

FRANCISCO F. ILLESCAS, PETITIONER, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. L-6853. December 29, 1953*

Ponente: PARAS, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fb7320579632/>**PARAS, C.J.:**

In the elections held on November 13, 1951, Benito Cruz and Francisco F. Illescas were candidates for mayor, and Victor Cruz and Francisco Cruz were candidates for vice-mayor in the municipality of Angat, Province of Bulacan. Francisco Illescas was proclaimed elected by municipal board of canvassers, having received 2,200 votes as against 2,181 votes of Benito Cruz. In due time the latter filed a motion of protest in the Court of First Instance of Bulacan, impugning the result in all the 23 precincts, except precinct No. 13-A. Francisco Illescas in turn entered his protest as to precincts Nos. 2, 4, 4-A, 6, 7, 8, 9, 15, 16 and 16-A. After necessary revision of ballots and trial, the Court of First Instance of Bulacan rendered a decision declaring Francisco Illescas elected municipal mayor with a plurality of four votes, the votes being 2,176 for Illescas and 2,172 for Benito Cruz. Both appealed to the Court of Appeals which, in its decision promulgated on July 26, 1953, found that Benito Cruz won with a plurality of five votes, he being credited with 2,185 votes, and Francisco Illescas 2,180 votes. The latter (petitioner) has appealed to this court by way of certiorari, and limits the controversy only to the 25 ballots specified in his six assignments of error. On the other hand, Benito Cruz (respondent), in further support of the appealed decision, has imputed error to the Court of Appeals insofar as the 20 ballots mentioned in his two counter-assignments of error are concerned.

Ballot Exhibit (I-4) is sought to be rejected by the petitioner, because V. Cruz is written in the space for mayor. This vote was correctly counted for the respondent inasmuch as the erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in favor of the latter (Revised Election Code, section 149, paragraph 6), and the fact that the voter desired to vote for the respondent as mayor is definitely shown when he wrote his correct surname in the proper space (Id., section 135). The name of Victor Cruz will not affect the vote in favor of the petitioner, since he was not a candidate for mayor. (Id., section 149, paragraph 7).

Ballot Exhibit (3-4) is alleged by the petitioner to have been erroneously counted in favor of the respondent, because B or F. Cruz is written in the space for mayor. The Court of Appeals did not commit any mistake, since if B is considered, it is the initial of respondent's name, and if F is deemed as having substituted B, the wrong initial does not annul the vote for the respondent (Revised Election Code, section 149, paragraph 6).

In ballot Exhibit (3-6) V. Cruz is written in the space for mayor. Under section 149, paragraph 6, of the Revised Election Code, this vote was correctly counted for the respondent. But it is contended for the petitioner that the vote should be rejected, because B or R Cruz appears in the space for member of the provincial board and the voter might have intended to vote the respondent for the latter position, and not for mayor. Petitioner's contention is not tenable, for the reason that when the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate, and the vote for the office

for which he is not a candidate shall be counted as stray (Revised Election Code, section 149, paragraph 3).

The petitioner wants this court to reject ballot Exhibit (4-2) in which R. Cruz is written in the space for mayor. The respondent was properly credited with this vote in accordance with section 149, paragraph 6, of the Revised Election Code.

Another ballot assailed by the petitioner is Exhibit 4-3 in which V. Cruz is voted for mayor. Similarly with Exhibit 1-4, said vote for the respondent must be sustained.

As ballot Exhibit (4-6), also impugned by the petitioner is analogous to Exhibit 3-6, it should be counted for the respondent.

The petitioner argues that ballot Exhibit (4-7) cannot be considered as a valid vote for the respondent, because V. Cruz appears in the space for mayor and V. Cruz appears in the space for vice-mayor. The vote for the respondent as mayor was correctly counted under section 149, paragraph 6, of the Revised Election Code.

Ballot Exhibit (5-7) is found by the Court of Appeals to contain in the space for mayor Binti or Bintu Kris or Kais, and was counted for the respondent under the principle of idem sonans. Contrary to petitioner's contention, no error was committed by the court a quo.

As ballot Exhibit (5-10) is similar to Exhibit 4-7, the petitioner's plea for its rejection is without merit.

Ballot Exhibit (6-1) is in the same class as Exhibits 3-6 and 4-6. Hence petitioner's contention that it should not be counted is overruled.

In ballot Exhibit (6-4) Benito Alinsangan Cruz is voted in the space for mayor, and it is insisted for the petitioner that the word Alinsangan was inserted to identify the voter. The speculative argument of the petitioner cannot prevail over the contrary finding of the Court of Appeals, and the vote must accordingly be credited in favor of the respondent in virtue of section 149, paragraph 9, of the Revised Election Code which provides that the use of a nickname, if accompanied by the name or surname of the candidate, does not annul such vote, except when it was used as a means to identify the voter. It is uncontroverted that Alinsangan is the family nickname of the respondent.

Ballot Exhibit (6-2) is objected to by the petitioner for being marked, the words "Panlao ang nacio" having been written thereon. As the ballot does not contain such expression, the Court of Appeals having in fact made no finding on the matter, the vote was properly counted for the respondent.

V. Cruz is written in the space for mayor and B. Cruz in the space for member of the provincial board in ballot Exhibit (6-5), and the petitioner claims that the vote should be considered stray. The ballot is in the same group as Exhibits 3-6, 4-6 and 6-1 and, for the reason we have already set forth, must be awarded to the respondent.

Ballot Exhibit (9-13) is protested by the petitioner on the ground that A. Bento, the name of a person distinct from that of the respondent, is written in the space for mayor. Bento readily has the sound of Benito and is therefore good under the principle of idem sonans (Revised Election Code, section 149, paragraph 2). As the erroneous initial of the surname accompanying the correct name of a candidate does not annul the vote in favor of the latter (Id., paragraph 6), this vote was rightly considered for the respondent.

The petitioner questions ballot Exhibit (8-1) in which V. Cruz appears in the space for mayor. Under section 149, paragraph 6, of the Revised Election Code, this vote must be held valid for the respondent, in parity with Exhibits 1-4 and 4-3.

The petitioner wants ballot Exhibit (12-1) rejected because F. Coros is written in the space for mayor. This is a

valid vote for the respondent, since Coros may easily sound Cruz and should be accepted under the principle of idem sonans (Revised Election Code, section 149, paragraph 2) in connection with paragraph 6, section 149, of the same code, which provides that the erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in favor of the latter.

Ballots Exhibits (13-6 and 13-7 are alleged by the petitioner to be marked, because in the first Sotto Lombir (meaning lumberyard) appears on the first line for municipal councilors, and in the second S. Lamber appears on the first line for councilors. The proof shows, however, that there was a candidate by the name of Soto known as Soto Lumber because he owns a lumberyard. Moreover, even assuming that there was no such candidate, as the Court of Appeals held, the votes can be validly counted for respondent, in view of paragraph 13, section 149, of the Revised Election Code to the effect that any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as a stray vote, but shall not invalidate the whole ballot. Hence these two votes are valid for the respondent.

Ballot Exhibit (13-9) should be discarded, according to the petitioner, because E. Cruz is voted for mayor. Under section 149, paragraph 6, of the Revised Election Code, this vote was properly counted for the respondent.

The petitioner contends that ballot Exhibit (G-5) was erroneously rejected by the Court of Appeals which held the same as marked, because of the mere fact that the word "nardo" is written above the letter "F" of F. Illescas voted for mayor. The Court of Appeals made its deduction from a penmanship comparison of some letters in "nardo" with corresponding letters in "Briones" and "Delgado" appearing in the same ballot. On the other hand, it is insisted for the petitioner that the word was not written by the voter. In the absence of positive evidence on the point, other than the ballot itself, we are inclined to hold that the basis for the conclusion of the court a quo is rather inconclusive, and we therefore rule that this vote should have been counted in favor of the petitioner.

The Court of Appeals rejected ballot Exhibit (H-5) as a valid vote for the petitioner, on the ground that only the word "Kiko" is written in the space for mayor. We have, however, already ruled that "when the nickname of a candidate is a derivative or contraction of his Christian name or his surname and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office." (Abrea vs. Lloren,[*] 46 Off. Gaz., 439.) It cannot be alleged that there is no evidence that the petitioner is popularly known with the name "kiko", because the Court of Appeals pointed out that "the protestee tried to show through the testimony of Tomas Pablo that his nicknames were 'kikoy', 'kiko', 'Dong', or 'Dodong', and even admitted that "in this country, the diminutive of 'Francisco' are usually 'Paquing', 'Paquito', 'Paco', 'Pakoy', 'Kiko', 'Kikoy', or 'Koko'. As there was no other candidates for mayor with the same derivative nickname 'Kiko', the vote in question should be credited for the petitioner.

Ballot Exhibit (H-6) was rejected by the Court of Appeals because Dodong Illescas is written in the space for mayor, and there is no evidence that "Dodong" is petitioner's nickname. This is erroneous, inasmuch as said court admitted that, as already stated, "the protestee tried to show through the testimony of Tomas Pablo that his nicknames were 'Kikoy', 'Kiko', 'Dong', or 'Dodong'", and no pretense is made that said testimony has ever been contradicted. Hence this particular vote is valid for the petitioner.

With respect to ballot Exhibit (J-8), claimed by the petitioner to be a valid vote for him, the Court of Appeals made the following finding: "Rejected on the ground that it is marked because there is a big cross or 'X' on the space for Senator as well as a small cross or 'X' and an arrow on the fourth line for Councilors. The ballot supports the ruling of the lower court for we can see in the ballot the following: there has been written the name B. Cruz' in big letters covering the lines 2, 3, 4, 5 and 6 for Senators which was cancelled by a big cross and thereafter the voter wrote another cross or 'X' immediately in the upper part of the letter 'Z' of 'Cruz' and which small cross was

later on crossed by a long line, which crosses are in our opinion unnecessary. Again, the elector wrote the name 'B. Cruz' on the fourth line for Councilors and immediately after the name the elector wrote an 'X' and then an arrow toward said letter 'X'. Evidently, these crosses and arrow are distinguishing marks which makes this ballot void. Hence, it was properly rejected by the lower court." This conclusion of the Court of Appeals is, we think, unassailable.

The rejection by the Court of Appeals of ballot Exhibit (J-11) is based upon the following finding: "Contested on the ground that it was prepared by the two persons of different culture. Upon examination of the ballot, we find the objection completely well taken. The names 'P. Elysascas' voted for Mayor and the initial 'P' superimposed by the initial 'V' followed by the surname 'Coros' on the line for Vice Mayor were written by a person not well schooled while rest of the names appearing on the other positions were written by a person skilled in writing. Therefore, this ballot should be rejected and discarded from those admitted by the lower court in favor of the protested, it having been prepared by two hands." We are not inclined to adopt the contrary position of the petitioner.

Ballot Exhibit (K-3) is claimed as a valid vote for the petitioner. Like Exhibit J-11, this ballot was found by the Court of Appeals to have been prepared by two hands because of some obvious variance of the handwriting contained therein. We are not in a position to alter the finding of the Court a quo.

It results that, out of the 25 ballots questioned by the petitioner, only three should be added to the total number of votes received by and credited to him by the Court of Appeals, thus still making the respondent the winner with a plurality of two votes. Although already unnecessary and superfluous, it may not be amiss to state that, as contended by the respondent, the Court of Appeals erred in not counting the 14 votes represented by colored ballots Exhibits (C-1) to (C-14). The reason for the rejection is that they are sample ballots, and, under section 128 of the Revised Election Code, no name of any actual candidate shall be written on sample ballots, nor shall they be used for voting, nor shall they be counted. In this case there is no question that as well the election inspectors as the voters to whom the sample ballots were distributed acted in good faith. The injunction contained in section 128 is addressed mainly to the election officials, and the latter's innocent mistake should not be used as a means to deprive likewise innocent voters of their right to vote. In a situation like this, we are constrained to hold the provision to be merely directory. It appears that, out of 14 votes, nine are for the respondent and five are for the petitioner. If these are added to their respective totals, the respondent will have a final plurality of six votes.

The respondent also claims that ballots Exhibits (3-11) and (9-1) should have been counted by the Court of Appeals in his favor and that ballots (Exhibits B-1, I-7, J-9 and J-10), which were credited by said court in favor of the petitioner, should be discarded. We need not pass on respondent's claim, for the result reached herein—already favorable to the respondent—will not be affected thereby.

The appealed decision will therefore be and it is hereby affirmed, and final judgment will be entered five days after notice of this decision to the petitioner. So ordered, with costs against the petitioner.

Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Labrador, JJ., concur.

[*] 81 Phil., 809.

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