

VICENTE M. FERRER, PROTESTEE AND APPELLANT, VS. JOSEFIN DE ALBAN, PROTESTANT AND APPELLEE.*G. R. No. L-12083. July 31, 1957*

Ponente: BAUTISTA ANGELO, J.

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In the general elections held on November 8, 1955, Josefin de Alban and Vicente M. Ferrer were candidates for the position of Mayor of Tumauni, Isabela. On November 12, 1955, the board of canvassers proclaimed Ferrer as the duly elected mayor, having obtained 1,010 votes as against 998 votes of Alban, or a plurality of 12 votes. Subsequently, Alban filed a protest impugning the result of the elections in Precincts Nos. 1, 14, 15 and 17 on the ground that many ballots cast therein were marked or illegally prepared but were considered valid and counted in favor of Ferrer by the board of canvassers. Alban also sought to annul the result of the elections in said preeincta, principally Precinct No. 17, alleging that policeman Benjamin Fernandez, a rabid follower of Ferrer, had terrorized the voters thereby stifling the free casting of the votes.

After trial, the court rendered decision in favor of Alban declaring him elected with a plurality of 55 votes over his opponent Ferrer. On appeal, the Court of Appeals affirmed the decision by reducing the plurality of Alban from 55 to 47 votes. Ferrer interposed the present petition for review wherein he assigns as main error the holding that the sixty-three (63) ballots therein enumerated are marked and in consequently deducting them from the total number of votes validly cast in his favor.

We will take up the 63 ballots in the order discussed by appellant in his brief.

Ballot Exhibit N.—This ballot was rejected by the Court of Appeals as marked because the names of the candidates from the second space for members of the provincial board down to the 7th place for councilors were written in capital letters while those of other candidates were written in small letters, the court concluding that the use of two forms of writing can only mean an intent to identify the voter. We disagree with this conclusion. Under Section 149, paragraph 18, of the Revised Election Code, the use of two or more kinds of writing cannot have the effect of invalidating the ballot unless it clearly appears that they had been deliberately put by the voter to serve as identification mark. Here such intent does not appear. The case in point is *Hilao vs. Bernardo*, G. R. No. L-7704, December 14, 1954, wherein it was held that the use of ordinary and printed forms of writing in a ballot is but a mere variation which does not invalidate the ballot. This ballot should, therefore, be counted for Ferrer.

Ballot Exhibit F.—This ballot was rejected because the voter wrote the names of the candidates for mayor on the same spaces intended for senators, the reason advanced being that, the voter being intelligent, he could not have had any other intention than to identify his ballot. We also disagree with this conclusion, for under Section 149, paragraph 13, of the Revised Election Code, a vote cast in favor of a candidate for an office for which he did not present himself is void but will not invalidate the whole ballot. The vote is merely considered stray vote. Since there is no evidence showing an intention to mark the ballot, the votes for those candidates shall only be considered stray votes which cannot have the effect of invalidating the vote in favor of appellant. This ballot

should also be counted in favor of Ferrer.

Ballot Exhibit E.—This ballot was not counted on the ground that the candidates for mayor were voted on the spaces for senators and also because the names of the candidates voted for, except four, were prefixed with the word "Hon.". The court ruled that said prefix is indicative of an intention to identify the ballot. This ruling is also incorrect, for under Section 149, paragraph 5, of the Revised Election Code, ballots which contain prefixes such as "Hon." are considered valid. The fact that said prefix was written before the names of the candidates for municipal offices is of no moment, for the voter may have entertained the notion that such positions also deserve that distinction. Anyway, there is no evidence showing that such was written to identify the ballot. This ballot is valid for Ferrer.

Ballot Exhibit S-6.—The Court of Appeals rejected this ballot as marked for the reason that it was signed by the elector himself. This is a finding of fact which we cannot now dispute. It is a well-settled rule that a ballot signed by the voter himself is a marked ballot. This ballot was properly rejected.

Ballots Exhibits Y, Y-1, Y-2, and Y-3.—These ballots were rejected as marked because there appears written the capital letter "A" on the first space for councilors in each of them. The Court of Appeals ruled that the use of that letter by several electors could not be innocent but must have been done in pursuance of a previous agreement to identify those ballots. We have examined these ballots and have reached the same conclusion. They were therefore properly rejected.

Ballot Exhibit C.—This ballot was rejected as marked because it contains the impertinent expression "Manila Rum" before the name Ramirez on the second line for councilors. As decided by this Court, this impertinent expression is sufficient to nullify the ballot for it serves no other purpose than to identify the voter (*Caraecle vs. Court of Appeals and Castillo*, 94 Phil., 308; 50 Off. Gaz., 571). This ballot was properly rejected.

Ballot Exhibit D.—This ballot was rejected as marked for it contains the impertinent word "dinendeng" written after "Andong", a nickname of Andres Pascaran, a candidate for mayor, on the 8th line for senators. This word is impertinent for its means "vegetable viand cooked with salted fish or bagoong." Under the same ruling, the ballot was properly rejected.

Ballot Exhibit D—1.—This ballot was declared valid and was counted in favor of appellant. It must have been included by mistake in this, appeal.

Ballot Exhibit D—3.—This ballot was rejected because the voter wrote the names of the candidates for mayor on the spaces for senators preceded by the prefix "Apo" and because the name of Pacita Warns was preceded by the words "Angking Mahal." This prefix is allowed by law and cannot therefore be considered as a mark. The words "Angking Mahal" are but an expression of admiration which can not be considered as mark under Section 149, paragraph 9, of the Revised Election Code. This ballot should be counted for Ferrer.

Ballots Exhibits D-4,, L-2, L-3, M-4, M4, and M- 14.—These ballots were rejected for containing the indecent word "Mangassi" written after the name of Marcelino Bacani, a candidate for councilor. Appellant tried to prove that the word "Mangassi" is part of the true name of Marcelino Bacani by presenting a copy of the latter's certificate of candidacy wherein it appears the signature of "Marcelino Bacani Mangassi." On the other hand, appellee presented the original copy of the same certificate which shows otherwise. The Court of Appeals found that the word "Mangassi" was written by a person other than Marcelino Bacani and at some posterior date. This is a finding of fact which we cannot now look into. Moreover, said court also found that the word "Mangassi" has an indecent connotation in Ibanag dialect and, for this reason, considered these ballots as marked. This conclusion is correct following the ruling in the *Caraecle* case.

Ballot Exhibits D—5 and I—1.—These ballots were counted in favor of appellant and so they must have been included by mistake in this appeal.

Ballots Exhibits M-7 and CC-4.—These ballots were rejected because they contain impertinent and insulting words. On the first ballot, the word "Ammesin", meaning "witch", was written after the name Conching on the 8th space for councilors, while on the second, the word "Jugador", meaning "gambler", was written before the name of candidate Bumanglag on the third line for councilors. These ballots were properly rejected following the ruling in the Caracle case.

Ballots Exhibits C-1, C-2, C-3, and C-4.—These ballots were rejected on the sole ground that they contain the names of relatives of appellants who were not candidates. This is error. These names shall only be considered as stray votes which do not invalidate the whole ballots as provided for in Section 149, paragraph 13, of the Revised Election Code. These ballots are valid for Ferrer.

Ballots Exhibits F-1 and M.—These ballots were rejected also on the ground that they contain names of persons who were not candidates which were considered as identifying marks. This ruling is also incorrect because said names can only be considered as stray votes, there being no evidence that they were written for purposes of identification. These ballots should be counted for Ferrer.

Ballots Exhibits L-1, M-1, and M-13.—These ballots were rejected on the strength of the testimony of Pascual Rodriguez who testified that the name of Climaco Bacani was written as an identifying mark. Since this finding of fact is not now open for review, we have no other alternative than to hold that these are marked ballots. They were therefore properly rejected.

Ballot Exhibit L-5.—This ballot was rejected on the ground that appellee was voted therein as councilor, one Versoza as candidate for councilor, and three other persons, who were not candidates, as senators. In the absence of any evidence showing an intention to mark, said names shall only be considered as stray votes which do not invalidate the whole ballot (Section 149, paragraph 3, of the Revised Election Code). This ballot should therefore be counted for Ferrer.

Ballot Exhibit M-12.—This ballot was also rejected because certain persons who were not candidates were voted for as senator and councilor, respectively. Under the same ruling, these names shall only be considered as stray votes which do not invalidate the whole ballot. This ballot is good for Ferrer.

Ballot Exhibit BB.—This ballot was rejected because the indecent and impertinent word "QueQue" appears "written before the name of Ferrer on the space for mayor. To this we agree, following the ruling in the Caracle case.

Ballot Exhibit CC-9.—This ballot was rejected for the only reason that the name of "Kamlon" or "Kamlos" appears written on the 8th space for councilors. This vote is merely a stray vote under Section 149, paragraph 13, of the Revised Election Code. This ballot is therefore good for Ferrer.

Ballots Exhibits X and X-1 to X-4.—These ballots were rejected as marked on the basis of the evidence aliunde presented by appellee that the name "B. Fernandez" written on the space for senators refers to Benjamin Fernandez, a municipal policeman, and was used as an identification mark. Since this is a finding which we cannot now dispute, these ballots must be rejected.

Ballots Exhibits X-5 to X-10, X-13, X-16 and X-18 to X—27.—These ballots were also rejected on the same ground that there was evidence aliunde showing that the name "Fernandez" written on the ballots was used as an identification mark because it refers to Benjamin Fernandez. However, we have carefully examined them and found

that on some ballots only "Fernandez" was voted as senator while on the others "V. Fernandez" was voted as senator. We entertain doubt as to whether the name "Fernandez" or "V. Fernandez" voted on these ballots can be considered as referring to Benjamin Fernandez in the face of the evidence that a certain Vicente Fernandez has filed a certificate of candidacy for the office of senator. The late withdrawal of this candidate is of no consequence because it may not have been well known to the people. In view of this doubt, the Court resolved to count these 20 ballots in favor of Ferrer.

Ballots Exhibits X-11 and X-12.—These ballots were rejected because they contain impertinent, irrelevant and unnecessary words before the names of some candidates. These words cannot be considered an appellation of affection or friendship that is allowed by law but impertinent expressions "which cast aspersion on the candidates. They were properly rejected.

Ballot Exhibit X-17.—This ballot was properly rejected because the name "Bizante Cad" written on the space for mayor does not sufficiently identify the candidate for whom the elector voted, there being another candidate by the name of Vicente Taccad for vice-mayor.

To recapitulate, we may say that of the 63 ballots impugned in this appeal, 3 were mistakenly included (D-1, D-5 and I-1), for they appear to have been counted in favor of appellant; 33 were improperly rejected and should therefore be counted in favor of Ferrer, namely, Ballots Exhibits N, F, E, D-3, C-1 to C-4, F-1, M, L-5, M-12, CC-9, X-5 to X-10, X-13 to X-16, and X-18 to X-27; and 27 ballots were properly rejected, namely, S-6, Y, Y-1 to Y-3, C, D, D-4, L-2, L-S, M-4, M-5, M-14, M-7, CC-4, L-1, M-1, M-18, BB, X, X-1, to X-4, X-11, X-12 and X-17.

In conclusion, we modify the decision appealed from by stating that protestant-appellee is the duly elected Mayor of Tumauni, Isabela, with a plurality of fourteen (X4) votes over protestee-appellant. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Labrador, Cnncupcwn, Endencia and Felix, JJ., concur.
Montemayor, J., concurs in the result. Decision modified.

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