

BENJAMIN FARIN, PETITIONER, VS. OSCAR R. GONZALES AND COURT OF APPEALS, RESPONDENTS.*G.R. No. L-36893. September 28, 1973*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/929b3a572e09/>**ANTONIO, J.:**

Benjamin Farin, the incumbent Municipal Mayor of Iba, Zambales, has appealed to this Court thru a petition for review on certiorari from the decision of the Court of Appeals in CA-G.R. No. 00937-R dated April 6, 1973, finding that two of the candidates for the office of Municipal Mayor, namely, Benjamin Farin and Oscar R. Gonzales, obtained an equal number of votes in the 1971 elections, and ordering the drawing of lots by the said candidates, and from the resolution dated May 21, 1973, denying Farm's motion for reconsideration. On August 9, 1973, We issued *motu proprio* a resolution considering the petition as a special civil action and the comment of private respondent as his answer thereto, and considered the case as submitted for decision.

In the elections of November 8, 1971, herein petitioner Benjamin Farin and respondent Oscar R. Gonzales, together with Crisanto Castillo, Remigio Anonas, Jr. and Antonio Reyes were candidates for Mayor in Iba, Zambales. After a tally of all the election returns, the Municipal Board of Canvassers proclaimed Farin as the duly elected mayor with a total vote of 2,252, as against the 2,250 credited to Gonzales, his nearest rival.

On November 15, 1971, Gonzales filed an election protest with the Court of First Instance of Zambales against Farin, which, after appropriate proceedings, rendered on March 17, 1972 a judgment confirming the proclamation of protestee Benjamin Farin as the duly elected mayor of Iba, with a total number of 2,254 valid votes as against 2,248 valid votes for protestant Oscar R. Gonzales, or a plurality of six (6) votes.

Protestant Gonzales appealed to the Court of Appeals, which, after appreciating the contested ballots, concluded that the protestant-appellant and the protestee-appellee each received 2,251 votes, and, as already stated above, accordingly directed the drawing of lots, to wit:

"The Court, therefore, pursuant to Section 224 of the Revised Election Code of 1971 orders the drawing of lots by the tied candidates for mayor—protestant Oscar Gonzales, and protestee Benjamin Farin— in the manner provided in Sec. 208 of the Code. The Board of Canvassers is hereby ordered to hold a special public meeting at which the Board shall proceed to the drawing of lots of the two (2) candidates and shall proclaim as elected the candidate who may be favored by luck, and who, thereafter, shall have the right to assume office in the same manner as if he had been elected by a plurality of votes."

In the instant petition, the only issue presented is whether or not the Court of Appeals erred in its appreciation of five (5) of the contested ballots. In his assignment of errors, Farm maintains that the Court of Appeals should have credited to him Exhibits "00" and "54", and rejected Exhibits "7", "TT" and "SSS" as valid votes for Gonzales.

1. Exh. "OO". - In the spaces for Senators, the following are written:

1. MIIYOR FIRNI
2. VICE MAYOR
3. ROGERABST
4. COUNCILOR
5. ALEXDELI
6. KEETE
7. NENEMORA

No other names are written on the ballot, as the space for Provincial Governor, the two spaces for Members of the Provincial Board, and spaces for Mayor, Vice-Mayor and Councilors are all blank. In the spaces for the first Member of the Provincial Board appears, however, an undecipherable writing.

This ballot was considered by the trial court as a valid vote for Farm, but the respondent Court of Appeals refused to count it on the ground that the "neighborhood rule" does not apply as the names were written so far from the proper spaces for Mayor and Vice-Mayor. We find no relevance, however, to the application of the so-called "neighborhood rule" on the questioned ballot. What is involved here is the application of the settled rule that where the name of a candidate is not written in the proper space in the ballot but is preceded by the name of the office for which he is a candidate, the vote should be counted as valid for said candidate. Such rule stems from the fact that in the appreciation of the ballot, the object should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty.

Thus We ruled that, even if the candidate's name is written in another space, if before such name the word "Mayor" is added, then the intention to vote for said candidate for Mayor is clearly discernible from the face of the ballot.[1] In another case,[2] We held that the lower court correctly counted a vote as one for Quemado for Vice-Mayor, although his name appeared in the space for Provincial Board Members, because his name was preceded by the pre-fix "visi," and also because, in the space immediately preceding, the voter wrote "Mayor," and the name immediately following was intended for the Vice-Mayor. As to the word "Firmi," there is no doubt that the same is idem sonans with petitioner's name.[3] It is apparent that the voter missed the proper spaces because of his very poor eyesight and low education, as reflected in his poor penmanship.

This vote is, therefore, valid for Farin.

2. Exh. "54". - In the space for Mayor is written the initial "F", followed by certain letters which have been cancelled. In the space for Vice-Mayor is the name of "Pastores," In the first, second and third spaces for Councilors are written, respectively, the following:

1. The word, Farin, but the same appears to have been crossed out.
2. Joy Abaigo
3. Naty Yap.

Respondent Court of Appeals held that the trial court erred in counting the vote for petitioner Farin, considering that there was a clear intention on the voter's part to erase or cancel his vote, it being merely accidental that the letter "F" was not also erased.

We agree. The vote having been cancelled, it may not be counted for any candidate, for such cancellation

indicates desistance.[4] Although the initial "F" remained, the same could not be considered as a valid vote for Farin, as ballots with initials only are considered not a valid vote.[5]

3. Exh. "7". - The name of respondent Gonzales is clearly written in the space for Mayor, and the names of other candidates are also written in the proper spaces, viz: for Vice-Mayor and for seven councilors. However, on the eighth line for councilors the words "Lando Batitu Bangal" are written.

The trial court considered the ballot as marked on account of the words "Lando Batitu Bangal." Respondent Court of Appeals, however, overruled the trial court and held that, in the absence of evidence aliunde, it is not clear that the words were written to identify the vote, hence, the vote should be counted in favor of respondent Gonzales.

We agree with the respondent Court of Appeals, considering that the voter is possessed of a relatively low educational attainment, as reflected by his poor penmanship, and the circumstance that the voter committed several errors in spelling and in writing the names of the candidates in the ballot, it is not improbable that the words appearing thereon on the last line for Councilors could have been the misspelled name of a person. We must re-affirm the rule that no ballot should be discarded as marked unless its character as such is unmistakable. Distinction should be made between marks that were accidentally, carelessly or innocently made, and those designedly placed thereon by the voter with a view to possible identification of the ballot, which, therefore, invalidates it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or of any evidence aliunde to show that the words were deliberately written to identify the ballot, the ballot should not be discarded.

The vote on the eighth line for Councilors for a person who is not a candidate should, therefore, be considered only as stray but the vote for the respondent is considered valid.[6]

4. Exh. "TT". - The space for Mayor is blank, while in the space for Vice-Mayor appears written the name "gonsalis." Below it in the blank space, and on the same line as the printed word "COUNCILORS," is the name "Abastilas." On the first line for Councilors appears the word "Lotel," which is crossed out, followed by the word "Lotol," while the other spaces for Councilors are blank.

Respondent Court of Appeals considered the vote for respondent Gonzales because, according to it, the intention to vote for Gonzales and Abastillas for Mayor and Vice-Mayor, respectively, is very apparent, and the voter's inability to write the names exactly on the lines or in the spaces for the respective offices may be due to his poor ability to write or, perhaps, to poor eyesight.

We disagree and hold that the vote should be considered as stray, hence, should not be counted for respondent Gonzales. The vote for a person to an office to which he is not a candidate is considered a stray vote.[7] It should be noted that the voter wrote correctly in the proper spaces his choices for Governor, Vice-Governor and Members of the Provincial Board. The Official Ballot, Exh. "TT", materially differs from the Official Ballot, Exh. "OO", in that, unlike the latter, the word "gonsalis," which is written in the space for Vice-Mayor, is not preceded by the name of the office for which respondent Gonzales was a candidate.

5. Exh. "SSS". - The space for Mayor is blank; but in the space for Vice-Mayor, the name "Gonzales" is written obliquely downward. Below the line for Vice-Mayor and above the line for Councilors, is the name "Bastaro." In the second, third, fourth, and fifth spaces are written, respectively, the following:

2. Cabral

3. an illegible and undecipherable word

4. angeles

5. mag.

The names, however, of "Maceda," "Ople," and "Magsaysay," candidates for Senators, appear written in the proper spaces, while those candidates for Governor and Vice-Governor, namely, "Magsaysay" and "Barito", also appear in the proper spaces in the ballot.

The vote for Mayor was considered by respondent Court of Appeals in favor of respondent Gonzales.

We disagree, considering the explicit provision of Section 189, paragraph 15, of Republic Act No. 6388 that any vote in favor of a candidate for an office for which he did not present himself shall be void and counted as stray.

Recapitulation. - To begin with, respondent Court of Appeals credited petitioner Farin and respondent Gonzales with 2,251 votes each. Exh. "7" was correctly counted for respondent Gonzales, while Exh. "54" was properly rejected as valid vote for petitioner Farin. Exh. "OO" should be considered a vote for petitioner Farin, but Exh. "TT" and Exh. "SSS", which respondent Court of Appeals considered in favor of respondent Gonzales, should have been rejected; thus, the final tally stands at 2,252 votes for petitioner Farin and 2,249 votes for respondent Gonzales. Consequently, petitioner Farin is the final winner in the 1971 election for the Municipal Mayor of Iba, Zambales, with a plurality of three (3) votes over respondent Gonzales.

WHEREFORE, the judgment of the respondent Court of Appeals is hereby modified and petitioner, Benjamin Farin, is declared as the duly elected Municipal Mayor of Iba, Zambales. Costs against private respondent Oscar Gonzales.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Esguerra, JJ., concur.

Makasias, J., on official leave.

[1] Cruz vs. Court of Appeals, et al., L-14095, April 10, 1959; Amurao vs. Galangi, et al., 104 Phil. 347, 356; Coscolluela vs. Gaston, 63 Phil. 41.

[2] Sarmiento vs. Quemado, L-18027, June 29, 1962, 5 SCRA 438, 441.

[3] Cf. Coscolluela vs. Gaston, supra, 41, 56, 65, where the words "lid. Coasla," "led cugollueia," "II soscolloal" and "Pervincial Ild. Coscolluela," written on the ballots were counted as valid votes for Coscolluela, and the word "Casten" was considered as a vote for Gaston; Sec. 189 (4), Election Code of 1971.

[4] Gutierrez vs. Reyes, L-13137, February 28, 1959; Delgado vs. Tiu, et al., L-I4143, May 27, 1959; Silverio vs. Castro, L-23827, February 28, 1967, 19 SCRA 520, 531-32; Katigbak vs. Mendoza, L-24477, 19 SCRA 543, 550; Nalog vs. Guzman, L-25656, May 31, 1967, 20 CRA 338, 341, 343-44; Juliano vs. Court of Appeals, et al., L-27477, July 28, 1967, 20 SCRA 808, 822; Garcia vs. Court of Appeals, et al., L-31775, December 28, 1970, 36 SCRA 582, 594-95. See also Sec. 189(15), Election Code of 1971.

[5] Naiog vs. De Guzman, supra, 341.

[6] Amurao vs. Calangi, et al., 104 Phil. 347,356; Cruz vs. Court of Appeals, supra; Sarmiento vs. Quemado,

supra; Pangontao vs. Alunan, L-18926, November 30, 1962, 6 SCRA 853, 855.

[7] Conui-Omega vs. Samson, L-21910, November 11, 1963, 9 SCRA 493, 503; Sec. 189 (17), Election Code of 1971. See also Amurao vs. Calangui, supra, 352-53, where it was held that:

"The above rulings of this Court only indicate one thing: that the voter should write the name of the person he intends to vote for in the proper space indicated in the ballot for the office for which he is a candidate in order to avoid any doubt or confusion as to the candidate he intends to vote for. The rulings seem also to indicate that the provision of the law on this point should be strictly followed so that a deviation therefrom would render the vote invalid and of no effect. Indeed, Section 135 of the Revised Election Code provides that the voter, on receiving his ballot, shall fill the same 'by writing in the proper space for each office the name of the person for whom or the name of the party for which he desires to vote,' and to make this provision effective, it was provided in Section 149 (13) of the same Code that '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 void and counted as stray vote but shall not invalidate the whole ballot.' The philosophy behind the rulings above adverted to is to make of these legal provisions mandatory in order to avoid any confusion in the minds of the officials in charge of the election as to the candidates actually voted for and stave off any scheming design to identify the vote of the elector thereby defeating the secrecy of the ballot which is the cardinal feature of our Election Law."

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