SERVANDO DE LOS ANGELES, CONTESTANT AND APPELLANT, VS. EULOGIO RODRIGUEZ, CONTESTEE AND APPELLEE.

G.R. No. 22257. December 03, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

In the 1922 general elections, Eulogio Rodriguez, Servando de los Angeles, and Miguel R. Cornejo contested for the office of governor of the Province of Rizal. Rodriguez obtained 11,339 votes, Angeles, 10,979 votes (correcting a manifest mathematical computation), and Come jo 4,662 votes. Rodriguez, having in his favor a plurality of 360 votes, was proclaimed as elected to the position of governor of Rizal.

Angeles protested the election of Rodriguez by a motion which alleged that numerous errors, frauds, and irregularities had been committed during the election, to his prejudice. After Cornejo had answered and Rodriguez had filed a counter-protest, a prolonged trial was had before Judge of First Instance Llorente. The judgment was that the protest be dismissed with costs and incidental expenses against the contestant.

The defeated candidate and losing party, in this court, assigns fifteen errors as committed by the trial court. For convenience, these errors will be grouped in much the same manner as by the parties.

A preliminary matter presented in error XIV which the parties argue in the concluding portions of their briefs, relates to the right of the contestee to intervene in the case. The court accepts as correct the statement of counsel for the appellant when he informs us that Rodriguez has resigned the office of governor of Rizal and that another has been named to fill the vacancy. But Rodriguez has not disclaimed. On the contrary, he remains a most persistent opponent. Did the resignation of Rodriguez ipso facto remove him as an adversary of the contestant?

The contest of an election is initiated by a motion of a registered candidate voted for at the election, e. g., Angeles. Every candidate served with the notice of protest immediately becomes a party to the proceedings, e. g., Rodriguez, But the jurisdiction of the courts to entertain the contest, does not in any manner depend upon the status of the contestee. If this court should decide in favor of the contestant, it would in effect order the contestee or his successor to surrender his office to the successful party, while if the suit should go against the contestant, the contestee or his successor would remain in undisturbed possession of the office. Even if Rodriguez has no personal interest in the proceedings, he has a party interest, which is to keep his political opponent out of the office and to see that the man who succeeded him by appointment is not disturbed in his rights.

Considering, therefore, the contest as still continuing between Angeles and Rodriguez, the first major point made by the appellant relates to alleged irregularities in precincts Nos. 1 and 2, municipality of Cardona, No. 3, municipality of Makati, and No. 3, municipality of Malabon. (Errors I, II, III, and IV.) The fact that detachable numbers were not removed from the ballots before they were deposited in the box, presents, according to the appellant, two important ramifications, the first, a violation of section 442, as amended, of the Election Law, and the second, the perpetration of fraud by a pre-arranged plan. If the 709 ballots cast in favor of Rodriguez and the 327 ballots cast in favor of Angeles, without th6 removal of the slips before deposit in the ballot box, were

eliminated, there would be a resulting difference of 382 votes in favor of the contestant, and he would win the election by a plurality of 22 votes.

The last paragraph of section 442, as amended, of the Election Law provides:

> "The detachable number of the ballot shall be detached from the latter in sight of the voter, at the moment when said ballot is to be placed in the ballot box, but not before, by the chairman of the election board, without exposing the contents of the ballot. The detachable number shall be deposited in the box for spoiled ballots and shall be kept there, and no ballot the number whereof has not been detached by said chairman and in the sight of the board of inspectors shall be allowed to be deposited in the box."

The language of the law in question is sought to be interpreted by the contestant as mandatory and invalidating the votes cast in violation thereof, and by the contestee as directory and not invalidating the votes.

While the authorities in the United States apparently take different views on this question, it will be found, on examination, that the decisions are predicated on the wording of the particular statute requiring interpretation and application. (Contrast Lynip vs. Buckner [1895], 22 Nev., 426; 30 L. R. A., 354, and Montgomery vs. Henry [1905], 144 Ala., 629; 1 L. R. A., [N. S.], 656; with West vs. Ross [1873], 53 Mo., 350.) In this jurisdiction, the general underlying principle is as stated "in Lino Luna vs. Rodriguez ([1918], 39 Phil., 208), where it was held:

"The rules and regulations, for the conduct of elections, are mandatory before the election, but when it is sought to enforce them after the elections, they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object. When the voters have honestly cast their ballots, the same should not be nullified simply because the officers appointed under the law to direct the election and guard the purity of the ballot have not done their duty. * * *"

More recently, in the case of Lucero vs. De Guzman ([1924], 45 Phil., 852), the court having to determine if a ballot otherwise unexceptionable, except for the failure of the election inspectors to detach the numbered coupon from it, should be counted, ruled:

> "The circumstance that the coupon bearing the number of a ballot is not detached at the time the ballot is voted does not justify the court in rejecting the ballot. The duty of detaching the coupon is placed by law upon the election officials, and the voter must not be deprived of the franchise by reason of their failure to perform this duty."

The irregularity in question seems to have been due to a misconstruction of the law on the part of the election inspectors, and to have been committed irrespective of whether the votes were for Angeles or Rodriguez. The voters were themselves in no wise at fault. Applying the law as heretofore interpreted, and noting no oppository facts, the challenged ballots were properly counted.

The other branch of appellant's argument under the same heading of alleged fraud in the municipalities of Cardona, Makati, and Malabon, consists in an exposition of the manner in which the fraud was committed. The mechanism of this plan, according to the appellant, was in the watchers having a list taken from the electoral census of the names of the voters, in front of each name there appearing the removable number of the ballot, so that in the scrutiny by these watchers near the inspectors, with a view of this list and number, they were able to verify if the voter had remained true to his promise and for whom he had voted. As pointed out by appellee, the hiatus in this theory is how the watchers came to know the numbers. The alleged list of electors was lost so we are forced to rely upon purely oral testimony for a knowledge of its contents. The success of the scheme would depend upon the concurrence of several essential factors which it is hard to assume united for its accomplishment.

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In some of the precincts at least, the election board was composed of members belonging to different parties who could easily have thwarted a plan designed to destroy the secrecy of the ballot.

On the major point with its two branches which we have under view, the trial judge made the following pronouncements:

> "It was fully proven that in precincts 1 and 2 of Cardona, 2 of San Pedro Makati and 3 of the municipality of Montalban, the detachable numbers of the ballots were not removed before depositing the ballots in the boxes. It is to be noted that the same was also done in the municipality of Jalajala and in precincts 1 and 2 of Teresa where the petitioner obtained a majority of votes. Petitioner prays for the annulment of all the votes cast in the aforesaid precincts of Cardona, Makati, and Malabon.

* * * * * * *

> "The court is of the opinion that this statutory provision (section 442, Administrative Code, as amended) relates to the manner and form of conducting the election; it is mandatory before the election but directory only afterwards. Once the ballots were allowed to be deposited in the box the irregularity thus resulting cannot be prejudicial to the innocent voters. There is neither proof that with the commission of such irregularity the voters were prevented from expressing their will, nor that such procedure has resulted in the casting of illegal votes to such an extent as to make the result of the elections doubtful in the aforesaid precincts. Furthermore, the law does not command that the ballots so cast shall be declared null or discounted in the canvass.

* * * * * * *

> "There was an attempt to prove that in precincts 1 and 2 of Cardona the secrecy of the ballot was violated; that lists were carried there; that on those lists the numbers of the ballots were noted; that during the canvass these numbers were checked with those of the detachable numbers of the ballots not removed; and that the public shouted the phrases 'He is loyal; strike him; strike him also.' All the evidence introduced is oral and completely contradictory. Not the slightest documentary evidence was introduced and as regards the remarks of the public, the evidence is very vague."

Accepting the law pertinent to the question as previously interpreted by this court and accepting the facts as found by an experienced trial judge, we must perforce decide against the appellant on his four assignments of error.

The second major point made by the appellant relates to alleged irregularities in precincts Nos. 1 and 2, municipality of Montalban (Errors V, VI, VII, and VIII). In these precincts, Rodriguez received 388 votes and Angeles 12 votes, or a difference in favor of Rodriguez of 376 votes. If the election returns in Montalban should be thrown out, Angeles would win the election by a plurality of 16. Fifteen irregularities are specified by appellant as having been committed in precinct No. 1 of Montalban and sixteen irregularities as having been committed in precinct No. 2 of Montalban. For the satisfaction of appellant, we will consider these alleged irregularities in detail. In the first place, it is asserted by appellant and not denied by appellee, that the municipal council of Montalban named all of the election inspectors and secretaries from the Democrata party. Our comment is that apparently Montalban is a stronghold of Rodriguez, and that there is only one party in that municipality. Bi-partisan representation on the board of inspectors is only possible, as indeed is expressly provided by law, "should there be in such municipality one or more political parties or branches or fractions thereof, or political groups." (Section 417, as amended, of the Election Law.)

It is next asserted that the municipal council in naming the election inspectors designated one of the inspectors as chairman of the board, in violation of section 421, as amended, of the Election Law, which provides that the inspectors of each precinct "shall meet and appoint one of their number chairman, or, if a majority shall not agree upon such appointment they shall draw lots for such position." Our comment is that while the law should have

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been followed to the letter, the variation therefrom was nonprejudicial to the rights of the voters.

It is next asserted with reference to the first precinct that the inspectors changed about in their duties and appointed another as substitute. Our comment is that while their actions were improper, there was a substantial compliance with the law.

It is next asserted with reference to the second precinct that there was no oath of registration of the voters. Our comment is that the list which would go to show the exactitude of this fact has disappeared and that there is evidence to the effect that oaths were taken.

It is next asserted that copies of the electoral list were not sent to the provincial board and the Executive Bureau as required by section 433, as amended, of the Election Law. Our comment is that it appears that all the copies were sent to the municipal secretary who could easily have forwarded them to the other named officials. At most, this was an error which did not hurt anyone.

It is next asserted that in precinct No. 1, ballots of the series "E" instead of the series "A" were used. Our comment is that while improper, under the circumstances, it is immaterial.

It is next asserted that the removable slips and stubs of ballots used have disappeared. Our comment is as heretofore explained that this would not affect the validity of the election.

It is next asserted that ballot 12-E cast in favor of Rodriguez bears a removable slip. Our comment is that in conformity with our decisions this ballot was properly counted.

It is next asserted that two names appear on a ballot which was counted for Rodriguez. Our comment is that while apparently properly admitted since both names were "Eulogio Rodriguez," the loss of this one vote by Rodriguez would not change the election.

It is next asserted that while there were only eight illiterates in precinct No. 1, the commissioner, Mr. Gomez, found twenty-seven ballots which appeared to have been written by two or three hands. A similar statement is made as to precinct No. 2. Our comment is that the opinion of the commissioner is not decisive and appears to be without foundation of fact.

It is next asserted that no copies of the oaths by illiterates and disabled voters were sent to the provincial board and the Executive Bureau. Our comment is that section 453, as amended, of the Election Law, requires the oath taken by the person and watcher who assist a voter to be made out in quadruplicate and sent to the officials named in the law. (Lino Luna vs. Rodriguez, supra; Cailles vs. Gomez and Barbaza [1921], 42 Phil., 496.)

It is next asserted that the number of the ballot was placed against the name of the voter as he advanced to vote. Our comment is that this appears to have been done only as to a few voters through mistake.

It is next asserted that the inspectors admitted many ballots without the corresponding removable number and that these ballots were deposited in the box and counted as valid votes. Our comment is that this subject has been covered under the first major point.

It is next asserted that Catalino Ano, one of the inspectors of the first precinct, was given employment after the election, in the office of the provincial engineer, by Rodriguez. Our comment is that this may be true or not and still not affect the election.

A few other points are made as to the second precinct, but we think enough has been said to show the attitude of the appellant. He argues truly that a number of provisions of the Election Law have not been followed. But when from these premises counsel proceeds to deduce that all of the irregularities committed can only be explained as

indicative of deliberate premeditated fraud, we are unable to follow him. Our impression is that the infringement of the law came about more through stupidity or ignorance or inexperience than through any criminal tendency. Indeed, with Rodriguez having such a close grip on the electorate of Montalban, the perpetration of fraud was unnecessary.

With reference to the many irregularities which the contestant tried to prove had taken place in the municipality of Montalban, we make our own the findings of the trial judge as follows:

> "The court is in accord with the petitioner that as to precinct 1 of the municipality of Montalban the following facts have been proven: The inspectors and the secretary of the Election Board all belong to the same party—the Democrata Party; the chairman of said Board was appointed by the municipal council; inspector Agapito San Pascual was not present at the first two days of registration, although he has signed the electoral census on all the days of registration; no copies of the electoral census were forwarded to the provincial board nor to the Executive Bureau ; in this precinct ballots of series E were used; the stub book of this series has disappeared; 36 detachable numbers have also disappeared; the copies of the declarations under oath of the illiterate and of the incapacitated voters were not sent to the provincial board nor to the Executive Bureau nor placed in the box for void ballots; and, lastly, the inspectors accepted ballots without the detachable coupon and such ballots were deposited in the ballot box and later counted as valid votes. All the irregularities above mentioned were committed either by the municipal council or by the board of inspectors. It is not believed that such irregularities can prejudice the innocent voters. Regarding the ballots without the detachable numbers which the inspectors allowed to be deposited in the ballot box, there is no evidence of any fraud relating thereto. Petitioner argues in his brief that there are many ballots written by the same hand and many others written by two or more persons. As far as we are able to recollect no evidence whatsoever was introduced as to this point. The attention of the court was not called to these ballots. Petitioner presented ballots written by two or more persons, Exhibit U, but these ballots belong to the second precinct of Montalban. "In regard to the second precinct of Montalban, almost the same irregularities were also committed. The inspectors and secretary of election appointed by the municipal council all belong to the Democrata Party; the same council appointed one of them as chairman; copies of the electoral census and of the oaths of the illiterate and incapacitated voters were not sent to the provincial board nor to the Executive Bureau; inspector Mariano Bautista acted as secretary during the registration days; during the canvass, the secretary did not write the votes on the blackboard and no tally sheet was found in the ballot box; the inspectors wrote on the census lists the numbers of the ballots. These numbers, according to inspector Mateo Bautista, were erased by a person extraneous to the Election Board; the detachable numbers of all the ballots used in this precinct have all disappeared, and, lastly, 7 ballots are also missing. Here we have to make the same conclusions that we made in relation with the irregularities committed in the first precinct. The electors had nothing to do with such irregularities. As to the 7 votes that have disappeared there is no evidence of any fraud regarding same. Petitioner in his brief also mentions 103 ballots written by persons other than the voters themselves. As far as we are able to recollect, the attention of the court was not called to this point during the trial of this case. No evidence was introduced about this matter and the adverse party was unable to explain anything regarding these 103 ballots. The petitioner introduced 12 ballots written by several persons and these 12 ballots are marked Exhibit U. Lastly, the petitioner attempted to prove that the electors did not subscribe the oath during registration days. Respondent, however, maintains that all the voters subscribed the required elector's oath, but that the petitioner took possession of all of them. Be it as it may, innumerable voters from this precinct appeared in court and testified that they had subscribed the elector's oath on registering. Furthermore, these voters have not been challenged. They were conclusively registered in the electoral census and were allowed to vote during the elections."

Based principally on the facts as they were found by the trial judge, we must rule against appellant as to assignments of error V, VI, VII, and VIII. In doing so, we wish again to emphasize our desire to respect the wishes of the voters so that what is done by public officials may not have the effect of disfranchising the

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electorate.

The remaining argument of appellant relates to alleged bribery committed in the barrio of Darangan, municipality of Binangonan, and in the barrio of Lamayan, municipality of San Felipe Neri, and to the admission and exclusion of ballots in certain precincts in various municipalities. (Errors IX, X, XI, XII, and XIII.) As these facts could be admitted without changing the result of the election, we need not burden this opinion with minute rulings. So-called bribery committed by means of a candidate's giving a check in the amount of ?*200 for the repair of a "visita," and by furnishing posts, galvanized iron, and cement for the construction of a school, indicate more of public spirit than of venal intent. As held in Lucero vs. De Guzman, supra, "The circumstance that a candidate for the office of provincial governor made a small contribution for the repair of a dangerous road leading to one of the precincts and that a few electors testified that they voted for him because of this liberality, does not justify the subtraction of their votes from the votes of said candidate in a contest subsequently instituted over the office. * * *" As to the ballots claimed to have been illegally admitted or excluded to the disadvantage of the contestant, if they are summed up, it will be found that all of them together if adjudicated to the contestant, would not place him in the office of provincial governor of Rizal.

With reference to the alleged bribery and the admission and exclusion of ballots, the trial judge made the following findings:

> "In regard to the charges of bribery, the petitioner attempted to prove that the respondent Eulogio Rodriguez had given a check for to be expended for the repair of a chapel (visita), and that in the barrio of Lamayan of the municipality of San Felipe Neri he had given posts, galvanized iron, and cement for the construction of the school of said barrio. Ramon Pons denied having received the check in question and all the evidence introduced is insufficient to prove said charges.
>
> "Finally, regarding the admission and exclusion of ballots, we are of the opinion that from the votes obtained by Eulogio Rodriguez there must be deducted 5 votes marked Exhibits S to S-4; 12 votes marked Exhibit U and ballot Exhibit P or a total of 18 votes. There must be admitted in favor of Eulogio Rodriguez the 6 votes of Exhibit 9, 4 of the Exhibit 10, 1 of 12,1 of 15, 1 of 16, 4 of 18,1 of 19, 1 of 21,1 of 22,1 of 23,1 of 25,1 of 28, 1 of 35,1 of 38,1 of 39, 1 of 40, 1 of 41, 1 of 42, 2 of 43, 1 of 44, 1 of 46, 1 of 47, 1 of 48, 1 of 49, 1 of 56, 1 of 57, 2 of 58, 5 of 60, 4 of 61, 1 of 63, 1 of 66, 3 of 67, 1 of 69, and 2 of 70, or a total of .57 votes. In favor of Servando de los Angeles there must be admitted 5 votes Exhibits T to T-4, the 4 votes of Exhibit AA, 2 of CC, 2 of DD, 2 of KK, 2 of II, 7 of LL, 5 of MM, 1 of NN, 2 of PP, 7 of QQ, 5 of RR, 1 of SS, 1 of UU, and 1 of Exhibit F, or a total of 47 votes. Ballots F and P are not found among the exhibits, but they were presented to the court during the trial and must therefore merit consideration. A resume of the increase and decrease of votes in accordance with the admissions and ex- clusions of votes herein made will show that the result of the election has not been affected."

For obvious reasons, we have to rule against appellant as to assignments of error IX, X, XI, XII, XIII, and XV. Looking at the case in a large way and disencumbering ourselves of multitudinous details, we are confident that we give expression to the will of the electorate of Rizal when we do as Judge Llorente did, find in substance against the contestant and in favor of the contestee. The law was not always followed, it is true, irregularities, many of them, were committed, it is true, but when everything is said and done, it still remains incontrovertible that the people wanted Rodriguez and not Angeles for their governor. For all the foregoing, the judgment appealed from will be affirmed with costs against the appellant. So ordered.

Johnson, Street, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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