

PABLO MONTEZA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND ULDARICO REYES, RESPONDENTS.

G.R. No. 26245. July 25, 1967

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

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

Appeal from the decision of the Court of Appeals, in its CA--G. R. No. 34914-R, affirming the decision of the Court of First Instance of Leyte, in its Election Case No. E-24, that declared the herein respondent-appellee Uldarico Reyes as the mayor-elect of Caibiran, Leyte in the general elections of 12 November 1963 with a 30-vote margin, over and against the herein petitioner-appellant Pablo Monteza.

After the said elections, the municipal board of canvassers of Caibiran, Leyte, proclaimed petitioner Monteza as the mayor-elect with a count of 1,378 votes; the count for respondent Reyes was 1,367 votes. In due time, Reyes filed a protest in the Court of first Instance of Leyte; Monteza counter-protested. After trial, the court a quo rendered judgment for protestant Reyes for having received 1,375 votes as against the protestee Monteza's 1,345 votes. Monteza interposed an appeal but the Court of Appeals sustained the trial court, reducing, however, the majority of Reyes to eight (8) votes, the appellate court's count being 1,362 votes for Reyes, while its count for Monteza was 1,354 votes.

Not satisfied with the appellate court's decision, petitioner Monteza appealed to this Court assigning, in the main, errors in the appreciation of ballots.

The Court of Appeals invalidated, as possessing distinguishing marks, the ballots marked as Exhibits "P-11-9", "P-8-A", "P-8-D", and "P-8-E" because in the first (Prec. No. 11) "Clemco Clemco" was written on line 3 of the space for senators; in the second (Prec. No. 8) "Padilla-Panilla" was written on line 8; and, in the fourth (Prec. No. 8) "Liuag-Luag" was written on line 5. The invalidation of these (4) ballots is claimed by the appellant as an error, and he cites as authorities the cases of Cruz vs. Court of Appeals, et al., G. R. No. L-14095, 10 April 1959, and Sarmiento vs. Ouemado, G. R. No. L-18027, 29 June 1962. In the Cruz, case, there was a misspelling in Exhibit G-14-Pineda, for which reason, this Court ruled that the repetition of the name of candidate Clemente shows the voter's rectification of the misspelling and not to identify his ballot; in the present case, there is no rectification of a misspell-ing. In the Sarmiento case, the repetition of the candidate's names in the respective ballots Exhibits Q-58 and Q-62 was not considered a mark because of the lack of evidence as to the intent to mark the ballots; in the present case, there is evidence aliunde that a party inspector, during the canvassing of votes, was seen holding a list, apparently of voters who sold their votes, and checking it every time a ballot was read where names of candidates were twice written.[1] In effect, therefore, the Sarmiento case sustains the invalidation by the Court of Appeals of the four (4) questioned bal-lots. On their face, the voters that wrote the ballots were intel-ligent, familiar with the scriptural process, and the repetitions do not appear justified by mistakes or by any necessity to clarify the names as originally written on the ballots.

Of the ballots involved in the second assignment of error, marked as Exhibits "P-15-A" to "P-15-M", inclusive,

the appealed decision states:

"X x x . These thirteen ballots were in-validated by the trial court as marked because they followed one and the same pattern of voting, viz.: Lt. Governor: A. Zamora; Board Member for Sub-province: J. Maderazo; Mayor Pablo Monteza; Vice-Mayor Pedro Ventulan; Councilors: all councilors were voted with initials of their first names. After having closely examined the context of each one of these ballots, we are unanimous in our opinion that indeed these ballots, on their respective faces, exhibit a preconceived pattern of marking. The circumstances pointed out by the lower court are so patent that they make us believe that a common pattern of marking these ballots was well conceived and subtly done. True, in isolated cases these circumstances may not brand the ballot as marked. However, it would be too much for us to believe that in all these 13 ballots the voters merely coincided in their manner of voting. Indeed this is too much of a mere coincidence. It is easier to believe, in this particular instance, that the above circumstances were parts of a well conceived scheme to check whether or not certain voters had fulfilled their promises to vote for a given candidate who, in the case at bar, is obviously the protestee. X x x."

Our own examination of these ballots shows that their description by the Court of Appeals is not a faithful portrayal of what they are. It is true that in twelve (12) of the thirteen (13) ballots, the same candidate for lieutenant-governor, board member and mayor were voted for (Exh. "P-15-A" has a different candidate for vice-mayor); but it is not true that all councilors were voted for with initials of their first names. The given name and the surname of a councilor-candidate (line 5) were written on Exhibit "P-15-A"; a "Dr. Doring Perez" was voted for (line 1) on Exhibit "P-15-C"; the given name and surname of two (2) councilor-candidates (lines 1 and 6) were written on Exhibit "P-15-J"; and no initials of the given names of councilors-candidates were written on lines 4 and 5 of Exhibit "P-15-L".

We fail to see in the aforesaid ballots any pattern of marking. That the same candidates for lieutenant-governor, board member and mayor were voted for in twelve (12) ballots is not sufficient to hold them as marked, and, therefore, invalid. We consider them valid in the absence of evidence aliunde that the use of initials, instead of given names, in the space for councilors was done for identifying purposes.

In his third assignment of error, petitioner Monteza urges that Exhibits "P-1-H", "P-8-G", "P-8-B", "P-11-10" and "P-10-G" were erroneously discounted by the Court of Appeals.

We agree with the Court of Appeals in its appreciation of the ballot, Exhibit "P-1-H". In this ballot, the voter wrote "Montego" on the space for mayor, with some illegible strokes underneath; all other spaces were left unfilled, except on the sixth line of the space for councilors where "POEj" was written upside-down in bold letters. In the absence of cogent explanation for this anomaly, this ballot must be held marked and invalid (Cf. *Lloren vs. Court of Appeals, et al.*, G. R. No. L-25907, 25 Jan. 1967).

On the space for mayor, in Exhibit "P-8-G", is written "P. Ma-tilaza". The appealed decision held that this ballot did not sufficiently identify the protestee. We believe the contrary. The initial "P." corresponds to the initial of the protestee's given name "Pablo", while "Matilaza" is idem sonans with his surname "Monteza" (Cf. *Conui-Omega vs. Samson*, G. R. No. L-21910, 11 Nov. 1963; *Arzaga vs. Bobis*, G. R. No. L-18953, 30 Oct. 1962). Valid vote for the petitioner.

Exhibit "P-8-B" was held as marked by the courts below because on lines 1 and 8, space for senators, "Manuel Roxas" and "Antonio Climaco" were voted for. The ground for the rejection being that Manuel Roxas could not be a candidate in 1963 because he was the late President of the Philippines and the use of his name was intended as a distinguishing mark. The objection does not justify the invalidation of this ballot because another Roxas, Gerardo, was a candidate for senator in 1963 and his nickname "Gerry" could be easily mistaken for "Junior", leading to the conclusion that the candidate bore the same name as his father. Caution against the

disenfranchisement of electors leans more to the conclusion that the wrong given name, with correct surname, as written, was an innocent error; in the same way, the voter's writing the wrong given name for candidate Climaco should not be construed as a distinguishing mark in the absence of other proof.

The Court of Appeals could not read the writing on the space for mayor in Exhibit "P-11-10" and, therefore, did not count it as a vote for the protestee. The trial court read the writing as "Minama-hal Montisa" but rejected it as marked. Although we must admit the difficulty in reading it, our examination makes it out as "Mina-hal Monteza" with the letter "z" underneath "Monte" and the last letter "a" underneath the letter "z". Notwithstanding the difficulty in reading the writing, since it can still be discerned by the normal naked eye, the vote should go for the petitioner. The word "Minahal" is merely an expression of affection and does not invalidate the ballot. (Rule 9, sec. 149, Revised Election Code).

Exhibit "P-10-G" was held to be a marked ballot in the ap-pealed decision because "Bert Romualdez" was written on the space for governor; "Atty. Maderazo", on the space for board member; "Am Monteza", on the space for mayor; and the names of the can-didates voted for were prefixed with "Mr." on every line from the space for vice-mayor to the last line on the space for councilors, except on the first line. The ruling is erroneous. The rules on the appreciation of ballots allow the use of nicknames if accompanied by the name or surname of the candidate (Rule 9); and the use of the prefix "Mr." is likewise declared permissible (Rule 5); and since no evidence shows that there was intent to identify the voter, the ballot should not be annulled as marked.

The last issue is whether or not the Court of Appeals erred in crediting motu-proprio four (4) additional votes for respondent Reyes. The board of canvassers failed to count these votes, and the trial court did not consider them; but the Court of Appeals discovered the mistake and, without these votes having been raised as an issue in the appeal, the appellate court included them in sum-ming up the votes received by the respondent.

The inclusion of these four (4) votes was correct. It is a settled doctrine in this jurisdiction that the appellate court, in election contests, may consider ballots not taken up in an assign-ment of error in order that substantial justice, the will of the elec-torate and public interest should be served and protected. (Cababasada vs. Valmoria, 83 Phil. 112; Ibasco vs. Ilao, G. R. No. L--16512, 29 Dec. 1960; Borja vs. De Leon, et al., G. R. No. L--20245, 30 Sept. 1963; Roldan vs. Monsanto, G. R. No. L-21570, 8 Nov. 1963).

In resume, sixteen (16) votes for petitioner Monteza should be added to the count (1,354) stated in the appealed decision, or a total of 1,370 votes while that of respondent Reyes remains the same (1,362) -- a difference of eight (8) votes by the former over the latter.

ACCORDINGLY, the appealed decision should be, as it is hereby, reversed and another one entered declaring petitioner Pablo Monteza the duly elected mayor of Caibiran, Leyte in the elections of 12 November 1963. Costs against respondent Uldarico Reyes.

After this decision becomes final, let a copy thereof be furnished to the Commission on Elections.

SO ORDERED.

Makalintal, Bengzon, JP, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., Sanchez, and Dizon, JJ., did not take part.

[1] In its decision, the Court of Appeals did not specifically pass upon the evidence regarding the actuation of the inspector, but decried, in general terms, the not uncommon practice of politicians in buying votes. The existence of the evidence aliunde appears in the trial court's decision, as quoted on page 4 of the respondent's brief and the

quoted portion has not been dis-puted by the petitioner.

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