

AURELIO CECILIO, PETITIONER AND APPELLANT, VS. GABRIEL BELMONTE, RESPONDENT AND APPELLEE.*G.R. No. 28523. February 18, 1928*

Ponente: VILLAMOR, J.

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In the general elections held in the Province of Nueva Ecija on June 2, 1925, Aurelio Cecilio of the Democrata Party, Gabriel Belmonte of the Nacionalista-Consolidado Party and Felino Cajucom, Independent, were registered candidates for the office of provincial governor. After examining the election returns of all the province, the provincial board made a canvass of all the votes obtained by each candidate for the office of provincial governor and a report of the result, showing that Aurelio Cecilio obtained 10,797 votes, Gabriel Belmonte 10,841 and Felino Cajucom 1,646. Consequently, the provincial board of canvassers proclaimed the candidate Gabriel Belmonte elected with a plurality of 44 votes and issued the proper certificate of election.

In due time and form Aurelio Cecilio, whom we shall call protestant, protested against the election of Gabriel Belmonte, whom we shall call the protestee. Felino Cajucom did not enter into this phase of the contest. The protest as well as the counter-protest alleges various grounds which appear in the respective briefs.

The trial of the case has been long and tedious, abounding in troublesome incidents which contributed to the prolongation of the proceedings. Finally, after two years and two months from the presentation of the protest (July 15, 1925) the court published (September 12, 1927), an extensive, analytical and well-reasoned decision of 698 pages, declaring that the protestant had obtained 10,006 votes, the protestee 10,260 and Felino Cajucom 1,646, with a plurality of 254 votes in favor of the protestee. The court, therefore, ordered the provincial board of Nueva Ecija, in its capacity of provincial board of canvassers, to correct the canvass and the proclamation made by it in regard to said office and to amend the same in accordance with the findings of the trial court, and held that the costs and the court expenses are to be borne by the protestant chargeable against the bond filed by him for that purpose; and lastly ordered the prosecuting attorney of Nueva Ecija to make an investigation and take the proper action concerning the irregularities which constitute a violation of the Election Law, mentioned in the decision.

The protestant appealed from this judgment and assigns the following errors as committed by the trial court: (1) In granting a new trial filed by the respondent Gabriel Belmonte in order to present additional evidence and in having received and admitted said additional evidence; (2) in not having declared all of the votes cast in favor of Gabriel Belmonte void, with the exception of eight, on account of all of said ballots having been cast for one or more candidates who were not registered; (3) in not having counted in favor of the protestant all of the votes claimed by him as valid votes, and in having counted the ballots contested by the protestant as valid votes in favor of the protestee; (4) in not having counted as valid votes in favor of the protestant Aurelio Cecilio, the ballots wherein it appears that another candidate was erroneously voted for an office different from that for which he had presented his certificate of candidacy; (5) in not counting as valid votes in favor of the protestant the ballots wherein the latter appears to have been voted for by the initials of his Christian name and his surname; (6) in completely rejecting the testimony of the protestant's handwriting expert on the ballots of precinct No. 2 of

Papaya and basing its finding exclusively upon that of the protestee's handwriting expert; (7) in not having declared that the provincial board of canvassers should have proclaimed the protestant Aurelio Cecilio candidate-elect for the office of provincial governor of Nueva Ecija and violated the law by proclaiming Gabriel Belmonte, following the falsified returns of precinct No. 3 of Guimba; (8) in not declaring that the only valid votes obtained by Gabriel Belmonte, according to the evidence introduced before the new trial took place, granted arbitrarily, amounted to only eight votes, and in not having proclaimed and ordered the proclamation of Aurelio Cecilio as governor-elect with a plurality of more than 8,000 votes over Felino Cajucom and more than 10,000 votes over Gabriel Belmonte; (9) in ordering and directing the prosecuting attorney of Nueva Ecija to make an investigation and to take the proper action on the irregularities which constitute a violation of the Election Law mentioned in the decision instead of issuing said order long before when the criminal action against the accused had not yet prescribed; and (10) in ordering the protestant to pay the costs and court expenses of the protest instead of imposing the same upon the respondent Belmonte.

The first assignment of error raises the question as to whether Courts of First Instance can consider motions for a new trial for the presentation of additional evidence in election protest proceedings. This question appears to have been already affirmatively decided by this court. In the case of *Arnedo vs. Llorente and Liongson* (18 Phil., 257), it was held that Judges of First Instance have no power to consider such motions; but in other election cases decided later by this court it laid down a different doctrine with knowledge of the ruling laid down in the case of *Arnedo vs. Llorente and Liongson*, supra, and that stated in *Navarro vs. Veloso* (23 Phil., 625). In *Calangi vs. Jocson* (G. R. No. 16108,[1] not reported) and in *Palomata vs. Villareal* (40 Phil., 641), the question of the applicability of section 145 of the Code of Civil Procedure to election cases in regard to motions for a new trial is discussed and in resolving it in the affirmative, the court used the same language in both cases, saying:

"Section 145 of Act No. 190 provides among other things that the judge may, within thirty days after notice of a decision, on his own motion, set aside his judgment and grant a new trial, when he has become satisfied, for example, that his judgment 'is against the law'. Under that provision the judge, in ordinary actions, may correct errors in his decision within a period of thirty days. In the absence of other provisions in the Election Law, we can see no legal objection, notwithstanding the summary character of election protests, to applying the above-quoted provision of section 145 of Act No. 190 to cases like the present.

"* * * We cannot bring ourselves to believe that the Legislature intended that the Judges of the Court of First Instance, who have final jurisdiction in municipal election contest cases, should not have sometime to examine, modify, and change, if necessary, a decision in which a manifest error in law had been committed. We are of the opinion that section 145 of Act No. 190 should be applied, and especially so in view of the fact that the decision of the Court of First Instance is final and not appealable."

And the court added:

"In reaching this conclusion we have not overlooked the decision of this court of *Arnedo vs. Llorente and Liongson* (18 Phil., 257) nor that of *Navarro vs. Veloso* (23 Phil., 625)."

In the present case the motion for a new trial was presented after the probatory period had closed, but before judgment was rendered, for the purpose of presenting certificates of candidacy of certain candidates for provincial offices, including that of the protestee, and for the offices of Senator and Representative, which certificates the protestee believed had been filed with the other certificates of candidacy of the candidates for municipal offices. In submitting his brief the protestant's attorney contends that all of the votes given to the protestee, with the exception of eight, must be declared null on account of more than 10,000 ballots appearing to have been cast for persons who had no certificates of candidacy. The protestee's attorney then filed the motion which is the subject matter of the first assignment of error. Under the circumstances set forth, we are of the opinion, as we hereby

declare, that the doctrine laid down in the Calangi and Palomata cases is more applicable to the case now before us. The motion for a new trial filed by the protestee, properly speaking, is a motion for the introduction of additional evidence, and the consideration of this class of motions lies entirely within the discretion of the judges as was held in *Gonzalez Quiros vs. Palanca Tan-Guinlay* (5 Phil., 675) and in *United States vs. Tria* (17 Phil., 303). The first assignment of error must be overruled.

The trial court granted the introduction of evidence prayed for in the motion and the certificates of candidacy questioned by the protestant are now attached to the record, that is, those of the candidates for the provincial offices, Vicente Melevo, Mariano Sta. Romana and Gabriel Belmonte, and those of the candidates for the office of Senator and Representative, Isauro Gabaldon and Ricardo Gonzalez Lloret, respectively. It follows, therefore, that the contention of the protestant in the second assignment of error is untenable. But even if these certificates had not been filed, there was a strong presumption, deduced from section 405 of the Election Law, that the Chief of the Executive Bureau and the secretary of the provincial board had sent certified copies of said certificates of candidacy to all the election precincts of the Province of Nueva Ecija, and, after the elections, the protestant cannot lawfully contest the validity of the 10,000 and some odd ballots cast for the protestee for the reason that persons appear to be voted for therein without certificates of candidacy. In the case of *De Guzman vs. Board of Canvassers of La Union*, and *Lucero* (48 Phil., 211), the court said: "The certificate of the respondent Juan T. Lucero was defective, lacking the formality of the oath. This irregularity might have justified the elimination of the name of Juan T. Lucero as a legal candidate for the office of provincial governor, if an objection on the part of the petitioner Tomas de Guzman had been made in due time. Yet we are of the opinion that this irregularity does not invalidate the election for the fundamental reason that after it was proven by the count of the votes that Juan T. Lucero had obtained the majority of the legal votes, the will of the people cannot be frustrated by a technicality consisting in that his certificate of candidacy had not been properly sworn to." The second and eighth assignments of error are groundless and must be dismissed.

The third and fourth errors attack generally the rejected ballots of the protestant and those adjudicated to the protestee. In order to locate the ballots claimed by the protestant it would be necessary to review all of the ballots used in the whole Province of Nueva Ecija, which would be an injustice to the members of this court as well as to the electorate of Nueva Ecija, who would be submitted to another period of anxiety in excess of that already suffered during the long course of this protest. In the case of *Lucero vs. De Guzman* (45 Phil., 852), this court, among other things, said:

"The rules of this court require that assignments of error should be specific. Of course this does not mean that in an election case a separate assignment must be made with respect to every ballot, which would be intolerable. But it is the duty of the appellant's attorney, in his discussion of the errors imputed to the trial court in the revision of ballots in the different precincts, to point out the error, or errors into which said court is supposed to have fallen. In a number of instances in the case before us, the appellant's attorneys have contented themselves with a mere submission of the particular ballot in question to the judgment of this court, without attempting to show wherein the trial court erred in admitting or rejecting such ballot. We have uniformly refused to examine such ballots for lack of sufficient assignment."

We see no reason for deviating from so wise a rule of procedure. The protestant's attorney made no attempt either in his written brief or in his oral argument to point out which ballots should be adjudicated to the protestant and which should be deducted from the protestee. Errors three and four are overruled for lack of sufficient assignment.

Under the fifth assignment of error the protestant complains that the lower court failed to count in his favor the valid ballots in which he appears to have been voted for by the initials of his Christian name and his surname. This complaint is groundless. In the oral argument of the attorney for the protestee, which was not contradicted by the opposing party, he positively stated in open court that three ballots were claimed by the protestant and

admitted that if they were adjudicated to the latter they would not affect the result.

In regard to the sixth assignment of error, the protestant alleges that the trial court erred in rejecting the 17 votes in his favor, following only the testimony of the protestee's handwriting expert and rejecting the testimony of the protestant's handwriting expert. It is a well established rule in this jurisdiction that the testimony of experts does not deprive the judges of the power to decide questions according to their own view, notwithstanding expert opinions. The protestee's attorney, however, for the sake of argument, admitted in open court that these seventeen votes might be granted to the protestant without thereby making any change in the result of the judgment appealed from.

In regard to the seventh assignment of error, it is alleged by the protestant that the trial court erred in proclaiming the protestee elected, basing its action upon the falsified returns of precinct No. 3 of Guiraba. In the preliminary discussion made by the protestant's attorney in his brief, he claims 62 votes under this assignment of error. The protestee's attorney in his oral argument maintained that the judge in making the canvass took into consideration the election returns as examined by the provincial board of canvassers. But even if the 62 votes referred to were adjudicated to the protestant, they would not change the result of the election, because the number of votes claimed in the three preceding assignments of error: $3+17+62=82$, do not overcome the plurality of the protestee, or 254 votes, as stated at the beginning.

The fifth, sixth and seventh assignments of error are overruled.

The ninth assignment of error refers to the order of the trial court to the prosecuting attorney of Nueva Ecija for the prosecution of the persons who committed violations of the Election Law on the occasion of the election in question. The judgment appealed from does not specify the violations for which criminal action should be instituted, but it seems that the court's order referred to the discovery of the falsified returns denounced by the protestant, that is, Exhibit A-3 of precinct No. 3 of Guimba. If the court's order referred to the alleged falsification of the returns Exhibit A-3, the discovery of this irregularity having been made in the judicial proceedings of this contest, we believe that the order is in accordance with section 2660E of the Administrative Code, as amended by Act No. 3387, which provides:

"Prescription.—Offenses resulting from violations of this article shall prescribe one year after their commission; but if the discovery of such offenses is incidental to judicial proceeding in any election contest, the term of prescription shall commence only when such proceedings terminate."

The tenth assignment of error refers to the order of payment of the costs imposed upon the protestant. The error is groundless. In accordance with section 482 of the Election Law, the costs should be imposed upon the defeated party in the protest.

In view of the foregoing, the judgment appealed from must be, as it is hereby, affirmed with the costs against the appellant. So ordered.

Johnson, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] Promulgated February 7, 1920.

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