

PERFECTO BALASON, PROTESTANT-APPELLEE, VS. ERNESTO BALIDO, PROTESTEE-APPELLANT.

G.R. No. L-25772. November 29, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

The case involves a dispute over a public office Barrio Captain - of Concepcion, Batangas, Batangas, as an off-shoot to the barrio elections held by the residents of the said barrio of Concepcion on January 12, 1964, pursuant to Republic Act 3590 known as the "BARRIO CHARTER".

At the said elections, the Board of Election Tellers proclaimed Ernesto Balido as the duly elected Barrio Captain of Concepcion, Batangas, Batangas, who received one hundred fifty-one (151) votes as against his opponent, Perfecto Balason who obtained one hundred forty-nine (149) votes, with a plurality of two (2) votes over the latter.

On January 25, 1964, Perfecto Balason filed election protest before the Municipal Court of Batangas, Batangas impugning the election of Ernesto Balido to the office of Barrio Captain of Concepcion, Batangas, Batangas, on the grounds of "(a) errors or mistakes or bad appreciation of ballots; and (b) improper adjudication of votes."

After a trial, the Municipal Judge rendered decision declaring "the protestant (Perfecto Balason) the winner of the elections for Barrio Captain in the barrio of Concepcion, Batangas, Batangas, held on January 12, 1964, with a plurality of six (6) votes..." The protestee was ordered to pay to the protestant 250.00 as damages in the form of attorney's fees, plus P12.00 as commissioner's fees, and the costs.

Ernesto Balido appealed to the Court of First instance of Batangas from the decision of the inferior court.

After a trial on the merits of the case, a decision was rendered declaring "the protestant (Perfecto Balason) the winner in the elections for Barrio Captain of Concepcion, Batangas, Batangas, held last January 12, 1964, with a plurality of three (3) votes over the protestee, Ernesto Balido, who is hereby ordered to pay to the protestant the sum of P300.00 as attorney's fees, and the costs."

From the foregoing last decision, Ernesto Balido appealed to this Court.

Section 8, Republic Act 3590, known as the BARRIO CHARTER, provides:

"All disputes over barrio elections shall be brought before the justice of the peace court of the municipality concerned; And in the determination and decision thereof, the court shall follow as closely as possible the procedure prescribed for inferior courts in Rule 4, Rules of Court. The decision or the justice of the peace court shall be appealable pursuant to the Rules of Court to the Court of First Instance whose decision shall be final on questions of fact."

Six assignments of error are listed in the appellant's brief.

Under the first error, the rejection by the trial court of the ballots, exhibits DD and EE, for the protestee, on the

ground they are marked, is assailed. In urging for the reversal of the court's ruling, the appellant says: "It is possible that the secretary of the Board of Election Tellers had placed these numbers (332 and 333) on the questioned ballots, to indicate how much ballots he had prepared or were in his possession before voting started." The contention, based as it is on a mere supposition, is, obviously, without merit, for, if any semblance of truth there could be in the assumption, to establish it as a fact, the appellant should have summoned any member of the Board of Election Tellers to the witness stand to testify on that matter.

In relation to these two challenged ballots which the trial court had rejected as marked, the court said:

"5. Exhibit 'DD', because it is a marked ballot. The placing of No. 332 on the upper right hand corner of the ballot enables a third person to determine, without other aid, that it was the vote of a particular person. The voter thereby endangers the secrecy of his ballot by placing said number as a mark of identification."

"6. Exhibit 'EE', where the number 333 (was written) on the ballot serves to identify the voter."

Under the second error, it is contended that the court erred in not declaring the ballot, exhibit W, as valid vote for the protestee. Appellant argues thus: "On the ballot, the name of Ernesto Balido is written in the space for sitio. The lower court rejected this ballot, on the ground that protestee's name was not written on the proper space for barrio captain. The trial court said:

"2. Exhibit 'W', where the name Ernesto Balido is written on the space for sitio. 'In order that a vote may be counted in favor of the candidate for a particular office, his name must be written in the space reserved on the ballot for the name of the candidate for that office. If the name is written in the space reserved for another office, the ballot cannot be counted as a vote for said person for the office for which he is a candidate.' (Aviado v. Telaus, 52 Phil. 665.)

Under the third error, the admission of the ballot, Exhibit 55, as valid vote for the protestant, is assailed, on the ground that said ballot "contains a completely and entirely distinct name from that of the protestant."

In reference to this particular ballot, the court said:

"Exhibit '55', where the name P. Balason Guerra is written in the space for barrio captain. Guerra is one of the candidate for councilman and the placing of his name in line with Balason does not annul the vote in favor of the latter." (Amurao v. Calagi, CA-G. R. No. 18240-R, June 14, 1957)

Under the fourth error, the ruling of the court in not rejecting the ballots, exhibits 58, 59, 60, 61, 62, 63, 74, 75 and 76 for the protestant, is assailed, the appellant arguing that - "x x x as it may readily be observed, these ballots are not the official ballots intended for the use of the voters, because they are different from those originally prepared and distributed among them by the secretary of the Board of Election Tellers."

In this regard, the trial court said:

"Exhibits '58', '59', '60', '61', '62', '63', '74', '75', and '76'. The court cannot see how or in what way they violated the secrecy of the ballot.

"Further, the court declared valid the challenged ballots of protestant Perfecto Balason with a statement that his name is written in the space for barrio captain because in each and every one of said ballot it can be seen that it was the intention of the voter to vote for said candidate."

Specifically ruling on the ballot, exhibit 60, one of those objected to on the ground that it was not an official ballot, the trial court said:

"Exhibit 60, where the name of P. Balason is written in the space of Barrio Captain. The objection that it is not an official ballot is without merit considering the testimony of Alfredo Austria, chairman of the Board of

Inspect-ors, who said that they had to use emergency ballots which they ran out of official ones and that said ballots were initialed by him before they were deposited into the box."

Under the fifth error, the ruling of the court with reference to the ballots, exhibits 4, 7, 10, 11, 14, 15, 19, 20, 21, 23, 24, 29, 30, 32, 34, 35, 38, 39, 41, 42, 48, 50, 51, 58, 59, 66, 68, 80, and 83 admitting them as valid votes for the protestant, is assailed, appellant arguing thus: "The record will show that protestee stated the ground of his objection to each of these ballots. The court, by merely stating that 'in all of which P. Balason is written on the space for Barrio Captain' did not resolve the objections raised in the way the rule provides."

Unfortunately, however, the appellant has failed to state in his brief the grounds of his objections to the admission of said ballots, as he had interposed in the lower court, and in view thereof, there is lacking a frame of reference upon which to base a ruling on the admissibility of said ballots. Be that as it may, however, the reference to the ballots, exhibits 58 and 59 in this error under consideration, which ballots are also assailed under the fourth error, on the ground that they are not official ballots, gives strong indication that the questioned ballots under the fifth error were also objected to for the identical reasons as those ballots mentioned in the fourth error. At any rate, there seems to be no valid reason to reject the questioned ballots as valid votes for the protestant, because, as the trial court said, "the said ballots were counted as valid for the protestant, because the name of P. Balason is already written on the proper space for Barrio Captain."

Under the sixth and last error, the ruling of the court admitting the ballot, exhibit 57, as valid vote for the protestant, is disputed, appellant contending that the name "Perepeato" is not idem sonans with "Perfecto".

With respect to this ballot, the trial court said:

"Exhibit '57', where the name 'Perepeato' is written in the space for Barrio Captain. 'A name or surname incorrectly written which, when read has a sound equal or similar to that of the real name or surname of a candidate shall be counted in his favor.'" [Rule 2, Section 149 of the Revised Election Code.]

The foregoing considerations clearly demonstrate that the issue posed by the appellant in relation to the ballots disputed in his brief, is factual, going into the correctness of the appreciation of the ballots. Hence, the decision of the trial court on the admissibility of said ballots is final. And there is no question of law raised in this appeal.

WHEREFORE, the appeal is hereby dismissed on the grounds: firstly, the question raised being factual, the decision of the trial court is final, and this Court lacks jurisdiction to review the appeal; and, secondly, the appreciation made by the trial court of the disputed ballots being in accordance with the facts and the law, the decision is affirmed. Costs against the appellant.

Dizon, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.
Concepcion, C.J., and Reyes, J.B.L., J., on official leave of absence.

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