

ERNESTO TAJANLANGIT, PETITIONER VS. MANUEL L. CAZENAS, RESPONDENT.

G. R. No. L-18894. June 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals declaring respondent Manuel L. Cazenias duly elected Mayor of Dao, Antique, with a total of 1,564 votes as against a total of 1,563 votes received by petitioner Ernesto Tajanlangit, or a plurality of one (1) vote.

Manuel L. Cazenias and Ernesto Tajanlangit were among the registered candidates for the office of mayor of the municipality of Dao, province of Antique, in the general elections held on November 10, 1959. After the canvass of votes, the municipal board of canvassers certified that Tajanlangit received a total of 1,570 votes and Cazenias a total of 1,567 votes. Accordingly, said board proclaimed Tajanlangit elected by a plurality of three (3) votes.

Not satisfied with the result of the election, Cazenias filed an election protest before the Court of First Instance of Antique contesting the results in seven (7) precincts of Dao, to which Tajanlangit filed his answer and counter-protest impugning the result in five (5) precincts, two of which were later withdrawn by him during the trial. After the trial, the court rendered decision on October 5, 1960, declaring Cazenias elected with a plurality of two (2) votes over Tajanlangit. On appeal, the Court of Appeals rendered a decision on July 31, 1961, declaring Cazenias elected by a plurality of one (1) vote over petitioner Tajanlangit.

Petitioner Tajanlangit interposed the present petition for review claiming that the Court of Appeals committed errors in its ruling over 16 ballots. On the other hand, respondent Cazenias counter-assigned errors involving 19 ballots.

We shall first rule upon the ballots disputed by petitioner.

Ballots Exhibits T-119, T-120 and T-121. These three (3) ballots were rejected by the Court of Appeals as marked ballots on the strength of the evidence aliunde presented to the effect that the writing of the name "Guimson" on these three ballots pertaining to Precinct No. 5 of Dao was part of a scheme to identify the voters. It is a settled rule in election contests that the "findings of fact of the Court of Appeals with regard to the evidence aliunde submitted by both parties are no longer open for review, the function of this Court being limited to determining if the appreciation made of said ballots by the Court of Appeals, apart from the evidence alluded to, was made in accordance with law and rulings of this Court" (*Hilao vs. Bernados*, G. R. No. L-7704, December 14, 1954). For this reason, this Court can no longer disturb the ruling of the Court of Appeals invalidating these three ballots.

Ballots Exhibits T-6 and T-94. These two (2) ballots were declared invalid by the Court of Appeals as marked ballots, the distinguishing mark consisting of the names "Acsay" and "Lotilla" (Exh. T-6) and "Ledesma" (Exh. T-94) which were written in "big, printed, bold and shaded letters" on said ballots. Petitioner contends that the writing of said names in printed letters and the other names in ordinary script should be considered as having been

done merely for clarity and emphasis and should not be considered as identifying marks.

Upon examination of the ballots in question, we agree with the conclusion made by the Court of Appeals that the writing of the aforesaid names "Acsay" and "Lotilla" on ballot Exhibit T-6 clearly appears to have been intended by the voter to serve as the identification marks. The names "Acsay" and "Lotilla" were written in extraordinary big printed letters which can no longer be considered as a mere variation of writing allowed in the preparation of a ballot. They are so prominent that even from a distance the ballots are easily identified. The use of two kinds of writing appearing in this ballot is a good example of the exception provided for in paragraph 18, section 149 of the Revised Election Code, which provides that unless it should clearly appear that it has been deliberately put by the voter to serve as identification mark, the use of two or more kinds of writing shall be considered innocent and shall not invalidate the ballot. A ballot should be rejected where the manner in which the candidate's name is written gives the impression of an intention to mark or identify the ballot (*Villavert vs. Lim*, 62 Phil., 178).

The following authority in which the candidate's name was written in big Gothic letters is in point:

"In this ballot all the names of the candidates voted for were written in ordinary writing with the exception of the name of "Teodulo Bernados" which was written in big Gothic letters with a flower drawn underneath in the space for mayor. The Court of Appeals declared this ballot to be valid vote for Bernados saying that such Gothic lettering merely shows the desire of the voter to attain greater clearness and emphasis on his favorite candidates. This we consider to be error because such Gothic lettering can be considered used in writing names on diplomas, certificates of merit, or other documents evidencing a meritorious award, but not in ordinary documents. When the voter wrote the name of Bernados in Gothic letters he must have done it with the evident intention of placing distinguishing mark on his ballot which necessarily invalidates it. This ballot should therefore be rejected. (Sec. 149, Rule 18, R.E.C.)" (*Hilao vs. Bernardos*, 6. K. No. L-7704, December 14, 1954)

Exhibit T-6 was, therefore, properly rejected as marked ballot.

We are however of the opinion that the ballot Exhibit T-94 wherein the name "Ledesma" was written in big printed letters can be validated as being merely the expression of the voter to clarify or emphasize his vote in favor of Ledesma. As that word appears written, it cannot be reasonably inferred that the intention of the voter was to mark the ballot. This is an instance where it can be said that the two kinds of writing can be anchored under paragraph 8, Section 149, of the Revised Election Code, because the intention to mark does not appear clear. The following authority supports this view:

"Protestee objects to these ballots as marked for the reason that certain name or names of candidates were written in printed form or writing, while the rest of the names were written in ordinary script. The objection is untenable because Rule 18, Section 149, of the Revised Election Code, provides that the use of two or more kinds of writing shall be considered innocent and shall not invalidate the ballots, unless it clearly appears that such kind of writing has been deliberately used by the voter to serve as identifying mark. Here such intention does not appear (*Hilao vs. Bernardos*, G. R. No. L-7704 [1954]; *De Alban vs. Ferrer*, 101 Phil, 1018). These ballots were, therefore, correctly admitted." (*Gutierrez vs. Aquino*, G. R. No. L-14252, February 28, 1959)

Ballot Exhibit T-11. This ballot was invalidated by the Court of Appeals as a marked ballot because the names Bernardino Dabandan, Alfredo Fernandez and Delfin Saymo, who were not candidates for any office and the last named person a registered voter in the precinct where the ballot was cast, were written on the ballot. Petitioner claims that the Court of Appeals erred in rejecting this ballot invoking the provision of paragraph 13, section 149 of the Revised Election Code, which provides that any vote in favor of a person who has not filed a certificate of candidacy shall be void and counted as a stray vote but shall not invalidate the whole ballot.

We do not agree with the conclusion reached by the Court of Appeals. There is no showing that this ballot was

cast by registered voter Delfin Saymo or that he wrote or signed his name thereon, which would have been sufficient to invalidate the same (Ferrer vs. De Alban 101 Phil., 1018; 54 Off. Gaz., 4255). In the absence of evidence aliunde that the aforementioned names of non-candidates were intended for purposes of identification, the same shall be considered as stray votes which shall invalidate the whole ballot (Par. 13, Section 149, Supra). This ballot should be counted in favor of petitioner who voted thereon for the office of mayor.

Ballot Exhibit T-25. This ballot was rejected by the Court of Appeals as an illegal ballot for having been prepared by two persons, affirming the conclusion made by the lower court that the names appearing on the 4th line for senators and on the lines for governor and vice-governor were written by one person while the other names appearing therein were written by another. The Court of Appeals also reasoned that the different spelling of the name "Lopez" on the 4th line for senators and that of "Lopes" on the 2nd line for councilors shows they were written by two different persons.

Upon examination of the ballot, we have noted that the names appearing on the 4th line for senators and on the lines for governor and vice-governor were written with a different pencil. The uphill alignment, pen pressure, slant as well as sizes of the letters in said names are dissimilar with those of the other names written on the ballot. We agree with the conclusion reached by the Court of Appeals that this ballot is null and void for having been filled by two distinct persons (Par. 23, Section 149, Revised Election Code).

Ballots Exhibits C-6, C-59, C-61, C-65, C-75 and C-76. These six (6) ballots were declared valid for respondent Cazenias by the lower court and this ruling had not been assigned as error by petitioner in his appeal to the Court of Appeals. Petitioner now questions the validity of these ballots for the first time on appeal before this Court. Following our ruling in the case of Salalima vs. Sabater (G. R. No. L-14829, May 29, 1959), the validity of these ballots can no longer be questioned before this Court after the ruling of the lower court was not included in petitioner's appeal to the Court of Appeals. To allow the petitioner to contest the validity of these ballots now would be unfair not only to the respondent but also the Court of Appeals, both of whom were deprived, the former, of an opportunity to present proof to destroy petitioner's claim, and the latter, to pass judgment upon the same (Quintia vs. Bautista, 59 Off. Gaz., 2339). Petitioner's assignment of error on these ballots cannot, therefore, be entertained.

Ballot Exhibit C-60. Immediately below the sixth line for councilors after the name "Secoban" which was written on said line, there appears initials "FS" or "ES", which petitioner claims to be an identifying mark of this ballot. The Court of Appeals admitted this ballot for respondent concluding that the letters "ES", which are the correct initials of candidate Eulalio Secuban, do not constitute a distinguishing mark sufficient to invalidate the ballot. In the absence of any showing that the initials "FS" or "ES" were that of the voter who cast this ballot or that said initials were placed thereon as an identification mark, this ballot was properly admitted for respondent (Gutierrez vs. Aquino, G. R. No. L-14252, February 28, 1959).

Ballot Exhibit C-86. This ballot contains the name "Dimas Portillo Batring" written on the last line for councilors. Petitioner contends that the word or nickname "Batring" which is not the nickname of candidate Dimas Portillo is a distinguishing mark sufficient to invalidate this ballot. On the basis of the evidence presented by the parties, the Court of Appeals concluded that there was "no clear indication of an intention to mark the ballot"; hence it admitted the said ballot in favor of respondent; This Court can no longer disturb this conclusion of the Court of Appeals which was based upon the evidence aliunde on record (Hilao vs. Bernardos, supra).

Ballot Exhibit T-4. On this ballot, the voter wrote the name "Juan C. Bajo" on the last line for councilors. The Court of Appeals rejected this ballot as marked affirming the conclusion made by the lower court that the writing of the name "Juan C. Bajo" was a disparagement of senatorial candidate Juan C. Pajo because "the voter probably

meant the term 'bajo' in a figurative sense to express his opinion of Mr. Pajo." The Court of Appeals further stated that the word "bajo" is impertinent and offensive because in Visayan dialect it means "bad smell".

We believe that this ruling is incorrect. In the first place, it is admitted that the word "bajo" has two meanings in Visayan dialect, i.e., "bad smell" and "a musical instrument". In the second place, an identification mark on a ballot cannot be presumed (*Jaucian vs. Callos*, 104 Phil., 603; 55 Off. Gaz., 10394). In the third place, there is no evidence that the name "Juan C. Bajo" was deliberately written on the ballot as a means to identify the voter. And in the fourth place, there being no candidates for councilor by the name of Juan C. Bajo, said name shall be considered as a stray vote which shall not invalidate the whole ballot (Par. 13, Section 149, Revised Election Code). This ballot should, therefore, be counted in favor of petitioner who was voted thereon for the office of mayor.

We shall now take up the ballots included in the counter-assignment of errors submitted by respondent.

Ballots Exhibits C-6, C-59, C-58 and C-85. These four (4) ballots were rejected by the Court of Appeals on the ground that the words appearing on the line for mayor on the first two ballots are "totally undecipherable" and on the last two ballots, the words written on said line do not sufficiently identify the respondent. Respondent claims that the Court of Appeals committed error in not counting these four ballots in his favor under the rule of *idem sonans*.

On Exhibit C-11, except for the letters "Ma", and the rest of the letters composing the word appearing on the line for mayor are illegible. We agree with the ruling of the Court of Appeals that the vote contained on this ballot cannot be counted in favor of the respondent.

On Exhibit C-59, while the capital letter "M" was clearly written on the line for mayor the word following it is also illegible. The voter appears to be illiterate. We agree with the Court of Appeals that the vote on this ballot cannot be counted in favor of respondent.

On Exhibits C-58 and C-85, the words "Cadia" and "Cuans" appearing on the line for mayor, respectively, do not sufficiently identify the candidate for whom the vote was intended. The rule of *idem sonans*, the test of which is whether the sound of the variant spelling is the same or similar, does not apply to these two ballots. We agree with the ruling of the Court of Appeals that these last two ballots cannot be counted in favor of respondent.

Ballot Exhibit T-144. This ballot was admitted by the Court of Appeals as valid for petitioner under the rule of *idem sonans*. Respondent contends that the word "Tafangu" written on the line for mayor does not fall under the *idem sonans* rule, and should be rejected and discounted from petitioner.

We have examined the vote in question and found that although at first glance, the word written on the line for mayor may be read as "Tafangu", a careful examination of the last two strokes shows that they were intended for the letters "i" and "t", after considering the dot above the letter "i" and the failure of the writer to cross the letter "t" which has relatively a short stem. Thus, the word may be read as "Tafangit". With a liberal application of the rule of *idem sonans*, we agree with the ruling of the Court of Appeals that the vote is valid for the petitioner.

Ballot Exhibit C-27. This ballot was declared invalid by the Court of Appeals as having been prepared by two persons upon the theory that the name "Cazenas" was written by a person other than the one that wrote the other names written thereon. After an examination of the ballot, we agree with the conclusion reached by the Court of Appeals because this ballot clearly appears to have been filled by two distinct persons (Par. 13, Section 149, Revised Election Code). This ballot is totally null and void.

Ballot Exhibit C-77. This ballot contains the name of a non-candidate, Julia Valdelion, written on the second line

for senators. Rejecting this ballot as marked, the Court of Appeals stated that the writing of the name "Julia Valdelion" after crossing out the name "E. Cea" clearly indicates an intention to mark the ballot. Respondent contends that said court admitted error in invalidating this ballot invoking the provision on paragraph 13, section 149 of the Revised Election Code.

It appears that no evidence was presented to show that the writing of the name Julia Valdelion was used as a means to identify this ballot. There is no evidence that this ballot was cast by Julia Valdelion or that she wrote or signed her name thereon. This Court has consistently held that where there is no evidence that the name of a person or persons, not candidates, were written on the ballot for purposes of identification, said name or names shall be counted as stray votes but shall not invalidate the whole ballot in accordance with the express provision of paragraph 13, section 149, of the Revised Election Code. We, therefore, hold that this ballot is valid and should be counted in favor of respondent who was voted thereon for the office of mayor.

Ballot Exhibit T-139. This ballot contains the word "ieting" or "ilting" on the line for mayor. The Court of Appeals admitted this ballot in favor of Ernesto Tajanlangit on the ground that the word is idem sonans with Eting, nickname of the petitioner, citing the cases of Abrea vs. Lloren (81 Phil., 809,) and Perez vs. Bimeda (G. R. No. L-8495, April 27, 1955) to support its conclusion. Respondent claims that the Court of Appeals committed error in declaring a mere nickname as a valid vote for petitioner. In support of his contention, he cites the recent case of Tabiana vs. Abordo (Case No. Ill, September 27, 1961), where the House Electoral Tribunal held that a nickname alone without being accompanied with the name or surname of the candidate is an invalid vote.

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 "Beloy"; 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 dearly expressed on 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 candidate 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. We believe, however, that the Lloren case was an exception to the general rule that in isolated ballots where a nickname only is written, without being accompanied by the name or surname of the candidate, should not be given effect in accordance with paragraph 9, section 149, in connection with section 34 of the Revised Election Code, which expressly provides that "certificates of candidacy shall not contain nicknames of candidates." Thus, in a later case, citing the case of Abrea vs. Lloren, supra, it was held that "As a general rule, isolated votes in favor of "a candidate designated by his nickname only, that is, not accompanied by his name or surname, are invalid (paragraph 9, section 149 of the Revised Election Code" (Campaner vs. Alano, 46 Off. Gaz., 5029.) This is the doctrine enunciated in the case of Tabiana vs. Abordo supra, which we believe is applicable to the ballot in question. In view of the circumstances mentioned above obtaining in the case of Abrea vs. Lloren, supra, we believe that the doctrine laid down therein regarding nickname is in applicable to the instant case. The same is true with the case of Perez vs. Bemida, supra, which was based on the Lloren case doctrine.

Moreover, in section 149, paragraph 1, of the Revised Election Code, it is provided that "any ballot where only the Christian name or only his surname appears is valid (paragraph 1). In paragraph 9 of said section, it is also provided that the use of nicknames, if accompanied by the name or surname of the candidate, does not annul such vote, except when such nicknames are used as a means to identify the voters. From these provisions it may be

inferred that the use of nickname only as a vote is not allowed or permitted otherwise the vote would be invalid. Therefore, the present ballot (Exh. T-139) containing only the nickname of petitioner is not valid vote for him. This ballot should be discounted from petitioner.

Ballots Exhibits T-129, T-130 and T-131. These three (3) ballots contain printed stickers of senatorial candidate Jesus Cuenco pasted on the spaces for senators. The Court of Appeals, however, declared these three ballots valid for petitioner upon its conclusion, based on the evidence aliunde presented by the parties, that "the stickers were placed on the ballots after they were read during the canvass and before the ballot boxes and election documents were finally turned in to the Municipal Treasurer sometime in the afternoon of the following day". This finding of fact is no longer open for review by this Court; hence, the ruling of the Court of Appeals admitting these three ballots in favor of petitioner should be upheld (*Hilao vs. Bernardos*, supra)

In connection with the three ballots referred to above, respondent makes mention of ballot Exhibit C-1, which was declared null and void under the provision of paragraph 14, section 149 of the Revised Election Code, for containing a printed sticker of candidate Angel V. Sanchez pasted on the line for vice-governor. Respondent contends that, applying the same ruling, ballots Exhibits T-129, T-130 and T-131 should also be declared null and void. Respondent's contention is untenable because in this particular ballot, Exhibit C-1, no evidence was presented to prove that the printed sticker was pasted on the ballot by some other person after the voter had delivered the same to the election inspectors. It was, therefore, properly rejected.

Ballot Exhibit T-78. Respondent objected.. to this ballot as marked with the name "Jose de la Cruz" written on the 5th line for senators. He contends that Jose de la Cruz was not a candidate for any office but was a registered voter in the precinct where this ballot was cast. The Court of Appeals ruled that said name is only a stray vote and does not invalidate the whole ballot. In the absence of evidence that the name Jose de la Cruz was used as a means to identify the ballot, or that the ballot was cast by him where he wrote or signed his name thereon, we agree with the ruling of the Court of Appeals admitting this ballot under the provision of paragraph 13, section 149, of the Revised Election Code.

Ballots Exhibits T-83, T-84 and T-89. These ballots were objected to by respondent as marked ballots, the alleged distinguishing mark consisting of the word "olo" written on the right hand margin of each ballot. Upon the evidence aliunde presented by the parties, the Court of Appeals concluded "that the mark 'olo' appearing on these ballots was placed thereon by some other person after they had been cast by their respective voters." It ruled that the ballots are valid for petitioner. This finding of fact made by the Court of Appeals based upon the evidence presented by the parties is no longer open for review by this Court (*Hilao vs. Bernardos*, supra).

It is a well settled rule in election contests that the marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter (*Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil., 428). In other words, a mark placed on the ballot by a person other than the voter himself does not invalidate the ballot as marked. We, therefore, uphold the ruling of the Court of Appeals admitting these three ballots for petitioner.

Ballots Exhibits T-48, T-50, T-91 and T-107. These four (4) ballots were admitted by the Court of Appeals overruling the objection interposed by respondent that the same were each prepared by two distinct persons. We have carefully examined the ballots in question and we agree with the conclusion reached by the Court of Appeals upholding the validity of these four ballots.

In resume we find that three (3) ballots (Exhs. T-4, T-11 and T-94) were improperly rejected and should be counted in favor of petitioner. One ballot (Exh. T-139) was, however, improperly admitted in favor of petitioner and should be deducted from him. With these changes, petitioner received a total of 1,565 valid votes. We also

find that one (1) ballot (Exh. C-77) was improperly rejected and should be counted in favor of respondent. This will give him a total of 1,565 valid votes.

Since the result of this protest is a tie, it is necessary that lots be drawn between the two candidates as provided for in Section 170 of the Revised Election Code.

Wherefore, the decision of the Court of Appeals is hereby modified in the sense that petitioner and respondent should draw lots to solve the tie as provided for in said section, without pronouncement as to costs.

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

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