

SALVADOR L. CALO, PETITIONER VS. COURT OF APPEALS AND CASIANO C. PLAZA, RESPONDENTS.

G.R. No. L-21256. September 30, 1963

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9cc20e4b40dc/>

CONCEPCION, J.:

This is an appeal by certiorari from a decision of the Court of Appeals.

Petitioner Salvador L. Calo and respondent Casiano C. Plaza were candidates for the office of mayor of the City of Butuan in the general elections held on November 10, 1959. Two (2) weeks later, or on November 25, 1959, the Board of Canvassers of Butuan City proclaimed Calo elected with 7,464 votes as against 7,278 votes of Plaza his closest opponent, or a plurality of 186 votes in favor of Calo. Soon thereafter, or on December 3, 1959, Plaza filed the corresponding election protest with the Court of First Instance of Agusan, which, after appropriate proceedings, rendered judgment for Plaza, whom the court declared elected with 7,428 votes as against 7,402 votes credited to Calo, or a plurality of 26 votes in favor of Plaza. On appeal taken by both parties, a special division of the Court of Appeals, in a 4 to 1 decision, held that Plaza had been elected with a plurality of five (5) votes, and with this modification, affirmed the decision of the trial court, with costs against Calo. Hence this appeal by certiorari taken by the latter, who maintains that the Court of Appeals has committed eight (8) alleged errors discussed in his brief. We do not deem it necessary, however, to take up each one of said alleged errors for the reasons presently to be stated.

Protestant's plurality of twenty-six (26) votes under the decision of the trial court was reduced by the Court of Appeals to five (5) votes, because the name written on the space for mayor in most of the ballots involved therein was "D.O. Plaza", and one of the candidates for Governor of the Province of Agusan was Democrito O. Plaza, and because the latter's nickname is "Monting" and the name written on said space in one (1) ballot (Exhibit 24-d) was "Monting Plaza", so that, the protestee contended, the candidate voted for was, not the protestant, but said Democrito O. Plaza. The protestee maintained, therefore, that these ballots should be considered as stray votes for mayor, but the Court of Appeals was not inclined to sustain this view, for the reason that the person voted for Governor in some of these ballots was, also, "D.O. Plaza", and that "Monting Plaza" was, also, the name written on the space for Governor in said Exhibit 24-d. The conclusion drawn therefrom by the Court of Appeals was that the voters who filled these ballots had in mind for mayor a person other than the one voted for Governor, which is clearly untenable, for, having written the same name in both spaces, the voter must be deemed to have intended the same individual, since identity of names necessarily connotes identity of persons, unless the contrary is satisfactorily established by competent evidence, and no such evidence has been introduced in the present case.

This notwithstanding, the Court of Appeals concluded that even if the votes for "D.O. Plaza" and "Monting Plaza"—which, according to the appealed decision numbered twenty-one (21)—were deducted from those obtained by the protestant, the latter would still be the winner by five (5) votes. There are, however, a number of other ballots that have been erroneously counted for the protestant, and/or not counted for protestee Calo, to wit:

- Exhibits 19-c, 36-e, 57-b, 55-a, 15-d, 19-b, 67-F, 37-F, 44-b, 89-c and 70, or eleven (11) ballots, in which "D.O. Plaza" was, also, voted for mayor. These ballots should be considered as stray votes for mayor and deducted from the total number credited to Plaza by the Court of Appeals. Paragraphs (1) and (6) of Section 149 of the Revised Election Code read:

"1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter."

"6. The erroneous initial of the name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct name of a candidate, or the erroneous intermediate initial between the correct name and surname of a candidate does not annul the vote in favor of the latter."

are not in point. Paragraph (1) refers to the case when only the Christian name, or the surname, or one word, which is the Christian name of a candidate and the surname of his opponent, has been written by the voter. It does not apply when said word is accompanied by initials, as in the ballots above mentioned. Neither does paragraph (6) apply when the initial or initials and the surname written are those of another candidate, although for another office, inasmuch as the latter must be deemed to be the person voted for.

- Exhibits 41-b, 55-d and 7-e (3 ballots) should likewise, be considered, for the same reason, stray votes for mayor, instead of being counted for protestant Plaza, the name written on the space for mayor therein being "D. Plaza".

- We should similarly consider as stray votes for mayor Exhibits 56-d, 44-b-l and 30-a (3 ballots) in which the persons voted for mayor are "D.O. Pleza", "D.O. Pesza" and "D. Palasas", respectively, for, even if the surnames therein had been correctly written "Plaza", these ballots would not be in a better position than those involved in the preceding paragraphs, insofar as the protestant is concerned.

- Exhibit 33-C-2 (1 ballot) in which the candidate voted for mayor is "D. B. Plasa", is substantially in the same condition as those heretofore discussed.

- Exhibits 21-e, 28-c, 57-f, 20-f-2 and 20-f-l (5 ballots), with pasted stickers bearing the printed name of persons, in which Plaza is voted for mayor, should be annulled as marked ballots (Section 149, paragraph 14).

- Exhibit 4-e, in which the name "Plaza" was written successively in the first four (4) spaces for Senators, and Exhibit 4-e-l, in which the voter wrote "D.O. Plaza" on the eight (8) spaces for Senators, apart from the space for Governor, and in both of which Plaza was voted for mayor, are, also, marked ballots, which (2 ballots) should be deducted from the votes credited to Plaza by the Court of Appeals.

- Exhibit 59-d-l, in which Plaza is voted for mayor, should be annulled as a marked ballot, the voter having written on the fourth space for Senators the words "Mga lider sopsop elang tian guipaboro".

- The following thirteen (13) ballots should be counted for Calo, he having been voted therein for mayor. They were erroneously nullified by the trial court upon the ground that they are marked:

- Exhibit M—9, merely because, after filling the first space for members of the provincial board, the voter had written on the second space therefor a word that the trial court read as "vocales". It should be noted, however, that one of the candidates for member of the provincial board was "Morales", and that the penmanship of the voter is so poor that he could have actually intended to write "Morales" not "vocales". Moreover, this word is the Spanish term for members of the provincial board and the voter might not have been familiar with the equivalent in

English of said term "vocales", so that he may have inserted this Spanish expression to indicate that the name written on said first space was intended for "vocales", or members of the provincial board, and, hence, without the intent to mark or identify the ballot.

- Exhibit EEEE-4, because the word written on the space for vice-mayor is "Conbaburd". This is not sufficient identification mark, in the absence of evidence aliunde, which has not been introduced. The voter was obviously unenlightened, judging from his poor spelling and handwriting.

- Exhibit RRRR, because "E, CHEZ" appears written on the second space for councilors. The trial court did not state why it considered the ballot marked. The fact that "E, CHEZ" was written in block letters, like the name "PEREZ", appearing in the next lower space, unlike other names on the ballot, which were written in ordinary script, does not justify the action taken by the trial court (Sec 149, par. 18). Besides there was a candidate for councilor by the name of Sanchez, and the voter appears to be of the unenlightened type.

- Exhibit 1-6, because the vote for mayor is "Badong Calo-Nanong". The last term (Nanong) does not suffice to constitute an identification mark.

- Exhibit S-8, because, after filling the space for Senators, provincial officiate, mayor and vice-mayor and the first space for councilors, the voter wrote, in the third space for councilors, the words "That's all", leaving the second and other spaces for councilors blank. Obviously the voter merely wanted to indicate that he did not care to vote for more than one councilor.

- Exhibit S-10, because, instead of writing the names of persons on the spaces for Senators, the voter wrote on the first space therefor the words "Grand Allaian". The intent to mark the ballot is far from clear. The voter may have meant to vote for the entire set of candidates for Senator of the political party known as Grand Alliance.

- Exhibit 99-f-10, because the word written on the third space for councilors is "Air" or "Ais". Considering that this word may be considered idem sonams with "Asis", which is the surname of a candidate for councilor, the voter may have merely committed an error in spelling.

- Exhibit V-4-d, because "sn B sancí" appears on the space for vice-mayor. The voter wrote, also, "di palsa" on the space for Provincial Governor, and "Ba Calo", on the space for mayor. These circumstances and his poor penmanship, as well as the fact that there was a candidate surnamed Sanchez, convince us that the voter had no intention to mark his ballot.

- Exhibit VVV-6, because the name written on the space for mayor is "S Kato". However, "K" is used in many parts of the Philippines in lieu of "C". We note also, that the "t" in "Kato", is written like an "i", although with a horizontal bar at the top, and that the voter has a very poor handwriting. Under the circumstances, said "Kato" may be considered idem sonams with "Calo".

- Exhibit ZZ-5, because the name written on the last space for councilors is "Martha". The intent to mark is not clear.

- Exhibit QQQQ-3, because the name written, on the last space for councilors, is "Pasing". Without any evidence aliunde on the intent to identify the ballot, said word is not enough to nullify the ballot as a marked one.

- Exhibit PP-6, because "D.O. Plaza ako" is written on the space for Provincial Governor. The term "ako" is not sufficient to nullify the ballot. The evident intent of the voter was, obviously, to stress his desire to vote for Democrito O. Plaza for Provincial Governor.

- Exhibit GG-4, because it is written in ink. The trial court violated paragraph 10 of Section 149 of the Revised Election Code.

Recapitulating, we should, therefore, deduct 11 plus 3, plus 3, plus 1, plus 5, plus 2, plus 1, or altogether 26 votes, from the 7,407 votes counted in favor of Plaza by the Court of Appeals, thereby leaving a balance of 7,381 votes in his favor. Upon the other hand, we must add thirteen (13) votes to the 7,402 votes credited to Calo by said Court, thereby increasing his votes to 7,415. As a consequence protestee Calo has won with a plurality of thirty four (34) votes over protestant Plaza.

Wherefore, the decision of the Court of Appeals and that of the Court of First Instance of Agusan are hereby reversed and another one shall be entered declaring that protestee Salvador L. Calo is the duly elected mayor for Butuan City, with costs against protestant Casiano C. Plaza. It is so ordered.

Bengzon, C. J., Padilla, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.