

ALBERTO A. VILLAVERT, PETITIONER-APPELLANT, VS. TOBIAS FORNIER, RESPONDENT-APELLEE.*G.R. No. L-3050. October 17, 1949*

Ponente: OZAETA, J.

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This is an election contest involving the office of provincial governor of Antique, the contending parties being the registered candidates for said office in the election held on November 11, 1947. The provincial board of canvassers declared Alberto A. Villavert elected with a majority of 60 votes. Tobias Fornier protested, and the trial court found that he had obtained a majority of 36 votes over Villavert and consequently declared him elected. Villavert appealed to the Court of Appeals and the latter also found that Tobias Fornier had won the election with a majority of 28 votes.

We gave due course to Villavert's petition for certiorari to review the decision of the Court of Appeals on the principal question of whether or not the ho ballots mentioned in his first assignment of error, which had been admitted by the trial court in his favor, were properly rejected by the Court of Appeals on the, ground that Villavert's name was written not on the dotted line following the words "Provincial Governor" but on the double line immediately above said words and below the instructions to the voter.

I. Upon a joint examination by the members of the Court of each of the 40 ballots in which the name of the appellant Villavert was written on the double line immediately above the words "Provincial Governor" and the dotted line Immediately following said words was left blank, a majority of the Court (the Chief Justice and Mr. Justice Peria, dissenting) voted to sustain the finding of the trial court and to reverse that of the Court of Appeals, for the following reasons:

The provision of law involved here is section 135 of the Revised Election Code, which says that the voter shall fill his ballot by writing in the proper space for each office the name of the person for whom he desires to vote. The purpose of this provision is to identify the office for which each candidate is voted. Thus, if the name of a candidate for mayor is written either in the space reserved for vice-mayor or in one of the spaces for members of the provincial board, the vote cannot be counted as valid for the office of mayor because it cannot be interpreted as having been intended for that office, (*Aviado vs. Talens*, 52 Phil. 665, 669; *Villaviray vs. Alvarez*, 61 Phil. 42, 44; *Pimentel vs. Festejo*, G.R. No. L-2327, January 11, 1949.) This case, however, differs from the cases just cited in that here the name of Candidate Villavert for provincial governor was written not in any space reserved for any other office but on the double line immediately above the words "Provincial Governor" and no other name appears on the dotted line immediately following said words. It cannot be doubted that the intention of the voter in thus writing the name of said candidate was to vote him for one of the offices specified on the ballot. Neither can there be any reasonable doubt that the office for which the voter intended to vote said candidate was that of provincial governor (1) because that was the office for which he (Villavert) was a registered candidate, (2) because the space in which his name was written was such that the vote could not have been intended for a member of the provincial board or for any other office specified farther down in the ballot, and (3) because no

other name was written on the dotted line immediately following the words "Provincial Governor" The failure of the voter to follow strictly the provision of the Election Law under consideration by writing the name of the candidate on the dotted line immediately following the words "Provincial Governor" instead of writing it on the double line immediately above said words, was evidently due to ignorance or mistake in good faith; but if his intention can be ascertained in an indubitable manner, as in this case, it should be given effect—not frustrated.

Any dictum that may be found in our decision in *Pimentel vs. Festejo*, supra, to the effect that the provision of the Revised Election Code under consideration is mandatory and not directory should be disregarded.

Five other ballots are claimed by the appellant in his first assignment of error, namely, Exhibits V-549, V-665, V-691, V-905, and V-1018. These ballots were rejected by the Court of Appeals for the reason that in each of them the name of Alberto Villavert was written between the titles "Provincial Governor" and "Members of the Provincial Board," following its ruling that any vote is invalid unless it is written on the dotted line reserved therefore. For the same reasons that we stated above in reversing the ruling of the Court of Appeals with regard to the other 40 ballots involved in this assignment of error, we reverse the Court of Appeals and count the said 5 ballots as valid votes for the appellant. We are not unaware that in *Dizon vs. Cailles*, 56 Phil. 695, 702, this court rejected one ballot written in the same manner as each of the five ballots here in question on the ground that the voter's will was doubtful. But we depart from that criterion because after thorough deliberation we are convinced that the intention of the voter in such a case is unmistakable and should not be frustrated.

II. Appellant assigns as error the rejection by the Court of Appeals of the following 13 ballots: V-98, V-157, V-165, V-168, V-169, 7-241, V-242, V-316, V-349, V-550, V-1246, V-1386, and V-1552.

After the members of the Court had jointly scrutinized each of these ballots, they voted unanimously to sustain the rejection by the Court of Appeals. In V-157 the name of Alberto Villavert was written on the double line above the words "Provincial Governor" and on the dotted line following these words the voter wrote "Member of the provincial," thus making the intention of the voter doubtful. In V-98, V-165, V-168, V-169, V-241, V-242, V-316, V-349, V-550, V-1246, and V-1552, the name of Villavert was written in one of the spaces for members of the provincial board; and in V-1386 his name was written in one of the spaces for councilors.

III. We sustain the rejection by the Court of Appeals of ballots V-339, V-551, and V-552 discussed in appellant's third assignment of error for the reason that they were not voted for Alberto Villavert but, respectively, for Anacleto, Nacleto, and Cleto Villavert. If the voter had written merely the surname Villavert in each of these ballots, it would have been sufficient under rule 1 of section 149 of the Revised Election Code; but the writing of the Christian name Anacleto, Nacleto, or Cleto, which is entirely different from Alberto, makes the intention to vote for the appellant doubtful. Alberto cannot be mistaken for Anacleto.

IV. In his fourth assignment of error appellant claims seven ballots which were rejected by the Court of Appeals. We hold that all of them, with the exception of V-737, V-1171, and V-1430, were properly rejected for the reason that the name written in the space for provincial governor was not that of the appellant nor was it *idem sonans* thereto.

But the names written in ballots V-737 ("Albirto Bel"), V-1171 ("Betong"), and V-IV30 ("Roberto V") are sufficient to identify the appellant Alberto Villavert and should be counted in his favor.

V. In his fifth assignment of error the appellant claims six ballots which the Court of Appeals rejected on the ground that each of them was a marked ballot.

In ballot V-512 the voter wrote in the space for vice-mayor the words "Race of the criminal party." We hold that that ballot was properly rejected as having been marked with such irrelevant words.

The remaining five ballots: V-642, wherein "Bonifacio Fabila Basoka" appears voted for councilor; V-670, wherein "Bias Marfil Viva" appears voted also for councilor; V-672, wherein the voter, in voting for Nemesio Rubino as mayor, added to that name the words "guid acon"; V-1325, wherein "Canoto abogago" appears voted for member of the provincial board and "Antonio Bianson abogago" appears voted for councilor; and V-1440, wherein "Agong Ymportante" appears voted for mayor, and in each of which the appellant was unmistakably voted for governor, were improperly rejected by the Court of Appeals as marked ballots, the names or words in question not being irrelevant nor constituting distinguishing marks, in our opinion.

VI. The eight ballots claimed by appellant in his sixth and last assignment of error were properly rejected by the Court of Appeals: V-663, because the voter wrote the words "Liberal Party" in the space for provincial governor and the, name of the appellant in the space for the first member of the provincial board; V-667, because the voter, after writing appellant's name in the space for provincial governor, lined it out and wrote it in the space immediately below the words "Members of the Provincial Board"; V-694, V-910, V-929, V-930, and V-995, because in each of these ballots the voter wrote appellant's name above the double line and another name in the space for provincial governor; and V-1149, because appellant's name is written in the space for the first member of the provincial board, although the word "govinador" is written in the space for provincial governor.

It results from the foregoing that the appellant should be credited with 45 votes under his first assignment of error, none under his second and third assignments of error, 3 votes under his fourth assignment of error, 5 votes under his fifth assignment of error, and none under his sixth assignment of error, making a total of 53 votes in all.

It remains for us to consider appellee's counter-assignments of error, which we shall now proceed to do.

I. In his first counter assignment of error the appellee questions the validity of 15 votes cast in favor of the appellant by patients of the Santa Barbara Leprosarium, which were rejected by the trial court on the ground that the voters did not appear as registered voters in precinct No. 1 of the municipality where they resided before being confined, but which were admitted by the Court of Appeals.

It appears that 31 persons from different municipalities of the province of Antique who were confined in the Santa Barbara Leprosarium voted in the last election, 29 in favor of the appellant and 2 in favor of the appellee. The trial court rejected 15 of the 29 votes in favor of the appellant and the 2 votes in favor of the appellee on the ground that the voters who had cast them did not appear as registered voters in precinct No. 1 of the municipality where they resided before being confined.

Section 14 of the Revised Election Code provides that patients confined in leprosaria shall exercise the right of suffrage in the municipality where they lawfully resided immediately before they were taken to said leprosaria; that they shall accomplish the voter's affidavit in quadruplicate before the justice of the peace of the municipality where the leprosarium is located on the day set by law for registration; that the justice of the peace shall prepare a list of these affidavits and send a certified copy of the portion thereof corresponding to each municipality to the board of election inspectors of the aforesaid municipality designated by the Commission on Elections, to the register of deeds of the province comprising the same, and to the Commission on Elections, together with copies of the affidavits of the voters concerned, and said officers shall enter in the list of voters of the respective precinct the names of said voters and such entry shall have the same force and effect as if said voters had personally appeared before the board of inspectors of said precinct. Section 10 of the General Instructions issued by the Commission on Elections to implement this provision provides that the registration of voters confined in leprosaria shall be accomplished by the entry of their names in the list of voters of precinct No. 1 of each of the municipalities from which the said voters respectively came or of which they were residents immediately before their confinement.

It seems that the justice of the peace of Santa Barbara, before whom the voters in question accomplished their respective affidavits, failed to comply with the above-mentioned provisions of the law and as a result said voters did not appear in the list of voters of precinct No. 1 of the respective municipalities of which said voters were residents. That, however, was not the fault of the voters, and they should not be penalized by annulling their votes. We have held in several cases that the rules and regulations for the conduct of elections are mandatory before the election, but when it is sought to enforce them after the election, they are held to be directory only, if that is possible, especially where, if they are to be held mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of the government, and not to defeat that object. When the voters have honestly cast their ballots, the same should not be nullified simply because the officers appointed under the law to direct the election and guard the purity of the ballot have not done their duty. The law provides a remedy, by criminal, action, against them. They should be prosecuted criminally, and the will of the honest voter, as expressed thru his ballot, should be protected and upheld." (Lino Luna vs. Rodriguez, 39 Phil. 208; De los Angeles vs. Rodriguez, 46 Phil. 595, 598-599; De Guzman vs. Board of Canvassers of La Union, 48 Phil. 211, 215; Kiamzon vs. Pugeda, 9 Phil. 755, 760, 763.)

For the foregoing reasons, we uphold the adjudication by the Court of Appeals of the 15 votes in question in favor of the appellant and overrule appellee's first counter assignment of error.

Conformably to this ruling, the two votes cast in the Santa Barbara Leprosarium in favor of the appellee which were also rejected by the trial court but which were not restored by the Court of Appeals, perhaps thru oversight, should be added to the votes for the appellee.

II. In his second counter assignment of error the appellee impugns 122 ballots adjudicated by the Court of Appeals in favor of the appellant, and contends that this court should reject them on the ground that they are marked ballots.

After examining each of said 122 ballots we find no sufficient reason to disturb the conclusions of the Court of Appeals.

III & IV. In his third and fourth counter assignments of error the appellee contends that the 132 ballots therein mentioned which were adjudicated by the Court of Appeals in favor of the appellant, should be counted out as invalid votes for the latter on the ground that the words written in the space for governor do not sufficiently identify the appellant, either because they are illegible, or because they are not idem sonans, or for some other reasons.

After examining each of these questioned ballots we agree with the Court of Appeals that they are valid votes for the appellant.

V & VI. In his fifth counter assignment of error the appellee questions the validity of the 9 ballots in favor of the appellant on the ground that each of them was written by two or more different persons; and in his sixth counter assignment of error he questions the validity of four ballots in favor of the appellant on the ground that each of the two pairs of ballots was written by one and the same person. We have also examined the ballots in question and find no reason to disagree with or disturb the finding of the Court of Appeals.

VII. It was proved during the trial, and so found by both the trial court and the Court of Appeals, that a voter in the municipality of Valderrama by the name of Honorato Ybut voted and prepared ballot Exhibit V-1 for himself, and also the following ballots: Exhibit V-2, for Concepcion Escoton; Exhibit V-3, for Maria Bectoriano; and Exhibit V-4, for Salome Labitoria. Both the trial court and the Court of Appeals counted as valid ballot V-1 which

was prepared and cast by Honorato Ybut for himself and declared invalid the three other ballots V-2, V-3 and V-4.

The appellee in his seventh counter assignment of error contends that the lower courts should have invalidated all of the four ballots thus cast in favor of the appellant on the ground that they were prepared by one and the same person.

The doctrine heretofore laid down by this court that ballots prepared by a single hand are fraudulent and should be rejected, refers to ballots prepared by an unidentified person; but in the instant case the ballots in question were proved to have been prepared by a qualified voter, and to annul his own ballot because he prepared also ballots corresponding to other voters would be tantamount to convicting him of an election offense and depriving him retroactively of the right to vote. The Court of Appeals, therefore, did not err in counting as valid ballot V-1 in favor of the appellant.

It also appears that a voter named Eugenia P. Amara registered in precinct No. 13 of San Jose and in precinct No. 2 of Laua-an and cast respectively therein ballots V-1098 and V-1290 in favor of appellant. Only one of these ballots was annulled by the Court of Appeals. The appellee contends that both should have been annulled. For the same reason stated above in validating ballot V-1, we sustain the Court of Appeals in not invalidating both of the two ballots cast by Eugenia P. Amara.

VIII & IX. Ballots V-266, V-729, and V-837 in favor of the appellant are impugned by the appellee on the ground that appellant's name on each of them was erased or canceled by the elector; and ballots V-723 and V-1356, on the ground that the voters had cast these two ballots for the appellee but some other person thereafter illicitly and clandestinely inserted and superimposed the name of the appellant over that of the appellee.

These counter assignments of error involve questions of fact as to which we are not authorized to review the findings of the Court of Appeals.

X. Thirty-three ballots are involved in appellee's tenth counter assignment of error. In all of them the name of appellee was written in the space for provincial governor but all of them were rejected by the Court of Appeals on the ground that they were marked ballots.

After examining each of these ballots, a majority of the Court voted to accept as valid 18 of them, namely: F-141, F-143, P-144, F-215, F-235, F-268, F-269, F-295, F-296, F-307, F-318, F-424, F-428, F-431, F-575, F-876, F-880, and F-887.

In F-141, the voter wrote on the fourth line for councilor the words "Dedum Para ma pa," and in F-143, on the third line for councilor, the words "Didong para numbag." The word "Dedum" or "Didong" might have been intended for the candidate for councilor named Candido Arangote. The additional words "para mapa" and "para numbag" are said to mean "fond of boxing." These words do not constitute an identification of the ballot. In any event, if the name or words do not constitute a valid vote for Candidate Candido Arangote, they are not, in our opinion, sufficient to invalidate the clear vote for Tobias Fornier for governor.

In F-144, the names "Alberto Matacao Villabit" and "Juan Himeniz Bayonan" were written on the last two lines for councilors; in F-215, the name "Juan Arikison" appears on the last line for councilor; in F-235, the word or nickname "Abil" (probably intended for Abelardo Rivero, a candidate for councilor) appears on the second line for councilor; and in F-268, the name "Liberato Montero (Bogoy)" appears on the last line for councilor. Because of those names the ballots were rejected by the Court of Appeals as marked. We do not, however, consider any of those names or words as a distinguishing mark of the ballot. Although these ballots may not be valid votes for councilors, they should not be invalidated as votes for governor.

In F-269, the voter wrote on the second line for councilor "I vote Nacionalista." Neither should this ballot be invalidated as a vote for governor on account of said words. For in V-1568, involved in appellee's second counter assignment of error, which we have overruled, the Court of Appeals admitted as valid the vote for appellant Villavert notwithstanding that on the last line for councilor the voter wrote "Esteban mabahol it olo." The same liberal criterion should be adopted for both sides.

In F-295, the names "Tomoy y Sayong" and "Tancio y Dora" appear respectively in the spaces for mayor and vice-mayor. There is no reason to invalidate it as a vote for governor.

In F-296, the voter wrote in the spaces for members of the provincial board the words "indi to con mga boto vocales," meaning that he did not wish to vote for members of the provincial board. These words do not invalidate the ballot as a vote for governor.

F-307 was rejected as a vote for appellee because the voter wrote "Tibureio Gago" on the fourth line for councilor. We think that is an error specially because the Court of Appeals accepted as valid V-1185 in favor of the appellant notwithstanding that the voter therein, wrote "Mediong Libat" (cross-eyed) in one of the spaces for councilors.

F-318 was rejected by the Court of Appeals as a vote for appellee because "Manuel Piang "Cleto Tawri," "Tenoy Sabak," and "Balentin Sarama" are voted therein as councilors. We do not consider that as sufficient to invalidate the vote for governor.

F-424 was rejected because the voter added the word "Penakas" after the name of Vicente Lomugdang in the first space for councilor. That also is an error specially because the Court of Appeals admitted as a valid vote for appellant ballot V-760, notwithstanding that the same word "Pinacas" appears on the sixth line for councilor.

F-428, F-431, F-875, and F-876.—In each of these ballots the name of appellee appears clearly voted for governor. According to counsel for the appellee they were rejected by the trial court because it seemed to said court that these ballots were signed by the electors to whom they had been issued. The Court of Appeals made no mention of them in its decision although they were included in appellee's counter assignment of error in said court. We have examined each of these ballots and we find nothing to show that they were signed.

F-880 was rejected because "Nating Canet" (skinny) and "Tuta Boha-on" (piles) are voted therein for councilors; and F-887 was rejected because the words "T. Tata Siluyan" appear on the last line for councilor. We likewise hold that, these words are not sufficient to invalidate these ballots as votes for governor.

XI. The 19 ballots mentioned in appellee's eleventh counter assignment of error were rejected by the Court of Appeals as not valid votes for the appellee on the ground that the person voted for governor in each of them was not the appellee. After examining each of these ballots, a majority of the Court voted to accept 10 of them as valid votes for, the appellee, namely: F-34, "Tobas Finier"; F-35, "T. Forign"; F-181, "T.Forni"; 7-188, "T. Foniar"; F-298, "To. Fornier"; F-333, "Fornier"; F-865, "Tobias Fornier"; F-905, "Tobias Fbias"; F-915, "Tovias Funler"; and F-979, "Tosue Fornier." We think these ballots sufficiently indicate the intention of the voters to vote for the appellee.

XII. Five ballots mentioned in appellee's twelfth counterassignment of error were rejected by the Court of Appeals as not valid votes for the appellee. Of these we think two are valid, namely, F-84 and F-981. In F-84 "tubiyas Purnr" was written on the double line followed by the word "Nacionalista" on the dotted line after the words "Provincial Governor"; and in F-981, "Tobias Fornier" is clearly written in the space for provincial governor, although two horizontal lines above the name and surname were drawn, which in our opinion are not a sufficient indication of any intention of the voter to cancel his vote.

XIII. Ballots F-103, F-919 and F-971 mentioned in appellee's thirteenth counter assignment of error were rejected by the Court of Appeals on the theory that each of them was filled out by two different hands. We agree with the Court of Appeals after examining these ballots and therefore overrule this counter assignment of error.

XIV. Three pairs of ballots mentioned in appellee's fourteenth counter assignment of error were rejected by the Court of Appeals on the ground that each pair was written by one and the same person. While there may be doubt as to this, a majority of the Court feel that they should not disturb the finding of the Court of Appeals.

XV. Appellee's fifteenth and last counter assignment of error reads as follows: "The Court of Appeals erred in ruling that the ballots Exhibit F-432 . . . and Exhibit F-893 . . . were spoiled ballots, and in not counting them as valid votes for your respondent, despite the incontrovertible evidence proving that they were deposited by the election inspectors in the box for spoiled ballots by mistake." This counter assignment of error involves a question of fact, which we are not authorized to review.

It results from our consideration of appellee's counter assignments of error that he is entitled to be credited with 2 additional votes under his first counter-assignment of error, 18 votes under the tenth, 10 votes under the eleventh, and 2 votes under the twelfth, or a total of 32 additional votes. We have found that appellant, on the other hand, is entitled to be credited with 53 additional votes under his assignments of error. We find, therefore, the result of the election to be as follows:

Tobias Pornier—15,082 votes as adjudicated by the Court of Appeals plus 32 votes, or a total of 15,114 votes.

Alberto A. Villavert—15,054 votes as adjudicated by the Court of Appeals plus 53 votes, or a total of 15,107 votes.

This leaves a majority of 7 votes in favor of the respondent-appellee Tobias Fornier.

For the foregoing reasons, the judgment of the Court of Appeals affirming that of the Court of First Instance is hereby affirmed, with costs against the appellant.

Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

MORAN, C. J.:

I concur in the result.

FERIA, J.:

I vote for the dismissal of the appeal from the decision of the Court of Appeals in favor of the respondent-appellee on the ground that the findings of said court sought to be reviewed in this appeal are of fact.

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