

ANASTACIO PANGONTAO, PETITIONER, VS. FLORES M. ALUNAN AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. 18926. November 30, 1962*

Ponente: DIZON, J.

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In the general elections held on November 10, 1959, respondent Flores M. Alunan and petitioner Anastacio Pangontao were among the candidates for mayor of the municipality of Talakag, province of Bukidnon. On November 12 of the same year, the Municipal Board of Canvassers proclaimed Pangontao as mayor elect with a plurality of 37 votes over Alunan. Not satisfied with the result, the latter filed the corresponding election protest within the legal period in the Court of First Instance of said province. After due hearing, said court reaffirmed the election of Pangontao but with a plurality of 16 votes only, which, upon motion for reconsideration, was further reduced to 4 votes.

Petitioner Alunan appealed to the Court of Appeals assailing the rulings of the trial court on a good number of ballots admitted as valid votes for Pangontao. After hearing the case, the Court of Appeals rendered the appealed decision declaring Alunan as mayor elect of Talakag by a plurality of 1 vote and awarding him the costs of suit. The pertinent portions of said decision read as follows:

"As elsewhere noted, the protestant and the protestee received 789 votes and 560 votes, respectively, in the 10 precincts of Talakag not involved in the protest; while after the lower court deducted 7 votes from protestant and 35 votes from protestee, the contested precincts gave protestant 312 votes and protestee 545 votes or a grand total of 1,101 and 1,105, respectively, with 4 votes plurality for protestee.

"In this appeal, protestant-appellant assails 50 votes adjudicated in favor of protestee, of which 5 votes were voided (Exhibits B-22, B-23, B-24, B-25 and E-11), deductible from protestee's votes; whereas none was annulled of the 25 votes challenged by protestee-appellee. The result is shown in the following tabulation:

Contested precincts as per decision of CFI

Deducted here

Final Vote

Uncontested precincts

Total

Pangontao

545

5

540

560

1100

Alunan

312

5

312

789

1101

Plurality of Alunan

1

"Wherefore, the judgment appealed from is reversed and protestant Flores M. Alunan is hereby declared mayor-elect of the municipality of Talakag by a plurality of one vote over protestee Anastacio Pangontao, with costs against the latter."

The present is Pangontao's appeal by certiorari from the above decision.

In his first assignment of error, he assails the ballot marked Exhibit 2 on the ground that it is marked, the word "Nubia" written on the first line for councilors having been so written to identify the ballot and the voter who cast it. The trial court, after examining the ballot in the light of the evidence of record, expressly found that "Nubia" appeared to be the name or nickname of a person, and considered the vote cast as a stray vote, leaving the ballot valid in all other respects. The Court of Appeals, for its part, considered the case as a doubtful one and, following the policy of the law of resolving the doubt in favor of the validity of the ballot, it affirmed the resolution of the trial court. After considering the ballot and the evidence of record material to the issue, we find no reason to disturb the ruling of both courts.

The other ballot questioned in the first assignment of error is the one marked Exhibit 6-1 which petitioner claims is a marked ballot because after the name "Kiliron" written on the first space for councilors, the voter wrote the word "Bulag". We agree with the respondent court that the word "Bulag" was merely *descriptio personae* which does not invalidate the ballot (*Cruz vs. Court of Appeals*, G. R. No. L-14095, April 10, 1959).

In the Second assignment of error, petitioner claims that the respondent court erred in not holding that the ballots marked Exhibits 5, 5-a, 5-b, 5-c, and 5-d are invalid because they are marked by the numbers 12, 23, 18, 11, and

25 written on their reverse side, respectively.

In connection with these alleged marks, the respondent court found that they do not appear to have been written by the voters themselves "because the numbers were smoothly and finely made with sharpened pencil points, unlike the writings on the face of the ballots, thereby indicating a different writer." To this, said court added that, "Most probably the numbers were written by some election officials while counting the bunches of ballots in the box for valid ballots to determine whether their sum tallied with the number of electors who had voted as per the permanent list, pursuant to Section 145 of the Revised Election Code." We agree entirely with the finding and observations just quoted and, as a result the questioned ballots are held to be valid votes for respondent Alunan.

In the third assignment of error, petitioner claims that the ballots marked Exhibits 6-B and 4-B should have been rejected by the Court of Appeals because they are clearly marked.

The alleged mark appearing on Exhibit 4-B is the fact that respondent Alunan appears to have been voted not only for mayor but also for senator. We believe that this circumstance does not invalidate the ballot. The vote cast for Alunan for senator should be considered merely as a stray vote.

Exhibit 6-B is also claimed to be a marked ballot because the voter, after voting for Alunan and Alahay for mayor and vice-mayor, respectively, voted for them again for councilors. For the reason already stated above, we hold this ballot to have been correctly counted as valid for respondent Alunan because the votes cast for him and for Alahay for councilors should be considered merely as stray.

In the fourth assignment of error, petitioner claims that the Court of Appeals should have admitted as valid votes for him the ballots marked Exhibits B-22, B-23, R-24, and B-25. The pertinent rulings of the respondent court read as follows:

"Ballots, Exhibits B-22, B-23, B-24 and B-25. These 4 ballots are marked, as indicated by the vote for 'Atty. Aquino' appearing as the 4th name in the space for councilors, thereby showing a scheme to thus mark the ballot (as intimated by witness Acido), said attorney being one of the lawyers, and nephew, of protestee."

A careful examination of the questioned ballots confirms the finding that the last person voted for councilor in all of them is "Atty. Aquino". Considering the circumstance that Atty. Aquino was found to be a nephew and one of the lawyers who appeared for petitioner in the trial court, as well as in the Court of Appeals and in this Court, we are constrained to agree with the finding that his name was purposely written on the ballots as a means of identifying them and the voters who cast them. They were, therefore, correctly rejected and considered not valid.

In the fifth and last assignment of error, petitioner contends that the Court of Appeals should have admitted Exhibit E-11 as a valid vote in his favor instead of invalidating it as marked. The Court of Appeals considered this ballot as marked because "Carlos P. Garcia" and "Juan Pajo" were voted for as councilors, and they being national figures and not candidates for said position, their names constitute identification marks, We find this ruling to be correct.

The vote cast for Juan Pajo could still be explained and considered as stray because he was one of the candidates for senator at the time, but certainly the name of Carlos P. Garcia, the incumbent President of the Republic at the time, who was not running for any elective position, presents an entirely different case and must be considered as an identification mark. This is perfectly in accord with our ruling in *Cruz vs. Court of Appeals*, G. R. No. L-14095, April 10, 1959, to the following effect:

"Similarly, at the bottom of the list of persons voted for councilors in Exhibit 17-F-Cruz, were "Lacson" and "Figueras". Considering that these are prominent politicians in Manila, who were not running, and could not have possibly run, for councilors in Calumpit, Bulacan, this ballot should, also, be regarded as marked, and

was erroneously counted for Pineda. (Balajadia vs. Ensala, supra; Corpus vs. Ibay, supra.)"

Having arrived at the above conclusions resulting in the finding that the Court of Appeals did not commit any of the errors assigned in petitioner's brief, we find it unnecessary to rule on the counter-assignment of errors made in the brief submitted by respondent Alunan.

Wherefore, the decision appealed from is affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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