

ANDRES MORALES, PROTESTANT-APPELLANT, VS. MANUEL TUGUINAY, PROTESTEE-APPELLEE.*G.R. No. 24415. February 10, 1967*

Ponente: REYES, J.B.L., J.

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Direct appeal from an order of the Court of First Instance of Bontoc, Mountain Province, in its Case No. 312, refusing to declare a motion for reconsideration to be pro forma and declining to hold that its decision on the merits had thereby become final and executory.

In the elections of November 12, 1963, the Municipal Board of Canvassers proclaimed appellee Manuel Tuguinay to have been elected Mayor of Banaue, subprovince of Ifugao, with a plurality over the other candidates. One of the latter, appellant Andres Morales, filed a petition of protest on November 22, 1963, alleging frauds and irregularities. After trial the court declared protestant Morales elected over protestee Tuguinay, by 642 votes for the protestant against 639 for his rival.

Within two days from receipt of the decision, protestee filed, on January 29, 1965, a motion for reconsideration, on the alleged ground of "Consistency and Delicacy" in the epigraph, and setting forth reasons why the Court should not have rejected certain ballots that had been accepted as valid for protestee by the Board of Inspectors. The court refused reconsideration on February 9, and on the same day the protestee filed notice of appeal to the Court of Appeals and appeal bond.

The protestant moved to dismiss the appeal on the ground that it was filed beyond the 5-day appeal period fixed in section 178 of the Revised Election Code, arguing that, the motion for reconsideration not being predicated on any of the grounds specified in Rules 37 and 38 of the Rules of Court (old), said motion did not interrupt the time for appealing the case.

The court below, on February 12, refused to dismiss the appeal of the protestee, whereupon protestant Morales, in turn, resorted directly to this Court on points of law, and in his brief as appellant reiterated the arguments he had urged upon the trial court.

We find the appeal to be without merit.

While it is true that the epigraph prefacing the body of protestee's motion for reconsideration in the Court of First Instance states his grounds to be "Consistency and Delicacy", in the succeeding paragraphs protestee expounds at length upon his contention that ballots with the letter H should not have been rejected, the Board of Election Inspectors having accepted the same as valid for bearing the initials of the protestee's native name "Hucka". Protestee quoted at length from the transcript, as supporting the fact that his nickname or native name was Hucka and that he was generally known by that appellation, though his Christian name is Manuel (Rec., pp. 11-19).

Thus the text of appellee's motion for reconsideration clearly demonstrates that in reality the ground advanced therefor was that the decision was not justified by the evidence [Rule 37, section 1, subparagraph (c)]. The

epigraph should yield to the contents of the motion (cf. *Jornales vs. Central de Bais*, G.R. No. L-15287, September 30, 1963) as substance should prevail over form, and the court below committed no error in refusing to dismiss the appeal.

WHEREFORE, the appealed order of February 12, 1965 is hereby sustained and affirmed. Costs against appellant Andres Morales.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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