

QUERUBIN PERFECTO, PROTESTANT AND APPELLEE, VS. ALFREDO SAPICO, ET AL., PROTESTEES, ALFREDO SAPICO, PROTESTEE AND APPELLANT.

G.R. No. L-23286. August 23, 1966

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of First Instance of Catanduanes.

In the elections held on November 12, 1963, Querubin Perfecto and Alfredo Sapico were candidates for vice-mayor of the municipality of Caramoran, province of Catanduanes. In due course, the Municipal Board of Canvassers of Caramoran proclaimed Sapico as vice-mayor-elect, with 817 votes, or a plurality of four (4) votes over his closest opponent, Perfecto, in whose favor 813 votes were tallied. Within the time prescribed by law, Perfecto filed the corresponding election protest, contesting the result of the elections in Precinct No. 16 of Caramoran, the returns for which credited Perfecto with 31 votes, as against 43 votes tallied for Sapico. Upon revision of the ballot box for said precinct, the commissioners who undertook the revision found therein 46 ballots claimed by Perfecto and 45 ballots claimed by Sapico. Of the former ballots, nine (9) were contested by Sapico, the remaining 37 ballots being uncontested. Upon the other hand, of the 45 ballots claimed by Sapico, three (3) were contested by Perfecto, so that 42 were uncontested.

The lower court sustained the objection to two (2) of the ballots objected to by Sapico and one (1) of those objected by Perfecto. As a consequence, of the votes cast in said precinct: 1) 44 votes, instead of 31 reported in the return in favor of Perfecto, or an increase of 13 votes, were counted for him; and 2) 44, instead of the 43 votes reported in the return in favor of Sapico, or an increase of one (1) vote, were tallied for him. In short, His Honor, the trial Judge found that Sapico had obtained 818, as against 826 votes counted for Perfecto, and, accordingly, declared Perfecto the vice-mayor-elect, with a plurality of eight (8) votes over Sapico, and ordered the latter to vacate said office and to turn it over to protestant Perfecto, with costs. Hence, this appeal by protestee Sapico.

The contested three (3) ballots claimed by Sapico were marked as Exhibits N, N-1 and N-2 and the following appeared written on the space for vice-mayor:

Exhibit

"N"

Sasablo

Exhibit

N-1

Alfredo Sapuco

Exhibit

N-2

Asapico

The lower court sustained Perfecto's objection to Exhibit N, upon the ground that "Sasablo" is not idem sonans with Sapico.

Appellant maintains that the lower court should have counted Exhibit N in his favor, because the vote therein cast was in favor, not of "Sasablo", as found by the lower court, but of "Sasapco", which Sapico claims is idem sonans with his surname.

This pretense is untenable for, decisions of courts of first instance in election protests affecting the position of vice-mayor in regular municipalities are not appealable, except on purely questions of law (Section 178, Republic Act No. 180, as amended; Calano vs. Cruz, 50 Off. Gaz., 610; Tumakay vs. Orbiso, L-8354, August 22, 1955), and the question whether the name written on Exhibit N is "Sasablo" or "Sasapco" is one of fact (Florido vs. Velez, L-8533, August 13, 1955). At any rate, we have examined Exhibit N and found that what appears thereon is not "Sasapco", but "Sasablo", as found in the decision appealed from. It is not contended that "Sasablo" is idem sonans with Sapico. Consequently, the lower court did not err in considering Exhibit N as a stray vote for vice-mayor.

Upon the other hand, the nine (9) contested ballots claimed by Perfecto were marked as Exhibits 1 to 9, respectively. The lower court found voted therein, the following:

"Exhibit

'1'

.....

R. Perfecto

'2'

.....

R. Perfecto

'3'

.....

Q. Recto

'4'

.....

Roben

'5'

Querubin Perfecto

On this ballot a sticker with the name

‘Ulpiano’ has been pasted over the blank space provided for the office of Provincial Governor.

"Exhibit

'6'

.....

Querubin Perfecto

This ballot has also a sticker with

the name 'Ulpiano' pasted on the space

for Provincial Governor.

"Exhibit

'7'

.....

R. Fupecto

‘8’

Perfexto

‘9’

R. Parfecto"

His Honor, the trial Judge nullified Exhibits 5 and 6, as marked ballots, in view of the stickers pasted thereon, but considered Exhibits 1, 2, 3, 4, 7 and 9 as valid votes for Querubin Perfecto, upon the ground that:

"The protestant has established that in the barrio of Supang and in the town of Caramoran, he is familiarly called as Ruben and his intimates address him in that way. This is not disputed by the protestee. With this evidence the Court finds and holds that the ballots containing the names ‘R. Ferfeto’ (Exh. ‘1’); ‘R. Perfecto’ (Exh. ‘2’); ‘Roben’ (Exh. ‘4’); ‘R. Fupecto’ (Exh. ‘7’); ‘R. Parfecto’ (Exh. ‘9’); were duly voted for the protestant and must be counted in his favor pursuant to the applicable provisions of the Revised Election Code and established precedents. x x x ‘Q. Recto’ on Exhibit ‘3’ appears also to have been voted for the protestant and must be counted in his favor."

It is urged by Sapico that Exhibits 1, 2, 3, 4, 7 and 9 should have been annulled because Perfecto had allegedly admitted "that the votes 'Ruben Perfecto' were intended by him to identify the voters".

But, we find no merit in this pretense for:

1. The name "Ruben Perfecto" does not appear in any of said contested ballots. What the voters wrote thereon were "R. Ferfeto", "R. Perfecto", "Q. Recto", "Roben", "R. Frepecto", "Ferpexto" and "R. Parfecto", respectively, and it is not denied that, with the exception of "Roben", all of these names are idem sonans with Perfecto, or R. Perfecto.

As regards Roben, the lower court found - and appellant does not assail this finding - that

"The protestant established that in the barrio of Supang and in the town of Caramoran, he is familiarly called as Ruben and his intimates address him in that way. This is not disputed by the protestee. x x x."

It is trite to say that "Roben" is idem sonans with Querubin.

Although protestant-appellee admitted, in the course of his testimony, that "votes having 'Ruben Perfecto' can be identified", a reading of his entire testimony shows that he did not mean that the voter or the ballot could thereby be identified, for the simple reason, just adverted to, that, in some places, he is familiarly known or addressed as Ruben. Since his true surname is Perfecto, it is obvious that who wrote Ruben Perfecto on their ballots could not possibly be identified. What appellee evidently meant was that the voters candidate voted for, when the name written was Ruben Perfecto, could be identified.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against protestee-appellant, Alfredo Sapico.

IT IS SO ORDERED.

Reyes, JBL, Barrera, Dizon, Makalintal, Bengzon, JP, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave.

Zaldivar, J., no part.

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