

**TOMAS A. BORJA, PETITIONER VS. DIOSCORO DE LEON, ET AL.,
RESPONDENTS.***G.R. No. L-20245. September 30, 1963*

Ponente: BAUTISTA ANGELO, J.

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Tomas A. Borja and Dioscoro de Leon were the official candidates for the office of mayor of Gapan, Nueva Ecija in the elections held on November 10, 1959. Upon the conclusion of the canvass on November 18, 1959, the municipal board of canvassers proclaimed De Leon as the duly elected mayor of Gapan with p. plurality of 96 votes over Borja, De Leon having been credited with 4,873 votes and Borja with 4,777.

On November 23, 1959, Borja filed a protest before the Court of First Instance of Nueva Ecija in which he averred that the election in Precincts Nos. 1,16, 22-A, 28, 28-A, 32, 32-A, 33, 33-A, 34, 35, 36, 36-A, 36-B, 36-C and 36-D was tainted with frauds and irregularities and should be invalidated.

By way of counterprotest, De Leon in turn contested the election in Precincts Nos. 2, 2-A, 3, 4, 4-A, 5, 6, 6-A, 7, 7-A, 8,10,10-A, 10-B, 11,12,14,17,18, 19,19-A, 19-B, 20, 21, 21-A, 21-B, 21-C, 22, 23, 23-A, 23-B, 24, 24-A, 25, 26-A and 27.

After trial on the merits, the court a quo declared De Leon the duly elected mayor with a plurality of 35 votes, whereupon Borja filed a motion for reconsideration. He alleged that the court erroneously credited Borja with 119 votes only in Precinct No. 22-A, which is less by 31 votes than the total number actually counted in his favor in open court during the hearing on January 22, 1960.

Acting on the motion, the court a quo ordered the reopening of the ballot box for Precinct No. 22-A and the recounting of the ballots cast for protestant as a result of which it was established that protestant received 146 votes. In view of this recounting, the court a quo amended its decision by declaring De Leon the elected mayor of Gapan with a plurality of 8 votes.

Both protestant and protestee appealed from the original decision, as well as from the amended one, to the Court of Appeals where, however, the appeal of protestee was dismissed in view of his failure to file his brief. He was likewise barred from filing his brief as appellee for the same reason. Thereupon, on May 30, 1962, the Court of Appeals rendered judgment likewise declaring Dioscoro de Leon as the duly elected mayor of Gapan with a plurality of 37 votes.

Protestant filed a motion for reconsideration contending that the Court of Appeals acted without jurisdiction when it passed upon on more than 300 ballots which protestant did not touch in his appeal, nor the protestee, as the latter's appeal was dismissed for failure to file his brief even if he was unable to file his brief as appellee after his appeal was dismissed. Protestant emphasized that the appellate jurisdiction of the Court of Appeals was merely restricted to those ballots which protestant touched or discussed in his appeal, and if this is done and the aforesaid 300 ballots are disregarded the result would show that protestant has a plurality of 10 votes over protestee.

Required to submit his comment on the motion, protestee submitted, even belatedly, an opposition thereto, invoking our ruling in *Lucero vs. De Guzman*, 45 Phil., 852. The argument of protestant to the contrary notwithstanding, the Court of Appeals denied the motion for lack of merit. Hence, the present petition for review.

The main theme of protestant is that the Court of Appeals erred in passing upon and in rendering judgment anew on 363 ballots despite the fact that the same were not the subject of his appeal nor were they touched upon or discussed in his brief even if they were not also taken up by protestee in his brief because his appeal was dismissed and was unable to file any brief as appellee. And this contention is predicated upon the fact that this Court in some cases has ruled in connection with protests on appeal that it is the duty of protestant, or his counsel, in the discussion of the errors imputed to the trial court in the revision of ballots in the different precincts, to point out the error or errors into which said court is said to have fallen, and that if he fails to do so or no such assignment is made, the court may refuse to consider or examine such ballots because there is no attempt to show where the error of the trial court had been committed. And with regard to the appellee, this Court has also stated that it is likewise the duty of the appellee to point out in his brief any error against himself into which the court is supposed to have fallen, as otherwise the court may refuse to consider it.^[1]

It is true that this Court has stated in some cases that in appeals in election protests it is necessary that the party appealing should make an assignment of error in which he should point out the error or errors imputed to the trial court in the revision of ballots in different precincts in view of the numerous number of ballots involved in a protest and that if such assignment is not made or the error is not pointed out, the appellate court may refuse to examine or consider the same in the appeal, but that ruling was laid down merely as a guide for a party or his counsel in an election case in view of the numerous ballots involved because otherwise the court may not know what particular ballot an appeal refers to. But that ruling cannot be so interpreted as to deprive an appellate court of the right given to it by law to examine any ballot even *motu proprio* if that is necessary to arrive at a correct decision (Section 175, Revised Election Code). It is for this reason that an appeal in an election case is likened to an appeal in a criminal case where the case is deemed tried *de novo* (Section 178, Revised Election Code). The philosophy behind this ruling is that the real purpose of an election case is to ascertain what is the true will of the people or who is the one duly elected and this can only be achieved by throwing wide open the appeal before the court.

Thus, in *Cababasada vs. Valmoria*,^[2] where the consideration of some ballots by the appellate court was objected to on the ground that the appellant has not made any express assignment of errors in his brief with regard thereto, and the objection was overruled on the ground that the ballots were within the appellate jurisdiction of the court, we said: "When it appears that the trial court has illegally rejected ballots that had been legally cast in favor of a candidate, the appellate court must correct the error, even without an express assignment of error made in the brief. An appellate court may affirm an appealed decision on grounds different from those stated in the decision of the trial court. According to Section 178 of the Revised Election Code, appeals in election contests shall proceed as in criminal cases, and in a criminal case the appellate court may consider errors of the trial court not expressly pointed out in an assignment of error, so as to render substantial justice." Our ruling in the case mentioned by protestant should be interpreted in this light because an election case involves public interest.

"There are weighty reasons that support the application of such theory in election cases. One is the cardinal principle that an election case involves public interest and, hence, it imposes upon the court the imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. That is why the law gives to the court the power, in the interest of justice, to order *motu proprio* that the ballot boxes and other election documents be produced before it so that they may be examined and recounted regardless of whether the party raises any issue in its pleading concerning the validity of the ballots (Section 175, Revised Election Code). On the other hand, it has been postulated as a fundamental principle underlying the trial of

election cases that technicalities or procedural barriers should not be allowed to stand if the same would tend to defeat rather than promote the interest of justice. Rather, it is enjoined that the Election Law should be liberally construed to the end that the will of the people may not be defeated (*Ibasco vs. Ilaos, et al.*, 110 Phil., 553.)

Having reached this conclusion, we deem it unnecessary to consider the other assignments of errors in appellant's brief.

Wherefore, the decision appealed from is affirmed. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalirital, JJ., concur.

[1] *U.S. vs. Noriega and Tobias*, 31 Phil., 310; *Lucero vs. De Guzman*, *supra*; *Mendoza vs. Mendiola*, 53 Phil., 267.

[2] 83 Phil., 112.

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