

VICTOR KIAMZON, CONTESTANT AND APPELLANT, VS. FABIAN PUGEDA, CONTESTEE AND APPELLEE.

G. R. No. 32298. March 31, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, 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; }At the general elections held on June 5, ,1928, the official candidates for provincial governor of Cavite were Victor Kiamzon of the Democrata party, and Fabian Pugeda of the Nacionalista-Consolidado party. According to the provincial canvass, Pugeda received 11,995 votes and Kiamzon 10,987, or a majority of 1,008 votes in favor of Pugeda, who was thereupon proclaimed provincial governor-elect of that province.

Kiamzon duly filed a protest with the Court of First Instance of the province against the election of Pugeda, alleging and specifying certain serious irregularities by the election inspectors of the municipalities of Alfonso, Amadeo, Bacoar, Bailen, Cavite, Dasmarinas, Gral. Trias, Imus, Indang, Mendez-Nunez, Naic, Noveleta, Rosario, Tanza, and Ternate.

The contestee answered alleging by way of special defense that should any falsified ballots be found in the ballot boxes, which was but a remote possibility, they must have been put there by the contestant's own leaders and partisans, in order later to be able to question the contestee's election; and by way of counter-protest, he asserted that in the municipalities of Carmona, Silang, Magallanes, and Kawit, a number of votes cast in his favor had not been credited to him, and on the other hand several marked ballots had been adjudicated to the contestant, and that in the municipality of Carmona over a hundred voters registered as qualified by education, had had their ballots prepared by other persons, without either the former or the latter taking the proper oath prescribed by law.

The contest was legally prosecuted. The court appointed a committee of three to review the ballots, and its report was" rendered on May 31,1929, stating that Pugeda had obtained 8,196 valid votes and 2,927 questioned votes, while Kiamzon obtained 8,783 valid votes and 1,592 questioned votes. After going over the same ballots, the court deducted 235 false ballots from Pugeda, and held that the contestee had obtained 11,642 votes against the contestant's 11,083, resulting in a majority of 559 in favor of Pugeda.

From this decision Kiamzon has appealed and in his brief assigns several errors.

The first question raised by the appellant refers to the 235 votes which the court deducted from the contestee, declaring them to be false, but without any hint as to who committed the falsification. Appellant contends that those ballots should really be counted in his favor, because the ballots abstracted and substituted with other false ballots in favor of the contestee, were ballots belonging to the appellant, otherwise there would have been no motive for the substitution; also drawing our attention to the fact that an election inspector of the appellee's party

had already been convicted by the Supreme Court of the unlawful abstraction of ballots in case G. R. No. 31009 ;[l]and that one Ciriaco Ramos was convicted by the Court of First Instance for having illegally prepared a number of ballots without authority to do so, although the case was dismissed by this court upon the appellant's death. The court is fully aware of the possibility pointed out by appellant in his argument; but in default of evidence reasonably showing that the 235 ballots thus substituted were ballots cast in favor of Kiamzon, it cannot be held that said ballots were indeed cast for the appellant. No matter how strong indications may be to the effect that the substituted ballots were in favor of the candidate Kiamzon, they are insufficient to sustain a finding to that effect. The question submitted by the appellant must therefore be decided negatively.

Another point raised by the appellant is that some 1,585 votes adjudicated to the appellee in the municipalities of Naic, Tanza, Rosario, Gral. Trias, Ternate, and Mendez, must be deducted as having been unlawfully prepared by various persons for illiterate or incapacitated voters who had failed to take the oath prescribed by section 427 of the Election Law, as amended by Act No. 3387.

This section, among other things, provides:

"Any applicant for registration in the list of voters shall file with the board of inspectors at any of its two meetings, in duplicate an affidavit duly made before any member of said board, setting forth his name and surname, citizenship, place and date of birth, age on last birthday, whether married or single, profession, occupation or trade, residence, stating his exact and correct address, time of residence in the Philippine Islands and in the municipality on the date of the affidavit, the qualification or qualifications entitling him to be a voter; that he has none of the legal disqualification for being a voter; the nature of his incapacity for preparing his ballot on election day, if he be illiterate or physically incapacitated; and that he recognizes and accepts the supreme authority of the United States of America in the Philippine Islands and will maintain true faith and allegiance thereto,, He shall also state, if, and where he voted at the preceding election, and if he has changed residence, he shall attach a copy of the application for cancellation mentioned in section four hundred and twenty-nine. On this affidavit shall be placed the number and place and date of issue of the personal cedula of the affiant corresponding to the year of the election, or in its absence, to the next preceding year.

"A copy of the affidavit shall be retained by the board of inspectors and the other copy shall forthwith be filed with the register of deeds. An extra copy shall be made and given to the elector at his request."

On the other hand, section 432 of the Election Law states:

"Sec. 432. Disqualifications.—The following persons shall be disqualified from voting:

"(a) Any person who, since the thirteenth day of August, eighteen hundred and ninety-eight, has been sentenced by final judgment to suffer not less than eighteen months of imprisonment, such disability not having been removed by plenary pardon.

"(b) Any person who has violated an oath of allegiance taken by him to the United States.

"(c) Insane or feeble-minded persons.

"(d) Deaf-mutes who cannot read and write.

"(e) Electors registered under subsection (c) of the next preceding section who, after failing to make a sworn statement to the satisfaction of the board of inspectors at any of its two meetings for registration and revision, that they are incapacitated for preparing their ballots due to permanent physical disability, present themselves at the hour of voting as incapacitated, irrespective of whether such incapacity be real or feigned."

The incapacity declared in paragraph (e) of this section has been recently introduced into the Election Law for the purpose of correcting abuses formerly noted in the preparation of ballots for incapacitated voters by other persons.

Its object is to prevent unscrupulous persons from vitiating the result of a popular election by violating the secret of the ballot. The electors referred to in paragraph (e) being, by law, incapacitated to vote, it plainly appears that it was the intention of the legislator to consider the votes of such electors illegal, and therefore must not be counted in the canvass of the ballots cast in the boxes. And the reason why the law demands such a sworn statement of said electors stating their incapacity, is that the party interested may be free to raise the proper objection.

The court has not overlooked the doctrine established in *Lino Luna vs. Rodriguez* (39 Phil., 208); *Valenzuela vs. Carlos and Lopez de Jesus* (42 Phil., 428); and *Cailles vs. Gomez and Barbaza* (42 Phil., 496) ; wherein it was held that the requirement of an oath on the part of an illiterate or incapacitated elector is mandatory before the election; and merely directory thereafter. That is to say, that the failure of an illiterate or incapacitated elector to take the oath does not by itself bring about the nullity of the ballot after the election. It was, however, held in the case of *Lino Luna*, supra, that the vote of an illiterate or incapacitated person who has not taken the oath is to be deducted if identified. It is further to be noted that in the cases cited, of *Luna*, *Valenzuela*, and *Cailles*, the point at issue was the anomaly of an illiterate voter's failure to take the oath. But the case before us does not deal merely with an incapacitated elector's failure to take the oath, but principally with the incapacity provided by law as attaching to those electors who, being educated, have omitted to depose to their inability to prepare their own ballot.

The law puts such electors on a level with the rest of the incapacitated persons so far as their incapacity is concerned; with the insane or feeble-minded, for instance; and we are of opinion that the court has never held that the provision of the Election Law upon incapacity to vote is mandatory before the election, and merely directory thereafter. Such incapacities as have been declared by law substantially affect the validity of the vote, so that persons thus disqualified are not entitled to vote. Wherefore, it is held that the votes cast by the electors incapacitated under section 432, paragraph (e) of the Election Law, are null and void, and must be deducted from the votes polled.

Referring again to the 1,585 ballots which the appellant claims were illegally prepared by various persons, and unduly adjudicated to the appellee, let it be noted that the illegality consists in that the voters whose ballots were prepared by other persons failed to depose to their physical inability to make them out themselves. A committee of two members of this court, assisted by a third, was entrusted with the arduous task of carefully examining the ballots submitted by the appellant, and after four days of arduous labor, it reached the conclusion that in the municipalities of Naic (184), Tanza (294), Gral. Trias (37), Rosario (25), and Ternate (41), there is a total of 581 ballots which appear to have been prepared by some 50 persons, varying in proportion from two to fourteen ballots a person, although there are cases where one person, as for instance in Tanza, prepared 26 ballots, another 38, and another, 63.

Among the remainder of the 1,585 ballots objected to by the appellant, there are others, of course, more or less resembling one another, which we assume correspond to the 44 sworn statements filed by illiterates, and the 53 filed by other incapacitated electors, which were found in the ballot-boxes indicated by the appellant. And as to the 581 ballots mentioned above, the court is of opinion that they were illegally prepared for incapacitated electors, according to the aforesaid section 432, paragraph (e), of the Election Law.

Having arrived at this result, and deducting from the appellee Puga the 581 votes in his favor contained in said 581 ballots, besides 11 marked ballots found in different municipalities and designated in the eighth assignment of error, it follows that his former majority of 559 votes over his opponent is wiped out and leaves him with 33 votes less than the appellant, Kiamzon.

But the appellee, on the strength no doubt of this court's opinion as stated in *Lucero vs. De Guzman* (45 Phil.,

852), has attributed certain alleged errors to the trial court in his brief which, he claims, have prejudiced him. And he submits that appellant's ballots objected to on the ground that they have been prepared by various persons should be, likewise rejected. The appellant's ballots thus assailed amount to 1,727, and the reasons put forward by the appellee for disregarding them are that some are marked, others, illegible and scratched, and the majority unlawfully prepared by one person. Under the last-named class, the appellee points out some 1,400. The court has examined the ballots of the municipality of Tanza and discovered that in precincts 2 and 6 thereof are 44 ballots, written, to all appearances, by six persons in a proportion varying from 2 to 6, but with one hand recurring in 22 ballots. It follows from the result of the revision of the ballots of said municipality of Tanza that, deducting a like number of votes from appellant Kiamzon, contestee Pugeda emerges with a majority of 11 votes. The court deems it needless to pursue the revision of the ballots of the other municipalities, Naic, Amadeo, Imus, Noveleta, Dasmariñas, Kawit, Carmona, Magallanes, Silang, Bacoar, and Mendez, indicated by the appellee, for it could serve no other purpose than to increase Pugeda's majority, by applying the same method of deducting from the appellant as many votes as may be found to have been illegally prepared for incapacitated electors. Enough has come to light to convince the court that in several municipalities of that province irregularities have been committed during the 1928 elections, such as the abstraction and substitution of ballots, and the violation of the secret ballot.

The question to be decided is whether in view of such irregularities, the general election in Cavite with regard to the post of provincial governor should be quashed. Matters of this sort have hitherto been presented to this court for consideration, and have given rise, after mature study and in accordance with precedents, to the following rules upon the quashing of elections in this jurisdiction:

1. "When the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast, the returns should be avoided." (Gardiner vs. Romulo, 26 Phil., 521.)
2. "Innocent voters should not be deprived of their participation in the affairs of their government for mere irregularities on the part of election officers for which they are in no way responsible." (Lino Luna vs. Rodriguez, 39 Phil., 208.)
3. "The rule is so well established that authorities need no longer be cited in its support that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected and those who are guilty of such frauds and irregularities should be punished to the very limit of the law." (Garchitorena vs. Crescini and Imperial, 39 Phil., 258.)
4. "It must now be regarded as settled doctrine of this court that voters shall not be deprived of their votes by the mere failure of the election officers to comply with the formal prerequisites of voting, as for instance, with the requirements that an oath shall be administered to illiterate persons desiring assistance in the preparation of their ballots and that they shall be assisted by two inspectors. In order to justify the rejection of such a vote it must appear that the irregularity, or irregularities, complained of were part of a fraudulent scheme to frustrate the free expression of the desires of the electorate." (Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428.)
5. "Where the evidence shows that in a particular precinct the secrecy of the vote was violated; the booths were not installed in conformity with law, the inspectors entered the booths to electioneer and see what the voters were writing; the will of many voters was defrauded, as they were not allowed to cast their votes freely, but were given ballots already prepared by the inspectors or leaders; where coercion was practiced upon many other voters by the election inspectors by snatching away from them their ballots and tearing them into pieces after reading them; the illiterate voters were not required to take the prescribed oath of their incapacity; the registry lists and the minutes

of the election were not properly kept, and, lastly, after the boxes were locked, the municipal secretary opened them and tampered with the ballots and mixed them; the election in said precinct must be annulled, as the intent to defraud the will of the electorate is manifest, and it is impossible to tell with certainty just what was the true result of the election." (Cailles vs. Gomez and Barbaza, 42 Phil., 496.)

6. "When the fraudulent are so mixed up with the legal ballots that the legal cannot be separated from the illegal ballots, and the election returns are not reliable by reason of certain marks thereon, indicating that they have been falsified, the election must be annulled." (Mandac vs. Samonte, 49 Phil., 284.)

In the case at bar the illegal ballots can be determined and set aside and also which of the two candidates was voted for therein; and furthermore, it is possible, as was done by the trial court, to ascertain for whom the official ballots had been cast that were later withdrawn and substituted. Thus it is that while the court is disgusted with the brazen violation of the secret of the ballot practised by some leaders, and the malice with which hundred of electors of both political parties have played into their hands, allowing others to prepare their ballots for them, it cannot legally hold that these irregularities justify the cancellation of the general election in question. And this conclusion is arrived at not only from a consideration of the disturbances and expenditures attendant on a new election, but also of the circumstance that the appellant and the appellee only dish cuss the votes of some two thousand voters from among 22,982 who took part in this general election. The court is of opinion and so holds, that there being no question as to the legality of the votes cast by the twenty thousand innocent voters, they should not be deprived of their right of suffrage by declaring the whole election quashed.

By virtue whereof, the judgment appealed from must be, as it is hereby, affirmed, but with the costs of this instance charged half and half to the parties. So ordered.

Avanceña, C. J., Malcolm, Ostrand and Villa-Real, JJ., concur.

Justice Johnson announced his vote before departure on vacation as in favor of affirmance of the judgment, and it is so recorded.

(Sgd.) Geo. A. Malcolm

Presiding Justice for the Chief Justice <hr align="left" width="60%" noshade="

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[1] People vs. Vargas, promulgated September 24, 1929, not reported.

DISSENTING

Johns, J., :

It appears from the record that in the precincts in question the number of voters who were not educationally qualified to vote at the election was 81. The contestant claims and alleges that the number of ballots which were written by two or three different persons in those precincts was 1,585, and it also appears from ail actual inspection made by the members of this court, that 595 different ballots, all for the contestee in such precincts, were prepared and written by two or three different persons. As to that the record is conclusive.

As a counter-charge, the contestee claims and asserts that at least 1,750 ballots for the contestant were all prepared by two or three different persons. Upon that question the members of this court examined the ballots of one

precinct only, and found as a fact that out of about 80 ballots in that one precinct, 44 of them were all prepared and written by two or three different persons. The remainder were not examined for the reason that it was unnecessary to the opinion and would not affect the result.

But it is fair to assume that like condition would be found in other precincts.

In the final analysis, the contestant charges that 1,585 ballots, all for the contestee, were prepared and written by two or three different persons, and the contestee charges that there were 1,750 ballots for the contestant which were all prepared and written by two or three different persons, and the record is conclusive that there were only 81 voters who were not educationally qualified. That is to say, it conclusively appears from the record that there was a wholesale violation of the express provisions of the law by the political workers of both candidates.

The amended law was enacted to insure the secrecy of the ballot and to prevent the doing of the very thing which was done in this case in a wholesale manner.

For such reasons, we are clearly of the opinion that, as to the provincial governor, the whole election should be declared null and void; that neither party should have a certificate; and that a new election should be ordered.

Voters and candidates should be made to know that the express provisions of the law should be enforced and respected, and that the secrecy of the ballot must be insured and protected, and that this court will not put its stamp of approval upon such a wholesale violation of the express provisions of the Election Law.

For such reasons. I dissent.

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