

JOSE KATIGBAK, PROTESTANT-APPELLEE, VS. RICARDO MENDOZA, PROTESTEE-APPELLANT.*G.R. No. L-24477. February 28, 1967*

Ponente: REGALA, J.

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This is an appeal directly to Us, on questions of law, from the decision of the Court of First Instance of Batangas declaring Jose Katigbak elected for the position of vice-mayor of the municipality of Padre Garcia, province of Batangas, in Election Case No. 1521, entitled Jose Katigbak, Protestant, versus Ricardo Mendoza, Protestee.

After the local elections in November, 1963, the Municipal Board of Canvassers of Padre Garcia, Batangas, certified that Ricardo Mendoza, one of two leading candidates for vice-mayor in that municipality, obtained 1,327 votes, while his rival, Jose Katigbak, obtained 1,310 votes. Accordingly, Mendoza was proclaimed elected.

Thereafter, or on November 29, 1963, Katigbak filed a petition of protest against the proclamation of Mendoza. The latter, however, filed a motion to dismiss on the grounds that the court lacks jurisdiction and that the allegations in the petition are ambiguous, indefinite and unintelligible. By order of December 16, 1963, the court denied the motion to dismiss but required the protestant to submit an amended petition specifying thereat the precincts protested and to indicate and describe all frauds, mistakes, errors and irregularities committed in each of the said pre-cincts. In compliance, the protestant filed an amended petition indicating that the irregularities so alleged were perpetrated in Precincts 1, 10, 13, 17, 19, 21 and 22 of the municipality of Padre Garcia. The protestee filed an answer and counter-protest covering Precincts 2, 4, 8, 11, 14, 16 and 18, in the same municipality and on the same grounds stated in the protest of the protestant.

After considering and counting all the ballots contested or uncontested by one or the other, the lower court rendered judgment declaring the protestant, Jose Katigbak, duly elected vice-mayor, with a plurality of only one vote over the protestee, Ricardo Mendoza, with the right of the former to assume office as soon as judgment becomes final.

Only the protestee has appealed and the errors assigned by him will be taken one by one in the following discussions.

I. THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION THE ADDITIONAL TWO (2) VOTES FOR PROTESTEE-APPELLANT IN PRECINCTS 8 AND 18 AS PER REPORT OF THE BOARD OF REVISORS IN SAID PRECINCTS.

The appellant insinuates here that the court below did not take into consideration the findings of the Board of Revisors as to the abovementioned precincts. From the report submitted by the said Board, we find the following remarks:

Precinct 8: "One ballot from spoiled ballot box claimed by protestee. After counting the votes for Mendoza it was found out that there were 22, while in the return there were only 21, but counting the vertical entry there

were actually 22."

Precinct 18: "After counting the votes cast in favor of Mendoza, there were 44 while in the return and in the Tally Sheet there were 43. One ballot for Mendoza written in the column for Provincial Board claimed by Protestee."

The decision of the lower court states that in Precinct 8, twenty-two ballots all in all are claimed by protestee, but since one of these ballots was taken from the spoiled ballot box, and for failure of the protestee to present evidence to support his claim to it, the actual number of ballots counted for protestee should only be twenty-one.

As to Precinct 18, the decision states that out of the forty-four ballots for the protestee, the Board considered only forty-three because one was written in the column for the members of the provincial board. As a matter of fact, the said ballot was not included by the commissioner for appreciation by the trial court.

As shown above, the findings of the lower court on these two precincts were properly and correctly based on the reports made by the Board of Revisors. We thus see no basis for the first assigned error.

II. THE LOWER COURT ERRED IN REJECTING AS VALID VOTES FOR PROTESTEE-APPELLANT BALLOT EXHIBITS P22-C, P22-H, P22-I, P22-J, P22-K and P22-L ON THE GROUND THAT THEY ARE MARKED BALLOTS.

The lower court observed that on these ballots all from one precinct, the name of Carlos Laylo, a registered candidate for councilor, is written as "C. Layle" and that it is the last name written for councilor. To the mind of the trial judge, the placing of "C. Layle" for "Laylo" as the last name was a product of an understanding among the voters and the protestee whose name appears in all these ballots as the common candidate for vice-mayor. Citing the ruling in *Villavert v. Lim*, 62 Phil. 178, that "ballots should be rejected where the manner in which the candidates' name is written gives him intention to mark or identify the ballot," the lower court considered these exhibits as marked ballots which should not be counted in favor of the protestee.

Scrutinizing the said exhibits, we have found that in Exhs. P22-C, P22-I and P22-L, the arrangement in the names of not only all the councilors voted for, but also of the senators, are the same. In Exh. P22-J, the names of senators are arranged as in the three mentioned exhibits but those of the councilors are not so arranged for there are only four councilors voted for, the last, coincidentally, of which is Layle. In Exh. P22-H, the arrangement in the names of the councilors is also identical to that in said Exhs. P22-C, P22-I and P22-L, but there are no names for senators. Exh. P22-K is an entirely different ballot as far as the arrangement in the names of senators and councilors is concerned, but the last name written is "C. Laylo." Except for one (Exh. P22-J), the candidate voted for mayor in all these ballots is Pesigan.

A showing alone that several voters belonging to the same precinct have written the names of particular candidates in an identical manner cannot justify the inference that the voters had a plan to identify their votes. The determinative factor in the nullification of ballots for being marked as following a design or pattern is the existence of evidence aliunde tending to show the intention or purpose in the use of the contested manner or means of voting, which is to identify the ballot. Indeed, an identification mark cannot be presumed. (*Villarosa v. Guanzon*, G. R. No. L-19605, September 28, 1962, citing *Jaucian v. Cellos*, 55 O.G. 10394; *Gabuya v. Dajao*, G. R. No. L-20235, September 30, 1963)

In the case of *Protacio v. de Leon*, G. R. No. L-21135, November 8, 1963, We held:

"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 Cortez, 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 v. Reyes, G. R. No. L-13137, February 28, 1959) No such reasons appear herein." (Underscoring ours)

The fact that the name "Laylo" is incorrectly spelled in these ballots should not invalidate the ballots because Rule 2, Section 149 of the Revised Election Code, is explicit that names of candidates incorrectly written if idem sonans with the names of candidates shall be considered valid. (Gutierrez v. Aquino, G. R. No. L-14252, February 28, 1959) In the absence of evidence that the name of a candidate was incorrectly written designedly to identify the voter, the vote cannot be held invalid for said candidate. The second assigned error is based upon a valid ground and we are constrained to consider the six ballot exhibits valid, which also means six votes in favor of the protestee-appellant.

III. THE LOWER COURT ERRED IN REJECTING AS VALID VOTES FOR PROTESTEE-APPELLANT EXHIBITS P21-E, P19-A, P19-B, P22-D, P11-A and P18-A ON THE GROUND THAT THEY ARE MARKED BALLOTS

Exhibit P21-E - Apparently, the appellant does not question the admission of this particular ballot but is questioning Exh. P1-E as discussed in his brief. In this exhibit, the name "Goce," a candidate for councilor, is written not only on the first space but also on the seventh and eighth for councilors. This Court has ruled in a number of cases (Gutierrez v. Aquino, supra; Gutierrez v. Reyes, supra; Delgado v. Tiu, G. R. No. L-14143, May 27, 1959; Salalima v. Sabater, G. R. No. L-14829, May 27, 1959) that the writing of a name more than twice on the ballot is considered to be intentional and serves no other purpose than to identify the ballot. We therefore agree with the lower court that said Exhibit P1-E is marked and must be rejected.

Exhibit 19-A - On space 1 for councilors, the name "Evora" is written. Underneath, on spaces 2 and 3, there appear two parallel vertical lines resembling quotation marks. On line 4 for councilors again, the name "Silva" is written, and under it, on space 5, two parallel lines likewise appear. Lines 6, 7 and 8 are filled up with names of other candidates. The court below held that the intention of the voter in putting these marks was to emphasize that he was voting for Evora and Silva more than once.

This Court has pronounced in Delgado v. Tiu, supra, that the two short parallel lines on spaces where the voter did not vote merely indicate the voter's desistance from voting and should not invalidate the ballot, which ruling is well in accordance with Rule 17 of the Rules for the appreciation of ballots. (Section 149, Revised Election Code) Ballot Exhibit 19-A is valid.

Exhibit 19-B - This ballot was rejected on the ground that the voter had no fixed mind as to whom of the two candidates, Mendoza and Katigbak, he should vote. On the space for vice-mayor, this is what appears: MEND K. We think the lower court did not commit a mistake in concluding that after the voter here had written the first four letters of the name Mendoza, he changed his mind and decided to write Katigbak and he so started by writing letter K. The vote as it stands cannot be credited for either of the candidates.

Exhibits 22-D and 11-A - Again, the court below did not commit any error in rejecting these ballots as marked, it appearing that on each of them are written three times the names of certain candidates. This is on the same principle that Exhibit P1-E is being excluded.

Exhibit 18-A - The name "Espiritu" appears on the first and last spaces for councilors and on each of the spaces in-between are two curved lines resembling close parentheses. In the cases where we decided to declare as invalid some ballots in which names of candidates are repeated, such names were written three or more times. In this

case, the name "Espiritu" appears only twice. In the absence of evidence to show that the purpose was to identify the ballot, such a single repetition does not invalidate the whole ballot. Neither are the lines on each of the empty spaces to be considered as marks since the rule under paragraph 17 of the rules for the appreciation of ballots is that circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the vote. Exhibit 18-A is then valid and the vote therein favor of the pro-testee-appellant should be counted.

IV. THE LOWER COURT ERRED IN NOT ADMITTING AS VALID VOTES FOR PROTESTEE-APPELLANT BALLOT EXHIBITS P18-9, P18-10, P18-11, P18-12, P18-13, P18-14 ON THE GROIND THAT THEY ARE MARKED BALLOTS.

Here, names of non-candidates appear on the ballots. In each of Exhibits P18-9, 18-10, 18-11 and 18-13, the name "Manalo" has been written on one of the spaces. Likewise, in Exhibits P18-12 and 18-13, the names "Artemio Malaluan" and "Domingo Zono" respectively, appear. During the hearing, these ballots were formally presented as evid-ence by the protestee, claiming that if the name of a person who is not a candidate has been written on any of the spaces this would not invalidate the ballot. The counsel for the protestant made no comment to such pre-sentation. The court, however, declined to make any discussion, and did not make any ruling, on these ex-hibits.

Rule 13 under Section 149, is clear that "any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for any office for which he did not present himself, shall be void and counted as a stray vote but shall not invalidate the whole ballot." This rule has been applied by this court in a line of cases. (See *Gutierrez v. Reyes*, supra; *Delgado v. Tiu*, supra; *Ferrer v. Alvar*, G. R. L-12083, July 31, 1957; *Salalima v. Sabater*, supra; *Conui-Omega v. Samson*, G. R. L-21910, November 11, 1963; *Calo v. Court of Appeals and Casiano*, G. R. L-21256, Sept. 30, 1963; *Tajanlangit v. Cazeñas*, G. R. L-18894, June 30, 1962; *Trajano v. Inciso*, G.R. L-23895, Feb.____, 1967.) We find that these ballots are not invalid and the votes for vice mayor should be counted for protestee--appellant.

V. THE LOWER COURT ERRED IN ADMITTING AS VALID VOTES FOR PROTESTANT-APPELLEE BALLOTS EXHS. P1-8 and P21-3.

These ballots contain the word "Pepe," which is the nickname for Jose, as the one voted for the office of vice-mayor. It so happens that the first name of candidate Katigbak is Jose, which, we suppose, is the reason the trial court admitted these votes for him. It is settled, however, that where only a nickname of a candidate is written without being followed or accom-panied by his surname, the vote should not be given effect. (*Tajanlangit v. Cazeñas*, supra; *Conui-Omega v. Samson*, supra; *Felisilda v. Achacoso*, G. R. No. L- 21228, November 22, 1963) This ruling is in line with Rule 9, section 149 of the Revised Election Code, which states that the "use of nicknames and appellations of affection and friendship if accompanied by the name or surname of the candidate does not annul such vote. x x" In this case no name or surname accompany the word "Pepe." The votes should not be counted for Katigbak.

In recapitulation, Exhibits P22-C, 22-H, 22-I, 22-J, 22-K, 22-L, 19-A, 18-A, 18-9, 18-10, 18-11, 18-12, 18-13 and 18-14 should be considered valid, and since in these ballots the protestee-appellant was voted for vice-mayor, these should be counted in his favor. Ballots P1-8 and P21-3, on the other hand, should be discounted from the total number of votes for protestant-appellee. Whereas, the trial court declared Jose Katigbak as having garnered 1308 votes as against Ricardo Mendoza with 1307, We have found in this review that Katigbak, or the protestant-appellee, should be credited with only 1306 and Ricardo Mendoza, protestee-appellant, should be given 1321, or that the latter has won with a majority of 15 votes over the former.

PREMISES CONSIDERED, the decision appealed from is hereby reversed. Ricardo Mendoza, the protestee-appellant, is hereby declared the vice-mayor elect for the municipality of Padre Garcia. Costs against protestant-appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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