

**MARIANO B. DELGADO, PETITIONER, VS. ANGEL B. TIU, ET AL.,
RESPONDENTS.***G.R. No. L-14143. May 27, 1959*

Ponente: BAUTISTA ANGELO, J.

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In the general elections held on November 8, 1955, Mariano B. Delgado, Angel B. Tiu and Alfredo Laure were candidates for the office of Mayor of Barugo, Leyte. The municipal board of canvassers certified that Delgado obtained 1,429 votes, Tiu 1,428 votes and Laure 1,400 votes, and accordingly, it proclaimed Delgado as mayor-elect with a plurality of 1 vote over Tiu and 29 votes over Laure.

Dissatisfied with this result, Tiu filed a protest before the Court of First Instance of Leyte against Delgado and Laure alleging the commission of fraud and irregularities in Precincts Nos. 2, 4-A, 7, 8, 25 and 27. In due time, Delgado filed his answer and a counter-protest wherein he challenged the election in Precincts Nos. 11, 13, 19, 20 and 26. Laure also filed his answer and counter-protest impugning the election in Precincts Nos. 7, 12, 15 and 27.

During the pendency of the case, Delgado withdrew his counter-protest in Precincts Nos. 13, 19 and 26 with the result that only 10 precincts became the subject of trial, namely, Precincts Nos. 2, 4-A, 7, 8, 11, 15, 20, 25 and 27. On April 25, 1956, after due trial, the court rendered its decision proclaiming Angel B. Tiu as the Mayor duly elected with a margin of 3 votes over Mariano B. Delgado and 29 votes over Alfredo Laure. Delgado appealed the decision to the Court of Appeals which on September 24, 1957 rendered a decision declaring that the election for the Mayor of Barugo, Leyte was a tie between Delgado and Tiu and so it ordered that the case be remanded to the lower court in order that the tie may be decided by lot as authorized by law. Delgado ultimately filed the present petition for review wherein he assigned several errors involving 15 ballots. Tiu on his part made a counter-assignment of errors covering 17 ballots.

We will first take up the assignments of error of appellant.

The first assignment of error refers to two (2) ballots (Exh. "A", Precinct No. 20, and Exh. "Q", Precinct No. 25), which were rejected by respondent Court of Appeals on the ground that "M Delgado", name of petitioner, was written on the line for Vice-Mayor, invoking the doctrine laid down in the cases of *Avidado vs.. Talens* (52 Phil., 661) and *Villaviray vs.. Alvarez* (61 Phil., 42, 45) to the effect that "in order that a vote may be counted in favor of the candidate for a particular office, his name must be written in the space reserved on the ballot for the name of the candidate for that office."

Petitioner claims that his name was written below the line for Mayor, which is blank, followed by the name "M. Cafieda", a candidate for Vice-Mayor, written below the line reserved for said office, which in turn was followed by the name of a candidate for Councilor, written on the first line for said office. He contends that considering the nature of the ballot, the intention of the voters to vote for him for the office of Mayor can be clearly ascertained. To bolster his contention, he cites the cases of *Hilao vs.. Bernados* (G. R. No. L-7704, Dec 14, 1954); *Mandac vs.. Samonte* (54 Phil., 709); *Coscolluela vs.. Gaston* (63 Phil., 41; 69), and *Villavert vs.. Fornier* (84 Phil., 756; 47

Off. Gaz. 1789).

An examination of the ballots in question, however, shows that the name "M. Delgado" was written exactly on the line for Vice-Mayor, which is a clear case of a stray vote under Rules 3 and 13, Section 149 of the Revised Election Code, which provide that any vote in favor of a candidate for an office for which he did not present himself shall be void and counted as a stray vote. The cases cited by petitioner are inapplicable to the instant case, because said cases refer to votes written immediately below or a little above the line for the office under consideration, where the intention of the voter to vote for a candidate for said office can be ascertained in an indubitable manner, and not where a candidate for an office was voted clearly for another office. It may also be inferred from the arguments of the petitioner that the voters who cast these two ballots may have merely committed a general misplacement of the votes intended for Mayor, Vice-Mayor and Councilor. But this Court had already occasion to rule on ballots of similar nature in the case of *Amurao vs. Calangi* (104 Phil., 347), wherein it held that such misplaced votes are considered "stray and invalid for having been cast in violation of the provisions of Sections 135 and 149 (13) of the Revised Election Code." For the foregoing reasons, the Court of Appeals did not err in rejecting the two ballot subject of this assignment of error.

The second assignment of error refers to only one (1) ballot (Exh. "2", Precinct No. 11), which was admitted for respondent Angel B. Tiu under Rule 17, Section 149 of the Revised Election Code. Petitioner contends that the "two short parallel lines" in the spaces on which the voter did not vote show the intention of the voter to mark his ballot with such lines. The contention is untenable. We agree with the Court of Appeals that such lines merely indicate the voter's desistance from voting which shall not invalidate the ballot as provided for in the aforecited rule. The ballot was properly admitted for respondent Tiu.

The third assignment of errors covers one (1) ballot (Exh. "3", Precinct No. 11), which was admitted by the respondent court for Angel Tiu. Petitioner contends that this ballot should be rejected as marked because the name "Proceso Cardines", who was not a candidate, was written thereon three times—on line 2 for Senators, on line 2 for Members of the Provincial Board and on line 2 for Councilors. The Court of Appeals invoked Rule 13, Section 149 of the Revised Election Code in admitting this ballot, which provides that a vote in favor of a non-candidate shall be void and counted as a stray vote but shall not invalidate the whole ballot. :

We disagree with the conclusion reached by the respondent court. We believe that Rule 13, Section 149 of the Revised Election Code contemplates & vote for a non-candidate which was innocently placed by the voter in the belief that said person was a candidate. The fact that this voter wrote the name "Proceso Cardines", who was not a candidate, three times on three spaces provided for different offices, reveals that the writing of this name was intentional and serves no other purpose than to identify the ballot. In the cases of *Gutierrez vs. Aquino* (G.R. No. L-14252 and *Gutierrez vs. Reyes* (G. R. No. L-13137), both decided by this Court on February 28, 1959, we held that the name of a candidate for an office written several times on the same ballot shows the clear intention of the voter to identify the ballot. In the present case, the name of a non-candidate was written three times which indicates that the intention to mark the ballot is more evident. This ballot should, therefore, be rejected as marked.

The fourth assignment of error involves one (1) ballot (Exh. "5", Precinct No. 25), which was admitted by the Court of Appeals as a valid vote for respondent Tiu. Petitioner claims that it is an error to admit this ballot because it contains only the initials "A.B.T.U" on the line for Mayor, invoking Rule 15, Section 149 of the Revised Election Code.

The respondent court admitted this ballot under Rule 2, Section 149 of the Revised Election Code stating that "A.B.T. U" is idem sonans with A. B Tiu (Angel B. Tiu). In the case of *Gutierrez v. Reyes*, supra, this Court ruled that the letters "ABCD" which corresponded to the name of candidate Abcede could be read for him under the

rule of idem sonans. Following this ruling, and considering the fact that the voter is not well versed in writing, we agree with the Court of Appeals that this ballot should be counted in favor of Angel B. Tiu.

The fifth assignment of error refers to six (6) ballots (Exh. "3", Precinct No. 8; Exh. "5", Precinct No. 11; Exh. "3", Precinct No. 20; Exhs. "13", "14" and "16", Precinct No. 27), which were admitted by the Court of Appeals in favor of respondent Angel B. Tiu. Petitioner contends that the words written on the line for Mayor do not sufficiently identify the candidate voted for.

The contention is not well taken because after examining the ballots in question, we find that the name "Atiu"; "A. Ten" or "A. Teu"; "A. teo"; "A. Tu"; "A Teur" and "A teo", which appear written on the line for Mayor, can be read as Tiu, and so they can be admitted for respondent under the rule of idem sonans (Rule 2, Section 149, Revised I Election Code).

The sixth assignment of error covers two (2) ballots which were both admitted in favor of respondent Tiu. Exh. "1", Precinct No. 25. Petitioner claims that this ballot should be rejected as marked considering the word "Ariba" written after the name "A. Ponferrada" on the 6th line for councilors. This contention is not well founded, because the word "Ariba" can be considered merely as an "appellation of affection and friendship" under Rule 9, Section 149 of the Revised Election Code.

Exh. "9", Precinct No. 27. It is also contended that this ballot is marked because the impertinent expression "good for all" appears written on the upper portion of the ballot. This contention is meritorious, because of the ruling: that the writing of impertinent, irrelevant and unnecessary words or expressions invalidates the ballot for it serves no other purpose than to mark or identify the voter (*Valenzuela vs. Carlos*, 42 Phil., 428; *Cecilio vs. Tomacruz*, 62 Phil., 689; *Caraecle vs. CA and Del Castillo*, 94 Phil., 308; 50 Off. Gaz., 571).

The seventh assignment of errors refers to two (2) ballots (Exh. "F" and "G", Precinct No. 27), which were admitted as valid votes for respondent. Petitioner contends that it is an error to consider these two ballots because the same were already classified by the board of inspectors as "marked ballots", the marks consisting of the name "T. Cardines", a non-candidate, written on line 2 for Senators on ballot Exh. "F" and the name "Egnacio", also a non-candidate, written on the 6th line for Councilors on ballot Exh. "G".

The contention is without merit, because by express provision of the law, the courts may examine or consider all the ballots involved in a contested election regardless of the opinion of the inspectors of election (Sections 175 and 176, of the Revised Election Code; *Reforma vs. De Luna*,* G. R. No. L-13242, July 31, 1958). The decision of these inspectors is not binding upon the courts but it is subject to review in case of protest. The alleged marks in these two ballots are not sufficient to invalidate them under Rule 13, Section 149 of the Revised Election Code, which provides that the vote in favor of a non-candidate shall be void and counted as stray vote but shall not invalidate the whole ballot. We therefore, affirm the ruling of the Court of Appeals that these ballots are valid for respondent who was voted thereon for the office of Mayor.

We shall now consider the counter-assignments of error of respondent.

The first counter-assignment of error refers to one (1) ballot (Exh. "B", Precinct No. 4-A), which was admitted by respondent court in favor of petitioner. Respondent claims that it was error to count this ballot for petitioner because the name "Romualdez" was written on the line for Mayor and "Delgado" written below said line.

An examination of this ballot shows that the second line for Members of the Provincial Board is blank, and the name "Romualdez", a candidate for Member of the Provincial Board, was written on the line for Mayor. Immediately below said line for Mayor, "Delgado" was written, followed by the name "Caneda", candidate for ViceMayor, written immediately below the line for Vice-Mayor. The Court of Appeals noted that perhaps the

voter made a mistake in writing the name "Romualdez" on the line for Mayor and discovered later his mistake, he inserted therein the name "Delgado", whom he intended to vote for Mayor, and so the ballot was counted for him under the rulings in *Mandac vs.. Samonte*, *supra*, *Villavert vs.. Fornier*, *supra*, and *Hilao vs.. Bernados*, *supra*.

We agree with the conclusion because the intention of the voter can be ascertained in an indubitable manner. Although it appears that Romualdez and Delgado were voted for the office of Mayor, the misplaced vote for Romualdez, who was a candidate for Board Member, shall be considered merely as a stray vote (Rules 3 and 13, Section 149, Revised Election Code). In the case of *Gutierrez vs.. Aquino*, *supra*, this Court ruled that where the names of the candidate for Mayor and the candidate for Vice-Mayor are written on the line for Mayor, the vote for the candidate for Vice-Mayor shall be considered as a stray vote and the vote for the candidate for Mayor as valid.

Following this ruling, this ballot was correctly admitted for petitioner.

The second counter-assignment of error relates to two (2) ballots (Exhs. "F" and "G", Precinct No. 4-A), which were admitted as valid votes for petitioner. Respondent contends that these two ballots were written by one and the same person.

We disagree, because after examining these ballots we find that the same were not written by one person. They were therefore properly admitted for petitioner.

The third counter-assignment of error involves fourteen (14) ballots which were likewise admitted by respondent court in favor of petitioner.

Thirteen (13) ballots (Exhs. "A", "B", "D", "E", "F", "G", "H", "I", "J", "K", "L", "AT, and "N", Precinct No. 25). Respondent contends that these 13 ballots should be rejected as marked, the mark on the first four ballots consisting of writing the name "Cesario" or "Cesar" on the first line for Senators accompanying the name "Sabido", a senatorial candidate; and the mark in the remaining 9 ballots (Exhs. "F" to "N") consisting of the name "Gregorio" written uniformly on the 8th space for Senators, except Exh. "N" where the name "Dregorio" was placed on the first line for Senators after the name "Sabido".

The Court of Appeals observed that the appearance of the names of persons who are not candidates (Cesar and Gregorio) on the ballots in question "is really suspicious", but invoking Rule 13, Section 149 of the Revised Election Code, which provides that a vote in favor of a non-candidate shall be counted as a stray vote, but shall not invalidate the whole ballot, it admitted them in favor of petitioner.

We agree with the observation of respondent court that the appearance of the names "Cesar" and "Gregorio" on several ballots on precisely the same space of the ballots is suspicious, but we do not agree to the applicability of Rule 13, Section 149, *supra*, to said ballots. As we have stated above (see third assignment of error), said rule for the appreciation of ballots contemplates the writing of a name of a non-candidate innocently and not where such name or names are used as a means to identify the ballots.

This is the situation here. Examining the ballots, we find that voters who had difficulty in writing exerted themselves in placing the name "Gregorio" on their ballots, such that the name "Gregorio" was misspelled "Dregorio" (Exh. "N"); where not a single senatorial candidate was voted for and yet the name "Gregorio" was written on the 8th line (Exh. "K"); where senatorial candidate "Warns" was voted on the 8th line and yet the voter still wrote therein the name "Gregorio" (Exh. "G"). This is indeed a case where the ballots conclusively show that a name of a non-candidate was used as a means to mark them. This conclusion is strengthened by the fact that all these 13 ballots in question were cast in only one precinct. In the case of *Ferrer vs.. De Alban* (101 Phil., 1018), we held:

"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 in pursuant of a previous agreement to identify these ballots. We have examined these ballots and have reached the same conclusion. They were therefore properly rejected."

For the foregoing reasons, these ballots should be rejected and deducted from the votes credited to petitioner.

Ballot Exh. "P", Precinct No. 25. Respondent likewise questions the admission of this ballot on the ground that it was marked with the impertinent words "Enay Takya" before the name "Cefranca", a candidate for Councilor, written on the 3rd line for said office. Since it is admitted that "Enay Takya" is the pet name of the wife of candidate Sefranca, the same can only be counted as a stray vote which does not invalidate the whole ballot (Rule 13, Section 149, Revised Election Code). This ballot was properly admitted.

In recapitulation, we find that two <2) ballots (Exh. "3", Precinct No. 11 and Exh. "9", Precinct No. 27) were improperly admitted in favor of respondent Angel B. Tiu. These 2 votes should be deducted from 1,429 votes credited to him by the Court of Appeals, thereby leaving 1,427 votes. We also find that thirteen (13) ballots (Exhs. "A", "B", "D", "E", "F", "G'V'H", "I", "K", "J", "L", "M", and "N", Precinct No. 25) were improperly counted for petitioner Mariano B. Delgado. These 13 votes should be subtracted from 1,429 votes adjudicated to him by the Court of Appeals, thereby leaving 1,416 votes.

Wherefore, the decision appealed from is hereby modified in the sense that respondent Angel B. Tiu is the duly elected Mayor of Barugo, Leyte, with a plurality of eleven: (11) votes over petitioner Mariano B. Delgado, with costal against the petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

[*] 104 Phi., 278.

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