

VICENTE OLANO, PROTESTANT AND APPELLANT, VS. BERNARDINO TIBAYAN, PROTESTEE AND APPELLEE.

G.R. No. 30836. March 30, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the protestant, Vicente Olano, from the judgment of the Court of First Instance of Cavite holding that the protestee, Bernardino Tibayan, obtained 261 legal votes in the general elections held on June 5, 1928, and he obtained 227 legal votes, for the office of municipal president of the municipality of Ternate, Cavite, the former having been elected with a plurality of 34 votes over the latter.

In support of his appeal, the appellant assigns the following errors alleged to have been committed by the trial court in its decision, to wit:

"1. That the lower court erred in rejecting the 35 ballots of the protestant, Vicente Olano, in precinct No. 3 of Ternate, 16 of which were placed in envelope K, and 19 in envelope L, on the alleged ground that each of these two groups were prepared by one person, notwithstanding the fact that this question was not raised by either of the parties in this case at the trial, or even in their pleadings. And it likewise erred in having rejected them without a sufficient legal ground.

"2. That the lower court erred in rejecting four other ballots prepared and voted in favor of the protestant, Vicente Olano.

"3. That the lower court erred in not rejecting at least 53 ballots cast in favor of the protestee, Bernardino Tibayan, notwithstanding that the same were prepared by Ciriaco Ramos, Placido Ramos, Daniel Tibayan, and Valentin Leonora, and other unknown persons, outside the polling-place in the three election precincts of Ternate, making use of false ballots. And it likewise erred in counting and adjudicating 3 other ballots to the protestee, two of which were marked and the third was not filled out in his favor.

"4. That the lower court erred in not declaring that the protestant, Vicente Olano, elected municipal president of Ternate with a plurality of at least 37 ballots over the protestee, Bernardino Tibayan, despite the frauds committed by the latter, making use of false or unofficial ballots and other unlawful means.

"5. That the lower court erred in not ordering in its judgment the prosecution of those persons who prepared the various ballots both official and unofficial cast in favor of the protestee, Bernardino Tibayan, outside of the three polling-places of Ternate, as proven at the trial.

"6. That the lower court erred in declaring the protestee, Bernardino Tibayan, elected municipal president of Ternate, and in sentencing the protestant to pay the costs, instead of holding to the contrary."

As to the first assignment of error, there is no question that the sixteen (16) ballots of precinct No. 3 of Ternate, placed in envelope K, wherein the name of the protestant Vicente Olano appears in the space for municipal president were filled out by one person, and that the nineteen (19) ballots of the same precinct placed in envelope L, in which also the name of the aforesaid protestant Vicente Olano appears in the space for the municipal

president, were also written by one hand.

The fact that neither of the parties raised the question of the illegality of said ballots either at the trial or in their pleadings, does not deprive the trial court of jurisdiction to examine them, for as this court held in the case of *Yalung vs. Atienza* (52 Phil., 781), recently decided, the institution of suffrage is a public and not a private interest, and the trial court may examine all the ballots after the ballot boxes are opened in order to determine which are legal and which are illegal, even when neither of the parties has raised any question as to their illegality.

As to the admissibility of the 35 ballots in question the evidence shows that they were found in the valid-ballot box, counted for and adjudicated to the protestant-appellant, Vicente Olano, by the board of inspectors. Their legality has not been attacked by the protestee-appellee, Bernardino Tibayan, either in his answer to the protest motion or during the trial of the case in the court below. It has not been proven that their insertion in said box was fraudulent nor that their preparation was part of a scheme to thwart the free expression of the voters' will. The mere fact that each group of ballots appears to be written by one man is not, in itself, sufficient to destroy the presumption of their legality, arising from their being found in the valid-ballot box in which they were deposited in the presence of the inspectors or watchers for the contending candidates. It might be that the voters who cast their votes were incapacitated, and had been assisted in the preparation of their ballots by two unauthorized persons in the polling-place, but this fact alone is not enough to invalidate the aforementioned 35 ballots, when it does not appear that such irregularity was part of a scheme devised to adulterate the suffrage. (*Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil., 428; *Cailles vs. Gomez and Barbaza*, 42 Phil., 496.)

In view of the foregoing considerations, we arrive at the conclusion that the lower court erred in rejecting the 35 ballots discussed in the first assignment of error, and in not adjudicating them to the protestant-appellant, Vicente Olano.

Having reached this conclusion we deem it unnecessary to consider the other assignments of error inasmuch as the judgment appealed from adjudicated to the protestee-appellee, Bernardino Tibayan, a plurality of 34 votes over the protestant-appellant and as 35 votes must be added to the latter, it results in a plurality of one vote in favor of said protestant-appellant, Vicente Olano, over the aforementioned protestee-appellee, Bernardino Tibayan.

By virtue whereof, the judgment appealed from is reversed, and it is held that Vicente Olano obtained 262 legal votes for the office of municipal president of the municipality of Ternate, Province of Cavite, in the general elections held on June 5, 1928, and Bernardino Tibayan obtained 261, thus leaving a majority of one vote in favor of the former, who must be declared, as he is hereby declared, elected municipal president of said municipality, with costs against the appellee. So ordered.

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

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