

**AUGUSTO R. VILLAROSA, PROTESTANT AND APPELLANT, VS.
ROMEO G. GUANZON, PROTESTEE AND APPELLEE.***G.R. No. L-19605. September 28, 1962*

Ponente: BAUTISTA ANGELO, J.

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Romeo Guanzon and Augusto Villarosa were registered candidates for the office of vice mayor of Bacolod City in the general elections held on November 10, 1959. Guanzon was the standard bearer of the Nacionalista Party while Villarosa ran under the Liberal Party. Having been adjudicated 9,678 votes by the Board of canvassers, Guanzon was proclaimed elected with a plurality of 516 votes over his next rival Villarosa, who obtained 9,162 votes. In due time, Villarosa filed a protest before the Court of First Instance of Negros Occidental.

After trial, the court rejected 586 ballots cast in several precincts on the ground that they were cast against the law. Of these ballots 469 were cast in favor of Guanzon, 67 were cast for candidate Ramos, 5 were cast for Villarosa, and 45 were left blank for the office of the vice mayor, so that deducting 469 from the total of 9,678 cast for Guanzon it would leave 9,209 votes. Inasmuch as protestant Villarosa obtained only 9,162 votes, his opponent Guanzon would still obtain a majority of 47 votes over him. Hence the court dismissed the protest.

Protestant Villarosa took the present appeal directly to this Court for, as he states in his brief, he will only raise questions of law.

It appears that in precinct No. 55, aside from 20 ballots which the court a quo found to be null and void for having been written by one hand, there are 127 ballots which it declared in its decision to be marked. However, in spite of its finding that said ballots were marked, the court a quo did not reject them as illegal but counted them in favor of protestee. It is contended that if these ballots were rejected, as the court a quo should have, protestee would have obtained only 9,082 votes against 9,157 votes of protestant, with the result that the latter should have been declared as the winning candidate for vice mayor with a plurality of 75 votes. The failure of the court a quo to reject said 127 ballots is now assigned by protestant in this appeal as the main error committed by the court. The rationale of the court a quo in not rejecting the 127 ballots in question is as follows:

"* * * The Court, however, found that of the 169 disputed ballots, there were 127 ballots that were found marked, namely: Exhibits 'H-101' to 'H-110' were marked by the characteristic name 'Quimson SOF'; Exhibits 'H-44' to 'H-53' were marked by the name 'Tañada LOR'; Exhibits 'H-80' to 'H-92', by the name 'Lopez FER'; Exhibits 'H-93' to 'H-99', by 'Pajo Juan'; Exhibits 'H-26' to 'H-34', by 'Cuenco MAR'; Exhibits 'H-15' to 'H-16' and 'H-20' to 'H-25', by 'Gatuslao Val'; Exhibits 'H-5' to 'H-14', by 'Gustilo AR'; Exhibits 'H' to 'H-4' and 'H-133', by 'Jocson NAR'; Exhibits 'H-60' to 'H-79', by 'Cordova TEO'; Exhibits 'H-161' to 'H-167', by 'Guanzon ROM'; Exhibits 'H-111' to 'H-123' & 'H-137', by 'AL Soto', Exhibits 'H-35' to 'H-43', by 'Gaston BEN'; Exhibits 'H-54' to 'H-60' & 'H-130', by 'Cuadra FER'; Exhibits 'H-17' to 'H-19' & 'H-151', by 'Misa RAM'; Exhibits 'H-135' to 'H-140', by Coscolluela, Jr.

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"With respect to marked ballots the Court believes that, 'The independence of the voters in the exercise of their right to vote would be violated if "marked ballots" were not disallowed for some unscrupulous persons taking advantage of their influence or political prestige may require of the voters the placing of a distinguished mark on their ballot, in consideration of some promise, reward or other valuable consideration and to which the voters would have no escape because of the distinguishing marks required of them.' (P. 167, Martin, Revised Election Code) In the case of Valenzuela vs. Carlos, 42 Phil. 428, the appellate Court, however, said 'In discounting marked ballots, great care should be used in rejecting them. It should be borne in mind that election laws are designed to effectuate the will of the electorate. So only in an unmistakable case where the ballot appeared so marked should it be rejected.' And finally in the case of Alihan vs. Arambulo, CA-G. R. No. 18799-R, April 28, 1958, the Court of Appeals held, 'The markings clearly intended to annul the ballots bearing them. All the ballots representing one hundred and twenty two (122) votes, for justice' sake should not be invalidated. If for mercenary motive a voter agrees to mark his ballot, it is to show the fulfillment of his promise and not to destroy his ballot.' Altho this Court believes that when a voter sells his vote for a mess of pottage, his right to vote is forfeited, the appellate Court has spoken. It handed down the foregoing ruling, for justice' sake. Indeed, if a grafter or a crook who is slick enough to evade conviction is allowed to vote, there is no reason why a mercenary voter deserves the rejection of his marked ballot."

Protestant now contends that in view of the finding of the court a quo that the 127 ballots in question are marked it erred in not invalidating them and in counting them instead in favor of protestee. He argues that the authorities relied upon by the court a quo to support its ruling that said ballots should not be rejected even if they were found to be marked, are inapplicable, because the facts found therein are at variance with those obtaining in the instant case. Thus, he contends, in the case of Valenzuela vs. Carlos,[1] the appellate court counted the disputed ballots because they merely contained accidental or unintentional strokes, flourishes, stains or erasures, which were rendered to be not sufficient to impart into them the attribute of marked ballots, whereas in the case of Alihan vs. Arambulo,[2] the alleged marks appearing on the questioned ballots were found to have been placed thereon after they had been deposited in the ballot box by persons other than the voters themselves, and so the Court of Appeals ruled that "for justice' sake they should not be invalidated." On the other hand, it is contended that the alleged distinguishing marks appearing on the 127 disputed ballots in this case were written by the voters themselves for purposes of identification.

There is no merit in the contention that the 127 disputed ballots were found by the court a quo to be marked because the voters themselves placed thereon some distinguishing marks for purposes of identification. No such thing appears in the decision. On the contrary, it can be gleaned therefrom that protestant has not presented any evidence aliunde to show that the writing of the so-called abbreviated Christian names was used as a means of identification. And it can also be gleaned that the court a quo disregarded the so-called marks because it does not appear clear that they were placed there to identify the ballots, and to support this view, it quoted the following ruling in the Valenzuela case, supra: "In discounting marked ballots, great care should be used in rejecting them. It should be borne in mind that election laws are designed to effectuate the will of the electorate. So only in unmistakable case where the ballot appeared so marked should it be rejected."

The question that now arises is: Are the disputed ballots really marked that they should be invalidated?

Let us elaborate. It appears that the so-called distinguishing marks are surnames of candidates accompanied by the first syllable of the correct Christian names of said candidates. Thus, in Exhibits "H-101" to "H-110", the name "Quimson SOF" appears. This refers to senatorial candidate Sofronio Quimson. In Exhibits "H-44" to "H-53", the name "Tañada LOR" appears. This refers to candidate Lorenzo Tañada. In the other ballots, the name "Lopez Fer" was intended for candidate Fernando Lopez; "Pajo Juan" for candidate Juan Pajo; "Cuenco Mar" for candidate Mariano Cuenco; "Gatuslao Val" for candidate Valeriano Gatuslao; "Gustilo Ar" for candidate Armando Gustilo; "Jocson Nar" for candidate Narciso Jocson; "Cordova Teo" for candidate Teofisto Cordova;

"Guanzon Rom" for candidate Romeo Guanzon "Al Soto" for candidate Alfredo Soto; "Gaston Ben" for candidate Benjamin Gaston; "Cuadra Fer" candidate Fernando Cuadra; "Misa Ram" for candidate Ramon Misa; and "Coscolluela Jr." for candidate Ildefonso Coscolluela, Jr.

The circumstance that several voters belonging to the same precinct appear to have written the names of particular candidates in an identical manner may appear suspicious or may indicate that there had been a preconceived plan on their part to write said names in that manner to enable them to identify the voters, but the showing of such circumstance based on what is written on the ballots alone cannot justify such inference in the absence of evidence aliunde clearly showing that such was the plan or intention. The reason is obvious: an identification mark cannot be presumed but must be established by clear evidence (*Jaucian vs. Callos*, 104 Phil., 603; 55 Off. Gaz. 10394). This is especially so where our Election Law allows a candidate to be voted on by writing either his name in full, or only the Christian name, or the only surname (paragraph 1, section 149); or the surname accompanied by the initial of the Christian name, or the Christian name accompanied by the initial of the surname (paragraph c, section 149); or the Christian name or surname accompanied by the nickname of the candidate (paragraph 9, section 149). And more important still is the provision that "Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the name and surname of a candidate, or in other parts of the ballot, traces of the letters 't', 'j', and other similar ones, the first letters or syllables of names which the voter does not continue, * * * shall be considered innocent and shall not invalidate the ballot" (paragraph 18, section 149; italics supplied). Finally, it is well settled in this jurisdiction that, in the absence of positive proof to the contrary, the words or signs appearing on the ballot similar to those above enumerated are presumed to have been placed thereon accidentally.[3]

There being no evidence aliunde presented in this case to show that the writing of the first syllables of the Christian names of candidates accompanying the surname in the 127 disputed ballots was part of a scheme agreed upon by the voters to identify their ballots, the same cannot be considered sufficient to invalidate the ballots as marked. The lower court, therefore, committed no error in admitting them and in counting them as valid votes in favor of protestee.

Wherefore, the decision appealed from insofar as it concerns appellee, is affirmed. The election of protestee as vice mayor of the City of Bacolod is confirmed. Costs against protestant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] 42 Phil., 428.

[2] CA-G.R. No. 18799-R, April 28, 1958.

[3] *Lucero vs. De Guzman*, 45 Phil., 825; *Cacho vs. Abad*, 62 Phil., 564; *Ferrer vs. De Alban*, 101 Phil., 1018; 54 Off. Gaz. 4255; *Amurao vs. Calangi*, 104 Phil., 347; 56 Off. Gaz. 3165; *Gutierrez vs. Aquino*, G. R. No. L-14252, February 28, 1959; *Parayno vs. Primicias, Jr.*, ETHR Case No. 116, June 24, 1960; *Sayo vs. Paredes*, ETHR Case No. 109, December 28, 1960; *Tajanlangit vs. Cazeñas*, G.R. No. L-18894, June 30, 1962.

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