

VICENTE JAUCIAN, CONTESTANT AND APPELLANT, VS. PEDRO F. CALLOS, CONTESTEE AND APPELLEE.

G. R. No. 11573. September 29, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In the general elections held on November 8, 1955, Vicente Jaucian and Pedro F. Callos were candidates for Mayor of Daraga, Albay. The municipal board of canvassers proclaimed Callos as mayor-elect with a majority of 134 votes. Dissatisfied with the result, Jaucian filed a protest in the Court of First Instance of Albay alleging that the election did not reflect the true and free expression of the popular will on account of mass frauds perpetrated in at least 10 precincts of the municipality. After hearing, the trial court re-affirmed the election of Callos with a majority of 68 votes, which was later reduced to 67 upon a joint motion by both parties in view of certain errors committed in the report of the commissioners, Jaucian took the case on appeal directly to this Court on the ground that the questions involved are purely of law.

It appears that in thirteen ballots cast in Precinct 38, Nuyda, surname of incumbent congressman from the second district of Albay, appears written on the first or second space of the column for councilors; in two ballots, Calleja, surname of incumbent governor of Albay, appears written on the first space of the column for councilors; in seven ballots, Montano, surname of a former senator, appears written in the same manner; in live ballots, Garcia, surname of a former senator, appears written in the same manner; in six ballots, Pecson, surname of a former senator, appears written in the same manner; in twelve ballots, Osias, surname of a former senator, appears written in the same manner; in seven ballots, Peralta, surname of a former senator, appears written in the same manner; in four ballots, Recto, surname of an incumbent senator, appears written in the same manner; in three ballots, Planas, surname of a candidate for senator, appears written in the same manner; in three ballots, Ziga, surname of a former governor of Albay, appears written in the same manner; in three ballots, Perez, surname of a former congressman, appears written in the same manner, with the exception of one; in five ballots, Carmen, Christian name of protestant's wife, appears written in the same manner; in three ballots, Toribio, surname of a candidate for senator, appears written in the same manner; in one ballot, Villa, surname of an acting general manager of the Manila Railroad, appears written in the same manner; and in one ballot, Imperial, surname of a candidate for board member, appears written in the same manner. These votes were declared by the trial court merely as stray which do not invalidate the entire ballot and so it counted them in favor of protestee.

The issue now posed by protestant is: Are the names of persons who are not candidates for councilors which appear written on the first or second space of the column intended for councilors to be considered merely as stray votes under Section 149, paragraph 13, of the Revised Election Code, or are they to be considered as distinguishing marks which would invalidate the whole ballot under the provisions of Section 135, in relation to Section 146, of the same Code?

The answer must necessarily be that they cannot be considered as distinguishing marks in view of the express provision of the law which says 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" (Section 149, paragraph 13, Revised Election Code). Under this provision, it would appear that the mere fact that the name of a person who is not a candidate is written on a space intended for an office for which he is not a candidate will not invalidate the ballot but that it would be merely considered a stray vote, and this is true even if the same name be repeated on the same space on several ballots unless there is sufficient evidence to show that the name was written thereon by the voter with the evident intention to identify his vote. In other words, the writing of that name on the ballot will not be considered as identifying mark unless there is clear evidence aliunde to show that it is. As this Court has aptly said: "No ballot should be described as a marked ballot unless its character as such is unmistakable" (*Valenzuela vs. Carlos*, 52 Phil., 428; *Cacho vs. Abad*, 62 Phil., 564).

It is true that the names in question appear written on the first space of the column intended for councilors and they refer to several ballots which were cast by voters belonging to the same precinct, a circumstance which may appear suspicious or may indicate that there has been a preconceived plan on the part of the voters to write said names to enable them to identify the ballots they have cast, but the showing of such circumstance based upon what is written on the ballot alone cannot justify the inference that the names were written as identifying marks in the absence of evidence aliunde clearly proving that that was the result of a preconceived plan or agreement reached by the voters before the election. The reason is obvious: an identification mark cannot be presumed but must be established by clear evidence. This is especially so in this instance where by legislative fiat the writing of a name in that manner is only considered as stray vote.

It is likewise true that in the case of *Balajadia vs. Eusala*, G. R. No. 42579, decided on January 23, 1935, this Court laid down the rule that ballots on which the names of conspicuous politicians or personages were written on spaces for offices for which they are not candidate and for which said persons are ineligible for being non-residents are invalid and should be invariably considered as marked ballots, but said ruling should now be considered abandoned or not controlling in view of the fact that the law on which it was predicated has already been modified by the present Revised Election Code which expressly ordains that such kind of voting will not render the ballot invalid. The Court of Appeals has occasion to explain the effect of the new law on the doctrine laid down in the *Balajadia* case in a case decided on November 15, 1948, which we find to be correct. We quote:

"These ballots were adjudicated in favor of the protestee but objected to by the protestant on the ground that the same are marked ballots because 'Floro Crisologo' was voted in the first line for councilors in both ballots. The name 'Floro Crisologo' really appears in the first line for councilors in both ballots. It is argued that said name belongs to 'Floro Crisologo', the actual Congressman for Ilocos Sur, and that it was written in these ballots as distinguishing marks. We cannot subscribe to this theory. In the first place, there may be other Floro Crisologos in the province of Ilocos Sur, and the names appearing in the ballots may refer to one 'Floro Crisologo' who is not a Congressman. Secondly, even admitting that the 'Floro Crisologo' voted for in these ballots is the Congressman, the ballots in question cannot be considered as marked ballots because the votes therein for 'Floro Crisologo' may be considered as stray votes; and under sub-section 13 of section 149 of the Revised Election Code, the ballot in question is valid. We are not unmindful of the decision of the Supreme Court in the case of *Balajadia vs. Eusala*, supra, but that decision was rendered before the actual Election Code was promulgated and certainly it is no longer controlling on the matter. Said decision was rendered in 1935 and in all certainly under the old Election Law which provides that it shall be unlawful to add any distinguishing feature to the ballot or to put anything thereon other than the names of the candidates for elective offices (section 452, Administrative Code, as amended by Commonwealth Act No. 233). Under that law, 608 the votes for a person who is not a candidate for the office for which he was voted, might be considered as distinguishing mark which will naturally annul the ballot. But now, the law on the matter is sub-section 13, mentioned above, which provides that votes for a person who is not a candidate is only considered as stray vote and does not make the ballot invalid.

* * * * *

"Under section 452 of the Administrative Code as amended by Commonwealth Act No. 233, the vote for any prominent politician for an office for which he was not candidate may be considered as distinguishing marks and thus invalidate the ballot. The present law, however, provides in subsection 13 of article 149 of the Revised Election Code that 'any vote in favor of any person who has not filed his 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 stray vote but shall not invalidate the whole ballot.' This provision of law superseded and repealed section 452 of the Administrative Code, as amended by Commonwealth Act No. 233." (Tabanda vs. Rosal, (CA) 46 Off. Gaz., 4349)

Our attention has been called to the case of Illarde vs. Rodulfa, G. R. No. 30551, wherein this Court has allegedly said: "When on a great number of ballots there appear in the first space for councilor the names of persons who are not candidates, there can be no other conclusion but that said manner of voting was purposely adopted in order to identify the voter who prepared the ballots or for whom it was prepared." But we have searched for the original of this decision and the same could not be found in the record of this Court. We cannot therefore check the facts involved in said case. At any rate, that case can be differentiated from the present because there it appears that 311 voters wrote in the same space the name of a person who is not a candidate for councilor, whereas in the present only few persons appeared to have written the names of several well-known politicians or public figures in a manner where it is hard to believe that the whole scheme had been the subject of a preconceived plan, for with the exception of two or three groups, the rest merely voted for one, two or three names which are scattered or isolated and so they fit into the pattern allowed by law.

Considering that in all the ballots questioned by appellant the name of appellee was correctly written on the space provided for the office of mayor, and there being no clear evidence aliunde to show in an unmistakable manner that the names written on the first space for the column of councilors were so written to serve as identification marks, it is fair and just that the same be declared valid votes for appellee in keeping with the spirit of the law. Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

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

DISSENTING

MONTEMAYOR, J.,

I dissent for the same reasons given in my dissenting opinion in the case of Rafael I. Amurao, petitioner, vs. Indalecio Calangi and the Honorable Court of Appeals, respondents, supra, p. 347.

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