

LEON REFORMA, PETITIONER, VS. MACARIO DE LUNA, RESPONDENT.

G. R. No. L-13242. July 31, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In the general elections held on November 8, 1955, Leon Reforma and Macario de Luna were the only candidates for the office of Mayor of Catanauan, Quezon. After the elections, the board of canvassers found that Reforma obtained 1,607 votes and De Luna 1,580 votes and proclaimed the former as mayor-elect with a majority of twenty-seven (27) votes. De Luna contested the former's election in the Court of First Instance of Quezon assailing the correctness of the returns in Precincts Nos. 7, 8, 10, 10—A, 11, 11—A and 14, while Reforma set up a counter-protest impugning the correctness of the returns in Precincts Nos. 6 and 8—A. The court, after trial, rendered judgment declaring that Reforma received 1,610 votes and De Luna 1,580, and that the former is the mayor-elect of Catanauan, Quezon with a majority of thirty (30) votes.

De Luna appealed to the Court of Appeals which in due time rendered judgment holding that Reforma had received 1,604 votes and respondent 1,616 votes. It reversed the decision appealed from and declared De Luna as mayor-elect of Catanauan, Quezon, with a plurality of twelve (12) votes.

Reforma filed a motion for reconsideration on the following grounds: (1) that the Court of Appeals had counted as valid votes for De Luna thirty-three (33) ballots in which the name of Luna was not written in the space reserved for mayor but in other spaces, in contravention of law; and (2) that said court had rejected three ballots in which Reforma was validly voted for. The motion for reconsideration having been denied, Reforma interposed the present petition for review assigning as main error the following:

"THE COURT OF APPEALS ERRED IN COUNTING AS VALID VOTES IN FAVOR OF RESPONDENT (PROTESTANT-APPELLANT LUNA) 33 BALLOTS NAMELY, EXHIBITS VI-LR-1 THRU VI-LR-3, VII-LR-1 THRU VII-LR-14, VIII-LR-1 AND VIII-LR-2, VIII-A-LR-1 THRU VIII-A-LR-9, X-LR-1, X-A-LR-1, AND XI-LR-2, AND XIV-LR-8, IN ALL OF WHICH HIS NAME WAS NOT WRITTEN IN THE SPACE RESERVED FOR MAYOR BUT IN OTHER SPACES RESERVED FOR DIFFERENT OFFICES, AND IN NOT DECLARING THEM VOID AND STRAY VOTES INSTEAD."

For the proper determination of the issue raised, there is need to make a brief statement of the proceedings had during the trial in the lower court.

After the issues were joined, the trial court appointed three commissioners for the revision and counting of the ballots. During the revision, the commissioners found thirtythree (33) ballots in which Luna was not voted for mayor, but instead his name was written on the space for senators, governor, members of the provincial board, and councilors. These thirty-three ballots were distributed in different contested precincts and were marked in the manner agreed upon by protestant and protestee. When these ballots were examined by the commissioners, they were not claimed by Luna as valid votes for him, but the attorney for Reforma made formal objections thereto on

the ground that Luna was not voted therein in the proper space for mayor, and marked them as exhibits. His objections were recorded in the report of the commissioners.

On August 13, 1956, when the case was called for the continuation of the trial, counsel for Reforma failed to appear, and, because of his absence, the court issued the following order in open court:

"The protestee Leon Reforma and his counsel Atty. Alfredo Calupitan, Jr., having failed to appear today notwithstanding the agreement between them and the protestant that this case will be considered terminated in two days, today and tomorrow, and that the non-appearance of the protestee and his attorney is without justifiable cause, case will be deemed submitted for decision of the Court on the evidence of the protestant."

In the afternoon of the same day, August 13, 1956, at 1:30 p.m., counsel for Reforma arrived and made the following motion in open court:

"If Your Honor please, we would like to ask for reconsideration of the order of this Court declaring the case submitted for decision on the ground that the Bicol Express train from Manila to Gumaca was derailed near Sucat and its trip was cancelled. This is the reason why I was not able to appear at the hearing of this case this morning"

The trial court did not issue any order granting or denying the above motion, but on September 28, 1956, rendered decision declaring Reforma as the mayor-elect of Catanaun, Quezon, with a plurality of thirty (30) votes.

It should be noted that the court did not count in favor of Luna the thirty-three ballots in which he was not voted for mayor, but the reason given for disregarding them is as follows: as the protestee defaulted on the day of the trial, no evidence was introduced to show why these ballots were objected to by protestee. The court therefore will be guided only by election returns in so far as the votes for the protestant are concerned." In other words, the court a quo disregarded said ballots, not because Luna's name was not properly written in the space indicated for mayor, but because no evidence was presented to show the illegality of these ballots.

As already stated, Luna did not claim these ballots in the lower court. It was only on appeal that he claimed for the first time that the trial court erred in not counting them in his favor because of Reforma's failure to present them as part of his evidence. Luna's theory was that although these ballots are illegal, since Reforma failed to present them as evidence, they should be counted in his favor as ballots awarded to him in the report of the commissioners. This theory was upheld by the Court of Appeals when on this matter it made this pronouncement: "where a party in an election case wishes to have the court reject any of the ballots found in the boxes of valid ballots, he must present such ballots to the court, in order that the issue of their validity may be properly determined. Otherwise all the ballots for a party which are found by the Committee on Revision of Ballots in the boxes of valid ballots shall be adjudicated to such party."

Petitioner now claims that this conclusion is erroneous (1) because respondent never claimed in the lower court that these ballots be counted in his favor, the illegality of which is self-evident; (2) because in election cases hearings are neither required nor necessary for the sole purpose of presenting as evidence ballots objected to during their revision by the commissioner, hearings being necessary only for the presentation of evidence aliunde; (3) assuming that said ballots should have been presented as evidence in order that the court may determine their validity, it is respondent who should have presented them to the court; and (4) it is the ministerial duty of the court to reject illegal ballots *motu proprio*, even if the same are not presented as evidence.

Respondent, on the other hand, justifies the ruling of the Court of Appeals on the following grounds: (1) the thirty-three ballots were not presented formally as evidence by petitioner; (2) the report of the committee of revisors supersedes the election returns, there being no proof that the ballot boxes had been tampered with; and

(3) petitioner never raised any issue regarding said ballots either in his brief filed with the Court of Appeals or in his oral argument, and therefore he is now estopped from raising said issue before this Court.

There is no question that the thirty-three ballots which were counted by the Court of Appeals in favor of respondent are illegal in so far as said respondent is concerned for the reason that his name was written thereon not on the space for the office of mayor but on other spaces pertaining to the offices of governor, senators, members of the provincial board, and councilors. This we have verified by an examination of the ballots concerned. As such, said ballots were cast in contravention of Section 149, paragraph 13, of the Revised Election Code, which provides 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 vote." question now to be determined is: Can said ballots be now examined by this Court having not been presented as evidence by petitioner during the trial in the lower court?

The pertinent provisions of the Revised Election Code governing election contests are Sections 175, 176 and 177. Section 175 provides:

"SEC. 175. Judicial counting of votes in contested elections.—Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but not more than fifteen pesos for every election precinct which they may completely revise and report upon."

Section 176 provides:

"SEC. 176. Procedure.—(a) Notice of the protest contesting the election of a candidate shall be served upon him by means of a summons at the post-office address stated in his certificate of candidacy, except when the protestee, without waiting for the summons, has made the court understand that he has been notified of the protest or has filed his answer thereto.

"(b) The protestee shall answer the protest within five days after being summoned or, in case there has been no summons, from the date of his appearance and in all cases before the commencement of the hearing of the protest. The answer shall deal only with the election in the precincts which are covered by the allegations of the protest.

"(c) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff.

"(d) The protestant shall answer the counter-protest within three days after notice.

"(e) If no answer shall be filed to the protest or to the counter-protest within the time limits respectively fixed, a general denial shall be deemed to have been entered.

"(f) In election contest proceedings, the registry list, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election.

"(g) The other defeated candidates voted for may, within the time limit prescribed for the filing of the protest, intervene in the case as other contestants and ask for affirmative relief in their favor by a petition in intervention, which shall be considered as another protest, except that it shall be substantiated within the same proceedings. Their intervention in any other manner shall not be allowed."

Section 177 provides:

"SEC. 177. Decision of the contest.—The court shall decide the protest within six months after it is presented in case of a municipal office, and within one year in case of a provincial office, and shall declare who among the parties has been elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment become final. A copy of such final judgment shall be furnished the Commission on Elections."

As may be seen the Revised Election Code does not provide for any particular procedure for the disposition of an election case once the issues are joined. On the other hand, Rule 132, of our Rules of Court, provides that the rules of court shall not apply to election cases "except by analogy or in a suppletory character and whenever practicable and convenient." It would therefore appear that by legislative fiat the trial of an election case shall be conducted in a summary manner without the cumbersome procedure prescribed for ordinary litigations in order that its result may be determined in the shortest time possible. The reason is obvious: an election case, unlike an ordinary action, involves public interest, time element being of the essence in its disposition so that the uncertainty as to who is the real choice of the people may at once be dispelled. Moreover, it is neither fair nor just that we keep in office for an uncertain period one whose right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action. As this Court has aptly said: "The purpose of the legislature in declaring that contest should not be conducted upon pleadings or by action was to free the court as far as possible from the technicalities incident to ordinary proceeding by action and to enable the courts to administer justice speedily and without complications" (*Lucero vs. De Guzman*, 45 Phil., 852). It also said that "An election contest is a special summary proceeding, the object of which is to expedite the settlement of the controversy of the candidates as to who received the majority of the legal ballots" (*Gardener vs. Romulo*, 24 Phil., 522).

Of course, in enunciating that the trial in an election case should be devoid of technicalities of procedure or conducted in a summary manner we do not mean that there should not be any reception of evidence as required in an ordinary trial. Cases there are when this may be needed as when it may be necessary to present evidence aliunde, or such evidence other than those documents which the law requires to be produced in court for its examination (Section 175, Revised Election Code). It is in this sense that the court may apply the Rules of Court by analogy or in a suppletory character as ordained in Rule 132. In every other respect, the trial is summary and the court may consider not only what has been presented formally as evidence but also whatever may have been submitted to it by virtue of the express provision of the law.

In this connection, it is important to note what Section 175 of the Revised Election Code provides. It says that the court, *motu proprio*, in the interest of justice may require "that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted" when judicial counting of the votes may be found necessary in a contested election. This provision is significant. It postulates that the court, *motu proprio*, may require, among other things, the production, of the ballots in order that it may examine them if such is necessary to do justice to the parties. And this is precisely what was done in this particular case. Upon petition of the parties, the court appointed a committee to revise the ballots and after the revision the committee submitted its report wherein it is recorded not only the admitted ballots but also those objected to and the grounds of the objections. It also submitted the ballots referred to therein and as marked by the parties. When the case was submitted to the court for decision, it had therefore before it not only the report of the commissioners but also the ballots referred to therein, and so there is no plausible reason why the same cannot be examined when necessary in the interest of justice even if not formally presented as evidence. Such practice is authorized by law. It is in this spirit that this Court made the following pronouncement:

"When the boxes are opened and in truth concerning an election made accessible, considerations of public policy require that the proof thus supplied should be accepted. The public at large has the deepest concern in the integrity of elections, and this public interest must be regarded as well as the technical rights of the litigants themselves. It would be most scandalous for us to sanction a practice under which a party to an election contest could be permitted to force an examination of the ballots and when the result is found unfavorable to himself to require the court to cover up the wrong, with consequences injurious to the cause of justice. . . The plain duty, of the court, under the circumstances presented in this case, was to proceed to a revision of the count with the report of the commissioners before him, and assisted by the facts appearing in those documents" (the ballots). (Lucero vs. De Guzman, 45 Phil., 852)

The respondent court therefore erred in not examining the ballots in question for the sole reason that the same were not formally presented as evidence by petitioner. Nor does the fact that petitioner did not raise this question before the Court of Appeals preclude him from raising it now in this appeal because having won in the trial court and these ballots having been rejected as valid votes in favor of respondent, it was not incumbent upon him to raise the issue until the case has been acted upon by the Court of Appeals. And when the latter court counted said votes in favor of respondent on the sole ground that petitioner failed to present the ballots as evidence so that their validity could be passed upon, it was only then that petitioner became adversely affected and the issue became necessary. Petitioner did not let the matter pass with folded arms. He immediately filed a motion for reconsideration vigorously raising the issue, which was denied by respondent court. It is therefore unfair to prevent him from now raising the issue in this instance.

In conclusion, we hold that the thirty-three (33) votes represented by the ballots in question should be deducted from the votes counted in favor of respondent, and thus deducted, the result is that he only received 1,583 votes as against 1,604 adjudicated to petitioner. The latter therefore should be adjudged as the winner by a majority of twenty-one (21) votes. This makes it unnecessary to consider the issue raised in the second assignment of error.

Wherefore, the decision appealed from is reversed. Petitioner is hereby declared as the mayor-elect of Catanauan, Quezon, with a majority of twenty-one (21) votes. No pronouncement as to costs.

Paras, C. J., Padilla, Montemayor, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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