

NAGA TAGORANAO, PETITIONER VS. THE HONORABLE COURT OF APPEALS AND MANGATA MANGONDATAO, RESPONDENTS.

G.R. No. L-32218. February 11, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Review by certiorari of the resolutions of the Court of Appeals in CA-G.R. No. 44844-R, Mangata Mangondato, Protestant-Appellee, versus Naga Tagoranao, Protestee-Appellant, dismissing the latter's appeal on two grounds, namely: (1) want of specific assignment of errors in said appellant's brief as required in Section 16(d), Rule 46, and (2) the subject index in said brief does not contain a digest of the argument as required by Section 16(a) of the same Rule and denying petitioner's motion for reconsideration of said dismissal.

The background facts and the rationalization of the Court of Appeals may best be stated in its own words thus:

"In the 1967 election for the office of the Mayor of the Municipality of Marantao, Lanao del Sur, protestee Naga Tagoranao, was proclaimed the duly elected mayor by the Municipal Board of Canvassers, having been credited by said board with 1,563 votes as against protestant Mangata Mangondato's 1,433 votes.

"Believing that he, and not Tagoranao, has won in said election, protestant Mangondato filed a protest in the Court of First Instance of Lanao del Sur, seeking to annul certain votes cast in favor of Tagoranao.

"After a lengthy proceedings, the trial court rendered judgment declaring protestant Mangondato the winner, thus:

"With this declaration of nullity of election in Precinct No. 2, the protestee, Naga Tagoranao, obtained a total votes of 641 while the protestant, Mangata Mangondato a total of 1,094 votes, giving therefore to the protestant a majority of 453 votes over that of the protestee. In fact, even if the election in Precinct No. 2 would not be annulled, the protestant still got the majority votes of 407 over that of the protestee as illustrated in the foregoing tabulations.

'PREMISES CONSIDERED, the Court hereby declares the protestant, Hadji Mustapha Mangata Mangondato the winner in the mayoralty race in the elections of November 14, 1967 and he is hereby proclaimed as the elected municipal mayor of Marantao, Lanao del Sur. The protestee, Naga Tagoranao, is adjudged to pay the costs.'

"This appeal was lodged by protestee-appellant Naga Tagoranao from the foregoing judgment. Protestee-appellant's brief was filed on April 22, 1970. On April 30, 1970, however, protestant-appellee, Mangata Mangondato filed a 'Motion To Strike Out Appellant's Brief and To Dismiss Appeal' on the ground of ' (g) want of specific assignment of errors in the appellant's brief, or of page reference to the record as required in Section 16(d) of Rule 46' (Sec. 1, Rule 50, Rules of Court).

"Amplifying on this ground, protestant-appellee argues (1) that appellant's brief specifically assails only 121 ballots as having been erroneously annulled by the lower court, whereas in its judgment the lower court found

protestant-appellee to have won with a plurality of -453 votes, or, 407 if all the votes cast in Precinct No. 2 are totally annulled, making him still the winner even if the 212 votes were to be counted in favor of appellant; (2) that while the lower court found certain ballots to have been written in groups, each group by one person, appellant merely argues that the same ballots were annulled by the lower court because they were found to be marked; and (3) that the manner by which appellant merely cited samples of ballots which are allegedly erroneously annulled by the lower court, violates the specific requirements of Section 16, Rule 46, Rules of Court, to the effect that errors allegedly committed by the lower court must be separately, distinctly and concisely stated.

"By resolution of this Court dated May 2, 1970, appellant was required by this Court to comment on appellee's motion to strike out appellant's brief and to dismiss appeal within 10 days from notice, Protestee-appellant's Opposition to Motion to Strike Out Appellant's Brief and to Dismiss Appeal was filed on May 4, 1970.

"The motion to strike out appellant's brief and to dismiss appeal should be granted.

"Appellant's brief contains 9 assignments of errors and from a reading of these assigned errors, it is readily discernible that appellant's counsel devoted assignments of errors Nos. 3, 4, 5, 6 and 7 to the discussion of the ballots some of which he would have annulled and some of which he would have credited in his favor,

x x x

"Now to brasstacks.

"Except in assigned error No. 5 where appellant, without citing specific examples of the ballots and without specifying how many should have been counted in his favor, merely asked that several of the votes cast in Precinct No. 2 be credited to him, in all these four assigned errors, Nos. 3, 4, 6 and 7, he merely cited a few samples of ballots therein questioned.

"For instance, in error No. 3, appellant merely specified 63 samples of several ballots allegedly bearing his name, which, according to him, the lower court erroneously rejected. In error No. 4, appellant merely cited 12 ballots out of several, which, according to him, should have been counted in his favor following the principle of *idem sonans*. Error No. 6 likewise, contains only a citation of 7 samples of ballots, out of several, which allegedly should not have been invalidated. And in error No. 7, the same approach was used by appellant. Here instead of specifying all the questioned ballots, appellant merely gave 4 samples of ballots which allegedly should not have been counted in favor of appellee.

"It was so aptly stated by appellant on page 8 of his brief that this case, being an election case, this 'Court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate x x x.' But the manner with which appellant's assigned errors were presented in his brief, far from helping this Court in its review of this case in search for the real winner, only muddled its already confused presentation.

"Appellee was credited by the lower court with a total of 1,094 votes as against appellant's 641 votes, and, to be able to win, appellant has the burden of off-setting appellee's big margin of 453 votes. We have read appellant's brief several times, in an effort to help, but all that we made out is that he has assailed specifically only a total of 86 votes - those he specifically cited as samples in errors Nos. 3, 4, 6 and 7. But even if these 86 votes are counted in favor of appellant, he would still come out the loser. Be that as it may, the rest of the votes cast either in favor of the appellee or in favor of the appellant which were annulled, have never been specifically assigned as errors and assailed by the appellant in his brief. The net effect is that appellant's brief is not a brief at all considering that out of 1,735 votes found by the lower court to have been cast in favor of both appellant and appellee, only 86 votes are being questioned. This shortcoming of appellant's brief provides us with a ground to dismiss his appeal, in accordance with the provision of Section X (g), Rule 50, Rules of Court, which reads:

'Grounds for dismissal of appeal.- An appeal may be dismissed by the Court of Appeals, on its own motion or on that of appellee, on the following grounds:

x x x

x x x

x x x

'(g) Want of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 16 (d) of Rule 46."

"Aside from this ground, however, there is another ground upon which the dismissal of this appeal can be buttressed. Appellant's brief has a subject index, but the same does not contain a digest of the argument as required by Section 16(a), Rule 46, Rules of Court. A subject index of the brief must have a digest of the argument as required in Section 16(a), *id.*, thus:

"Contents of appellant's brief- the appellant's brief shall contain in the order herein indicated the following:

'(a) A subject index of the matter in the brief with a digest of the argument and page references and a table of cases alphabetically arranged, text books and statutes cited with reference to the pages where they are cited.'

"Our reason for requiring strict compliance with these two provisions of the Rules of Court are stated in the following decisions of this Court as well as of the Supreme Court, thus:

'The purpose of the brief is to present to the court in concise form the questions in controversy, whether the law or of facts, and it should be prepared in such a manner as to minimize the labor of the court in the examination of the record upon which the appeal is heard and determined (*Esteva and Reyes vs. Cecil*, 50 Phil. 67). Strict compliance with this requirement is necessary now more than ever, considering the steadily mounting number of cases that are elevated to the appellate court.' (*SALABA vs. SALAZAR*, CA-G.R. No. 5258-R, June 28, 1956; 52 O.G. 6220)

'The appellant cannot expect this Court, with the numerous cases pending before it, to read the whole record on appeal, which, in this case contains 97 pages in small print, and glean therefrom why the order appealed from should be set aside and the relief demanded granted. The appellant is required to help the court in its laborious duty in the examination of the alleged errors to point out where and in what respect said errors are committed.' (*SASILAN vs. CHAVES*, No. L-17334, Feb. 28, 1962)

"The formulation of issues devolves upon petitioners, without them respondents would be at a loss to frame their answer, except to point out, as they did, the procedural lapse of petitioners. This Court on its part, cannot wade through the mass of materials laid before it in search of points on which respondent judge may have erred and which petitioners have failed to specify.' (*ABAGA vs. DE GUZMAN*, L-19930 to L-19935, Nov. 30, 1962)

"But it is understood that the dismissal of this appeal is not just purely anchored upon violations in appellant's brief but more upon the uselessness of allowing the appeal to prosper, thus causing an endless delay in its speedy disposition. As elsewhere stated, appellant has actually assailed only 86 votes, those assigned in errors Nos. 3, 4, 6 and 7. When this case comes up for consideration on its merit, this Court is not duty bound to examine the whole mass of evidence other than those 86 votes specifically assigned in appellant's brief. Assuming, *arguendo*, that this Court, in considering the case on the merit, finally finds these 86 votes to have been cast in favor of appellant, still appellant would come out the loser by 367 votes. It is the futility of allowing this useless appeal to go on that likewise compels us to cut short its existence.

"ACCORDINGLY, the appeal of protestee-appellant Naga Tagoranao is hereby dismissed, with costs against him."

In his petition for review, petitioner posits that:

"Assignment of Errors

"In dismissing the appeal, the Court of Appeals erred:

-A-

"In assuming that Section l(g), Rule 50, Rules of Court, authorizing the dismissal of an appeal based on want of express assignment of error applies to election cases. Indeed, it is contrary to the express provision of law and to a long line of decisions of this Honorable Court that appeal briefs in election cases need no express assignment of error because, like a criminal case, it is tried on appeal de novo.

- B -

"Assuming that Section l(g), Rule 50, Rules of Court, applies to election cases, still the Court of Appeals erred in demanding strict compliance thereto contrary to the ruling of this Honorable Court that substantial compliance is sufficient - - an error magnified by the fact that it did not give the petitioner reasonable time within which to comply with the requirement by: (a) prematurely issuing notice to file brief at a time when the transcript of stenographic notes were not even complete; (b) by granting only one extension of fifteen (15) days to the original (15) days, with full knowledge that petitioner's counsel did not participate in the trial court and that delays not imputable to petitioner, such as the Holy Week, prevented petitioner's counsel from working on the appeal brief.

-C-

"Given the time that was denied him earlier, petitioner prepared and filed lists (attached hereto as Annex 'C') of ballots falling under the third, fourth, fifth, sixth and seventh assignment of errors of the Appeal Brief, hereto attached as Annexes 'D' and 'D-I' (Want of specific assignment of errors was raised as an objection allegedly because the appeal brief, for lack of time, cited only samples of the ballots objected to). The Court of Appeals erred in completely ignoring the said list, also contrary to the rulings of this Honorable Court that an election case is imbued with public interest and that, therefore, a technicality should not be allowed to defeat the interest of justice, so much so that in *Juliano vs. Court of Appeals* (July 28, 1967), 20 SCRA, 808, this Honorable Court sustained the right of a party to bring to the attention of an appellate Court certain ballots for review for the first time in a motion for reconsideration.

-D-

"The Court of Appeals erred in ruling that failure to comply with Section 16(a), Rule 46, Rules of Court, requiring a digest of the arguments in the subject index of the appeal brief, is ground for dismissal of an appeal.

-E-

"The Court of Appeals erred in ruling that it is being required to examine the whole mass of evidence.

-F-

"The Court of Appeals erred in deciding the merits of the second assignment of error in connection with a motion to dismiss appeal, directly contrary to the ruling of this Honorable Court in *Velasco vs. Rosenberg*, 29 Phil. 212. "

After considering all the aspects of this case, the arguments adduced by the parties and mature deliberation, it is Our conclusion that the outright dismissal of petitioner's appeal by the Court of Appeals was short of being justified. Appreciating that under the circumstances extant in the record, there are not enough reasons to find petitioner's appeal to be frivolous and purely dilatory, the public interest involved in this case, above all, and reason and authority suggest that the Court of Appeals should have disregarded technicalities of procedure and instead proceeded to render a decision on the merits, thereby gaining precious time in resolving all doubts as to who of herein contestants was the legally elected mayor of their town. This is not to ignore that the resolution of dismissal might have been precisely motivated by the honest desire to save time; but considering that this is an election case and invariably We have held on many occasions that what is of uppermost importance in every election contest is for the courts to determine who in fact is the people's legitimate choice, without regard to technicalities of procedure which do not affect the jurisdiction of the court, and inasmuch as the shortcomings attributed by the Court of Appeals to petitioner's brief are not jurisdictional in nature but are wholly within its sound discretion, We are left without any alternative but to withhold Our sanction from the manner in which the appellate court has tried to achieve what otherwise is a laudable objective.

The main reason given by the Court of Appeals in support of its order of dismissal is that in five of petitioner's assignments of error, the 3rd, 4th, 5th, 6th and 7th and the corresponding discussions thereof, instead of specifying therein all the ballots, either challenged or claimed by petitioner, and pointing out the legal grounds for such challenge or claim as regards each and everyone of them, petitioner "merely cited a few samples ballot," whose number would not be sufficient to alter the decision of the trial court. While such stricture seems to be quite true with respect to the printed brief as filed, the appellate court chose, albeit without saying so, to disregard the "Supplement to Appellant's Opposition to Appellee's Motion to Strike Out Appellant's Brief etc. "to which was annexed the complete list of the ballots covered by petitioner's assignment of errors, which list, to Our mind, if it is not exactly what the rules contemplate, is sufficient to have enabled the court to know which are all the ballots challenged or claimed by petitioner, and by reference to the corresponding samples given in the brief, what are the grounds for such challenge or claim.

It should be borne in mind that under the law, appeals in election cases "shall proceed as in a criminal case." (Sec. 178, Revised Election Code, as amended) While it is true that under the Revised Rules of Court of 1964, it is now required of appellants in criminal cases to make assignment of errors,[1] unlike in the old rules which expressly provided that in criminal cases

"appellants are not required to make assignment of errors although it is advisable for them to do so,"¹ and, accordingly, the new rule should equally apply to present appeals in election cases, the amendment of the rule was not intended to completely change the nature of appeals in criminal and election cases from that of a total review or a trial de novo to that of an appeal by writ of error as in civil cases. The only purpose of the amendment is to compel appellants to make such assignments and thereby lighten the burden of the court in reviewing the whole case without the necessity of having to comb the entire record and mass of evidence blindly and without proper guide as to where and how the trial court might have erred, aside, of course, from the advantage that when there are assignments of errors, the discussions of the alleged errors are bound to be more orderly, systematic and more easily comprehensible. The time consequently saved may well be spent by the courts in deeper study of the merits of the appeal and, of course, in the consideration of many other cases which may be more urgent or may demand equal, if not more, attention due to their nature and character and the more paramount interests that might be involved. Of course, the basic nature of the appeal remains to be a trial de novo and to the appellate court is reserved the power to review the whole record and take into account any error it may perceive in the consideration of the whole record, regardless of the appellant's assignment of errors. In criminal cases, the fundamental reason for this method of review is the high regard that the law has for the presumption of innocence which it accords all persons accused of an offense which must be given full

effect inspite of procedural and technical errors such accused or counsel may themselves commit against their interest, either thru honest mistake or inadequate knowledge. In election cases, "the philosophy behind this ruling is that the real purpose of an election case is to ascertain what is the true will of the people or who is the one duly elected and this can only be achieved by throwing wide open the appeal before the court." [2] Earlier, in *Ibasco vs. Ilao*, G. R. No. 17512, December 29, 1960, this Court said:

"There are weighty reasons that support the application of such theory in election cases. One is the cardinal principle that an election case involves public interest and, hence, it imposes upon the court the imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. That is why the law gives to the court die power, in the interest of justice, to order *motu proprio* that ballot boxes and other election documents be produced before it so that they may be examined and recounted regardless of whether the party raises any issue in its pleading concerning the validity of the ballots (Section 175, Revised Election Code). On the other hand, it has been postulated as a fundamental principle underlying the trial of election cases that technicalities or procedural barriers should not be allowed to stand if the same would tend to defeat rather than promote the interest of justice. Rather, it is enjoined that the Election Law should be liberally construed to the end that the will of the people may not be defeated."

To have a better perspective, We had the ballots involved in this case brought to this Court, not only with the end in view of ascertaining whether or not with the assignment of errors in question, the discussions under each of them and the list above-mentioned which petitioner supplied the appellate court soon after private respondent moved to dismiss the appeal, it ^would already be possible, even if not easily, for the impugned ballots to be identified and duly appreciated, but also to have at least a general idea of whether or not petitioner's appeal has any substantial basis and is not, therefore, frivolous and purely dilatory, and We are satisfied, after sampling a good number of them, that it is best that the appellate court consider the case on its merits. This is far from holding that the errors assigned by petitioner in his brief in question should be sustained. We are only indicating that under the principles heretofore adhered to by this Court in the disposition of appeals in election contests, and all things in the case at bar considered, there is enough legal basis for the Court of Appeals to proceed with the regular course of petitioner's appeal and, consequently, that its resolution dismissing the same on technical procedural grounds was not in order.

It is indeed to be desired that the periods for filing briefs in all cases, particularly criminal and election cases, should be abbreviated as much as possible, but We feel it was unusual for the Court of Appeals to have given petitioner a single extension of fifteen (15) days with the warning that no further extension would be granted, when the records of the appellate court were not yet complete, since it had not yet received the required copies of the transcript of the stenographic notes of the trial in the Court of First Instance, even conceding respondents' contention, not appearing to be altogether exactly accurate, that counsel for petitioner had previously secured his own copies thereof. Ordinarily, even in election cases, two or three extensions are allowed. On the other hand, if indeed there was enough justification for denying more time to petitioner, it was only fair that the court should have considered such circumstance in evaluating the consequent shortness of the time within and the hurry with which counsel had to finish petitioner's brief and, therefore, the resulting inadequacies of its form. In these premises, We hold that the prompt submittal by petitioner of the supplementary list of ballots challenged or claimed by him, as aforestated, could well have been considered as a substantial compliance with the rules, pursuant to the principles already cited governing appeals in election cases.

The decisive point is that the case was still unheard by the appellate court; the ballots were already before the court and challenged or claimed in assignments of errors, to be sure, not very happily phrased because of hurry in the preparation of the brief due to unusually limited period given to the appellant, for which reason, precisely, a supplementary list was submitted, identifying and more or less classifying said ballots, even only by reference to typical samples of the nature of the grounds of objection or claim; after all, appellee had still to file his brief and

there was yet no decision, much less any that was final. Under such circumstances, in the interest of justice and the more paramount public interest involved in an election so hotly contested that several cases related thereto have already reached this Court, the dictates of sound discretion suggest that the appellate court should have disregarded the technical objections of private respondent. Recalled and applied here must be Our injunction in *Juliano vs. Court of Appeals*, L-27477, July 28, 1967, 20 SCRA 808, 820-822;

"It can be gathered from the reading of the foregoing rulings of this Court that the decisive circumstance that makes it mandatory for the court to consider, and rule on, a ballot is that the ballot is before the court and it is claimed or impugned by a party in the election contest - - be it in the trial court or in the appellate court. The court can not, and it must not, close its eyes to the realities as presented by the ballots before it. The contention that to allow a party to claim or impugn ballots for the first time in a motion for reconsideration of a decision in the appellate court is to sanction confusion and delay in the disposal of election cases is of no moment as long as the claim on the ballots is presented before the decision has become final and the ballots thus claimed would be decisive in determining the real winner in the elections. Considering that the purpose of election contests is to determine the true will of the electorate, the court should examine every ballot presented before it and rule whether the ballot or ballots is/are valid or not. For the court to refuse to consider ballots brought before it simply because a party has not complied with certain procedural or technical requirements, would be to disregard the public interest that is involved in the election case. Of course, it is for the court to determine if the belated claim or objection on certain ballots before it is frivolous, done in bad faith, and only for the purpose of delay, x x x."

This is Our latest pronouncement on the matter in issue and should be considered as correspondingly clarifying or qualifying whatever may have been stated in Our previous decisions cited by respondents.

For the same reasons discussed above, the second ground relied upon by the Court of Appeals cannot be of any graver importance than the first, since it refers only to the omission of petitioner to include in the subject index of his brief a digest of the argument with page references as required by Sec. 16(a), Rule 46. Unquestionably, a proper subject index cannot be more indispensable than the assignment of errors, hence the said second ground must also be overruled.

Petitioner also complains of the manner in which the appellate court ruled on his first and second assignment of error. The least that can be said in this connection is that the perfunctory disposal of said assignments of error do not commend themselves. As to the first assignment of error, it was simply held that: "Anent error No. 1, there is hardly any ground to reverse the judgment a quo based thereon, for well-settled is the rule that as to matters of credibility of witnesses, the Court cannot substitute its own discretion with that of the lower court, for the latter court is in a better position to gauge said credibility of witnesses." Certainly, an attack on the credibility of witnesses which gives detailed reasons therefor with page references to the oral evidence in the record, as has been done by petitioner on pages 9 to 16 of his brief, deserve more consideration than to be simply cast aside by a sweeping statement of a general principle. It would appear that the appellate court fell into the same inadequacy of exposition which it found to be a fatal defect in petitioner's assignment of errors.

As regards the second assignment of error, the ruling was: "Anent error No. 2, where appellant raises alleged abuse of discretion of the lower court in not allowing him the opportunity to present his witnesses, it is well to recall here that appellant went to the Supreme Court on a petition for Certiorari, docketed as L-31456, questioning the actuation of the lower court. The learned Supreme Court, however, in a Resolution dated January 14, 1970, threw out appellant's said petition for lack of merit." Overlooked here is the familiar doctrine that a minute resolution of this Court dismissing a petition for certiorari does not constitute *res adjudicata*, since very often, as could have been the case with the questions raised in appellant's petition for certiorari, the grounds of the petition are more appropriate issues in a regular appeal.[3]

IN VIEW OF THE FOREGOING, the impugned resolutions of the Court of Appeals of May 27, 1970 and June 25 1970 are reversed and this case together with all the records taken from the Court of Appeals are ordered returned to said court for appropriate proceedings consistent herewith, with costs against private respondent.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, J., concur.

[1] Sec. 7, Rule 124.

[2] Borja vs. de Leon, L-20245, September 30, 1963, 9 SCRA 216,219-220.

[3] See, Vda. de Nator vs. Court of Industrial Relations, L-16671, March 30, 1962,4SCRA727, 733.

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