

FELIX LOMUGDANG (DECEASED), PROTESTANT, VS. PATERNO JAVIER, PROTESTEE-APPELLANT, PABLO PE ALOLOD, INTERVENOR-APPELLEE.*G.R. No. L-27535. September 30, 1967*

Ponente: REYES, J.B.L., J.

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Paterno Javier appeals on points of law from a decision of the Court of First Instance of Antique, in election contest Case No. 3-63 of said Court, declaring the deceased Felix Lomugdang as having received a plurality of votes for the office of Municipal Mayor of Culasi, Antique, as against contestee, Paterno Javier, and declaring the Vice-Mayor elect, Pablo Pe Alolod, entitled to assume the office in view of the death of the protestant.

The facts of the case are the following:

On May 17, 1966, the Municipal Board of Canvassers of Culasi, Antique, certified that in the general elections held on November 12, 1963, Paterno Javier had received 1,203 votes, the plurality of the votes cast for Municipal Mayor according to the election returns, and thereby proclaimed him Mayor. Felix Lomugdang, having obtained the second place with 1,150 votes, on May 30, 1966, protested against the election of Paterno Javier.

In his motion of protest, Lomugdang impugned the result of the election in Precinct No. 4, Culasi, Antique, alleging as grounds the commission of errors or irregularities by the Board of Election Inspectors; erroneous appreciation of ballots, and improper adjudication of votes.

Paterno Javier in due time filed his answer and counter-protest, wherein he impugned the result of the election in Precincts Nos. 1, 2, 4, 5, 6, 9, 10, 11, 12, 13, 18, 19, 24, 25, 26, 28, 29, 30, 31, 34, 35 and 36, alleging as ground the commission of errors or irregularities by the Board of Election Inspectors; erroneous appreciation of ballots, and improper adjudication of votes in the counter-protested precincts. It was likewise alleged that the ballots in the counter-protested precincts, except the ballots in the ballot box of Precinct No. 4, were burned pursuant to Section 157 of the Revised Election Code, when the ballot boxes were used in the elections of November, 1965; and that he would present evidence aliunde to prove the allegations in the counter-protest.

Shortly before the case was first set for hearing on July 18, 1966, and before any evidence could be adduced in the hearing of the protest, the protestant met an untimely death. The protestee, through counsel, moved to dismiss the protest on July 22, 1966. On September 1, 1966, Pablo Pe Alolod who was elected Vice-Mayor of Culasi, Antique, filed a motion to intervene and/or for substitution, alleging that he would be entitled to the office in the event the protestant would prevail over the protestee in accordance with Section 7 of Republic Act 2264. The protestee opposed this motion to intervene and/or for substitution, alleging that Vice-mayor Pablo Pe Alolod has no right to intervene under the provisions of Section 176(g) of the Revised Election Code. On September 27, 1966, the trial court denied protestee's motion to dismiss the protest and allowed Vice-mayor Pablo Pe Alolod to intervene in the case. On September 2, 1966, the protestee filed a motion for reconsideration of the Order denying his motion to dismiss and allowing the vice-mayor to intervene. This motion for reconsideration was denied on

October 3, 1966.

On order of the trial court, the commissioner opened the ballot box of Precinct No. 4 on October 11, 1966, and rendered its report. It appears from the report of the commissioners that 83 ballots were claimed by Felix Lomugdang, and 17 ballots were claimed by Paterno Javier. Of the 83 ballots claimed by Lomugdang, 46 were admitted and 37 were objected to by the protestee. Subsequently, the protestee withdrew his objections to 3 ballots, leaving 34 ballots objected to by the protestee, which were marked as Exhibits J-1 to J-34. Of the 17 ballots claimed by the protestee, none was objected to by the protestant.

On October 24, 1966, the intervenor, Vice-Mayor Pablo Pe Alolod moved for the dismissal of the counter protest, on the ground that all the ballots in the counter protested precincts, except those in Precinct No. 4, have been burned pursuant to Section 157 of the Revised Election Code, and that evidence aliunde is not admissible to prove the allegations in the counter protest, since the burning of the ballots was done without the intervention or fault of either party. The protestee opposed the intervenor's motion to dismiss the counter protest, for the reason that in said counter-protest, he impugned the correctness of the certificate of canvass and the correctness of the election returns in twenty-two (22) precincts; and that the ballots in the counter protested precincts, except those in Precinct No. 4, having been burned in accordance with law, he is entitled to prove by testimony of the individual voters that they have voted for the protestee, in numbers exceeding those returned by the inspectors as having cast their votes for the protestee in the counter protested precincts.

In its order of November 14, 1966, the trial court deferred resolution on the motion to dismiss the counter protest, and re-scheduled the hearing of the protest and counter-protest for November 22, 1966. On November 22, 1966, the court ordered the election returns marked (Exhs. L-1 to L-18), and commissioned the Clerk of Court to receive them, after which the Court would resolve whether or not to allow the protestee to introduce evidence aliunde consisting of the testimony of the voters, and should the Court resolve to deny said motion, then the whole case would be deemed submitted for decision. On December 15, 1966, the trial Court denied the petition of the protestee to present evidence aliunde in connection with the precincts involved in the counter protest, and considered the case submitted for decision.

In its decision of January 26, 1967, the Court declared the protestant, Felix Lomugdang, the duly elected Municipal Mayor of Culasi, Antique in the elections of November 12, 1963, with a plurality of seven (7) votes over the protestee, Paterno Javier, and held Vice-Mayor Pablo Pe Alolod entitled to the office.

Protestee appealed to the Court of Appeals, from that decision the lower court of January 26, 1967; the order of December 15, 1966; dismissing the counter-protest, the order of January 6, 1967, denying the motion for reconsideration of that order of December 15, and from the order of January 20, 1967, not giving due course to the appeal from the orders of December 15, 1966 and January 6, 1967. The Court of Appeals, however, certified the case to this Court, the issues involved there being purely of law.

Only the protestee-appellant filed his brief, in August, 1967, but all parties prayed this Court to decide the case as early as possible, thereby submitting the case for decision without the appellee's brief.

Appellant Javier in his brief assigns the following alleged errors:

I. The trial court erred in not dismissing the protest upon the death of the protestant before the hearing of the protest, there having been no showing as yet that the election of the protestee is void or that the protestee had not obtained the majority of votes in the elections held on November 12, 1963.

II. The trial court erred in not allowing the protestee to offer evidence aliunde to prove the allegations in his counter-protest -- the ballots in the twenty-two counter-protested precincts, except the ballots of Precinct No. 4,

having been burned pursuant to Section 157, Revised Election Code -- and, in effect, dismissed the counter--protest.

III. The trial court erred in allowing Vice-Mayor Pablo Pe Alolod to intervene in the case.

IV. The trial court erred in declaring the pro-testant elected Municipal Mayor of Culasi, Antique, in the elections held on November 12, 1963.

The first and third assignments refer to the same issue and can be discussed together. Determination of what candidate has been in fact elected is a matter clothed with public interest, wherefore, public policy demands that an election contest, duly commenced, be not abated by the death of the contestant. We have squarely so ruled in *Sibulo Vda. de De Mesa vs. Judge Mencias*, G. R. No. L-24583, October 29, 1966, in the same spirit that led this Court to hold that the ineligibility of the protestant is not a defense (*Caesar vs. Garrido*, 53 Phil. 97), and that the protestee's cessation in office is not a ground for the dismissal of the contest nor detract the Court's jurisdiction to decide the case (*Angeles vs. Rodriguez*, 46 Phil. 595; *Salcedo vs. Hernandez*, 62 Phil. 584).

In the same *Sibulo* case, already cited, this Court likewise ruled that by virtue of Section 7 of Republic Act 2264, the vice-mayor elect has the status of a real party in interest in the continuation of the proceedings and is entitled to intervene therein. For if the protest succeeds and the protestee is unseated, the vice-mayor succeeds to the office of mayor that becomes vacant if the one duly elected can not assume the post.

Hence, no error was committed by the Court below in allowing Vice-Mayor Alolod to intervene in the protest at bar. Appellant's first and third assignments of error must be and are over-ruled.

The next issue is whether the Court below should have permitted the protestee-appellant's offer of evidence aliunde (consisting of the testimony of the voters themselves) to support the counter-protest against the official returns in some 22 precincts, because the ballots cast therein were burned after three months, conformably to section 157 of the Revised Election Code (R. A. No. 180, as amended). The Court a quo rejected this offer for the reason that to allow the voters in said precincts (some 4,000 in all) to reveal the names of the candidates for whom they voted would amount to holding another election.

We see no error in the resolution of the trial Court. Because of previous incidents in this case that had to be resolved by this Court (G. R. No. L-22248, January 30, 1965; G. R. No. L-24747, February 28, 1966) hearings on the merits of the protest did not start until October 1966, and it is easy to see that the presentation of the 4,000 witnesses in support of the counter--protest would have brought the hearings to unmanageable proportions and prolonged the trial even beyond the end of 1967, when the term for which the candidates were to hold office would expire. Furthermore, had the protestee-appellant acted with due diligence and notified the municipal treasurer in due time of his intended counter-protest, the destruction of the ballots of the affected precincts would have been avoided. Only the protestee could have done so, for only he was in a position to know what precincts would be the subject of his counter protest. All in all, we perceive here an obvious design of appellant for protracted delay that could not and should not receive either encouragement or sanction from the Courts.

Appellant relies on *Salvani vs. Garduno*, 52 Phil. 673, 679, as authority for the admissibility of the testimony of the electors for the purpose of impeaching the returns when the ballots are shown to have been destroyed. But the *Salvani* case involved only one precinct, while in the present case, appellant wished to introduce the testimony of the electors in practically all the precincts of the municipality, a procedure that for the reasons previously given, is improper. As aptly remarked by the Court below, it would amount to holding practically a new election, without the secrecy that public policy considers as essential to the electors' freedom of choice.

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby affirmed.

Considering the proximity of the next elections, this decision shall become final within five (5) days from notice to the parties. Costs against appellant.

SO ORDERED.

Dizon, Makalintal, Sanchez, Castro, Angeles and Fernando, JJ., concur.
Concepcion, C.J., and Bengzon J., on official leave and did not take part.
Zaldivar, J., did not take part.

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