

**JOSE E. GARCIA, PETITIONER, VS. THE COURT OF APPEALS AND
ARMANDO JOSON, RESPONDENTS.***G.R. No. L-31775. December 28, 1970*

Ponente: ZALDIVAR, J.

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In connection with the general elections held on November 14, 1967, in the municipality of Mallig, province of Isabela, the municipal board of canvassers of said municipality certified that the votes obtained by the candidates for the office of municipal mayor were as follows:

Jose E. Garcia.....	679 votes
Armando Joson	678 votes
Jesus Baniguid.....	588 votes
Eduardo Siababa	568

Accordingly, the municipal board of canvassers proclaimed Jose E. Garcia the elected municipal mayor, with a plurality of one vote over Armando Joson who obtained the next, highest number of votes.

In due time Armando Joson filed in the Court of First Instance of Isabela a protest against the election of Jose E. Garcia. Likewise, in due time protestee Garcia filed an answer to the protest, and a counter-protest. A protest in intervention was filed by the, third candidate, Jesus Baniguid Joson in his protest, Garcia in his counter-protest, and Baniguid in his protest in intervention, as the case may be, alleged the commission of frauds, coercions and irregularities in specified precincts in the municipality of Mallig, and each impugned the validity of specified number of ballots that were cast in favor of each other. After appropriate proceedings in accordance with law, the Court of First Instance of Isabela, on January 23, 1969, rendered a decision declaring protestant Armando Joson the elected municipal mayor of Mallig, Isabela, crediting him with 678 votes, as against protestee Jose E. Garcia who was credited with 663 votes, or a margin of 15 votes. Intervenor Jose Baniguid was credited with 581 votes. Protestee Jose E. Garcia appealed from the decision of the Court of First Instance of Isabela to the Court of Appeals.

On December 10, 1969, the Special Second Division of the Court of Appeals promulgated a decision affirming the decision of the lower court which declared protestant Armando Joson the elected municipal mayor of Mallig, Isabela. The Court of Appeals, however, declared that Joson had won over Garcia by a margin of only five votes, instead of fifteen votes as declared by the lower court.

In due time, protestee Garcia filed before this Court a petition for certiorari to review the decision of the Court of Appeals. This Court gave due course to, the petition.

Before this Court appellant Garcia assigns five errors which, he alleges, had been committed by the Court of Appeals in deciding the case against him. Likewise, appellee Joson assigns three errors which, he claims, had

been committed by the Court of Appeals, and maintains that he should be declared winner by a margin of more than five votes over appellant Garcia.

The errors assigned by Garcia involve twenty (20) ballots, and the errors assigned by Joson involve six (6) ballots. All these questioned ballots are properly marked as exhibits and have been carefully examined by this Court. The only question raised by both parties in the appeal before this Court relates, to the appreciation of ballots.

We shall first consider the ballots involved in the errors assigned by appellant Garcia.

1. Exhibits 40, 53 and 67. The trial court, as well as the Court of Appeals, ruled that these ballots are valid ballots for Joson. Garcia contends that the Court of Appeals erred in declaring these three ballots valid. Garcia impugns these ballots as marked.

It is claimed that ballot Exhibit 40 is a marked ballot -- the alleged mark being the word "Siababa" written on lines 7 and 8 for senators; that ballot Exhibit 53 is also a marked ballot -- the alleged mark being the word "Cibaba" written on line 8 for councilors; and that ballot Exhibit 67 is likewise a marked ballot -- the alleged mark being the word "Sarangaya" written on the first line for senator, no candidate for senator having been voted on the seven other lines for senator.

The record shows that there was a candidate for mayor whose surname is "Siababa", and that there was a candidate for member of the provincial board whose surname is "Sarangaya".

Garcia maintains that these three ballots should be declared invalid because, in the memorandum filed by the counsel for Joson in the trial court, the counsel admitted that these three ballots are marked. We find that counsel for Joson really stated in his memorandum that these three ballots are marked, but the admission of counsel for Joson that these three ballots are marked was done in order that he would be consistent with his objections to the ballots of Garcia which were found to be marked in a manner more or less similar to the three ballots in question. These three ballots are impugned as marked because it appears on each of these ballots that the name of a candidate is written on the line corresponding to the office for which he was not a candidate. Thus, in ballot Exhibit 40 the word "Siababa", which is the surname of a candidate for mayor is written on lines 7 and 8 for senator; in ballot Exhibit 53 the word 'Cibaba' (idem sonans of Siababa) is written on line 8 for councilor; and in ballot Exhibit 67 the word "Sarangaya", which is the surname of a candidate for member of the provincial board, is written on the first line for senator. We find that there are ballots where Garcia is voted for mayor and are objected to by Joson also on the ground that a candidate's name, or the name of a person, is written on the line corresponding to an office for which he was not a candidate.

The trial court disregarded the admission of Joson 1 that these three ballots (Exhibits 40, 53 and 67) are marked and declared them valid. The trial court likewise declared valid those ballots of Garcia where alleged marks similar to those claimed to be found on the three ballots in question also appear. Thus, in declaring valid these three ballots of Joson (Exhibits 40, 53 and 67), the trial court made reference to its ruling which declared valid the ballots of Garcia (Exhibits AA, BB, KKK, XXXX, UUU, VVV, and WWW), which were objected to on practically the same grounds as the objections to these three ballots in question.[1]

It is Our view that the trial court had acted correctly when it disregarded the admission of counsel for Joson that these three ballots in question are marked ballots and ruled on them on the basis of what appear on the faces of those ballots, in the same manner that it had ruled on other ballots that were similarly objected to; and the Court of Appeals did not commit any error when it likewise disregarded the contention of Garcia that these three ballots should be declared invalid because counsel for Joson had admitted that these ballots are marked. We agree with

the observations of the Court of Appeals regarding these three ballots, as follows:

"Ballots Exhibits 40 53 67 Precincts 9, 10 and 13, respectively. They were objected to by, protestee as marked ballots because in each a candidate was voted for the wrong office. Sia-baba, candidate for reelection as mayor, was voted for senator and, councilor, respectively, in Exhibits 40 and 53, while Sarangaya, a candi-date for provincial board member was voted for senator in Exhibit 67. Protestee contends that, since protestant, in his memorandum, agreed to their rejection for being marked ballots, the trial court erred in still counting them for the latter and considering as merely stray the votes therein for Sarangaya and Siababa. The trial court is not bound by protestant's conformity to the rejection of the ballots; it can, under the authorities heretofore cited, motu proprio examine and determine the legality of all the ballots in the con-tested precincts. It may not be amiss to state that several ballots wherein protestee eas voted for butttestant on the same ground i.e. candidates were voted for the wrong office were counted below in his favor. Exhibits 40, 53 and 67 are good for protestant."[2]

It is a settled doctrine that an election protest involves public interest.[3] So in an election protest the determination of whether a ballot is valid or invalid should be left exclusively to the court or electoral tribunal taking cognizance of the election case, either during the trial or on appeal, as the case may be. To sanction the idea that the court or electoral tribunal is duty bound to accept the admission of a party in an election case regarding the validity or invalidity of a ballot or ballots, involved in the case, would be to leave to the parties, or to their counsel, the determination of the result of the election. The practice would open the door to collusions or compromises which could affect the decision of the election case -- and the decision may not reflect the true expression of the will of the electorate. Matters involving the public interest should not be the subject of compromises, or decided on the basis of admis-sions or concessions by private parties whose interests are only secondary to those of the public. The law provides that upon the petition of any interested party, or motu proprio if the interest of justice so requires, the court should order the production before it of the ballot boxes and all election documents relevant to the-election case, and examine and rule on all the ballots and the documents presented before it, with a view to determine the true result of the election. The law imposes upon the court (or electoral tribunal) the imperative duty to ascertain by all means who is the real candidate elected by the elec-torate.[4] Once a ballot is properly brought before the court (or electoral tribunal) for adjudication, the court or tribunal should decide on the validity or invalidity of the ballot on the basis of what appear on the face of the ballots.[5] In the case of *Manalo vs. Sevilla*[6] this Court held:

"x x x. The public has an interest in an election and as to who is elected. Its rights cannot be affected by the concessions of private individuals. The law provides the only way in which the election of a per-son can be proved. No concession among con-testants for an office will be permitted to circumvent that provision. x x x."

The three ballots in question, therefore, should be appreciated, or ruled upon, on the basis of what appear on the face of these ballots regardless of the admission of the counsel for Joson -- that admission, as We have adverted to, having been made only so he would be consis-tent with his objections to the ballots of Garcia which appear to bear marks or defects similar to the ones appear-ing on these three ballots.

Upon examination by this Court of these three ballots, Exhibits 40, 53 and 67, We find that ballot Exhibit 40 should be declared invalid for being marked. We find that the word "Siababa" is written twice on this ballot (lines 7 and 8 for senator) in such a manner as to indicate the the intention of the voter to identify his ballot. The words "Siababa" are so written twice toward the right side of the ballot such that they are more or less isolated as to catch the eye and serve as a distinguish-ing mark of the ballot. In the case of *Tajanlangit vs. Cazeñas*[7], this Court ruled:

"A ballot should be rejected where the manner in which the candidate's name is written gives the impression of an intention to mark or identify the ballot (*Villavert vs. Lim*, 62 Phil. 178)."

In ballot Exhibit 53 the word "Cibaba" (idem sonans with "Siababa") written on the 8th line for councilor simply gives rise to a stray vote for candidate Eduardo Siababa for mayor, but does not constitute a mark that Would render the ballot invalid.[8]

Likewise, in ballot Exhibit 67, the word "Sarangaya" written on the first line for senator simply gives rise to a stray vote for Gaudencio Sarangaya who was a candidate for member of the provincial board, but does not constitute a mark that would render the ballot invalid.[9]

2. Exhibits EE, FF, II and FFF:

The trial court declared all these four ballots in-valid. The three members of the special second division of the Court of Appeals, however, were not unanimous in their ruling on these four ballots[10], and so, these ballots remained invalid as ruled by the trial court. Garcia contends that the Court of Appeals erred in not unanimously holding that these four ballots are valid.

In ballot Exhibit EE the words "JOE GARCIA, JOE GARCIA" are written on the line for mayor. All the names voted on this ballot are well written in capital letters. The trial court rejected this ballot as marked because of the writing of "JOE GARCIA" two times on the same line. We agree with the trial court that this is a marked ballot and should be rejected. Judging from the form of the hand-writing on this ballot the person who prepared this ballot is intelligent and is a good writer. Where the name of a candidate is written twice on the same space in the ballot by one who apparently is an intelligent voter and a good writer the intent to mark the ballot is manifest. In the case of Sarmiento vs. Quemado, G. R. No. L-18027, June 29, 1962,[11] this Court made the following ruling:

"4. The lower court nullified Exhibits S-10 and S-12, in both of which the vote for mayor is 'J. Nietes Nietes', as marked ballots. The person who prepared these ballots -- unlike those who prepared Exhibits Q-57, Q-58 and Q-52 -- appear to be well educated, judging from their good penmanship. They could have had no possible reasons to write 'Nietes' twice, except to mark their respective ballots."

In ballot Exhibit FF, the words "Joe Garcia, Joe Garcia" are written on the line for mayor. Judging from the form of the handwriting on this ballot, the voter who prepared this ballot was an intelligent person and a good writer. For the same reason that We have declared ballot Exhibit EE as marked, in the preceding paragraph, We also declare this ballot Exhibit FF as marked and, therefore, invalid.

In ballot Exhibit II the words "never mind my dear" are written on line 6 for councilor, and the words "the other" are written on line 7, such that all the words read "Never mind my dear the other." The trial court considered the words as irrelevant and constitute a mark on the ballot. The majority of this Court is of the view that these words simply indicate the desistance of the voter from voting for the other candidates for councilor, after writing names on the first three lines. We declare this ballot valid.

In Exhibit FFF the words "Gaon Walter Enheyero Ti Bombe concejal can" are written on the first line for councilor. The words "Enheyero Ti Bombe concejal can" are definitely irrelevant and constitute a mark on this ballot. Judging from the handwriting on this ballot, the voter who prepared this ballot is intelligent and writes well. He filled all the lines with complete names of candidates, some even with middle initials. The voter evidently intended the superfluous words to mark the ballot. We declare this ballot invalid.

3. Exhibits GGG, RRRR, TTTT, DDDDD, GGGGG

The trial court and the Court of Appeals declared these five ballots invalid.

Garcia contends that the Court of Appeals erred in holding that these five ballots are marked.

In ballot Exhibit GGG the words "Penong Samsam" are written on line 8 for senator. The word "Samsam",

accord-ing to the trial court, is an indecent and insulting Ilo-cano word meaning "grabber". Both the trial court and the Court of Appeals consider the words "Penong Samsam" as irrelevant and constitute a distinguishing mark. We agree with the Court of Appeals when it made the following observation regarding this ballot:

“And considering that the owner of the ballot voted for the other seven senators with their corresponding names, the writing of a nickname with an indecent word fairly shows an intent to identify the ballot.”

Exhibit RRRR was declared invalid by the courts below for being marked. The mark on this ballot consists in the writing of the letter O on line 7 for senators, letters K, Q, S (or 8), L, G, M and K, and H Myo res-pectively on lines 1, 2, 3, 4, 5, 6, 7 and 8 for coun-cilors. This Court agrees with the trial court and the Court of Appeals that this is a marked ballot. It is very apparent that the voter wrote those letters on those lines for no other purpose than to make his ballot easily dis-tinguishable from other ballots. The voter wrote the names of candidates for senator from lines 1 to 6 for senators, and also the names of the persons whom he voted for mayor and vice-mayor on their respective lines. This circumstance indicates that the voter could write com-plete names if he chose to, and when he simply wrote one Capital letter on each of the other lines he could have no other purpose but that of placing a distinguish-ing mark on his ballot.

In ballot Exhibit TTTT the word "yes" is written three times successively on lines 1, 2 and 3 for members of the Provincial Board. The majority of this Court is of the view that the words "yes" were mistakenly written by the voter on the lines for members of the provincial board as answers to the questions in connection with the plebiscite regarding the amendments to the Constitution, and do not constitute marks on this ballot. We declare this ballot valid.

In ballot Exhibit DDDDD the Words "Mabohay Garcia" are written below the last line for councilor and on the heavy horizontal line indicating the lower edge of the ballot. On this ballot the name Garcia is already voted for mayor and that all the spaces for councilor had been filled with the names of persons voted for councilor. It is very apparent that these irrelevant words "Mabohay Garcia", written as they are at the bottom part of the ballot, were intended to mark this ballot. We agree with the trial court and the Court of Appeals that this ballot is marked and, therefore, invalid.

In ballot Exhibit GGGG the word "Bayauac" is written on line 8 for senators. It is not shown that the word "Bayauac" is the surname of any candidate. In the pro-vince of Isabela the word "Bayauac" refers to a big lizard. On this ballot the voter had properly voted for seven candidates for senator. The word "Bayauac" is definitely irrelevant and it serves as a distinguishing mark of the ballot. The voter who prepared this ballot is intelligent and writes well, and he even corrected the names of can-didates that he erroneously wrote on the wrong lines. We agree with the trial court and the Court of Appeals that this ballot is invalid and should be rejected.

4. Exhibits DD and 1

Ballots Exhibits DD and 1 were declared invalid by both the trial court and the Court of Appeals upon the ground that the word "Joe" written on the line for mayor in these, ballots is a nickname which is not accompanied by the Christian name or surname of the candidate. The trial court declared that the word "Joe" is the nickname of Garcia, and the Court of Appeals adopted this finding of the trial court in ruling that these ballots are invalid. It stands, therefore, that both the trial court and the Court of Appeals had made a finding that the word "Joe" is the nickname of Garcia. This is a finding of fact which which this Court will not disturb, and We are only called upon to determine if the appreciation of the ballots by the Court of Appeals, apart from the evidence, is in accordance with law and the-decisions of this Court.[12] It is provided in paragraph 9 of Section 149 of the Revised Election Code, and reiterated in recent decisions of this Court, that for a nickname to be counted in favor of a candidate it must be accompanied by his correct Christian name or his surname. The Court of Appeals did not err in not

counting these two ballots for Garcia.12-A

5. Exhibits 14, 24, 34 35 and 36

In these five ballots, Exhibits 14, 24, 34, 35 and 36, Joson is voted for mayor. Both the trial court and the Court of Appeals ruled that these five ballots are valid. Garcia contends that the Court of Appeals erred in not declaring these ballots marked.

In ballot Exhibit 14 there are written on lines 6, 7 and 8 for senators, respectively, the names "Salapay G. Mabute", "Lognag D. Orgame" and "Obispo G. Seguancia". These three names are not the names of candidates for any office. We consider this ballot marked because of the writing of these three names of non-candidates. The trial court as well as the Court of Appeals erred in declaring this ballot valid.

In ballot Exhibit 24 the word "Yiba" is written opposite (or after) the names voted for provincial governor, for mayor, for vice-mayor and for councilor on the first line for councilor. The word "Yiba" is not the name of any candidate for senator nor of any candidate for a provincial office in the province of Isabela, nor of any candidate for a municipal office in the municipality of Mallig, in the elections of November 14, 1967. The word "Yeba" is a slogan coined by Mayor Antonio Villegas of the City of Manila. We believe that the voter who prepared this ballot had no other purpose in writing the word "Yiba" opposite the names of four candidates whom he had voted than to place a distinguishing mark on his ballot. We declare this ballot invalid.

Ballots Exhibits 34, 35 and 36 are objected to by Garcia upon the ground that they are marked ballots, the mark consisting in the word "Laurel" written on the first line for councilor in each of these three ballots. One of the candidates for senator during the elections of November 14, 1967 was Salvador Laurel. There are three ballots, Exhibits UUU, VVV and WWW, of Garcia that the word Laurel is also written on the first line for councilors, and these ballots were declared valid ballots for Garcia. While it is true that these three ballots, Exhibits UUU, VVV and are not questioned in the present appeal, We cannot close our eyes to the existence of these three ballots which are similarly situated as the three ballots (Exhibits 34, 35 and 36) that are now in question. We, therefore, declare that the writing of the name of candidate laurel for senator on the first line for councilor in each of these six ballots (Exhs. 34, 35, 36, UUU VVV and WWW) simply gives rise to a stray vote for candidate Laurel but does not invalidate the ballot. We hold that both the trial court and the Court of Appeals did not err in declaring the three ballots, Exhibits 34, 35 and 36, valid.

We now come to the ballots that are involved in the errors assigned by Joson.

6. Exhibits GG LL and LLB.

These three ballots were declared invalid by the trial court, but were declared valid by the Court of Appeals.

In ballot Exhibit GG the words "G. Sarangay Garcia" are written on the line for mayor. There was a candidate for member of the Provincial Board by the name of Gaudencio Sarangaya. It is very apparent that "G. Sarangay" stands for the name of candidate Caudencio Sarangaya. We have here a case of two persons who are candidates who are voted for an office for which the law authorizes the election of only one person. Section 149, paragraph 11, of the Revised Election Code, provides as follows:

"11. Where there are two or more candidates voted for an office for which the law authorizes the election of only one person, the ballot shall not be counted in favor of any of them, but this shall not affect the validity of the other votes contained therein."

Inasmuch as on the line for mayor in this ballot (Exhibit GG) both Sarangaya and Garcia are voted, this ballot shall not be counted as a vote in favor of neither Sarangaya nor Garcia for the office of municipal mayor. It should

be noted that in this ballot Sarangaya is not voted for member of the provincial board -- the office for which he was a candidate. There is reason for the belief that the voter intended to vote Sarangaya also for mayor in this ballot. If the purpose of the voter was not to vote for Sarangaya for mayor, then his purpose when he wrote "G. Sarangay" before the name Garcia could be no other than to mark his ballot, in which case this, ballot should be declared invalid for being marked.

We agree with the contention of Joson that it is not clearly shown in this ballot that his opponent Garcia is the one voted for the office of municipal mayor.

In the case of Coscolluela vs. Gaston, 63 Phil. 41, 67, 68, this Court made the following rulings:

"4. Ballot Gaston Exhibit 5775. In this ballot Emilio Rodriguez and Emilio Gaston were voted for governor. The same should not have been counted in favor of either of the two candidates voted for the said office (Cailles vs. Gomez and Barbaza, supra and other cases).

x x x x

"In ballot Exhibit 2562 the vote for governor is cast in favor of 'emetio gaston gatuslao'. Neither should this vote be adjudicated to the protestee, because it does not appear that his surname is Gaston Gatuslao, and because there is a candidate for member of the provincial board named Valeriano Gatuslao." [13].

And so, "G. Sarangay Garcia" in the ballot now in question, like "emetio gaston gatuslao" (Emilio Gaston Gatuslao) in the foregoing citation which could not be counted as a vote for candidate Emilio Gaston for governor because Gatuslao (a candidate for member of the provincial board) was also voted for governor, should not be counted as a vote for mayor for Garcia.

The Court of Appeals erred in declaring this ballot, Exhibit GG, valid for Garcia.

In ballot Exhibit LL the word "Senators" is written after the printed word "Senators", and the word "Members" is written after the printed words "Members of the Provincial Board". Joson maintains that these words "Senators" and "Members" constitute distinguishing marks on this ballot. We do not agree. In the absence of evidence that the words "Senators" and "Members" were written on this ballot to serve as distinguishing marks, We hold that these words do not constitute marks that would render this ballot invalid. We are of the view that the voter simply, wanted to manifest clearly his intention to vote for the candidates for senators and members of the Provincial Board because the word "Senators" appears written above the names voted for senators and the word "Members" appears written above the names of the candidates voted for members of the Provincial Board. The Court of Appeals had correctly declared this ballot valid.

In ballot Exhibit LLL the words "Gacia Orzami" are written on the line for vice-mayor. Joson contends that these words constitute a distinguishing mark on this ballot. We do not agree. There was a candidate for vice-mayor whose surname is Orzami. In this ballot the word "Gacia" is also written on the line for mayor, indicating that the voter had voted for Garcia as mayor. The record shows that Garcia and Orzami were teammates -- the former for mayor and the latter for vice-mayor. It could be that when the voter wrote "Gacia Orzami" on the line for vice-mayor he simply committed an honest mistake. There is no evidence that the writing of the words "Garcia Ozzami" was deliberately done by the voter in order to identify his ballot. The Court of Appeals had correctly declared this ballot valid.

7. Exhibit QQQQ

This ballot, Exhibit QQQQ, is the lower half of a torn ballot -- that part of the ballot from line 8 for senators downward. The upper portion is missing. On the line for mayor of this torn ballot the word "Garcia" is clearly

written. Joson contends that the Court of Appeals erred in declaring this ballot valid for Garcia because it is torn, without its upper portion. There is no showing in the record how this ballot became torn. Neither is this ballot marked as spoiled ballot. In declaring this ballot valid the Court of Appeals made the following observation:

"Exhibit QQQQ is only the lower half of the ballot containing the spaces of provincial governor down to the councilors. It was invalidated (by the trial court) because 'to the mind of the court, it was spoiled by the voter, but was inadvertently deposited by the Board of Election Inspect-ors inside the compartment for valid ballots.' As per minutes of voting in this precinct there were 188 valid ballots. The sum of the votes garnered by each of the four can-didates for mayor, as counted by the commis-sioners, plus one stray ballot, is 188; the number of votes of protestee including the 'lower half of one (1) cut ballot'. (Com-missioner's Report, pp. 21-22.). The minutes of voting as summarized in the report con-tained nothing about spoiled ballot or a half ballot. It must therefore be presumed, in the absence of evidence to the contrary, that when the ballots were read and counted by the board of inspectors all were intact or that none was cut in half. Rule 21 of Section 149 provides that the accidental tearing or per-foration of a ballot does not annul it." [14]

We hold that the Court of Appeals had correctly dec-lared this ballot valid.

8. Exhibits 27 and 52

The trial court declared these two ballots valid but the Court of Appeals declared them invalid. Joson contends that the Court of Appeals erred in declaring these ballots invalid.

In ballot Exhibit 27 the word "kentisiac" is writ-ten diagonally downward from line 5 to line 7 for coun-cilors. The word "kentisiac", in Isabela, means "and me also". We consider the word "kentisiac" as irrelevant and constitutes a distinguishing mark. The Court of Ap-peals had correctly declared this ballot invalid.

In ballot Exhibit 52, "L. Egna cio" is written on the line for governor and "Pin pin" is written on the line for vice-governor. The syllable "cio" is written far to the right after the syllable "Egna"; and the syl-lable "pin" is likewise written far to the right after 'the syllable "Pin". There was a candidate for governor whose name is L. Ignacio, and there was a candidate for vice-governor whose surname is Pinpin. The peculiar manner that the voter had written the names of these two candidates on the ballot clearly indicates an intention on the part of the voter to place something that would easily, distinguish his ballot from other ballots. Judging from the handwriting on the face of this ballot, it is easily concluded that the voter is intelligent and a good writer. When he wrote the names Ignacio and Pinpin on this ballot in the manner as they now appear the conclusion is inescapable that he meant to place a distinguishing mark on his ballot. The Court of Appeals had correctly reject-ed this ballot.[15]

In resume, in this appeal, protestant Joson loses three (3) votes (Exhibits 40, 14, and 24), while protestee Garcia gains two (2) votes (Exhibits II and TTTT) but loses one (1) vote (Exhibit GG). The Court of Appeals credited Joson with 673 votes, and if we, deduct the three votes that Joson loses in the present appeal, it results that Joson has 670 valid votes. On the other hand, the Court of Appeals credited protestee Garcia with 668 votes. In-asmuch as in the present appeal Garcia gains two votes and loses one vote, it results that Garcia has 669 valid votes. It follows, therefore, that Joson should be credited with 670 votes and Garcia with 669 votes, or a difference of one (1) vote in favor of Joson.

WHEREFORE, with the modification that protestant-ap-pellee Joson be declared winner by a margin of one (1) vote over protestee-appellant Garcia, the decision of the Court of Appeals is affirmed. This Court hereby, declares protestant-appellee Armando Joson the duly elected muni-cipal mayor of Mallig, Isabela in the elections of Novem-ber 14, 1967. Costs should be paid by protestee-appel-lant Jose E. Garcia.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur. Teehankee, J., adds qualifying remarks in a separate concurrence.

[1] See pages 37-A, 45-A and 52-A of the decision of the Court of First Instance of Isabela, which is Appendix "A" of the brief for protestee-appellant in the Court of Appeals, attached to the record.

[2] Underscoring supplied. See decision of the Court of Appeals, Annex "A" of the petition (printed) for certiorari, page 55 thereof.

[3] *Gardiner vs. Romulo*, 26 Phil. 521; *Galang vs. Miran-da*, 35 Phil. 269; *Macasunding vs. Macalangan*, G. R. No. L-22779, March 31, 1965, 13 SCRA 577; *Cauton vs. Commission on Elections*, G. R. No. L-25467, April 27, 1967, 19 SCRA 911; and *Juliano vs. Court of Appeals*, G. R. No. L-27477, July 28, 1967, 20 SCRA 808.

[4] *Ibasco vs. Ilao*, G. R. No. L-17512, December 29, 1960.

[5] *Juliano vs. Court of Appeals*, *supra*.

[6] 24 Phil. 609, 621.

[7] G.R. No. L-18894, June 30, 1962; 5 SCRA 567, 570. See also *Sarmiento vs. Quemado*, G.R. No. L-18027, June 29, 1962; 5 SCRA 438, 444.

[8] Par. 13, Section 149, Revised Election Code.

[9] Par. 13, Section 149, Revised Election Code.

[10] Mr. Justice Eulogio Serrano, who penned the decision, voted to reject these four ballots. Mr. Justice Juan Enriquez voted to admit two ballots, Exhs. EE and FF. Mr. Justice Jose Mendoza voted to admit all the four ballots.

[11] 5 SCRA 438, 444.

[12] *Juliano vs. Court of Appeals*, 20 SCRA 808, 816.

12-A *Gadon vs. Gadon*, G.R. No. L-20012, November 30, 1963, 9 SCRA 652; *Bisnar vs. Lapasa*, G.R. No. L-24468, February 28, 1967, 19 SCRA 534; *Katigbak vs. Mendoza*, G.R. No. L-24477, February 28, 1967, 19 SCRA 543.

[13] The office involved in this case was that of governor of Negros Occidental. Emilio Gaston, the pro-testee, was a candidate for governor, and Valeriano Gatuslao was a candidate for member of the provincial board. Emilio Rodriguez was not a candidate for governor. See also *Cailles vs. Gomez and Barbaza*, 42 Phil. 496, 533; and *Columbres vs. Camagay* 47 O. G. 209, 2071, 57, January, 1951.

[14] Decision of the Court of Appeals, Appendix A of the printed petition for certiorari, pages 47 and 48.

[15] *Tajanlangit vs. Cazeñas*, 5 SCRA, 567, 570; *Sarmiento vs. Quemado*, 5 SCRA, 438, 444.

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CONCURRING OPINION

TEEHANKEE, J.:

The two ballots (Exhs. DD and 1) with the word "Joe" written on the line for mayor would be decisive in favor of petitioner if "Joe" could be considered as the Christian name of petitioner Jose E. Garcia. In such case, these ballots could be validly appreciated in petitioner's favor under section 149, rule 1 of the Revised Election Code. But since the Court of Appeals has found as a fact that "Joe" is merely his nick-name and petitioner himself admitted this to be so, I concur with the application of Rule 9 of section 149 that a nickname standing alone cannot be counted in favor of a candidate.

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