

ALEJANDRO SARMIENTO, PROTESTANT AND APPELLEE, VS. SERAFIN QUEMADO, PROTESTEE AND APPELLANT.

G. R. No. L-18027. June 29, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by Serafin Quemado from a decision of the Court of First Instance of Antique.

At the general elections held on November 17, 1959, the municipal board of canvassers for the Municipality of Laua-an, Province of Antique, proclaimed Serafin Quemado as the candidate elected for Vice-Mayor of said municipality, with 1,155 votes, or a plurality of one (1) vote, over his closet opponent for said office, Alejandro Sarmiento, for whom 1,154 votes had been cast, according to the canvass made by said board. In due time, Sarmiento filed the corresponding election protest with the Court of First Instance of Antique, which after appropriate proceeding, rendered a decision holding that Sarmiento had obtained 1,148 votes, as against 1,146 votes for Quemado, and accordingly, declaring Sarmiento elected with a plurality of two (2) votes over Quemado. On motions for reconsideration filed by both parties, said court amended its decision by reducing the votes for Sarmiento, and, hence, his plurality over Quemado, by one (1) vote, but affirming the original decision in all other respects. Hence, this appeal by Quemado, which has been given due course, despite the provision of Section 178 of the Revised Election Code, pursuant to which the decisions of courts of first instance in election protests affecting the offices of vice-mayor and municipal councilors of regular municipalities shall not be appealable, in view of the constitutional mandate to the effect that the Supreme Court may not be deprived of its jurisdiction to review, reverse, modify or affirm on appeal, certiorari or writ of error, final judgments and decrees of inferior courts in all cases in which an error or question of law is involved (*Calano vs. Cruz*, 50 Off. Gaz., 610).

Both parties have made in their briefs their respective assignments of error.

Assignments of Error of Quemado.

- Quemado maintains that the ballots Exhibits S-2, S-35, S-51, S-77 and S-82, should have not been counted for Sarmiento, because they are marked, for in

Exhibit S-2. —

"Juan Siro" is written on the fifth space for councilors;

Exhibit S-35.—

"C Mongao-gao" appears on the last space for councilors;

Exhibit S-51.—

"E Cea Jwan" was voted for in the second space for senators;

Exhibit S-77.—

"Strong J. Nietes" appears on the space for mayor; and

Exhibit S-82.—

"Nietes Daniel peang" was written on the first space for councilors.

It is urged by Quemado that the words "Siro", "gao", "Jwan", "Strong" and "peang" are impertinent and irrelevant expressions having no other possible purpose than to identify these ballots, but the lower court held otherwise, and we think, correctly, there being no evidence aliunde or other fact clearly indicating the intent of the voter.

- It is similarly contended that Exhibits S-37, S-47, S-50, S-62, S-65, S-76 and S-81 should have been nullified as marked and should not have been counted for Sarmiento, because in:

Exhibit S-37.—

"Ramon Magsaysay" was written in bold letters, on the last space for senators, to identify the ballot and the same was prepared by two (2) hands;

Exhibit S-47.—

The first letters of the names (family names) of the candidates therein voted for were separated from the rest of said names by a dot;

Exhibit S-50.—

"Filez Nonisa" was written on the last space for councilors;

Exhibit S-65.—

"Felix Buay" appears on the second space for senators;

Exhibit S-76.—

"Felis may pinele-an" was voted for on the fourth space for councilors;

Exhibit S-81.—

"Piles Bagies" (which is said to mean "Felix the shark") was written on the first space for senators;

Exhibit S-62.—

"Pedong" appears on the middle of the first space for senators and "M.M." was written above the printed words "Provincial Vice-Governor", which are followed by "L-Novisteros", as the candidate voted for said office.

It is further urged that one Felix Nunieza, a prominent political leader in the Arrabal of Cuisijan, where Exhibits S-50, S-65, S-76 and S-81 were cast, was the person alluded to by the voters who prepared said ballots and wrote thereon the names "Feliz", "Felix", "Felix" and "Piles", for the purpose of identifying the same. For the reasons stated in connection with Quemado's first assignment of error, we find that the lower court was justified in rejecting such pretense.

- "Written-by-two-hands" is Quemado's objection to Exhibits S-3, S-15, S-31, S-4G, S-46, S-64 and 'SW79-, which, he, accordingly, maintains, should not have been counted for Sarmiento. Upon examination of these ballots we hold that this pretense is untenable.

- It is next urged that the name written on the space for vice-mayor in Exhibits S-20, S-41, S-71, S-83 and S-S6, which were counted for Sarmiento, is illegible, and that the names on the spaces for mayor and vice-mayor in

S-41 had been, written by a hand other than that which had filled the rest of the ballot. The lower court was right in holding that Sarmiento was voted for vice-mayor in said ballots and that S-41 had been filled by only one hand.

- Qr-9, in which Quemado appears voted for vice-mayor, was annulled by the lower court as a marked -ballot, because the numbers "3", "4" and "5" in the corresponding spaces for senators were crossed out and the numerals "4", "5" "7" and "6" respectively were written after the aforesaid numbers, before filling the names of candidates voted for. We agree with Quemado that the lower court erred in holding -that this ballot is marked. The poor penmanship of the voter clearly indicates his humble condition and suggests strongly that he may have deemed it necessary to reproduce the numbers appearing in the tickets or sample ballots which are commonly used in rural areas. This vote should be counted for Quemado.

- The lower court, likewise, annulled Exhibit Q- 20, as written by two-hands. We are not satisfied, from the appearance of the ballot, that the conclusion reached by the lower court is correct. Quemado appears therein voted for vice-mayor, and should be credited this additional vote.

- Exhibits Q-23 and Q-84 were in the opinion of the lower court written by only one hand, and, hence, were annulled. We agree with this view.

- The vote for vice-mayor in Exhibit Q-24, which, Quemado claims, should have been counted in his favor, was found by the lower court to be illegible, and, we think correctly.

- Because the respective voters had written "Borja Borja" in the second space for senators in Exhibit Q-57, "Pajo Pajo" in the first space for senators in Exhibit Q-58, and "Eca Pilaez Pilaez" in the last space for senators in Exhibit Q-62, these three ballots were annulled in the decision appealed from as marked. A majority of the members of this Court feel that the action taken by His Honor, the trial Judge, should be reversed, for there is no evidence, aliunde of the intent to identify the ballots and such intent is not manifest on the face thereof.

- Exhibits Q-63, Q-64, Q-65 and Q-66 were annulled by the lower court as marked, because, in the language of the lower court:

"All of these ballots were cast in precinct No. 4-A. (In each of them the name of one candidate for senator is clearly and markedly indented to the right as to render the ballot easily distinguishable."

We are fully in accord with this conclusion.

Assignments of Error of Protestant Sarmiento.

- The respective voters voted for vice-mayor, in Exhibit S-19, "A Ianoito", in Exhibit 45, "Saumeroo", and in Exhibit 88 "Sar". Sarmiento claimed these ballots as votes in his favor, but the lower court rejected correctly his pretense.

- Exhibits S-5 and S-6 were annulled by the lower court upon the ground that both had been prepared by one and the same hand. Sarmiento maintains otherwise, but his contention is refuted by the identical handwriting appearing in these ballots.

- In Exhibit S-87, "Nietes"—a candidate for mayor—was written after the printed word "vice-mayor". Immediately following the printed term "councilors" and at the same level thereof—but not in the space for councilors—the voter wrote "Sarmiento". Below the same, in the space for councilors he wrote the names of the persons voted therefor. Sarmiento maintains that this vote should have been credited to him/ inasmuch as the votes for mayor and vice-mayor had obviously been displaced, and his name is not in the space for councilors. This contention would have been tenable had the space for vice-mayor been left blank, but the name of Nietes is written thereon and, hence, there is no means by which to justify its being counted as a vote in favor of Sarmiento, for said office.

- The lower court nullified Exhibits S-10 and S-12, in both of which the vote for mayor is "J. Nietes Nietes", as marked ballots. The person who prepared these ballots—unlike those who prepared Exhibits Q-57, Q-58 and Q-62—appear to be well educated, judging from their good penmanship. They could have had no possible reason to write "Nietes" twice, except to mark their respective ballots.

- Likewise, annulled as marked were Exhibits S-61— in which the voter wrote "Norito Samsona Bingador" and "R. Songcayawan box people no fault", in the fourth and eighth spaces respectively for senators—and S-75, in which the phrase "seven Thrills" appears on the last space for councilors. These ballots are clearly marked.

- The persons voted for vice-mayor in Exhibits Q-22 and Q-7 are "S. Amado" and "Sirapin", respectively. "S. Amado" was counted for Quemado under the *idem sonams* rule and, correctly, considering that the proper initial of his Christian name was written by the voter. "Serafin" is, likewise, *idem sonams* with "Serafin", which is Quemado's Christian name, and which no other candidate for vice-mayor is claimed to have. Both ballots were properly counted for Quemado.

- In Exhibit Q-19, "S. Quemado" was written slightly under the space for vice-mayor, but outside the space for other officers. It was properly credited by the lower court to Quemado as candidate for vice-mayor.

In Exhibit Q-39, the vote for vice-mayor was similarly written in the space between the printed words "vice-mayor" and "councilors". The name written can be read as "Quemadu", although it may at first appear as "Auema-du" or "Auemodu", due to the imperfection in the writing of the first letter. This ballot was, also, correctly credited to Quemado.

- In Exhibit Q-80, the voter wrote, in the space for Provincial Vice-Governor, "Mayog Magluyan" and in the spaces for members of the provincial board:

"Vice S. Quemada sobranco

O Neon la grnosa

V Jungco L. Jungco"

The lower court correctly counted this ballot as a vote for Quemado for vice-mayor, despite the fact that his name appears in the space for the provincial board, not only because his name is preceded by the prefix "visi" meaning "vice", but, also, because in the space immediately preceding the voter wrote "Mayog Magluyan", thereby indicating that the later was a vote for "mayor" and that the name immediately following the same was intended for the "vice-mayor".

- Sarmiento maintains that Exhibits Q-8 and Q-38 have each been prepared by two-hands, but the lower court did not think so, and neither do we.

- It is lastly urged by Sarmiento that Exhibits Q-10, Q-42, Q-49 and Q-51 are marked, because the following appear on:

Exhibit Q-;10.—

"Alejandro negcor" on the last space for councilors;

Exhibit Q-42.—

"I. Cadio L.," on the space for provincial governor;

Exhibit Q-49.—

"Lotilla, Lotilla", on the space for provincial vice-governor; and

Exhibit Q-51.—

"CUENCO", in capital letters, on the first space for senators, whereas the rest of the ballot is filled in ordinary handwriting.

The lower court did not err in rejecting Sarmiento's pretense. The facts relied upon by Sarmiento are not sufficient to show the intent of the voter to mark his ballot, apart from the fact that "the use of two or more kinds of writings * * * shall be considered innocent and shall not invalidate the ballot", pursuant to Article 149 (18) of the Revised Election Code (Republic Act 180), "unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks" and such is not the case before us.

Recapitulating, we should add to the 1,146 votes credited by the lower court to Serafin Quemado five (5) votes, namely those cast for him in Exhibits Q-9, Q-20, Q-57, Q-58 and Q-62, thereby giving him a total of 1,151 votes, as against 1,147 obtained by Sarmiento, for which reason protestee Serafin Quemado is hereby declared elected for vice-mayor of Laua-an, with a plurality of four (4) votes over protestant Alejandro Sarmiento and the decision appealed from is, accordingly, reversed, with costs against said protestant. It is so ordered.

Padilla, Bautista Angelo, Barrera, Dizon, Regala and Makalintal, JJ., concur.

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