

RAFAEL CARANDANG, PLAINTIFF AND APPELLEE, VS. GALICANO AFABLE, DEFENDANT AND APPELLANT.*G.R. No. 30608. March 26, 1929*

Ponente: OSTRAND, J.

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At the general elections in the municipality of Tuy, Province of Batangas, on June 5, 1928, Rafael Carandang and Galicano Afable were duly qualified candidates for the office of municipal president of said municipality. Galicano Afable was declared elected with 194 votes against 187 votes for Rafael Carandang. The latter filed a protest in the Court of First Instance of Batangas and after hearing, and upon revision of the ballots, said court found that Carandang had received 196 valid votes and that Galicano Afable had received only 191. The court therefore declared Carandang elected and Afable appealed to this court and presents the following assignments of error:

- (1) The trial court erred in rejecting ballots Exhibits F-4, H-1, H-2, H-5, H-8 and H-12, in which instead of the name Galicano Afable, the names of Galicano Apacible, G. Apacible, or Galicano Pasible were written on the lines corresponding to the office of municipal president.
- (2) That the court erred in adjudicating the ballots Exhibits F-7, GM, G-8, 10, 12, 13, 15, 16, 17, 21, 24, 26, 29 and 31 in favor of the appellee.

In our opinion, the first assignment of error is well taken. In his certificate of candidate for municipal president, the appellant stated under oath that he was generally known by the names of Galicano G. Afable, Galicano Afable, Cano Afable, Sanoy Pable, Kalicano Apable, Noy Plebe, Galicano G. Afable, Kanoy Afable, Anoy Afable, Alicano Afable, Galicano Garcia, Afable, Galicano, Kanoy, Anoy, Noy, and Calican.

The surname Afable apparently springs from the same root as the name "Apacible," and the two names are almost idem sonans. The appellant is a relative of Dr. Galicano Apacible, a well-known and prominent man in the Province of Batangas, and the evidence shows that Galicano Afable has often been called Galicano Apacible. It is also to be noted that Doctor Apacible is a resident of the town of Balayan and that he consequently cannot very well have been voted for as municipal president of Tuy. These facts, taken in connection with the large variety of names applied to the appellant and of which at least one is practically identical with the names for president appearing on the ballots referred to in the first assignment of error, show clearly that the six rejected votes were intended for said appellant. Holding as we do that these votes are valid and should be counted in favor of the appellant, he must be considered elected municipal president of the municipality of Tuy with a plurality of one vote. The second assignment of error need therefore not be considered.

For the reasons stated, the judgment of the court below is reversed, and it is adjudged and decreed that the protestee and appellant, Galicano Afable, was elected to the office of municipal president of the municipality of Tuy, Province of Batangas, in the last general elections, and it is hereby ordered that the Court of First Instance of Batangas direct the municipal board of canvassers of said municipality of Tuy to correct its returns in conformity

with the decision of this court and to issue in favor of said Galicano Afafe the certificate of election prescribed by law. Without costs in either instance. So ordered.

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

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