

ROGELIO CORDERO, PETITIONER, VS. HON. BETHEL K. MOSCARDON, REGIONAL TRIAL JUDGE, 6TH JUDICIAL REGION, BRANCH XXXV, ILOILO CITY AND CONRADO ORRICA, RESPONDENTS.

UDK-6066. September 30, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioner Rogelio CORDERO and private respondent Conrado ORRICA were the only candidates for Barangay Captain in the May 17, 1982 elections in Barangay Gines Interior, Cabatuan, Iloilo. Private respondent ORRICA was proclaimed winner by the Barangay Board of Canvassers by 99 votes as against 95 votes for CORDERO.

By actual count, a total of 209 votes were cast, but five (5) were admittedly "no-bearing" thus leaving only a total of 204 votes. Nine (9) votes were considered stray.

On May 24, 1982, petitioner CORDERO filed a protest before the Municipal Circuit Court of Cabatuan and Maasin, while ORRICA filed a counter-protest.

A Revision Committee appointed by the Municipal Circuit Court reported the following results:

For CORDERO

(Protestant)

For ORRICA

(Protestee)

Uncontested

92

64

Contested

11 (Exhs.LL to VV)

37 (Exhs. 1 to 37)

Credited

4 (Exhs.SS to VV)

35 (Exhs. 1 to 35)

Stray

7 (Exhs.LL to RR)

2 (Exhs. 36 to 37)

Total

96

99

After hearing, the Municipal Circuit Court credited the stray votes in favor of the respective candidates and arrived at the following results:

For CORDERO

(Protestant)

For ORRICA

(Protestee)

Uncontested

92

64

Contested

11 (Exhs.LL to VV)

37 (Exhs. 1-37)

Credited

11

37

Stray

0

0

Total

103

101

The Municipal Circuit Court explained its conclusion thus:

"This Court has found that it was the intention of the voters in the ballots marked as Exhs. 'LL' to 'RR' to vote

for the protestant as their barangay captain, and it was the intention of the voters in the ballots marked as Exhs. '36' and '37' to vote for the protestee as their barangay captain. In all these 9 ballots the voters wrote the names of the candidate of their choice on the first space provided for councilmen followed by the names of the councilmen of their choice. This can be understood that the said voters intended to vote for either the protestant or the protestee as their barangay captain. Since this is the intention of the voters therein, said intention must have to prevail over their non-writing of the name of their candidate on the space intended for barangay captain. It is their intention in these ballots as can be seen or discoverable from the face of these ballots as it is the intention of the voters in the above ballots admitted by the Committee."[1] (Italics ours)

Protestee ORRICA appealed to the Regional Trial Court, Branch XXXV, Iloilo City, which, on June 22, 1983, reversed the Municipal Circuit Court, considered all nine (9) votes again as stray and arrived at the same findings as the Revision Committee, thus:

For CORDERO
(Protestant)

For ORRICA
(Protestee)

Uncontested

92

64

Contested

11 (Exhs. LL to VV)

37 (Exhs. 1 to 37)

Credited

4 (Exhs. SS to VV)

35 (Exhs.1 to 35)

Stray

7 (Exhs. LL to RR)

2 (Exhs. 36 to 37)

Total

96

99

In so concluding, respondent Judge opined:

"Applying the provisions of PD 1296 (The 1978 Election Code) as well as that of Resolution No. 1539 of the Commission on Elections, the present circumstances on appeal would not create any conflict between the interpretation and implementations of these proviso. Specifically, paragraphs 5 and 15, Section 155 of PD 1296, clearly provide that where the name of a candidate appears on the space in a ballot for which he is no candidate, such shall be considered as stray. Exhibits 'A' to 'II' or '1' to '55' do not appear as such for the name of the candidate (Protestee Orrica) was written on a space above the line below which was printed the office for Barangay Captain. Hence, it is fitting and proper to apply rather the provisions of Sec. 43 of Resolution No. 1539 of the Commission on Elections - appreciating the vote bearing in mind the object of the elections which is to find out the true will of the voter. In fact, with all practicality, the names were still not beyond the delineated space for the first office for election - that for Barangay Captain. Neither does it appear that the space where the names were written were intended for a particular office or strictly restricted for writing on at all. In this concept, it is just and reasonable to sustain the votes in favor of the herein Protestee Orrica. Exhibits 'JJ' to 'RR' or '36' to '44' must be sustained as stray votes for both contenders (par. 5 and 15, Sec. 155, PD 1296 as held in the cases of *Nalog vs. De Guzman* and *Aviado vs. Talens*, 52 Phil. 665). On the other hand, Exhibits 'SS' to 'VV' or '45' to '48' be resolved in favor of Protestant Cordero, again, in consonance with the spirit and purpose of Sec. 43 of Resolution No. 1539." (Italics supplied)

Protestant CORDERO moved for reconsideration, but respondent Judge denied the same.

Elevating his cause to us, CORDERO now contends that respondent Regional Trial Court Judge erred in considering the seven (7) votes written on the first space provided for councilmen as stray, contrary to the rules for the appreciation of ballots and in disregard of the true will of the electorate.

We Sustain the Municipal Circuit Court.

Fundamentally, the purpose of election laws is to give effect rather than frustrate the will of the voter. No technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, not from evidence aliunde. This rule of interpretation goes to the very root of the system.[2]

In this case, seven (7) voters wrote the name of protestant CORDERO, and two (2) voters wrote the name of protestee ORRICA, on the first space provided for councilmen followed by the names of the councilmen of their choice. As held by the Municipal Circuit Court, "it can be understood that the said voters intended to vote for either the protestant or the protestee as their barangay captain".

The rule that if the name is written in the space reserved for another office, the ballot cannot be counted as a vote for such person for the office for which he is a candidate (Section 155 (5)[3] and (15)[4] of the 1978 Election Code;[5] ,) admits of exceptions, where, as in this case, the intention of the voters to vote for protestant CORDERO and protestee ORRICA, respectively, is unmistakable and should not be frustrated.[6]

And, although Section 20 (2) of Batas Pambansa Blg. 222[7] provides that the decision of the Regional Trial Court shall - be final we can assume certiorari jurisdiction in the interest of substantial justice find consistent with the underlying principle that the ballot should be liberally construed, and the intentment should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective.[8]

WHEREFORE, the judgment of respondent Regional Trial Court Judge is hereby REVERSED and that of the Municipal Circuit Court of Cabatuan and Maasin is hereby REINSTATED, declaring protestant Rogelio Cordero as the winner in the election for Barangay Captain in Barangay Gines Interior, Cabatuan, Iloilo, last May 17, 1982. No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

[1] Rollo. p. 20.

[2] Perez vs. Suller, 69 Phil. 196 (1939).

[3] Sec. 155. Rules for the appreciation of ballots. - In reading and appreciation of ballots, the committee shall observe the following rules:

X X X X X X X X

"5. When the name of a candidate appears in a space of the ballot for an office for which he is a candidate and in another space for which he is not a candidate, it shall be counted in his favor for the office for which he is a candidate and the vote for the office for which he is not a candidate shall be considered as stray except where it is used as a means to identify the voter, in which case the whole ballot shall be void."

[4] "15. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot."

[5] Aviado vs. Talens, 52 Phil., 665 (1929).

[6] Villavert vs. Fornier, 47 O.G., pp. 1789, 1790-1792, April 1951; Villavert vs. Lim, 62 Phil. 178 (1935).

[7] Sec. 20. Inclusion and exclusion cases; and protest. –

X X X X X X X X

"A sworn petition contesting the election of any barangay official shall be filed with the city or municipal or metropolitan trial court, as the case may be, within ten days from the date of the proclamation of the winners. The trial court shall decide the election protest within fifteen days after the filing thereof. The decision of the municipal or city or metropolitan trial court may be appealed within ten days from receipt of a copy thereof to the Regional Trial Court (CFI) which shall decide within thirty days from submission, and whose decision shall be final."

[8] Mandac vs. Samonte, 49 Phil. 301 (1926); Abrera vs. Lloren, 81 Phil. 809 (1948).

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