

ANTONIO K. BISNAR, PROTESTANT-APPELLEE, VS. BRAULIO LAPASA, PROTESTEE-APPELLANT.*G.R. No. L-24468. February 28, 1967*

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/722a61a41cb2/>**MAKALINTAL, J.:**

In the election of November 12, 1963 Antonio K. Bisnar and Braulio Lapasa were candidates for the office of vice-mayor in the municipality of Inopacan, Province of Leyte. The municipal board of canvassers of Inopacan proclaimed Lapasa winner, with a majority of 32 votes (1,293 to 1,261). Bisnar lodged a protest (Election Case No. 24-B) in the Court of First Instance of Leyte, which rendered judgment in his favor and declared him to be the duly elected vice-mayor of Inopacan, with a plurality of twenty-four (24) votes (1,250 to 1,226). The protestee appealed directly to us and now alleges that the lower court erred: (1) in declaring null and void Exhibits A, B, C, and D of Precinct No. 6; Exhibits A-1 and B-1 of Precinct 12; Exhibits A, F, G, H and J of Precinct 16; Exhibit A of Precinct 17; and Exhibits A, D, E, F, G, and M of Precinct 18; and (2) in declaring null and void fifty (50) other ballots in which he appears voted for, on the ground that the same are marked.

On each of the eighteen (18) ballots referred to in the first assignment of error, only the word "Bala," said to be the nickname of protestee-appellant, is written on the space for vice-mayor. In the first place there is no showing that "Bala" is the nickname of protestee-appellant. No evidence on this point is cited by him. Indeed, he admits that no evidence aliunde whatsoever was presented by the parties. What the trial court said in its decision is that the word "Bala," even if it be considered as protestee-appellant's nickname, is not sufficient to render the vote valid for him. This, after all, is a correct statement of the rule.

Section 34 of the Revised Election Code expressly provides that certificates of candidacy shall not contain nicknames of the candidates; and section 149, paragraph 9 allows the use of nicknames and appellations of affection and friendship if accompanied by the name or surname of the candidate, except when they are used as a means to identify the votes. On the basis of these provisions, this Court has held in a number of cases that for a ballot containing the nickname of a candidate to be counted in his favor the nickname must be accompanied by either his name or surname, unlike a ballot which contains only the christian name or surname of a candidate, which is considered valid if there is no other candidate with the same name or surname for the same office (*Felisilda v. Achacoso*, G. R. No. L-21228, November 22, 1963; *Tajanlangit v. Caseñas*, G. R. No. L-18894, June 30, 1962).

Protestee-appellant invokes our decision in *Abrea vs. Lloren*, 81 Phil. 809. We have heretofore explained, in *Tajanlangit vs. Caseñas*, *supra*, the reason why in that decision we considered as valid for Isabelo Lloren the ballots where he appeared voted for only by his nickname "Beloy". We said:

"Examining the ratio decidendi in the case of *Abrea vs. Lloren*, *supra*, the reason why this Court admitted ballots containing only a nickname was because 602 of the total number of 1,010 votes counted for Isabelo Lloren were cast by writing his nickname 'Belot'; and it had no alternative than to brush aside legal technicalities for the sake of 'giving effect to the will of the people as freely and clearly expressed in the

ballots'. In justifying the admission of 602 ballots containing the nickname 'Beloy', this Court took into consideration certain proven facts, to wit, (a) that in his certificate of candidacy, candi-date Lloren stated that he was known by the nickname Beloy; (b) that Lloren distributed sample ballots containing only his nickname Beloy on the line for Municipal Mayor; (c) that the ballots containing only his nickname represent 60% of the total number of votes received by Lloren; and (d) that no objection was interposed by the other party against the evidence presented by Lloren that he was properly and commonly known by the nickname Beloy and no other candidate for mayor bears the same nickname."

None of the circumstances mentioned in the decision just quoted is present in the instant case. The trial court properly rejected the 18 ballots now claimed by appellant.

We now consider individually the fifty (50) ballots subject of the second assignment of error.

1. Precinct 6, Exhibits E and F.

Exhibit E was rejected by the trial court as a marked ballot because of the word "opalao" written on space 6 for councilors. The word could have been intended for an actual person, whether candidate or not, although imperfectly written. There is no evidence as to what it means, or that it was used to identify the ballot. Under the circumstances this should be counted for protestee-appellant.

So should Exhibit F, which was invalidated by the trial court because of a diagonal line drawn across the ballot, from the third to the last space for senators. Considering that the first two spaces are properly filled, the voter must have drawn the line to indicate his desistance from voting for other senatorial candidates.

2. Precinct 7, Exhibits B, C, D, E, F, G, H, I, J, K, L, M, O, P and Q.

Exhibit B was prepared by a poor writer. He wrote "I. Lloren" on the space for mayor and "I. Lapsa" on the space for vice-mayor. "I" is not the initial of protestee-appellant. The rule is that an erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in his favor (Section 149, paragraph 6, Revised Election Code). This is a valid vote for protestee-appellant.

In Exhibits C, D, E, F, G and H the word "engat" appears on space 1 for senators. In Exhibits I and J, the same word is written on spaces 6 and 8 for senators, respectively. This word is not and could not have been intended as the name of a person. In the Visayan dialect it means "shining" or "luminous," and can only be regarded as an irrelevant and impertinent expression. The same is true of the word "boy," which appears in Exhibits K, L, M, O and P on space 8 for senators, and in Exhibit Q, on space 6 for councilors.

In fact we have already ruled on these very same ballots and held them invalid in the case of Lloren vs. Court of Appeals and Pacito Abrea, G. R. No. L-25907, January 23, 1967. We there said:

"In all of these cases, a pattern is readily discernible - a group of voters in the same precinct wrote a particular word or name among those voted for certain offices. It is unlikely that in a precinct, for example, Precinct 14, 6 voters would all innocently write the name "Minong" or "Menong" on line 4 for senators x x x x x And, this curious pattern or way of voting is true with respect to the other ballots specified above. The appearance of the aforementioned words in practically the same spaces in several ballots, in the same precincts, is a clear and convincing proof of a design to identify them. Thus, in a case, the appearance in 4 ballots of the name "Cesario" or "Cesar" uniformly on the first space for senators, and of the name "Gregorio" on line 8 for senators in 8 ballots, in the same precinct, was held to be conclusive proof that the name of the candidate was used as a means to mark the ballots (Delgado v. Tiu, G.R. No. L-14143, May 27, 1959)."

3. Precinct 12, Exhibits A, B, C, D, G, H, and I.

In Exhibit A the words considered by the trial court as objectionable are: "Have a good time Mr. Pacito" on spaces

4 to 5 for councilors; in Exhibit B, "I forgot his name" on space 3 for councilors; in Exhibit C, "Forget me not" on space 5 for councilors; in Exhibit D, "Binabati kong vice-mayor ug Biloy Mayor" cross-wise to the ballot on the right hand margin opposite the spaces for governor down to vice-mayor; in Exhibit G, "Rock Beloy" on space 1 for senators; in Exhibit H, the word "Mede" on space 5 for senators; and in Exhibit I, the word "Daling" on space 1 for senators.

Exhibits A and C have already been passed upon and declared invalid by this Court in *Lloren vs. Court of Appeals and Pacito Abrea*, supra, where we said:

"As a general rule, a voter must write on the ballot only the names of candidates voted for the offices appearing thereon. Certain exceptions, however, were provided in Sec. 149 of the Revised Election Code. For example, prefixes such as "Sr.", "Mr.", "hijo", "Jr.", etc. will not invalidate the ballot. Initials, (Par. 15), nicknames or appellations of affection and friendship will not invalidate the ballot, if accompanied by the name or surname of the candidate, and above all, if they were not used as a means to identify the voter. Even under a liberal view, the words written on the ballots under consideration cannot be considered as falling within the exception to the rule. Consequently, they are irrelevant expressions that nullified the ballots."

The same ruling should apply to Exhibits B, D, and G.

Exhibits H and I are, however, valid ballots. In the absence of evidence that the words "Mede" and "Daling" were intended as identifying marks, the same should be considered as stray votes but shall not invalidate the ballots.

4. Precinct 13, Exhibits C, D, A-Abrea, B-Abrea, C-Abrea, D-Abrea, E-Abrea and F-Abrea.

In Exhibit C the words "Medi Hingasoko Jabines" are written on space 5 for councilors. The words "Medi Hingasoko" is an irrelevant and impertinent expression which invalidates the ballot.

In Exhibit D the word "Coper" appears on space 5 for councilor. We are not convinced that this was intended to mark the ballot. The same is true with respect to Exhibit B-Abrea, where the word "coper" precedes the name "Roxas" on space 1 for senator. We hold these two ballots valid for protestee-appellant.

In Exhibit A-Abrea the words "Forget Me Not" are written on the space for vice-governor. Following our ruling in Exhibit C, Precinct 12, this ballot was correctly declared invalid by the trial court.

In Exhibit C-Abrea the word objected to is "Cardo" on space 1 for senators; in Exhibit D-Abrea, it is "Señorito" on space 2 for councilors; in Exhibit E-Abrea, the word is "Rudy" on space 1 for senators; and in Exhibit F-Abrea, it is "Talay" on space 5 for councilors.

In the case of Exhibits C-Abrea and E-Abrea the words "Cardo" and "Rudy", respectively, are evidently nicknames, which in the absence of evidence that they were intended for identification, do not invalidate the ballots. The ruling of the trial court with respect to them is therefore reversed.

Exhibit D-Abrea is a marked ballot. The word "Señorito" is not used as a prefix, for it does not accompany the name of a candidate and hence does not fall under Section 149, paragraph 5, of the Revised Election Code. We can conceive of no reason for its use except to mark the ballot.

In Exhibit F-Abrea, following our ruling in Exhibits H and I of Precinct 12, the appearance of the word "Talay" should be considered only as stray vote and the ballot itself as valid for protestee-appellant.

5. Precinct 14, Exhibits A, B, C, D, E, F, and G.

In Exhibit A, the initial "R.L." appears below the seal of the Republic of the Philippines and the word "Sorab" on the space for governor. The presence of the aforementioned initial on such a conspicuous part of the ballot clearly

indicates the intention of the voter to identify his vote. This ballot was correctly rejected by the trial court.

In Exhibits B, C, D, E, and G, the word "Menong" or "Minong" appears uniformly on space 4 for senators, while in Exhibit F, the same word is on space 1 for councilors. These ballots have been declared invalid in our decision in *Lloren v. Court of Appeals and Pacito Abrea*, supra, quoted hereinbefore in connection with Exhibits C, D, E, F, G, H, I, J, K, L, M, O, P, and Q of Precinct 7.

6. Precinct 16, Exhibits B, C, and E.

In Exhibits B and C "Zenon Mones" and "deong Cuenco" appear on space 1 for senators, respectively, and in Exhibit E the word "shot" is written on the left margin opposite the spaces for councilors.

"Zenon Mones" is evidently a name and its appearance on Exhibit B does not invalidate the ballot in the absence of evidence that it was written for identification purposes.

Exhibit C is a valid ballot and should be counted in favor of Lapasa. The word "deong" preceding the name of "Cuenco" may be considered as an appellation of affection or friendship under Sec. 149, paragraph 9 of the Revised Election Code.

Exhibit E is marked and therefore invalid. In *Lloren vs. Court of Appeals and Pacito Abrea*, supra, we ruled on this particular exhibit thus:

"x x x the appearance of these words, which are neither appellations of friend-ship nor nicknames of candidates, in spaces not intended for writing could not have been intended for any purpose than to identify the ballots."

7. Precinct 17, Exhibits B, C, D, E, F, and G.

Exhibit B, on which "I. Lloren Biloy Lloren" is written on the space for mayor, was rejected by the lower court as a marked ballot. We find no reason why this ballot should not be valid. In writing "I. Lloren Biloy Lloren" merely emphasized his intention to vote for Isabelo Lloren for mayor.

In Exhibit C, the word "Lowlow" was written before and after the name "Compendio", who was voted for councilor. This particular ballot was already ruled upon by us and accepted as valid in *Lloren vs. Court of Appeals and Pacito Abrea*, supra, where we held:

"... Unlike in the previous case, the alleged identifying words were written with the name of a duly registered candidate. In the absence of evidence aliunde that these words are not nickname or appellation of affection or friendship, and were intended to mark the ballot, we incline to uphold its validity."

In Exhibit D "Kowacnit Sigordo" is written on space 6 for councilor; in Exhibit E "Tse na lang" is written on space 3 for councilors; in Exhibit F, "Ci na lang" is written on space 6 for councilors; and in Exhibit G "Mahal kong Lloren" appears on the space for mayor and "Ganon den Lapasa" appeared on the space for vice-mayor.

Exhibit E was held to be invalid in *Lloren vs. Court of Appeals and Pacito Abrea*, supra, where we said that the words "Tse na lang" constitute an impertinent and irrelevant expression which annulled the entire ballot. The same ruling applies by analogy to Exhibits D and F. The ruling of the trial court with respect to Exhibit G, however, should be reversed, since the words "Mahal kong Lloren" specify nothing but affection and friendship, repeated by indication in the succeeding vote for Lapasa.

8. Precinct 18, Exhibits B and K.

In Exhibit B, the initials "A.A.D." appears on space 1 for senators.

This particular ballot was held invalid in *Lloren vs. Court of Appeals and Pacito Abrea*, supra, where we said:

"It is true that under paragraph 15 of Section 149 of the Revised Election Code, initials, while they are not valid votes, will not invalidate the whole ballot. But the initials referred to in said provision as not constituting valid vote must refer to initials of re-registered candidates. Furthermore, the appearance of these initials in 3 ballots in the same precinct, on the same space, cannot be merely coincidental, but intended to mark the ballots (*Ferrer v. Alban*, supra)."

In Exhibit K, "C Pausto" is written before the name of "Cuenco," who was voted for senator on space 1 for senators, and "Pausto" appears before the name "De la Rosa," who was also voted for senator on space 2 for senators. On the space for Mayor appear the words "Biloy Leoren Lioren Lioren".

The use of these words before the names "Cuenco" and "De la Rosa" cannot be considered as innocently made by the voter. "Pausto" is not the christian name of candidate Cuenco nor of candidate De la Rosa. Had it been used only once it could conceivably be an innocent mistake, but not when used successively, especially considering that the rest of the spaces for senators contain only the surnames of the candidates. This is a convincing circumstance that the same was written for no other purpose than to identify the ballot.

Summarizing our conclusions, we hold that fifteen (15) ballots declared invalid by the lower court should be adjudicated to the protestee-appellant, namely, Exhibits E and F, Precinct 6; Exhibits B, Precinct 7; Exhibits H and I, Precinct 12; Exhibits D, B-Abrea, C-Abrea, E-Abrea and F-Abrea, Precinct 13; Exhibits B and C, Precinct 16; Exhibits B, C, and G, Precinct 17. Added to the 1,226 votes credited to him in the appealed decision, the total is 1,241, which is still less by 9 votes obtained by protestant-appellee Antonio K. Bisnar.

The judgment appealed from is affirmed, with the only modification that protestant-appellee Antonio K. Bisnar is declared winner by 9 votes over protestee-appellant Braulio Lapasa. Costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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