

BASILIO YALUNG, PROTESTANT AND APPELLEE, VS. FELIX ATIENZA, PROTESTEE AND APPELLANT.

G.R. No. 30338. February 14, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The protestee Felix Atienza appeals to this court from the judgment of the Court of First Instance of Tarlac holding that in the general elections held on June 5, 1928, in the municipality of Capas, Province of Tarlac, the protestant Basilio Yalung obtained 238 votes, and the protestee Felix Atienza alias Puguion 232 votes, that is, a majority of 6 votes in favor of the former, for the office of municipal president of Capas, with the right to assume said office; with costs against the aforesaid protestee.

In support of his appeal, the appellant assigns eleven alleged errors as committed by the court below in its judgment, which we shall consider in the course of this decision.

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

In the general elections held on June 5, 1928, Felix Atienza and Basilib Yalung were, among others, registered candidates voted for the office of municipal president of Capas. After the voting and the canvass of the ballots by the municipal board of canvassers, Felix Atienza obtained 236 votes, and Basilio Yalung 234, that is, a difference of two (2) votes in favor of the former, who was proclaimed elected to the office of municipal president of Capas, Tarlac.

Dissatisfied with this result Basilio Yalung in due time filed a motion of protest alleging, among other things, essential facts constituting fraud and irregularities in the adjudication and canvass of the ballots without which the protestant would have obtained a majority of more than fifty (50) votes over the protestee Felix Atienza for the office of municipal president of Capas.

The court below having acquired jurisdiction to try the contest by virtue of said motion, pursuant to a proposal by the parties, appointed commissioners to examine and recount the ballots contained in the ballot boxes of precincts Nos. 1, 2 and 4 of the municipality of Capas.

Having performed their task in accordance with the instructions of the court, said commissioners submitted the corresponding report. Having considered the same and heard the parties upon the contested ballots, the court below rendered the judgment referred to above.

As to the first assignment of error, the motion of protest having alleged that frauds and irregularities were, committed in precincts Nos. 1, 2 and 4 of the municipality of Capas, Province of Tarlac, and the trial court having ordered the opening of the ballot-boxes of said precincts, the latter had to proceed either by itself or by means of commissioners to the examination of the ballots and other documents contained in said boxes, in accordance with the provisions of section 479 of the Election Law, in order to determine whether the frauds and irregularities alleged in the motion were committed. 'Inasmuch as it is not necessary to specify in detail in the motion of protest

in which of the ballots the frauds and irregularities were committed, such a procedure being well-nigh impossible, and it being enough to allege in what the fraud and irregularity consisted, and that had it not been for such anomalies, the result of the election would have been otherwise, all of which have been alleged in the motion of protest in question, the court or the commissioners appointed by the same may revise all the ballots, admitting the valid and legal ones and rejecting the others, with a view to arriving at the lawfully expressed will of the electors. The institution of popular suffrage is one of public interest and not a private interest of the candidates, so that if in the revision of the ballots some illegal ballots are found which have not been specifically impugned in the motion of protest, the court may reject them *motu proprio*, since it is not essential that the contestant set forth the grounds of his contest with the same precision required of a pleading in ordinary civil cases (20 Corpus Juris, 227).

In the case of *Lucero vs. De Guzman* (45 Phil., 852), this court stated the following:

"The purpose of the legislature in declaring that contests should not be conducted upon pleadings or by action was to free the courts as far as possible from the technicalities incident to ordinary proceeding by action and to enable the courts to administer justice speedily and without complication."

The trial court, then, did not err in taking into account in the revision of the ballots, irregularities not set forth in the motion of protest.

In the second assignment of error the appellant impugns the appealed judgment in rejecting the ballot marked 1—Atienza of precinct No. 2 of the municipality of Capas as void with respect to said appellant, because in the column for the municipal president there is written only the Christian name "Felix." The lower court did not commit the error assigned to it in its judgment, according to the doctrine laid down by this court in the case of *Cailles vs. Gomez and Barbaza* (42 Phil., 496), "a Christian name without the surname is not sufficient to identify the intention of the voter."

In ballot A-1—Atienza of precinct No. 4 of the municipality of Capas, which was rejected by the trial court and which the appellant in his third assignment of error contends is an error, there appears written in the column for municipal president, the name of "Jusi Atinza." As the Christian name of the candidate of the same surname for the office of municipal president of Capas is "Felix," the word "Jusi" cannot, even remotely be considered as an attempt of the voter to write the name "Felix" and consequently the rule of *idem sonans* cannot be applied, and the ballot must be rejected as a vote in favor of Felix Atienza.

The third assignment of error, and its corollary, the fourth assignment therefore lacks merit.

In the fifth and sixth assignments of error it is contended by the appellant that the admission of the ballot A-1—Yalung of precinct No. 2 of the municipality of Capas in favor of the appellee Basilic Yalung was an error for the reason that said ballot was found in the spoiled-ballot box, and citing in support of such contention the doctrine laid down in the case of *Lucero vs. De Guzman* (45 Phil., 852).

This ballot was deposited by the election inspectors in the spoiled-ballot box, not because it was spoiled, since it does not bear the words "spoiled ballot" as required by section 454 of the Election Law, but because in the column for municipal president appears a little slanting pencil line which the inspectors considered as a distinguishing mark and hence rejected the ballot as marked. Said ballot cannot be considered spoiled, and its deposit in the spoiled-ballot box was due to an error. (*Mandac vs. Samonte*, 49 Phil., 284.)

Nor may such a ballot be considered as marked according to section 463 of the said Election Law, because that small line does not, either by its form or circumstances, indicate an intention to identify the same. (*Cailles vs. Gomez and Barbaza*, 42 Phil., 496.)

Since ballot A-1—Yalung is valid and as it was deposited in the spoiled-ballot box by mistake, the trial court did not err in counting it in favor of the protestant-appellee Basilio Yalung (*Mandac vs. Samonte*, 49 Phil., 284; *Valenzuela vs. Carlos and Lopea de Jesus*, 42 Phil., 428; *Cailles vs. Gomez and Barbaza*, 42 Phil., 496; *Lino Luna vs. Rodriguez*, 89 Phil., 208; *Lucero vs. De Guzman*, 45 Phil., 852).

As to the ballots Exhibits A—Yalung and B—Yalung of precinct No. 4 of Capas, contested in the seventh assignment of error by the protestee-appellant as votes in favor of the protestant-appellee Basilio Yalung, for the reason that after the Christian names, the initials of the names and surnames in ballot A—Yalung there are periods and commas, and at the end of the surnames of some candidates in ballot B—Yalung there are some little lines, they are perfectly valid inasmuch as they do not by themselves alone constitute marks of identification, following the doctrines laid down in the cases of *Valenzuela vs. Carlos and Lopez de Jesus*, and *Cailles vs. Gomez and Barbaza*, above cited.

With respect to ballot 1-A—Yalung, in which the name of Basilio Yalung is written in the last column for members of the provincial board, and ballot 2-A—Yalung, wherein the name of Basilio Yalung is written in the column for vice-president, impugned by the protestee-appellant as votes in favor of the protestant-appellee, they must be deducted from the latter's votes, for his name is not written in the column for municipal president. And with respect to ballot 8-A—Yalung, likewise contested by the protestee-appellant as a vote in favor of the protestant-appellee, Basilio Yalung it must be admitted because the latter's name is written in the column for the office of municipal president (*Lucero vs. De Guzman*, 45 Phil., 852).

Touching the tenth assignment of error, the ballot marked with the letter "M" must be held illegal and void, because the name "Felix" and the surname "Atienza" are written in capital letters, whereas the other names are in ordinary writing, showing ability to write. This manner of writing the name and surname in capital letters cannot mean anything else than that the voter or the one helping him to write out his ballot intended to put a distinguishing mark thereon by which to identify the voter.

Ballots M-1, M-2 and M-3 mentioned in the same assignment of error are valid because in Exhibits M-1 and M-3, although some of the names and surnames are written in capital letters, it is evident that the voter desired to attain greater clearness, and in M-2, the whole ballot is written out in the same manner. As it does not clearly and positively appear that said manner of writing was adopted by way of identification, said ballots must be deemed valid.

Summarizing, we have it that of the 238 votes adjudicated to Basilio Yalung in the appealed judgment, ballots 1-A—Yalung and 2-A—Yalung of precinct No. 4 of the municipality of Capas, Tarlac must be deducted, thus reducing the votes adjudicated to him to 236; and to the votes adjudicated to Felix Atienza must be added ballots M-1, M-2 and M-3, increasing his votes to 235, thus reducing Basilio Yalung's majority over Felix Atienza from six votes to one.

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

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

RULING ON THE MOTION FOR RECONSIDERATION

March 7, 1929

VILLA-REAL, J.:

This is a motion presented by Felix Atienza praying for the reasons therein alleged, that the judgment of this court of February 14, 1929 be set aside, and another rendered rejecting ballot 8-A-Yalung, and deducting it from Basilio Yalung's vote, and admitting ballot A-1-Atienza, adding it to his votes.

After again reviewing the ballots which are the subject-matter of the motion for reconsideration, we have found that ballot 8-A-Yalung must be rejected as a vote in favor of the protestant Basilio Yalung, because in the same space for municipal president is also written the name of Meliton Bagay, another duly registered candidate for said office, in accordance with the doctrine laid down by this court in the case of Cailles vs. Gomez and Barbaza (42 Phil., 496), that "when there are two names voted for the same position for which the law authorizes the election of only one person, the ballot should not be counted in favor of any of those voted for."

As to the ballots Exhibits M and A-1-Atienza, claimed by Felix Atienza as votes in his favor, we do not find sufficient reason to change the conclusions reached in our original decision with respect to them.

Inasmuch as in our original decision we adjudicated 236 votes to Basilio Yalung and 235 to Felix Atienza, with a majority of one vote in favor of the former, deducting 1 vote from the 236 adjudicated to Basilio Yalung, the result would be that the latter would have the same number of votes as adjudicated to Felix Atienza, or a tie, which must be resolved by the said two candidates drawing lots in accordance with the provisions of the third paragraph of section 477 of the Election Law.

By virtue whereof, the judgment of this court in this rendered on February 14, 1929, is amended, and the election between the protestant and protestee is hereby declared a tie, and it is ordered that they draw lots in the presence of the Court of First Instance of Tarlac, with costs against the loser therein. So ordered.

Johnson, Street, Johns, and Romualdez, JJ., concur.

Malcolm and Ostrand, JJ., dissent.

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