

BRIGIDO CRISTINO, PROTESTANT AND APPELLANT VS. LEON CA-VITE, PROTESTEE AND APPELLEE.

G.R. No. L-24253. February 17, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Claimed by protestant, but rejected by the court below,[1] are 154 ballots cast in the November, 1963 local elections in Hindang, Leyte, on which is written the name "D-Cristino" on a space for councilors. All quarters concede that should these 154 ballots be credited in favor of protestant, he will easily dislodge protestee who is at the tail end in the list of proclaimed elected councilors of that town. Otherwise, protestant loses (924 for protestant, 941 for protestee) by 17 votes. And, the judgment below dismissing his protest must of necessity be confirmed.

The problem of ballot appreciation came up because in the last local elections, three candidates for councilor bear the same surname, Cristino: Brigido Cristino, the protestant; Bernardo Cristino, a brother of Brigido; and Zosimo Cristino, a first cousin of the first two. Evidence there is that protestant Brigido is known as "Beding" Cristino, or "Ding" Cristino. Bernardo Cristino, upon the other hand, carries the nicknames "Bernal" Cristino, or "Dr." or "Doc" Cristino, for he obtained from the National University the degree of Doctor of Dental Medicine in 1936, altho he did not pass the board examinations. One thing in common between the brother Brigido Cristino and Bernardo Cristino is that both of their Christian names start with the capital letter B.

Evidence is hopelessly in conflict as to who was intended by the voter when he wrote "D. Cristino" on the ballot. Since the appeal solely questions the legality of the lower court's refusal to credit protestant with the 154 votes aforesaid and is direct to this Court, we must perforce accept the findings of fact below.[2] On the controversial point of the voter's intention, His Honor, the trial judge, has the following to say:

" But with respect to all tha ballots consisting in all of one hundred fifty-four (154) ballots from the three (3) precincts where the words 'D. Cristino' alone appear and as the Court is not convinced from the evidence of the protestant that these refer to him alone, the 'D' standing for his nickname 'Ding' as it is also claimed by the protestee to stand for the initial for the other candidate Bernardo Cristino who is also known as 'Doc' or 'Dr.' or 'Do' the Court is of the opinion that Rule 6 of Section 149 cannot be applied as the intentions of the voters cannot be clearly found as to who of the two Cristinos—Brigido and Bernardo they intend to vote. It cannot be considered as a wrong initial accompanied by a correct surname as in the *Illescas* [case] aS there are two (2) candidates bearing the same surname * * * we can gather that the use of an erroneous initial accompanied by a correct surname could be considered valid) if there is only one (1) candidate bearing the correct surname after the erroneous initial, but as in the case at bar, there are three (3) candidates for councilors with the same surname of 'Cristino', it would be stretching our mind too much to consider the ballots containing 'D. Cristino' alone, for the protestant. Our stand is further strengthened by the case of *Gonzaga vs. Seno*, L-20522, decided on April 23, 1963 where our Supreme Court held, 'When there are two or more candidates for an office with the same name or surname, the voters shall, in order that his vote may be counted, add the correct name, surname or initial that will identify the candidate for whom he votes.' * * * In the present case, the initial 'D'

followed by the correct surname of three candidates for the same office is claimed by the protestant to correspond or denote his nickname 'Ding'. It is also claimed by the protestee to denote the initial of the other candidate Bernardo Cristino whose nickname is also 'Dr.', 'Doc' and/or 'Do'. Our stand is further bolstered by the withdrawal of protestant's claim on ballots where 'E. Cristino' alone appear, Exh. 'G—1' in Precinct No. 7; Exh. 'C-1' in Precinct No. 15 where 'G. Cristino' alone appear; and in Precinct No. 17, Exh. 'L' where 'G. Cristino' appear; Exh. 'P' where 'I. Cristino' alone appear and Exh. 'U-1' where 'D. Justino' alone appear. The withdrawal of protestant's claim by protestant's counsel on the above-enumerated ballots has also influenced the mind of the Court [on] the sincerity of the protestant's claim that all ballots where 'D. Cristino' alone appear should be declared) for protestant pursuant to Rule 6, as under the said Rule the above-stated ballots where protestant withdrew his claim, could also be claimed under the said provision of law.

In view of the foregoing, it is our considered opinion that all the one hundred fifty-four (154) ballots where the words 'D-Cristino' alone appear on the space for councilors, should and are hereby declared as stray votes which should not be counted ' the protestant. * * * "[3]

The protestant argues that he is entitled to all the 154 votes written with "D. Cristino". He reasons out that he distributed sample ballots bearing the name "D. Cristino"; and that, upon the other hand, appellee has not shown that their party distributed any sample ballots bearing the same name. The theory advocated is susceptible to legitimate attack from two directions. First, the lower court observed that "there is no proof that these were the same sample ballots [one which is Exhibit Cristino-C where the name "D. Cristino" appears for councilors], used and distributed during the last election; that their genuineness is questionable as they could have been printed after the last election and after the filing of this case in court and that these four (4) exhibits [sample ballots] are impertinent and immaterial as they could not exclusively show the intentions of the voters." [4]

Second, both protestant Brigido Cristino and his brother Bernardo Cristino obviously are well known in the town. Brigido, according to the election returns garnered 880 votes [increased to 924, per decision below] to Bernardo's 704 votes. For indeed, Brigido Cristino in the last election was a reelectionist; Bernardo Cristino was also a former elective councilor. The two of them, Brigido and Bernardo were both candidates for the same position of councilor in the 1955 election; but both lost. This props up the conclusion below that the "D. Cristino" ballots may not be counted for protestant.

A rule so sound that it commands respectability is that the intention of the voter should be given effect, not stifled or frustrated.[5] But here we are not authorized to draw a conclusion planted on surmise, speculation or guesswork. The dangerous implications which may result in declaring the wrong man as the winner, are sufficient enough to deter us from giving our nod to protestant's claim. It is as correct here to say as it is below that the claimed ballots should be placed in the category of stray votes.

But protestant summons to his aid Rule 16, Section 149 of the Revised Election Code, as amended by Republic Act 3036, which reads:

"16. When there are two or more candidates for an office with the same name and/or surname, the voter shall, in order that his vote may be counted, add the correct name, surname or initial that will identify the candidate for whom he votes: Provided, That when two or more candidates have the same surname and one of them is seeking reelection, a ballot wherein only such surname is written shall be counted in favor of the candidate seeking reelection."

Protestant would want to place himself within the proviso that when two or more candidates have the same surname and one of them (as is his case) is seeking reelection, a ballot where only such surname is written shall be counted in favor of the candidate seeking reelection. The inherent weakness in protestant's ratiocination is that the disputed ballots did not bear "only such surname"—Cristino. Instead, the name "D. Cristino" was written on those

ballots. And, "D. Cristino" may either be a vote cast for protestant Brigido Cristino or his brother Bernardo Cristino.[6]

Upon the premises, we vote to affirm the judgment under review.

Costs against protestant-appellant. So ordered.

Concepcion, C. J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Ruiz Castro, JJ.,

Judgment affirmed.

[1] In Election Case No. B-25, Court of First Instance of Leyte, Branch VIII (Baybay)[2] Aballe vs Santiago, L-16307, April 30, 1963; Cabrera vs Tiano, L-17299, July 31, 1963; Development Bank of the Philippines vs. Ozarraga, L-16631, July 20, 1965; Abuyo vs. de Suazo, L-21202, October 29, 1966.[3] Decision below, pp. xxxiii-xxxv, Appendix A of appellant's brief.[4] Decision below, pp. xix-xx, Appendix A of appellant's brief.[5] Valenzuela vs. Carlos, 42 Phil.; 428, 465; Mandac vs. Samonte, Phil. 284, 301; Rodriguez vs. Zambrano, 61 Phil. 77, 78; Perez vs. Suller, 69 Phil. 196, 198; Abrea vs. Lloren, 81 Phil. 809, 814, 817.

[6] In a case decided by the House Electoral Tribunal, Abeleda vs. Abeleda, 49 Off. Gaz. No. 11, p. 4947, both parties to the contest bear the same surname "Abeleda". According to the evidence the protestant's nickname is "Ipe" or "Pepe" and the protestee was baptized "Jose Jesus", and "Pepe" is a nickname for "Jose" Ballots for "Pepe Abeleda" or merely "Pepe" or "P. Abeleda" were not counted for either party, since it is not possible to know whether they were intended for the protestee, whose name is Jose, or the protestant who claims the nickname "Pepe". See also: Moya vs. del Fierro, 69 Phil. 199, 203-204.

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