

BRICCIO MADRID AND FELIPE AREVALO, PETITIONERS, VS. THE HONORABLE ANATOLIO C. MAÑALAC, JUDGE OF THE COURT OF FIRST INSTANCE OF SORSOGON; MELCHOR H. AQUINO, SALVADOR ARCANGEL, PL...

G. R. No. L-5770. April 17, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside the decision rendered by respondent Judge on May 23, 1952, dismissing the protest on the ground that protestants have failed to present the ballots as evidence to substantiate said protest, and after said decision has been set aside, to order him to decide the protest on the basis of the evidence presented by protestants.

On November 28, 1951, petitioners, who were candidates for the office of councilor of Donsol, Sorsogon in the elections held on November 13, 1951, filed in the Court of First Instance of Sorsogon a protest against, the election of respondents who were proclaimed by the Municipal Board of Canvassers on November 16, 1951, as the duly elected councilors.

On December 5, 1951, respondents filed their answer praying that the protest be dismissed.

When the case was called for trial on February 1, 1952, petitioners submitted their evidence consisting of 30 election statements submitted by the inspectors in the contested 30 election precincts of Donsol, which statements were marked as Exhibits L to OO, plus other documentary evidence. Respondents, instead of submitting their evidence, asked for seven days within which to present a motion to dismiss the protest, and the motion was filed on February 8, 1952. A similar period was granted the protestants to answer the motion to dismiss. On May 26, 1952, the respondent Judge rendered decision dismissing the protest, holding in substance that the court lacks jurisdiction to entertain the protest in view of the failure of the protestants to submit the ballots cast as part of their evidence, and considering that this is a clear abuse of discretion, protestants interposed the present petition for certiorari.

The question to be determined is whether an election protest involving a municipal position wherein it is claimed that the Board of Canvassers did not make a correct tally of the votes as they appear in the election statements, can be entertained by the court on the strength merely of said election statements without, the necessity of submitting the ballots as evidence. The respondent Judge sustained the negative view and this is now claimed as erroneous by petitioners.

The contention of petitioners that, the respondent judge erred in dismissing the protest on the sole ground that they failed to present the ballots as evidence is well taken. There is nothing in the election law, nor in the rules of evidence, in so far as they may be applicable, which would require as an absolute rule the presentation of the ballots as evidence in the determination of an electoral contest. Cases there are where their production may be

necessary as when fraud is claimed to have been committed in casting said ballots, or when they were allegedly forged or falsified. In other cases, the allegation of the protest may be established in any manner sanctioned or permitted by ordinary rules of evidence. The general rule is that the ordinary rules of evidence apply to election contests as well as to other cases. The only requirement is that the evidence must confine to the points in issue and must be relevant. (McCrary, *On American Law of Election*, 4th ed., 339.)

"Although courts will sometimes allow greater latitude in the introduction of evidence than would be permitted in ordinary cases, it may be said generally that the rules of evidence which govern the courts in ordinary contests over property rights apply to contested election cases the courts and any competent evidence which tends to sustain or defeat the contest is admissible." (20 C. J., section 327, p. 241.)

The principal basis of the protest in question is that the protestants had reason to believe that the canvass made by the Board did not tally with the true count as appears on the various election statements submitted by the inspectors in the 30 election precincts involved in the protest. And to prove this assertion, protestants submitted as evidence the 30 election statements received from the poll clerks of said precincts in order that the court may determine if the Board of Canvassers has really committed a mistake in the tabulation of the votes. The protest does not allege any other irregularity. There is indeed no need for the presentation of the ballots to determine the correction of the canvass made by the Board.

The view entertained by the respondent judge that the election law contains a mandatory provision which requires the production of the ballot boxes in an election contest so that the ballots may be examined is not, in our opinion, correct. The only pertinent provision that may be invoked is section 175 of the present Revised Election Code and said section does not contain such mandatory provision. Said section merely provides that the court shall order that the ballot boxes, the election statements and other documents used in the election be produced before it if so required by the interested party or by the court itself. The production of the ballots is therefore only optional. It is not mandatory. It may only be required when necessary to prove the ground of protest and when required either by the party or by the court. This situation does not obtain in the present case.

Petition is hereby granted, with costs against the respondents-protestees.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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