

AURELIANO ROSANES, PROTESTANT AND APPELLANT, VS. AMADO PEJI, PROTESTEE AND APPELLEE.

G.R. No. 30780. March 18, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Aureliano Rosanes contests Amado Peji's election as president of the municipality of Alfonso of the Province of Cavite.

The court below rendered judgment dismissing the contest, and the protestant now appeals to this court alleging that the dismissal of his action was erroneous, because, according to him, the election in precinct No. 5 of the municipality of Alfonso should be annulled in view of the numerous frauds and irregularities therein committed by the leaders and followers of the protestee; wherefore, he, the protestant, should be declared the president elect of said municipality, and the lower court should not have given credit to the testimony of the witnesses for the protestee, it being incoherent, contradictory and biased.

The frauds and irregularities alleged in the protest are made to consist mainly of changes in ballots, threats, pressure upon voters and failure to deposit the election returns within the proper ballot box.

The only change proven is that of A-91 and A-92, which was satisfactorily explained at the trial of this case: it was an error on the part of the secretary of the election. who gave to one voter the ballot that should have been given to another and vice versa.

The evidence of record is such that it cannot, in justice, be concluded that there were the threats and violation of law alleged in the protest, as perpetrated in that precinct during the voting. Of the only two persons mentioned by the witnesses for the protestant as having intruded in said precinct on ;the occasion of record, one, Esteban Boocan, does not know how to write, and could not therefore have filled out the voters' ballots, and the other is Antonio Talen, hardly mentioned on cross-examination, as the trial judge rightly observes, whose correct considerations, which we adopt, are as follows:

"If those violators of the law had been named, perhaps they might have been made to appear and write in order to see whether or not some of the ballots contained in the ballot box pertaining to precinct No. 5 had been filled in by them. And if it were true that that violation of the law was brazen and scandalous, constant and continuous during the whole of the day of voting, it is unlikely the democrats could have kept their patience in a place where popular suffrage was being made a mockery of, without any of the democratic watchers ,there, or any other democrat having gone to town, or to any other place in order to call for help from the proper authorities. The court believes that there is much exaggeration in the evidence presented by the protestant on this particular.

"One witness for the protestant testifies, or at least gives us to understand, that there were several individuals armed with bolos. But another witness assures us that there was only one with a bolo, and that one was Esteban Boocan, One of the witnesses for the protestant testifies that there were from five to ten individuals armed who

remained within the precinct. But another witness for the protestant assures us that there were no more than five. This shows the tendency of the former to exaggerate the facts."

To our mind, the preponderance of the evidence militates in favor of the fact that inspector Benito Leonor signed the election returns Exhibit 1, which was not deposited in the proper ballot box because it was believed that such a thing should not be done in view of the fact that it was not drawn up on a proper form and because only one copy was prepared instead of three.

As to the credibility of the witnesses, after considering the testimony of all for both sides, we find the evidence in support of the protest, as we have already intimated, insufficient.

The second error assigned is a consequence of the rest.

When, as in the instant case, the person elected obtained a considerable plurality of votes over his adversary, and the evidence offered to rebut such a result is neither solid nor decisive, not only according to our opinion in view of the record, but also in the judgment of the trial judge, who saw and heard the witnesses testify, it would be imprudent to annul the election as that would be contrary to the popular will solemnly expressed in the suffrage.

The appealed judgment is affirmed, with costs against the appellant. So ordered.

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

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