

EMILIO ARZAGA, PETITIONER, VS. FRANCISCO BOBIS, SR.*G. R. No. L-18953. October 30, 1962*

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

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/37e16457924c/>**REYES, J.B.L., J.:**

In the general election of November 10, 1959, the board of municipal canvassers of El Nido, Palawan, proclaimed incumbent Emilio Arzaga mayor with a majority of 2 votes (509 by 507). His election was contested in due time, and the Court of First Instance of Palawan likewise declared him winner by 3 votes (509 by 506). His opponent Francisco Bobis, Sr., brought the case to court of Appeals. The latter reversed the decision of the lower court and declared Bobis, Sr., the winner by 5 votes (502 by 507). The present case is an appeal by certiorari from the decision of the Court of Appeals.

Petitioner Arzaga assigned twelve errors involving 15 ballots, whereas respondent Bobis, Sr., made five counter-assignments of error relative to 6 ballots. Thus, we are asked to review a total of 21 ballots only.

PETITIONER'S TWELVE ASSIGNMENTS OF ERROR

"1. The Court of Appeals erred in considering Ballot Exhibit 'A-6' (Precinct 3-A) as valid vote for respondent."

In the blank space for mayor in this ballot the following was written: "F. Vuvis". Under the idem sonans rule, this should be counted in favor of respondent Bobis, Sr. The first assignment of error is, therefore, overruled.

"A name or surname incorrectly written which when read has a sound equal or similar to that of the real name or surname of a candidate shall be counted in his favor," (Sec. 149, paragraph 2, Revised Election Code.)

"11. The Court of Appeals erred in considering ballot Exhibit 'A-1' (Precinct 3) as a valid vote for respondent, in spite of the fact that what is written thereon is not the name of respondent nor idem sonans thereof."

In the space for mayor "F. Pabes (or Pabis), Sr." was written by the voter. The second assignment of error is likewise overruled. It is counted in favor of respondent under the idem sonans rule.

"III. The Court of Appeals erred in declaring Exhibit 'B-6' (Precinct 3-A) as invalid vote against petitioner."

With respect to this ballot the Court of Appeals said:

"En la balota B-6 aparece votado E. Arzaga para el puesto de alcalde. El elector escribe con bastante claridad; voto a 6 candidatos para senadores, para el puesto de gobernador y vice-gobernador, y a 6 consejales. En el espacio para miembros de la junta provincial, escribio 'E. Arzaga' y en el segundo espacio 'Castro Adolfo' pero tacho estos dos nombres y despues de la palabra 'Arzaga' puso Totang ena mo' y despues del apellido 'Adolfo' puso 'Berat'. Indudablemente, estas palabras insultantes e indecentes han sido escritas por el mismo elector a juzgar por la caligrafia con que estan trazadas las mismas."

We have examined this ballot, and we agree with the Court of Appeals that the voter used indecent words to mark his ballot. The third assignment of error is similarly overruled.

"IV. The Court of Appeals erred in considering ballot Exhibit 'B-14' (Precinct 3-A) as marked and invalidating it against herein petitioner."

Petitioner Emilio Arzaga was voted for in this ballot. The Court of Appeals nullified the same as marked inasmuch as "Perez Bungcad" was written on the third space for councilors.

In the absence of any evidence aliunde, we are not convinced that this is a marked ballot. In fact, there was a candidate for councilor by the surname of "Bungcad", although his first name was not Perez, but Patricio, corroborated by the election return, Exhibit "YY", the ballot, Exhibit B-X-4, and by the tally sheet, Exhibit "A-X-6". The fourth assignment of error is sustained. Ballot Exhibit "B-14" of Precinct 3-A is counted in favor of petitioner Arzaga.

"V. The Court of Appeals erred in considering ballot Exhibit 'B-5' (Precinct 3-A) as marked and invalidating it against herein petitioner."

Petitioner Arzaga was voted for herein. But on the 8th space for senators, the voter wrote: "R. Perez Cabus Cabus". No evidence aliunde was presented as to the meaning of "Cabus Cabus". Hence, it does not appear certain, nor clear, that the ballot is marked (Cruz vs. Court of Appeals, G. R. No. L-14095, 10 April 1959). While Perez is not a candidate for senator, the writing of his name should be considered a stray vote only, in accordance with paragraph 13, Section 149, of the Revised Election Code, to wit:

13. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as stray vote but shall not invalidate the whole ballot,"

The fifth assignment of error is, therefore, sustained. Exhibit "B-5" is counted in favor of petitioner Arzaga.

"VI. The Court of Appeals erred in considering ballot Exhibit 'B-10' (Precinct &-A) as marked and invalidating it against petitioner."

VII. The Court of Appeals erred in considering ballot Exhibit 'B-11' (Precinct 3-A) as marked and invalidating it against herein petitioner."

VIII. The Court of Appeals erred in considering ballot Exhibit 'B-12' (Precinct 3-A) as marked and invalidating it against herein petitioner."

The 6th, 7th, and 8th assignments of error are taken up together because they have a common feature. In all of them petitioner Arzaga was voted as mayor. In ballot Exhibit "B-10", the voter wrote on the fifth line for councilors the words "Perez lagare talob sa kabila". In ballot Exhibit "B-11" was written "Perez lagari", on the sixth space for councilors. In ballot Exhibit "B-12" also appears "Perez lagare" on the fourth space for councilors. With respect to these ballots, the Court of Appeals said:

"El protestante contiene que estas balotas son marcadas porque aparecen votados 'Perez' con varias palabras impertinentes. El protestante declaro en la vista de esta causa que el nombre completo de Jose Perez es Jose Sanchez Perez y que Jose Perez no es conocido en el barrio con una apodo. Jose Perez no era candidato para ningun cargo."

"El protestante declaro que la palabra "lagare" en visayo significa 'sierra'. En tagalog, que es nuestra lengua nacional, la palabra 'lagare' tiene el mismo signincado y aun sin pruebas podemos dedarar que la palahra 'lagari' en tagalog significa 'sierra'. Tenemoe, por consiguiente, que segun el protestante no contradicho por ningun otro testigo, Jose Perez no es conocido en el barrio por ningun otra apodo o apelativo."

We agree with the Court of Appeals that these ballots were marked intentionally to identify them. "Lagare" is an

impertinent and derogatory word meaning a person who would want to profit or get from both sides; and the appearance of three ballots from the same precinct, having the same derogatory expression, strongly implies its use as a mark. The 6th, 7th, and 8th assignments of errors are overruled.

IX. The Court of Appeals erred in considering ballot Exhibit 'B-8' (Precinct 3-A) as marked and invalidating it against herein petitioner."

Petitioner Arzaga was voted as mayor in Exhibit "B-8". However, on the 6th line for councilors the words "Bienes---OPA" were written. While no evidence aliunde was presented by respondent as to the meaning of these words, we cannot agree with the Court of Appeals that the ballot was marked intentionally, considering that letters OPA were written in capitals, at the bottom of the ballot and away from the rest of the names of the persons voted for, which are all in current script. Nor is there showing that the letters are the initials of a candidate. The 9th assignment of error, is, therefore, overruled (*Coraede vs. Del Castillo* 94 Phil., 308; 50 Off. Gaz., 571; *Moya vs. Del Fierro*, 69 Phil., 199).

"X. The Court of Appeals erred in not invalidating Ballots Exhibits A-1', 'A-3', 'A-7', and 'A-8' (Precinct 3-A) against respondent."

Petitioner Arzaga claims that indecent words or expressions were written on these four ballots. Since he did not, or could not, specify the alleged indecent words or phrases therein, the 10th assignment of error is forthwith overruled. These ballots are counted in favor of respondent Bobis, Sr.

"XI. The Court of Appeals erred in counting ballot Exhibit 'A-2' (Precinct 3) in favor of respondent."

On the space for mayor was written "F. Babes" or "F. Babeis". Obviously, the voter intended to vote for respondent Bobis, Sr. (*idem sonans* rule). The 11th assignment of error is overruled.

"XII. The Court of Appeals erred in not considering ballot Exhibit 'A-3' (Precinct 3) marked and in counting it a valid vote for respondent."

In Exhibit "A-3" appears written in the space for mayor "Kiko Padrieno Bobis, Sr." "Kiko" is just a nickname for Francisco, and "Padrieno" is nothing more but an expression of respect. The intention of the voter to mark his ballot is not clear. The 12th assignment of error is overruled.

RESPONDENT'S COUNTER-ASSIGNMENT OF ERROR

Respondent Francisco Bobis, Sr., made five counter-assignments of error involving 6 ballots, which will be taken up one by one.

"First Error. The Court of Appeals erred in rejecting the votes for respondent in ballots Exhibits B (s)-1 (Precinct 3) and B(s)-2 P(Precinct 3).

In Exhibit "B (s)1, we read the name written on the space for mayor as "F. Bobkis", which is *idem sonans* with the name of respondent. But in Exhibit "(s) 2," "F. Boslro" appears to have been written. There being no similarity in the sound as written in the latter ballot with that of respondent Bobis, Sr., the same may not be counted in his favor. The first counter-assignment of error is sustained as to Exhibit "B(s)1, and overruled as to Exhibit 'B(s)2.

"Second Error. The Court of Appeals erred in holding ballot Exhibit H-1 (Precinct 3) as valid for petitioner."

"E. arsaaa" was voted for as mayor in this ballot. Plainly, the voter intended to vote for respondent E. Arzaga, and the vote is valid under the *idem sonans* rule. The second counter-assignment of error is overruled.

"Third Error. The Court of Appeals erred in holding ballot Exhibit B-1 (Precinct 3-A) as valid for petitioner."

Petitioner E. Arzaga was voted for in Exhibit "B-1" of Precinct 3-A. Respondent Bobis, Sr., contends that this ballot is marked because the words "Casoy Guzman" was written on the first space for councilors. According to the Court of Appeals, no evidence aliunde was presented to show the intended meaning of the word "Casoy". We believe this ballot is a valid vote for petitioner Arzaga (*Cruz vs. Court of Appeals*, supra). The third counter-assignment of error is, therefore, overruled.

"Fourth Error. The Court of Appeals erred in not holding ballot Exhibit B-7 (Precinct 3-A) as not marked by the words "Dreo Boro Sosoe."

Petitioner Arzaga was voted for herein. However, respondent Bobis, Sr., contends that this ballot was intentionally marked inasmuch as the words "Dreo Boro Sosoe" were written on the third space for councilors and on the fourth space appeared "Bienes I Love y Darling". In the absence of evidence aliunde, we can not determine whether the words "Dreo Boro Sosoe" were not meant to stand for the name of a non-candidate. As to the "I love y darling", it merely expresses preference for candidate Bienes, and does not invalidate the ballot (*Delgado vs. Tiu*, 105 Phil., 835). Exhibit "B-7" of Precinct 3-A is, therefore, valid. The fourth counter-assignment of error is overruled.

"Fifth Error. The Court of Appeals erred in holding ballot Exhibit B-2 (Precinct 3-A) as valid vote for petitioner."

Petitioner E. Arzaga was voted as mayor in this particular ballot. Respondent Bobis, Sr., claims that it was intentionally marked, because "S. Sumurraga" was writtenthree times herein. We have examined the ballot carefully and have found that "S. Sumurraga" was really written on three different spaces: (a) on the 8th space for senators; (b) on the space for provincial vice-governor; and (c) on the space for vice-mayor. According to the election return, Exhibit "YY", and the tally sheet, Exhibit "A-X-6", Santiago Sumurraga was a candidate for vice-mayor only. From the ballot it is evident that the voter could hardly write. It is apparent that it took great pains and trouble to write the three sets of "S. Sumuraga"—"S. Sumarraga"—"S. Sumarruga". Attention is also invited to the fact that the first six spaces for senators were left blank. On the seventh space for senators he wrote "Villareal". He did not vote for any member of the provincial board. He voted for only one councilor, "Gusman", but he wrote it on the sixth line, and also left the first five spaces for councilors blank. All these facts and circumstances found on the ballot seems to indicate the apparent intention of said voter to mark his ballot to identify it. In upholding the validity of this ballot the Court of Appeals relied on paragraph 3, Section 149, of the Revised Election Code, which provides:

"3. When the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate. The vote for the office for which he is not a candidate shall be counted as stray."

The Court of Appeals also cited the case of *Amurao vs. Calangi*, 104 Phil., 347, which is not applicable to this case. We believe that the case of *Gutierrez vs. Aquino*, G. R. No. L-14252, promulgated on February 28, 1959, is the one applicable to this case, a portion of which is quoted hereunder, to wit:

"Ballot Exhibit P32-GI. This ballot was rejected by the trial court as marked because the name "Recto", a candidate for Senator, was written in all the eight spaces for senators. To this conclusion we agree because the writing of the name "Recto" several times evidently was intended to identify the voter who cast this ballot. Rule 3, Section 149, of the Revised Election Code is inapplicable. This rule contemplates the writing of a name of a candidate in TWO SPACES of the ballots whereby the vote for the office for which he is not candidate shall be counted as stray vote. This ballot was properly rejected."

The rule of the Election Code above-quoted is justified in the case of a name written in two spaces because the duplication could be an oversight. But the rule can not be stretched indefinitely without opening the door to fraud.

Ballot Exhibit "B-2" of Precinct 3-A should be nullified, and the fifth counter-assignment of error sustained.

In conclusion, only two (2) votes should be added to petitioner Emilio Arzaga's total number of votes and one (1) deducted from him. The votes of respondent Francisco Bobis, Sr., should be increased by one. The result is as follows:

ARZAGA

BOBIS

As of the appealed decision 502 507

Plus: Exh. "B-14" (Prec. 3-A) Plus: Exh. "B(s)-1"

4th Assignment of ment of error)" 1

Exh. "B-5" (Prec.3-A) (1st counter-assignment of error) 1

5th counter-assignment error) 1 _____

504

Less:

Exh. "B-2" (Prec. 3-A)

(5th Counter-assignment of error) 1

Final Total 503 508

Wherefore the decision appealed from is affirmed, with the modification above-indicated. Respondent Francisco Bobis, Sr., is hereby declared elected to the office of municipal mayor of El Nido, Province of Palawan, with a majority of five (5) votes. Costs against petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.