

PEDRO ESTELLA, PROTESTANT AND APPELLANT, VS. PEDRO EDAÑO, PROTESTEE AND APPELLEE.

G. R. No. L-18883. May 18, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

Pedro Estella and Pedro Edano were candidates for the office of mayor of Masinloc, Zambales in the elections held on November 10, 1959. After "the canvassing" of the results of the election was known, giving Edano a majority of 194 votes, Edano was duly proclaimed elected.

Estella filed a protest in the Court of First Instance of Zambales on December 29, 1959," wherein he sought a recounting of the ballots cast in precincts Nos; 2, 3-C, 4 and 4-A, on the ground that fraudulent acts forgery and other irregularities were Committed, and of those in precincts Nos; 6-A, 10, 10-A and 10-B, claiming voting therein was attended by terrorism, intimidation, and other election anomalies to the prejudice of the protestant.

The case was first set for hearing on March 2 and 3, 1960. On the first day of the hearing, the ballot boxes in precincts Nos. 2, 3-C, 4 and 4-A, where fraudulent acts, forgery, and other irregularities were allegedly perpetrated, were opened and the ballots found therein examined and recounted. Protestant did not register any objection to the ballots cast therein. However, he requested for the postponement of the hearing scheduled for the following day, promising to present in the next session evidence to prove that terrorism existed during the elections, before the other ballot boxes from precincts Nos. 6-A, 10, 10-A, and 10-B are to be opened. The court granted this petition and the case was, consequently, set for hearing on April 11 and 12, 1960.

On April 5, 1960, protestant again moved for postponement of the trial, which was granted and the same was re-set for June 15 and 16, 1960. On June 11, protestant filed another motion for postponement. This, again, was granted by the court, and the continuation of the hearing was set for July 20 and 21, 1960. As protestant once more requested for transfer of the hearing, the court granted the same by order of July 20, 1960, with the warning that should protestant fail to appear at the hearing scheduled for the following day, July 21, the case would be considered submitted for decision.

On that day, July 21, 1960, the court received a telegraphic motion from the protestant asking for the postponement of the hearing on the ground that the NBI handwriting expert to be presented by him would be available only after August 10, 1960. This was amplified by a motion explaining the necessity of the presentation of said expert witness to prove that only one or two persons prepared the ballots in precincts Nos. 10, 10-A and 10-B.

This time, the court denied the motion, "it appearing that this case has been pending for more than six months as a result of several postponements asked by the protestant to enable him to obtain the necessary evidence in this case, and in view of the mandate of Section 177 of the Revised Election Code that the election protest of a municipal office shall be decided within six months after its presentation". The case, therefore, was considered submitted for decision.

On August 3, 1960, the court rendered a decision reading as follows:

"This is an election protest for the office of mayorship of Masinloc, Zambales. The protestant seeks the recounting of the votes cast in Precincts Nos. 2, 3-C, 4, and 4-A on the ground that an irregularity was committed in the counting of the votes cast in said precincts. He also seeks to void the votes cast in Precincts Nos. 6-A, 10, 10-A and 10-B on the ground that there were other irregularities committed in said precincts. However, when the ballot boxes for Precincts Nos. 2, 3-C, 4, and 4-A, were opened and the ballots therein recounted, no objection was raised by the parties on the validity of the ballots cast for the mayorship of Masinloc, Zambales; and the result of the recounting tallies with the election returns with respect to Precincts Nos. 2, and 3-C, and with respect to Precincts Nos. 4 and 4-A the recounting of votes shows that the protestant and the protestee received one hundred thirty (130) votes each in precinct No. 4-A, while in Precinct No. 4 the protestant received sixty-nine (69) votes which also tallies with the election returns, and the protestee received ninety-six (96) votes or one vote less than what he got in the election returns.

"On the alleged irregularities committed in Precincts Nos. 6-A, 10, 10-A, and 10-B, the protestant has failed to substantiate them.

"In view of the foregoing, judgment is hereby rendered dismissing the instant protest with costs against the protestant, and declaring the protestee Pedro Edano to have been duly elected mayor of Masinloc, Zambales in the last election of November 10, 1959.

"So ordered."

Protestant thus interposed an appeal to the Court of Appeals. Said court, however, finding that no question of fact is involved in the appeal, certified the case to us for adjudication in accordance with law.

It is now contended by appellant that the lower court erred:

- In considering the case submitted for decision and denying; the petition for postponement, because it considered Section 177 of the Revised Election Code, which states that the election protest of a municipal office shall be decided within six (6) months after its presentation, as mandatory.
- In considering the case (submitted) for decision despite the fact that the court has not as yet opened the ballot boxes Nos. 10, 10-A, 10-B and 6-A and the commissioners appointed by the court have not submitted their report regarding the contents of said ballot boxes.
- In denying the protestant-appellant's motion for postponement by telegram to be able to secure the presence of a very important witness, sent on July 21, 1960, after receipt of the order of July 20, 1960, wherein the hearing was set for the next day, July 21, 1960, with a warning as set forth in said order.
- In denying the motion for reconsideration and new trial filed by the herein protestant-appellant.

The appeal is not meritorious. Contrary to protestant-appellant's allegation, the dismissal of the protest was not predicated on the strict observance of Section 177 of the Revised Election Code providing for a period of 6 months within which a decision in a protest involving a municipal office has to be decided. As a matter of fact, it must be because of its awareness of the directory nature of such provision that the court did not dismiss the protest when the six-month period from the date of the filing thereof (on December 29, 1955) had elapsed, but only after the protestant-appellant failed to appear and adduce evidence at the hearing of July 21, 1960. The dismissal, clearly, was for failure of said protestant to substantiate the allegations of the protest and not merely because of the lapse of the 6-month period.

It' can not also be seriously contended that the lower court erred in denying protestant's telegraphic motion for postponement, and in considering the case submitted for decision before the ballot boxes in Precincts Nos. 10,

10-A, 10-B and 6-A were actually opened and the ballots contained therein recounted.

In the first place, considering the charges preferred by protestant in connection with the various precincts specified in the protest, the testimony of the expert witness would not be of such materiality as to warrant a postponement of the trial.

Protestant charged, with respect to Precinct No. 2, that the signatures of the election inspectors were forged and that no less than 50 votes validly cast in his favor were allegedly read for the protestee. While the testimony of the expert would be necessary to prove the forgery, the ballots themselves would be the best evidence to prove the charge that ballots in favor of the protestant were read for the protestee.

With respect to Precinct No. 3-C, it was claimed that the ballot box was removed from the Municipal Treasurer's office and was brought to the session hall of the municipal building where the same was emptied and its contents tampered with. This, again, could be established by proofs, other than the testimony of the expert, showing that such illegal acts were done.

As to Precinct No. 4, protestant charged that there was a mixed-up of the ballots thus enabling the election inspectors to tamper the true results of the voting. This charge could also be proven by evidence of such irregularity or disorder, and not by an examination of the writings on the ballots.

In Precinct No. 4-A, the Board of Inspectors allegedly failed to read in favor of protestant 40 ballots found hidden underneath the ballot box. The charge could properly be substantiated by a recounting of the ballots, not an examination thereof.

In connection with Precincts Nos. 10, 10-A and 10-B, located in the private property of the Consolidated Mines, Inc., it was charged that the chief of the mining police force, a certain Delfin Fadera, terrorized and intimidated the voters into voting for the protestee, and that during the counting, ballots validly cast for the protestant were not read. These charges could be established by testimonies and other proofs of the existence of the alleged terrorism, and by a recounting of the ballots, but not by the testimony of a handwriting expert.

As to Precinct No. 6-A, wherein the Chairman of the Board of Inspectors allegedly took the ballot box to her residence where the contents thereof were removed and tampered with, such alleged illegal act could have been proven by other evidence. As a matter of fact, protestant already submitted a photograph purportedly showing the serious and anomalous situation in this precinct. Certainly, the testimony of the expert witness would not be necessary to establish this point.

Secondly, considering that the court actually had dealt with the protestant with leniency in the sense that the latter was given more than enough opportunity to prove his charges, and had even given him warning that no further postponement would be granted, the denial of the motion for the transfer of the hearing set for July 21, 1960, is in order.

Regarding the order of the court denying protestant's motion for new trial, taking into account the fact that only the allegation of the existence of terrorism in Precincts Nos. 10, 10-A, 10-B and 6-A remains to be substantiated, and evidence of the genuineness of the handwriting on the disputed ballots, as we have previously said, would not be necessary to prove the same, such order is justified.

Wherefore, the decision and order of the lower court appealed from are hereby affirmed, with costs against the protestant-appellant. So ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

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