

SALVADOR K. DEMETERIO, PETITIONER AND APPELLANT, VS. HONORIO LOPEZ, RESPONDENT AND APPELLANT.

G.R. No. 26550. March 04, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Salvador K. Demeterio and Honorio Lopez, protestant and protestee, respectively, each interposed an appeal from the order of the Court of First Instance of Leyte entered in election contest No. 2869 of the same court, dismissing the protest with the costs and expenses against the protestant.

In support of his appeal, the protestant, Salvador K. Demeterio, assigns the following alleged errors as committed by the trial court in its order, to wit:

"1. In deciding this case without having required the protestee to introduce his evidence, and in sustaining the motion of dismissal filed by him upon the ground that the evidence of the protestant did not essentially alter the election of said protestee;

"2. In denying the motion of the protestant-appellant of February 2, 1926 to amend the allegations regarding precinct No. 1 of Babatñgon;

"3. In not annulling all of the votes of said precinct No. 1 of Babatñgon as justified by the fraudulent acts discovered upon the opening of the ballot boxes of said precinct and shown by the evidence and the documents which form a part of the record in the case;

"4. At all events, the trial court committed an error in not deducting from the votes of the protestee, 93 votes which had been cast by illiterate voters without previously having taken an oath as to their incapacity, this irregularity being a result or part of a scheme of frauds practised by the supporters of the protestee in order to assure a majority of the votes in said precinct;

"5. The trial court committed an error in denying the protestant-appellant's motion of February 6, 1926 to amend his original protest in regard to precinct No. 1 of the municipality of Tacloban;

"6. In not annulling all of the votes of said precinct No. 1 of Tacloban in view of the numerous frauds discovered upon the opening of the ballot boxes and shown by the evidence and the documents attached to the record, which form an integral part thereof;

"7. The trial court also erred in denying the protestant's motion of February 9, 1926 to amend the allegations of his protest in regard to precinct No. 4 of the municipality of Tacloban;

"8. The trial court erred in not annulling all of the votes of precinct No. 4 of Tacloban in view of the frauds committed and discovered upon the opening of the ballot boxes, as shown by the evidence and the documents which form a part of the record;

"9. Attention of the trial court having been called to the frauds committed in precinct No. 1 of Babatñgon and Nos. 1 and 4 of Tacloban and clearly shown by the documents and admitted by the said court, the latter

committed an error in not taking into consideration the influence of these frauds in the canvass of the votes and in the determination of the question as to which of the two candidates had obtained the real majority;

"10. The trial court committed an error in not deducting 42 votes from the protestee in precinct No. 3 of Tacloban, which had been cast by capacitated voters but who voted as being incapacitated;

"11. The trial court committed an error in rejecting 47 ballots of the protestee in precinct No. 5 of Tacloban, written and prepared by only a few hands, cast by capacitated persons who voted as being incapacitated;

"12. The trial court committed an error in not annulling all of the votes in precinct No. 2 of Babatñigon in view of the frauds committed in said precinct and discovered upon the opening of the ballot boxes; and, at least, in not deducting from the protestee's votes those of the illiterates who voted without taking an oath as to their incapacity, when this irregularity is a part of the scheme practiced by the protestee's supporters in this precinct;

"13. The court likewise committed an error in not annulling all of the votes of precinct No. 2 of San Miguel;

"14. At any rate, the trial court committed an error in not deducting from the protestee's votes the four illegal votes cast by Patricio Tampiengco and Venturito Peñaranda who voted in the precinct of San Miguel, the former three times, neither being a registered voter in this precinct; and in not deducting the 23 illegal votes in favor of the protestee cast by certain voters as incapacitated when they were not;

"15. The trial court committed an error in not deducting from the protestee's votes in precinct No. 11 of Palo, 12 votes cast by voters who, knowing how to prepare their ballots personally, nevertheless, permitted others to do it for them;

"16. The trial court committed an error in holding that the protestee had obtained in precincts Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 10 (not contested) of the municipality of Palo, 1,023 when in reality there were only 987 votes;

"17. The trial court also erred in denying protestant's motions of April 30, 1926 praying for a new trial; of May 3, 1926 praying for the correction of the total number of votes obtained by the protestee in all of the precincts of the municipality of Palo, and of May 8, 1926 praying for a decision of the questions raised in the documents attached to the record, and which form an integral part thereof, relative to precincts No. 3 of Tacloban and No. 2 of Babatñigon; and

"18. Finally, the court committed an error in deciding the case against, and not in favor of, the protestant."

While the appellant Honorio Lopez has made no assignment of error in support of his appeal, yet, he raises the question in his brief as to the lack of jurisdiction of the lower court to try the protest, alleging, as ground, the fact that, his certificate of candidacy not having been verified under oath, the protestant is not a duly registered and voted candidate and, therefore, has no legal standing to file the protest. Briefly the facts in the present case are as follows:

In the general election held in the month of June, 1925, Salvador K. Demeterio and Honorio Lopez were the only candidates for the governor of the Province of Leyte. After the balloting, the canvass and the returns made by the provincial board of canvassers, the result was 18,455 votes in favor of Honorio Lopez and 17,866 votes in favor of Salvador K. Demeterio, the former being proclaimed elected with a majority of 589 votes over the latter.

Salvador K. Demeterio filed a motion of protest in due time in the Court of First Instance of Leyte, which gave rise to the present case, and that court immediately proceeded with the appointment of the commissioners who, after opening the ballot boxes and examining their contents, rendered their report.

The case having been called for trial, the protestant introduced his evidence in support of his protest. Before presenting his, the protestee, Honorio Lopez, prayed for the dismissal of the protest upon the ground that the evidence presented by the protestant did not show that the latter had obtained a greater number of votes than he,

reserving the right to present his evidence if his motion was decided adversely.

During the trial of the case the protestant, on February 2, 1926, asked leave to amend the allegations of his protest in regard to precinct No. 1 of Babatñgon, alleging frauds lent acts which could not be discovered until after the ballot boxes had been opened.

Later, that is, on February 6, 1926, the protestant filed another motion of the same nature and for the same reasons in regard to precinct No. 1 of Tacloban.

And, finally, on February 9, 1926, the protestant filed another motion of the same nature and for the same reasons in regard to precinct No. 4 of Tacloban.

The three motions were heard, the trial court dismissing them upon the ground that they had been presented out of time and that the amendments proposed were of such a nature as to add new grounds to the protest and would essentially change those already alleged.

In regard to the first assignment of error, the practice followed in the courts of these Islands is to permit the defendant to present a motion for dismissal in ordinary cases after the plaintiff has rested, reserving the right to present his evidence if the ruling on his motion is adverse to him either in the first instance or on appeal. In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires, the motion for dismissal at that stage of the proceeding must be considered as a demurrer to the evidence presented by the protestant, with implied waiver by the protestee to present his evidence, whatever may be the ruling, whether adverse or favorable, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. If, in the prosecution of election protests the ordinary practice were to be followed in regard to the presentation of motions for dismissal or of demurrers to the evidence, in the majority of case, if not always, the law would be frustrated and the will of the electorate defeated, to the great detriment of the underlying principles of representative government, because, in case of revocation of a ruling sustaining the motion of dismissal or the demurrer on appeal, the case would have to be remanded to the court below for the continuation of the trial and the introduction of evidence by the protestee, thus causing the proceeding to continue during the term of the office in question, with the possible result that the defeated, and not the elected, candidate would be discharging the office.

In election protests, therefore, the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it.

In the present case, the motion for dismissal filed by the protestee has the effect of a demurrer to the evidence presented by the protestant, he having thereby impliedly waived the introduction of his evidence, for which reason the trial court did not commit an error in sustaining said motion and definitely deciding the case without requiring the protestee to present his evidence.

In regard to the second, fifth and seventh assignments of error, the same will be jointly considered as they raise the same question of law, the proposed amendments to the motions being not merely an elaboration of the grounds alleged in the original protest, but introducing additional grounds not previously alleged which essentially change the grounds of the protest, and the trial court committed no error in denying said motions for having been presented out of time, that is, beyond the time provided by law for the presentation of protests, notwithstanding the fact that the alleged irregularities were not discovered until after the ballot boxes had been

opened because they are not mere defects of form or unessential omissions. (Orencia vs. Araneta Diaz, 47 Phil., 830; Tengco vs. Jocson, 43 Phil., 715; Cailles vs. Gomez and Barbaza, 42 Phil., 496; Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428; 20 C. J., 234-235.)

As the questions raised by the rest of the assignments are mixed questions of fact and of law, we will consider them together.

Commencing with precinct No. 1 of Babatñgon, upon opening the ballot boxes in this precinct 12 ballots were found in favor of the protestant which were adjudicated to him upon his petition without any objection on the part of the protestee; and 217 ballots in favor of the protestee, the adjudication of which in favor of the latter was objected to by the protestant upon the ground that irregularities were committed in said precinct which would annul the election held therein.

The irregularities found are: (a) That 94 voters asked for assistance in the preparation of their ballots when there were only 71 voters with property qualification and the rest with educational qualification; (b) that in the red ballot boxes containing invalid ballots, two ballots in favor of Lopez were found with the notation on the back "Ballot rejected, does not know how to write" and "Does not know how to write," respectively, said ballots being well written, although all the spaces are not filled out and all the persons voted for are not candidates for the office for which they were voted; (c) that one of the ballots used in the election was missing, and (d) that the returns and tally sheets were falsified.

The trial court, after examining the contested ballots, deducted from the 217 votes in favor of the protestee, the 23 in excess of the number of voters with property qualification, presuming that they were the votes of voters with educational qualification who had asked for assistance in violation of the secrecy of the ballot.

In precinct No. 2 of Babatñgon 10 ballots were found in favor of the protestant which were adjudicated to him upon his petition, without any objection on the part of the protestee, and 168 ballots in favor of the protestee which were adjudicated to him without objection of the protestant.

In precinct No. 1 of Tacloban 111 ballots were found in favor of the protestant and 269 in favor of the protestee.

Upon examining the ballots of the protestant, 24 of the voters were found to have educational qualifications who had asked for assistance from other persons as shown by the fact that the ballots appear to have been written by only a few hands; and upon examining the ballots of the protestee 35 were found of voters with educational qualifications which were written by only a few hands. The trial court was of the opinion that said voters with educational qualifications asked for assistance from other persons, thus violating the secrecy of the ballot, and deducted from the protestant's 111 votes, the 24 votes which it believed to be illegal, leaving 87 votes in favor of the latter. It likewise deducted from the protestee's 269 votes, the 35 votes which it also believed to be illegal, leaving 234 ballots in his favor.

The following other irregularities are pointed out: The inspectors certified having used 417 ballots in said precinct, but upon opening the ballot boxes only 427 used ballots were found, while, according to the stubs, 429 were used, thus leaving two ballots missing.

Ninety-one ballots in favor of the protestant were found in the white ballot boxes of precinct No. 3 of Tacloban, 26 of which were objected to by the protestee, who alleged that said 26 ballots belonged to voters who had educational qualifications but who asked for assistance in their preparation.

After examining the said questioned ballots, the trial court not only adjudicated them to the protestant together with the 58 remaining ballots, but also the 8 ballots which were deposited in the red ballot box, having been

rejected by the inspectors by mistake.

They also found 120 ballots in favor of the protestee in the same white ballot box which, upon his petition and without objection of the protestant, were adjudicated to him, as well as six more ballots which were found in the red ballot box, having been rejected by the inspectors by mistake.

As to precinct No. 4 of Tacloban, upon the opening of the ballot boxes, 51 ballots were found in favor of the protestant and 175 in favor of the protestee.

Upon examining said ballots, eight of the protestant's were found, written by four hands only which were deducted by the lower court from the 51 votes in his favor.

It was also found that the protestee's 22 ballots were written by eight hands which were deducted from the 175 votes in his favor by the lower court.

The reason why the court rejected said ballots was because, in the preparation of the same, the secrecy of the ballot was violated.

The protestant, in addition, cites the following irregularities: (a) The absence of the oaths of the voters who asked for assistance, as well as of the persons who assisted them; (b) the absence of 6 ballots from the ballot boxes, and (c) the falsification committed by the inspectors in stating 257 ballots in the election returns when they found only 245.

Upon the opening of the ballot boxes of precinct No. 5 of Tacloban 23 ballots were found in favor of the protestant which, upon his petition and without opposition on the part of the protestee, were adjudicated to the former.

Two hundred twenty-five ballots in favor of the protestee were also found, of which 47 were objected to by the protestant, who alleged that they belonged to voters with educational qualifications, but who voted with the assistance of other persons, as shown by the fact that they are written by only a few hands.

The oaths of the inspectors and of the persons whom they assisted were not presented. Neither was any direct evidence presented that said 47 voters really asked for assistance in the preparation of their ballots.

In the white ballot box of precinct No. 2 of the municipality of San Miguel 5 ballots were found in favor of the protestant and 134 in favor of the protestee, 26 of which were objected to by the protestant upon the ground that the voters who wrote them had educational qualifications but were assisted by other persons.

Pedro Legarda testified as a witness in support of said opposition, but contradicted himself in such a manner in identifying the ballots and the voters who prepared them that his testimony is not entitled to any credit.

Another irregularity committed in this precinct is also cited, to the effect that on the eve of the elections, the chairman of the election board, Patricio Tampiengco, at a meeting held by the supporters of Martin Lesignes, candidate for the office of municipal president, threatened the voters, saying to them: "You must vote for this party (of Martin Lesignes), because the most distinguished men of the town, from the justice of the peace to the last municipal policeman, are affiliated with this party, and to-morrow I will know the voter who did not vote for our candidates, because I will be the chairman of the board of inspectors and will open the ballots."

Indeed, from the beginning of the elections Patricio Tampiengco opened the ballots deposited in favor of Fortunato Legarda, the opposing candidate for the office of municipal president. It appears, however, that none of the voters for the latter had been prohibited from voting.

Another irregularity is also pointed out to the effect that the walls of the booths were only 80 centimeters high and

the voters could be seen from the outside.

Another irregularity mentioned is that Patricio Tampiengco and Venturito Peñaranda, although they were registered voters in precinct No. 1 of San Miguel, voted in precinct No. 2, but it has not been proven for which of the two candidates for provincial governor they voted.

In the ballot boxes of precinct No. 11 of Palo, 84 ballots were found in favor of the protestant, two of which were rejected by the court upon the petition of the protestee, 213 ballots in favor of the protestee were also found, which were objected to by the protestant upon the ground that 12 of them belonged to voters who had registered with educational qualifications and who asked for assistance from other persons.

No oaths of the persons who are supposed to have been assisted have been presented.

In noting the votes obtained by the protestee in precinct No. 2 of the municipality of Palo a clerical error was committed, putting 95 instead of 59 votes, with the result that the total number of votes obtained by said protestee in said municipality was 1,023 instead of only 987 votes, or a difference of 36 votes.

Upon examining the alleged irregularities committed in the different precincts of the various municipalities in question, it appears that voters were found who had registered with educational qualifications but voted with the assistance of other persons, and the trial court rejected their ballots and deducted them from the votes of the candidate for governor for whom they were cast, upon the ground that they had violated the secrecy of the ballot in the preparation thereof and therefore are null and void.

In regard to the voters with educational qualifications who took oaths on their physical incapacity, the court considered their ballots valid, as the oaths of the persons who assisted them were not introduced as evidence in order to show that they really were assisted and did not waive their right to assistance until the last moment, preparing their own ballots, especially in view of the fact that their ballots do not appear to have been written by a few hands only.

The lower court did the same with respect to the voters with educational qualifications in regard to whom the oaths of their persons who assisted them are attached to the record. The oaths of incapacity not having been presented as evidence at the trial, the court did not know exactly if the voters had really been assisted or not. We do not believe that this is the true legal ground. It is presumed that the persons who took an oath to assist said voters complied therewith, and, the contrary not having been proven, we must take it for granted that they were assisted. The true ground, in our opinion, is the same presumption of compliance with duty which can only be destroyed by competent evidence to the contrary. Section 453 of the Election Law authorizes the voter with educational qualifications to ask for help, under oath, when he is physically incapacitated to prepare his own ballot. The taking of the oath gives rise to the presumption that the incapacity sworn to is real, unless the contrary is shown, which has not been done by the protestant in the case before us.

It appears, therefore, that the irregularities alleged by the protestant as committed by certain voters, a few of whom voted in his favor and a few in favor of the protestee, have not been conclusively proven.

These alleged irregularities in the preparation of the ballots, and others consisting in the falsification of the returns and the tally sheets and the unexplained missing ballots from the ballot boxes, are claimed to justify the inference that there was a preconceived plan to defeat the election of the protestant by means of a series of ingenious frauds.

We have already commented on the insufficiency of the evidence as to the alleged irregularities committed by voters with educational qualifications in the preparation of their ballots.

The lack of an explanation for the missing ballots from the ballot boxes is also claimed to account for the strange

existence of ballots, prepared by the same hand, corresponding to voters with educational qualifications, whose oaths of incapacity have not been introduced as evidence. It is alleged that the missing ballots were used as a "shuttle," as it is termed in election parlance, which means that the ballot is prepared outside of the precinct and delivered to the voter, who deposits it in the ballot box after he has obtained another blank from the proper election inspector and has apparently filled it out in the election booth, taking said blank ballot with him upon leaving, to be used in the same manner as the previous one and so on. If this procedure has been used, not only the supporters of the protestee but also those of the protestant are guilty of fraud; because ballots were found belonging to voters with educational qualifications, uniformly written and deposited in favor of the protestee as well as the protestant. But as to this alleged fraud, there is absolutely no proof other than the weak indicia which, the protestant contends, show the existence thereof.

All of the alleged irregularities in the preparation of the ballots of voters with educational qualifications, besides not having been proven, are not sufficient to annul the election in the precincts in which they were committed, inasmuch as it does not appear that they have made the result of the election in said precincts doubtful, because the trial court could not identify the illegal ballots and deduct them from the votes of the candidate to whom they belonged. "Elections should never be held void unless they are clearly illegal; it is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained. It has even been held that gross irregularities not amounting to fraud do not vitiate an election. * * *" (20 C. J., 181, par. 222.)

Neither is the fact that the walls of the election booths were only 80 centimeters high, permitting those on the outside to see within, sufficient reason for annulling the election in a precinct, it not appearing that the secrecy of the ballot was violated. (20 C. J., 173; Lucero vs. De Guzman, 45 Phil., 852; Cailles vs. Gomez and Barbaza, 42 Phil., 496; Gardiner vs. Romulo, 26 Phil., 521.)

Neither is the fact that the inspectors falsified the returns and the tally sheets sufficient cause for annulling the election, nor that they have been negligent in the conservation of the ballots, when it does not appear that such acts or omissions have materially effected the result, even when the circumstances were such as to render said inspectors liable to punishment; because the free and honest expression of the vote, without any influence, is of the utmost importance, and so long as this requisite is complied with and the result can be clearly determined, no irregularity whatsoever should be sufficient to annul an election unless the law otherwise provides. "Unless it is expressly declared by statute that the particular act is essential to the validity of the election, or that its omission will render it void, an election which appears to have been fairly and honestly conducted will not be vitiated by mere irregularities which are not shown to have affected the result. In the absence of fraud, the misconduct of election officers or irregularities on their part will not justify rejecting the whole vote of a precinct where it does not appear that the result was affected thereby, even though the circumstances may be such as to subject the officers to punishment. * * * But the power to throw out an entire division is one which ought to be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation, and threats from exercising their franchise." (20 C. J., 179-181.)

Finally, the fact that two of the voters voted in a precinct other than that in which they were registered; the fact of the chairman of the board of inspectors of a precinct has said to those present at a meeting "You must vote for the candidate of the party, because the most distinguished men of the town, from the justice of the peace to the last municipal policeman, are militating in this party and I will know who has not voted for its candidate," it not

appearing to have influence the will of the voters, and the fact that by reason of some defect in the construction of the election booths people from the outside could see the voters while they prepared their ballots, the same not appearing to have violated the secrecy of the ballot, are irregularities not constituting sufficient cause for annulling the election in the precinct in which it was held, there being no conclusive proof that they were the result of a preconceived plan to commit frauds and the same not having materially effected the outcome of the election.

Having arrived, at this conclusion, we do not believe it is necessary to discuss the question of law raised by the protestee, as appellant, in regard to the lack of jurisdiction of the trial court to try the election protest upon the ground that the protestant's certificate of candidacy was not duly sworn to.

In view of the foregoing and finding no error in the order appealed from, the same is affirmed in all its parts, with the costs against the protestant-appellant. So ordered.

Johnson, Street, Malcolm, Villamor, and Ostrand, JJ., concur.

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