

FORTUNATO BULAN, PETITIONER AND APPELLANT, VS. PRIMO GAFFUD, RESPONDENT AND APPELLEE.*G.R. No. 25816. February 01, 1927*

Ponente: OSTRAND, J.

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At the general election held in the Province of Isabela on June 2, 1925, Fortunato Bulan and Primo Gaffud were the leading candidates for the office of provincial governor. Upon canvassing the statements and returns of the result of the election, the provincial board of canvassers found that Gaffud had received 1,706 votes, giving him a plurality of 335 votes over his rival Bulan, and he was declared elected. Bulan thereupon filed a protest with the Court of First Instance of Isabela, which court, upon a review of the ballots and returns, found that Gaffud had received 1,788 valid votes and Bulan only 1,396 votes and decided that the former had been duly elected provincial governor and had the right to take possession of the office. From this decision Bulan appeals to this court and makes the following assignments of error:

"That the lower court erred:

"1. In finding that the violations of the law, the irregularities and the fraudulent practices perpetrated by the election officers in the first precinct of Echague are not sufficient to annul the election held in said precinct.

"2. In holding that the irregularities, illegalities and frauds committed in the third precinct of Echague are not grounds for the annulment of the election held in said precinct.

"3. In holding that the serious violations of the law and the fraudulent manner in which the election took place in the second precinct of Jones, do not constitute sufficient grounds for declaring the election in said precinct void.

"4. In holding that the frauds and illegalities committed in the first precinct of Santiago do not justify the annulment of the election held in said precinct.

"5. In finding as valid ballots and in adjudicating the votes contained in Exhibits A, B, C, D, E, G, L, L1, N, O, R, H, I, J, K, M, Ñ, P, Q, S, 6-D, 7-D, 8-D, 10-D, 11-D, 1 to 67, 13-D to 28-D, 88-C to 99-C, 38-C to 41-C, A-10, 6, 78, 3, 4, 5, 26-C, 24-C, 22-C, 21-C, 20-C, 19-C, 18-C, 17-C, 23-C and 21.

"6. In accepting as valid ballots 1-C to 16-C, A-4 to A-9, 27-C to 35-C, A-1 to A-3, 74-C to 87-C, 43-C to 48-C, A-11 to A-19, 49-C to 51-C, 57-C, 88-C to 99-C, A-20 to A-26, and 61-C to 71-C.

"7. In dismissing the protest and in not proclaiming the protestant as the candidate in whose favor a majority of the votes were cast for the office in question."

The irregularities to which the first assignment of error has reference are thus described in the decision of the court below:

"The election inspectors of this precinct, after having made a canvass in that election precinct and after publishing the votes obtained "by each one of the candidates at about five o'clock in the afternoon of June 3,

1925, in view of the fact that the municipal treasurer did not wish to receive the ballot boxes before the election returns were delivered to him, and as they were annoyed by the noise of the children in the school, the election precinct being in the same school, the said inspectors carried the ballot boxes to the house of the chairman of the board of inspectors, Romualdo Gaffud, where they remained until ten o'clock in the morning of the fifth, when they were delivered by said inspectors to the municipal treasurer. During the time that said boxes were in the house of the said Romualdo Gaffud they were not opened and were guarded by a policeman, and the election inspectors were engaged in preparing the election returns and in drawing lines on various sheets on which they wrote or copied the number of votes obtained by each one of the candidates for insular, provincial and municipal offices. The chairman of the board of inspectors, Romualdo Gaffud is a relative of the protestee Primo Gaffud, who lives in the same municipality as the protestee, Echague.

"About June 4th the municipal treasurer, on two different occasions, once in the morning and again in the afternoon, requested the election inspectors to deliver the ballot boxes and the returns, but they could not do so in view of the preparation of the election returns which had not yet been finished. After the canvass, on June third, one of the inspectors went to his house to sleep and did not return until about two o'clock in the afternoon, when he found the other inspector and the secretary asleep in the election precinct. The only one who was not asleep and guarding the ballot boxes was the chairman of the board, Romualdo Gaffud. The principal cause of the delay in the delivery of the ballot boxes and the returns is due to the fact that the said election inspectors prepared twenty-four copies of said returns, in the belief that they had to make them in quadruplicate for each of said inspectors. The list of votes had to be written by hand.

"It appears that there were 60 candidates for councilman, 9 for vice-president, 11 for governor, 11 for member of the provincial board, and as many others for representative and president, and 3 for senator. With this number of candidates it necessarily took considerable time to prepare the list of votes. There is no evidence that the delay in the delivery of the ballot boxes and the election returns was for the deliberate purpose of swelling the number of votes of the candidate for governor, who was favored by them, in case that he had the least number of votes in the other municipalities, or that he had lost the election. Said inspectors were disposed to deliver the ballot boxes to the municipal treasurer on the afternoon of June third after they had made the canvass, but the municipal treasurer refused to receive them." (It may be noted that the reason for his refusal was that he did not feel authorized to receive the boxes until the returns were ready for delivery.)

The second assignment of error relates to irregularities committed in the third precinct of the municipality of Echague. There the voting did not terminate until after midnight of the election day and 42 voters were permitted to cast their ballots after 6 o'clock in the afternoon though no identification cards had been issued to them as required by section 28 of Act No. 3030. It appears, however, that one of the election inspectors made a list of these voters for the purpose of identification and there is no suggestion of fraud in connection with the matter. It further appears that one of the ballots cast was not written on the official blank form; that there were no guard rails separating the inspectors from the watchers in the polling place; that the partitions between the booths were of a very flimsy construction; that some of the adherents of Gaffud solicited votes within a radius of 30 meters from the polling place; and that the ballot boxes and returns were not delivered to the municipal treasurer until the morning of June 5th.

The third assignment of error deals with irregularities committed in the second precinct of the municipality of Jones. The election was held in a camarin and there were two inhabited houses within a radius of 30 meters from the polling place; from both of the houses there was a clear view of the interior of the election booths, but at such a distance, that it was impossible for the persons in the houses to read the names written upon the ballots by the voters in the booths. It further appears that the partitions separating the booths from each other and from the polling place were made of interwoven split bamboo and left many openings through which the voters within the booths could be seen and identified; that five of the ballots cast were found with their detachable numbers unremoved; and there is testimony to the effect that various adherents of Gaffud solicited votes within a radius of

30 meters from the polling place.

Under the fourth assignment of error the appellant complains that in the first precinct of the municipality of Santiago certain of the leaders of Gaffud's party interfered with the voters and solicited votes within a radius of 30 meters from the polling place. The trial judge discredited the testimony to that effect on the ground that not only were municipal policemen stationed in the vicinity of the polling place, but that there were also Constabulary soldiers with instructions to arrest violators of the election law. We agree with his Honor that had the irregularities occurred as testified to by the witnesses for the protestor, the attention of the police and the Constabulary would undoubtedly have been called to that fact by the protestor's adherents, which apparently was not done.

The appellant insists that the irregularities enumerated are sufficiently serious to warrant the annulment of the election in the four precincts mentioned. That might be true if the vote had been close and there was any probability that the result of the election was in any manner affected by said irregularities, but that such is not the case here becomes quite evident upon an examination of the returns. In the three precincts of Echague where the conduct of the election appears to have been regular, the appellant received only 12 votes as against 530 votes cast for the appellee; in the second precinct of Jones, where irregularities occurred, the appellant received 5 votes, but he received no votes at all in the two precincts of the same municipality where there were no irregularities. In Santiago he received 10 votes in the first precinct, none in the second and only 7 in the third. As will be readily seen, the appellant's following in the three municipalities was insignificant and he had practically nothing to lose there. It is further to be observed that he was fully as successful in the precincts where the irregularities took place as he was in the other precincts. Bearing in mind that in election contests irregularities in the conduct of the contested election "are generally to be disregarded unless the statute expressly declares that they shall be fatal to the election, or unless they are such in themselves as to change or render doubtful the result" (McCrary on Elections, 4th ed., sec. 227), it is clear that the appellant has not shown sufficient grounds for the annulment of the election in the precincts in question and that the first four assignments of error are without merit. We may add that it is very evident that the irregularities here in question were due to ignorance or inefficiency on the part of the election officials rather than to fraudulent intent.

In his fifth and sixth assignments of error the appellant questions the validity of 180 ballots counted in favor of the appellee by the court below. The fifth assignment also includes Exhibits 1-67, but these exhibits are not in the record or discussed in the briefs and have probably been included by mistake. Inasmuch as the court gave the said appellee a plurality of 392 votes and that, therefore, after deducting the 180 votes in question the appellee will still have a plurality, it is unnecessary to enter into a detailed discussion of the disputed ballots, especially so since many of them have not been forwarded to this court and are not to be found in the record.

Some of the ballots are objected to on the ground that they were found in the boxes for spoiled ballots, but it has been satisfactorily shown that they are not spoiled ballots but ballots rejected for various reasons by the election inspectors and by mistake or through ignorance placed in the boxes for spoiled ballots instead of being placed in a separate package and deposited in the ballot box in which they were originally found. (Revised Administrative Code, sections 462 and 463.)

Other ballots are objected to because they contain names of persons who were not registered candidates for office. Most of these names are merely misspelled and by applying the rule of *idem sonans* were properly admitted and counted. We find for instance the names of "Platsido Serapio" instead of "Placido Serafica;" "Andong Espiritu" instead of "Alejandro Espiritu;" "Lupe Pontanilla" instead of "Lope Funtanilla;" "Alfonso Lulao" instead of "Alfonso Lutao;" "Vesbeti Gonsaga" instead of "Vicente Gonzaga;" "Pablo Amaleg" instead of "Pablo Amalingan," etc.

But there is also a number of ballots in which persons who were not registered as candidates were voted for and in regard to which the court below held that the ballots were void as to the unregistered candidate only and valid as to the rest. In this the court erred. The last paragraph of section 452 of the Administrative Code as amended by section 19 of Act No. 3210 reads as follows:

"Any ballot cast for a deceased or imaginary person or for a person for an office for which he is not a candidate, or when circumstances show the purpose of the voter to identify the ballot, shall likewise be unlawful, null and void."

The language of the statute is so clear as to admit of no special interpretation: it can only mean that a ballot containing a vote for a person for an office for which he is not a registered candidate is null and void as to all other persons voted for on that ballot. This court has so held in the case of *Mandac vs. Samonte* (page 284, ante) decided August 30, 1926.

For the reasons stated, we hold that the appellee Primo Gaffud was legally elected governor of the Province of Isabela in the last general elections, and to that extent the appealed judgment is affirmed with the costs of both instances against the appellant. So ordered.

Johnson, Street, Malcolm, Vilimnor, Romualdez, and Villa-Real, JJ., concur.

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