

LUIS SAN JUAN, PETITIONER, VS. SANTOS CALDERON AND HON. BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, RESPONDENTS.

G.R. No. L-5654. January 30, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

In the elections of November 13, 1951 Luis San Juan and Santos Calderon together with other persons were candidates for councilors of the municipality of Taytay, Rizal. The corresponding proclamation of the board of canvassers declared Santos Calderon one of the elected councilors defeating Luis San Juan by three votes only.

Alleging that, in one precinct, about twenty ballots cast for him had illegally been read and counted in favor of Santos Calderon, San Juan filed a protest in the Court of First Instance of Rizal. Acting on the protest, the respondent judge required the protestee to answer. The protestant filed a bond. On December 5, 1951 the protestee replied, making admissions and denials, but claiming to have been properly proclaimed. Commissioners were designated, ballots were examined and a report was submitted. Then the protest came up for hearing on March 26, 1952; and after the protestant had rested his case, the protestee submitted a motion to dismiss for the reason that the court had no jurisdiction to take cognizance of the matter, and the respondent sustained the motion in an order the pertinent portion of which reads as follows:

"In the present case, the protestant failed to prove (1) the election returns in all the precincts of the municipality of Taytay, of this province, in the last elections of November 13, 1951; (2) that the municipal board of canvassers has proclaimed the protestee; (3) that the protest was presented during the legal period from and after the said proclamation and (4) that both the protestant and the protestee were registered candidates in the said elections for municipal councilor. These are the facts which confer jurisdiction upon this court over the subject matter. For the failure of the protestant to prove these facts, the court did not acquire jurisdiction over the subject matter and protestee has the right to raise that question at any stage of the proceedings."

In *Pobre vs. Quevedo*, 52 Phil., 359, at pages 360, 361 this Supreme Court said that "* * * in order to confer jurisdiction on the Court of First Instance over an election protest, it is sufficient to file a motion to that effect, stating the following facts: (a) That the protestant has duly registered his candidacy and received votes in the election (*Tangco vs. Jocson*, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (*Manalo vs. Sevilla*, 24 Phil., 609); and (c) that the motion of protest was filed within two weeks after such proclamation (*Navarro vs. Veloso*, 23 Phil., 625; *Manalo vs. Sevilla*, supra; *Hontiveros vs. Altavas*, 39 Phil., 226, * * *."

Judged by this doctrine, respondent's decision seems to have required proof of more points than those prescribed by established jurisprudence.

On the other hand has the protestant complied with the aforesaid requirements?

We note that the first three paragraphs of the protest alleged that protestant had filed his certificate of candidacy in due time, that he had been voted for in the said elections, and that the protestee had been proclaimed elected by the board of canvassers on November 19, 1951 with a majority of 3 votes. These three paragraphs were expressly admitted in the respondents' answer. It was therefore unnecessary for protestant to prove those allegations.[1] As to the filing of the protest within two weeks[2] after the proclamation, there is the assertion that the proclamation was made on November 19, 1951 and the protest is dated November 28, 1951 (i.e. nine days afterwards). It is not probable that the protest was late. Anyway there was no obligation of protestant to prove or allege the time of filing, because it is a matter of record, and the court knows it.[3] And the respondents here admit that the protest was filed on December 1, 1951 (i.e. twelve days after proclamation).

Wherefore, inasmuch as the points essential to jurisdiction have all been shown, the respondent judge erred in declaring he had no jurisdiction. His order of dismissal is revoked, and as requested by the petitioner, he is directed to decide the aforesaid election protest on the merits. Costs shall be taxed against the respondent Santos Calderon. So ordered.

Paras, C.J., Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] The rules of procedure applicable to ordinary civil cases are also applicable generally to election contests when they do not conflict with the Election Law. (*Gardiner vs. Romulo*, 26 Phil. 521; *Lucero vs. De Guzman*, 45 Phil., 852; *Morente vs. Filamor*, 52 Phil., 289.)

[2] Sec. 74, R. A. No. 180.

[3] *Villanueva vs. Araneta Diaz* 47 Phil., 836; *Nisperos vs. Araneta Diaz*, 47 Phil., 806.

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