

**NAZARIO NALOG, ET AL., PROTESTANTS, NAZARIO NALOG,
PROTESTANT-APPELLEE, VS. NEMESIO DE GUZMAN, ET AL.,
PROTESTEES, NEMESIO DE GUZMAN, PROTESTEE-APPELLANT.**

G.R. No. 25656. May 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by protestee, Nemesio de Guzman, from a decision of the Court of First Instance of Rizal, declaring protestant, Nazario Nalog, elected vice-mayor of the municipality of Antipolo, Rizal, with a plurality of ten (10) votes over his closest opponent, said Nemesio de Guzman.

During the general elections held on November 12, 1963, protestant Nazario Nalog and protestee Nemesio de Guzman were candidates for the office of vice-mayor of Antipolo. On November 13, 1963, the municipal board of canvassers of Antipolo proclaimed De Guzman elected to said office with a plurality of five (5) votes over Nalog, who, accordingly, filed, with the aforementioned court – together with the candidates for councilors of his party – the corresponding election protest No. 7921, on November 26, 1963. After appropriate proceedings, said court, in which said Election Case No. 7921 was heard jointly with Election Case No. 7918, involving the office of the Mayor of Antipolo, rendered a joint decision in both cases, finding, in Election Case No. 7921, that Nalog had obtained 2, 048 votes, as against 2,038 votes tallied for De Guzman, and, accordingly, proclaiming the former elected to the office in question, with costs against De Guzman. Hence, this appeal by the latter. The losing party in Election Case No. 7918, likewise, appealed from said decision, but the appeal therein had been taken to the Court of Appeals as CA-G. R. No. 37001-R, to which Court the evidence was forwarded. Hence, we could not have said evidence until after the Court of Appeals had rendered its decision, on April 27, 1967.

Nalog assails the appeal upon the ground that the Supreme Court has no jurisdiction over the same, because "from any final decision rendered by the Court of First Instance in protests against the eligibility or the election of provincial governors, members of the provincial board, city councilors and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be," pursuant to Section 178 of the Revised Election Code^[1] thereby denying, by necessary implication, the right to appeal from said decision in election protests involving the office of mayor or councilor of regular municipalities. It is settled, however, that whenever questions purely of law are raised, a review may be sought from the Supreme Court, under Article VIII, Section 2, of the Constitution.^[2]

In his first assignment of error, De Guzman maintains that the lower court should not have credited to Nalog the following eleven (11) ballots, namely, Exhibits NN-168, NN-171, NN-180, NN-185, NN-188, NN-191, NN-192, NN-197, NN-206, NN-207 and NN-208.

In Exhibits NN-171, NN-180, NN-185, NN-191, NN-192, NN-197 and NN-206, Nalog was voted on one of the spaces for councilor. By express provision of law, these seven (7) votes should be considered as stray.^[3] What is more, the name written on or, rather, across the space for Vice-Mayor, in Exh. NN-197, is "Jose Oliveros,"

Hence, there can be no possible justification to chalk this vote for Nalog.

The name written on the space for Vice-Mayor in Exhibit NN-163 is "Nalog." The same was properly credited to Nalog.

Upon the other hand, the name "N. Nalog," originally written on the space for the Vice-Mayor, in Exhibit NN-188, appears to have been crossed-out, seemingly by the voter himself, thus indicating a change of heart on his part. This ballot should not be counted for Nalog.

The voter who filled Exhibit NN-207, is a poor writer. He had written only two (2) names one, on the space for mayor and, another, on the space for vice-mayor. On the latter space, he seems to have originally written, "NAM" and then corrected it, by continuing the last stroke downward of the letter "M" into a big loop, so that the word written may now be read as "NAMO," "NANO," or "NARO." The members of this Court believe that the person voted for vice-mayor is "NARO," which is idem sonams with Nalog, and that the vote was properly counted for the appellee.[4]

Appellant assails Exhibit NN-208 as marked. The objection is untenable. What is written on the space for vice-mayor may, at first glance, appear to- be "Walag Nalog," or "Walag Narog;" but, upon further examination, it would seem that, the first word written was really "Nalog," except that the voter had started to write the capital "N" with a short stroke downward, which he tried to rectify by starting to write anew, with a stroke upward, so that the "N" now looks like a somewhat imperfect "W." Hence, he again wrote the word "Nalog." The voter's intent to vote for Nalog was thus merely made more manifest. The vote was properly counted for herein appellee.

The second assignment of error involves several groups of ballots: (a) one consists of sixteen (16) ballots (Exhibits NG-2, NG-6, NG-40, NG-41, NG-42, NG-44, NG-45, NG-48, NG-52, NG-53, NG-54, NG-55, NG-71, NG-124, NG-125 and NG-131) in favor of Nalog, which, appellant maintains, should be annulled, because of fingerprints allegedly appearing, either on the face of the ballots, or on the back thereof; and (b) a group of twenty (20) ballots (Exhibits NG-4, NG-16, NG-17, NG-18, NG-46, NG-49, NG-59, NG-60, NG-93, NG-101, NG-112, NG-118, NG-123, NG-126, NG-128, NG-142-A, NG-144, NG-145, NG-164, and NG-165) allegedly marked, because the names appearing thereon were "written, in extraordinarily big printed letters for the purpose of marking them," in the language of appellant herein. There are other ballots not falling under either of these two (2) categories.

Suffice it to say that some of the alleged fingerprints in the first batch are mere smudges; that, although there are fingerprints in other ballots, there is nothing to indicate that they are fingerprints of the voters who filled them; and that the general appearance of these ballots suggests that the alleged marks were, probably, accidental in nature.

Then again, it is not true that the letters used in the second batch are extraordinarily big. Although a few were written with letters somewhat bigger than the ordinary, there is nothing therein to indicate more than a special interest for given candidates. At any rate, the question whether or not certain ballots are marked is one of fact, which is beyond our power of review in this case, in view of the provisions of the Revised Election Code adverted to above.

For this reason, the objection of herein appellant to Exhibits NG-9, NG-10, NG-11, NG-15, NG-29, NG-65, NG-76, NG-84, NG-90, NG-94, NG-103, NG-113, NG-149, NG-160, NG-162, NG-163, NG-166 and NG-177, upon the ground that the same are marked – on account of specified peculiarities thereof – cannot be entertained.

It is not disputed, however, that the name "NALOG" appears printed on a sticker pasted on the space for vice-mayor in Exh. NG-99. This is a marked ballot, and, as such, null and void, by specific provision of law.[5] It

should not be counted for Nalog.

Under his third assignment of error, appellant impugns Exhibits NG-31, NG-64, NG-77, NG-97, NG-176 and NG-327, upon the ground that each had been written by two (2) distinct persons. This is, however, a question of fact, which we cannot review in the present proceedings.

Appellant's fourth assignment of error refers to Exhs. NG-190, NG-194, NG-196, NG-199-A, NG-199-B, NG-223, NG-229, and NG-230 in which his name appears on a space other than that for the vice-mayor. He maintains that these votes should be counted for him. This pretense contravenes a positive statutory injunction and must, therefore, be overruled.

The fifth assignment of error of appellant refers to Exhs. NN-85 and NN-92, which had been invalidated by the lower court as marked, because of a nickname written twice on Exhibit NN-85 and of initials allegedly appearing at the foot of "Exh. NN-92. These, again, are questions of fact, which we cannot review in this protest.

Under his sixth and last assignment of error, appellant alleges that Exh- NG-198 had been omitted, perhaps, inadvertently, from the computation, made by the lower court, of the votes cast in his favor. This claim is untenable, for his name was written, on Exh. NG-198, not on the space for vice-mayor, but on the first space for councilors. Consequently, the lower court did not err in not counting it for appellant.

In short, the following nine (9) votes should be deducted from the votes credited by the lower court to appellee Nazario Nalog, namely: Exhibits NG-99, NN-171, NN-180, NN-185, NN-188, NN-191, NN-192, NN-197 and NN-206, thereby reducing the aggregate number of votes cast in his favor from 2, 048 to 2, 039, or a plurality of one (1) vote over the 2, 038 votes credited by the lower court to appellant De Guzman.

Hence, without considering the assignments of error made by herein appellee, Nazario Nalog, the decision appealed from should be, as it is hereby affirmed, with costs against appellant, Nemesio de Guzman.

SO ORDERED.

Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Castro, JJ., concur.

[1] Republic Act No. 180, as amended.

[2] Sarmiento vs. Quemado, L-18027, June 29, 1962; Gonzales vs. Court of Appeals, L-18255, November 21, 1961; Tumakay vs. Orbiso, L-8354, August 22, 1955; Calano vs. Cruz, L-6414, January 12, 1954; Marquez vs. Prodigalidad, L-2098, May 30, 1949.

[3] Section 149(3), Republic Act No. 180, as amended; Aviado vs. Talens, 52 Phil. 655; Villarey vs. Alvarez, 61 Phil. 42; Coscolluela vs. Gaston, 63 Phil. 11; Amurao vs. Calangi, L-12631, August 22, 1958; Gutierrez vs. Aquino, L-14252, February 28, 1959; Delgado vs. Tiu, L-14143, May 27, 1959.

[4] Balon vs. Moreno, 57 Phil. 60; Cecilio vs. Tomacruz, 62 Phil. 689; Ferraren vs. Añonuevo, L-19275, November 29, 1963; Conui-Omega vs. Samson, L-21910, November 11, 1963; Calo vs. Court of Appeals, L-21256, September 30, 1963; Sarmient vs. Quemado, L-18027, June 29, 1962; Arzaga vs. Bobis, L-18953, October 30, 1962; Cruz vs. Court of Appeals, L-14095, April 10, 1959.

[5] Section 149(14), Republic Act No. 180, as amended.

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