

ISABELO LLOREN, PETITIONER-APPELLANT, VS. HON. COURT OF APPEALS, ET AL., RESPONDENTS-APPELLEES.*G.R. No. L-25907. January 25, 1967*

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

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This is an appeal, by certiorari, from the decision and resolution of the Court of Appeals declaring Pacito Abrea the elected mayor of Inopacan, Leyte, with a majority of 19 votes over Isabelo Lloren.

In the elections of November 12, 1963, Pacito Abrea and Isabelo Lloren were duly registered candidates voted for the office of municipal mayor of Inopacan, Leyte. After the canvassing of votes, the municipal board of canvassers proclaimed Lloren elected with 1,449 votes, or by a plurality of 9 votes over Abrea's 1,440 votes.

Abrea timely filed a protest in the Court of First Instance of Leyte which court, after due trial, rendered a decision on February 28, 1963, nullifying 174 votes credited to protestee Lloren and 24 votes credited to protestant Abrea, and the latter was declared mayor-elect with 1,416 votes, against the protestee's 1,275 votes, or by a plurality of 141 votes.

On appeal by the protestee, the Court of Appeals modified the decision of the trial court by crediting him with an additional 121 votes (88 ballots bearing only his nickname, 23 of which were allegedly marked, and 10 votes previously declared illegible by the trial court). As protestee-appellant was credited only with a total of 1,396 votes, protestant-appellee, with his 1,416 votes, was declared the winner by a majority of 20 votes. On appellant's motion for reconsideration, the plurality was further reduced to 19.

Lloren filed the present petition, claiming that the Court of Appeals erred:

1. In not holding that the words written on the space for mayor in Exhibit G, Precinct 6 and Exhibit H, Precinct 11 when read, are idem sonans with the name of appellant;
2. In holding that Exhibit C of Precinct 3 is a marked ballot;
3. In not declaring that Exhibit D of Precinct 15, Exhibit A of Precinct 17, Exhibit D of Precinct 13, Exhibit J of Precinct 16, and Exhibit D of Precinct 12 are valid ballots for petitioner-appellant;
4. In holding that Exhibit K of Precinct 15 is a marked ballot and in not counting the same in favor of petitioner-appellant;
5. In finding that Exhibits A, B, C, D, E, F, G, H, I and J of Precinct 7, Exhibits K, L, M, N, O, P, Q and R, like of Precinct 7, Exhibits B, C, D, E, F, G, and H of Precinct 14, Exhibits S, U, V of Precinct 18, Exhibits B, C, D, of Precinct 11, Exhibits J, K, L, M, N and P of Precinct 14, are marked ballots;
6. In ruling that Exhibits A, B, and C of Precinct 18 are null and void; and
7. In declaring Exhibits A and C of Precinct 12, Exhibit A of Precinct 13, and Exhibit C of Precinct 17 not valid votes for appellant.

It may be stated that the majority of the ballots subject of the present appeal was nullified for being allegedly marked. In this connection, it must be remembered that the matter of invalidating ballots should be dealt with extreme care and caution, otherwise the genuine will of the electorate may be defeated. Thus, it has been pronounced that the disenfranchisement of electors is not to be declared except upon strongest evidence of an intention to sully the purity of suffrage (*Gadon vs. Gadon*, L-20015, November 30, 1963); no ballot shall be rejected as marked unless clear and sufficient reasons justify that action (*Amurao vs. Calangi*, 104 Phil., 347; *Salalima vs. Sabater*, L-14829, May 29, 1959); and that doubt must be resolved in favor of the legality of the ballot (*Ferrer vs. Alban*, 101 Phil., 1018; *Pagonatao vs. Aluna*, L-18926, November 30, 1962).

1, Exhibit G. Precinct 6. and Exhibit H. Precinct 11 - Petitioner claims these 2 ballots which were declared illegible by the Court of Appeals. A scrutiny of the first (Exhibit G, Precinct 6) shows that a very poor writer managed to scribble "Sabilo.yran" (the only vote cast) on the space for mayor. On the principle of *idem sonans*, this vote should be counted for petitioner Isabelo Lloren. In the second (Exhibit H, Precinct 11), the word "Eisabilo" written on the first space for provincial board members appeared to have been erased. And, on the space for mayor, the voter tried to write the name of his candidate, but his effort produced only the word "Eisabi". The intent of the voter, who is another poor writer, to cast his vote for petitioner is apparent.

2. Exhibit C. Precinct 3—The word "engat" appeared in inverted position on the last line for councilors, although the names of the voted candidates were written in the corresponding spaces in the ordinary manner. While it may be true that a ballot that was entirely filled upside-down was once declared valid (*Cruz vs. Court of Appeals*, L-14095, April 10, 1959), the writing of the word "engat" in this case, in a way different from the rest of the writings on the same ballot, cannot be regarded as innocent or unintentional. It is rather a clear indication that the voter intended to identify his ballot, as found by the Court of Appeals.

3. Exhibit B, Precinct 15; Exhibit A, Precinct 17; Exhibit D. Precinct 13; Exhibit I, Precinct 16; and Exhibit D, Precinct 12. - These 5 ballots were declared invalid for being marked.

In Exhibit B, Precinct 15, the word "pansay" (Visayan concoction for toilet) was written on top of the printed word Senators. This word is not only irrelevant, but also, its appearance in a place other than the proper space for voting cannot be considered as done accidentally or innocently (*Conui-Omega vs. Samson*, L-21910, November 11, 1963).

In Exhibit A, Precinct 17, the word "lowlow" was written before and after the name "Compendio", who was voted for councilor. Unlike in the previous case the alleged identifying words were written with the name of a duly registered candidate. In the absence of evidence aliunde that these words are not a nickname or appellation of affection or friendship, and were intended to mark the ballot, we incline to uphold its validity. This vote should be credited to petitioner.

Exhibit D, Precinct 13—the word "seniorito" appeared on the far right side of the ballot on the second line for councilors. Not accompanying the name of any candidate, the ballot was correctly rejected, as the word cannot be considered as an appellation of affection or respect.

Exhibit J, Precinct 16—the word "shot" was written downwards on the left margin opposite the voted candidates for councilors, whereas in Exhibit D, Precinct 12, the statement "Binabati kong vice-mayor ug Beloy mayor" was written on the right margin. Following our ruling in the case of Exhibit B, Precinct 15, the appearance of these words, which are neither appellations of friendship nor nicknames of candidates, in spaces not intended for writing could not have been intended for any other purpose than to identify the ballots.

4. Exhibit K, Precinct 15 - The Court of Appeals declared this ballot as marked, in view of the appearance of five

big circles on the first line for senators. Considering that this voter appears to be a poor writer who left the spaces blank except those for the mayor and the first line for councilors, the disputed circles could have indicated merely the voter's desistance to vote for any other candidates (*Gutierrez v. Aquino*, L-14252, February 28, 1959).

5. Exhibits A. B. C, D. E. F. G, H, I and J, Precinct 7; Exhibits K, L, M., N, O, P. Q, and R, same precinct; Exhibits A, B, C, Precinct 11; Exhibits J. K, L. M, N. and P. Precinct 14; Exhibits B. C, D, E, F, G and H, same precinct; and Exhibits S. U. V. Precinct 18—In Exhibits A, B, C, D, E, F, G, and H of Precinct 7, the word "engat" or "ingat" or "ensat" appeared uniformly on the first line for senators, while in Exhibits I and J the same word was written on lines 6 and 8, respectively.

In Exhibits K, L, M, N, O, and P of the same precinct 7, the word "boy" appeared uniformly on line 8 for senators, although in Exhibits Q and R the same word, "boy", was written on lines 1 and 6 for councilors.

In Exhibits A, B, and C, Precinct 11, the name "Daniel" appeared in one of the lines for councilors, whereas, in Exhibits j, K, L, M, N and P, Precinct 14, the word "Menong" or "Minong" was written uniformly on line 4 for senators. In Exhibits B, C, D, E, F, G, and H, Precinct 14, the word "sorab", or "curab", "surab" or "sarab" appeared either on the space for provincial governor or one of the provincial board members, and in Exhibit S, U, and V of Precinct 18, the name "Mines", "Menis" or "Menes" was written in one of the spaces for councilors.

In all of these cases, a pattern is readily discernible—a group of voters in the same precinct wrote a particular word or name among those voted for certain offices. It is unlikely that in a precinct, for example, Precinct 14, 6 voters would all innocently write the name "Minong" or "Menong" on line 4 for senators, or that 7 voters in the same precinct would all put the word "sorab", "curab", "scarab" or "sarab" in one of the spaces for provincial officials. And, this curious pattern or way of voting is true with respect to the other ballots specified above. The appearance of the aforementioned words in practically the same spaces in several ballots, in the same precincts, is a clear and convincing proof of a design to identify them. Thus, in a case, the appearance in 4 ballots of the name "Cesario" or "Cesar" uniformly on the first space for senators, and of the name "Gregorio" on line 8 for senators in 8 ballots, in the same precinct, was held to be conclusive proof that the name of the non-candidate was used as a means to mark the ballots (*Delgado vs. Tiu*, L-14143, May 27, 1959). Considering that the intention of the voter is a question of fact, and, therefore, peculiarly within the sphere of the Court of Appeals, we see no reason to depart from its ruling.

6. Exhibits A, B, and C, Precinct 18.—In these ballots, capital letters "AAD" were written uniformly on line 1 for senators. It does not appear that these were the initials of any candidate, and, at least in Exhibit A and C, no other name or word was written on the spaces for senators except those letters. It is true that under paragraph 15 of Section 149 of the Revised Election Code initials, while they are not valid votes, will not invalidate the whole ballot. But the initials referred to in said provision as not constituting valid vote must refer to initials of registered candidates. Furthermore, the appearance of these initials in 3 ballots in the same precinct, on the same space, cannot be merely coincidental, but intended to mark the ballots (*Ferrer vs. Alban*, supra).

7. Exhibits A and C, Precinct 12; Exhibit A. Precinct 13, and Exhibit C, Precinct 17.—Exhibit A, Precinct 12, contained the statement "Have a good time Mr. Pacito" written on lines 4 and 5 for councilors; Exhibit C, also Precinct 12, and Exhibit A, Precinct 13, contained the words "Forget me not" on space 5 for councilors and the space for vice-governor, respectively. In Exhibit C, Precinct 17, the expression "Tse na lang" appeared on the third line for councilors.

As a general rule, a voter must write on the ballot only the names of candidates voted for the offices appearing thereon. Certain exceptions, however, were provided in Section 149 of the Revised Election Code. For example, prefixes such as "Sr.", "Mr.", and the like, and suffixes such as "hijo", "Jr.", etc. will not invalidate the ballot (par.

5). Initials (paragraph 15), nicknames or appellations of affection and friendship will not invalidate the ballot, if accompanied by the name or surname of the candidate, and above all, if they were not used as a means to identify the voter. Even under a liberal view, the words written on the ballots under consideration cannot be considered as falling within the exception to the rule. Consequently, they are irrelevant expressions that nullified the ballots.

In resume, with the exception of Exhibits G, Precinct 16; H, Precinct 11; A, Precinct 17; and K, Precinct 15, which should have been counted in favor of the petitioner, the rejection of the other ballots involved in this appeal for being marked must be sustained. Hence, the election of respondent Pacito Abrea, by a majority of 15 votes, is declared.

Wherefore, and as thus modified, the decision of the Court of Appeals is affirmed and the present petition is dismissed. With costs against the petitioner. It is so ordered.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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