

ORLINO TESORO, PETITIONER, VS. HONORABLE COURT OF APPEALS AND BENJAMIN SANIDAD, RESPONDENTS.

G.R. No. L-36666. December 19, 1973

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for review on certiorari seeks the reversal of the decision of the respondent Court of Appeals dated March 7, 1973 setting aside the decision of the trial court and directing the remand of the case for new trial to enable the parties to adduce evidence to support their protest and counter-protest.

In Our resolution dated July 6, 1973, We consider this petition for review as a special civil action, the comment of private respondent Benjamin Sanidad as his answer thereto, and the case as submitted for decision.

The undisputed facts are as follows:

Herein petitioner Orlino Tesoro, private respondent Benjamin Sanidad, Rosario Jaramillo and Avelino Battad were candidates for mayor of Sto. Domingo, Ilocos Sur in the elections of November 8, 1971. The municipal board of canvassers issued a certificate that private respondent Benjamin Sanidad obtained 1,692 votes; petitioner Tesoro, 1,585 votes; Rosario Jaramillo, 917 votes; and Avelino Battad, 329 votes. Accordingly, on November 9, 1971, the municipal board of canvassers proclaimed respondent Benjamin Sanidad mayor-elect.

Petitioner Tesoro filed a motion of protest dated November 16, 1971 against the election of respondent Sanidad, impugning the results of the election in 23 out of 32 precincts, namely precincts nos. 3-A, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 17-A, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 on the ground of serious irregularities, frauds, massive and systematic terrorism, rampant and massive vote-buying, systematic utilization of flying voters and other illegally registered voters, misreading of the ballots, misrecording of the votes, wrong appreciation of the ballots, marked ballots and unjustified rejection of valid votes in favor of herein petitioner, which if reviewed and corrected, will make herein petitioner the winner.

In his answer dated November 26, 1971 to the protest, herein respondent Sanidad denies the charges specified in the protest, alleging that the elections were the cleanest, most peaceful and orderly in local electoral history and by way of counter-protest, impugns the results of the elections in precincts 3, 5, 5-A, 6, 6-A, 15, 16, 21, 23 and 25 on the ground that in these precincts, herein petitioner and his leaders engaged in vote-buying and various schemes like marking of ballots, clearly valid votes for respondent Sanidad were rejected, invalid votes were counted in favor of petitioner, and petitioner and his leaders resorted to widespread terrorism in precincts nos. 5 and 21 compelling the voters to vote against their will for petitioner.

After the revision committees submitted their reports, the trial court in its decision, expressly stated that the parties, believing that it "would best expedite the termination of the case, agreed to just admit the ballots and their other documentary exhibits (election returns, certificates of candidacy, etc.) sans adduction of further evidence and then let the court render its decision based on these and nothing more. This was exactly what was done" by

the trial court, which after examining the ballots involved in the protest and counter-protest, as well as the objections thereto by the parties, rendered a 164-page decision dated June 23, 1972, finding that petitioner garnered 1,626 votes as against 1,514 votes for herein respondent Sanidad or a majority of 112 votes, and accordingly declared petitioner as mayor-elect.

Thereafter, respondent Sanidad perfected his appeal to the respondent Court of Appeals.

However, after the respondent Court of Appeals granted on August 31, 1972 the motion of the original counsels of private respondent Sanidad to withdraw as counsel, Atty. Constanse P. Pimentel, the new counsel for respondent Sanidad, filed a motion to remand for new trial and/or further proceedings of the case dated September 18, 1972 to the trial court to allow him to further present additional evidence and to direct the Chief of the Questioned Documents Section of the National Bureau of Investigation to make available their services for the purpose of determining the original entries for respondent Sanidad, Rosario Jara-millo and Avelino Battad in the questioned ballots of precincts nos. 10, 14, 17, 18, 21, 22, and 24 as well as the immediate photography of 219 questioned ballots under terms and conditions as the court may prescribe, attaching as annexes (1) certificates issued by the members of the Board of Election Inspectors in precincts nos. 10, 14, 17, 18, 21, 22 and 24 concerning the casting and courting of votes, record of challenges of voters and record of protests all showing that the elections in those precincts were orderly, peaceful and honest; (2) the receipt issued by the deputy clerk of court of the delivery to him by the municipal treasurer of Sto. Domingo of the ballot boxes of the 23 precincts involved showing that -- with the exception of precincts nos. 10, 18 and 22 -- all the outside compartments of subject ballot boxes were duly sealed with numbered--self-locking-metal seal as required by COMELEC Resolution No. RR-984 of October 18, 1971, which memorandum receipt however was not attached to the records of the case; (3) report on revision of ballots duly signed and certified by the revisors showing that the interior seal of the ballot boxes of precincts nos. 10, 14, 17, 18 and 21 were either broken or opened, the inside of the ballot boxes of precincts nos. 17 and 22 were apparently tampered with, the ballot boxes for precinct no. 21 has no exterior self-locking-metal seal and its interior metal seal no. D-64066 was originally the exterior seal, and the exterior seal of the ballot box for precinct no. 24 was broken, all to favor herein petitioner Tesoro.

Counsel for respondent Sanidad further stated in his motion to remand that while examining the questioned ballots and exhibits in the office of Mr. Buenaventura Miguel, Chief of the Special Civil Action of the Court of Appeals, with the assistance of alleged handwriting and fingerprint-expert Pelagio Casilao, he discovered tampering, erasures, alterations and superimpositions of the originally good and valid votes in his favor and for the other mayoralty candidates Jaramillo and Battad just to favor petitioner Tesoro.

In his opposition dated September 26, 1972 to the motion to remand, herein petitioner, while conceding that under Section 3 of Rule 51 of the Revised Rules of Court, the appellate court may direct a new trial or further proceedings to be had on the case in exercise of its appellate jurisdiction, strenuously objects to the motion on the ground that (1) the parties in the lower court agreed to just submit the case for decision on the basis of the ballots and other documentary exhibits without adduction of further evidence; (2) the proofs sought to be introduced by respondent Sanidad were then already existing and known to him during the trial of the case and therefore not newly discovered or could have been discovered with the exercise of due diligence on his part; and (3) the motion to remand is purely dilatory.

In its resolution dated October 4, 1972, the 8th Division of the Court of Appeals composed of Justices Ru-perto J. Martin, Andres Reyes and Mateo M. Canonoy, denied said motion to remand on the ground that "this being an election contest, it is of public interest that no further delay be resorted to in the disposition of the case."

However, the decision on the merits of the case dated March 7, 1973 rendered by the 3rd Division of the Court of

Appeals penned by Mr. Justice Emilio Gancayco and concurred in by Messrs. Justices Hermogenes Con-cepcion, Jr. and Ramon Fernandez, ordered the remand for new trial to enable the parties to adduce further evidence, even as it quoted the portion of the decision of the trial court stating that the parties agreed to just submit the case for decision on the basis of the ballots and other documentary exhibits without adduction of further evidence and expressly recognized that there-after "the trial court proceeded carefully to examine, consider and comment on each and every ballot submitted by each side and correspondingly objected to by the other," stating:

"It appears that the 152 contested ballots in Precinct Nos. 10, 14, 17, 18, 21, 22, and 24 were tampered with and as such were deducted by the trial court from the votes that were credited to the appel-lant. Thus, the trial court found that in Precinct No. 10 the ballots marked as Exhibits T-13 to T-31 show erasures and superimpositions of the appellant's name and that the superimpositions are the penmanship of only one person distinct from the voter in any of these ballots so that 'each of them were prepared and filled by two distinct persons before they were deposited in the ballot box during the voting,' (pp. 110-111, appellant's brief). Hence in this precinct, seventeen (17) votes for appellant were invalidated; in Precinct No. 14, the trial court made the same findings, insofar, as the ballots marked T-1 to T-30, so thirty-one (31) votes for appellant were invalid-ated (pp. 141-142, appellant's brief); in Precinct No. 17, ballots T-10 to T-38 were found to be similarly tampered, so twenty-eight (28) votes credited to the appellant were recalled; in Precinct No. 18, four (4) votes for the appellant were invalidated on the same ground, (Exhibits T-1 to T-4; pp. 172-174, appellant's brief); in Precinct No. 21, twenty-six (26) votes for the appellant were also invalidated (Exhibits T-5 to T-30) on the same ground (pp. 181-182, appellant's brief); in Precinct No. 22, twenty-three (23) votes for the appel-lant were invalidated (Exhs. T-7 to T-29) on the same ground (pp. 188-192 appellant's brief); and in Precinct No. 24, twenty-three (23) votes for the appellant were invalidated on the same ground (Exhs. T-1 to T-3; pp. 196-198, appel-lant's brief).

"The findings of the trial court invalidating these votes of the appel-lant turned the tide of the result of the election in favor of the appellee. Hence, besides the other ballots that have been contested, and are before us on appeal, the merit of the case will rise or fall on the correctness of the ruling of the trial court insofar as these 152 ballots are concerned.

"The appellant contends that the memorandum receipt (Form No. 132-A) issued by the Clerk of Court on Jan-uary 11, 1972 to the Municipal Treasurer of Santo Domingo, Ilocos Sur, when the latter turned over the ballot boxes, subject of the protest to the former, showing that the ballot boxes were duly padlocked with three (3) padlocks each and duly sealed with one metal with the corresponding numbers, shows the physical condition of said ballot boxes then. However, when the Committee on Revision submitted their report to the Court, the appellant contends that they found the following:

- Precinct No. 10 - interior seal broken
- Precinct No. 14 - interior seal broken
- Precinct No. 17 - apparently good but ballot contents tampered as will be shown later.
- Precinct No. 18 - interior seal opened
- Precinct No. 21 - exterior no self-locking metal seal. Interior seal No. D-64066 originally the exterior seal.
- Precinct No. 22 - apparently good but ballots contents tampered as shall be shown later.
- Precinct No. 24 – exterior seal broken, rusty at one corner of the bottom.' (Annex A, pp. 26-27, Appellant's brief).

"In a motion to remand for new trial and/or further proceedings filed by the appellant on September 18, 1972 with this Court, the same matter was brought to our attention in addition to the fact that the minutes of the votings do not show any irregularity in any of these precincts nor any protest of tampering as was found by the

trial court; that an examination of the contested 152 ballots above mentioned by handwriting expert Pelagio Ka-silao show that in many of the ballots where the names 'Sanidad' appears to have been superimposed on the erased name 'Tesoro', there are traces that can be seen even with the naked eye, that the name 'Tesoro' is also superimposed on the name 'Sanidad' so that the erasure must not have been made only once but twice; that affidavits of certain Chairmen, poll clerks, election inspectors, and members of the CNEA of the contested precincts attest that they did not find any erasure or identifying marks nor noticed any ballot filled by any two persons; that a narrative report of the acting Election Registrar attest to the peaceful conduct of the election in that town (pp. 70-181, rec.). Although this motion to remand the case for new trial was denied by a resolution of this Court of September 19, 1972, as it will only necessarily delay this election protest, the same prayer is reiterated on appeal.

"After a careful examination of all the contested ballots, the documents before us and the records, We find that a remand of the case for new trial is in order if We are to arrive at the truth and fairly resolve this election protest. The reason for this is basic. If during the new trial the appellant can establish that these contested ballots were erased and/or tampered with, after the votes were deposited in the ballot boxes, and/or after the ballot boxes were delivered to the Deputy Clerk of Court, then the said ballots lost their probative value and the counting of votes made by the Board of Election Inspectors as reflected in the election return would be the best evidence of the result of the election. (*Batisba vs. Cariño*, 47 O.G. 1267; *Belosillo vs. Cabuyoc*, CA G.R. 2940-R, March 29, 1949; *Tagarda vs. Roa*, CA G.R. 2509-R, Sept. 30, 1948; *Campanero vs. Alano*, CA G.R. 2558-R, December 16, 1948).

"On the other hand, if it could be shown that the 152 ballots in question were tampered with before they were deposited in the ballot boxes, then the same shall be null and void. (Section 189, Rule 23 of the Election Code 1971; *Trajano vs. Enciso*, 19 SCRA 343). We are not convinced that there is enough evidence to sustain the findings of the trial court that the 152 contested ballots above mentioned were tampered with before they were deposited in the ballot boxes. All the contested ballots were just submitted for the appreciation of the court without adducing any other evidence. The trial court should have *motu proprio* made an inquiry or required that evidence be adduced at least on such vital issue of as to when the said 152 ballots were tampered with. The rebuttable presumption that the said ballots suffered from this defect before it was placed in the ballot boxes as argued by the appellee citing the case of *Trajano vs. Enciso*, 19 SCRA 343, cannot be upheld in the light of the evidence being sought to be adduced by the appellant at the new trial tending to show the contrary." (Pp. 312 to 317, rec.).

Respondent Sanidad is now estopped from seeking a second chance to submit additional evidence, after he and his previous counsel submitted the case for decision on the basis of evidence already before the trial court. He had ample time during the trial to seek the assistance of handwriting and fingerprint experts either from the NBI or from the private sector. He should not now be rewarded for his miscalculations or strategic error.

Moreover, as urged by herein petitioner, the proofs he intends to submit at the new trial are not newly discovered and/or could have been discovered by the exercise of ordinary diligence. They were already then existing as well as subject to and/or available for his scrutiny at the time of the trial -- like the questioned ballots, the certificates of the members of the election inspectors on the casting and counting of votes, records of challenges of voters and record of watchers, the receipt issued by the deputy clerk of court of the delivery to him of the ballot boxes of the questioned precincts, the report on the revision of ballots by the revision committees including the description of the ballot boxes themselves, as well as the testimonies of the members of the board of election inspectors and the CNEA representatives (*Republic vs. Alto Surety*, 110 Phil. 9, 15-16; *Toribio vs. Decasa*, 55 Phil. 44; *Bersabal vs. Bernal*, 13 Phil. 463; Vol. 2, *Moran*, Comments on the Rules of Court, 1970 ed. 220). The alleged newly discovered evidence was actually forgotten evidence, which respondent Sanidad and his counsel already knew or should have known during the trial. Such forgotten evidence does not justify a new trial (*Lim vs. Republic*, 33 SCRA 291, 294).

Appellate courts do not sit to remedy the tactical mistake committed by the parties or their counsel at the trial.

It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned. xx x x Mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy of irrelevancy of certain evidence, the proper defense, or the burden of proof, x x failure to introduce certain evidence, to summon witnesses, and to argue the case are not proper grounds for a new trial, unless the incompetency of counsel is so great that his client is prejudiced and prevented from properly presenting his case" (Vol. 2, Moran, Comments on the Rules of Court, pp. 218, 219-220, citing *Rivero vs. Santos, et. al.*, 98 Phil. 500, 503-504; *Isaac vs. Mendoza*, 89 Phil., 279; *Montes vs. Court*, 48 Phil. 64; *People vs. Manzanilla*, 43 Phil. 167; *U.S. vs. Dungca*, 27 Phil. 274; *U.S. vs. Umali*, 15 Phil. 33; see also *People vs. Ner*, 28 SCRA 1151, 1164). In the 1968 case of *Palanca vs. American Food, etc.* (24 SCRA 819, 828), this principle was reiterated.

Respondent Sanidad does not even impute such gross incompetence to his former counsel in his motion to remand.

Neither was the trial tainted by bias or prejudice on the part of the trial Judge, whose fairness and diligence are revealed by his 164-page decision (*Pulido vs. C.A.*, 34 SCRA 230, 233-34).

This Court has always directed that questions over title to a public elective office should be resolved with dispatch as demanded by public interest.

It is therefore evident that the respondent Court of Appeals acted with grave abuse of discretion in directing the remand of the case for new trial.

WHEREFORE, THE DECISION OF THE COURT OF APPEALS DATED MARCH 7, 1973 IS HEREBY SET ASIDE; RESPONDENT COURT OF APPEALS IS HEREBY DIRECTED TO RENDER ANOTHER DECISION BASED EXCLUSIVELY ON THE EVIDENCE SUBMITTED AT THE TRIAL. WITH COSTS AGAINST PRIVATE RESPONDENT.

Makalintal, C.J., Ruiz Castro, Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

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