

ELEUTERIO DE LEON, PROTESTANT AND APPELLANT, VS. NICANOR F. CRUZ, PROTESTEE AND APPELLEE.

G.R. No. L-5579. December 29, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

In the general elections held on November 15, 1951, for the office of municipal mayor of Paranaque, Rizal, Nicanor F. Cruz, herein protestee-appellee, was certified by the municipal board of canvassers to have obtained 8,161 votes, as against 5,669 votes obtained by Eleuterio de Leon, herein protestant-appellant. Accordingly, on November 23, 1951, the appellee was proclaimed as the elected municipal mayor with a plurality of 492 votes.

On December 6, 1951, the appellant filed a motion of protest in the Court of First Instance of Rizal, impugning and contesting the appellee's election on the following grounds:

"(a) Multiple votings by various persons and/or substitution, in the very act of voting', of registered 'flying' voters, by persons other than said registered 'flying' voters, who failed to appear at the respective precincts to vote, probably due to fear that they might be detected, were committed in Precincts Nos. 1, 1-A, 2, 3, 6, 6-A, 7, 8, 9, 13-A, 14, 15, 15-A, 17, 19, 20, 21, 21-A, 22, 26, 29, 30, 31 and 32 of said municipality;

"(b) In all the precincts mentioned in allegation 4 (a) hereof, as well as in Precinct Nos. 16-A, 28, 35, 41, 44, 46 and 47, ballots cast in favor of herein protestant were not read and counted in his favor but were instead credited in favor of protestee;

"(c) In Precinct No. 8 of said municipality, the election return filed by the Board of Election Inspectors with the Municipal Treasurer of Paranaque, Rizal, shows in words that the protestee obtained 'one hundred four' votes only, while the same return shows in figures that said protestee obtained '204' votes, and the Municipal Board of Canvassers of Paranaque credited the protestee with '204' votes, instead of '104' only, which is the correct number of votes received by said protestee;

"(c-1) Moreover, said Precinct No. 8 was located in the house of Cornelio Rivera, incumbent Vice-Mayor of Paranaque, Rizal, and protestee's campaign leader, in violation of Sec. 64 of the Revised Election Code, which made possible the commission of the irregularity that the voting and the actual counting of the ballots cast was made on the second floor thereof, and the Board of Election Inspectors excluded the watchers of the protestant and other Nacionalista candidates therefrom;

"(d) In Precincts Nos. 20, 21 and 21-A of the said Municipality, blank ballots were allowed to be taken out of the voting precinct by voters and they were later on brought inside the precinct by the succeeding voters already filled with the names of candidates; votes cast in favor of the protestant were read and counted in favor of the protestee; votes cast in favor of protestee were re-read and counted again in favor of said protestee; and watchers of Nacionalista candidates were not allowed inside said precincts to enable them to perform the duties permitted them by law;

"(e) In Precinct Nos. 7, 8, 20, 21, 21-A and 24, of Paranaque, Rizal, watchers of the Liberal party candidates were allowed by the Board of Election Inspectors to write and cast the votes for registered voters other than

said watchers;

"(f) In Precinct Nos. 22, 23, 24, and 41, ballots marked with a cross (+) in the space for Mayor were credited in favor of the protestee on the ground that the said mark stands for 'Cruz', when said ballots should be declared spoiled for being marked;

"(g) In Precinct Nos. 7, 8, 20, 21, 21-A, 26, 29, 30, 31 and 32, many ballots written by one hand were credited in favor of the herein protestee."

The appellee filed an answer with a counter-protest and counterclaim, to which the appellant filed a reply and answer. To enable the court to examine and count the ballots in all the contested precincts, it appointed commissioners who were directed to open the ballot boxes and separate the ballots into the following groups:

"GROUP I: Ballots which are not contested and admitted by both parties.

"GROUP II: Ballots which are contested by the protestant.

"GROUP III: Ballots which are contested by the protestee.

"GROUP IV: Ballots which are claimed to be null and void for one reason or another by the protestant.

"GROUP V: Ballots which are claimed to be null and void for one reason or another by the protestee."

On January 14, 1952, the appellant filed an amended motion of protest, the amendment consisting of the following:

"1. That the only change made in this Amended Motion of Protest is the addition in par. (a) of the prayer of the figures '9', '46' and '47', corresponding to the elections" precincts bearing said numbers of Parafiaque, Rizal;

"2. That in the original motion of protest, those figures were inadvertently omitted, although as may be seen in original motion of protest, Precinct No. 9 has been duly protested in the allegation in par. 4 (a), while precincts Nos. 46 and 47 were likewise duly protested in the allegation in par. 4 (b)."

After the commissioners had revised the contents of the ballot boxes in eight precincts contested by the appellant, the latter filed a motion praying that the commissioners be ordered to desist from further revising the contents of the ballot boxes in other twenty-one contested precincts, but that they be ordered to proceed with the revision of the contents of the ballot boxes in precincts Nos. 19, 20, 21 and 21-A. This motion was granted.

On February 13, 1952, the appellant filed a motion praying that Mr. Edgar Bond be authorized to examine the fingerprints appearing in certain registry lists, to compare them with the voters' affidavits, and to take photographs thereof if necessary. This motion was set by attorneys for appellant for hearing three days from February 13, or February 16. On February 15 the appellee filed an opposition and counter-motion to dismiss the protest, copy of which was served on counsel for the appellant on the same date. On February 15 attorneys for the appellee filed an urgent motion, praying that the hearing of appellant's motion filed on February 13, be set for a definite date, preferably February 18. On February 18, at 7:00 a.m., attorneys for the appellants filed an urgent motion, praying that the appellee's motion to dismiss be heard on February 20, instead of on February 18. On the latter date, the court issued an order dismissing the motion of protest filed by the appellant and confirming the election of the appellee as the duly elected mayor of Paranaque, with costs against the appellant. In said order the motion for postponement filed by attorneys for the appellant was denied. His two motions for reconsideration having been denied, the present appeal was interposed by the appellant.

The first point raised by the appellant is that the appellee's counter-motion to dismiss did not contain any notice of hearing and therefore was a useless scrap of paper which should not be resolved by the lower court. It appears,

however, that said motion to dismiss was part and parcel of appellee's opposition to the appellant's motion filed on February 13; and it was accordingly not necessary for the appellee to set his opposition for a separate hearing. Moreover, in the urgent motion filed by attorneys for the appellee on February 15, it was prayed that the hearing of appellant's motion of February 13, be held on February 18; and attorneys for the appellant must be held to have known of the hearing on February 18, because they moved to postpone the same to February 20.

The lower court denied appellant's motion for postponement on the ground that although Mr. Alberto Jamir, one of the attorneys for the appellant, had to appear in another court, the appellant was represented by four lawyers and anyone of them could represent him at the hearing held on February 18. The court acted properly, especially considering that an election contest should be disposed of within a limited statutory period in the interest of all concerned.

The opposition and counter-motion to dismiss filed by the appellee on February 15, 1952, was premised on the allegation that the motion of protest failed to state a claim upon which relief could be granted. Specifically, it was pointed out that the motion of protest did not allege that the frauds, irregularities and violations invoked by the appellant would in any way alter the result of the appellee's election, particularly because, in the revision of the ballots, the appellant contested only a total of 426 votes, and even if all these votes are counted for the appellant, the appellee would still have a plurality of 66 votes. The trial court, in ruling upon the point stated as follows:

"It appears, further, that in compliance with the order of the Court dated January 14, 1952, the commissioners and watchers appointed by the Court commenced the revision of the ballots in all the contested, precincts; that in the course of such revision, the protestant filed an urgent motion dated January 30, 1952, in which motion the said protestant asked the Court to order the commissioners and watchers appointed in this case to desist from further revising of the contents of the ballot boxes in Precincts Nos. 7, 9, 14, 15, 15-A, 16-A, 17, 22, 23, 24, 26, 28, 29, 30, 31, 32, 35, 41, 44, 46, and 47 of the municipality of Paranaque, Rizal, as he was waiving his right to ask for the opening of the ballot boxes aforesaid for the reason alleged in said motion; that on February 1, 1952, the Court granted the said motion, and the Court order the said commissioners and watchers to open and revise only the ballots in the ballot boxes of Precinct Nos. 19, 20, 21 and 21-A, of Paranaque, Rizal, as prayed for by the protestant in the said motion of January 30, 1952; and that after all the 13 questioned ballot boxes, as stated in the daily reports of the commissioners, were opened and revised, it appear that a total of 426 votes have been challenged by the protestant.

"Indeed, there is no showing in the motion of protest that the protestant is entitled to the relief he prayed for. He failed to aver in his basic pleading that his motion of protest would change the result of the election for mayorship of Paranaque, Rizal. However, the protestant was nevertheless given an opportunity to examine the ballot boxes in the precincts contested. Taking advantage of this, he was only able to challenge 426 votes.

"Considering that the protestee was proclaimed with a plurality of 492 votes, some 66 votes more than the votes allegedly contested by the protestant, it is the opinion of the court that any further proceedings of this case will no longer be necessary, as the questions that may and could only be raised and discussed would be academic or moot question." (pp. 19-21, Appellee's brief.)

The appellant contends that, inasmuch as the jurisdictional facts required by section 174 of the Revised Election Code are alleged in the motion of protest, the same cannot be dismissed for lack of a cause of action, even if there is no allegation that the irregularities complained of would affect the result of the election. The appellant has cited the case of Gallares vs. Casenas, 48 Phil., 362, in support of the proposition that the lower court, instead of dismissing the motion of protest, should have allowed the appellant to amend it by alleging that the result would be changed by the irregularities complained of, assuming that such allegation is necessary. However, as correctly stated by the appellee, in the case cited the protest contained an allegation "that had not said irregularities or violation of the law alleged in the preceding paragraph been committed, the result of the elections would have

been different, and the contestant would have been victorious with a large majority of votes over the contestee." And this Court merely allowed the contestant to specify the number of votes which would result in favor of the protestant after the judicial counting.

In the present case there is no allegation whatsoever that the irregularities mentioned in the motion of protest would, if corrected, ever result in the election of the appellant. The dismissal by the lower court of the motion of protest becomes the more imperative, in view of the fact that the appellant not only waived the opening of the ballot boxes in many contested precincts but, in connection with the ballots revised, contested only a total of 426 votes, or 66 votes short of the plurality adjudicated by the municipal board of canvassers to the appellee.

The appellant, however, relies upon the following manifestation of his counsel: "We wish to make it of record that all admission as to the genuineness or authenticity of the ballots which may be made during the revision of the ballots by the commissioners, now or in the future, pursuant to the order of the court dated January 14, 1952, shall be without prejudice to proving in due time that such ballots were written by one hand, or by a person or persons other than the duly registered voter, according to the allegations of our motion of protest. In other words, all such allegations (admissions) shall be confined only to the fact that such ballots appear regular on their face and that they are legibly written, but our right to prove that they are not valid and should not be counted because they were written by a person or persons other than the duly registered voters is hereby expressly reserved. It is claimed that, under this reservation, the appellant was free to contest the validity of all the uncontested ballots, and thereby 'to prove that such uncontested ballots were written by one hand or by a person or persons other than the duly registered voters, it being alleged that a handwriting expert may testify to the fact that the fingerprints and signatures appearing in the voters' affidavits are different from the fingerprints and signatures in the registry lists. In the first place, this contention would nullify the purpose of the expensive formality of separating the contested ballots from the uncontested ballots. Indeed, the commissioners were directed by the lower court to group, in addition to other contested ballots, those ballots claimed to be null and void for one reason or another. In the second place, assuming that the appellant may prove discrepancies in the fingerprints and signatures in the voters' affidavits and in the registry lists, that circumstance alone will not show that the illegal voters prepared all or any of the uncontested ballots in favor of the appellee.

It is further argued that the appellant had waived the opening of the ballot boxes in many contested precincts, with the reservation to continue his motion of protest with regards to all other grounds specified therein, and that, under said reservation, the appellant may show at the trial "that the frauds committed by the protestee and/or his leaders and henchmen were so flagrant and their influence so diffusive that it is impossible to separate the good votes from the bad in order to determine the true result of the election, for which reason the entire vote therein should be avoided and rejected." The motion of protest, however, does not contain the proper allegation to justify the presentation of the intended evidence.

Wherefore, the appealed order will be affirmed, and it is so ordered with costs against the protestant-appellant.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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