

VICENTE DITCHING, PROTESTANT AND APPELLANT, VS. ESTEBAN JALANDONI, FELIX MONTINOLA LOZADA AND VICENTE TINSAY, PROTESTEES. ESTEBAN JALANDONI, APPELLEE.

G.R. No. 30315. February 15, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the protestant Vicente Ditching from the judgment of the Court of First Instance of Occidental Negros declaring the protestee Esteban Jalandoni to have been legally elected to the office of municipal president of Victorias, Occidental Negros, in the general elections held in said municipality on June 5, 1928, with a plurality of 3 votes over the protestant; with the costs against the latter.

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

- "1. The lower court erred in holding ballots, Exhibits B-1, B-2, B-5, B-15, D-2, and D-12 valid, for the office of municipal president in favor of the protestee Esteban Jalandoni and counting them as valid votes.
- "2. The lower court erred in holding ballot Exhibit C-16 valid and, consequently, in not having counted the vote cast therein for the office of municipal president in favor of the protestant Vicente Ditching.
- "3. The lower court erred in holding that the protestee Esteban Jalandoni obtained 340 votes and the protestant Vicente Ditching 337 and, consequently, in holding the protestee Esteban Jalandoni to be the legally elected municipal president of the municipality of Victorias, with a plurality of three votes.
- "4. The lower court erred in not holding that the protestant Vicente Ditching obtained 338 votes and that the protestee Esteban Jalandoni only obtained 335 and, consequently, in not holding the protestant Vicente Ditching to be the legally elected municipal president of the municipality of Victorias with a plurality of 3 votes over the protestee Esteban Jalandoni."

The following pertinent facts are necessary for the solution of the questions raised by the present appeal:

On June 5, 1928, Vicente Ditching and Esteban Jalandoni were, among others, registered candidates voted for the office of municipal president of Victorias, Occidental Negros. After the voting was over and the canvass of the votes made, Esteban Jalandoni obtained 342 votes, and Vicente Ditching 330, with a plurality of 12 votes in favor of the former, who was then proclaimed the winning candidate for said office.

Not satisfied with said result Vicente Ditching filed an election protest against Esteban Jalandoni on June 19, 1928, which was answered by the latter in due time with a Counter-protest.

The Court of First Instance of Occidental Negros having acquired jurisdiction by virtue of said motion of protest, a commission was appointed for the examination and revision of the ballots and other papers pertaining to said elections. Having performed their task the commissioners appointed submitted their report on July 23, 1928

adjudicating 119 votes to Vicente Ditching, and 189 to Esteban Jalandoni in precinct A of the municipality of Victorias, and 105 votes to Vicente Ditching and 51 to Esteban Jalandoni in precinct C, that is, a total of 224 votes in both precincts to Vicente Ditching, and 240 votes to Esteban Jalandoni.

Having considered the report and heard the parties upon the contested ballots admitted by said commissioners, the trial court rendered judgment adjudicating 340 votes to Esteban Jalandoni, and 337 to Vicente Ditching.

Not satisfied with that decision, Vicente Ditching took this appeal.

As to the first assignment of error, it appears from the judgment appealed from that ballot B-1 in favor of Esteban Jalandoni was impugned by Vicente Ditching because the coupon had not been removed from it, and that ballot B-2 also in favor of Esteban Jalandoni was contested, not only because the proper coupon had not been removed, but also because the names of the candidates voted for by the elector had been written on the back of it.

Although it is only in this instance alleged that said ballots should not be admitted in favor of Esteban Jalandoni because they are among the seven (7) ballots which, according to the report of the commissioners submitted on July 23, 1928, were taken from the spoiled-ballot box in the recount made by said commissioners, it is no reason why they should be admitted, since the fact that they were found in said box raises the presumption that they were spoiled, and more so, since the word "spoiled" was written upon them, as required by the law, and whosoever claims them as valid must prove conclusively that their deposit in the aforesaid box was due to a mistake or to fraud, in order that they may be counted as valid. (*Bulan vs. Gaffud*, 49 Phil., 906; *Mandac vs. Samonte*, 49 Phil., 284; *Lucero vs. De Guzman*, 45 Phil., 852; *Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil., 428.)

The trial court, therefore, erred in admitting them as valid ballots in favor of Esteban Jalandoni (*De los Angeles vs. Rodriguez*, 46 Phil., 595).

As to ballot B-15, wherein the words "Aslaben Ahanla" appear written in the column for municipal president, from the sound of its pronunciation it is clearly seen that it was the voter's intention to vote for Esteban Jalandoni for the office of municipal president of Victorias, but that his efforts to write his candidate's name were not crowned with success on account of his lack of ability to write and spell. The name written in said ballot comes under the rule of *idem sonans*, and is admissible.

The lower court, therefore, did not commit an error in admitting it as valid in favor of Esteban Jalandoni.

With respect to ballot Exhibit D-2, wherein appear the words "Sitiban Jaladu" is valid and admissible for the same reasons given for the validity and admissibility of ballot B-15, since the word "Sitiban" is the pronunciation given by Visayans of limited education to the word Esteban. And the word "Jaladu" has the "u" written near the right edge of the paper with no more room to continue writing the syllable "ni."

The same reasons support the validity and admissibility of ballot Exhibit D-12, in which appear the words "Baslian Jalandoni." Moreover, it does not appear that there was another candidate for the office of municipal president with the name Jalandoni and consequently, the voter could not have had any other intention than to vote for Esteban Jalandoni for the office of municipal president of Victorias.

As to ballot Exhibit C-16, claimed by the protestant and appellant Vicente Ditching as a valid vote in his favor, contending that the initials R. M. appearing at the bottom of said ballot do not constitute a distinguishing mark, inasmuch as the last space for municipal councilors was blank, the fact that said initials were written below and outside of said space, does not mean that the voter wished to vote for a councilor with said initials, but that he placed them there in order to identify his ballot. This being so, it is a violation of the prohibition contained in section 452 of the Election Law and the trial court did not commit an error in rejecting said ballot as a vote in

favor of Vicente Ditching.

Briefly, then, we hold that from the 340 votes adjudicated to Esteban Jalandoni two votes must be deducted, leaving 338 votes, notwithstanding which, he still has a plurality of one vote over Vicente Ditching to whom 337 votes were adjudicated.

With the aforesaid modification, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

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