

MAXIMO M. FERRAREN, PETITIONER VS. RAMON B. AÑONUEVO, RESPONDENT.

G.R. No. L-19275. November 29, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of Appeals. The facts, as found by the appellate court are:

"In the general elections held on November 10, 1959, Maximo M. Ferraren, Ramon B. Añonuevo and Fausto Aldaba are candidates for mayor in the municipality of San Teodoro, Oriental Mindoro.

"After canvassing the result of the election based on the returns from the boards of election inspectors of the ten precincts of said municipality of San Teodoro, the municipal board of canvassers found that Maximo M. Ferraren received 724 votes, Ramon E. Añonuevo 723 votes and Faustino Aldaba 148 votes. So it proclaimed Maximo M. Ferraren elected municipal mayor of San Teodoro with a plurality of one vote over Ramon B. Añonuevo.

"Not satisfied, Ramon B. Añonuevo filed this election protest with the Court of First Instance of Oriental Mindoro contesting the result of the election in precinct No. 5. Maximo M. Ferraren, on his part, filed a counter-protest covering precincts Nos. 1-A, 3, 3-A and 6.

"After due trial, the lower court rendered its decision, the dispositive part of which reads:

"Wherefore, this court hereby renders judgment finding that Ramon Añonuevo has obtained the highest number of votes during the election held on November 10, 1959, over the other candidates and has a right to be proclaimed as elected mayor of the said municipality of San Teodoro, Oriental Mindoro; declaring that the proclamation made by the Municipal Board of Canvassers of San Teodoro, Oriental Mindoro, on November 11, 1959, of Maximo M. Ferraren as elected mayor of said municipality, null and void, and ordering the said Municipal Board of Canvassers to convene and issue a new proclamation within five days from and after notice of the final entry of this judgment, proclaiming Ramon Añonuevo elected Municipal Mayor of San Teodoro, Oriental Mindoro, with costs."

On Appeal, the Court of Appeals affirmed the decision of the lower court, after finding that Añonuevo had received 718 votes as against Ferraren's 697 votes. Hence, this appeal interposed by Ferraren.

Protest: Precinct No. 5

Ferraren contends that the Court of Appeals erred in holding as marked or identified the following ballots cast in his favor: Exhibits 3, 5, 6, 9,14, 15, 16,19, 20,12 and 18.

After going over Exhibits 3, 5, 6 and 16, and considering the evidence aliunde in exhibits 5 and 6, we are satisfied that the expressions or remarks set forth opposite them were written for the purpose of identifying them and therefore the appellate court committed no error in holding them so:

Exhibits 3 —"Nako si Kristo" on the space for councilor

5 —"Agdan Pook" on the space for senator

6 —"Tres Lease" on the space for senator

1 6 —"A.P.O." on the space for senator

(See Cruz vs. Court of Appeals, G. R. No. L-14095, April 10, 1959; Gutierrez vs. Reyes, G. R. No. L-13137, February 28, 1959).

However, we find nothing to indicate that the expressions set forth opposite the following ballots were written so as to identify the voter:

Exhibit 9 —"Madalang" on the space for councilor

1 4 —"Saiyo Lamang" on the space for councilor

1 5 —"Sa Pepe Kit" on the space for Provincial Board Member

1 8 —"Ponsing" on the space for senator

2 0 —"Ponsing" on the space for senator

1 2 —"Piniong Alcantara" on the space for senator

1 8 —"Penyong Alcantara" on the space for senator

These seven ballots should be merely considered stray votes but they should be counted valid in favor of Ferraren.

Ferraren contends also that the ballots, Exhibits E and K should not be counted in favor of Añonuevo.

Exhibit E bears the words "R. Ano" on the space for mayor while Exhibit K bears the words "A Aneabo" on the space for mayor. We agree with the Court of Appeals that these votes were intended for Añonuevo (Lucero vs. De Guzman, 45 Phil., 852).

Counter-protest: Precinct No. 1-A

Ferraren objects to Exhibits O, Q, R and W as having been prepared by different persons. We have gone over these ballots cast in favor of Añonuevo and do not find Ferraren's objection to be meritorious. Neither do we find merit in Ferraren's contention that the ballots identified as Exhibits T, U and Z are marked ballots and therefore should not be counted in favor of Añonuevo. With respect to Exhibit T, the word "Añonuivo" appears on the space for mayor. We agree with the appellate court that this is a vote for Añonuevo. With respect to Exhibit U, what appears as "Balar Kayo" is really "Baler Rayos" which is the idem sonans of Valer (for Valeriano) Reyes, one of the candidate for councilor of San Teodoro, Oriental Mindoro. Exhibit Z was also correctly counted in favor of Añonuevo, it appearing that the words " E. Telvina," written on the space for councilor, are idem sonans of Harina, a candidate for councilor.

We agree with Ferraren, however, that Exhibit Y, wherein the words "Marcos Maligalig" appear written on the space for senator, should be held invalid for being marked (Fausto vs. de Guzman, 45 Phil., 852; Cruz vs. Court of Appeals, G. R. No. L-14095, April 10, 1959). It should not have been counted in favor of Añonuevo, as ruled by the Court of Appeals.

Ferraren claims in his favor Exhibits 22, 23, 24 and 26. Exhibits 22, 23, and 24 were correctly held to be marked or identified by the Court of Appeals. The word "Joe" written on the space for senator in all of these ballots was written for no other purpose than to identify the ballots. Neither is there merit in the contention that Exhibit 26 is valid for Ferraren because the word written on the space for mayor is illegible. (See 149 (15), Revised Election

Code).

Counter-protest: Precinct No. 3:

Ferraren contends that the ballots identified as Exhibits AA, BB, CC, DD and HH, on each of which is written the name "D. Florida", which is not the name of any candidate for councilor, are marked and therefore should not have been counted in favor of Añonuevo. We find the contention meritorious.

But we do not agree with Ferraren that Exhibits EE, GG, JJ, KK, MM, NN and OO were prepared by different persons. The appellate court correctly counted them in favor of Añonuevo.

Ferraren also contends that Exhibit 30 should have been counted in his favor because the word "Menarin", which appears on the space for mayor, is idem sonans of "M. Ferraren." We agree with Ferraren that this is a vote for him. With respect to Exhibit 31, however, we think that the appellate court correctly ruled that the word "Pira" on the space for senator is an identifying mark.

Neither do we find error in counting in favor of Añonuevo Exhibits ZZ, NNN, PPP, VVV, HHH, III, OOO and YYY on the ground that they were prepared by different persons.

We find Exhibit TTT, however, to be marked. The word "V. Rayos" is written on five successive spaces for councilors, obviously to identify the ballot (Gutierrez vs. Aquino, G. R. No. L-14252, February 28, 1959).

We also believe that Exhibits 41 and 42 should have been counted in favor of Ferraren. The word "Max" in Exhibit 41 is intended for Maximo Ferraren, while the word "Koncilor", written on the space for councilor in Exhibit 42 does not make the same a marked ballot (Abrea vs. Lloren, 81 Phil., 809; Perez vs. Bimeda, G. R. No. L-8495, April 27, 1955).

With respect to Exhibits 34, 37, 44 and 44-A, the Court of Appeals correctly held Exhibit 34, with the word "Epodod" written on the space for senator; Exhibit 37, with the word "vote" written on the space for vice-mayor; and Exhibit 44 with the words, "p." and "p. 2." written on the spaces for councilors, to be marked. But Exhibit 44-A should have been counted as valid for Ferraren, it appearing that the word written on the space for mayor is the idem sonans of "Ferraren."

Counter-protest: Precinct No. 6:

Ferraren contends that Exhibit JJJJ should not have been counted in favor of Añonuevo, the word written not being the idem sonans of Añonuevo. After going over this ballot, we believe that the appellate court committed no error in counting this ballot for Añonuevo.

Neither did the Court of Appeals err in counting Exhibits MMMM and IIII. These two ballots do not appear to have been prepared by different persons, contrary to Ferraren's claim.

The result is that from the total number of 718 votes, which the Court of Appeals found had been cast in favor of Añonuevo, 7 should be subtracted, thereby giving Añonuevo 711 votes; while to the total number of 697 votes, which the appellate court found had been cast in favor of Ferraren, 11 should be added, thereby giving Ferraren 708 votes. Añonuevo, therefore, won by a plurality of 3 votes.

In view thereof, the respondent Ramon Añonuevo is declared the duly elected Mayor of San Teodoro, Oriental Mindoro in the elections held on November 10, 1959, with a plurality of three (3) votes over the petitioner Maximo Ferraren. As thus modified, the judgment appealed from is affirmed, with costs against petitioner.

Bengzon, C. J., Bautista Angelo, Labrador, Concepción, Paredes, Dizon, and Makalintal, JJ., concur.

CONCURRING AND DISSENTING

REYES, J. B. L., J.:

I concur with the majority opinion, except with regard to the following ballots:

Exhibit 31 (Precinct No. 3)—I can not agree that this ballot is marked with the word "Pira" (or "Pera") in the absence of evidence aliunde. The word, though in the space for senators, could well be a name—and should be considered a stray vote. It could also be the beginning of a surname (f.ex. Peralta) that the voter found difficulty in completing. Without other proof, the doubt should be resolved in favor of the validity of the ballot.

Exhibit 34 (Precinct No. 3)—In the absence of any evidence aliunde, I believe this ballot can not be held marked by the word "Epolod". I read that as the name " E Palad", and while a stray vote for senator, the ballot is valid and should be counted for petitioner Ferraren.

Exhibit 44 (Precinct No. 3)—Neither is this a marked ballot as contended. The last two lines for councilors bear the letters "E. A." in one and "P. V." in the next. The first appear to be the initials of one of the candidates (E. Aldaba), and, in all likelihood, so are "P. V.". (It is not "P. 2."; the last initial seems to be a "V" with an initial hook, but being written leaning to the right and not vertically, bears some resemblance to the figure "2"). It is clear to me that the voter, being in a hurry to finish writing, contended himself with reducing the names of his last two choices to mere initials.

Hence, Ferraren should be credited with 3 more votes or a total of 711, the same as those of respondent Añonuevo. The result is a tie to be decided in the manner prescribed by law.

Padilla, J., concur.

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