

**REMEGIO GABUYA, PETITIONER VS. EUTQUIO M. DAJAO,
RESPONDENT.***G.R. No. L-20235. September 30, 1963*

Ponente: BARRERA, J.

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In the general elections of November 10, 1959, wherein Remegio Gabuya and Eutiquio Dajao ran as candidates for the position of Mayor of Dimiao, Bohol, Gabuya was proclaimed elected. Dajao filed a protest in the Court of First Instance of Bohol, which, after hearing, upheld the proclamation of the protestee and declared him elected by 733 votes against the protestant's 637 votes. The protestant took an appeal to the Court of Appeals, which court, in its decision of August 13, 1962 ruled and discounted as marked ballots 170 votes of the protestee appellee, reversed the decision of the court a quo and declared the protestant-appellant the elected mayor of Dimiao, Bohol, with a plurality of 38 votes over his opponent. Protestee-appellee now comes to us by way of the present petition for review.

Petitioner does not here question the finding by the Court of Appeals that all the 170 ballots in dispute were invariably voted for in this manner: The name of the candidate first voted for councilor was written with his surname prefixed by a nickname or what appears to be a derivative or contraction of his first or Christian name, while the rest of the candidates were voted for by their surnames or their surnames and initials of their respective first or Christian names. Thus, the candidate first voted for or whose name appears on the first space for councilors was written "Dan" Calihat, for Daniel; "Mat" for Mateo Acusar; "Greg" for Gregorio Pahang; "Tek", "Tik" or "Tic" for Eutiquio Idulzura; "Lu" for Luis Acorda; "Lus" or "Los" for Lucio Saluta; "Ped" for Pedro Lagura; "Panoy" for Galicano Idul; "Cleto" or "Clito" for Anacleto Palaca; and "Masoy" for Damaso Lagumbay. It is claimed, however, that the Court of Appeals, in concluding from the aforestated manner that the same was made for the purpose of identification, and in declaring the 170 ballots all marked, committed an erroneous conclusion of law. Indeed, involved in this case is the sole issue of whether or not the Court of Appeals erred in holding as marked and, consequently, deductible from the total number of votes counted for herein petitioner, the 170 ballots voted for in the manner above indicated.

In support of his contention, disputing the ruling of the Court of Appeals, petitioner relies on the case of *Amurao vs. Calangi*,^[1] wherein this Court, rejecting another Court of Appeals decision holding that the writing of the name of the candidate twice gives rise to the suspicion that it was a design to mark the ballot, held that such fact does not invalidate the ballot but makes of the vote for the office of which he is not a candidate, stray. The foregoing ruling was made in view of the absence of evidence showing that the repetition of the names of the candidates was made for the purpose of identifying the ballots. In other words, 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 ballots. ^[2]

True it is that under Section 149(9) of the Revised Election Code, 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. The rule, however, is predicated on the proviso that the same is not used as a means to identify its voter.[3]But in this case, there is precisely such evidence found by the Court of Appeals, which finding is binding on this Court.

Thus the Court of Appeals in the instant case, said:

"* * *. It is a fact that a common pattern was adopted in filling up all the ballots under consideration. This circumstance lends credibility to the evidence presented by protestant to the effect that sample ballots prepared in the manner these ballots under consideration were filled up were distributed by the protestee and his leaders and that instructions were given to the voters to follow said sample ballots which contain countersigns. For this reason, these 170 (not 174 as claimed by protestant) ballots should be as they are hereby declared invalid as marked ballots." (Italics supplied.)

It is evident therefrom that in arriving at the conclusion that the 170 ballots in dispute are marked, the Court of Appeals took into account not only the manner by which the said ballots were filled, but also the evidence aliunde presented by the protestant-respondent tending to establish that such manner of voting was planned to identify the votes of certain voters or groups of voters, in violation of the provisions of the Election Law.

In view of the foregoing, and finding no reason to disturb the decision of the Court of Appeals sought to be reviewed, the same is hereby affirmed, with costs against petitioner. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] 104 Phil., 347.

[2] See also Villarosa vs. Guanzon, L-19605, Sept. 28, 1962.

[3] See. 149— RULES FOR THE APPRECIATION OF BALLOTS. In the reading and appreciation of ballots the following rules shall be observed.

* * * * *

- 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, except when they were used as a means to identify their respective voters.

"* * * * *"

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