

SERAPION ADESER, PROTESTANT AND APPELLEE, VS. MATED TAGO, PROTESTEE AND APPELLANT.*G.R. No. 30282. March 01, 1929*

Ponente: VILLA-REAL, J.

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This appeal is taken by the protestee Mateo Tago from the judgment of the Court of First Instance of Bohol holding that the protestant Serapion Adeser obtained 215 votes for the office of municipal president of Bimiao, Province of Bohol, in the general elections held in said municipality on June 5, 1928, and the protestee 212 votes, thus giving the former a plurality of 3 votes over the latter.

In support of his appeal the appellant assigns the following errors as committed by the court below in its judgment, to wit:

"1. The lower court erred in appreciating in favor of the petitioner the following ballots; 1-A (precinct No. 1) and 3-A (precinct No. 4) both with 'Apiong Cerila' for president; 2-A (precinct No. 1) with 'Serapion A.?' 1-A, 2-A (precinct No. 2) and 4-A (precinct No. 4) with 'Serapion A;' 1-A (precinct No. 3) and 5-A (precinct No. 4) with 'Serapion' on the space for president and 'Adeser' on that for vice-president; 1-A and 2-A (precinct No. 4), illegible; and 5-X (precinct No. 1) which was burned.

"2. The lower court erred in not appreciating in favor of the respondent ballot 6-X in precinct No. 1, with the name 'Mateo' and a not well written surname for president.

"3. The lower court erred in finding that the petitioner obtained more votes than the respondent and in declaring the former elected-president of the municipality of Dimiao."

The following pertinent facts are necessary for the solution of the questions raised in the instant appeal.

In the general elections held in the municipality of Dimiao, Bohol, on June 5, 1928, among the registered candidates voted for the office of municipal president of said municipality, were Mateo Tago, who obtained 213 votes, and Serapion Adeser, who obtained 212 votes, giving a plurality of only one vote in favor of the former as against the latter, according to the results of the canvass, made by the municipal board of canvassers of Dimiao. In pursuance whereof, on June 7, 1928, said board proclaimed Mateo Tago President elect of said municipality.

Dissatisfied with said result, Serapion Adeser on June 13, 1928, and in due time, filed a motion of protest in the Court of First Instance of Bohol against Mateo Tago, alleging as a cause of protest, certain irregularities committed in the appreciation of ballots in precincts Nos. 1 and 3 of the municipality of Dimiao. Mateo Tago also filed, in due time, an answer with a counter-protest, alleging that irregularities had been committed in the appreciation of the ballots in precincts Nos. 2 and 4 of the same municipality.

Having acquired jurisdiction to try the protest and counter-protest by virtue of said motion, the Court of First Instance of Bohol, upon petition of the parties, appointed three commissioners who took charge of the opening of the four valid-ballot boxes of the four precincts, and of recounting the ballots contained therein, later on

submitting to the trial court a report of the result of their proceedings, stating that the protestee Mateo Tago obtained 209 votes and the protestant Serapion Adeser 204 votes, having rejected seven (7) contested ballots in favor of the former, and thirteen (13) likewise contested, in favor of the latter. The said 20 contested ballots having been submitted to the Court of First Instance of Bohol for decision, the latter adjudicated three (3) of them to Mateo Tago, and eleven (11) to Serapion Adeser, which, added to the votes obtained by said candidates, respectively, gave a total result of 215 votes in favor of Serapion Adeser, and 212 votes in favor of Mateo Tago.

From this judgment Mateo Tago appealed to this court.

With respect to ballots, 1-A of precinct No. 1, and 3-A of precinct No. 4 of the municipality of Dimiao, contested by the appellant in his first assignment of error as erroneously admitted in favor of Serapion Adeser, the vote being written in favor of one "Apiong Cerila" for the office of municipal president, it appears from the record that Serapion Adeser stated in his certificate of candidacy that he was also and still is known by the nickname of "Apiong Cerila." Inasmuch as among Filipinos of scant education it very frequently happens that a person is better known by his nickname than by his Christian name and surname, and as it does not appear that there is any other person with the nickname "Apiong Cerila" (except Serapion Adeser), the voters who wrote such nickname in the space for the office of municipal president of Dimiao could not have voted for any other than Serapion Adeser, This being the will of the two voters who used such nickname in voting for him, we must give it effect and hold said two ballots valid and admissible in favor of Serapion Adeser.

As to ballots 2-A of precinct No. 1, 1-A of precinct No. 2, and 4-A of precinct No. 4, contested by the protestee-appellant as erroneously admitted by the court below in favor of Serapion Adeser because in the space for the office of the municipal president in each of them is written only "Serapion A," while it is true that in the cases of Cailles vs. Gomez and Barbaza (42 Phil., 496), and Lucero vs. De Guzman (45 Phil., 852), it was held for the reasons stated therein, that the Christian name and the initial letter of the candidate's surname alone are not sufficient to identify the person voted for, nevertheless, we believe that when there is no other candidate bearing the same name and surname and the same initials, the Christian name and the initial letter of the surname are sufficient to identify the candidate bearing- said Christian name and said initial of surname.

In the instant case, Serapion Adeser is the only candidate for municipal president of Dimiao, Bohol, with said name and surname, and when the four voters, respectively wrote in the four ballots the name of "Serapion A" in the space for the office of the municipal president, they could not have had the intention to vote for any other candidate than Serapion Adeser.

When they wrote only the initial A of Adeser's surname, it cannot be said that said four voters desisted from voting for him, for if they had so intended, they would have erased his name and placed another instead, or asked for another ballot.

It appearing clearly, then, that the intention of the four voters, who wrote in their respective ballots the name of "Serapion A" for the office of the municipal president of Dimiao was to vote for Serapion Adeser, effect must be given to their will and said ballots must be admitted as valid in favor of the said Serapion Adeser.

With respect to ballots, 1-A of precinct No. 3, and 5-A of precinct No. 4, contested by the protestee-appellant Mateo Tago as erroneously admitted in favor of Serapion Adeser because the Christian name Serapion is written in the space for the municipal president, and the surname Adeser between the space for municipal president, and that for municipal vice-president, a careful examination of said two ballots will show that there being no space left wherein to write the surname Adeser, after having written the Christian name Serapion, the voters were under the necessity of writing the surname below said Christian name, and this circumstance does not indicate that said voters desired to vote for Serapion Adeser for the office of municipal vice-president of Dimiao.

The admission of these two ballots as valid in favor of Serapion Adeser is not, therefore, erroneous.

As to ballots 1-A and 2-A of precinct No. 4, contested by the protestee-appellant, as erroneously admitted by the trial court in favor of Serapion Adeser because the latter's name and surname are illegible, there are written in the space for the office of municipal president in ballot 1-A the words "Siropio adise," and in ballot 2-A, the words "Sirapio adise," which, read by a Filipino who barely knows how to read and write, has a sound similar to Serapion Adeser, save that the voters who wrote them did not know how to spell correctly. These two ballots squarely come within the rule of *idem sonans* and, consequently, are valid and may be admitted in favor of Serapion Adeser.

Ballot 5-X of precinct No. 1, contested by the protestee-appellant as erroneously admitted in favor of Serapion Adeser, because it was marked with a burn on the upper right-hand corner, after being submitted to a careful examination clearly shows that said burn was accidental and not made for purposes of identification and, therefore, its admission was correct.

In the second assignment of error, the protestee-appellant claims ballot 6-X of precinct No. 1, because it clearly appears that he has been voted for therein for the municipal presidency, although his surname is not clearly written. A careful examination of said ballot leads to the conclusion, from the inartistic and defective manner in which his name and surname are written in the space for the municipal president, that the voter desired to write the name of Mateo Tago; therefore, this ballot should be admitted as a vote in his favor.

Summarizing the above, we find that the two ballots, 1-A of precinct No. 1, and 3-A of precinct No. 4, contested by the protestee-appellant Mateo Tago as inadmissible because in the spaces for municipal president is written the nickname "Apiong Cerila" and not Serapion Adeser; the four ballots, 2-A of precinct No. 1, 1-A and 2-A of precinct No. 2, and 4-A of precinct No. 4, also contested by Mateo Tago as inadmissible because in the space for municipal president is written only the Christian name Serapion, and the initial A of the surname; and not the whole surname Adeser; the two ballots, 1-A of precinct No. 3, and 5-A of precinct No. 4, likewise contested by protestee-appellant as inadmissible because the Christian name Serapion is written in the space for municipal president and the surname Adeser between the space for municipal president and in that for municipal vice-president; and the two ballots 1-A and 2-A of precinct No. 4, also contested as inadmissible because the names appearing in the spaces for municipal president are illegible; and the ballot 5-X of precinct No. 1, also contested by Mateo Tago as inadmissible because it is marked with a burn, are all valid and may be admitted in favor of Serapion Adeser; and that ballot 6-X claimed by Mateo Tago as a vote in his favor is also valid and admissible. From the 215 ballots adjudicated by the court below to Serapion Adeser, there is none, then, to be deducted; but one ballot must be added to the 212 adjudicated to Mateo Tago, making a total of 213, the former obtaining a plurality of 2 votes over the latter.

By virtue whereof, and with the aforementioned modification, the appealed judgment is affirmed, with costs against the appellant. So ordered.

Johnson, Malcolm, Ostrand, and Romualdez, JJ., concur.

DISSENTING:

STREET, J., with whom concurs VILLAMOR, J.,:

I dissent from so much of this decision as holds that a ballot on which is written "Serapion A" can be read as a vote for Serapion Adeser, on the ground stated in my dissenting opinion in *Namocatcat vs. Adag*, G. R. No.

30283,[1]

[1] P. 794, ante.

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