

CONRADO PENSON, PROTESTANT AND APPELLEE, VS. TIMOTEO PARUNGAO ET AL., PROTESTEES. TIMOTEO PARUNGAO, APPELLANT.

G.R. No. 30471. February 02, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an appeal from the judgment of the Court of First Instance of Nueva Ecija declaring Conrado Penson to be the municipal president elect of the municipality of Talavera, Nueva Ecija, as against his opponent Timoteo Parungao.

The record discloses that Conrado Penson and Timoteo Parungao were registered candidates voted for the office of municipal president of said municipality of Talavera. According to the municipal canvass, Parungao obtained 525 votes and Penson 518, that is, a majority of 7 votes in favor of Parungao.

Penson contested Parungao's election in the Court of First Instance, alleging several irregularities which need not be stated here, since the appeal is expressly based upon the consideration given to certain ballots. The contest was heard in the Court of First Instance of Nueva Ecija, which, having revised the ballots and considered the other evidence adduced by the parties thereto, decided that Penson obtained 516 valid votes, while Parungao obtained only 496. Therefore, Penson won the election with a majority of 20 votes.

Parungao appealed from the judgment of the lower court to this court, and in his brief assigns thirty errors as committed by the court a quo.

These thirty alleged errors involve a discussion of 53 ballots, of which 28 were rejected by the court below and are now claimed by the appellant for himself, and the remaining 25 were adjudicated by the court below to the appellee and are now impugned by the appellant who contends they should not have been adjudicated to said appellee.

Examining the 28 ballots claimed by the appellant as unduly deducted from those cast in his favor by the court below, we find:

- Ballots A-153 of precinct No. 1, ballots E-145, E-146, E-147, E-148, E-149, E-150, E-151, E-152, E-153, E-154, E-155, E-156, E-157, E-158, E-159, E-160, E-161 and E-162 of precinct No. 5 (a total of 19 ballots), were rejected by the court below as marked ballots, because in all of them appears the name of Felipe Vengco, the only person voted for the office of councilor, who filed his certificate of candidacy and was elected with 353 votes. It is true that there are some witnesses who testified that Felipe Vengco told his electors to write only his name (Felipe Vengco) in the space for councilor in order to know that they really voted for him. Supposing that Felipe Vengco really made this suggestion to the voters in his election campaigns, yet, there is no positive evidence that the appellant Parungao was a party to such combination, if we may call it so; hence, if Vengco's conduct could have any effect, it would be only on himself, and not on Parungao. Furthermore, said 19 ballots are apparently

very clean, and show none of the distinguishing marks forbidden by the law to be placed upon ballots. The marks on ballots must appear upon the same and cannot be proved by evidence aliunde, but with data contained in the ballots themselves. We are of the opinion that the 19 ballots referred to must be counted in favor of the appellant.

- Ballot C-92 of precinct No. S, and ballots D-69 and D-70 of precinct No. 4 (3 ballots) where appear respectively the names Tinio Palaguae, T. Aaramugao, and Tiano Parao, which were rejected by the court below, must be counted in favor of the appellant, according to the rule of *idem sonans*.

- Ballot B-155 of precinct No. 2, is marked "Mamatay si Conrado Fenson at si Fa." ("Down with Conrado Penson and Fa."), and ballots E-136, E-137 and E-138 of precinct No. 5 are marked, the first with these words "alijandru lim nga Htud Butiog," and the other two with a strip of paper pasted on the ballot bearing the name of Domingo Bonifacio. These 4 ballots were duly deducted from the appellant.

- Ballot E-139 of precinct No. 5 for the appellant is valid although the letters of his name are very lightly written, doubtless due to a defect in the pencil used and to the writer's scant ability to write; and

- Ballot E-140 of precinct No. 5 should not be counted in the appellant's favor, because the person voted for therein is one named Francisco Angeles.

It is thus seen that out of the 28 ballots cast in favor of the appellant and rejected by the court below, 28 should be adjudicated to him as valid ballots. Comparing this number with the appellee's majority of 20 votes, according to the canvass of the court below, it follows that the appellant was elected to the office of municipal president here in question by a majority of 3 votes.

In view of this result there is no need to discuss the 25 ballots in favor of the appellee impugned by the appellant. Wherefore, the judgment appealed from is affirmed in so far as it is in harmony herewith, and reversed in so far as it is not; and it is held that the appellant Timoteo Parungao was elected to the office of municipal president of Talavera; Nueva Ecija, by a majority of three votes over those obtained by the appellee, Conrado Penson.

Without special pronouncement as to costs. So ordered.

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

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