

GABRIEL ROLDAN, PETITIONER VS. PEDRO MONSANTO, RESPONDENT.

G.R. No. 21578. November 08, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for certiorari to review the decision of the Court of Appeals in CA-G. R. No. 28506-R, Gabriel Roldan, protestant-appellant, vs. Pedro Monsanto, protestee-appellee. The petitioner has waived his right to present a brief and relies upon his petition to support the grounds for the petition.

In the general elections of November 10, 1959, in the municipality of Catmon, province of Cebu, Gabriel Roldan and Pedro Monsanto were both registered as candidates for the office of mayor and received votes for said office. The board of canvassers of the municipality proclaimed Pedro Monsanto elected to the office, with 1,766 votes as against Gabriel Roldan with 1,704 votes, or a majority of 62 votes. Thereupon Roldan presented a petition of protest in the court of first instance. This court after a revision of the ballots in the contested precincts found that the protestee Monsanto was elected with a plurality of 26 votes. Protestant appealed the decision of the court of first instance to the Court of Appeals, and this court affirmed the judgment of the trial court, but reduced the majority of Monsanto from 26 votes to 10 votes. Petitioner now seeks a review of the decision of the Court of Appeals.

Petitioner has not presented a formal "assignment of errors" at the beginning of the petition but groups his objections to the decision of the Court of Appeals; he has not asked for the review of the decision upon specific ballots but upon groups of ballots. The questions presented in the petition are discussed herein.

The first question raised, a legal one, is the consideration by the Court of Appeals of 22 ballots for appellee Monsanto, rejected by the court of first instance, notwithstanding the fact that Monsanto did not appeal from the decision of the court of first instance, or cite this as error in appellee's brief. The Court of Appeals set aside the ruling of the court of first instance on said ballots and admitted and counted them for the appellee. We hold that the action of the Court of Appeals in reversing the action of the lower court on the 22 ballots and in counting them in favor of protestee-appellee is in accordance with the provisions of Section 178 of the Revised Election Code which considers an election protest similar to a criminal case, wherein on appeal the case is tried de novo, and the appellate court may review a ruling of the court of first instance on any ballot motu proprio whether the ballot had been the object of appeal or not. This is based on the provisions of Section 178 of the Revised Election Code and supported by Our decisions in the cases of *Ibasco vs. Ilao, et al.*, 110 Phil., 553, and *Borja vs. De Leon, et al.*, G. R. No. L-20245, Sept. 30, 1963.

The same ruling applies to the adjudication by the Court of Appeals of a ballot, Exhibit L-57, in favor of protestee-appellee, although its rejection by the trial court was not expressly assigned as error by any of the parties.

The third error alleged in the petition is that—

"* * * the Court of Appeals * * * adjudicated as valid votes for the protestee-appellee sixty-seven (67) ballots, among others, notwithstanding that in these ballots there are written names which are not the true and real Christian name of protestee-appellee, names of non-candidates, of conspicuous politicians or personages, or voters in the district or precincts, or names which are not idem sonans to protestee-appellee, or names not sufficient to identify the protestee-appellee, or not in the proper space, and hence are stray votes for protestee-appellee, and words, nicknames or appellations or marks are written in the ballots which are written designedly for the purpose of identifying the ballots because they are either irrelevant and impertinent, with no indicia connected to it as to justify their existence in the ballot."

As the petitioner has not designated the eleven ballots from the 67, all supposedly erroneously counted by the Court of Appeals in favor of the appellee and has not indicated the objection to each and everyone thereof, it is impossible for Us to examine the individual ballots alluded to and are unable to make a ruling on the alleged error or errors. The general objection stated in the petition is not a sufficient ground for rejecting the ballots. The Court of Appeals must have considered each ballot according to the nature of the appellation, prefix or suffix, and as these (prefix or suffix) involve generally questions of fact and as the ballots themselves have not been expressly pointed out, We do not feel justified, upon consideration of the mere allegations of petitioner and after considering the appealed decision, in disturbing the findings of the Court of Appeals with respect thereto.

The above reasoning is also applicable to the rest of the 56 ballots mentioned in the petition, where according to the petitioner—

"* * * words, names, nicknames, appellations, prefixes and suffixes are written in several places in the ballots, designed to identify the ballots or the voters, most of them irrelevant or impertinent, with no indicia connected to them to justify their existence in the ballots."

The petitioner evidently misunderstood the nature of the proceeding which he filed in this Court, which is a petition for certiorari. Notwithstanding the fact that this case is an election case the procedure before this Court in a petition for review of the decision of the Court of Appeals is one for certiorari and is not an ordinary appeal. The proceeding for certiorari before Us does not have the effect of authorizing the review and revision of all the ballots contained in the contested precincts without specific allegations of the supposed errors committed by the Court of Appeals. We are limited to examining these supposed errors in the decision of the Court of Appeals that are expressly and specifically pointed out. The petitioner in this case has made general allegations of errors in his petition for review but he has not elaborated on these alleged errors specifically with respect to each ballot (he has waived the presentation of a brief). We are, therefore, obliged to consider the merits of the supposed errors upon the allegations of the petition itself or upon the findings of the Court of Appeals in its decision. Hence, We have been forced to pass upon the merits of the petition mainly upon petitioner's own allegations and the decision of the Court of Appeals, without consideration of the ballots themselves.

The last error or discrepancy supposedly committed by the Court of Appeals is one of computation, i.e., that two ballots, L-57 and L-59, have or have not been included in the totals in the recapitulation. Much as We have tried to understand what the nature of the supposed error is, it is impossible for Us to rule on the supposed error because the petition for review makes reference to computation contained in the trial court's decision, but which was not attached to the petition or presented or caused to be elevated to Us. In the same manner as it has been impossible for Us to consider the petitioner's objections to the rulings of the Court of Appeals on the specific ballots because the ballots have not been pointed out and the objections to each clearly specified, similarly We can not make a finding or ruling on this supposed error of computation as the computation in the court of first instance to which reference is made has not been presented.

Wherefore, the petition should be as it hereby is denied, with costs against the petitioner.

So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepción, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ.,
concur.

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