

SEMENIANO TRAJANO, PROTESTANT AND APPELLANT, VS. MATEO B. INCISO, PROTESTEE AND APPELLEE.

G.R. No. L-23895. February 16, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

In the election for Mayor of Lawa-an, Samar on November 12, 1963, candidate Mateo Inciso was proclaimed Mayor-elect by the Board of Canvassers. The results were declared as follows:

Mateo Inciso 974 votes

Semeniano Trajano 946 votes

Plurality 28 votes

A difference of twenty-eight votes out of a total of 1,920 votes cast for both political contenders was thus registered, per canvass, in Inciso's favor.

Trajano filed on November 27, 1963 an election protest in the Court of First Instance of Samar. Precincts 1, 2 and 11 were thereunder contested. Protestee Inciso subsequently filed an answer with counter-protest, but he later withdrew his counter-protest.

After trial, and appreciation of contested ballots, the Court of First Instance on June 27, 1964 rendered a decision finding protestee Inciso the winner, with 957 votes as against Trajano with 946 votes; or a difference of eleven (11) votes only.

Trajano appealed from said decision to this Court, directly, stating in his notice of appeal that he would raise only questions of law.

Appellant seeks to put in issue before Us fifty six (56) ballots, alleging errors in their appreciation below.

The first group consists of thirty-one (31) ballots, all of Precinct 11: Exhs. C-3, D-4, E-5, F-6, G-7, H-8, J-10, K-11, L-12, M-13, N-14, U-21, W-23, X-24, Y-25, AA-27, BB-28, CC-29, DD-30, EE-31, FF-32, HH-34, 11-35, JJ-36, KK-37, MM-39, NN-40, PP-42, QQ-43, RR-44, and SS-45. Said ballots each contain a vote for Inciso as Mayor, and were found valid by the lower court. Appellant contends they should all be rejected, as marked ballots, alleging that they consist of ballots filled by two persons before being deposited in the ballot box, and, thus, null and void under Rule 23 of Section 149 of the Revised Election Code.

The allowance or rejection of a ballot filled by more than one person depends on its condition before it was cast in the ballot box: If at the time it was cast it was filled only by one person, but thereafter it was tampered and entries were made thereon by other persons, the ballot is valid. If, on the other hand, it already bore the fillings of two or

more persons when cast, said ballot is deemed marked and thus void.

The presumption *juris tantum* is that a ballot found to be with the handwriting of two or more persons suffered this defect before it was cast.[*] It is only a presumption *juris tantum*, rebuttable by evidence. In the present case the court *a quo* found that sufficient evidence rebutted said presumption and thus ruled that the thirty-one ballots in question was tampered only after they had been cast. Said finding being of fact should not be unsettled herein.

And besides the evidence relied upon by the lower court is positively convincing, namely: (1) The ballot box, containing *inter alia* the thirty-one ballots, was cut open through and through at the portion corresponding to the Apartment for valid ballots; the envelopes for used and unused ballots were torn open on one side almost the entire length of said envelopes; (2) the Municipal Treasurer discovered on January 17, 1964 that a window in his office was destroyed; he noticed subsequently the afore-stated tampered ballot box; and, (3) the Chairman of the Board of Election Inspectors for Precinct 11, Genito Bodilla, testified that at the time he read the names of the candidates, the extraneous names or words alleged to be markings were not yet there, and that the ballot box was not yet cut when delivered to the Municipal Treasurer.

All the 31 ballots are therefore properly counted for protestee Inciso.

The second group of ballots—seven in all, under Precinct 11 also—consists of ballots purportedly with votes for Trajano as Mayor. These are: Exhs. P-16, Q-17, R-18, S-19, V-22, Z-26 and 00-41. Not counted by the Board of Canvassers, the same were urged by protestant Trajano to be considered by the trial court in his favor. The Court of First Instance, however, also declined to count said votes on the grounds that six of the ballots are totally void, each having been accomplished by two persons; and one ballot (Exh. Q-17) is indecipherable in its vote for Mayor. Appellant now contends otherwise.

Regarding these seven ballots, the parties agreed that what are written thereon were written before the ballots were cast. The dispute is on whether said writing, with respect to each ballot (except Exh. Q-17), consists of handwriting of one person or of two persons: if the former, they are valid; if the latter, void. And the dispute as to Exh. Q-17 is whether the vote therein for Mayor is decipherable for Trajano or not.

After viewing said ballots the court *a quo* arrived at the conclusion that the six ballots abovementioned were accomplished by two persons each and, therefore, void. As to Exh. Q-17, said court found the vote therein for Mayor to be indecipherable; no count for either. Aside from these findings' being factual in nature, we are convinced the record plainly discloses that each of Exhs. P-16, R-18, S-19, V-22, Z-26, and 00-41 indeed contains the handwritings of two persons. Specifically, these six ballots contain the name "Trajano" in the space for Mayor, but in a handwriting markedly different from the rest of the writing in the respective ballots. Furthermore, the name "Trajano" appears written in an identical way in at least four of these ballots: In Exhs. P-16, V-22, Z-26 and 00-41. All this points to the fact that, before they were cast, these ballots were each filled up by two distinct persons. As such, they are totally null and void (Rule 23, Sec. 149, Rev. Election Code). As to Exh. Q-17, the court *a quo* rightly considered the vote for Mayor therein as stray, the same being—as even an intense study of it will show—illegible (Rule 15, Sec. 149, Rev. Election Code).

The lower court therefore committed no error in considering these seven ballots.

Appellant lastly assails a group of eighteen ballots pertaining to Precincts 1 and 2, all of which were counted for protestee Inciso. It is contended here that these ballots are marked and thus should have been rejected.

Sub-grouping the above ballots we proceed to consider them as follows:

The first sub-group consists of five ballots allegedly Marked because written by two distinct persons before

casting. They are Exhs. WW-49, AAA-53, WWW-89 BBBB-94 and UUU-87. Referring to the first four of these appellant contends that they are marked because they are written partly in ordinary script and partly in block letters. After considering the evidence, the court concluded that said variation was merely for emphasis and not to identify the voter. No error was committed by said court in this respect. The rule was properly applied that unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, the use of two or more kinds of writing shall be considered innocent and shall not invalidate the ballot (Rule 18, Sec. 149, Rev. Election Code). In the present case, no showing of intent to identify could be discerned either from evidence aliunde or from a pattern in the variation of writing. And as to the last ballot under this first sub-group, Exh. UUU-87, this Court is not disposed to alter the finding of the court *quo* that the name Inciso and the name Camenforte therein written are of the same person's handwriting.

The second sub-group consists of eleven ballots allegedly defective because one person accomplished several ballots. Thus, appellant contends that Exhs. LLL, LLL-3, LLL-4, LLL-7, LLL-8, LLL-10 LLL-11 and LLL-12, are strikingly similar to other ballots rejected by the lower court as several ballots written by only one person, namely, LLL-1, LLL-2, LLL-5, LLL-6 and LLL-9. A check with the records will show that the aforesaid rejected ballots bear no striking likeness to those presently assailed ballots; neither are the assailed ballots similar to each other in writing. It cannot be said that the persons who filled the ballots now questioned had also filled any other ballot.

The same ballots—LLL, LLL-3 LLL-4, LLL-7 LLL-8, LLL-10, LLL-11 and LLL-12 are also questioned on the ground that Camenforte, a non-candidate, is voted there in for Councilor. Camenforte was then candidate for councilor in an adjoining municipality; and Lawa-an formerly was a part of his district in said mother municipality. The rule is settled that the writing of the name of a non-candidate for any office shall not invalidate the ballot in the absence of evidence aliunde—none herein—that said name was intended for purposes of identification (Rule 13, Sec. 149, Rev. Election Code; *Tajanlangit vs. Cazenias*, L-18894, June 30, 1962).

Also under the second sub-group are Exhs. RRR-84, SSS-85 and AAAA-93. Appellant contends that only one person wrote RRR-84 and SSS-85. The record does not support said contention; contrary to appellant's view the writings on RRR-84 do not look alike to those in SSS-85. And as to AAAA-93, a comparison thereof with LLL, LLL-1 to LLL-14 will yield no proof that AAAA-93 was written by the same person who wrote one or more of the latter.

These eleven ballots in the second sub-group are validly counted for protestee Inciso.

The third and final sub-group covers two ballots and involves the question of *idem sonans*. Appellant claims that Exh. XX-50 is marked because it contains the word "Peisva" in the space for Councilor, allegedly an impertinent remark intended for identification purposes. The court *quo* ruled the same to be *idem sonans* for Espina, a candidate for Councilor. And We see no reversible error in the latter view; the word in question appears to be "Peisna" rather than "Peisva", and, therefore, *idem sonans* for Espina.

Next and last comes Exh. XXX-90, which "M.NCSO" appears in the space for Mayor, which the court *quo* held to be *idem sonans* for Inciso. The same is indeed a clear instance of *idem sonans* for the name of the protestee.

Recapitulating, therefore, this Court finds no error by the court below in the appreciation of the fifty-six ballots Presented to Us by appellant.

Wherefore, the decision appealed from declaring protestee Inciso winner by 11 votes is hereby affirmed in toto, with costs against appellant. So ordered.

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

Judgment affirmed.

[*] Gutierrez vs. Reyes, L-13137, February 28, 1959.

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