

PAULINO TUMAKAY, ET AL., PROTESTANTS AND APPELLEES, VS. LUIS C. ORBISO, ET AL., PROTESTEES. LUIS C. ORBISO, PROTESTEE AND APPELLANT.*G.R. No. L-8354. August 22, 1955*

Ponente: BAUTISTA ANGELO, J.

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In the general elections held on November 13, 1951, Luis C. Orbiso and Paulino Tumakay were registered candidates for the office of vice mayor of the municipality of Medellin, province of Cebu. The board of municipal canvassers declared Orbiso elected with 875 votes as against his opponent Tumakay with 769 votes. In due time, Tumakay filed an election protest against Orbiso before the Court of First Instance of Cebu. This time the court found Tumakay as the one duly elected with 751 votes over Orbiso who obtained 694 votes. The protestee has now taken this appeal on the plea that the only questions he will raise are purely of law.

While this case was pending appeal in this Court, appellee filed a motion to dismiss on the main ground that under the provisions of section 178 of Republic Act No. 180, known as Revised Election Code, no appeal can be taken from a decision of the lower court in protests involving the position of vice mayor and, hence,—he contends—this Court cannot now entertain the present appeal. Action on this motion was however deferred until after the briefs had been filed in order that it may be taken up in the decision on the merits. We now declare that said motion has no merit under the doctrine laid down in *Marquez vs. Prodigalidad*, G.R. No. L-2098 and *Calano vs. Cruz*, G.R. No. L-6404, it appearing that the questions to be determined are purely of law.

On the side of the political faction of appellant Orbiso in the general elections held on November 13, 1951 there was a candidate for councilor by the name of Patricio Tumayao. The lower court found that in the five precincts of the municipality where he was a candidate, Tumayao was voted by many with his surname accompanied by different Christian names, nicknames and other appellations which, in the opinion of the court, clearly indicate an intention on the part of the voters to identify their ballots. And so the court found them to be marked and declared them invalid. These ballots number around 186.

Appellant now poses this question: "In those cases where Tumayao, who was a candidate, is voted, accompanied by names other than his, is the whole ballot or only the votes in his favor nullified?" It is appellant's theory that only the vote in favor of said candidate should be nullified considering the provisions of paragraph 9 of section 149 of the Revised Election Code. But the lower court found otherwise and this is now assigned as error.

The law invoked by appellant provides:

"9. The use of nicknames and appellations of affection and friend-ship, if accompanied by the name or surname of the candidate, does not annul such vote, except when they were used as a means to identify their respective voters."

A perusal of the above provisions would at first glance indicate that the use of a nickname or appellation in the

name or surname of a candidate when made as a means to identify the voter has the effect of annulling only the vote cast for said candidate and not the whole ballot because of the phrase "does not annul such vote" employed therein, and that this inference seems to be bolstered up by the other paragraphs of the same article which expressly refer to the ballot when speaking of the nullifying effect of the irregularity committed by the voter. But a more careful scrutiny of the provisions of paragraph 9 as compared with the rest gives us the reason why in said paragraph the word "vote" is used instead of "ballot", to wit, that in said paragraph the identifying mark is written on the very name of the candidate whereas in the other cases the mark or irregularity is committed on the ballot itself. Moreover, the provisions of section 149, which contain merely the general rules for the appreciation of the ballots for the guidance of the inspectors, must yield to the specific provisions of the law relative to the effect of a mark placed by the voter on the ballot. We refer to section 146 of the same Code which provides that the board of inspectors shall "determine whether there are any marked ballots, and, if any be found, they shall be placed in a package labelled 'Marked Ballots for National Offices' or 'Marked Ballots for Local Offices' as the case may be, * * * and shall not be counted" These provisions contain a mandate to the inspectors that marked ballots must be placed in a sealed envelope and should not be counted. The logical inference is that the mark has the effect of nullifying the whole ballot.

The philosophy underlying this provision is undoubtedly to protect and maintain the secrecy of the ballot which is the cardinal feature of our election law, and in order that this fundamental purpose may be fully achieved Congress took special care in providing that any person who "puts (on the ballot) any distinctive mark" or who "makes use of any other means to identify the vote of the voter" may be amenable to criminal prosecution (section 135, in connection with section 183, Revised Election Code).

Indeed, "the statute making invalid any ballot containing any mark or device enabling it to be identified, is designed to prevent a voter from giving information to some interested person as to the way in which he voted" (Mansfield vs. Scully, 29 A. 2d 444, 129 Conn. 494). The interpretation which appellant wants us to adopt in considering these ballots would defeat this fundamental purpose. We find no valid reason for such interpretation because a voter who marks his ballot forfeits his right to vote. His vote becomes null not only for one but for all the candidates.

The decision appealed from being in accordance with law, is hereby affirmed, with costs against appellants

Bengzon, Acting C.J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment affirmed.

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