

SATURNINO GALLARDO, PETITIONER AND APPELLANT, VS. ELIAS ALDANA, RESPONDENT AND APPELLEE.*G.R. No. 31636. August 26, 1929*

Ponente: STREET, J.

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This appeal has been brought by Saturnino Gallardo to reverse a judgment of the Court of First Instance of the Province of Rizal, in an election contest, in which it was declared that Elias Aldana, the incumbent of the office of municipal president of the municipality of Las Piñas, Rizal, had been rightfully elected to office, and the motion of contest was dismissed, with costs and incidental expenses against the contestants.

In the court of origin this contest involved the entire tale of municipal offices of Las Piñas, but under the existing law only the municipal president had a right to appeal to this court, with the result that we are here concerned only with the office of municipal president of the municipality.

According to the official returns the contestant Saturnino Gallardo received 364 votes, while the respondent Elias Aldana received 431 votes, with the consequence that the latter was declared elected and was inducted into office. Upon protest filed by the contestant, and after a protracted and attentive trial, his Honor, the trial judge, after a new revision of all the ballots in the three precincts of the municipality, adjudicated 432 votes to the respondent Aldana and 382 votes to the contestant Gallardo, with the result that the respondent obtained a majority of 50 votes, instead of the 67 votes conceded to him in the election returns and by the findings of the municipal canvassers.

In the motion of protest various frauds were alleged, consisting of the alleged incorrect appreciation and admission of ballots by the inspectors of the election, the subtraction, or loss, of ballots, the illegal construction of the election booths, and the improper preparation of ballots used by illiterate persons, with qualification of education, by persons who had not taken the required oath. In the course of the lengthy trial some of these charges were abandoned. Upon others the trial court found contrary to the contention of the contestants and to these findings no assignments of error have been taken. As the case is presented in this court the assignments of error of the appellant are mostly directed to the admissibility of ballots in the preparation of which the voters are alleged to have received assistance without the formalities prescribed by law.

In this connection it is claimed that one Florentino Pallera prepared some 26 ballots for the straight Nacionalista ticket, to which the contestee belongs, and which were voted by as many voters, while only 14 affidavits were found in the ballot box showing that he had taken oath to assist in the preparation of ballots as required by section 453 of the Election Law. Giving credit for these 14 ballots, as well as for his own ballot, there remain 11 ballots prepared by him as to which there are no corresponding affidavits made by him as voter of confidence to make out ballots for the voters. Upon this it is insisted that 11 ballots should be deducted from the votes conceded by the canvassers to the contestee Aldana. The same contention is made with respect to 11 ballots alleged to have been improperly filled out by Benjamin Cristobal, without his having taken the oath; as to 6 ballots similarly

prepared by Sixto Tolentino; as to 6 ballots similarly prepared by Baltazar Quilatan, and 38 other ballots similarly prepared by unidentified hands. All of the ballots above-mentioned pertain to precinct No. 1; and the identity of the hands preparing the several groups of ballots to which attention has been directed is rested upon the visual appearance of the ballots, assisted by the testimony of Doctor Del Rosario who, as a handwriting expert, testified that the different groups mentioned appear to be in the same hand for each group.

In addition to the foregoing it is claimed that four of the ballots found in the ballot box of the first precinct had been irregularly or unlawfully prepared by Jose Timbang, chief of the municipal police of Las Piñas and two likewise prepared by Juan del Rosario, municipal treasurer of Las Piñas, all without affidavit. As the chief of police and municipal treasurer are prohibited by law from taking part in the conduct of elections, it is insisted that the 6 ballots mentioned should be deducted from the votes of the contestee even apart from the want of affidavit on the part of the voter requiring assistance. In all the votes thus challenged from the first precinct amount to 75.

On similar grounds 37 votes are challenged in the second precinct, and 31 votes from the third precinct.

Errors Nos. 1, 3, and 5 all raise the same general question, namely, whether votes can be deducted in a mass, or an election declared invalid by reason of assistance given to voters in the preparation of ballots without the corresponding oath having been made out as required in section 453 of the Election Law. It will be observed that the records of the election, taken from the ballot box, contain a number of affidavits made by electors chosen to assist illiterate voters desirous of aid, or as required by law. The votes which are challenged represent excess ballots alleged to have been improperly prepared by persons other than the voter; and as already stated the proof of the giving of such assistance rests chiefly on the visual similarity of the handwriting within the different groups of challenged ballots.

In the appealed decision the trial judge said that the handwriting expert appeared to him to have erred in his appreciation of the handwriting in which various ballots in the different groups are written. This observation is probably true, but an inspection of the ballots shows, we think, that the expert was in the main correct; and for the purposes of this decision we must assume that in each of the three precincts voters received aid in the writing of their ballots without the affidavits of the helpers having been reduced to writing as required by law.

The main question to be decided in the case, then, is this: Can ballots cast by illiterate voters be thrown out because their ballots were written by helpers without the corresponding oath having been administered and written affidavit preserved? Upon this point this court has lately spoken in the case of *Olano vs. Tibayan* (p. 168, ante), wherein the court, through Justice Villa-Real, said:

"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 interfere with the right of suffrage. (*Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil., 428; *Cailles vs. Gomez and Barbaza*, 42 Phil., 496.)"

It is true that the passage quoted, and similar pronouncements of the court, recognize the propriety of deducting

votes where voters have been unlawfully assisted in the preparation of their ballots provided it can be shown that the irregularity was part of a general scheme to defraud the electorate; and we have studied this record with some concern to ascertain whether the proof would justify the finding that the irregularity mentioned was part of a conspiracy on the part of the contestee and his associates on the Nacionalista ticket to override opposition and defeat the will of the voters.

Upon this point a majority of the members of this court are unable to declare that the finding of the trial court and its refusal to disturb the election was incorrect. The proof does not enable us to see clearly how the fraud, if any was committed, was accomplished. It is possible that a fraud was in fact perpetrated by the use of a few ballots as shuttles (lanzaderas) by which device, as is well known, the ballots of voters who are not skilled in the art of writing or whose fidelity to party is in doubt, may be illegally written out for them by others. Again, a fraud could have been accomplished by the posting of those who were intended to give illegal assistance in booths next to those occupied by the voters to be assisted. But the proof does not support a finding that either of these methods was used. We are therefore compelled to adhere to the theory, apparently adopted in the appellant's brief, that the irregularity consisted in the fact that help was extended to illiterate voters without the necessary oath having been taken by the helper. The case therefore falls under the doctrine stated in the passage quoted above from *Olano vs. Tibayan*.

We are therefore constrained to hold that the votes challenged upon the ground above stated should not be deducted from the votes of the contestee. It is possible that the court erred in not counting for the contestant the 4 votes (error No. 4) which had, for trifling defects, been placed in the box of spoiled ballots. But, as the trial judge observed, these 4 votes, as well as 2 others challenged under error No. 2, could not affect the result. No opinion is therefore passed upon the propriety of the action taken with respect to these votes, it being evident that the failure to sustain the major contention for the appellant's case is fatal to the success of the contestant.

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

Avanceña, C. J., Johnson, Villamor, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

JOHNS, J.:

Fraud is apparent and for such reason the election should be declared void and another election ordered. For such reason I dissent.

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