

PABLO A. CRUZ, CONTESTANT AND APPELLEE, VS. ATILANO DE GUZMAN, CONTESTEE AND APPELLANT.*G.R. No. 31948. November 15, 1929*

Ponente: VILLAMOR, J.

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Pablo A. Cruz and Atilano de Guzman were candidates for the office of municipal president "of Angat, Bulacan, in the last general elections held on June 5, 1928. Cruz received 731 votes and De Guzman 787, the municipal board of canvassers proclaiming De Guzman elected by a majority of 56 votes.

Pablo A. Cruz and his fellow partisans, the candidates for vice-president and councilors, contested the election of De Guzman and his fellow partisans, alleging certain irregularities committed by the election inspectors in precincts 1, 2, 4, and 6, more particularly described in the motion of protest reproduced in the appellant's brief.

The contestees filed a general denial, and contend that they, have been legally elected to their respective offices.

After the proper proceedings, the court below found that contestant Pablo A. Cruz obtained 738 votes as against contestee Atilano de Guzman's 658 votes, or a majority of 80 votes for the municipal presidency of Angat.

Pablo A. Cruz's fellow partisans, the candidates for the offices of vice-president and councillor of the said municipality of Angat, were also declared elected, with the exception of Narciso Perez, who lost out in the drawing of lots between himself and Felix Ventura, De Guzman's fellow partisan and candidate for councillor.

Contestee Atilano de Guzman appealed from the judgment of the trial court, and in his brief assigns the following errors:

"1. The lower court erred in finding that there was a general, premeditated scheme on the part of appellant Atilano de Guzman and his followers, to influence the popular will in the general elections held on June 5, 1928, bribing the electors and buying their votes, and requiring of them in return, certain marks of identification upon their ballots.

"2. The lower court erred in rejecting, as marked, ballots C-2 to C-25 (24 ballots) cast in favor of appellant Atilano de Guzman in precinct No. 1, and in not rejecting ballots G-1 to G-25, and G-27 to G-43 (42 ballots) in favor of appellee Pablo A. Cruz in the same precinct, notwithstanding the fact that all the aforesaid ballots for both of said candidates are in the same condition and present the same appearance.

"3. The lower court erred in rejecting ballots Exhibits XX-12 to XX-13; XX-15; XX-18; XX-21; XX-24; XX-32; XX-34; XX-35; XX-38 to XX-41; XX-43; XX-46 and XX-47 (20 ballots) cast in favor of appellant De Guzman, on the ground that they are marked ballots, and in counting and adjudicating in favor of appellee Pablo A. Cruz the ballots Exhibits 121 to 126; 131 to 134; 136; 138 to 141 (15 ballots), which were cast in favor of said candidate in election precinct No. 2, notwithstanding the fact that said ballots are all practically in the same condition and appearance.

"4. The lower court erred in rejecting as marked or countersigned, ballots Exhibits XXX-1 to XXX-3; XXX-5

to XXX-16; XXX-18 to XXX-20; XXX-22; XXX-24 to XXX-25; XXX-27 to XXX-28; XXX-80 to XXX-31; XXX-33 to XXX-36; XXX-38; XXX-41 to XXX-43; XXX-47; XXX-50; and XXX-56 (36 ballots) cast in favor of Atilano de Guzman and in counting as valid in favor of appellee Pablo A. Cruz, Exhibits 168 to 208 (41 ballots), which were cast in election precinct No. 4 in favor of said candidate, notwithstanding the fact that they are all in the same condition and present the same appearance.

"5. The lower court erred in rejecting as marked and countersigned, ballots C-36 to C-39; C-41 to C-57; C-59 to C-86; C-88 to C-89 (51 ballots) cast in favor of the appellant, Atilano de Guzman, and in counting as valid votes Exhibits G-47 to G-50 and G-54 (5 ballots), which were cast in favor of the appellee Cruz, in precinct No. 6, notwithstanding the fact that they are all in the same condition and present the same appearance.

"6. The lower court erred in not declaring contestee Atilano de Guzman, president elect of the municipality of Angat, Province of Bulacan, with a plurality of votes over his opponent Pablo A. Cruz, the appellee, and in not dismissing the election contest instituted by Pablo A. Cruz."

A resume of the ballots referred to in the appellant's assignments of error shows that he claims 131 ballots cast for him, as improperly rejected by the court below, and likewise objects to 103 ballots improperly awarded to the appellee by the trial court.

Precinct No. Deducted from appellant Awarded to appellee

1 24 42

2 20 15

3 36 41

6 51 5

Total 131 103

The trial court held that there was a general premeditated scheme on the part of the appellant, Atilano de Guzman, and his followers to influence the popular will in the general elections held on June 5, 1928, by bribing the electors and buying their votes, requiring of them in exchange, certain marks of identification on their ballots.

It is true that some of the witnesses of the appellee did testify to such a concerted scheme on the part of the appellant and his copartisans at a meeting in the house of one Francisco Cruz, at which several persons assisted. Upon this point, it is to be noted that such a scheme is not mentioned among the reasons for the protest alleged by the contestant in his original motion. Nevertheless, the contestant presented witnesses to prove this fact, and the contestee did not object; and so, in the instant case, there appears to be no violation of the general rule that the evidence must be confined to the facts alleged, because of the acquiescence of the person against whom such evidence was presented. However, the record shows that the parties agreed in open court that the persons mentioned by the contestant's witnesses (the appellee in this case), would, in respect to what was agreed upon at the meeting referred to and the alleged bribery of the voters, deny the statements of the contestant's witnesses. Having examined the evidence of record, it seems improbable that in formulating a plan directly in violation of the Election Law, the author or authors thereof would have exposed it at a gathering of several persons, it being neither natural nor usual for one proposing to commit a crime to expose to the public his criminal intentions. Moreover, it should be remembered that experience has taught certain lessons regarding elections. In these political contentions, passion and partiality run wild, and the contending parties leave no stone unturned in order to win out. For this reason, testimony as to alleged schemes of the adversary should be received with caution, and unless strongly corroborated by other evidence, is not sufficient to decide the result of a popular election.

In the present case, we observe that of the four witnesses presented by the contestant to testify on the alleged scheme to influence the popular will, the one named Simon Roxas, a democrata inspector, after the elections applied to the appellant Atilano de Guzman for employment, and as the latter could not give it to him, he went to one Matias Fernando, a well-known leader of the Nacionalista Party, who engaged him as conductor of his auto-bus. The other witness, named Jose Cruz, also wrote the letter Exhibit 100 to the appellant Atilano de Guzman applying for work which the latter could not give him; but now he is working on the truck of the aforesaid Matias Fernando, having been urged to do so by one Isabelo Francisco, who told him he could get work there if he testified against Atilano de Guzman. The record does not disclose the motives of the two other witnesses, Segundo Angeles and Benito Nepomuceno, who pretend to be democrats, but we believe that, from what has been said concerning the former two, there is sufficient reason to doubt the veracity of these witnesses, aside from the fact that their statements have been absolutely contradicted by the appellant and his witnesses, Francisco Cruz and Jose Landayan.

In view of the agreement between the parties referred to above, we find that the facts affirmed by the witnesses for the appellee are contradicted by those for the appellant. And, if we consider the fact that these same witnesses for the appellee who, according to themselves, were offered money to vote for the appellant, which they refused, and, furthermore, as not a single ballot for the appellant has been identified as obtained through bribery, and bearing marks, it cannot be held that the evidence preponderates in favor of the appellee's contention.

As to the 131 ballots alleged by the appellant to have been improperly rejected by the court below, the latter rejected them considering them as marked ballots, because on some of them the names of the candidates for councilors are written at the extreme right of the ballot, on others at the extreme left, and in the rest, in the middle but with a space between the names and surnames. There is no question that the names of the candidates were not written in the spaces assigned by law. Neither is there any question as to whether or not the voter placed some distinguishing mark or sign on them prohibited by the law. Beyond the fact that the ballots in question have been prepared by the voter in the form stated, said ballots appear to be perfectly clean.

In several election contests, and in particular those of *Cailles vs. Gomez and Barbaza* (42 Phil., 496); *Valenzuela vs. Carlos and Lopez de Jesus* (42 Phil., 428); *Mandac vs. Samonte* (49 Phil., 284); and lately in *Penson vs. Parungao* (52 Phil., 718); and in *Geirosa vs. Taningco* (G. R. No. 30609),[1] this court, construing section 452 of the Election Law, enunciated certain rules respecting marked ballots. In *Penson vs. Parungao*, the court said that marks on ballots must appear on the ballots themselves, and cannot be proved by means of evidence aliunde, but with data contained in the ballots themselves. Had it not been that some of the appellee's witnesses testified, without any objection on the part of the appellant, that the plan adopted by the appellant and his copartisans was to require the voters to prepare their ballots by writing the names of the candidates for councillor either on the right side, or on the left, or in the middle of the ballot but with a space between the names and surnames, the ballots in question could not by themselves alone have been contested as marked.

We cannot give full credit to the testimony of witnesses Benito Nepomuceno, Simon Roxas, Segundo Angeles, and Jose Cruz, who mention marks of identification, for the reasons stated above, and furthermore, because the great majority of the 103 ballots of the appellee objected to by the appellant, are prepared in the same manner, the names of the candidates for councillor being written sometimes at the extreme right, other times at the left, and still others in the middle of the ballot but with a space between the names and surnames.

We therefore conclude that the 131 ballots claimed by the appellant are not marked ballots within the meaning of the law, as well as the 103 ballots awarded to the appellee. And the lower court having held that the appellee obtained a majority of 80 votes, which must be deducted from the 131 votes referred to, leaves a majority of 51 votes in favor of the appellant. In accordance with this result, the judgment appealed from should be, as it is

hereby, reversed, and appellant Atilano de Guzman is declared municipal president elect of Angat, Bulacan, by a majority of 51 votes. Without special pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Ostrand, Johns, and Romualdez, JJ., concur.

Street, J., dissents.

[1] Promulgated March 22, 1929, not reported.

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