

PORFERIO INGUITO, PETITIONER, VS. THE COURT OF APPEALS AND ALFREDO ORQUILLAS, SR., RESPONDENTS.

G.R. No. L-26883. November 23, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Porferio Inguito and Alfredo Orquillas, Sr., were, in the elections of November 12, 1963, candidates for the office of mayor of the municipality of Enrique Villa-nueva, in the Subprovince of Siquijor, Province of Negros Oriental. On November 14, 1963, the municipal board of canvassers proclaimed Inguito elected mayor by a plu-rality of one (1) vote over Orquillas: 645 to 644.

This election protest was thereupon initiated by Orquillas by filing the same on November 22, 1963 in the Court of First Instance of Negros Oriental. Inguito filed his answer (with a counter-protest). After trial, on May 7, 1965, the Court of First Instance rendered its decision finding protestant Orquillas to have won over Inguito to one (1) vote: 647 to 646.

Protestee Inguito appealed to the Court of Appeals. On September 21, 1966, the Court of Appeals promulgated its decision which affirmed that of the Court of First Instance, finding, moreover, that protestant Orquillas won by a margin of four (4) votes: 647 to 643.

After denial of his motion for reconsideration, Inguito has appealed to Us from said decision of the Court of Appeals.

Appellant seeks the rejection, among others, of thirteen ballots, all found by the Court of Appeals as valid for Orquillas (Exhs. I-86 to I-92, I-96 to I-100 and I-103), on the ground that said ballots are marked.

Said thirteen ballots were all cast in one precinct (Precinct No. 5). In each of said ballots, the surname of one candidate is written twice. Petitioner clearly pictures these features, as follows:

Ballot No.

Objections

Exhibit I-86

"Ganzon Ganzon" (line 1 for senators)

Exhibit I-87

"Tolentino Tolentino" (line 8 for senators)

Exhibit I-88

"Diokno Diokno" (line 4 for senators)

Exhibit I-89

"Lim-Lim" (line 6 for senators)

Exhibit I-90

"Primicias Primicias" (line 5 for senators)

Exhibit I-91

"Peralta Peralta" (line 5 for senators)

Exhibit I-92

"Elecion Elecion" (line 3 for Provincial Governor)

Exhibit I-96

"Perdeses Perdeses Ontal Ontal" (Board Member for Sub-Province)

Exhibit I-97

"Elecion Elecion" (line 3 for Provincial Board)

Exhibit I-98

"Manos-Manos" (line 6 for councilors)

Exhibit I-99

"Omictin Omictin" (for Lieutenant Governor)

Exhibit I-100

"patay patay" (for Vice-Mayor)

Exhibit I-103

"B. Paculba Paculba" (line 2 for councilors)

The rule is that in the absence of evidence to show that the purpose was to identify the ballot, a single repetition of the name of a candidate does not invalidate the ballot (*Katigbak v. Mendoza*, L-24477, February 28, 1967). And what has been considered as a marked ballot is one where a candidate's name is written more than twice (at least three times), in which case it is deemed intentional and as serving no other purpose than to identify the ballot (*Gutierrez v. Aquino*, L-14252, February 28, 1959; *Katigbak v. Mendoza*, *supra*). This rule, however, refers to one or two ballots or several ballots in different precincts. Where, as in this case, thirteen ballots, all cast in the same precinct, contain this common feature - the repetition of one candidate's surname - the same evidences a pattern designed to mark said ballots in that precinct. Furthermore, the repetition in these thirteen ballots occur on the same line, and thus can not be deemed unintentional, innocent or due to oversight, unlike the single repetition held as not showing markings, where the name of the candidate was written on the first line and repeated on the last line for councilors (see *Katigbak v. Mendoza*, *supra*).

Accordingly, excluding as marked the aforesaid thirteen ballots counted for protestant Orquillas, he should only have 634 votes (647 minus 13), and thus protestee Inguito, with 643 votes counted in his favor by the Court of Appeals, wins by a margin of nine (9) votes.

Protestant-appellee counter-assigns as error only one ballot, Exh. O-174, where "Indado" was deemed *idem sonans* for Inguito and counted in protestee's favor. The same is indeed *idem sonans* for Inguito, as found by the Court of Appeals. Assuming it is not, Inguito would still have a plurality of eight (8) votes over Orquillas.

In view of the foregoing, We find no further need to pass upon the other ballots regarding which Inguito assails the findings of the Court of Appeals.

WHEREFORE, the decision of the Court of Appeals is hereby reversed, and protestee-appellant Porferio Inguito is hereby declared to have won in the election herein pro-tested, by a plurality of nine (9) votes over protestant-appellee: 643 for Inguito to 634 votes for Orquillas. No costs.

SO ORDERED.

Dizon, Acting C.J., Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Reyes, J.B.L., J., on official leave.

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