

SANTIAGO A. SILVERIO, PROTESTANT-APPELLEE, VS. PEDRO CASTRO (DECEASED), PROTESTEE-APPELLANT, MISAEAL CLAMOR, INTERVENOR-APPELLANT.

G.R. No. L-23827. February 28, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The returns of the November 12, 1963 election for Mayor of Cateel municipality, Davao province, per canvass of the Board of Canvassers showed that Pedro Castro re-ceived the highest number of votes for said office, 1,769; Santiago Silverio obtained the next highest votes therefor, 1,754; thus giving Castro a plurality of 15 votes. And in due time Castro was proclaimed elected and assumed the office.

Silverio, on the other hand, filed on November 23, 1963 a protest in the Court of First Instance. A counter--protest was filed by Castro.

Subsequently and before hearing of the said election case, Castro died on May 6, 1964. Vice Mayor Misael Cla-mor thereupon succeeded to the office of Mayor.

The protest was thereafter heard, starting on July 6, 1964. After hearing, on September 14, 1964, decision was handed down by the trial court, reversing the Board of Canvassers and declaring Silverio winner by seven (7) votes; that is, Silverio was credited with 1,740 votes; Castro, with 1,733 votes.

Appeal was taken therefrom on behalf of protestee Castro (deceased) directly to Us, to raise questions pure-ly of law. A dispute later arose as to the personality of protestee's counsel to take an appeal, Castro having died. This Court resolved the matter by requiring Vice-Mayor Clamor to intervene, as he did, on the side of appellant (Resolution of July 22, 1965).

Appellant presents for review 119 ballots. For our purposes they shall be discussed under four groups:

FIRST GROUP: SEVENTY-ONE (71) BALLOTS FOR SILVERIO; SPACES FOR SENATORS AND/OR COUNCILORS NOT FILLED OR FILLED ONLY PARTLY; RULED VALID BY CFI.

Said 71 ballots are as follows:

(a) 34 ballots under Assg. of Error No. 2:

Precinct 1

Precinct 3

A-18 cp

1

A-1 cp

A-19 cp

1-A

A-6 cp

A-20 cp

1-B

A-8 cp

A-21 cp

1-C

A-9 cp

A-22 cp

Precinct 2

A-10 cp

A-23 cp

2

A-11 cp

Precinct 22

Precinct 5

A-12 cp

H-1 cp

4-A

A-13 cp

H-2 cp

4-B

A-14 cp

H-5 cp

Precinct 21

A-15 cp

H-6 cp

13

(or 1-H)

H-7 cp

13-B

A-16 cp

H-8 cp

13-C

A-17 cp

(b) 12 ballots under Assg. of Error No. 3:

Precinct 7

Precinct 8

6-A

7

6-B

7-A

6-C

7-B

6-D

7-C

6-J

7-D

6-K

6-L

(c) 10 ballots under Assg. of Error No. 4:

Precinct 12

8-C

8-H

8-D

8-I

8-E

8-J

8-F

8-K

8-F

8-L

(d) 15 ballots under Assg. of Error No. 7:

Precinct 6

Precinct 7

5-A

6-E

12-E

5-B

6-F

12-F

5-C

Precinct 16

Precinct 25

5-D

9-A

16

5-E

Precinct 20

5-F

12-C

5-G

12-D

As to this first group of ballots, the court a quo incurred no error. It properly followed the rule that desistance from completely filling the spaces in the ballot does not render the ballot marked (Gadon v. Gadon, G.R. No. L-20015, November 30, 1963). For here there admittedly is no evidence aliunde of a purpose to identify the ballots through said means, nor is said purpose clearly discernible upon the face of said ballots.

Summary of First Group: CFI affirmed.

SECOND GROUP: TWENTY-THREE (23) BALLOTS, SUBDIVIDED INTO (A) FIFTEEN (15) FOR CASTRO, REJECTED BY CFI AS MARKED; and (B) EIGHT (8) FOR SILVERIO, RULED VALID BY CFI; PREFIXES, NICKNAMES AND DESCRIPTIONS OF CANDIDATES ARE INVOLVED.

Subgroup A - Fifteen (15) ballots for Castro rejected by the CFI.[1]

1. From Precinct 1, ballot A-14. It has the word "Egg" written before the candidate's name "Castro" in the space for mayor.

2. From Precinct 6, ballot E-3. It has the word "To-li" before the candidate's name "Peñaueva" in the space for councilor.
3. From Precinct 16, ballot I. It has the word "Egg" before the name of candidate "Castro" in the space for mayor.
4. From Precinct 16, ballot I-11. It has the name "(Catigbak)" between the candidate's name for councilor, thus: "Consing (Catigbak) Aguilon".
5. From Precinct 18 ballot J-1. It has the word "Pudpud" before name of "P. de la Cruz" in space for councilor.
6. From Precinct 18, ballot J-5. It has the word "Pudpud" before the name "de la Cruz" for councilor.
7. From Precinct 18, ballot J-16. It has the word "Dr." in the space for mayor before the name of candidate "Castro", who is not a doctor.
8. From Precinct 24, ballot 0-3. It has the figure "5" before the name "Castro" for mayor.
9. From Precinct 24, ballot 0-7. It has the word "Salokot" before name of candidate "Castro" in space for mayor.
10. From Precinct 24, ballot 0-24. The word "Jr." appears after the name "P. Castro" for mayor. Castro is not a Jr. and the word "Jr." is placed far after the name.
11. From Precinct 24, ballot 0-31. It has the word "Dato" or "Datu" before the name of candidate Sarmiento in the space for governor.
12. From Precinct 24, ballot 0-34. It has "Dr." written before "Castro" in the space for mayor.
13. From Precinct 24, ballot 0-43. It has "Dr." written before the name "Castro" in the space for mayor; and the nickname "Ely" appears before the name of candidate "Sarmiento", whose nickname is not Ely, in the space for governor.
14. From Precinct 25, ballot P-4. It has the word "Towang" before the name of candidate "Castro" for mayor.
15. From Precinct 25, ballot P-18. It has "C Vote" appearing before the name "Castro" in the space for mayor.

With the exception of ballot 0-31 ("Datu" Sarmiento), all of the above fifteen ballots are indeed filled with identifying marks. The words "Egg", "Toli", "Pudpud", "Salokot", "Towang" and "C Vote" are obviously for purposes of marking the ballots.

So is the word "Dr.", applied to protestee Castro, who is not a doctor, twice in one precinct and once in another. Altho Rule 5, Sec. 149, Rev. Election Code allows the prefix "Dr.", it has been held by Us that it is allowed only if not used as identification marks; where, as herein, it recurs in a pattern or system to mark and identify ballots and votes in different precincts, the court a quo incurs no error in rejecting them (*Jimenez v. Lofranco*, G.R. No. L-21124, Nov. 8, 1963).

The figure "5" in ballot 0-3 is not an accidental stroke for in the same ballot, there appears the figure "7" before the name "Sarmiento" in the space for governor. It is therefore rightly deemed marked.

The placing of "(Catigbak)" in the middle of the name of candidate "Consing Aguilon", although allegedly denoting that to the voter's mind Consing Aguilon is Senator Katigbak's counterpart in Cateel, clearly serves to identify said particular ballot, so that the intent to mark can be inferred therefrom.

And the suffix "Jr." as applied to Castro in ballot 0-24 is patently used as a means to identify the voter, it being written so far from the name "P. Castro" that the space separating them is longer than the space covered by the name itself. As such it is marked (Rule 9, Sec. 149, Rev. Election Code).

As to the word "Datu" before the name of candidate Sarmiento, however, which appears in but one ballot, the same is not clearly a sign for marking, and said ballot should be accepted as valid. As this court ruled in *Gadon v. Gadon*, G.R. No. L-20015, November 30, 1960, pursuant to Rule 5 of Section 149, Rev. Election Code, which mentions "Datu" among the prefixes allowed, the use of the prefix "Datu" does not invalidate the ballot where there is no discernible pattern in the use of such prefix which would reveal an intention to mark the ballots.

Subgroup B. Eight (8) ballots for Silverio ruled valid by the CFI:[2]

1. From Precinct 19, ballot 11-U. It has the word "Conoyaes" [or "Conozaes"] in the space for councilor.
2. From Precinct 10, ballot C-13 cp. It has the nickname "Oto" after the name of candidate "Manligoy" in the space for councilor.
3. From Precinct 11, ballot I-3 cp. It has the word "Atty." before the name of candidate "P. Sanico" for councilor.
4. From Precinct 11, ballot 17 cp. This ballot is not discussed by appellant and is not found among the ballots forwarded to Us.
5. From Precinct 14, ballot E-1 cp. It has the nickname "Titoy" before the name "Juanillo" in a vote for councilor.
6. From Precinct 18, ballot G-3 cp. It has the nickname "Mano" before the name "Silverio" for mayor.
7. From Precinct 23, ballot 14. It has the word "Vice" before the name of candidate "M. Clamor" in the space for vice-mayor.
8. From Precinct 25, ballot 16-C. It has the nickname "Bobby" before the name "Silverio" for mayor.

In the above ballots, the nicknames "Oto", "Titoy", "Mano" and "Bobby" were manifested to be the nicknames of the persons voted for.[3] In the absence of clear and convincing proof that these nicknames were used to identify the voters, the rule is that the use of nicknames of the candidates, accompanied by their name or surname, does not annul the ballot (Rule 9, Sec. 149, Rev. Election Code).

As to "Conoyaes" [or "Conozaes"] appearing in the space for councilor, the same is, as the court pointed out, *idem sonans* for Gonzales, a candidate for councilor. It is a vote for Gonzales, not a mark.

"Atty." before "P. Sanico" is not a mark, it appearing that P. Sanico is a lawyer.[4]

And "Vice" before "Clamor" simply describes the office for which he was being voted for, namely vice-mayor; this alone does not suffice to constitute marking and invalidate the ballot.

All of the eight ballots in this subgroup, therefore, were correctly held valid for candidate Silverio.

Summary of Second Group: CFI affirmed except as to one (1) ballot in subgroup A (ballot 0-31: "Datu" Sarmiento), for Castro, rejected by CFI but held valid by Us.

THIRD GROUP: ELEVEN (11) BALLOTS FOR CASTRO; REJECTED BY CFI UPON CONCLUSION THAT SEVERAL BALLOTS WERE PREPARED BY ONE PERSON.

According to the court a quo, ballots A-1, A-3, and A-10 (Precinct 1) were written by one and the same person, and, in support of said conclusion, it stated that they have "the same general appearance or pictorial effect"; although finding that there are differences and variations in them, it ruled that the same are due to the intention of the writer to disguise the writings and make it different from his standard writing.

Following the same principles applied to the above ballots, the court a quo further held that ballots A-4 and A-5 (Precinct 1) were prepared by one person; ballots C-1 and C-3 (Precinct 4), by one person; ballots C-4 and C-6

(Precinct 4), by one person; and ballots C-7 and C-8 (Precinct 4), by one person.

The point to bear in mind is that this involves rules of appreciation of ballots in an election case. And the purpose of election laws is to give effect rather than frustrate the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated and in the appreciation of ballots, doubts are to be resolved in favor of their validity.[5]

Now the court a quo invalidated the above eleven ballots, as mentioned, upon the principle of general appearance or pictorial effect. Yet the very authority referred to and quoted by said court stated that said general resemblance is not enough to warrant the conclusion that two writings are by the same hand (Appendix, Appellant's brief, 42-43):

"In order to reach the conclusion that two writings are by the same hand there must not only be present class characteristics but also individual characteristics or 'dents and scratches', in sufficient quantity to exclude the theory of accidental coincidence; to reach the conclusion that writings are by different hands we may find numerous illnesses in class characteristics but divergences in individual characteristics, or we may find divergences in both, but the divergence must be something more than mere superficial differences. (Osborn's Questioned Documents, p. 244)." [Underscoring supplied]

Another eminent authority on the subject, Wilson R. Harrison, on SUSPECT DOCUMENTS, has this to say:

"In spite of the fact that the handwriting of any individual is based on a number of master pat-terns governing letter design, which are present substantially unaltered in all specimens of his writing, some of these specimens may at first sight appear to have little in common. On the other hand, the handwritings of different peo-ple may appear to bear a marked resemblance to each other, although, on analysis of the struc-ture, the master patterns can be shown to be quite distinctive and unlikely to be confused. In view of this, the question may well be asked why this should be so, and why the general ap-pearance of a handwriting is little guide to its fundamental structure.

"The answer to such questions is simple, and is bound up with the way in which a great many people accomplish the reading process." (P. 307; underscoring supplied.)

The court a quo, as mentioned earlier, noted differ-ences and variations in the ballots concerned, but attri-buted them to attempt by the writer to disguise his hand. Applying some principles on the recognition of disguise in handwriting,[6] We are of the view that an examination of the ballots in question do not show, beyond the doubts that are to be resolved in favor of their validity in election cases, common authorship as to each respective set.

Says Harrison, op. cit.:

"x x x The rule is simple - whatever features two specimens of handwriting may have in common, they cannot be considered to be of common authorship if they display but a single consistent dissimilarity in any feature which is fundamental to the struc-ture of the handwriting, and whose presence is not capable of reasonable explanation."

"(2) Disguised Handwriting Exhibits Less Fluency and Poorer Rhythm than the Nor-mal Hand

"By definition, it follows that it is the "normal" hand in which any writer has be-come most practised and in which he has had the greatest opportunity to become fluent; there cannot be anything like the same fluen-cy and rhythm associated with a hand which is written deliberately in any style to which the writer has not become accustomed. A hand-writing can exhibit its best rhythm only when it has been executed to a great part as a re-flex movement, without conscious thought having to be given to the details of its structure. x x x"

"(7) Disguise is Rarely Consistent

"With the obvious exception of the use of the unaccustomed hand, few forms of dis-guise are consistently retained throughout the whole of an extended passage of handwri-ting. Apart from the relaxation of the dis-guise, which is usually characteristic of the latter part of a passage and which is due to the writer becoming tired, with the conse-quent loss of concentration, certain portions of a disguised document can be counted on as having been much less thoroughly disguised than others." (Pp. 343, 352 & 369)

In ballots A-1, A-3 and A-10, the capital "R's", "P's" and "B's" are different in every ballot but consistently the same within each of them. The fundamental structure of the small letter "t" (E.g., the "t" in Castro) are dif-ferent in all three ballots, again consistently the same within each ballot. Furthermore, the writings are all done with fluency and rhythm, which would not be the case if they were that of one person trying to disguise his handwriting.

In ballots A-4 and A-5 the capital "R's" are very different in the two ballots but the same within each ballot; and the capital "P" - a letter structurally re-lated to capital "R" - partakes of said difference, that is, it conforms to the structure of the capital "R" as often as it appears in the respective ballots. Said internal consistency points against the introduction of disguise. For as Harrison further observed:

"x x x From this it appears that any developed handwriting in its normal state can be expec-ted to exhibit a marked degree of internal consistency. This is of fundamental import-ance when considering the problem posed by disguised handwriting, for it implies that if the internal consistency of the handwri-ting is to be preserved, any appreciable al-teration in the design of one letter must be accompanied by a corresponding change in the design of structurally related letters. This will impose a severe restriction on both the nature and the extent of any dis-guise which can be introduced into the let-ter designs without its presence becoming patent." (P. 359)

Similarly, there are in these two ballots fluency and rhythm, favoring the view that their differences - conceded by the court a quo - are due to differences in authorship rather than disguise.

Anent ballots C-1 and C-3, the same observation as to capital letters "P" and "R" previously made are also applicable herein.

Regarding ballots C-4 and C-6, the "ñ's" are con-sistently different in the two ballots but uniform within each; the final strokes in ending letters such as "g" and "y" are different; and again the fluency that ap-pears in both writings bears against presence of disguise.

Finally, in ballots C-7 and C-8 the small letter "g" is structurally different, in the loop, which difference is maintained throughout in the respective ballot (Cf. "Bendigo"; "Aguilon"; "Ziga" and "Liwag"). This singu-lar consistent dissimilarity, as above-stated, practical-ly rules out disguise, in the absence of reasonable ex-planation.

In the foregoing eleven ballots, therefore, the court a quo erred in not applying the rule of liberali-ty in the appreciation of the ballots, and in arriving at the conclusion that said ballots are invalid upon the unacceptable premise that general appearance or pic-torial effect is a reliable index of handwriting identity. Said error, involving as it does a conclusion - drawn from undisputed facts (the appearance of the bal-lots) as well as the applicability of a fundamental rule in appreciation of ballots, is one of law and thus re-versible herein.

Summary of Third Group: Reverse CFI as to all ele-ven (11) ballots.

FOURTH GROUP: FOURTEEN (14) BALLOTS: NON-CANDIDATES, CORRECTIONS AND ERASURES, OTHER FEATURES.

A. Five (5) ballots with non-candidates voted for, or with a candidate's name in space for office not run for by him; ruled by CFI valid for Silverio.

1. From Precinct 3, ballot A-cp. It has "Diocno" in space for councilor.
2. From Precinct 3, ballot A-2 cp. It has "P. Sanico" in space for senator.
3. From Precinct 5, ballot 4-D.[7] It has "Porras" in space for senator.
4. From Precinct 8, ballot 7-H. It has "Palma Hill" [Gil] in space for senator.
5. From Precinct 24, ballot 15-C. It has "Doterte" in space for senator.

As ruled by this Court in *Tajanlangit v. Cazeñas*, G.R. No. L--18894, June 30, 1962, a vote for a non-candidate of the respective office is to be deemed merely a stray vote and not a sign of marking in the absence, as herein, of evi-dence aliunde to the contrary. (Cf., also, Rule 13, Sec. 149, Rev. Election Code)

B. Five (5) ballots with corrections or erasures; ruled by CFI valid for Silverio.

1. From Precinct 3, ballot A-5 cp. "Silverio" in space for councilor is crossed out by two horizontal lines drawn across the name; "Silverio" appears, without cancellation, in the proper space for mayor.
2. From Precinct 8, ballot 7-E. "M Clamor" in space for councilor is cancelled by horizontal lines drawn across it; "M Clamor" appears, uncanceled, in proper space for vice-mayor.
3. From Precinct 16, ballot 9-E. In the space for councilor, preceding the name "Ravelo" are heavy circular strokes cancelling initials.
4. From Precinct 19, ballot 11-S. "Santiago Silve-rio" in the space for governor is crossed out by horizon-tal lines and several "x's"; above it is written "Sarmiento".
5. From Precinct 19, ballot 11-T. In the space for governor, "Duterte" is cancelled by two "x's" but again after it is written "Duterty".

The above erasures and cancellation are plainly cor-rections of errors, not evidencing any purpose of mark-ing. Neither is there evidence aliunde to establish a design to mark thereby. The court a quo rightly consi-dered these ballots valid (Rule 4, Sec. 149, Rev. Elec-tion Code; *Protacio v. De Leon*, G.R. No. L-21135, Nov. 8, 1963).

C. Four (4) ballots with other features.

1. From Precinct 4, ballot C-10. It is for Castro, rejected by the CFI as marked because all the names voted for therein are in very large block letters.

An examination of said ballot reveals nothing irre-gular to constitute marking; the size of the writing -maintained uniformly throughout - simply conforms to the space provided for in the ballot itself. This differs from the case in *Tajanlangit v. Cazeñas*, G.R. No. L-18894, June 30, 1962, where only two names were written in extraor-dinarily big printed letters so that they stood out pro-minently compared with the rest of the names written in the ballot. In the present case, the writing could well be the voter's habitual one, there being no evidence to show otherwise. Said ballot was erroneously deemed marked.

2. From Precinct 7, ballot 6-G. In the space for mayor, it has a small "x" written to the left of "Silve-rio" and another small "x" written after said name, to-wards the end of the line. Said ballot was held valid by the CFI.

The placement of said two "x's", viewing the ballot as a whole, which is otherwise neat and filled only with few names, indicates upon its face a clear intent to mark. Said ballot should have been rejected as invalid.

3. From Precinct 16, ballot 9. It has the letter "x" (apparently in capital) before the name "Penanueva" for councilor. Said ballot was held valid by CFI for Silve-rio; and We agree, since the letter "x" as used was meant

only to be an initial, as shown by the use of initials throughout the other seven names voted for councilor.

4. From Precinct 18, ballot 10-E. It has votes writ-ten in ordinary script and others in block letters. It was held valid for Silverio by the CFI. No error was com-mitted herein. Rule 18, Sec. 149, Rev. Election Code al-lows such variation in writing in the absence of evidence aliunde to prove design thereby to identify the voter, and there is none herein (Sarmiento v. Quemado, L-18027, June 29, 1962).

Summary of Fourth Group: Reverse CFI as to two (2) ballots, C-10 and 6-G.

In view of the foregoing, therefore, We find that the court a quo erred in rejecting the following thirteen (13) ballots for Castro, which We find valid:

Second Group. -

1. Precinct 24, Ballot 0-31 ("Datu" Sarmiento)

Third Group. - (Re question of common authorship)

2. Precinct 1, Ballot A-1

8. Precinct 4, Ballot C-3

3. " 1, " A-3

9. " 4, " C-4

4. " 1, A-10

10. " 4, " C-6

5. " 1, " A-4

11. " 4, " C-7

6. " 1, " A-5

12. " 4, " C-8

7. " 4, " C-1

Fourth Group. -

13. Precinct 4, Ballot C-10 (large letters) and fur-ther erred in accepting as valid one (1) ballot for Silve-rio, which We find to be marked and should thus have been rejected:

1. Precinct 7, Ballot 6-G ("x Silverio x")

Adding, therefore, thirteen (13) votes to Castro and deducting one vote from Silverio, We have:

CFI Finding As Reviewed Final Counting by Us

Silverio 1,740 - 1 = 1,739

Castro 1,733 + 13 = 1,746

so that Castro emerges as final winner by a plurality of seven (7) votes over Silverio.

WHEREFORE, the judgment appealed from is hereby re-versed and protestee Castro, whose interest is succeeded to and represented herein by intervenor-appellant Clamor, is declared winner by a plurality of seven (7) votes in the election of mayor of Cateel, Davao on November 12, 1963. No costs.

SO ORDERED.

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

[1] All discussed under Assignment of Error No. 5.

[2] The first six ballots are treated under Assignment of Error No. 6; the other two under Assignment of Error No. 7.

[3] Tsn., pp. 645, 676-677 and 716.

[4] Tsn., p. 735.

[5] Amurao v. Calangi, G.R. No. L-12631, Aug. 22, 1958; Pangontao v. Alunan, G.R. No. L-18926, Nov. 30, 1962.

[6] See Harrison, SUSPECT DOCUMENTS, pp. 350-372.

[7] Based on allegation because ballot not forwarded to Us.

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