

SILVESTRE DOMINGO, PETITIONER VS. FERNANDO RAMOS, RESPONDENT.

G.R. No. L-25490. July 27, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal by certiorari from a decision of the Court of Appeals in an election protest. Last June 3, this Court resolved to consider the case submitted for decision upon a manifestation by counsel for appellant that he was not going to file a reply brief.

In the mayoralty elections of Rosales, Pangasinan held on November 12, 1963, Fernando Ramos was proclaimed winner over Silvestre Domingo, his closest rival, by a majority of eleven (11) votes. The complete results of the official canvass is as follows:

1. Fernando Ramos
2,632
votes
2. Silvestre Domingo
2,621
"
3. Buenaventura Paray
1,210
"
4. Jeremías Seráfica
481
"

Silvestre Domingo filed a protest and the Court of First Instance of Pangasinan rendered judgment declaring him elected with 2,618 votes as against 2,603 votes credited to Fernando Ramos, or a plurality of fifteen (15) votes. Ramos appealed to the Court of Appeals.

The contending parties did not dispute before the Court of Appeals the number of votes obtained in the uncontested precincts as well as the number of uncontested ballots in the protested precincts which are as follows :

Protestant

Silvestre Domingo Protestee
Fernando Ramos

1. Uncontested precincts

1,363

votes

1. Uncontested precincts

1,474

votes

2. Uncontested ballots in protested precincts

1,229

votes

2. Uncontested ballots in protested precincts

1,112

votes

Total

2,592

Total

2,586

There were 31 questioned ballots for Domingo and 50 for Ramos. The Court of Appeals rejected 4 and counted 26 for Domingo out of his 31 questioned ballots. (One of his questioned ballots was not taken up for being also among the questioned ballots for Fernando Ramos.) On the other hand, out of the 50 questioned ballots for Ramos 6 were rejected and 44 were counted in his favor by the Court of Appeals. Fernando Ramos thus obtained a total of 2,630 votes, winning by a plurality of 12 votes over Silvestre Domingo, who obtained a total of 2,618 votes. As

a consequence, the Court of Appeals reversed the decision of the Court of First Instance of Pangasinan and declared Ramos the duly elected mayor. His motion for reconsideration having been denied, Domingo in turn brought this appeal to this Court, contending—

"I. THE COURT OF APPEALS ERRED IN ADMITTING AS VALID VOTES FOR FERNANDO RAMOS THE FOURTEEN (14) BALLOTS MARKED AS EXHIBITS D-5, PRECINCT 5; D-24, PRECINCT 25; D-28, PRECINCT 25; D-43, PRECINCT 44; D-45, PRECINCT 44; D-54, PRECINCT 44; D-55, PRECINCT 44; D-92, PRECINCT 24; D-94, PRECINCT 24; D-98, PRECINCT 24; D-156, PRECINCT 20; D-159, PRECINCT 34; D-199, PRECINCT 20; and D-270, PRECINCT 27; WHICH FOURTEEN (14) VOTES WERE ALL REJECTED BY THE TRIAL COURT AS VOTES FOR FERNANDO RAMOS;

"II. THE COURT OF APPEALS ERRED IN REJECTING THE BALLOT MARKED AS EXHIBIT R-67, PRECINCT No. 15; WHICH BALLOT WAS ADMITTED BY THE TRIAL COURT AS A VALID VOTE FOR SILVESTRE DOMINGO;

"III. THE COURT OF APPEALS ERRED IN ADMITTING AS VALID VOTES FOR FERNANDO RAMOS THE BALLOTS MARKED AS EXHIBITS D-30, PRECINCT 25; D-68, PRECINCT 9; D-91, PRECINCT 24; D-160, PRECINCT 34; D-198, PRECINCT 37; D-212, PRECINCT 32; and D-225, PRECINCT 14; and

"IV. THE COURT OF APPEALS ERRED IN NOT DECLARING SILVESTRE DOMINGO THE DULY ELECTED MAYOR OF THE MUNICIPALITY OF ROSALES, PANGASINAN, IN THE ELECTIONS OF NOVEMBER 12, 1963"

Domingo was satisfied with the findings of the Court of Appeals on his 30 questioned ballots (4 rejected and 26 admitted in his favor) except for one rejected ballot which is the subject matter of the second assignment of error. He claims that this vote is *idem sonans* for Domingo. The trial court admitted this as *idem sonans* for Domingo, but the Court of Appeals rejected it. (One of the ballots was not taken up for it is also among the questioned ballots for Ramos.)

Out of the 44 ballots admitted in favor of Ramos by the Court of Appeals, 21 are being questioned in this appeal by Domingo, 14 of which are those mentioned in the first assignment of error, while the other 7 are those mentioned in the third assignment of error.

In the 14 ballots mentioned in the first assignment of error "A. Ramos" is written on the space for mayor. Domingo objected to each and every one of these 14 votes on the ground that they are stray votes for Aurora Ramos an LP candidate for councilor on the same ticket as protestee Ramos. It is not disputed that Aurora Ramos was an LP candidate for municipal councilor in the November 12, 1963 elections in Rosales, Pangasinan. Protestee Ramos, on the other hand, invokes paragraphs (1) and (6) of Section 149 of the Revised Election Code which provide:

"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 on 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."

It is likewise contended that Aurora Ramos or "A. Ramos" was also voted in some, if not all, of these 14. ballots as councilor and that the letter "A" in "A. Ramos" stands for Ramos' nickname, "Ando," which is a contraction of his Christian name "Fernando".

The following are the fourteen (14) questioned ballots referred to in the first assignment of error.

1. Exhibit D-5, Precinct 5. On the space for mayor, what is written is "A. Ramos." On the first space for councilors is also written "A. Ramos". In this particular ballot there is only one name, to wit, that of Vice-Mayor candidate L. Sanchez, which is written between the name "A. Ramos" for mayor and the name "A. Ramos" on the first space for councilors.
2. Exhibit D-24, Precinct 25.—On the space for mayor, what appears to be written is "A. Ranac." All the spaces for councilors were left vacant.
3. Exhibit D-28, Precinct 25.—For mayor the person voted for is "A. Ramos." On the first line for councilors, the person voted for is "A. Ramos." On the space for Vice Mayor is written "A. Fernandez."
4. Exhibit D-43, Precinct 44—For mayor the person voted for is "A. Ramos." On the first line for councilors, the person voted for is "A. Ramos." In between these or on the space for Vice Mayor is written "L. Sanchez."
5. Exhibit D-45, Precinct 44—For mayor the person voted for is "A. Ramos." On the first line for councilors, the person voted for is "A. Ramos." On the space for Vice Mayor is written "L. Sanchez."
6. Exhibit D-54, Precinct 44.—On the space for Mayor is written "A. Ramos." The name of Aurora Ramos does not appear on the spaces for councilors.
7. Exhibit D-55, Precinct 44.—On the space for Mayor is written "A. Ramos." Aurora Ramos does not appear to have been voted for as councilor.
8. Exhibit D-92, Precinct 24.—On the space for Mayor is written "A. Ramos." Aurora Ramos does not appear to have been voted for as councilor.
9. Exhibit D-94, Precinct 24.—On the space for Mayor is written "A. Ramos." Aurora Ramos does not appear to have been voted for as councilor.
10. Exhibit D-98, Precinct 20.—On the space for Mayor is written "A. Ramos." On line 6 for councilors "A. Ramos" is written.
11. Exhibit D-156, Precinct 20—For mayor the person voted for is "A. Ramos." On the first line for councilors, the person voted for is "A. Ramos." In-between these or on the space for Vice-Mayor is written "L. Sanchez."
12. Exhibit D-159, Precinct 34.—For Mayor, the person voted is "A. Ramos." The spaces for councilor were all left blank.
13. Exhibit D-199, Precinct 20.—On the space for Mayor is written "A. Ramos." On the first line for councilors, the person voted for is "A. Ramos." In-between these or on the space for Vice-Mayor is written "Sanchez."
14. Exhibit D-270, Precinct 27.—On the space for Mayor is written "A. Ramos." Aurora Ramos does not appear to have been voted for as councilor.

In the case of Calo vs. Court of Appeals, G. R. No. L-21256, September 30, 1963, where the name written on the space for mayor was "D. O. Plaza" and in others "D. Plaza," and one of the candidates for Governor of the Province of Agusan was Democrito O. Plaza, this Court, in rejecting¹ the votes as stray votes for mayoralty candidate Casiano G. Plaza held:

"1. Exhibits 19-c, 56-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 are not in point. Paragraph (1) refers to the case when only the Christian name, or 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 with 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.

"2. 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".

The Court of Appeals gave the following reasons for the following the ruling of the Calo case in appreciating the 14 questioned ballots:

1. On some of these ballots there is only one name ("L. Sanchez" candidate for vice-mayor) written between the name "A. Ramos" for mayor and the name "A. Ramos" on line one for councilor, thus showing that the voter could not have confused one with the other especially where, as in this case, all the names voted for are clearly written. There can be no confusion because "Aurora" (female) cannot be mistaken for "Fernando" (male). The Court of Appeals concluded that the person who filled this ballot had in mind for mayor Ramos a person other than the one voted for councilor.

But as held in Calo vs. Court of Appeals, supra, that having written the same name on 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.

2. Section 149 (2), Revised Election Code (rule on idem sonans) appears to be applicable.

This applies, however, only to cases of misspelling the name or surname or both of the candidate.

3. Section 149(1) and (6), Revised Election Code (rules on surname and name and erroneous initial or initials of names and surnames following correct names or surnames) are applicable in this case. This point appears contrary to the Calo case.

4. The letter "A" in "A. Ramos" stands for the word "Ando" which is the logical and common contraction of the name "Fernando."

It is to be noted, however, that the law speaks of initial of a name or surname but not of a nickname. As a matter of fact, certificates of candidacy cannot contain nicknames of candidates (Section 34, Revised Election Code).

5. The Court of Appeals likewise ruled that if the letter "A" were stricken off the surname "Ramos" would be sufficient to validate the vote in favor of Ramos.

We cannot, however, strike off a given fact and change a vote cast in favor of "A. Ramos".

6. The Calo case will not apply because what appears on the spaces for mayor and governor was "D. O. Plaza" and not Casiano G. Plaza. It is clear that "D. O. Plaza" stands for Democrito O. Plaza, the candidate for Governor.

The Court of Appeals appears to have considered the correct initials of the name and middle surname of Democrito O. Plaza as different from the case at bar, there being no middle initial in "A. Ramos". But it overlooked the fact that in the Calo case, in some ballots only "D. Plaza" appeared on the space for mayor and these were rejected by this Court for the same reasons in rejecting the ballots with "D. O. Plaza."

Following the Calo case, therefore, the 14 votes counted by the Court of Appeals in favor of protestee Fernando

Ramos should be deducted from the 2,630 votes counted in his favor, thereby leaving a balance of 2,616 votes. The result is that protestant Silvestre Domingo has a plurality of two (2) votes over protestee Fernando Ramos.

We deem it unnecessary to consider the other assignments of errors in view of the result reached in this case.

Wherefore, the decision of the Court of Appeals is reversed and another one is entered declaring protestant Silvestre Domingo as the duly elected mayor of Sosaes, Pangasinan.

Concepción, C. J., Reyes, J. B. L., Barrera, Dizon, Makalintal, Sanchez and Ruiz Castro, JJ., concur.

Decision reversed.

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