

**ABELARDO APORTADERA, PETITIONER AND APPELLANT, VS.
MANUEL C. SOTTO, RESPONDENT AND APPELLEE.***G.R. No. L-16876. November 30, 1961*

Ponente: CONCEPCION, J.

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In the general elections held on November 10, 1959, petitioner Abelardo Aportadera and respondent Manuel C. Sotto obtained 66,209 and 78,346 votes respectively for the office of Vice-Governor of the province of Davao. Accordingly, on December 16, 1959, the corresponding board of canvassers proclaimed respondent as the candidate elected for said Office.

In due time, petitioner instituted this quo warranto proceedings, upon the ground that, at the time of said election, respondent was not a qualified voter of the Province of Davao, for he was a voter duly registered in Precinct No. 16-A of the fourth legislative district of Manila, in the election years 1953, 1955, 1957 and 1959; that on October 3, 1959, respondent registered as a new voter in Precinct No. 9 of Davao City without first "securing the transfer to Davao Province or City or the cancellation of his registration as a voter" in said Precinct No., 16-A of Manila; that he belatedly filed, with the office of the City Treasurer of Manila, an application for such cancellation on October 30, 1959, or 34 days beyond the period prescribed by law therefor, for which reason, said application should be considered illegal and void; that in order to register as a new voter in Davao, respondent subscribed a voter's affidavit stating that he was "not at present actually registered in any other precinct", thus committing a felony punishable under Article 172, in relation to Article 171 of the Revised Penal Code; and that by committing such crime, respondent disqualified himself as a voter, and, hence, became ineligible to the office of Vice-Governor of Davao.

Respondent moved to dismiss the petition for the reason that it does not state a cause of action. After due hearing, the Court of First Instance of Davao granted the motion and, accordingly, dismissed the petition, with costs against petitioner. Hence, the latter has interposed the present appeal which is before this Court, only questions of law being raised by him.

Section 2071 of the Revised Administrative Code, as amended by Republic Act No. 1095, provides:

"No person shall be eligible to a provincial office unless at the time of the election he is a qualified voter of the province, has been a bonafide resident therein for at least one year prior to the election, and is not less than twenty-five years of age."

This case hinges on the question whether or not respondent is a "qualified voter" of Davao province. Petitioner maintains the negative view upon two (2) grounds, namely: (1) that respondent is not a duly registered voter of Davao, because, before being registered as such, he had failed to apply for the cancellation of his registration as a voter in the City of Manila; and (2) that, having committed the aforementioned felony in registering himself as a voter in Davao, he had become disqualified to vote, and, consequently, to run for Vice-Governor.

The first ground is predicated upon the theory that registration as a voter is a condition essential to be a "qualified

voter". There is no merit in this pretense, which has already been rejected in *Yra vs Abano* (52 Phil., 380), *Vivero vs. Murillo* (52 Phil., 695), and *Larena vs. Teves* (61 Phil., 36). Registration is essential to the exercise of the right of suffrage, not to the possession thereof. Indeed, only those who have such right may be registered. In other words, the right must be possessed before the registration. The latter does not confer it.

It is argued that the cases cited are no longer controlling because section 431 of the Old Election Code provided:

"Every male person who is not a citizen or subject of a foreign power, twenty-one years of age or over, who shall have been a resident of the Philippines, for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting, is entitled to vote in all elections if comprised within either of the following three classes:

"(a) Those who, under the laws in force in the Philippine Islands upon the twenty-eight day of August, nineteen hundred and sixteen, were legal voters and had exercised the right of suffrage.

"(b) Those who own real property to the value of five hundred pesos, or who annually pay thirty pesos or more of the established taxes.

"(c) Those who are able to read and write either Spanish, English or a native language."

whereas section 98 of the Revised Election Code reads:

"Every citizen of the Philippines, whether male or female twenty-one years or over, able to read and write, who has been a resident the Philippines for one year and of the Municipality in which he has registered during the six months immediately preceding, who is not otherwise disqualified, may vote in the said precinct at any election."

Petitioner lays stress upon the clause "in which he had registered," in this section 98, to bolster up the claim that registration is one of the qualifications to be a voter. He overlooks, however, the fact that registration in a given precinct is mentioned in said provision, in order that a person "may vote in said precinct." In any event, said section 98 cannot be construed as adding registration to the original requirements of a qualified voter, for, otherwise, it would conflict with Article V of the Constitution, pursuant to which:

"Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election. The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question."

Inasmuch as registration is not essential, under this Article, for the possession of the right of suffrage, defendant's contention cannot be sustained without holding that section 98 of the Revised Election Code seeks to amend said provision of our fundamental law, and, hence, without becoming unconstitutional.

It is unnecessary, therefore, to pass upon the validity of respondent's registration in Davao, owing to his failure to seasonably apply for the cancellation of his registration in Manila, for even if he had not been registered at all in Davao, this could not decisively affect the question whether or not he is a "qualified voter," if he meets the condition prescribed in said Article V of the Constitution, and, in addition thereto, has the age and residence required in section 2071 adverted to above, which are not impugned by petitioner herein.

Upon the other hand, the disqualifications to vote are set forth in section 99 of the Revised Election Code, which is of the following tenor:

"The following persons shall not be qualified to vote:

- (a) Any person who has been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon.
- (b) Any person who has been declared by final judgment guilty of any crime against property.
- (c) Any person who has violated his allegiance to the Republic of the Philippines.
- (d) Insane or feeble-minded persons.
- (e) Persons who cannot prepare their ballots themselves."

Admittedly, subdivisions (c), (d), and (e) of this section are inapplicable to the case at bar. Neither does the offense allegedly committed by respondent fall under subdivisions (a) and (b), inasmuch as a "final judgment" of conviction is necessary for the application thereof, and, admittedly, no such judgment has been rendered against him.

Wherefore, the order appealed from is hereby affirmed, with costs against petitioner-appellant, Abelardo Aportadera. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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