

SIMEON MANDAC, PETITIONER AND APPELLANT, VS. DOMINGO SAMONTE, RESPONDENT AND APPELLEE.

G. R. No. 32143. March 28, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } This is an election contest filed by Simeon Mandac against the election of Domingo J. Samonte for provincial governor of Ilocos Norte, held on June 5, 1928, and proclaimed by the provincial board of canvassers on September 19 of the same year.

Upon trial, the Court of First Instance of Ilocos Norte dismissed the protest on July 31, 1929, and confirmed the provincial board of canvassers' proclamation of Domingo J. Samonte as the provincial governor-elect of Ilocos Norte.

The contestant appeals from said dismissal and assigns the following errors as committed by the trial court:

- "1. In not deducting the following votes cast for Samonte, which are null and void, to wit:
- "2. In not declaring the following votes null, and in not deducting them from the appellee:
- "3. In admitting and counting the following ballots as lawful votes in favor of the contestee Samonte, to wit:
- "4. In not admitting and counting the following ballots as lawful votes in favor of the contestant, Mandac, to wit:
- "5. In not re-establishing the true votes of Mandac, and of Samonte in the three precincts of Pinili, or at least, in not annulling the election in said municipality for the provincial governor."

We will first take up the third and fourth assignments of error as affecting a number of votes which, taken together, would change the result of the elections if the two errors are sustained, and in case they are disallowed, then the contestee's plurality would be maintained, even though the remaining errors are upheld.

The third assignment of error deals with 158 ballots which the appellant attacks as unlawful and hence wrongfully credited to the contestee. In certain of these ballots (such as Exhibits 1, 22-b, and 69-5) the vote is cast in favor of "Domingo" sans surname. As it does not appear that there is another candidate with a similar name, the vote is sufficient to identify the contestee (*Lucero vs. De Guzman*, 45 Phil., 852).

In some of these impugned ballots, there is 2-a, where the vote is cast in favor of "de Sanonti." Such are valid as sufficiently identifying the contestee in so far as an attempt was made to write the given name, which was not completed, and the surname which, though by no means perfect, fairly reproduces the sound, and as such falls under the *idem sonans* rule.

Ballots 2, 2-6, 7, 8, 8-b, 8-c, 8-d, 9, 9-a, 9-b, 10, 10-a, 22-a, 22-c, 22-d, 22-e, 56-#, 61, and 63-a, we believe are valid and lawful, for although the contestee's given name and surname are more or less imperfectly written thereon, yet by their sound and characters, they are sufficiently identified with the name and surname of Domingo Samonte.

Ballots 8-a and 68-b, where the vote for governor is in favor of "Dr. Samnte" are also valid for the contestee, who, according to his certificate of candidacy, is a physician. The surname "Samonte" in Exhibit 8-a sounds practically the same as "Samonte" and may be said to represent the latter by the rule of *idem sonans*.

Ballot 9-d, where an attempt has been made to write the word "Governor" (very ill written) before the name of the person voted for, must be deemed valid. The same may be said of ballots 17 and 18. That word thus put before does not nullify the vote, as has already been held in the case of *Valenzuela vs. Carlos and Lopez de Jesus* (42 Phil., 428). "Domingo samon" are enough of an identification of the contestee.

Ballot 9-c shows the contestee's name and surname written somewhat above that of Mariano Marcos, which is erased. The latter was beyond all doubt an erroneous repetition, because that name had already been written in the line above, for the office of representative. The voter's intention plainly appears to have been to correct the error and vote for the contestee. Ballot 9-c is validly counted for the appellee. The same thing may be said of ballots 17-a, 19, 22, 52-a, in the first of which the contestee's name was written over that of Petros Quevedo, voted in the same ballot for municipal president; in ballot 19, the first name which the voter began to write was Andres, doubtless for Andres Paredes, therein voted to membership of the provincial board; in ballot 22, the contestee's name was written over that of Ignacio Flores, who is there voted as member of the provincial board; and in ballot 52-a-, the name erased was the contestant's in order to put in its place the contestee's name.

In ballot 46-a, the surname "Samonti" is some distance from the name "Domingo;" but it is evident that this is simply due to the fact that the voter did not notice the line where he wrote the surname. We hold this ballot to be valid.

The same holds good for Exhibit 50, where the contestee's name is written above the line for governor, and nearer that for representative. But a careful examination of said ballot reveals the fact that the person who filled it out could not follow the respective lines. Even the name "Santiago" for senator is written across different lines. That the voter's intention to vote for the contestee as governor is shown by the fact that all the names for the several offices are written in; for senator Santiago Fonacier, for representative Erifio Ranjo, for governor Domingo Samot (in sound like Samonte) and for the provincial board Mauro Quevedo and Antonio Galo.

Ballot 55 is of a similar nature where, at first sight, the contestee's name seems to have been voted for as a member of the provincial board rather than for governor; but a Careful examination of the ballot shows that the name of Garo Agbayani which appeared for governor was erased, doubtless, because it had been written there by mistake since the same name appears in the space for representative. It cannot be maintained that the contestee's name was written for a member of the provincial board, because in the first place, the name written on the line for governor having been erased, the voter's intention is clearly to put that name in place of the one erased, and in the second place because in the same ballot two different names already appear as members of the provincial board. This ballot, 55, is valid in favor of the appellee.

The scraping on ballot 53, over which the contestee's name is written, does not necessarily render said vote illegal as cast in favor of the appellee (*Mandae vs. Samonte*, 49 Phil., 284). Ballot 53 is valid.

The fact that in ballots 53-a, 55-a, 62 and 68, the contestee's name is written over other names first written, does not nullify said votes. It was so held by this court in the case of *Valenzuela vs. Carlos and Lopez de Jesus* (42

Phil., 428).

As to the 22 ballots (Exhibits 5-G to 5-G21) which the contestant alleges to have been written by the same hand, we note that the first eleven ballots (from 5-G to 5-G10, inclusive) and the last of the group, 5-G21, do appear to have been written by the same person; and this number almost coincides with the eleven voters (the difference of one vote may be due to error) which, according to the appellant himself is the maximum number of voters assisted at the voting in that precinct. Ballot 5-G11 has not, in our opinion, been written by the same person that wrote the preceding ballots of the group; ballots 5-G12 and 5-G13 seem to have been written by one hand; ballots 5-G14, 5-G15, and 5-G16 were written by different hands; ballots 5-G17, 5-G18, and 5-G19 were written by one and the same hand; but ballot 5-G20 is by another.

In the rest of the ballots referred to in this third assignment of error, namely, Exhibits 7-E to 7-E14; 7-E15 to 7-E19; 7-E20 to 7-E22; 7-F to 7-F30; 7-F31 to 7-F38; 7-F39 to 7-F44; and 7-F45 to 7-F46, although it is true that some groups seem to have been written by the same person, nevertheless, as it has not been shown that fraud was present, the simple circumstance that some of said ballots appear to have been filled in by the same person, is not a sufficient ground for imputing illegality and nullity to those ballots. The same considerations and conclusions apply to the ballots of the first precinct of Sarrat, namely, Exhibits 5-Y to 5-Y18, which we have examined, discovering that ballots 5-Y2, 5-Y15, 5-Y16 and 5-Y17 differ from the rest as well as from one another in handwriting.

Summarizing our observations upon the third assignment of error, we find no merit therein.

The appellant contends in the fifth assignment of error that the votes of both parties hereto cast in the three precincts of the municipality of Pinili should be restored or else the election of the provincial governor in said municipality quashed.

In support of this point, it is alleged as a fact that the officers of said municipality of Pinili, before the voting and during the same on June 5, 1928, threatened the electors with declaring their carabaos under quarantine unless they voted for the contestee, in consequence of which many of the electors refrained from casting a vote.

On this threat witness Severo Sulit testified, and his testimony is regarded with suspicion by the trial judge who notes that said witness is not a resident of Pinili, but of Batac. The court below did not give credit to this witness for his manner of testifying, and there is no sufficient reason for us, under the circumstances, to deviate from the conclusion reached by the trial judge who saw and heard him testify. The trial judge also remarks that certain individuals, described by said Sulit as partisans of the contestant, were not cited to testify on this particular.

In evidence of the effects of this alleged threat, the contestant says that in the first precinct of said municipality of Pinili, 222 persons actually voted whereas 229 ballots were used; in the second precinct 178 persons voted and 185 ballots were used; and in the third precinct, 209 persons voted and 216 ballots were used. That immediately after the canvass on the night of June 5, 1928, the votes cast for the parties hereto were as follows: For Mandac 90, 57, and 75, and for Samonte, 42, 39, and 36 in the respective precincts; a result different from that stated in the election returns and the ballots found during the revision made pursuant to an order of the court below, the appellant attributing said difference to frauds committed against him.

Inasmuch as the evidence adduced to prove this consists of the testimony of Rufino Evangelista and Francisco Labayog, and of documents Exhibits Mandae AAA, BBB, BBB-a, 3-c, 3-D, 3-D1, and 3-D2, the following findings of the court below in respect to this evidence still hold, for we find nothing in the record to cast any doubt on their correctness:

"The court, having considered the evidence of both parties upon this point, finds that the contestant's point has not

been established. There is not a scintilla of evidence to show that the ballots were fraudulently prepared in favor of the contestee, and that any votes for the contestant were destroyed after the polling. This contention is merely an inference made by the contestant from the testimony of Rufino Evangelista and Francisco Labayog, but the court is unwilling to credit the statement made by these witnesses to the effect that they went about the three precincts to jot down the data in the three precincts, regarding the number of ballots used, the number of voters, and the result of the election for the governorship. Furthermore, the court doubts that they went to Pinili on the day of the election, since the first is a resident of Paoay, and the second of Laoag. The circumstances are so blatant as to arouse the suspicion that their statements concerning the election {Mandac Exhibits AAA, BBB to BBB-a, 3-C and 3-D to 3-D2) are fabricated. It will be noted that the witness Rufino Evangelista asserts that the memoranda in Exhibit AAA were jotted down by himself on different occasions and with different fountain pens, but it is manifest from said exhibit that they were written at the same time, with the same pen and with the same kind of ink." (Pp. 70 and 71, decision of court below, Record.)

The contestant likewise cites Exhibit ZZ, which is a set of notes alleged to have been prepared by Pablo Juan from telephone messages received at the contestant's office during the canvass. Celestino Peralta's testimony does not identify, beyond doubt, said document as being in the true handwriting of Pablo Juan, who was not called as a witness in this case.

There is not sufficient evidence for us to differ with the election returns for the municipality of Pinili, and the report of the revising committee, as found in the first table on page 89 of the original decision of the court below.

In view of our finding upon the third and fifth assignments of error, we deem it needless to take up the others, since, even granting them all well taken, they would not alter the result, which is, at least, a majority of 254 votes in favor of the contestee.

Wherefore, the judgment appealed from is affirmed with costs against the contestant. So ordered.

Malcolm, Villamor Ostrand, Johns and Villa-Real, JJ., concur.

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