104 Phil. 347

**[ G. R. No. L-12631. August 22, 1958 ]**

**RAFAEL I. AMURAO, PETITIONER, VS. INDALECIO CALANGI, ET AL., RESPONDENTS.**

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

**BAUTISTA ANGELO, J.:**

In the general elections of November 8, 1955, Rafael I. Amurao and Indalecio Calangi were candidates for the office of mayor of Mabini, Batangas. After a canvass of the votes, the municipal board of canvassers found that Calangi had obtained 2,015 votes and Amurao 2,010 votes, and proclaimed Calangi mayor-elect by a majority of five (5) votes.

Dissatisfied with the result, Amurao filed a protest in the Court of First Instance of Batangas impugning the returns from nine precincts of Mabini on the grounds of fraud, error and irregularities. Calangi denied the allegations of the protest and filed a counter-protest assailing the returns from other seven precincts of Mabini. However, the counter-protest with reference to Precinct No. 11 was later withdrawn.

After trial, the lower court rendered a decision declaring Amurao mayor-elect of Mabini with a majority of six (6) votes, having received 2,101 votes as against 2,095 adjudicated to Calangi. The Court of Appeals to which the decision was appealed by Calangi reversed this decision and declared Calangi the duly elected mayor of Mabini with a total of 2,140 votes, or a plurality of 74 votes over Amurao, who obtained 2,066 votes. This is a petition for review filed by Amurao raising as only issue the erroneous appreciation of certain ballots by the Court of Appeals.

The first assignment of error involves fifty-six (56) ballots which were counted by the Court of Appeals in favor of respondent Calangi on the ground

that, although the name of Calangi was not written on the proper space for mayor, the intention of the voter to vote for him is manifest and should be given effect, citing some decisions of the Supreme Court, of the Court of Appeals and of the House Electoral Tribunal. The Court of Appeals stated that, while the general rule, based on the provisions of Sections 135 and 149 (13) of the Revised Election Code, is that "for any ballot to be counted for a candidate for mayor, it is indispensable that his name is written by the voter in the proper space for mayor, which word is clearly printed in the ballot and cannot be mistaken by a person who, as provided by the Constitution, is able to read"[1] this general rule is not always mandatory and inflexible. It is not so rigid as to admit of no exceptions.. The Court of Appeals cited the case of Villavert vs. Fornier, 84 Phil., 756; 47 Off. Gaz., 1789, wherein the Supreme Court made the remark that "Any dictum that may be found in Pimentel vs. Festejo, (*supra*) to the effect that the provisions of 135 of the Revised Election Code are mandatory and not directory, is disauthorized."

Petitioner now contends that this conclusion of the Court of Appeals is erroneous because, the votes for Calangi not having been written on the proper space for mayor, cannot be counted in his favor, but should be considered as stray votes and invalid under the provisions of Sections 135 and 149 (13) of the Revised Election Code. In support of his contention, petitioner cites several decisions of the Supreme Court, of the Court of Appeals and of the House Electoral Tribunal.

In order to dispel any doubt in the minds of the bench and bar with regard to the proper interpretation that should be placed on the provisions of Sections 135 and 149 (13) of the Revised Election Code in view of the apparent conflict now existing in our jurisprudence as to the effect to be given to the failure of the voter to write on the proper space on the ballot the name of the candidate for whom he desires to vote, we will discuss briefly the different decisions of this Court that have been rendered interpreting or applying the provisions above adverted to.

The first case in which this Court has been called upon to pass on the validity of a ballot where a general misplacement of the names of the candidates to be voted for appear written successively in the order indicated therein, is

that of Lucero vs. De Guzman, 45 Phil., 852, wherein the first ruling on general misplacement has been laid down. In that case, speaking of the ballots contested because of a general misplacement of the names of the candidates, this Court said: "Not infrequently there was evidently a general misplacement of the whole series of names intended to be voted successively for senator, representative, and provincial governor; and we find that, beginning at the top of these ballots, the voters have placed the name of the senator above the space intended for his name and so on through the other offices successively. The result is that the name of the person for whom the voter may have intended to vote as representative appears in the space for senators, and the name of the person intended to be voted for as governor appears in the space for representative. The trial court used proper discernment in rejecting votes for either of the litigating parties where there was apparently a single misplacement, i.e., in the office of governor; but he made a distinction in those cases where there was a general misplacement of the whole set. The reason given was that in this latter class of cases it could be inferred that the name appearing in the space for representative was really intended to be voted for governor." Upon a careful consideration of the issue, this Court found this distinction to be erroneous and held that the rule advanced regarding general misplacement cannot be maintained because "a name can be counted for any office *only* when the name is written within the space indicated upon the ballot for the vote for such office." And on this point, the Court laid down the following ruling: "Only names written within the space (encasillado) set apart for a particular office can be counted as properly voted for that office; and this rule applies not only where there appears to have been an error in the placing of the name of a single candidate but to cases where there is a general misplacement of the entire series of names intended to be voted for the succssive offices."

The next case where the issue of general misplacement was involved is Kempis vs. Bautista, 81 Phil., 447, decided on August 27, 1948. Although no mention of the issue was made in the decision, the same however was raised in appellee's brief, because ballots of this nature were rejected, and this Court laid down the following ruling: "Para que un candidate pueda reclamar con exito una balota es precisso que en ella este escrito su nombre en el encasillado correspondiente al cargo al cual es candidate. Si su nombre aparece escrito en el espacio correspondiente a un cargo la presuncion es que fue votado para dicho cargo y no

para otro."

The case of Pimentel vs. Festejo, 46 Off. Gaz., 2533, decided on January 11, 1949, is the latest which involves the issue of general misplacement. There, appellant's contention is premised on the theory "that his name was only misplaced in the ballots in question but the intention of the voters to elect him as mayor can be gathered from the fact that in the order or sequence of the candidates for the several positions mentioned in each ballot, his name would appear to be written in the space for mayor if the names of the candidates for governor, members of provincial board, mayor and councilor have not been also misplaced one or two lines above or below the correct space." This Court held that this theory is untenable, and laid down the following ruling: "For any ballot to be counted for a candidate for mayor, it is indispensable that his name is written by the voter in the proper space for mayor, which word is clearly printed in the ballot and cannot be mistaken by a person who, as provided by the Constitution, is able to read. * * * A name can be counted for any office only when it is written within the space indicated upon the ballot for the vote for such office (Lucero vs. De Guzman, 45 Phil., 852). It is impossible to count a ballot as vote for a candidate for mayor, when his name is clearly written in the space reserved for another office."

The above rulings of this Court only indicate one thing: that the voter should write the name of the person he intends to vote for in the proper space indicated in the ballot for the office for which he as a candidate in order to avoid any doubt or confusion as to the candidate he intends to vote for. The rulings seem also to indicate that the provision of the law on this point should be strictly followed so that a deviation therefrom would render the vote invalid and of no effect. Indeed, Section 135 of the Revised Election Code provides that the voter, on receiving his ballot, shall fill the same "by writing in the proper space for each office the name of the person for whom or the name of the party for which he desires to vote", and to make this provision effective, it was provided in Section 149 (13) of the same Code that "Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, *shall be void and counted as stray vote* but shall not invalidate the whole ballot." The philosophy behind the rulings above adverted to is to make of these legal provisions mandatory in order to avoid any confusion in the minds of the

officials in charge of the election as to the candidates actually voted for and stave off any scheming design to identify the vote of the elector thereby defeating the secrecy of the ballot which is the cardinal feature of our Election Law.

In reaching this conclusion, we have not overlooked our ruling in the case of Villavert vs. Fornier, 47 Off. Gaz., 1789, which was cited by the Court of Appeals to uphold its view. Nor do we ignore the decisions of the House Electoral Tribunal where the rule of general misplacement has been upheld.[2] But the Villavert case is not pertinent for it does not involve a general misplacement of votes, while the House Electoral Tribunal has adopted an inconsistent stand, for in three other cases it repudiated the theory of general misplacement.[3] Thus, in the Villavert case, we find that the same only involves a *single misplacement* in that the name of candidate Villavert for provincial governor was written "on the double line immediately above the words 'provincial governor', and no other name appears on the dotted line immediately following said words, for which reason this Court said: "It cannot be doubted that the intention of the voter in thus writing the name of said candidate was to vote him for one of the offices specified on the ballot", which is none other than that of provincial governor. "If the intention of the voter can be ascertained in an indubitable manner, as in this case, it should be given effect—not frustrated." Evidently, this ruling cannot now be invoked because it is inapplicable to the issue before us.

We are not also oblivious of the principle that "no technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, not from evidence *aliunde*"[4], and that "Consistently with this, the utmost liberality of construction must be observed in reading the ballots, with a view to giving effect to the intention of the voters" [5], so well postulated in several decisions of this Court. And it is in view of this liberal policy that we have declared valid the vote for governor in the Villavert case even if not written in the proper space of the ballot, the vote in the Caraecle case[6], where the vote, although misplaced, was preceded by the name of the office of the candidate, and the vote for mayor in the Moya case[7], where the name of

respondent was written immediately below the line for mayor but immediately above the line for vice-mayor. But aside from these exceptions, we cannot go any further in our liberalism lest we might open the door to a dangerous situation where we may have to declare valid a vote written on the ballot, regardless of order and place, so long as the intention of the voter may be discerned or ascertained without the aid of evidence *aliunde* thereby brushing aside specific rules of interpretation which by legislative fiat are ordained to be observed to achieve an untrammelled expression of the people's will. Such cannot be the intendment of our legislative body.

We are therefore constrained to hold that the votes cast for respondent Galangi in the fifty-six (56) ballots involved in the first assignment of error are stray and invalid for having been cast in violation of the provisions of Sections 135 and 149 (13) of the Revised Election Code.

The second assignment of error covers twenty-seven (27) ballots which were invalidated because the names of some candidates were written twice in the ballots. The Court of Appeals said that these ballots are too numerous to be merely the result of honest and innocent mistakes of the voters who prepared them. Nor can they be attributed to the ignorance of the voters because a semi-illiterate or unschooled elector would not ordinarily make the trouble of writing the name of the candidate twice in the ballot. When he goes out of his way to do so, his purpose becomes suspicious, and such can only be considered as a design to mark the ballot.

With this opinion we disagree, for the reason that under Section 149, paragraphs 3 and 13, of the Revised Election Code, "when the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate. The vote for the office for which he is not a candidate shall be counted as stray." Since there is no evidence showing that the repetition of the names of the candidate was made for the purpose of identifying the ballots, the votes for this candidate shall only be considered as stray votes but they cannot have the effect of invalidating the votes in favor of petitioner Amurao who was properly voted for the office of mayor. As it was held in one case :

> "In ballot (exhibit 3-6) V. Cruz is written in the space for mayor. Under section 149, paragraph 6, of the Revised Election Code, this vote was correctly counted for the respondent. But it is contended for the petitioner that the vote should be rejected, because B or R Cruz appears in the space for member of the provincial board and the voter might have intended to vote the respondent for the latter position and not for mayor. Petitioner's contention is not tenable, for the reason that when the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate, and the vote for the office for which he is not a candidate shall be counted as stray (Revised Election Code, section 149, paragraph 3)." (Illescas vs. The Court of Appeals, et al., 94 Phil., 215.)

Since no evidence *aliunde* was presented and the ballots in question reflect the will of the voters, extreme caution should be observed before the same are invalidated. These ballots may be numerous, it is true, but it was not shown that they pertain to only one precinct. Apparently, they come from different precincts, and the names of the candidates voted twice are candidates for different offices. It cannot therefore be asserted that they were filled out by the voters following a pattern or a preconceived agreement reached between them before the election. "No ballot should be discarded as a marked ballot unless its character as such is unmistakable" (Valenzuela vs. Carlos, 42 Phil., 428; Cacho vs. Abad, 62 Phil., 564). These ballots should therefore be counted for Amurao.

The third assignment of error only involves eighteen (18) ballots, and not nineteen (19) as erroneously stated in petitioner's brief.

Ballot Exhibit H—23. This ballot was rejected because the name of "Arago" was written on the first line for senators after the name "Recto" and it was considered as marked. This is a mistake because Arago was a candidate for councilor. The same shall only be considered as stray vote which does not invalidate the whole ballot. This should be counted for Amurao who was properly voted for mayor.

Ballot Exhibit O—55. This was rejected for the only reason that the word "Alap" was written on the sixth line for councilors. This name may refer to

candidate Lacap for councilor and so it is only a stray vote. Following the same ruling, the ballot is valid for Amurao.

Ballots Exhibits L—47, N—37, and O—48. These ballots were rejected as marked because the voters wrote the name of Calangi in the space for senators in Exhibit L—47, and on the space for vice-mayor in the other two ballots. This is error. Following the same ruling, said votes shall only be considered as stray which do not invalidate the entire ballot, and so they tire valid votes for Amurao who was voted in the proper space for mayor.

Ballot Exhibit I—13, This was rejected as marked because it contains the irrelevant and indecent expression “Hemiay na Bolos” on line four for senators. We agree with this finding. This impertinent expression is sufficient to nullify the ballot as ruled in Caraecle vs. Court of Appeals, et al., 50 Off. Gaz., 571.

Ballot Exhibit A—19. This ballot was also rejected for containing the unnecessary and irrelevant expression “Anac ni Carias bombay” after the name Rafael Amurao. Upon the authority of the same case, this ballot was properly rejected.

Ballot Exhibit O—53. This was rejected as marked because the word “Caibiaan” was written after the name “M. Arago” on the third line for councilors. This word may have been intended only as an expression of affection or friendship which cannot be considered as a mark under Section 149, paragraph 9, of the Revised Election Code. This ballot should be counted for Amurao.

Ballot Exhibit M—41. This was rejected as marked on the sole ground that the last two letters of Hernandez and Casapas, candidates for councilors, were separated by commas. We have examined the ballot and in our opinion said commas were innocently written by the voter in his hurry to fill the ballot and cannot be considered as a mark unless the evidence is clear (Section 149, paragraph 18, Revised Election Code). This ballot should be counted for Amurao.

Ballots Exhibits I—14, J—45, K—9, L—48, M—37, N—36, N—43, O —44 and O —54. These nine (9) ballots were rejected by respondent court as marked because certain names or nicknames were written thereon, to wit: “Abarkes” on line six for councilors on Exhibit I—14; “Betol” on line six for councilors in Exhibit J—45; “Antonio Dalangin” on line seven for senators in Exhibit K—9; “Aling

Oyang" on line one for provincial board members on Exhibit L—48; "Pres." on line one for senators on Exhibit M—37; "Ariejis" on line two for senators in Exhibit N—36; "Marcis" on line two for senators in Exhibit N—43; "Simdo" on line one for senators in Exhibit O—44; and "Bitong" on line six for senators in Exhibit O—54. Whether these words were attempts to write the names of candidates or merely refer to names of persons who were not candidates, they cannot be considered as distinguishing marks that would invalidate the entire ballot in the absence of evidence aliunde to show that they were deliberately written thereon to identify the ballots. This ruling is predicated upon the rule which provides that "Any vote in favor of a person who has not filed a certificate of candidacy * * * shall be void and counted as stray votes but shall not invalidate the whole ballot" (Section 149, paragraph 13, Revised Election Code). We find no reason to depart from this ruling in the absence of any clear evidence showing a contrary intention. These ballots should be counted in favor of Amurao who was properly voted for mayor.

The fourth assignment of error only refers to Ballot Exhibit P—40. This ballot was rejected because on the space for mayor was written only the word "Maeor" which does not clearly identify the candidate voted for. This rejection is proper following the rule under Section 149, paragraph 15, of the Revised Election Code.

The fifth assignment of error refers to Ballots Exhibits 2, 5—L, 7—W, 8—II, 16—D and 11—L.

Ballot Exhibit 2. This ballot was properly admitted for respondent Calangi whose name was voted in the space for mayor. The initials for the candidates for councilors on the spaces for said offices do not constitute distinguishing marks.

Ballot Exhibit 5—L. This was properly admitted for respondent Calangi who was voted on the space for mayor. The alleged figure '"9″ on line one for members of the provincial board may have been intended as the first letter of a name which the voter wanted to write. It should be considered innocent in the absence of evidence *aliunde* that it was placed deliberately as a, distinguishing mark.

Ballot Exhibit 7—W. This ballot was properly declared valid for Calangi whose

name appears on the space for mayor. We agree to the conclusion that the initials appearing on the lines for vice-mayor and first line for councilor do not constitute distinguishing marks for the small circles placed after the initials were intended merely as periods (Section 149, paragraph 18, Revised Election Code).

Ballot Exhibit 8—II. This was declared valid in favor of respondent Calangi who was properly voted on the space for mayor. We agree to the conclusion that the Words "wala na" written on the eighth line for senators was merely an indication of the voter's desistance from voting the rest of the candidates for senators.

Ballot Exhibit 16—D. We agree with respondent court in admitting this ballot for Calangi because the alleged mark consisting of the letter "n" below line six for councilors appears to be innocently written.

Ballot Exhibit 11—L. We agree that this is a good ballot for respondent Calangi. The repetition of the names of candidates for mayor and vice-mayor cannot be considered as identification mark without evidence *aliunde* to that effect.

The sixth assignment of error refers to Ballots Exhibits L—52, L—53, O—33, 2—M and 11—R. The respondent court rejected the first three ballots as valid votes for petitioner and admitted the last two as valid votes for respondent. It appears that during the trial evidence *aliunde* was presented with respect to these ballots. As regards Exhibits L—52, L—53 and O—33, matching was allowed and it was ascertained that the first two were cast by Albino Dimayuga and Canute del Espiritu Santo whose names and initials appear thereon as identifying marks, and the last was fraudulently cast by a flying voter. And as regards Exhibits 2—M and 11—R, testimonial evidence was presented by petitioner to show that they were prepared by the voters only in one voting booth, but this evidence was not given credence. Considering that the conclusions made by respondent court with regard to these ballots are based on questions of fact, the same are not now subject to review and therefore its ruling should be upheld.

The seventh assignment of error refers to four ballots. Ballot Exhibit 7—Z.

This ballot was properly admitted for respondent Calangi. The word written in the space for mayor is “A. Calangi” without a dot on the letter “i”. The erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in his favor (Section 149, paragraph 6, Revised Election Code).

Ballot 7—HH. This ballot was declared valid for respondent on the ground that the name of Calangi on the second space for senators was preceded by the word “Myor” a misspelling of the word “Mayor”. In line with the ruling in the case of Caraecle vs. Court of Appeals, *supra*, this ballot should be counted in favor of Calangi.

Ballots Exhibits 10—C and 10—D. These two ballots were correctly counted for Calangi whose name was properly voted on the space for mayor although it bears the prefix “Dr.”. This prefix is allowed by law and cannot be considered as a mark (Section 149, paragraph 5, Revised Election Code).

Let us now come to the counter-assignment of error by respondent. This counter-assignment refers to fourteen (14) ballots, known as Exhibits O—37, O—38, O—39, and P—29 to P—39, which were cast for petitioner in consideration of certain bags of cement belonging to the Municipality of Mabini, which petitioner, during his incumbency as mayor, distributed free of charge to the persons who cast those votes.

The evidence shows, according to the Court of Appeals, that the municipal treasurer of Mabini purchased cement from the Cebu Portland Cement Company in the year 1955 and delivered it to petitioner Amurao who was then the incumbent mayor. It was the mayor who distributed the cement free of charge among the barrio residents. The delivery is evidenced by receipts and the ballots of the voters who received the cement were identified by matching the serrations of the ballots with the corresponding coupons. The respondent court found that there is an indication that the cement was used directly by Amurao for electioneering purposes but did not declare the votes of the voters who received the cement invalid because “there is no express statutory prohibition against such a practice.”

This finding is erroneous, for Section 49 of the Revised Election Code

precisely prohibits such expenditures. Thus, said section provides that it is unlawful for any person to make or offer to make an expenditure to any person to induce him either to vote or withhold his vote for or against any candidate, and the term expenditure includes the payment or delivery of anything of value (Section 39, *Ibid*.). There is no question that cement is a thing of value and that its delivery to a voter as an inducement to vote for a candidate is unlawful. But respondent court apparently did not declare the ballots in question invalid because there is nothing in the law which declares them void although a candidate who commits such act is amenable to criminal prosecution (Sections 183-185, Revised Election Code). Respondent now contends that if such expenditure, is unlawful and is punishable by law, so a vote cast in consideration of the money or thing given should also be declared illegal. While in Zosa vs. Lucero, (ETHR No. 68), the House Electoral Tribunal declared that votes obtained because of such pecuniary inducement are illegal and should be rejected because it violates the spirit of our Election Law whose fundamental aim is to promote free and clean elections, we do not deem it however necessary to pass on this point now because even if the ballots in question be deducted from those obtained by petitioner Amurao, the same will not materially affect the result of the present appeal. Petitioner Amurao would still win by a small margin.

To recapitulate, we wish to make the following summary:

| | Sustained | Reversed |
|---|---|---|
| First Assignment of Error ..... | 0 | 56 |
| Second Assignment of Error ..... | 0 | 27 |
| Third Assignment of Error ..... | 2 | 16 |
| Fourth Assignment of Error ..... | 1 | 0 |
| Fifth Assignment of Error ..... | 6 | 0 |
| Sixth Assignment of Error ..... | 5 | 0 |
| Seventh Assignment of Error ..... | 4 | 0 |
| Counter-assignment of Error ..... | 14 | 0 |
| TOTAL ..... | 32 | 99 |

Votes to be deducted from Calangi……. 56 (1st assignment of error)

Votes to be added to Amurao……. 43 (2nd & 3rd Assignment of error)

| Calangi | Amurao |
|---|---|
| 2,140 | 2,066 |
| -56 | 43 |
| 2,084 | 2,109 |

Majority in favor of Amurao ……. 25 votes.

Wherefore, the decision appealed from, is reversed. Petitioner Amurao is hereby declared mayor-elect of Mabini, Batangas with a majority of twenty-five (25) votes. No pronouncement as to costs.

*Paras, C. J., Bengzon, Reyes, A., Concepcion, Reyes, J. B. L., Endencia,* and *Felix, JJ.,* concur.

*Padilla, J.,* concurs in the result.

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[1]Citing Pimentel vs. Festejo, 82 Phil., 545; 46 Off. Gaz., 2533, 2535; Lucero vs. De Guzman, 45 Phil., 852; Aviado vs. Talens, 52 Phil., 665; Villaviray vs. Alvarez, 61 Phil., 42.

[2]Fernandez vs. Baes, 50 Off. Gaz., 2523 (1951); Moll vs. Fuentebella, Electoral Case No. 74 (1957). “

[3]Confessor vs. Lucero, 45 Off. Gaz., 743 (1948); Zoza vs. Lucero, Electoral Case No. 68, (1956); Albano vs. Reyes, Electoral Case No. 101, (1957).

[4]Perez vs. Suller, 69 Phil., 196.

[5]Valenzuela vs. Carlos, 42 Phil., 428.

[6]Caraecle vs. Court of Appeals, et

al., 50 Off. Gaz., 571.

[7]Moya vs. Del Fierro, 69 Phil., 199;
See also Coscolluela vs. Gaston, 63 Phil., 41.

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*DISSENTING*

**MONTEMAYOR**, *J.*,

The following dissent is prompted: First, by the close election race between petitioner Rafael Amurao and respondent Indalecio Calangi for the post of Mayor of Mabini, Batangas, and the checkered fortune had by each of them from, the Board of Canvassers and the courts, trial and appellate. Calangi was first declared mayor-elect by the Municipal Board of Canvassers by a majority of five votes; upon protest filed by Amurao in the Court of first Instance, the latter declared him winner over Calangi by the small margin of six votes. Still later, on appeal to the Court of Appeals by Calangi, he was declared duly elected Mayor by a plurality of 74 votes; and finally on appeal to this Tribunal by Amurao, the latter was declared Mayor-elect with a majority of 25 votes. Second, because of my disagreement to the ruling of the majority on the interpretation of the election law on the vajidity or invalidity of votes wherein there is a general misplacement of the names of the candidates, as well as the effect of writing the names of candidates twice, for different offices.

Fifty-six ballots claimed by Calangi, where there was a general misplacement of the names of his candidates and of his own, were rejected by the trial court for the reason that his name was not written on the line or space in the ballot corresponding to the office of Mayor. The Court of Appeals, after scrutinizing these 56 ballots, declared them valid for Calangi on the ground that considering the position of his name, as candidate for Mayor, and the positions of the names of the other candidates for other offices, despite the general misplacement of these names, nevertheless, the intention of the voter could be clearly ascertained, namely, to vote for Calangi as Mayor for Mabini. Said the Court of Appeals:

> "The general rule that a stray vote is invalid cannot always be literally followed because it is subordinate to the basic and paramount rule that the ballot should be read with reasonable liberality in order to give effect to the, voter's intention, (Mandac vs. Samonte, 49 Phil. 302; Moya vs. Del Fierro, *supra*; Perez vs. Suller, 69 Phil. 196), especially if the voter is unskilled in the use of the pen (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 429). A literal application of the rule invalidating stray or scattering votes might frustrate the voter's intention.
>
> "We have examined carefully the 56 contested ballots above described and we are convinced that the intention of the voters who cast said ballots was to vote for appellant Calangi. Their intention should be given effect. Said ballots exhibit the same features as those found in the cases of Siagan vs. Benesa, Moya vs. Del Fierro, Fernandez vs. Baes, and Villavert vs. Former, *supra*."

However, this Tribunal, through the majority opinion, rejects all these 56 ballots, simply because the name of Calangi was not written in its proper place. I am very much inclined to agree, as I do agree, with the Court of Appeals. The rule laid down in the election law, particularly, Sections 135 and 149, paragraph 13, should not be considered as a hard and fast and inflexible rule, much less mandatory. The strict interpretation of this provision laid down in the case of Pimentel vs. Festejo,[1] 46
Off. Gaz., 2533, to the effect that these provisions of the Election Code are mandatory and not directory, has been repudiated and set aside by this Tribunal in the case of Villavert vs. Fornier,[2] 47
Off. Gaz., 1789, where we said that:

> "Any dictum that may be found in our decision in Pimentel vs. Festejo *supra*, to the effect that the provision of the Revised Election Code under consideration is mandatory and not directory should be disregarded."

Incidentally, the House Electoral Tribunal, composed of nine members, three of whom are Justices of the Supreme Court, in the case of Estanislao A. Fernandez vs. Juan A. Baes, 50 Off. Gaz., No. 6, p. 2523, accepted and applied

this rule of general misplacement, and in the course of ruling on certain ballots involved in the protest, said:

> "On Exhibit F—6, the spaces reserved for President and Vice-President are not filled out, but in the first, second and third spaces for Senator are written the names Laurel, Briones, and E. Fernandez, respectively. Considering the order in which said names had been written, and considering further that the first two names written by the voter correspond to candidates for President and Vice-President, respectively, it is evident that the voter simply incurred in a *general misplacemen*t of the names of the candidates he was voting for. Following the *basic rule of liberality* the majority of the members of the Tribunal agreed to admit this ballot." (Italics supplied).

* * * * * *

> "In Exhibit F—3, all the names of the candidates voted for were written one space lower so that the name 'E. Fernandez' appears in the first space for Senator. In accordance with the ruling made by the majority of the members of this Tribunal in connection with two other ballots in which a *general misplacement* was made by the corresponding voters, this ballot is admitted." (Italics supplied).

And in the case of Sebastian C. Moll, Jr. vs. Felix A. Fuentebella, Electoral Case No. 74, decided by the same House Electoral Tribunal as late as August 10, 1957, the same rule of misplacement was accepted and applied, as shown by the following ruling of said Tribunal:

> "The general rule is that where the name of the candidate is written entirely outside of the space designated for the office for which he is a candidate, the vote is counted as stray. (Valenzuela vs. Carlos, 43 Phil. 428). However, in order to give effect to many ballots wherein there was a general *misplacement* of the names of candidates, we have admitted as valid, ballots containing the name of the parties herein where it appears in the proper sequence of the misplaced names of candidates for President, Vice-President and

> Representative no matter where they appear on the ballot." Italics supplied).

It is significant to note that in each of the above-cited cases of the House Electoral Tribunal, the decision was signed by the three members, Justices of the Supreme Court, namely, Justices Padilla, Reyes, and Bautista Angelo in the Fernandez vs. Baes case, and by Justices Padilla, Bautista Angelo and Labrador in the second case of Moll vs. Fuentebella. Still more significant to note is that Justice Bautista Angelo, signing both decisions of the House Electoral Tribunal, which as already stated, accepted and applied the rule of misplacement, is the very Justice and jurist who has now penned the learned opinion of the majority, which to me unfortunately abandons the said rule. Perhaps, it is this fact of the adherence to this rule by four Justices of this Tribunal, including the writer of the present majority opinion, which has emboldened and encouraged the undersigned to prepare the present dissenting opinion.

I am for a liberal interpretation and application of the provisions of the election law in so far as they refer to the validity of ballots, specially when the same are prepared by voters who have not had the opportunities and the benefits of education and experience in paper work. The filling out of a ballot in the voting booth by an elector is not a test of calligraphy and skill in writing and filling out of blank forms. The ballot is but a medium of expression of the will of the citizen and his preference for a candidate or candidates for certain offices. If that will can be ascertained in any legal or reasonable matter, considering his degree of education and training as may be gathered from his penmanship, then his ballot should be considered a valid vote, regardless of clumsiness, lack of skill, or even carelessness in the preparation of said ballot. When a citizen has passed the test and proved his qualification as a voter, then every presumption and consideration should be accorded him and indulged in his favor, with a view to giving him participation and share in responsibility and right in the selection of the men who are to occupy public elective offices, specially local offices which directly and necessarily affect his life and his everyday activities.

Returning to this question of general misplacement, if there is only one name

on the ballot, as for instance, the name of a candidate for Governor is written on the line for Mayor or Councilor, then there would be no question that the same cannot be considered valid, because there is no way to determine that the voter really intended his vote for the office of Governor, But when there are several names of candidates for different offices, say for Mayor, Vice-Mayor and Councilors, and there is a sequence in the way these names are written, the mere fact that through the ignorance, lack of skill or experience of the voter, the first name is written above or below that of Mayor, with the corresponding misplacement of the names following it, should not invalidate the ballot. Otherwise, to stick to the letter of the law requiring that the name of a candidate should be written in the space for the office for which he is running would result in the disenfranchisement of many voters. We should bear in mind that many of the voters in the rural. areas seldom have the opportunity of writing even their names, much less filling out blank forms, such as a ballot. Once a voter is in the booth, he is completely on his own. He cannot consult anyone or seek advice or suggestion as to how the ballot is to be filled out, and he cannot take his time either, because when there are other voters waiting, he is given only five minutes. (Section 135, Revised Election Code). More often than not, he is confused and considering the limited time available to him, he may even get panicky and so proceeds to write out the names of his candidates the best way he could, often-times disregarding the order and even ignoring the spaces for the different offices. That is why we have cases of ballots filled out on the reverse side. But I repeat that considering the ballot in its entirely and the education, preparation, and experience of the voter as may be judged by the ballot itself, if the will of the voter can be ascertained, then said will should be accepted and carried out and such ballot should be considered valid.

Lastly, I wish to say a few words about the ballots which were declared invalid by the Court of Appeals, considering them as marked ballots, but which were validated by this Tribunal. Almost invariably, in these ballots, the name of a candidate was written twice. After considering these ballots with care, the Court of Appeals believes that they were marked ballots, because the writing of the name of a candidate twice and the position of said name convinced the Court of Appeals that they were intended to distinguish and identify the ballots. This Court, however, applied the rule contained in Section 149, paragraphs 3 and 13

of the Revised Election Code, to the effect that when the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate, and that any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as a stray vote but shall not invalidate the whole ballot. I shall not attempt to discuss all these ballots which were found marked by the Court of Appeals but found and declared valid by this Tribunal, but shall limit myself to some which are typical and exhibiting the same pattern as the rest. In Exhibit H—21, the name Recto is voted for Senator and also as Councilor. In Exhibit A—13, Paredes was also voted for Senator and also for councilor. These two men are national figures and it was a matter of public knowledge that they were running for the office of Senator, but surely, not for the office of Councilor of the town of Mabini, Batangas. The voters who prepared these ballots could not have made an honest mistake, not only because they must have known that Paredes and Recto were candidates only for the office of Senator, but also because as appears oih the official ballot, the spaces for Senators are at the top of the ballot and the spaces of Councilors are at the bottom, with a wide space between them corresponding to the offices of Provincial Governor and members of the Provincial Board, Mayor and Vice-Mayor. The only conclusion is that the writing of the name of Recto and Paredes in the space for Councilor was to mark and identify the ballots, evidently for the benefit and satisfaction of the people who were interested in the manner the voters voted. The same thing may be said of Exhibit A—14 where Recto is voted for Senator and Paredes is voted for Councilor. In Exhibit H—19, Arago, a candidate for the post of Councilor, was voted for Senator and was also voted for Councilor. He was only a local candidate for the post of Councilor, and yet the voter who prepared that ballot placed his. name in the space for Senator, evidently just to mark the ballot. Truly, the post of Councilor is a far cry from the office of Senator. In Exhibit I—10, Amurao is voted for the office of Mayor, but he was also voted for the office of Senator. What I said about Exhibit H—19 applies to Exhibit I—10. Then in Exhibit H—23, in the first line of the space for Senators, the name Recto and Arago are written. Arago, as already stated, was a candidate only for Councilor, never for Senator. Why the voter put his name on the same first line for Senator, with Recto may be puzzling, but one cannot but conclude that it was to identify the ballot.

Furthermore, in my opinion, whether or not a ballot, judging from its appearance, the names of candidates written on it and the relative positions of the said names, considering that there can be no valid excuse for writing the names of candidates for offices widely different not only in category, but in the relative position occupied by two offices on the ballot, is marked, is more a question of fact than of law. When the Court of Appeals, whose findings of fact are binding in this Tribunal in case of appeal, after a careful examination and scrutiny of a ballot, believes and concludes that it is a marked ballot, because it can be identified by the person or persons for whose benefit and satisfaction it was so marked, then said finding of the Court of Appeals should be accepted by this Court.

Although the rule in the application of the election law is that its provisions should be liberally construed so as to avoid any unnecessary disenfranchisement of voters, nevertheless, that portion of the law against marking or identifying ballots, should be construed and applied in such a manner as to discourage, if not eliminate, the identification of ballots. The secrecy of the ballot is one of the highlights of our electoral and suffrage system in order to secure and guarantee a free and honest vote. A voter, by means of the secret ballot, can select his candidates without any interference of pressure or influence from others. Unfortunately, not infrequently, this secrecy of the ballot is violated by those who, desirous of knowing how one has voted, whether or not in accordance with instructions or wishes of another who through bribery, favor, coercion, and pressure can impose his will on a voter, has devised ingenious means and schemes which the ordinary layman and an unpractised eye may overlook and pass undetected, such as, writing the name of a national figure like Paredes or Recto, candidate for Senator, in the space way below, for the post of Councilor; or writing on the space for Senator the name of one well known to the voter to be a candidate for Councilor and who has never aspired for the post of Senator. If we are to preserve the secrecy of the ballot, we must discourage all attempts at its infringement by invalidating marked ballots. On the importance arid necessity of the secrecy of the ballot, numerous authorities may be cited:

> "By compelling the voter to use official ballots only and to vote in secrecy, the dim of the law is to suppress coercion, bribery, and other crimes connected

with the election, and consequently to secure the free and honest expression of the conviction of every citizen As rightly observed by Witmore:

” ‘On the one hand it checks bribery and all other corrupt practices which consist in voting according to a bargain or understanding. No man has ever placed his money corruptly without satisfying himself that the vote was cast according to the agreement . . . And when there is to be no proof but the word of the bribe-taker (who may have received thrice the sum to vote for the briber’s opponent), it is idle to place any trust in such a use of money. In other .words, take away all interests in committing an offense, and the offense will soon disappear. . . On the other hand, the marking of the vote in seclusion reaches effectively another class of evils, including violence and intimidation, improper influence, dictation by employers or organizations, the fear of ridicule and dislike, or of social or commercial injury—all coersive influence of every sort depending on a knowledge of the voter’s political action. Tumult and disorder at the polls, bargaining and trading of votes, and all questionable practices depending upon the knowledge gained, as the day goes on, of the drift of, the contests,—it would be hardly necessary to argue in advance, even if England’s experience did not prove it, that these practices, wherever they have prevailed, must disappear. In short, the secret ballot approaches these more or less elusive evils, not merely with the weak instrument of a penal clause for this and that offense, but with the effective methods of modern legislation. By compelling the dishonest man to mark his vote in secrecy, it renders it impossible for him to prove his dishonesty, and thus deprives him of the market for it. By compelling the honest man to vote in secrecy, it relieves him not merely from the grosser form of intimidation, but from more subtle and perhaps more pernicious coercion of every sort. By thus tending to eradicate corruption and by giving effect to each man’s innermost belief, it secures to the republic what at such a juncture is the thing vitally necessary to its health—a free and honest expression of the conviction of every citizen.’ Witmore on the Australian Ballot System, 2nd Ed., Introduction, p. 52″ (Francisco, The Revised Election Code, pp. 193-194.)

“Statutes designed to secure the secrecy and purity of the ballot are mandatory in their character and are binding on both the officials and the electors.” (State vs. Christ (N.M.) 179, p. 629).

> "Names of prominent politicians, not candidates for councilors, written in the spaces for councilors, are marks on the ballots and 4 thus invalidate them." (Balajadia vs. Eusela, G. R. No. 42579, January 23, 1935, 3 L. L. J., p. 154).

For the reasons above-stated, I dissent.

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[1]82 Phil., 545

[2]84 Phil., 756

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