishing mark. As such it should invalidate the ballot following the well-settled ruling of this Court that "The writing of impertinent expressions in the ballot invalidates it." (Lucero *vs.* de Guzman, 45 Phil., 852; Fausio *vs.* Villarta, 53 Phil., 166; Villavert *vs.* Lim, 62 Phil., 178; Cecilio v, Tomaeruz, 62 Phil., 689, 710; Caraecle *vs.* Court of Appeals, et al., 50 O.G., 571.)

Ballot RH-32. In this ballot all the names of the candidates voted for were written in ordinary writing with the exception of the name "T. Bernados which was written in capitalized block-type letters or in or in printed from in the space for mayor. The Court of Appeals admitted this ballot as a valid vote for Bernados saying that the unique writing of "T. Bernados" as above seated might only due to a desire on the part of the voter to emphasize his favorite candidate. This is now assigned as error it being contended that the writing of said name in such

unique and eye-catching way can only be interpreted as a desire on the part of the voter to identify his vote.

We are inclined to uphold the ruling of the Court of Appeals for in our opinion that is only a mere variation in which under paragraph 18 of Section 149 of the Revised Election Code cannot have the effect of invalidating the ballot. Said section provides that "The use of two or more kinds of writing * * * shall be considered innocent and shall not invalidate the ballot." This is also in line with the ruling in Villavert *vs*. Lim, *supra*, which says:

> "LETTERS IN THE FORM OF PRINTED TYPES. – The form of the letters in which certain names of the candidates are written in the ballots 'Exhibits D-11 and D-19, D-25, F-25 and J-1 – which is similar to the printed form and different from the ordinary form of the letters in which the other names are written – does not constitute a distinguishing mark, there being no indication either in the ballots themselves or in the' testimony that the adoption of the form of printed; letters in writing certain names is with a view to marking said ballots for purposes of identification."

Ballot RH-257. In this ballot all the names of the candidates voted for were written in ordinary writing with the exception of the name of 'Teodulo Bernados" which was written in big Gothic letters with a flower drawn underneath in the space for mayor. The Court of Appeals declared this ballot to be valid vote for Bernados saying that such Gothic lettering merely shows the desire of the voter to' attain greater clearness and emphasis on his favorite candidate. This we consider to be an error because such Gothic lettering can no longer be considered a mere variation in the writing of the voter. Gothic lettering is generally used in writing names on diplomas, certificates of merit, or other documents evidencing a meritorious award, but not in ordinary documents. When the voter wrote the name of Bernados in Gothic letters he must have done it with the evident intention of placing a distinguishing mark on his ballot which

necessarily invalidates it. This ballot therefore should be rejected. –

Ballot RH-192. In this ballot the voter wrote the name "Verano" in the space for senator in the special election in capital letters while he wrote the names of the other candidates in the respective spaces in ordinary writing, and it is now contended that this is a marked ballot. The Court of Appeals ruled otherwise holding that there is no positive proof tending to show that the name "Verano" was intentionally Written in capital letters in order to identify the ballot. To this we agree for we believe that the writing of that name in capital letters is merely a variation which does not have the effect of invalidating the vote. This ballot should be counted for Benados.

Ballot RH-256. This ballot is objected to because the middle initial "P"; and the surname "Laurel" in the first space for senator are Written in such big letters that one can easily distinguish them from the rest of the ballot. The Court of appeals admitted this ballot as a valid vote for Bernados for the reason that there was no positive proof that said initial and name of Laurel were intentionally written with capital letters merely to identify the ballot. This ruling is correct it being merely an innocent variation of the
writing of the voter. This ballot should be counted for Bernados.

Ballot RH-185. This ballot was objected to as a marked ballot because the voter wrote the name "Jose P. Laurel" transversally or obliquely on the third and fourth spaces for senators, and the Court of Appeals ruled that that is not an illegal mark because it merely shows that Laurel was the only senatorial candidate for whom the elector desired to vote. This ruling is now disputed on the ground that if the voter desired to vote only for Laurel as alleged he could have written his name in straight line on any of the eight spaces reserved for the senatorial candidates. We believe that the ruling of the court is correct for there is no positive evidence to, show that the intention of the elector in writing the name of Jose P. Laurel in the way he wrote was to identify his ballot. This vote should be counted for Bernados.

Ballot TB-41. This ballot was examined and found by the board of

inspectors as marked ballot so that at the back of it was written the notation “marked ballot” with the signatures of the inspectors. Nevertheless, the Court of Appeals declared this to be a valid vote for Bernados for it did not find anything unusual in its face that may be considered as distinguishing mark. The court said; “Except for the fact that the name of Jose P. Laurel is written in a size smaller than the other names appearing therein, all the names of the candidates voted for are written in same style of writing.” To this we agree. This ballot should be counted for Bernados.

Ballot RH-29. In this ballot the space for mayor is blank, and in the space tor vice-mayor “P. Amonoy” was written on top thereof also in the space for vice-mayor were written words which Bernados claims to be his name. The Court of Appeals admitted this ballot for Bernados, making, the following comment: “The surname of the protestant (Bernados) was written below, but reaching almost up to, the proper space for mayor. The name of P. Amonoy, a registered candidate for vice-mayor, was written on the proper space for vice-mayor. Other names of candidates were written in this manner. Evidently, the voter had poor eyesight.” We find this comment correct. We may add that the elector sterns to be a poor writer or of little instruction, and so he is not accurate in writing the names on the proper space. But it appears clear from an examination of the ballot that his intention is to vote Bernados for the office of mayor. The court did not err in admitting this ballot for him.

Ballot RH-167. The lower court found that the name written on the space for mayor is “T. Bamndiao” and, consequently, rejected this ballot for Bernados because said name is not *idem sonans* for T. Bernados. The Court of Appeals disagrees with this finding and believes that the name written might be; read either as “T. Bamndiao”, or'”T. Barnndios”, or “T. Barnndias”, as claimed by counsel for Bernados. The reason of the court is: “The last alphabet in the name might be either ‘o’ or ‘s’. The writer of the ballot is almost illiterate as shown by the fact that he tried to vote for the positions of Mayor and Vice-Mayor only. For the office of Vice-Mayor, the voter was able to scribble only the Initials ‘P.A.’ But there is no question

that the ballot is so defective enough as to fail to show that the intention of the voter is to vote for Bernados." To this comment we agree. We have carefully examined the ballot and we are of the opinion that the name written on the space for mayor may be admitted for Bernados under the rule of idem sonans.

Ballot RH-341. This was rejected by the lower court because it contains the word "Agnos" before the name of Teresa M. Jugo, a candidate for councilor, which was considered as a distinctive mark. Since Teresa M. Jugo was the lane woman candidate for councilor, the word "Agnos" might have been added only to her name as a mere nickname or appellation of friendship and so the Court of Appeals admitted the ballot as a good vote for Bernados with the following comments "Since we are not convinced that the word was' written in order to identify its voter, this ballot should be admitted as good vote for the appellant, under Rule 9, Section 149, of the Revised Election Code." To this comment we agree.

*BALLOTS CONTESTED BY RESPONDENT*

The ballots contested by respondent are TB-19, TB-20, TB-21, TB-22, and TB-23, which the Court of Appeals refused to admit for Bernados on the ground that they were marked "spoiled ballots". These ballots form part of the 13 ballots which were found in the red box when the same was opened during the trial in the lower court. On the back thereof there appear written the words "spoiled ballots", except in one, but they were not accompanied by the signatures of the inspectors as required by law (Section 136, Revised Election Code). They were also found with their coupons detached. Together with the 13 ballots, there were also found in the red box 6 ballots which have their coupons attached and which were marked as "spoiled ballots". Because of the fact that the 5 ballots in question, as well as the rest of the 13 except 1, were all marked as "spoiled ballots", the Court of Appeals refused to count them for Bernados evidently because of the provision of the law that "The ballots deposited in the red box shall be presumed to be spoiled ballots, whether or not they contain such notation" (Section 147, Revised Election Code). In this connection, it is

interesting to note the following facts found by the Court of Appeals:

> "In this precinct No. 3, 200 voters voted, 206 ballots were used, 200 detached coupons found in the red box, and 187 ballots actually found in the white box or box for valid ballots. We fully concur with the observations of the court below, repeated with clearness in appellee's brief, that the 6 ballots with their coupons attached might have been considered spoiled in the manner envisioned under Section 136 of the Revised Election Code, while the 13 ballots with their coupons detached might have been declared spoiled ballots pursuant to Section 137 of the same Code. If the ballots with their coupons attached! were in fact considered spoiled, under the provisions of Section 136, the respective 6 voters must have been given one more ballot each, and this explains the fact that while only 200 electors voted, 206 ballots were used. Again, if the 13 ballots with their coupons detached were in fact considered spoiled pursuant to Section 137, the respective 13 voters might not have been given another ballot each, and this explains why only 187 ballots were found in the white box for valid ballots.

We are of the opinion that the Court of Appeals erred in declaring invalid the 5 ballots in question. It is true that the law presumes that ballots deposited in the red box are spoiled ballots, whether or not they contain a notation to that effect, but we believe that the Facts proven in this case as found by the Court of Appeals sufficiently overcome such presumption pointing to the inevitable conclusion that said ballots were placed in the red box, not at the time they were cast by the elector, but during the canvassing of the votes, and, therefore, they can still be the subject of re- view as marked ballots. Our reasons for reaching this conclusion are: (1) In Precinct No. 3 where these ballots were cast only 200 voters voted, 200 detached coupons were found in the red box, and only 187 ballots were actually found in the white box; or box for valid ballots. This means that the 13 Selectors whose ballots were allegedly spoiled were not given an extra ballot each as required by law (Section 136, Revised Election Code).

Evidently these 13 ballots, including the disputed ones, had been mistakenly placed in the red box for spoiled ballots; (2) all these 13 ballots do not have their coupons attached, as should be the case if they were really spoiled ballots, a circumstance which indicates that they were actually cast by the electors; and (3) the words "spoiled ballots" written at the back of each and everyone of these 13 ballots do not carry the signatures of the inspectors which the law requires to serve as a guarantee of their compliance with the law. These circumstances, as we have already stated, sufficiently overcome the presumption that said ballots are spoiled ballots within the meaning of the law. They can therefore still be the subject of review. We have carefully examined the 5 ballots under consideration and we have found that they do not suffer from any defect which would invalidate them and, therefore, we find no reason why they should not be counted in favor of respondent.

In resume, we declare that of the ballots contested by petitioner, ballots marked as inhibits TB-37, TB-135, and counted for petitioner, and ballots marked as exhibits RH-344 and RH-257 should be rejected and deducted on the total number of votes cast for respondent. With regard to ballots TB-19, TB-20, TB-21, TB-22, and TB-23 contested by respondent, we declare that the same are valid votes and should be counted in favor of respondent.

Summarizing the number of ballots which we have admitted rejected, we find that 3 votes should be added to those obtained by petitioner and 5 votes should be added to, and 2, votes should be deducted from, those obtained by respondent with the result that respondent is still winning with a majority of 3 votes.

We, therefore, affirm the decision appealed from, without pronouncement as to costs.

*Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo,* and *Concepcion, JJ.,* concur

*Mr. Justice Labrador* took no part.

*Mr. Justice Reyes, J.B.L.,* did not took part."

[1] Cecilio *vs*. Tomacruz, 62 Phil. 694; Corpus *vs*. Ibay, G. R. No. L-2305, July 8, 1949; Fausto *vs*. Villarta, 53 Phil.,166, and Villavert *vs*. Lim, 62 Phil. 178.

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