

JOSE GEUKEKO, PETITIONER AND APPELLANT, VS. ANDRES PASCUAL, RESPONDENT AND APPELLANT.

G.R. No. 26243. March 31, 1927

Ponente: OSTRAND, J.

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OSTRAND, J.:

At the general elections held in the Province of Rizal on June 2, 1925, Andres Pascual and Jose Geukeko were the leading candidates for the office of provincial governor. Upon a canvass of the returns the Provincial Board of Canvassers found that Pascual had received 14,567 votes, giving him a plurality of 229 votes over his rival Jose Geukeko and declared him elected. Geukeko thereupon filed a protest with the Court of First Instance of Rizal which court, upon a review of the ballots and returns, credited Pascual with 13,196 votes, a plurality of 20 votes over that conceded Geukeko, and dismissed the protest. Both of the parties appealed to this court and the protestant-appellant makes the following assignments of error:

"I. The trial court committed an error in "rejecting the valid ballots legally cast in favor of the protestant and appellant and enumerated and specified in his brief, because the alleged defects do not exist or are of no importance.

"II. The trial court committed an error in admitting, as legal and valid, the ballots (555) cast in favor of the protestee Andres Pascual hereinafter enumerated, the same being void and worthless, because it appears that the persons voted for therein were not candidates for the office for which they were voted, or because they are marked and countersigned, or are not official ballots."

The protestee-appellant's assignments of error are as follows:

"I. The trial court erred in not holding that the ballot boxes of precincts Nos. 1, 2, and 3 of the municipality of Cardona had been tampered with, and in not abiding by the result of the canvass which appears in the election returns.

"II. The trial court erred in not holding that the ballot boxes of precinct No. 1 of Tanay had been tampered with after the election, and in not abiding by the result of the canvass which appears in the election returns of the inspectors.

"III. The trial court erred in not holding that the ballot boxes of precinct No. 2 of Tanay had been tampered with after the election, and in not abiding by the result of the canvass made by the inspectors which appears in the election returns.

"IV. The trial court erred in not holding that the ballot boxes of precinct No. 3 of Tanay had been tampered with after the election, and in not abiding by the result of the canvass made by the inspectors which appears in the election returns.

"V. The trial court erred in not holding that the ballot boxes of the only precinct of Jalajala had been tampered with after the election, and in not abiding by the result of the canvass made by the inspectors which appears in the election returns.

"VI. The trial court erred in not holding that the ballot boxes of precinct No. 5 of the municipality of Malabon had been tampered with, and in not abiding by the number of votes shown in the election returns.

"VII. The trial court erred in not holding that the ballot boxes of precinct No. 4 of Tagig had been tampered with, and in not abiding by the election returns of said precinct in determining the number of votes obtained by the protestant and the protestee.

"VIII. The trial court erred in not holding that the ballot boxes of precinct No. 3 of Pateros had been tampered with, and in not abiding by the election returns of said precinct in determining the number of votes obtained by the protestant and the protestee.

"IX. The trial court erred in not counting as valid votes in favor of the protestee Andres Pascual 806 ballots enumerated in his brief.

"X. The trial court erred in admitting in favor of the protestant Jose Geukeko 953 ballots enumerated in the protestee-appellant's brief."

Under his first assignment of error the protestant-appellant maintains that 1,023 ballots rejected by the court below should have been counted in his favor. Most of these ballots were rejected on the ground that they contained votes for persons who were not registered candidates for the respective offices in regard to which the votes were cast and that, therefore, the ballots were invalid under section 452 of the Administrative Code, as amended by section 19 of Act No. 3210 and of which the last paragraph 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."

We agree with the protestant that the criteria adopted by the court below in reexamining the ballots were rather strict and that some of the rejected ballots should have been admitted. In many cases the Christian name alone, or else the surname alone, of a registered candidate other than the protestant or protestee was written on the ballot. The court below declared such ballots invalid and in doing so probably endeavored to follow the rule laid down by this court in previous decisions that in regard to a protestant or protestee, neither the Christian name nor the surname standing alone can be considered a sufficient identification of the person voted for, but that both names must be indicated. While this rule holds good in counting the votes cast for the contestants themselves, we do not think it should be applied to votes cast for candidates who are not parties to the contest. The reason therefore is obvious. Before a ballot can be declared invalid under the provisions of the paragraph above quoted, it must, in the absence of indications of intentional marking of the ballot, appear conclusively that it contains one or more votes for persons not registered as candidates for the corresponding office and it stands to reason that if, for instance, only the surname of the person voted for appears on the ballot and the same name is also the surname of a registered candidate for the office to which the vote relates, it cannot be said with certainty that the person voted for is not the candidate registered and that the entire ballot therefore is invalid. The same would be the case with Christian names. In reviewing the present case, we have consequently considered such ballots valid.

Of the 1,023 ballots claimed by the protestant and rejected by the court, 289 suffer from the fatal defect that names of candidates have been written on the ballots in spaces designated for votes for offices other than those for which said candidates were registered. That, of course, constitutes a direct violation of the last paragraph of section 19, *supra*, and renders the ballots invalid.

In regard to other points in connection with the disputed ballots, we have followed the rules laid down in previous decisions and very fully stated in the case of *Cailles vs. Gomez and Barbaza* (42 Phil., 496).

Applying the foregoing principles, we find, upon a careful examination, that the protestant is entitled to 443 votes more than those allowed by the court below, thus giving him a total number of 13,619 votes. Following the same criteria in regard to the ballots claimed by the protestee-appellant under his ninth assignment of error, we find that he should be credited with 481 of the 806 votes there claimed.

The protestee-appellant's first eight assignments of error, all relating to the tampering with ballot boxes after the original canvass of the votes, are in our opinion well taken. The evidence is conclusive that the boxes referred to in the assignments were violated as claimed by the protestee and it is well settled that in such cases the original count must ordinarily prevail. As far as can be ascertained from the record the original count in the precincts referred to in the aforesaid eight assignments of error gave the protestee 122 more votes than those allowed him by the court below.

The protestant's second and the protestee's tenth assignments of error relate to assertions by each of the parties that his opponent has been credited with votes to which he is not entitled. The protestant maintains that 423 invalid votes have been admitted in favor of the protestee by the court below; the protestee contends that not less than 953 invalid votes have been similarly credited to the protestant. Due to the inaccuracy of most of the assertions contained in the briefs in relation to these assignments and to the fact that a large portion of the ballots involved were not brought before this court, it has been impossible to arrive at accurate conclusions as to all of the votes referred to in said assignments, but a fairly close examination has revealed that relatively very few of the votes or ballots attacked can be regarded as of doubtful validity, and that they will not materially affect the result of the election, but that on the contrary, their elimination would increase the protestee's lead.

Summarizing the result of our review of the case, we hold that the protestee Andres Pascual was legally elected governor of the Province of Rizal in the last general elections with a plurality of at least 180 votes. The judgment appealed from is therefore affirmed with the costs against the protestant-appellant. So ordered.

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

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