

PRIMO EVANGLISTA, PETITIONER, VS. HIPOLITO CASTILLO, RESPONDENT.

G.R. No. L-2650. October 27, 1950

Ponente: TUASON, J.

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TUASON, J.:

This was an election contest for the office of vice-mayor of Mabini, Batangas. The Court of First Instance declared the contestant the winner by eighteen votes over the contestee, the latter appealed to the Court, of Appeals, and the Appellate Court dismissed the appeal on the ground that the trial court's decision was unappealable. We are now requested to review the Court of Appeals' order of dismissal.

In the case of Lucena et al vs. Tan, (G. R. No. L-2296, September 14, 1949, 47 Off. Gaz., 1121; 84 Phil., 548), the Court said::

"Prima facie the proposed appeal will involve legal and factual questions.

"Now, is that appeal authorized by law? Section 178 of the present Election Code specifically allows appeals to the Supreme Court or the Court of Appeals (as the case may be) from decisions of courts of first instance in contests against the election of provincial governors, members of the provincial board, city councilors and mayors. Vice-mayors and municipal councilors are not mentioned.

"In *Tajanlañgit vs. Peñaranda* ([1917]), 37 Phil., 155), we declared that, in view of the provisions of the Administrative Code, decisions of the courts of first instance in municipal election contests were final and not appealable. The view was premised on the fact that the law directed that all election contests shall be filed with the corresponding court of first instance, which 'shall have exclusive and final jurisdiction except as hereinafter provided * * *' and the further fact that while expressly providing for an appeal in contests of elections for provincial governors, the law contained no provision permitting an appeal in contests involving municipal officers.

"Such ruling was applied in subsequent cases. (*De Guzman vs. Cuenca*, 40 Phil., 203; *De la Cruz vs. Revilla and Bustos*, 40 Phil., 234; *Municipal Council of Las Piñas vs. Judge of the Court of First Instance of Rizal*, 40 Phil., 279; *Arevalo vs. Dalandan*, 40 Phil., 475.)

"The present Election Code, unlike the law at the time the above-mentioned, cases were considered, does not contain a provision giving 'exclusive and final jurisdiction to courts of first instance'. But the difference should be immaterial, because this Court only mentioned such final jurisdiction as one of the reasons for holding that no appeal existed. There is the other reason which is still goods the law does not provide for appeal in contests for vice-mayor and councilor, although it expressly allows appeals in contests for other positions.

"In *Aguilar and Casapao vs. Navarro* (55 Phil., 898), we held. there was no appeal to this Court from the order of a court of first instance denying a petition for authority to correct the election returns, because section 480 of the Election Law (at that time) enumerating the cases appealable to the Supreme Court, did not include such controversial matter. We said, a well-recognized principle of law' is 'that an appeal to a higher court may only be taken when the law so provides'.

"On the other hand, the American authorities seem to be of the opinion that in the absence of statute 'no appeal or error proceeding lies from the judgment of a court in an election contest'. (18 American Jurisprudence, 384; see also 29 Corpus Juris Secundum, 429, et seq.) This is not a denial of equal protection of the laws because the principle applies to all persons similarly situated. And as to due process, this Court has held that the right of appeal is statutory and is not a necessary element of due process of law. (U. S. vs. Gomez Jesus, 31, Phil., 218; Duarte vs. Dade, 32 Phil., 36.)

"We must, therefore; hold that no appeal to this Court lies from a decision of the court of first instance in contests for vice- mayor or municipal councilors.

"The decision in Marquez vs. Prodigalidad, L-2099, (May 26, 1948), may be deemed an exception to this holding. But herein petitioners do not fall within that exception, because unlike the Marquez case the appealed, litigation involves questions of fact, and does not revolve around a question of jurisdiction. Of course it must be understood that those justices who dissented in the Marquez case do not, upon signing this decision, repudiate the views announced in their dissenta"

In the case of Marquez vs. Prodigalidad, referred to in Lucena vs. Tan, supra, the Court, with Mr. Justice Feria and the writer of this opinion dissenting, made this rulings

"Creemos, portanto, que el articulo 178 delCodigo Electoral Revisado, al disponer expresamente que son apelables las decisiones de los Juzgados de Primera Instancia 'sobre protestas contra la eligibilidad o la eleccion de gobernadores provinciales, vocales de la junta provincial, consejales de ciudad y alcaldes,' no ha tenido el proposito de vedar en otras protestas la apelacion al Tribunal Supremo sobre cuestiones puramente de derecho, particularmente sobre cuestiones de jurisdiccion, o de constitucionalidad de alguna ley, ordenanza, trada u orden ejecutiva."

It will at once be noted from a comparison of the two decisions that in Marquez vs. Prodigalidad only questions of law were involved while in Lucena vs. Tan both questions of fact and of law, so it was presumed, would be put in issue. It will also be noted that, the later case was excluded from the rule laid down in the earlier one because of the presence in the Lucena case of factual controversies. To determine, therefore, which of the two adjudications is to govern the instant appeal, we only have to see whether the case at bar is affected with questions of fact. Briefly, the facts are these:

Primo Evangelista, contestee in the court below, and Hipolito Castillo, contestant, were candidates for vice-mayor of the aforementioned municipality in the general elections held on November 11, 1947. The election returns gave Evangelista 1,283 votes and Castillo, 1,267. Accordingly the municipal board of canvassers proclaimed Evangelista elected with a plurality of sixteen votes over his opponent.

In impugning the election, the protestant alleged frauds, irregularities, and other violations of the Election Law in Precincts 1, 4, 5, 6, 7 and 9. And upon trial the Court made these conclusions:"Of the total votes of 1,267 adjudicated to the contestant by the board of canvassers as shown in the election returns for the six precincts in the municipality of Mabini, a total of 5 votes should be deducted; namely, PE-1, PE-4, HC-9, HC-11, and HC-16, leaving a total of 1,262 votes. On the other hand, of the total votes of 1,286 adjudicated to the contestee by the board of canvassers as shown in the election returns, a total of 39 votes, shall be deducted; namely, 1-P, 1-Q, 1-EE, 4-Q, 4-R, 4-H, 6-D, 7-A, 9-V, one vote illegally cast by Albino Maramot, one excess vote in Precinct No. 4, one excess vote in Precinct No. 6 and the 27 ballots which have been found to have been written by one or two hands; and after deducting these 39 votes from the total votes in favor of the contestee are 1,244. Therefore, the contestant has received a plurality of eighteen (18) votes over the contestee. Accordingly, the contestant Hipolito Castillo is hereby declared vice-mayor elect of the municipality of Mabini, Batangas."

Roughly, the court below found that some ballots were intentionally marked, some had been prepared by more

than one person, and others, which had not been counted in favor of the protestant by the board of canvassers, should, in the opinion of the court, have been so counted. On the other hand, certain ballots credited to the protestee by the board, of canvassers and objected to by the protestant were held valid and properly canvassed for the protestee.

That most or all of these findings are essentially findings of fact is so manifest as to obviate discussion. This being so, the controlling doctrine, as far as this case is concerned, is that announced in *Lucena vs. Tan*, supra.

The similarity between the present case and the case just mentioned is implicitly admitted by the protestee's counsel. In the Court of Appeals they suggested that the motion to dismiss the appeal be held in abeyance on the theory "that the question of law raised in the case of *Dominador Lucena vs. Hon. Judge Tan*, G.R. No. 2296, (is) now pending decision in the Supreme Court," insinuating that the decision in that case would be decisive of the case at hand.

There was an incident in the Court of First Instance which properly could have been the subject of a special action, or appeal under the *Lucena-Tan* doctrine. We refer to the dismissal of the protesters counter-protest which alleged frauds in Precinct No. 2, frauds which, it was averred, redounded to the protestee's detriment and to the protestant's benefit. The court dismissed that counter-protest upon the objection of the protestant, who contended that the counter-protest did not state facts sufficient to confer jurisdiction of the counter-protest on the trial court in that the counter-protest failed to allege that the counter-protestant had filed a certificate of candidacy for the office in dispute.

But, although this matter is prominently stressed in the brief of the appellant in his appeal by certiorari, it seems to be a fact that he did not appeal to the Court of Appeals from the order dismissing his counter-protest. He appealed only from that part of the decision pertaining to the adjudication of contested ballots by the Court of First Instance on the basis of which the protestant was pronounced the vice-mayor-elect with a plurality of eighteen votes. The clear inference we draw from the pleadings and the briefs before us is that the protestee and appellant was not keenly interested in the recounting of the ballots in Precinct No. 2 and took no steps to challenge the order quashing his counter-protest. Furthermore, there is no showing or allegation that if allowed the counter-protest could by any possibility have changed the result of the decision..

It is our opinion that the decision of the Court of Appeals should be affirmed, with costs against the appellant. It is so ordered.

Moran, C.J., Feria, Paras, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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