

PIO ANCHETA, PROTESTANT AND APPELLEE, VS. MAURO ORTIZ ET AL., PROTESTEES. MAURO ORTIZ, APPELLANT.

G.R. No. 12934. December 08, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on the 6th day of June, 1916, an election was held in the Province of La Union for the office of governor of said province; that at said election the protestant and protestees were each candidates; that at the close of said election the provincial board of canvassers, after a canvass of the votes of the respective municipalities of said province, declared that each of said candidates had received the following number of votes:

Vote.

Pio Ancheta

3,331

Mauro Ortiz

3,499

Gabriel Tabora

1,989

Vicente Valpiedad

55

Immediately on the announcement of the result of said election by said provincial board of canvassers the said Pio Ancheta filed the present protest in the Court of First Instance of the Province of La Union. The protestant alleged that certain irregularities and frauds had been practiced in the following municipalities: Bacnotan, San Juan, San Fernando, Bauang, Agoo, Balaoan, Balacan and Tubao.

The protestant alleged that if the illegal votes which had been cast in said municipalities were rejected from the total number of votes cast, that he (Pio Ancheta) would have received a majority of the votes cast.

Each of the candidates were duly notified of the presentation of said protest.

On the 26th day of July, 1916, the protestee, Mauro Ortiz, presented his answer, in which he interposed a general and special defense. In his general defense he denied generally and specifically all of the facts alleged in said protests. In his special defense he alleged that certain frauds and irregularities had been practiced by the municipal board of canvassers in the following municipalities: Luna, Bangar, Santo Tomas and Caba.

On the 26th day of July, 1916, the court appointed, by consent of the parties, the following commissioners for the purpose of hearing the proof to be adduced by the respective parties relating to the frauds and irregularities alleged in their respective protest and answer: Rafael Lete, Cosme Abenoja and H. W. Widaees. Said commissioners entered upon the performance of their duties on the 31st day of July, 1916, and continued their work up until about the 18th day of August, when they made their report. Their report is a very carefully prepared statement relating to the questions presented by the protest and answer. After hearing the respective parties and considering their proof, and an examination of the ballots cast in each of the said municipalities to which the protest related, the commissioners reached the following conclusion:

"(a) That Mauro Ortiz received—

1. Clear votes

2,458

2. Doubtful votes

194

3. Protested votes

14

"(b) That Pio Ancheta received—

1. Clear votes

2,940

2. Doubtful votes

141

3. Protested votes

18

"(c) That Gabriel Tabora received—

1. Clear votes

1,680

"(d) That Vicente Valpiedad received—

1. Clear votes

50

Said commissioners in their report stated that they had rejected 222 ballots for various reasons given.

Upon the presentation of said report the respective parties agreed that the same was correct and exact with reference to the number of ballots, "clear" and "questioned," found in the ballot boxes of the various municipalities. Both parties, however, the protestant as well as the protestee, Mauro Ortiz, asked permission to adduce additional proof with reference to the frauds and irregularities alleged to have been committed in the municipality of Bacnotan. Said permission was granted. Proof was adduced with reference to said alleged frauds, and the cause was submitted to the court for decision.

On the 9th day of May, 1917, the Honorable Manuel Camus, in a very carefully prepared opinion, reached the conclusion that Mauro Ortiz received 3,272.54 1/31 legal votes, and that Pio Ancheta had received 3,285.59 1/31 legal votes and issued an order directed to the provincial board of canvassers to correct its return in accordance with said conclusion. It will be noted from the decision of the lower court that each candidate was given the number of votes which he had been accorded in the report of the commissioners except in the municipality of Bacnotan. In said municipality the commissioners gave to Mauro Ortiz 46 votes and to Pio Ancheta 467 votes, while the Court of First Instance, after a careful examination of the ballots, gave to Mauro Ortiz 80.54 16/31 votes and to Pio Ancheta 465.59 1/31 votes. In other words, upon a reexamination of the ballots found in the ballot box in said municipality, the lower court reached the above result after dividing between the various candidates eleven disputed ballots. It was by that means that the lower court reached the conclusion that the candidates received a fraction of a vote. Said eleven votes will be discussed later.

From that decision of the lower court the protestee, Mauro Ortiz, appealed and made several assignments of error, many of which may be discussed together.

The appellant contends that an error was committed by the lower court in not being- present and presiding over the sessions of the commissioners during the time they were examining the ballots and hearing proofs relating to the alleged frauds and irregularities. The appellant, either personally or by his attorney, was present during the sessions of the commissioners. He presented no objection to the fact that the sessions of said commission were not held in the presence of the court. He gave his consent to the method of conducting the investigation by the commissioners. He entered no protest. Shall he be heard now to enter a protest for the purpose of annulling the acts of the commissioners ? The doctrine is so well established that it no longer needs the citation of authorities to support it, that, generally, an objection which is not presented in the lower court will not be heard for the first time on an appeal. The appellant not only failed to present any objection in the court below, but actually gave his consent to the method of conducting the examination by the commissioners (pp. 2 to 5, stenographic notes.) And moreover, while it is not denied that the commissioners are subject to the control and direction of the court, their work would be of but little assistance to the court if they were required to act in its presence and under its direct supervision. The principal purpose in the appointment of commissioners is to save busy courts from the necessity of the detailed work of counting ballots. That purpose would be completely defeated if, notwithstanding the appointment of commissioners, the court should be required personally to assist in the counting of the votes.

Considering the fact that the parties consented to the method of examining the ballots by the commissioners in the court below without protest, and considering especially the fact that they agreed expressly to the method adopted by said commissioners, we are not now inclined to reverse or to modify the conclusions of the lower court upon the first assignment of error. (*Hontiveros vs. Altavas*, 24 Phil. Rep., 632.)

The second contention of the appellant is that the lower court committed an error in accepting the report of the commissioners with reference to various municipalities without hearing proofs relating to the frauds and irregularities charged. In answer to that contention it is sufficient to say that the appellant, as well as the appellee, admitted, when the report of the commissioners was presented, that it was true and an exact reference to all of the said municipalities in question, except that of Bacnotan. The proof adduced in the court below by the respective parties was limited to the alleged frauds and irregularities committed in the municipality of Bacnotan. Having thus agreed, and having thus accepted the report of the commissioners, and having failed to present any proof which in any way tended to affect the result reached by said commissioners in all of said municipalities, except Bacnotan, we see no reason now, the objection having been presented for the first time, for modifying the conclusions of the lower court.

The next contention of the appellant is that the municipal board of inspectors of the municipality of Bacnotan

committed an error (a) in permitting certain ignorant and incapacitated persons to be assisted by the members of said board without first taking the oath required by law, and (b) in permitting certain persons to vote who had not theretofore been duly registered and qualified as voters. Whether or not said errors were committed is a question of fact. Proof relating to said alleged errors was adduced pro and con during the hearing before the lower court. While the proof is in conflict, and while several of the witnesses contradicted themselves frequently upon each of said questions, we are of the opinion that a fair preponderance of the proof adduced shows that neither of said irregularities were committed by the municipal board of inspectors.

In addition to what we have here stated we desire to make that part of the decision of the lower court relating to these particular alleged errors a part of this decision, without the necessity of repeating it here.

The protestee alleged and attempted to prove that ten or eleven persons voted at the election in the municipality of Bacnotan who had not been theretofore registered and qualified as voters. While the lower court reached the conclusion that that allegation had not been proved, yet, nevertheless, out of the abundance of caution, and without being able to determine for which particular candidate said eleven votes had been cast, it divided the said eleven votes among the respective candidates in proportion to their total votes in said municipality. By that method the lower court reached the conclusion that each of the candidates in the municipality of Bacnotan received a fractional part of a vote. The lower court refused to annul the result of the election even though some persons had voted who were not qualified as voters. This conclusion, of course, was reached after it had found that a preponderance of the evidence shows that no such fact existed. But even though the eleven votes in question had all been given to the protestee, still that would not be sufficient to change the result.

After a careful examination of the record, and for the reasons above given, as well as for the reasons given in the decision of the lower court, we are of the opinion and so hold that the judgment of the lower court should be and is hereby affirmed, with costs against the protestee and appellant Mauro Ortiz. So ordered.

Arellano, C. J., Carson, Araullo, Street, Malcolm, and Avancena, JJ., concur.

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