

SULPICIO GADON, PROTESTANT AND APPELLANT, VS. PEDRO GADON, PROTESTEE AND APPELLANT.

G.R. No. L-20015. November 30, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case refers to the election of November 10, 1959 for the position of Mayor of Despujols, Romblon. Protestant Sulpicio Gadon and protestee Pedro Gadon (both with Reyes as the middle name) were the respective candidates of the Nationalista and Liberal parties. On November 13, 1959 the municipal board of canvassers proclaimed Pedro Mayor-elect with a plurality of three (3) votes, having obtained 642 votes as against 639 votes for Sulpicio.

On November 18, 1959 Sulpicio Gadon filed a petition of protest, alleging fraud and irregularities in the counting of votes in precincts 2-A and 4. Pedro Gadon filed an answer and then an amended answer with counter-protest, contesting the balloting and/or counting of votes in precincts 1,2,3,3-A, 5 and 5-A. The amended answer was duly admitted by the trial court. On December 15, 1959 the protestant filed, with leave of court, an amended petition, including precinct 3-A among those protested by him. This amended petition was admitted without objection on the part of the protestee, who, for the first time during the trial, objected to the opening of the ballot box for this particular precinct. The court, however, overruled him.

After considering the ballots cast and uncontested, as well as those claimed by either party and protested by the other, the trial court adjudged protestant Sulpicio Gadon winner by eleven (11) votes over protestee, with a total of 627 votes as against 616 votes for the latter. Both parties appealed to the Court of Appeals, which in turn certified the appeal to us in view of the question of jurisdiction raised by the protestee, which question is the subject of the first two errors assigned by him.

APPEAL OF THE PROTESTEE

The challenge to the trial court's jurisdiction is primarily directed against the admission of the amended petition of protest on December 15, 1959—after the statutory period for filing a protest had expired. It is true that the amendment consisted of the inclusion of a precinct (3-A) not included in the original petition; but it is likewise true that the said precinct was then already within the jurisdiction and cognizance of the Court, being one of those made by the protestee the subject of this counter-protest. Such counter-protest, requiring as it did the opening of the ballot boxes for the precincts involved therein and the examination and recounting of the ballots they contained, threw all of those ballots open for the court's consideration and entitled the protestant! to claim all the valid ones in his favor and to object to those which were not valid for the protestee. (*Cecillo vs. Tomacruz*, 62 Phil. 689, 699-700).

There is a suggestion by the protestee that the original petition itself does not contain sufficient allegation of jurisdictional facts even with respect to the precincts (2-A and 4) referred to therein. The suggestion is without

basis, as paragraphs 7 and 8 clearly show. These two paragraphs state that fraud and irregularities were committed in the counting of votes in those two precincts and that if they were recounted the protestant would appear to have received more votes than the protestee. Such allegation is sufficient for jurisdictional purposes.

We now proceed to review the decision appealed from with reference to the ballots enumerated in the third, fourth, fifth and sixth errors assigned by the protestee as appellant.

THIRD ASSIGNMENT OF ERROR

I. Precinct No. 1

Exh. 3 was rejected below as invalid for the protestee on the ground that the family name "Gadon" (which is the family name of both the protestant and the protestee) is preceded only by the letter R, which is the middle initial of both. The ruling is erroneous, because the letter is not R at all but P, which stands for Pedro, the Christian name of the protestee.

Exh. 4, rejected below on the same ground, should likewise be considered valid and counted in favor of the protestee for the same reason.

II. Precinct No. 2

Exh. 4, a ballot for the protestee, was not counted by the trial court, which found that it was marked with the name "Pajo" written below the last line for councilors. We agree with the protestee that this circumstance does not necessarily reveal an intention to identify the ballots. Pajo was a candidate for Senator and the placement of his name might have been the result of mistake or inadvertence, rendering the vote a stray one for him but valid as far as the protestee is concerned.

Exh. ,18, discounted below, is valid for the protestee. The fact that some space for senators were not filled is of no significance; and the name "Eco Baranda" written on one of them (Eco was a candidate for Senator; Baranda for Provincial Board) does not by itself alone disclose a deliberate intention to mark the ballot.

Exh. 31, discounted below, is a clear vote for the protestee. The name written on the space for Mayor is clearly "P.R. Gardon" and not something else as held by the trial court.

III. Precinct No. 2-A

Exh. 2, a vote for the protestee, was rejected below on the ground that it contains impertinent expressions, to wit: "manoy," "mandoy" and "pare enoy" before the names voted for Vice-Governor, Mayor and one of the councilors, respectively. According to the protestee (and this explanation is not disputed) the prefixes referred to are colloquial expressions in Visayan which connote respect something equivalent to the Tagalog "ka" or the English "Mr." Exh. 2 is a valid vote for the protestee.

Exh. 7 was rejected below on the ground that it cannot be determined whether it is a vote for the protestant or the protestee. The name that is written, however, is very clearly P. R. Gadon, which can mean only Pedro R. Gadon, the protestee.

Exh. 9, rejected below, is valid for the protestee. The name written for mayor is Pedro Gadon, and the scrawl just before it, which seems to be an imperfect figure 8, may have been merely the result of the voter's inexperience in writing, as shown by the rest of the ballot.

Exh. 10 bears the name "Peton" for mayor. The lower court read this "Dedon" and so rejected it. We believe, however, that the first letter appears clearly enough to be the capital P, which stands for the name of the protestee,

the name following being good under the rule of idem sonans.

IV. Precinct No. 3

Exh. 3 is claimed by the protestee. This was adjudicated by the trial court in his favor, and consequently no error was committed by it.

Exh. 9 was held invalid below because the name "Gadon" on the space for Mayor is prefixed with "Dr. P.P.P." A close examination of the ballot reveals that the name "Dr. Antonio Mayuga" was written first on the same space. The voter, realizing his mistake because Dr. Mayuga was a candidate for Governor, erased it and then wrote the name "P. Gadon" instead, but the traces of the other name had not been thoroughly obliterated. Nevertheless the clear intention was to vote for the protestee, and hence this ballot should be counted in his favor.

Exh. 20 was rejected by the trial court on the ground that it is marked with the letter O.P. after the name "Jose Yap," one of those voted for councilors. There is no explanation for the presence of those letters, which are quite prominent and written with a remarkably good hand. The rejection is justified.

Exh. 23 was held invalid for the protestee. The ruling is erroneous. The name voted for Mayor is PR Gadon and not RR Gadon, as found by the court below.

Exh. 40 was correctly rejected by the trial court on the ground that the word "Daldo" written on the blank space opposite the printed word "councilors" has no reasonable explanation for its presence and is therefore impertinent and constitutes a distinguishing mark, the proper spaces for the councilors' positions being otherwise filled with the corresponding names of the candidates.

V. Precinct No. 3-A

Exh. 3, discounted by the court below as invalid for the protestee, is a good vote in his favor. The name that is written is not "C.R. Gadon," as found by the court but "P.R. Gadon."

Exhs. 6, 18, 23, 24 and 30 were held invalid by the trial court on the ground that some of the spaces for Senators were left blank. The ruling is clearly erroneous. The fact that the voter desist from filling all the spaces on the ballot does not necessarily betray an intention to identify his vote. These ballots are good for the protestee.

Exh. 21 was correctly rejected because of the letters "op" written after the name "Jose Yap" voted for as one of the councilors, in the same manner that those letters appear after the same name in Exh. 20, precinct No.3, supra.

VI. Precinct No. 4

Exh. 10, claimed by the protestee, was rejected by the trial court on the ground that the letter before "R. Gadon" on the space for Mayor may be read either as S, D. or A. We find, however, that it appears to be P and not anything else, and so the ballot should be counted in favor of the protestee.

Exh. 12, rejected below, is also good for the protestee inasmuch as the name written on the space for mayor appears to be "P.R. Gadon."

VII. Precinct No. 5.

Exh. 3. The name voted for Mayor is that of the protestee. The ballot was rejected by the trial court because the name "Gaac," a candidate for Vice-Mayor, appears on one of the spaces for Senators. This circumstance does not invalidate the ballot, but merely makes the vote for Gaac stray, since he was not a senatorial candidate. There is no clear showing, either by the face of the ballot itself or by evidence aliunde, that the misplacement was deliberate.

Exh. 7 was correctly rejected for being hopelessly illegible, particularly the name written on the space for Mayor.

Exh. 10 and 14, wherein the protestee appears voted for as Mayor, were held invalid by the trial court because some space were not filled by the voter. As in the case of other similar ballots already considered by us, these two ballots are good and should be counted.

Exh. 15 was correctly rejected on the ground that it bears an impertinent unnecessary and identifying expression below the last line for councilors, namely: "My vote is heartily dedicated."

Exh. 21, rejected because some spaces were left blank, should be counted for the protestee as in the case of Exhibits 10 and 14.

VIII. Precinct No. 5-A

Exh. 21 was rejected by the trial court on the ground that the capital letter written before the family name "Gadon" on the space for Mayor is R and not P. Our appreciation of this ballot is to the contrary. Although there is a short tail at the end of the terminal loop of the said letter, it is still easily discernible as a P, which stands for the Christian name of the protestee. This ballot should be counted in his favor.

Exh. 27, held invalid below on the ground that some spaces were not filled by the voter, should be counted for the protestee, whose name is clearly written on the proper space.

FOURTH ASSIGNMENT OF ERROR

Under this assignment of error the protestee as appellant questions the admission of 44 ballots for the protestant, wherein the latter's name is preceded by varying prefixes, such as "Manong," "Nong," "Ping," "Don," "Tio," or "Datu." We see no discernible pattern in the use of such prefixes which would reveal an intention to mark the ballots, and consequently they fall under the general rule enunciated in Section 149, rule 5, of the Revised Election Code.

Of the ballots enumerated under this assignment by the protestee as appellant, only one was incorrectly admitted. This is Exhibit II in precinct No. 3-A, where a big figure or letter O is written before the family name "Baranda" on the second space for members of the Provincial Board. The facts that said letter is not the correct first initial of the candidate voted for and that it appears to have been placed deliberately and after the name itself had been written, judging from its location outside the line and to the left of the numeral "2," reveal an intention of the voter to identify his ballot. This ballot should therefore be discounted from those received by the protestant.

FIFTH ASSIGNMENT OF ERROR

The protestee makes reference here to 13 ballots counted by the trial court as valid for the protestant, but which he maintains should be considered stray. Of these ballots only one was incorrectly admitted, namely, Exhibit O in precinct 5, where only the nickname "Sulping" is written on the space for Mayor. A nickname alone, unaccompanied by the name or surname of the candidate, is insufficient (Sec. 149, Rule 9 of the Revised Election Code).

SIXTH ASSIGNMENT OF ERROR

Three ballots are involved here: Exhibit Z in precinct 2, Exhibit XY-1 in precinct 3-A and Exhibit XY-2 in precinct 4.

In Exhibit Z the name voted for Mayor is "Payorcio Gadon." This was counted by the trial court for protestant

Sulpicio Gadon. Protestee Pedro Gadon claims it as his, and contends that at most the ballot should be considered stray. This last contention is well taken, since it is really difficult, and would be nothing but guesswork, to say which of the two parties is voted for.

Exhibit XY-1 was correctly considered by the trial court as a stray vote for either party, the name written on the space for Mayor being illegible.

Exhibit XY-2 was correctly considered as a valid vote for the protestants. The name thereon for Mayor is M.R.S. Gadon, which must have been intended as Mr. S. Gadon.

In resumé, as a result of the appeal of the protestee, twenty-five (25) votes should be credited to him which were held invalid by the trial court. These 25 votes, added the 616 counted by the said court in his favor, makes a total of 641 votes. On the other hand three (3) votes should be deducted from those adjudicated to the protestant in the decision appealed from (Exh. II, precinct 3-A; Exh. O, precinct 5; and Exh. Z, precinct 2).

APPEAL OF THE PROTESTANT

The protestant has assigned four errors in his appeal. The first assignment refers to the adjudication of 105 ballots cast for the protestee which the protestant contends are marked and therefore invalid. The alleged mark consists of the fact that in these ballots the names of A. Y. Mayuga and L. Romero, candidates for Governor and member of the Provincial Board, respectively, are prefixed with the title "Dr.," while the name of Zoilo Anastacio, a candidate for the office of councilor, is invariably written in full, in contrast to the other candidates for the same office whose family names only are written. The use of the prefix "Dr." to the names of Mayuga and Romero is justified, the first being a Doctor of Medicine and the second a Doctor of Dentistry. And it is not true, as alleged by the protestant, that in the ballots referred to only the name of Zoilo Anastacio is invariably written in full. In some of them there are names voted for councilors similarly written, while in others, where Mayuga and Romero are voted for with the prefix "Dr." only the family name "Anastacio" appears. We do not discern a pattern of voting for purposes of identifying the ballots, especially considering that those ballots are scattered in many different precincts. The so-called evidence aliunde presented by the protestant to prove the existence of such a pattern is weak and unconvincing, is contradicted by evidence for the protestee, and cannot overcome the intendment of validity that the law affords to every duly accomplished ballot. The disenfranchisement of electors is not to be declared except upon the strongest evidence of an intention to prostitute the purity of suffrage.

Under the second assignment of error, the protestant maintains that Exhibit 25 in precinct 5, a ballot cast for the protestee, is marked. The spaces for Senators, with the exception of the last, are blank; and on the last space the name "Gregorio" is written. Gregorio was a candidate for councilor, and his name is repeated on the first space for that office, all the other spaces being unfilled. We do not think this circumstance was intended to identify the ballot. The voter must have wanted to vote for Gregorio alone as councilor, but was not sure as to the proper place where to write his name, and so wrote it on a space for Senator as well as on one for councilor. The first may only be considered as stray, but does not invalidate the whole ballot.

The third assignment of error refers to six (6) ballots Exh. CC (precinct 5) and Exhs. L, O, S, T and U (precinct 5A). These ballots, which carry the name of the protestant, were declared invalid by the trial court on the ground that on each of them some spaces for Senators and some for councilors were not filled by the voters. As in similar cases we have already considered, the ruling is erroneous. A voter is under no obligation to vote for all the positions in the ballots, and his failure to do so does not constitute an identifying mark. These six ballots, therefore, are valid for the protestant.

The protestant's fourth assignment of error has to do with the question of the sufficiency of the allegations in his

protest with respect to the 105 ballots subject of the first assignment. Our resolution of the latter impliedly resolves the question presented.

Summarizing our conclusions in regard to the appeal of the protestant, we hold that six (6) ballots declared invalid by the trial court should be adjudicated to him. Added to the 627 votes credited to him in the decision appealed from, the total is 633, from which should be deducted the three (3) votes declared invalid as a result of the protestee's appeal, making a net total of 630 votes. This total is eleven (11) votes less than the 641 valid votes received by the protestee, *supra*.

In view of the foregoing, the judgment appealed from is reversed, and protestee Pedro Gadon is declared winner by 11 votes over protestant Sulpicio Gadon. With costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J.B.L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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