

MOISES SAN JUAN, CONTESTANT AND APPELLANT, VS. MIGUEL R. CORNEJO, ARTEMIO REYES AND RAMON COMAGON, CONTESTEES. MIGUEL R. CORNEJO, APPELLEE.

G.R. No. 31039. July 26, 1929

Ponente: STREET, J.

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STREET, J.:

This is an appeal from a decision of Judge Buenaventura Reyes, presiding in the Court of First Instance of the Province of Rizal, wherein Miguel R. Cornejo, candidate elect to the office of municipal president of Pasay, was declared to have been rightfully elected to said office, as a consequence whereof the contest instituted by the appellant, Moises San Juan, was dismissed, with costs and incidental expenses against said contestant.

In the general election held on June 5, 1928, there were four candidates for the office of municipal president of Pasay, in the Province of Rizal, namely, Miguel R. Cornejo, Moises San Juan, Artemio Reyes and Ramon M. Comagon. According to the returns, as the result was officially proclaimed, Cornejo received 1,060 votes, Moises San Juan 1,028, Artemio Reyes 815, and Ramon M. Comagon 800. In party affiliation the two leading candidates were irregular, Cornejo belonging to the faction known as Reformist Democrat, and San Juan pertaining to the Independent Nationalist; while the official Democratic and official Nationalist candidates occupied the third and fourth places respectively in the returns. The present contest was instituted in due form by San Juan, and in so far as the result of this proceeding is concerned, Reyes and Comagon may be ignored, since the controversy involves only the two leading candidates.

It appears that the municipality of Pasay comprised, in this election, fourteen electoral precincts; but in the first thirteen of these precincts no irregularities of importance came to light in the course of the contest, though in these precincts San Juan was declared entitled to 14 more votes and the appellee, Cornejo, to 10 more than the inspectors had given them respectively. The contest, then, centers upon precinct 14, in which, according to the election returns, Cornejo received 124 and San Juan 21 votes. Upon the recount, incident to this contest, it was discovered that, among the ballots bearing the name of Cornejo, as candidate for municipal president, 92 were written upon unofficial, or counterfeit, ballots; and if the votes apparently represented by these unofficial ballots are deducted from Cornejo's plurality in this precinct, the general result will be changed and San Juan will be declared elected.

As was observed by the trial judge, there is no doubt that the questioned ballots are unofficial, since the paper on which they are printed is of lighter color than the official ballots, and the questioned ballots are a millimeter broader than the official ballots. Moreover, the words terminating many of the lines of printed matter in the questioned ballots are different from the words ending the similar lines in the official ballots. Other circumstances contribute to make this conclusion certain, and indeed there is no controversy over the fact that the questioned ballots are false. The only question is as to whether the contestee, Cornejo, is responsible for the use of these ballots and whether they are the veridical ballots used by the voters on the election day. Upon this point the trial

judge came to the conclusion that the false ballots had been surreptitiously introduced into the box of used ballots and substituted for an equal, or approximately equal, number of genuine ballots which were at the same time taken from the box. In view of this finding his Honor held that the box had been violated after the official count of the votes had been made, and that it was therefore necessary for the court to adhere to the official returns from this precinct, by which Cornejo was conceded 124 votes and San Juan 21.

The record furnishes no material upon which this finding of the trial judge can be properly reversed. On the contrary, we find every reason for believing that the conclusion reached by the trial court was correct. The dominating circumstance leading to the conclusion at which the trial judge arrived is that the numbered stubs, or detachable strips, taken from the ballots which were voted were found undisturbed in the box of spoiled ballots; and all of these stubs had evidently been detached from official ballots, having been found to be of the same sort of paper as the official ballots and of the same breadth. This circumstance is, to our mind conclusive that official ballots, to the number of the stubs found in the box of spoiled ballots, were actually used by the voters on election day. This indicates, beyond a reasonable doubt, that the counterfeit ballots bearing the name of the contestee as candidate for the office of municipal president were introduced into the box of used ballots after the official count had been accomplished.

It is true that, as the trial judge observed, the proof before the court supplied no means for determining just when and how the substitution of the ballots was accomplished, but fraud prefers, as far as possible, to work in the dark, and when the fact of the substitution is proved, it is not necessary for the party injuriously affected thereby to show the exact manner in which the deed was done. It is of course a somewhat novel manifestation of ingenuity for an intending contestant, or his followers, to lay a ground for contest in this subtle way, namely, by substituting in the box of used ballots a number of counterfeit ballots bearing the name of the successful candidate, with a view to the planting of a contest based upon the invalidity of those very ballots; but, as experience has shown, it is impossible to exhaust the resources of fraud, and we have no hesitancy in declaring that the findings of the trial judge are supported by the evidence.

The judgment appealed from will therefore be affirmed, and it is so ordered, with costs against the appellant.

Avancena, C. J., Johnson, Johns, Romiialdez, and Villa- Real, JJ., concur.

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