

AURELIO CECILIO, PETITIONER, VS. GABRIEL BELMONTE AND THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, RESPONDENTS.

G.R. No. 24794. November 17, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an action instituted originally in this court for the purpose of having a writ of mandamus issued, directing the respondent judge to order the opening of the ballot boxes of precinct No. 3 of Guimba, and the examination and revision of the ballots of said precinct, as well as of all the contents thereof, and to have Exhibit B, which is the order of the respondent judge, annulled and set aside, so far as it takes for granted the supposed tampering with the ballot boxes of precinct No. 3 of Guimba before the contestant has finished introducing his evidence.

As grounds of the petition it is alleged:

(a) That the petitioner and the respondent Gabriel Belmonte, besides Felino Cajucom, were the only registered candidates voted for in the last general elections held June 2, 1925, for the office of provincial governor of the Province of Nueva Ecija, and that the provincial board of canvassers of said province on July 2, 1925, proclaimed the respondent Gabriel Belmonte elected for the office of provincial governor of Nueva Ecija, declaring that said respondent had obtained 10,841 votes against 10,797 cast for the petitioner Aurelio Cecilio and 1,646 for the other candidate, Felino Cajucom, that is to say, adjudicating to the respondent Gabriel Belmonte a majority of 44 votes over the petitioner Aurelio Cecilio.

(b) That the petitioner filed in due time in the Court of First Instance of Nueva Ecija a motion of protest contesting the proclamation and election of the respondent Gabriel Belmonte, among other grounds, because "in precinct No. 3 of Guimba the petitioner obtained 123 votes for the office of governor and the respondent Gabriel Belmonte 70 votes, but the board of inspectors stated in their return that the respondent Gabriel Belmonte had obtained in said precinct 145 votes and the petitioner 83, thus falsifying the election return and misrepresenting the votes which each candidate for the office of governor has obtained in said precinct."

(c) That the respondent after filing his answer and counterprotest, filed another answer to the amended protest, alleging that in precinct No. 3 of Guimba a false count was made, that is to say, that there were counted in favor of the contestant votes which should not have been counted, and that there were not counted votes in favor of the contestee which should have been counted, and alleging especially "that in the ballot box of precinct No. 3 of Guimba, there were illegally introduced, after the count, 75 ballots approximately, with the name of the contestant on about 40 of them, taking away at the same time an equal number of legal ballots with the name of the contestee Gabriel Belmonte thereon, for the purpose of justifying afterwards the allegation in the protest that the contestant had obtained 143 votes for the office of governor and the respondent Gabriel Belmonte 70 votes, and that the certificate wherein 145 votes were adjudicated to the contestee Belmonte and 83 of the contestant was falsified."

(d) That under the allegations of the contestant as well as of the contestee in regard to precinct No. 3 of Guimba, the best evidence that might have been and may be offered of the truth in connection with said precinct is the

contents of the ballot boxes and the review of their contents, or at least no complete evidence can be introduced without reviewing said contents and the ballot boxes of said precinct.

(e) That on the day of the trial the petitioner prayed the respondent judge, under the provisions of article 479 of the Election Law, as amended by Act No. 3210, to order the opening of each and every one of the ballot boxes of each and every one of the election precincts of Nueva Ecija, the subject-matter of the protest, in order that all of the ballots of said precincts and the contents of the ballot boxes might be reviewed by the proper reviewing commissioners, which petition was denied by the court upon the ground that the petitioner had not introduced sufficient evidence to prove that the ballot boxes of said election precincts, and especially Precinct No. 3 of Guimba, had not been properly kept, to which denial the petitioner excepted in time.

(f) That the petitioner, out of courtesy, introduced certain evidence as to the safe-keeping of the ballot boxes, and the respondent judge, after hearing said evidence, ordered the opening of the ballot boxes of all the polling places, except of precinct No. 3 of Guimba.

(g) That the respondent Gabriel Belmonte stubbornly objected to the examination and revision of the ballots of precinct No. 3 of Guimba, as well as the review of the ballots and contents of said boxes, notwithstanding the repeated petitions of the petitioner; and the respondent judge had been reserving the ruling on said petitions of the petitioner for the opening of the ballot boxes and the review of the ballots until two months after the filing of the protest the petitioner was notified of the order denying his motion for the review of said ballots of precinct No. 3 of Guimba, and consequently the opening of the ballot boxes of said precinct.

(h) That the petitioner having asked for the opening of the ballot boxes and the review of the ballots of precinct No. 3 of Guimba, as well as the examination of all the contents of said ballot boxes, in accordance with section 479 of the Election Law, as amended by Act No. 3210, the respondent court has the ministerial and imperative duty to grant said petition and make the proper order for the opening and review of the contents of the ballot boxes in question.

(i) That unless this high court should order the opening of said ballot boxes of precinct No. 3 of Guimba and the review of the contents thereof, the petitioner would be prevented from duly proving his allegations in the motion of protest with regard to precinct No. 3 of Guimba, and the petitioner has no other adequate, obvious, appropriate, speedy and effective remedy in the ordinary course of law to have the respondent judge perform the ministerial duty to order the opening of said ballot boxes and the review of the contents thereof.

The respondents filed their answer to this complaint, admitting the allegations contained in the first seven paragraphs thereof, and alleging as special defenses:

(1) That the evidence introduced by the petitioner to show the proper safe-keeping of the ballot boxes of precinct No. 3 of Guimba was successfully rebutted by the evidence introduced by the respondent.

(2) That the petitioner did not object to the evidence offered by the respondent, nor did he question in the lower court the correctness of its admission.

(3) That the petitioner has not adduced any proof to overthrow the evidence introduced by the respondent as to the tampering with the ballot boxes of precinct No. 3 of Guimba.

(4) That on September 16 of this year, the respondent judge entered an order, denying the opening of the ballot boxes of precinct No. 3 of Guimba.

(5) That the petitioner did not take any exception to this ruling of the trial court.

(6) That as the respondent party introduced evidence as to the tampering with the ballot boxes, the trial court

believes that it lay within its discretion to order the opening thereof upon the petition of either party, and likewise to order the same of its own accord, if in its opinion the examination of the ballots would in any way serve the interests of justice.

(7) That in the event of an error having been committed by the respondent court in weighing the evidence as to the tampering with the boxes, such an error cannot be corrected through mandamus proceeding.

(8) That the petitioner not having excepted to the order of the trial court providing that before proceeding with the opening of the ballot boxes and the recounting of the ballots, he should introduce evidence that the same have been duly kept intact, the petitioner cannot in a mandamus proceeding maintain that it is an imperative duty of the respondent court to open the ballot boxes at any time that the same may be asked for with or without evidence that the same have not been tampered with.

(9) That any such allegations, as the petitioner did not make in the court below, either verbally, or in writing, before or after the denial of the opening of said boxes, were not submitted to the respondent judge, and the latter has not had an opportunity to consider them for the decision of the incident which has given rise to this proceeding.

(10) That in an election contest, when a party contesting the legality of the return of an election cannot present primary evidence, which are the ballots, because the ballot boxes have been tampered with, and, on the other hand, the election return cannot be sustained because the same is also attacked as fraudulent, in that case the contestant party may resort to secondary evidence, as for instance, the testimony of the inspectors of election and of the watchers, the tally sheet, the surplus ballots, the stubs of the ballots torn off, etc. But in that case it is the duty of the petitioner to ask for the opening of the ballot boxes not for the purpose of making a recounting of the ballots, the probative force of which was lost on account of the tampering with the ballot boxes, but for the purpose of using as evidence the documents above mentioned and taking them in connection with the testimony of the witnesses.

From an examination of the record, it appears that the allegations of the petitioner and of the respondents, just as the points made by the attorneys for both parties in their oral argument and respective memorandum, only raise a question of law, to wit, whether or not a contestant, who alleges irregularities committed by the election officers in the count of the votes, must introduce evidence as to the proper safe-keeping of the ballot boxes before he may make use of his right to present the contents of the ballot boxes to prove his allegations. As may be seen, the question involves the interpretation of section 479 of the Election Law, as amended by section 44 of Act No. 3030, and by section 25 of Act No. 3210. Said section 479 provided among other things:

"Sec. 479. * * * Such court shall have exclusive and final jurisdiction, except as hereinafter provided, and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined, * * *."

This section was amended by section 44 of Act No. 3030 as follows:

"Sec. 479. * * * Such court shall have exclusive and final jurisdiction, except as hereinafter provided, and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined, * * *"

Finally section 25 of Act No. 3210, amending said section, provides:

"Sec. 479. * * *.

"Such court shall have exclusive and final jurisdiction, except as hereinafter provided. Upon petition of an interested party, or of its own accord if the interests of justice require it, said court shall forthwith cause the

registration lists, ballot boxes, ballots, and other documents used at such election to be brought before it and examined, * * *

It may be seen from a reading of the amendments made to the Election Law on this point that while Act No. 8030 requires that the registration lists and all the ballots used in the election be presented and examined, Act No. 3210 provides that upon the petition of a party or of its own accord, the court may order that the registration lists, ballot boxes, ballots and other documents used in the election be brought before it and examined, if the interests of justice so demand. The substantial portion of the provision, that is, the bringing before the court and examination of the ballots used in the election, has remained the same, with the only modification that even in the absence of a petition of an interested party, the court *motu proprio* may order the examination of said ballots, if the interests of justice so demand. Now, this provision of the Election Law has already time and again been interpreted by this court in various election cases.

In the case of *Manalo vs. Sevilla* (24 Phil., 609), this court, passing upon the question whether or not the trial court erred in opening the ballot boxes without any more evidence than the allegations contained in the motion of protest, said:

"We think not. The allegations of the protest are made under oath; they set out in detail the irregularities complained of. These allegations, if true, lay a sufficient foundation for the recount. This is especially the case in view of the wording of the statute. It provides that, upon filing the protests, the 'court shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined.' "

In the case of *Hontiveros vs. Altavas* (24 Phil., 632), this court said:

"In support of the sixth alleged error, it is insisted that the court committed a reversible error by directing the commissioners to open the ballot boxes and examine and recount the ballots without first requiring the protestant to make a *prima facie* showing of fraud or gross irregularities. This contention is based upon the proposition that there exists a presumption in favor of the legality of the election and the correctness of the returns.

"The law provides that upon the institution of the contest the court 'shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined * * *.' (Sec. 27.) The filing of the protest and the service of the same upon all candidates voted for gives the court jurisdiction to proceed to a final determination of the case, and having once acquired such jurisdiction the court is expressly empowered to examine all the ballots. The ballots cannot be examined without opening the boxes. The law does not require *prima facie* showing other than the allegations in the protest of fraud or irregularities in order to authorize the opening of the boxes. If the parties by agreement accept the returns from any precinct or precincts, however, the necessity for the opening of the boxes would cease to exist as to them. In view of the plain provisions of section 27, it is not difficult to reach the conclusion that this alleged error is not well founded."

In the case of *De la Merced vs. Revilla and Camacho* (40 Phil., 190), this court, confirming the doctrines laid down in the cases of *Manalo vs. Sevilla*, and *Hontiveros vs. Altavas*, *supra*, said:

"The law does not require a *prima facie* showing, other than the allegations in the protest, of fraud or irregularities in order to authorize the opening of the ballot boxes. (*Hontiveros vs. Altavas*, 24 Phil., 632, 648.) If, however, the parties, by agreement accept the returns from any precinct, or precincts the necessity for the opening of the boxes would cease to exist, as to them. A protest under oath, alleging facts sufficient to establish that illegal votes were cast and counted for the opponent, which are sufficient to change the election, makes a *prima facie* case for the opening of the ballot boxes and the recounting of the ballots. (*Manalo vs. Sevilla*, 24 Phil., 609.)

"In our opinion, it is an error and in violation of the mandatory duties of the court to deny the interested party,

under proper allegations, the right to examine all of the ballots used at the election and to present evidence with reference to the legality of the questioned ballots. Under an issue properly presented in a motion of protest, raising the question of the legality or illegality of ballots cast and the counting of the same, the law orders the court to have brought before it all ballots used at the election in the precincts which are questioned. It is a right, under an issue properly framed, on the part of the protestant, and the court has no right or authority to deny it. The law is mandatory."

In the course of the mandamus proceeding instituted by Valenzuela against the judge who was then presiding over the Court of First Instance of Bulacan (R. G. No. 16327),^[1] wherein the respondent judge denied the motion of the petitioner for the opening of certain ballot boxes of the precincts covered by the protest, this court said:

"Upon consideration of the case and the application of counsel for the petitioner Pio Valenzuela, and it appearing that by a decree of the 12th of this month of March, the judge of first instance ordered the opening of the ballot boxes, as prayed for by the petitioner, with the exception of those objected to by the respondent party, as having been tampered with, and which are indicated in said decree, wherein nothing is said contrary to the assertion of respondents' counsel;

"And taking into account that said decree absolutely denies the opening of the excepted ballot boxes, without giving the reason or ground for said ruling of the judge, it not being proper nor just, in a case where the evidence sought to be introduced has not been shown to be irrelevant, impertinent, or immaterial to the object and purpose of the motion of protest pending in the court, to reject such evidence to the prejudice of the petitioner and the right administration of justice, since by such evidence it is sought to discover where the truth lies among the facts alleged by the parties in interest for the due adjudication of this litigation;

"The order of dismissal of the 24th instant is set aside, and it is adjudged and decreed that the writ of mandamus applied for issue, with the costs against the respondent Juan B. Carlos, directing the judge of first instance of Bulacan to order the opening, at the hour and date he may deem fit, of the ballot boxes of precinct No. 2 of the municipality of Baliwag, of precincts Nos. 1 and 2 of Guiguinto and precincts Nos. 2 and 3 of San Rafael in election contest No. 2107."

And recently, in the case of Lopez vs. Araneta Diaz (R. G. No. 24604, promulgated October 3, 1925, not reported), we held that when in the motion of protest certain irregularities committed by the election inspectors in the count of the votes are alleged, this constitutes sufficient ground for the opening of the ballot boxes and the examination of the questioned ballots.

There can be no doubt, in view of what was above stated, that in so far as it relates to the examination of the registration lists, ballot boxes, ballots and other documents used in the election, the provision of section 479 of the Election Law, as amended by section 25 of Act No. 3210, imposes upon the court an imperative duty, and the law does not require any more prima facie evidence than the allegation in the protest of the commission of frauds or irregularities in the count of the ballots in order to authorize the opening of the ballot boxes. To require the contestant to prove the proper safe-keeping of the ballot boxes before he may ask for the opening thereof would be to amend the law by imposing upon the contestant a condition which the lawmaker did not deem it fit to require. To allow the contestee to allege and introduce evidence of the tampering with the ballot boxes, before they are opened, would be to sanction an easy way to defeat a protest. The petitioner has raised in his protest the question relative to the legality or illegality of certain ballots in precinct No. 3 of the municipality of Guimba, as well as the accuracy of the count thereof, and therefore he has the right to have the ballots examined which have been used in said precinct and introduce evidence as to the legality of the questioned ballots. In our opinion, it constitutes a violation of the imperative duties of the judge to deny to the petitioner the opening of the ballot boxes in question.

It must be observed that in Cailles vs. Gomez and Barbaza (42 Phil., 496), we held "where the ballots lose their

probative value, because the ballot boxes have been tampered with and the ballots altered, the count made by the board of election inspectors is the best evidence of the result of the election. The oral testimony of the voters who voluntarily waive the secrecy of the vote (*Dayrit vs. San Agustin and Valdez*, 40 Phil., 782; *Valenzuela vs. Carlos and Lopez de Jesus*, supra), is admissible for the purpose of verifying the returns; but said testimony cannot be given more weight than the returns of the board of election inspectors, unless it is shown that the returns are false." Again, we held in *Lucero vs. De Guzman* (45 Phil., 852), that "where the conservation of the boxes is prima facie shown and their contents are found intact upon being opened according to law, the ballots themselves become the best evidence of the votes cast; and it is the duty of the court to determine the contest, so far as dependent upon the count, by the proof afforded by the ballots." But the doctrines laid down therein, as well as in the other cases cited by the respondents in their memorandum, have reference to the admissibility of the ballots as evidence. And it is very clear that the contestant cannot introduce the ballots as evidence unless the ballot boxes are opened and the questioned ballots examined.

The fact that the instant protest is about the election of a provincial officer does not affect the question, for section 479 of the Election Law, as lastly amended, does not make any distinction in the application of its provisions. The fact that in this case appeal may lie does not prevent the granting of the remedy applied for, once it is proven that the respondent judge has refused to perform an imperative duty enjoined by the law.

It is said that the petitioner cannot be granted the relief applied for, for the reason that he has not previously filed a motion in the lower court for the reconsideration of the order denying the opening of the boxes. This allegation of the respondents is of no important. It appears in the record that the day next following that when the said adverse order was entered, the petitioner took exception to said ruling, announcing his intention to institute a proceeding in the Supreme Court. It likewise appears in the record that the petitioner has persistently applied for the opening of the ballot boxes of precinct No. 3 of the municipality of Guimba, and on seeing the position of the trial court in this question at the beginning of the trial, he made a verbal motion for the reconsideration of the petition denied by the court for the opening of the ballot boxes.

Needless to say, the conclusion which we have arrived at does not and cannot have the effect of controlling the discretion of the trial court in judging the admissibility or inadmissibility of the ballots and certificates of election contained in the ballot boxes in question in accordance with the dictates of sound judgment. We only wish to say that it is not proper to talk of the admissibility as evidence of the ballots and other papers used in the election so long as the ballot boxes are not opened. The opening of the ballot boxes is a prerequisite to discussing the question relative to the probative force of their contents.

Adhering, therefore, to the doctrines laid down in the cases aforecited, we are of the opinion, and so hold, that the writ applied for should issue, directing the respondent judge to order the opening of the ballot boxes of precinct No. 3 of Guimba and to proceed with the trial of the protest in question and decide the same afterwards according to law.

No special finding as to costs is made. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1]*Valenzuela vs. Revilla and Carlos*, upon motion for reconsideration, promulgated March 31, 1920, not reported.

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