

DELFIN PROTACIO, PETITIONER AND APPELLANT, VS. ELEUTERIO DE LEON AND THE COURT OF APPEALS, RESPONDENTS AND APPELLEES.

G.R. No. L-21135. November 08, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

In the general elections of November 10, 1959, petitioner Delfin Protacio and respondent Eleuterio de Leon, were candidates for the position of Mayor of Parañaque, Rizal. The municipal board of canvassers of Parañaque, proclaimed respondent De Leon, mayor-elect, with a majority of 33 votes over Protacio (5,192 for De Leon, 5,159 for Protacio). A protest was lodged by Protacio with the CFI of Rizal (Election Case No. 5913), which rendered judgment, declaring Protacio the duly elected Mayor of Parañaque, with a plurality of seven (7) votes over De Leon. The CFI judgment was appealed to the Court of Appeals (CA-G.R. No. 30500-R), which, thru its Special Sixth Division, rendered a decision on December 22, 1962, modifying the decision by reducing the majority votes of Protacio from 7 to 5. On January 3, 1963, respondent De Leon's Urgent Motion for Reconsideration of the judgment, was referred to a Division of Five, which, on March 15, 1963, promulgated an Amended decision, with one Justice dissenting, the dispositive portion of which runs as follows—

"Votes Awarded

Protestee Protestant

de Leon Protacio

In our original decision 5,144 5,149

Under motion for reconsideration +26 —2

Under protestant's counter assignment of error —3 0

5,167 5,147

From the above, it clearly appears that protestee Eleuterio de Leon has obtained a majority of 20 votes over protestant Delfin Protacio.

WHEREFORE, the judgment of this court on December 22, 1962, is hereby set aside and the judgment appealed from REVERSED. Let a new judgment be entered dismissing the protest and declaring Eleuterio de Leon duly elected mayor of Parañaque, Rizal. No pronouncement as to costs."

The amended decision is now before Us on appeal by certiorari, the petitioner contending that the respondent Court decided issues of appreciation of [ballots, not in accordance with pertinent provisions of] the Revised Election Code and the applicable decisions of this Court, insofar as it—

- (a) adjudicated TWENTY-SIX BALLOTS (invalidated in the Original decision of respondent Court) to respondent de Leon;
- (b) deducted TWO BALLOTS (held valid in the Original decision) and ONE OTHER BALLOT (held valid by the trial court) from petitioner; and
- (c) invalidated only THREE BALLOTS among the INVALID BALLOTS, subject of petitioner's counter-assignment of errors.

The errors allegedly committed by the respondent Court, are embodied in twenty (20) assignments of error, which We will discuss presently.

Exhibit P-4 under the first assignment of error. Petitioner contends that Exhibit P-4, should not have been declared valid for respondent De Leon, containing, as it does, the names of two well known movie stars, Armando Goyena, written on the space for vice-mayor and Tessie Quintana on the first space for councilors, not registered candidates for vice-mayor and councilor or for any other office. In this ballot, only four (4) names appear, that of Pelaez for senator, respondent De Leon for Mayor, Armando Goyena for Vice-mayor and Tessie Quintana for councilor. Considering that Goyena and Quintana were prominent and conspicuous cinema personalities, through-out the Philippines, there could have been no other purpose of the voter in placing their names on the ballot than to mark it. Same is invalid for De Leon (*Cruz vs. CA, et al.*, No. L-14095, April 10, 1959; *Pagontao vs. CA, L-18926*, Nov. 13, 1962).

Exhibits P-51 and A-2; under the 2nd assignment of error.

"In ballot P-51, the name 'F. Valderrama', a registered voter in precinct No. 37-A, was written on the first space for members of the provincial board. In ballot A-2, the name, 'R. Buenavista', a registered voter in precinct No. 11, is written on the first space for senators."

We find Exhibit P-51, invalid for De Leon. "F. Valderrama", not a candidate, was a registered voter in Precinct 37-A, and the handwriting on the ballot is identical to the signature on the registered voters' list in the same precinct. The writing of such name is not coincidental. Manifestly, the voter signed his name to identify his vote (*Gutierrez vs. Aquino, L-14252*, Feb. 28, 1958). With respect to Exhibit A-2, the signature of "R. Buenavista" appearing in the list of voters, is not the same as the handwriting appearing in the ballot; the letter is printed and there is no way of identifying whether this ballot was "F. Buenavista's vote. Valid for De Leon.

Exhibits P-71, P-75, P-77, P-80, P-81 and P-84, Third assignment of error.

Petitioner maintains that the alleged distinguishing marks in said ballots consist of the names of protestee's supposed political leaders, who were not candidates during the elections, namely: "Tony Espiritu" in ballot P-70, P-82, P-83; "A. Aniag", in ballot P-75; "M. Oca" in ballot P-77; "Basilio" in ballot P-79; "Aling Capiral" in ballot P-80; "Antonio Salazar" in ballot P-81; "Nemesio de Leon" in ballot P-84 and "Purita" in ballot P-71.

Petitioner presented evidence aliunde, in an endeavor to show that names in these protested ballots were supposedly placed by the voters in furtherance of an alleged preconceived plan of identifying their ballots by such means. Petitioner presented witnesses, tending to show that previous to the date of election, leaders of De Leon made a last minute house to house campaign, and to prove that they voted for De Leon, the electors were requested to place the name of prominent members of their families in the spaces for Councilors or Senators. In its amended decision, the respondent Court, said—

"Exhibits P-71, P-75, P-77, P-80, P-81 and P-84 are valid for protestee, the votes for Purita, A. Aniag, M. Oca, Aling Capiral, Antonio Salazar and N. de Leon therein being stray; there is no sufficient and reliable evidence that they were political leaders of protestee during the last elections" (pp. 4-5, Amended decision)

While the above ruling involves a conclusion of fact, and, therefore, not open to review, as a general rule, We find that the testimony of petitioner's witness Primitivo de Jesus is hearsay and of little weight; he was the running mate of protestant during the last election; he obtained the information regarding the scheme, from Basilio Aniang, who was not presented to testify. According to Antonio Garcia, another witness, Tony Espiritu and Nemesio de Leon agreed among themselves during the 1955 elections (not the 1959 elections), to require their doubtful followers to place their names and that of Purita on the ballots to identify them. This, however, had been completely denied by Tony Espiritu. Garcia declared also that in the 1959 elections, he did not hear Tony Espiritu or Nemesio de Leon giving similar instructions to their men. Witnesses for petitioner, Agripino and Rodolfo Cristobal declared that Tony Espiritu had instructed them to do what they had done in 1955, which was likewise denied by Tony Espiritu. These votes may only be considered as stray, without invalidating the whole ballots (Rule 13, Sec. 149, Revised Election Code). The six (6) ballots are, therefore, valid for respondent De Leon.

Exhibits A-1, Precinct No. 11-A, under the fourth (4th) assignment of error: The objection is that there appears on the fifth (5th) space for Senators, an "A" with embellishment. We find that the embellished "A" is the usual form by which the voter writes letter "A". The vote is valid for De Leon.

Exhibit P.-65 is the subject of the fifth (5th) assignment of error. The respondent Court stated—

"P-65 should be declared valid tinder Rule 6, Section 149 of the Revised Election Code, 'lavilla' preceding De Leon does not appear to be a name distinct from appellant's."

"Lavilla" is not idem sonans to "Eleuterio", christian name of De Leon. Where the ballot contains a Christian name distinct and different from that of the candidate, although the surname written is correct, said ballot cannot be counted for him, even if there is no other candidate bearing surname (Lucero vs. de Guzman, 45 Phil. 852; Villavert vs. Lim, 62 Phil. 178; Villavert vs. Fournier, 84 Phil., 756; 47 Off. Gaz. 1789; Gutierrez vs. Aquino, L-14252, Feb. 28, 1959). P-65 is, therefore, invalid for De Leon.

Exhibits P-23, P-24, P-87, and P-90, under the Sixth Assignment of Error. Petitioner claims that the way these ballots were written, particularly the names of Mayor and Vice-Mayor, which were indented and in vivid contrast with the manner the other names were written, makes said ballots marked. The left margin of their names are about 1-1/2 inches as compared with the others, which is 1/2 inch. We do not share the view, since such indentions are not sufficient to identify who the voters were. Moreover, they were scattered in 3 different precincts. Valid votes for De Leon.

Exhibit P-5 (Seventh error), contains the word "sorry" after the name Rodriguez, which was enclosed in parenthesis and superimposed with the name of F. Lopez. Petitioner claims that this ballot contains an irrelevant expression. It is evident that the voter wrote Rodriguez first for Senator, but changed his mind and wrote the name F. Lopez instead, by placing within parenthesis Rodriguez, and the word "sorry" after it. This is simply an expression of regret for having committed a mistake; it does not identify the voter at all. Valid vote for De Leon .

Exhibit P-56 Eighth Assignment of Error. The words "Minte" and "Kabayan", in block or printed form, both enclosed in parenthesis, are written after the name C. Gonzales and F. Gonzales, 2nd and 7th spaces for councilor. All the names are in longhand. There is no explanation given why such words, specially "Minte", written in a conspicuous and bold characters, was placed there, except to identify the voter. Invalid for De Leon.

Exhibits P-1 (Precinct No. 20) and A-7 (Precinct No. 10) under the 9th Assignment of Error. Petitioner objected on the ground that these ballots were written by two different hands (each). We find that in Exh. P-1, there are distinct and marked dissimilarities in the writing of the names of the Mayor and Vice-mayor, and the rest of the handwriting. Invalid for De Leon. (Gutierrez vs. Reyes, L-13137, Feb. 28, 1959; Gutierrez vs. Aquino, L-14252, Feb. 28, 1959).

Exhibit A-7—clearly shows that the ballot was prepared by only one hand. Valid for De Leon.

Exhibit P-16, Tenth Assignment of Error. Petitioner contends that this ballot was written by two persons, taking into account ballots Exhibits P-9 to P-15, which were declared invalid. Insofar as Exhibits P-9 to P-15, We find that they were prepared by two persons and, therefore, invalid. Exhibit P-16, however, could not be considered as having been written by two persons, there being no basis for comparison, the only name appearing thereon is "Di Lion". Valid for De Leon.

Exhibit P-102, 11th Assignment of Error. After the names of Isidro Rodriguez (for Governor) and Amado Gervacio (for Vice-governor), which were written after the names of Eleuterio de Leon and Primitivo de Jesus, were cancelled, signature initials appear. It is claimed by petitioner that said ballot should be invalidated, arguing that if signed ballots are rejected, initialed ballots should be similarly rejected. We find logic in this reasoning. The initials appearing in said ballot, sufficiently identify the voter. Admittedly, there was a mistake committed when the names of the mayor and vice-mayor were erroneously written in the spaces for governor and vice-governor, but there was no explanation given for placing the initials after the corrected names. Invalid for De Leon.

Exhibits P-26, P-96, P-98 and P-113, under the thirteenth Error, Exhibit P-26 contains the phrase "Liberal Party" written eleven (11) times—on the space for vice-governor, on all the spaces for board members and from the 2nd to the 8th space for councilors, and the word "Factor" on the first space for Councilor. Ballot is invalid for De Leon, for being marked. The name "Factor" the only name appearing conspicuously before the "Liberal Party" in the spaces for Councilor, had no other purpose than to identify the voter.

Exhibit P-96, the word "Street" written diagonally on the spaces for Senators and Councilors, does not invalidate the vote for De Leon. The word could stand for "Straight", obviously referring to the vestiges of the block-voting system, once prevalent in this country. As held in various decisions, the writing of these phrases may be expected for some time (*Gutierrez vs. Aquino*, supra). Exhibit P-98, the phrase "Grand Alliance" with a long curved arrow diagonally written across the spaces for Senators and pointing to the phrase, was undoubtedly made for emphasis. Exhibit P-113, with the phrase "and party", is also valid, for the same reason as stated for Exhibit P-96.

Exhibit B-11 (Precinct No. 2), under the 14th assignment of error. Protacio is voted. Respondent objects on the ground that it has been written by two hands. The handwriting form of name Gasgonia on the first space for councilors is fundamentally different from the handwriting form of the names appearing in the ballot. Invalid for Protacio.

Exhibit B-17, Precinct No. 7, under the 15th assignment of error, where the name voted for Mayor was Delfin Antonio". Evidence aliunde submitted, proved that petitioner was also known as Dr. Antonio, because when he began his medical practice, he put up a drugstore and named it "Farmacia Antonio". In invalidating this ballot, the respondent Court held that petitioner herein was not sufficiently identified. This is error. Petitioner has been associated or known by another name (Antonio), because of his drugstore bearing said name. In a case (*Gutierrez vs. Aquino*, supra), this Court upheld the validity of a ballot where the phrase "Big 4" was written together with the Christian name of the candidate, it having been shown that such candidate was known by the nickname "Big 4" because he owned a jeep with such phrase printed below the jeep's windshield. Valid for petitioner.

Exhibit B-1 (Prec. No. 19), under the sixteenth assignment of error: The ballot shows that after the name "A. Cortez" on the 9th line for councilors, the word "saging" (banana) is written. Petitioner contends that the candidate after which name the word is written, was commonly known by such nickname. Under the 12th assignment of error, We invalidated a ballot when We found an irrelevant epithet, invoking the doctrine laid down in the *Bernados & Sabater* cases (supra). We find said doctrines applicable in the ballot in question. Invalid for

petitioner.

Exhibits P-28, P-57, P-62 and P-91, under the seventeenth assignment of error, are claimed to have been written by more than one (1) person each and/ two (2) ballots were written by one person.

Exhibits P-28 and P-91, the names of the Senators, Governor, Vice Governor and Board members, were written by one person, the Mayor, Vice-Mayor and councilors, by another. They are entirely different handwritings. Invalid for De Leon. Exhibit P-62, however, is valid, the difference which is not apparent, is only in the degree of impression in writing the names of the Governor, Mayor and Vice-Mayor. Valid for De Leon.

Exhibit P-57, the only name appearing there, is "De Leon" in the space for Mayor. It is alleged that the person who wrote De Leon in this ballot, is the same person who wrote "De Leon" in the space for Mayor in ballot Exh. 63 (not included under this assignment). The name "De Leon" in the two ballots are not written by the same hand. They evince different handwritings. Good vote for De Leon.

Exhibit P-27, P-30 and P-31 (Prec. No. 24, under the 18th assignment of error. On Exh. P-27, a big letter "X" was placed immediately after the name of Santos on the 8th space for councilors. It is too big for a period. There is no reason for the existence of such letter, except to mark the vote. Invalid vote for De Leon.

On Exh. P-30, the name of "Pelaez" a national political figure and not a candidate for councilor was written on the fourth space for councilors and a big "X" was immediately placed after it. Aside from the fact that the "X" standing alone is a mark, We have also ruled in the case of *Pagontao vs. CA*, L-18926, Nov. 13, 1962.

"Exh. E-11 was correctly rejected against petitioner. It is marked because 'Carlos P. Garcia' and 'Juan Pajo' were voted as councilors, they being national figures and not candidates for said position".

Not a valid vote for De Leon.

Exhibit P-31, contains the name "Magsalin" in the second space for senators, which is immediately followed by a big "X". After the names of Mora and C. Cruz, (6th & 7th spaces for councilors) a big "X" was placed. This ballot is also invalid for respondent De Leon, for the same reasons stated for P-27 and P-30. The three were cast in the same precinct No. 24 and of the same pattern.

Exhibit P-46, P-48 and P-101, under the 19th assignment of error.

Exhibit P-46, contained cancelled names, which were again re-written. Obviously, the voter had been copying from a sample ballot and when he found out that he missed one name, he had to cross out all the written names to have them conform with the same ballot. The supposed likeness of a human face appearing before the word "Leon" on the space for Mayor on Exhibit P-48 is more of a replica of the letter "D". The name "N. Cruz" which was written to occupy all the three spaces for members of the Provincial Board in Exh. P-101, was merely an indication that the voter wanted to vote for only one board member. There is no clear showing that these three (3) questioned ballots were marked. They are, therefore, valid for De Leon.

The topic taken up by petitioner in his 20th assignment of error, is the alleged irregularity in the conduct of the voting in Precinct No. 41. Efforts were made by petitioner to show that ballots were distributed and cast in said Precinct even after the permitted hour of 6:00 o'clock p.m. on election day. We may agree with petitioner that such really happened. However, there is no way of determining which of the ballots read by the board of inspectors were cast after said hour. We would prefer to leave the ballots as they are, as did the trial court and the respondent Court, for any deduction of votes We may order, would amount to a disfranchisement of those who were there on time, who could not be differentiated from those who came and cast their votes beyond the period allowed by law.

Respondent made fifteen (15) counter-assignments of error.

First Counter-assignment of error. Respondent contends that it was error for the lower court to receive evidence, with respect to a vote cast for the petitioner in Subic Naval Base, and award it to the petitioner. The respondent, does not dispute the legality or validity of a vote cast for a candidate in a Naval Reservation. His only complaint was said vote was not a subject of the protest. The objection is more of a technicality which should not defeat the purposes of the election law. The courts have ample authority to examine, and recount the ballots before it, regardless of whether a party raises any issue in his pleadings about them (Sec. 175, Rev. Elec. Code; *Ibasco vs. Ilao, et al.*, 110 Phil, 553). The lower court was correct in receiving the evidence, and the respondent Court in affirming such action.

Exh. A-1 (Prec. 11). Under Second Counter-assignment of error. This ballot was awarded by the lower court to respondent. On appeal, the respondent Court declared it invalid for De Leon. We agree with the findings of the respondent Court. The word "Coronel" alone, written in the space for Mayor does not identify, with sufficiency, the person voted for. The word is general and was not followed by the name or surname of respondent. It could refer to anybody who was a possessor of such rank. It is invalid for respondent.

In the third counter-assignment of error, respondent claims that it was error for the respondent Court in not declaring 115 ballots in four precincts (10, 17, 17-a and 19), invalid for petitioner. Respondent alleges that all the ballots followed a common pattern of identification, whereby the last councilor voted for in each of the above ballots was candidate Angel Cortes, cousin and most influential leader of petitioner in the locale of said precincts. Unless these ballots are declared, in any part of this decision, as invalid for other reasons, We are not ready to share the respondent's view. More often than not, voters follow the arrangement appearing in the same ballots (cartilla) distributed by each candidate. This, standing alone, does not render the ballot marked. The constant doctrine is that no ballot should be declared null and void as marked, unless there are clear and sufficient reasons to justify such conclusion (*Gutierrez vs. Reyes*, L-13137, Feb. 28, 1959). No such reasons appear herein.

Exhibit B-13 (precinct 17-A), under the fourth counter-assignment of error. Respondent claims that there is written in one of the space for councilors an irrelevant and impertinent phrase "P. COR OF JESUS". The name written on the ballot looks like "P. COREZ JESUS". There is a candidate bearing the surname of Cortez. Voter could have intended said vote for him. The phrase written, to our mind, is neither irrelevant or impertinent, but only a sample of poor writing by a person who could not write and spell very well. Furthermore, such a misspelled name cannot invalidate the whole ballot. At most it could be stray for the candidate who may have been meant to be voted for. Good vote for Protacio.

Exhibit P-52 (Precinct No. 37-A), fifth counter-assignment of error, contains on the 8th space for councilors the name "Sony Boy". Respondent claims that the name pertains to Arsenio Cruz, one of the official candidates for councilor, having earned that name when he was a ping-pong player. The respondent Court, however, considered the ballot marked, for it saw no relation of the name to candidate Cruz. We agree with this finding of fact and We declare the ballot invalid for respondent.

Exhibit P-69, in sixth counter-assignment of error. Respondent claims it was error for the respondent Court to invalidate this ballot which contains "S. Mora", on the second space for councilor and a big "M" in block or printed letter, on the eighth space for councilors, with the remaining space in blank. There could be no mistake regarding the intent to mark this particular ballot. The letter "M" which appears conspicuous, is different from the M in the name Mora, and it was also retraced to indicate emphasis. It is an invalid vote for De Leon.

Exhibit P-68 (Precinct 41), 7th-counter-assignment of error. The big "M" printed after R. Rodriguez" on the sixth space for Senators, the 7th and 8th space being left vacant, was conspicuously and purposely written and

distinctively different from all the letter Ms in this ballot. There can be no other intention of the voter than to identify his ballot. Invalid vote for De Leon.

Exhibit B-20 (Precinct 19) 8th counter-assignment of error, contains the expression "CARANCHO" or "GARANCHO" before the name Dr. D. Protacio. Both petitioner and respondent considered the word "Carancho" a derivative of "CHOCARAN", a tagalog word meaning friend, thus making the same an appellation of affection and friendship. It may also mean that Protacio belonged to the same group. It does not identify the vote. Valid vote for Protacio.

Exhibit B-4 (Precinct 21-A) 9th counter-assignment of error, is claimed to be marked. On the back of this ballot, the numerals "49" appear. Both the trial court and the respondent Court rule that, in all likelihood, the numbers were not written by the voter, but by the board of election inspectors as a tally guide, to which We agree. Valid vote for Protacio.

Exhibit B-5 (Precinct 21-A) tenth counter-assignment of error, is sought to be invalidated on the ground that there appears inverted, illegible writings above the vote for Rodriguez on the third line for senators and above the name "Galauran", on the first line for board members. The illegible writings are merely the imprints of the other names written on the ballot caused by the folding of the same. Indelible pencil was used in writing the names. A little moist could have caused the imprints, specially if We take note that when folding the ballot the two names (Rodriguez and Galauran) come exactly opposite each other. Good vote for Protacio.

Exhibit B-3, prec. 5; B-10, prec. 7; B-36, prec. 13; B-14, prec. 17; B-8, prec. 19; B-4, prec. 24-A; B-25, prec. 11; B-39, prec. 13 and B-1, prec. 25, are questioned under respondent's 11th counter-assigned error. It is claimed that petitioner's name in these ballots were written on two different spaces—one on the space for Mayor and the second on other space, but which was crossed out or erased and another name belonging to a candidate for the position in the cancelled space is written. We do not consider these ballots marked. It is merely a clear case of mistake on the part of the voter, who, after realizing that he had placed the name of the petitioner in the wrong space, had to cancel the same and put the right name in its right place. All are valid votes for Protacio.

Exhibits B-11, Prec. 11; B-57, Prec. No. 15; B-33, Prec. 16-B; B-51, Prec. 16-B, under the 12th counter-assigned error. Respondent's objection is centered on the supposed unusual manner in which the letter "i" was written in each of these ballots, by using as dots small circles, small crosses, quotation marks, small check marks. The manner by which the "i" was written in each of the four ballots is not sufficient to identify the voters. They are but the product of individual mannerism of voters, which do not invalidate the ballots. Valid votes for Protacio.

On Exhibit B-26 (Prec. 2), respondent claims that numeral "2" appears written on the 6th space for councilors; on B-2 (prec. 5), the names originally written on the spaces for provincial board were crossed out and besides them there appear "O" and "X" marks; on B-12 (Prec. 11), clear fingerprint impressions are seen. (13th counter-assigned error). We find that in B-26, the figure which had the resemblance of numeral "2" is more of a V, apparently the first letter of a name which the voter did not continue. In the same ballot, the letter preceding the surname .Sarmiento on the 3rd space for councilors looks like the figure on the 6th space which respondent claims to resemble numeral "2". The letters "o" and "x" in ballot B-2, are merely circles and crosses signifying desistance of the voter to write any other name. The fingerprint appearing at the back of B-12, could have been mistakenly placed at the polls when the voter was given the ballot. Two signatures and/or initials appear beside the fingerprint, which are obviously those of the Inspectors. There being no showing that these particulars served as identifying marks, the votes are good for Protacio.

On Exhibit B-13, Prec. 13, 14th assignment of error, P. de Jesus was followed by the word "Poming", which was enclosed in parenthesis. Respondent claims that the enclosed word is a mark which invalidates the ballot

Respondent, however concedes that the word is De Jesus' nickname. The use of nicknames is not prohibited. The vote is valid for Protacio.

The 15th counter-assignment of error deals with the findings of Pedro Damasco, NBI Expert. It is contended that it was error for the respondent Court in not accepting in toto the report of said expert regarding 24 votes case for petitioner, which were claimed to have been prepared by persons other than the registered voters. The lower court discredited the NBI Expert, and We find no reason to hold otherwise. As the lower court has commented—

"* *, in the interests of justice, directed Mr. Damasco to take the stand. The Court felt—as it still feels now, and with greater reason—that it could not be made to swallow opinions of experts 'as is'. Especially so, when, as in this case, its attention had been called to an error in the expert's conclusions, which, an examination of the pertinent photographs, the Court was able to confirm."

"After Mr. Damasco testified, the Court found greater case to doubt the soundness of his conclusions. It has been said that dactyloscopy is more or less exact science, and this, the Court inclined to believe. But as in any, other science, findings are as sound as the methods employed in their evaluation and the competence of the people who make them. The court regrets to say that Mr. Damasco's finding and the explanations he gave therefor on the stand hardly did justice to the science of dactyloscopy."

"Mr. Damasco admitted the blunder of representing that one ballot (marked N-12 and N-13) matched with two stubs—Stub No. 5467 and Stub No. 558. * *."

We cannot see our way clear to uphold the tenability of this counter-assignment of error.

The following ballots are invalid for De Leon:

Under the assignment of errors by petitioner—thirteen (13) ballots (Exhs. P-4; P-51; P-65; P-56; P-1; P-102; P-72; P-26; P-28; P-91; P-27; P-30 & P-31.

Under the counter-assignment of errors—four (4) ballots (Exhs. A-1; P-52; P-69; & P-68), but which were already correspondingly deducted in the totals arrived at by the Court of Appeals.

The following are invalid for Protacio:

Under the assignment of errors—two (2) ballots (Exhs. B-11 and B-1). One of these ballots has been deducted from the totals arrived at by the Court of Appeals.

Recapitulation: De Leon Protacio

Amended Decision 5,167 5,147

Under Our Decision -13 -1

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5,154 5,146

or a majority of EIGHT (8) votes of De Leon over Protacio.

In view hereof, respondent Eleuterio de Leon, is declared the duly elected Mayor of Parañaque, Rizal, in the elections held on November 10, 1959, with a majority of eight (8) votes over the petitioner Delfin Protacio. As thus modified, the judgment appealed from, is affirmed, without costs.

Bengzon, C. J., Labrador, Reyes, J.B.L., Dizon, Regala, and Makalintal, JJ., concur.

Padilla, Bautista Angelo, Concepción and Barrera, JJ., concur in the result.

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