

JUAN NAMOCATCAT, PROTESTANT AND APPELLEE, VS. VICTORINO ADAG, PROTESTEE AND APPELLANT.

G.R. No. 30283. February 15, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal is taken by the protestee Victorino Adag from the judgment of the Court of First Instance of Bohol holding that the protestant Juan Namocatcat obtained 446 votes and Victorino Adag 435, resulting in a majority of 11 votes in favor of the former and against the latter, with costs against the protestee.

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

"1. The trial court erred in adjudicating to the protestant-appellee ballot No. 4 of precinct No. 1; ballots Nos. 3, 5, 7, 8, 11, 12 and 13 of precinct No. 2; and ballots Nos. 4 and 8 of precinct No. 5, in all of which Juan N. was voted for the office of municipal president of Valencia, Bohol.

"2. The trial court erred in adjudicating to the protestant two ballots in precinct No. 2; two ballots in precinct No. 3; one ballot in precinct No. 4; and one ballot in precinct No. 5; in all of which Juan Gading was voted for the office of municipal president of Valencia, Bohol.

"3. The trial court erred in rejecting ballot No. 7 of precinct No. 1, because Pastor Boiser was voted for the office of representative."

The pertinent facts necessary for the solution of the questions raised by the three assignments of error are as follows:

In the general elections held in the municipality of Valencia, Bohol, on June 5, 1928, Juan Namocatcat and Victorino Adag were, among others, registered candidates voted for the office of municipal president of said municipality. After the voting and the canvass of the votes by the municipal board of canvassers, it was found that Victorino Adag obtained 431 votes and Juan Namocatcat 426 votes, that is, a majority of 5 votes in favor of the former over the latter, and Victorino Adag was proclaimed elected to the office of municipal president of said municipality of Valencia, Bohol.

As Juan Namocatcat was not contented with said result, he filed in due time a motion of protest against Victorino Adag who filed an answer and a counter-protest within the period prescribed by law.

The Court of First Instance of Bohol having acquired jurisdiction over the content by virtue of said motion, upon petition of both parties, commissioners were appointed to recount and examine the valid ballots contained in the ballot boxes corresponding to precincts Nos. 1, 2, 3, 4 and 5 of the municipality of Valencia, Bohol. Having performed their task in accordance with the law, said commissioners submitted a report to the trial court to the effect that Juan Namocatcat obtained 437 votes, and Victorino Adag 435. Having considered the report and heard the parties upon the same and upon the contested ballots, the Court of First Instance of Bohol rendered the

judgment referred to above.

In his first assignment of error, the protestee-appellant impugns the validity and admissibility in favor of the protestant Juan Namocatcat of ballot No. 4 of precinct No. 1; ballots Nos. 3, 5, 7, 8, 11, 12 and 13 of precinct No. 2, and ballots Nos. 4 and 8 of precinct No. 5 because "Juan N" appears in the column for the office of municipal president and not Juan Namocatcat.

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), for the reasons therein stated, it was held that the Christian name and the initial of the surname alone are not sufficient to identify a candidate, nevertheless, when it appears that no other candidate for the same office has the same Christian name and surname, or the same initials, and the voter's intention to vote for the candidate with the Christian name and the initial of the surname which he writes in his ballot is manifest, the will of said voter must be complied with. This is the most just and reasonable interpretation considering that in the Philippines, voters scarcely able to read and write know their candidates by their Christian names rather than by their surnames. Moreover, there are surnames hard to remember and harder still to write, and this is why it often happens that the voters write no more than the Christian name and the initial of the surname. This interpretation is also more in harmony with the legislator's intention in extending the right of suffrage to those who do not know how to read and write save in their own dialect, the majority of whom are ignorant. If, in ascertaining the intention of the voter manifested in his ballot, the degree of education, his means of knowing the candidates' names, and the local customs, were not taken into account, the ends of the law would be frustrated, and many legally qualified voters would be deprived of the right of suffrage.

From this point of view, the court a quo did not err in adjudicating to the protestant-appellee Juan Namocatcat the ten ballots the validity and admissibility of which are contested in the first assignment of error, because nothing is written in the space for the municipal president but the name "Juan N."

As to the second assignment of error, referring to the six ballots with the name of Juan Gading voted for the office of municipal president, in the nineteen (19) contested ballots in precinct No. 2, only seven, that is, those bearing Nos. 3, 5, 7, 8, 11, 12 and 13, wherein appear the name of Juan N voted for the office of municipal president, which are the same ones mentioned in the first assignment of error, are the only ones that were adjudicated by the court a quo to Juan Namocatcat, and none with the name of Juan Gading was adjudicated to the latter. Of the twenty (20) ballots contested in precinct No. 3, none was adjudicated either to the protestant or to the protestee, because neither of them was therein voted for the office of municipal president. Of the nine ballots contested in precinct No. 4, none was adjudicated either to the protestant or to the protestee, because neither of them was voted for therein for the office of municipal president and in none of them was Juan Gading voted for said office. Of the eight ballots contested in precinct No. 5, two only, that is, those bearing Nos. 4 and 8, were adjudicated to Juan Namocatcat, and they are the same ones mentioned in the said first assignment of error, not because they bear the name of Juan Gading, but that of Juan N. But even if the protestant-appellee had been adjudicated ballots in which appeared the name of Juan Gading, such adjudication would have been correct, because in his certificate of candidacy, Juan Namocatcat sets forth that he is also known by such name or nickname. In order to interpret the will of the Philippine voter of slight education, we cannot disregard the sociological fact that among the ignorant people, a person is better known, if not by his Christian name, then by his nickname alone.

It therefore appears that none of the alleged ballots bearing the name of Juan Gading were adjudicated to Juan Namocatcat.

The third assignment of error is well taken, and the court a quo erred in rejecting ballot No. 7 of precinct No. 1, simply because in the space for representative was written the name of Pastor Boiser, who is not a candidate for

said office. Section 464 of the Election Law, as amended by Act No. 3210, which declared all ballots void wherein a person was voted for an office for which he was not a candidate, has been reamended by Act No. 3387, repealing such provision by implication in providing that such a vote is to be considered as a scattering vote.

Briefly, then, we have it that the adjudication by the lower court of ballots No. 4 in precinct No. 1, Nos. 3, 5, 7, 8, 11, 12 and 13, of precinct No. 2, and Nos. 4 and 8 in precinct No. 5, where the words "Juan N." are written in the space for municipal president in favor of Juan Namocatcat, should be affirmed, and the judgment must be reversed in so far as it rejects ballot No. 7 in precinct No. 1, in favor of the protestee-appellant Victorino Adag, adjudicating said ballot to him, with the result that the protestant-appellee obtained 446 votes and the protestee-appellant 436, that is, a difference of 10 votes in favor of the former.

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

Johnson, Malcolm, Johns, Ostrand, and Johnson, Malcolm, Johns, Ostrand., concur.

DISSENTING

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

I dissent from so much of this decision as declares that a vote can be counted for the candidate Juan Namocatcat when the voter has written only "Juan .N" in the place where the name of the person voted for should be written. In section 452 of the Election Law, as amended, it is required that the voter shall prepare his ballot by writing in the proper space for each office the name of the person for whom he desires to vote. The word "name," as used in this statute, has been interpreted by this court to mean, at the very least the surname. It is true we have held that the Christian name and the middle name, if any, may be dispensed with altogether or represented merely by an initial, or initials.. But it has never before been held that the essential surname can be indicated oh the ballot by a mere initial.

In the opinion of the court in the present case the rule heretofore followed is evaded by the suggestion that it here appears that there was candidate for the contested office bearing a surname having the same initial as the surname Namocatcat. But the same fact was equally manifest in *Cailles vs. Gomez and Barbaza* (42 Phil., 496), and *Lucero vs. De Guzman* (45 Phil., 852), where the former doctrine was recognized, because the names of all candidates for the contested office were there likewise known to the court and no two ,had surnames beginning with the same initial. The tendency of the present departure from the settled rule will be to produce confusion and uncertainty in the application of the law and to multiply the issues in election contests; for it must be evident at once that if, in a case like this, there should be a single person in a particular precinct having the same Christian name and the same initial to the surname as one of the candidates, an ambiguity would arise in the mind of the inspectors, upon counting the votes, as to whether or not the voter may have intended to vote for the other person rather than the candidate. For instance, if it had been made to appear in this case that there was living in the same precinct, at the time of the election, a person named Juan Nery, would it not have been uncertain whether the voter had intended to vote for such Juan Nery rather than Juan Namocatcat, for it is not infrequent that voters vote for persons for particular offices who are not candidates at all? And if such fact had been proved, would it not have Justified the rejection of the vote for Juan? This consideration shows the danger of opening the doors to ambiguities of this sort, for such questions will now be added to the list of multifarious issues which have to be judicially examined in election contests.

In the appealed decision a passage is cited from *Mandac vs. Samonte* (49 Phil., 284, 301), which is supposed to be

authority for the proposition that the surname may be represented on the ballot by an initial only. But this is an incorrect interpretation of the decision in *Mandac vs. Samonte*, supra, for what is there said about using the initials of names on the ballots clearly has reference to the use of initials in writing Christian names. There is nothing in *Mandac vs. Samonte*, supra, which even suggests that the discussion is there concerned with the use of an initial to indicate a surname. Furthermore, by turning to 10 Am. & Eng. Ency. of Law, 2d ed., p. 723, which is the source of the passage found at page 301 (English edition) of the decision in *Mandac vs. Samonte*, we find that the passage cited is taken almost textually from a reading note which has an epigraph showing on its face that the discussion is concerned with the initials of Christian names.

In the opinion of the court it is suggested that the wide diffusion of illiteracy in certain sections of this country is enough to justify the adoption here of a more liberal rule. But this fact does not in my opinion justify a clear departure from the requirement of the statute that the name of the person voted for shall be written on the ballot.

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