

PROCESO ECHARRI, PROTESTANT AND APPELLANT, VS. FELICIANO GOMEZ, PROTESTEE AND APPELLEE.*G.R No. 26672. September 09, 1927*

Ponente: VILLA-REAL, J.

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In the general elections held on June 2, 1925, the only candidates duly registered and voted for for the office of provincial governor of Laguna, were the protestant-appellant, Proceso Echarri, and the protestee-appellee, Feliciano Gomez.

After the votes had been canvassed and the returns certified and sent to the provincial treasurer, the provincial board acting as board of canvassers, proceeded to canvass all the votes cast in the province for members of the Legislature and provincial officials, with the result that the said protestee-appellee, Feliciano Gomez, received 12,379 votes and the protestant-appellant, Proceso Echarri, 12,358 votes, or a majority of 21 votes in favor of the former, who was proclaimed governor-elect of the Province of Laguna.

Having been defeated, Proceso Echarri on June 12, 1925 filed a motion of protest based on the general allegation that each and every one of the returns of each and every one of the election precincts of the municipalities of the Province of Laguna, transmitted to the provincial treasurer and canvassed by the provincial board as board of canvassers, did not contain the true number of legal and valid votes cast in favor of the protestant and the protestee.

In answer, the respondent set up special defenses based on allegations of the same nature and scope as those contained in the said motion of protest.

In view of the nature of the motion of protest and the answer, the court appointed ten commissioners, five for each of the contending parties, to examine the ballots and recount the votes. The commissioners discharged their duty in open court, before Judge Alzona, in the presence of the parties and the attorneys of the protestant, and make their returns.

During the examination of the ballots by the judicial commissioners, many irregularities were discovered all of which were so serious as to cause the protestant, on August 25, 1925, to amend his original motion of protest so as to specify said irregularities.

After the revision commissioners had reported, and both parties had introduced their evidence, oral as well as documentary and real, in support of their respective contentions, the court rendered a decision holding that the protestee had obtained 12,368 legal and valid votes, and the protestant likewise had obtained 12,136 valid and legal votes, the former having therefore, a majority of 232 votes over the latter.

The protestant appealed to this court from said judgment, assigning as grounds for his appeal the following alleged errors as committed by the trial court in its decision, to wit: (1) The trial court erred in not deducting ballots Exhibits 154 to 3,783 from the respondent's votes; (2) the trial court erred in not holding that the election

returns of the third precinct of Pila were falsified and in not declaring the election in said precinct a failure or null; (3) the trial court erred in deducting from the votes adjudicated to the protestant 60 ballots in precinct No. 12 of San Pablo marked Exhibits B-21 to B-80; 73 ballots in precinct No. 14 of San Pablo, Exhibits B-81 to B-152-X; 45 ballots in precinct No. 15 of San Pablo, Exhibits B-153 to B-197; and 20 ballots in precinct No. 4 of Santa Cruz, Exhibits B-1 to B-20; (4) the trial court erred in adjudicating to Gomez 30 ballots from the red box of invalid ballots of precinct No. 1 of Biñan, permitting Lazaro Belizario to testify; (5) the trial court erred in dismissing the protest and in not finding that the protestant Echarri had obtained a majority of at least 1,444 votes over the protestee Gomez and in not ordering the provincial board of canvassers to correct the provincial canvas and to proclaim the protestant governor of the Province of Laguna.

The protestee, although he did not appeal, making use of the right granted him by the appeal of the protestant (Lucero vs. De Guzman, 45 Phil., 852), also assigned the following alleged errors as committed by the trial court in its decision, to wit: (1) In declaring, without any proof to justify it, that the ballot box of precinct No. 3 of San Pablo was tampered with, and in adjudicating to the parties the number of votes appearing in the election returns and not the number of votes resulting from the ballots; (2) in holding, without any proof to justify it, that the ballot box of precinct No. 5 of San Pablo was tampered with, and in adjudicating to the parties the number of votes appearing in the returns and not the number of votes resulting from the ballots; (3) in declaring, without any proof to justify it, that the ballot box of precinct No. 2 of Alaminos, was tampered with, and in adjudicating to the parties the number of votes appearing in the election returns and not the number of votes resulting from the ballots; (4) in not adjudicating to the protestee the votes validly cast in his favor in the ballots Exhibits B-1 to B-197 and ballot B-52-X (198 ballots in all) in which the protestee's name was maliciously, illegally and criminally erased and that of the protestant written over it. (Precincts 4 of Santa Cruz, and 12, and 14 and 15 of San Pablo, the latter being the protestant's municipality); (5) in admitting Exhibit 3784 (a collection of lists of municipal candidates of the province) as evidence, notwithstanding the protestee's objection on the ground that it is not the best evidence; (6) in not rejecting the 321 ballots of the protestant in the 17 precincts of San Pablo in which names of fictitious individuals, or persons who have not filed certificates of candidacy, appear voted for, notwithstanding the fact that there was valid and sufficient legal proof showing who were the registered candidates in said municipality and that these were not candidates for the office for which they were voted; (7) in not rejecting 2,558 ballots erroneously counted and adjudicated to the protestant for the office in question, notwithstanding that the same are illegal and null and fatally defective; (8) finally the trial court erred in rejecting 43 legal and valid ballots of the protestee in the different precinct of the province.

After a careful consideration of all the questions of fact, as well as of law, raised by the protestant-appellant in his four assignments of error upon all the evidence documentary and real as well as oral introduced by the parties, respectively, and after examining one by one all the ballots admitted by the trial court whose validity has been impugned by the respective parties, we find that 1,051 votes should be deducted from the 12,368 votes adjudicated to the protestee Feliciano Gomez in the judgment appealed from, leaving 11,317 votes; and 1,246 votes should be deducted from the 12,136 votes adjudicated to the protestant, leaving 10,890 votes. The majority, then, in favor of the protestee-appellee over the[^] protestant-appellant is 427 votes.

In the resolution of all the objections raised by the parties against the legality of the ballots which they impugn, the rules laid down by this court in the cases of Cailles vs. Gomez and Barbaza (42 Phil., 496) ; Lucero vs. De Guzman (45 Phil., 852) ; and Mandac vs. Samonte (49 Phil., 284) for determining said legality were followed.

To the rules already laid down in said cases, we only have to add that when, instead of Writing the full Christian name of a candidate, a diminutive or an augmentative, or a contraction or abbreviation of said name in Spanish, or in any local dialect is used, the ballot for that reason alone does not become null, if from a reading of the name

and surname of the candidate, it may be clearly inferred that the intention of the voter was to vote for said candidate.

In passing upon the validity of a ballot in which a candidate has been voted for for two or more different offices, we have not followed the doctrine laid down in the case of *Valenzuela vs. Carlos and Lopez de Jesus* (42 Phil., 428), which declared said ballot valid, because the judgment in said case was rendered in accordance with the provisions of section 452 of the Administrative Code as amended, and before section 19 of Act No. 3210 took effect, nullifying a ballot in which a person is voted for for an office for which he is not a candidate. We have applied the provision of this new law and have declared null those ballots in which persons, who are candidates for only one office, are voted for for two different offices, for the reason that in regard to the other office, said person may be considered to have been voted for, without being a candidate therefor, which annuls the ballot (*Mandac vs. Samonte*, 49 Phil., 284).

As to the destruction of the ballots contained in the box for valid ballots in the third precinct of Pila by means of sulphuric acid, in the same circumstances the same causes should produce the same effects. If, after the same or a greater amount of sulphuric acid was poured into two new ballots boxes of exactly the same kind as the one tampered with, containing the same kind and quantity of ballots and other papers, the corrosive liquid filtered through the four corners at the bottom of each one of said experimental boxes, spread out on the wooden floor on which they were, and burned it, the same effect should have been produced on the part of the floor on which the tampered box was when, according to the witnesses of the protestant-appellant, on the afternoon of August 12, 1925, a partisan of the protestee poured a liquid substance which, according to the results of the analysis made by the Bureau of Science, was sulphuric acid, since in the four corners or exterior angles of the bottom of the said ballot box, were and may still be found, traces of nitrations of the corrosive ingredient; but the fact is that when the ballot box that was tampered with was raised hours afterwards, to be returned to the dungeon of the provincial jail, it was not noted, nor can it now be noted, that there was any burn on the floor, nor any sign of the spilling of sulphuric acid.

The result of the experiment, then, disproves the testimony of said witnesses of the protestant, as dealing with an impossibility, aside from the incredibility arising from their conduct in having remained silent for the period of nearly four months, and it overthrows all the evidence presented tending to show that the protestee and his partisans were responsible for the destruction, in order to obliterate every trace that might prove that the election returns of said third precinct of Pila were falsified. The ballots were really destroyed. And while there are circumstances indicating who might be responsible for the destruction, yet, such indicia are not sufficient to arrive at a conclusion beyond all doubt. In the same situation, and in the absence of conclusive evidence to the contrary, the presumption is strong, and there is evidence to support it, that the canvass of the votes in the said third precinct of Pila was made in accordance with the law, and that the certificate of the result of the election and of the proceedings of the board of inspectors, contains the truth, and must prevail. (*Mandac vs. Samonte*, 49 Phil., 284.)

In view of the result of the revision of the ballots made by us, we deem it unnecessary to consider and discuss the other assignments of error made by the appellant and the appellee in their respective briefs.

In virtue of the foregoing, we affirm the judgment appealed from, with the sole modification that the protestee-appellee is adjudged a majority of 427 votes, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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