

SIMEON Y. ABIERA, CONTESTANT AND APPELLANT, VS. SIMEON P. ABIERA, CONTESTEE AND APPELLEE.

G.R. No. 32910. July 22, 1930

Ponente: VILLA-REAL J.

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VILLA-REAL 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; }

In the general elections of June 5, 1928, held in the municipality of Dao, Province of Antique, the contestant-appellant Simeon Y. Abiera and the contestee-appellee, Simeon P. Abiera, were the candidates for the office of municipal president of said municipality, the former having filed the following certificate of candidacy:

"CERTIFICATE OF CANDIDACY

"I, Simeon Y. Abiera, do solemnly swear (or affirm) that I announce, and permit to be announced, my candidacy for the office of municipal president of the municipality of Dao, Province of Antique; that I am a resident of said municipality of Dao; that I am a duly qualified elector in said municipality and eligible to the office above-mentioned; that I belong to no party; that my post-office address for all electoral purposes is Dao, Antique.

"I further swear (or affirm) that I am generally known by the name of Simeon Y. Abiera or S. Y. Abiera or Simeon A. Ysulat or S. A. Ysulat or Simeon Abiera Y. or Simeon Ysulat A. or Maestro Simeon Abiera or Maestro Simeon.

(Sgd.) "Simeon Y. Abiera"

And the latter submitted the following certificate of candidacy :

"I, Simeon P. Abiera, aged 48, do hereby state: That I announce, or permit to be announced, my candidacy for the office of municipal president of Dao, Province of Antique, in the general elections to be held on June 5th,1928; that I am a resident of the municipality of Dao, Province of Antique, P. I.; that I am a duly qualified elector of said municipality of Dao, and eligible to said office; that I belong to the Nacionalista Colectivista Party; and that my post-office address for all electoral purposes is: Municipality of Dao, Province of Antique, P. I.

"That I am known by the name of Simeon P. Abiera or S. P. Abiera, and I do hereby claim all ballots containing the following names: Simeon Abiera, S. Abiera, and C. Abiera.

"Dao, Antique, P. I., May 14, 1928.

(Sgd.) "Simeon P. Abiera"

Thereafter, on the 7th day of June, 1928, the municipal board of canvassers adjudicated 480 votes to Simeon P. Abiera and 446 to Simeon Y. Abiera, and proclaimed the former municipal president-elect of Dao by a majority of 36 votes.

Dissatisfied with said result, Simeon Y. Abiera duly filed a motion of protest with the Court of First Instance of Antique. After due notice, and after the contestee, Simeon P. Abiera, had filed his answer, the contest was heard, evidence being adduced in support of the respective contentions. After having heard the evidence, the court decreed the contestee, Simeon P. Abiera, to have been lawfully elected municipal president of Dao, Province of Antique, with a majority of 15 votes over the contestant Simeon Y. Abiera, dismissing the latter's protest with costs and incidental expenses charged to him. Dissatisfied with this judgment, contestant Simeon Y. Abiera appealed, assigning the following alleged errors as committed by the court below, to wit:

"The lower court erred:

"1. In holding that votes cast in the name of Simeon Abiera or simply S. Abiera for municipal president should be counted in favor of the contestee and appellee, and in thus adjudicating 225 such votes to the latter.

"2. In adjudicating the following ballots as valid votes for the contestee and appellee:

"(Precinct No. 3)

"In the name of Simon Abra

"Do. Simio Abera

"Do. Sinon Auira

"(Precinct No. 4)

"In the name of Simiun Abra (Exhibit 1-4)

"3. In adjudicating the following ballots to the contestee and appellee:

"(Precinct No. 2)

1 ballot 'Cemor Paura' (Exhibit H-3)

1 ballot

1 ballot 'Cumunon P. Abira' (Exhibit H-5)

"1 ballot T. P. Abeire' (Exhibit H-6)

"(From Precinct No. 3)

"1 ballot 'P. A. Simon Abera' (Exhibit C-4)

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"

(From Precinct No. 4)

"1 ballot 'Simeon B. Abiera' (Exhibit 1-8)

"(From Precinct No. 6)

"8 ballots *S. B. Abiera' (Judgment appealed from, page 17, line 25)

"4. In adjudicating to the contestee and appellee the three ballots from precinct No. 6 identified as follows:

"Exhibit F-1 for 'Simon F. Abiera'

"Exhibit F-2 for 'Simeon I. Abiera'

"Exhibit F-3 for 'S. F. Abiera'

and in failing to adjudicate them to the contestant-appellant.

"5 In failing to adjudicate the following ballots to the contestant and appellant:

"(From Precinct No. 1)

"(c)-1 ballot 'Simeon Ysulat'

"(b)-2 ballots 'Simeon A. Ysulat'

"(c)-1 ballot 'S. A. Ysulat'

"(d)-1 ballot 'S. Y. Abiera' (Exhibit B-1)

"(e)- 1 ballot 'SeY buira' (Exhibit B-2)

"(f)-1 ballot 'Simen Abiera M' (Exhibit B-3)

"(From Precinct No. 2)

-1 ballot 'Simeon Ysulat'

"(From Precinct No. 3)

i-l ballot 'S Y A' for president (Exhibit C-13)

ll(i)-l ballot 'S Y A' for president (Exhibit C-18)

"(From Precinct No. 7)

"(O)-l ballot '\$ A Y' for president (Exhibit J-2)

"(fc)-l ballot 'S A abira' for president (Exhibit

""(0-1 ballot'S A Abira' for president (Exhibit J-6)

"(m)-l ballot 33 A Abiera' for president (Exhibit J-7)

"(n)-l ballot 'S A Abeyra' for president (Exhibit J-8)

"6. In failing to count as valid votes those contained in the following ballots out of precinct No. 2:

"1 ballot 'Y CEneen' (Exhibit H-13)

"1. ballot 'S. Y. Abiera' (Exhibit H-14)

"1 ballot'S. A. Ysulat' (Exhibit H-15)

"1 ballot 'S. Y. Abiera' (Exhibit H-16)

"1 ballot 'Simeon Y. Abiera'

which the inspectors deposited in the red spoiled-ballot box during the canvass, by mistake, instead of returning them to the white ballot-box where said inspectors found them.

"7. In failing to count as valid votes those contained in the following ballots from precinct No. 4, to wit:

"1 ballot 'Semeyon S'ulat' (Exhibit 1-16)

"1 ballot 'S. Y. Abiera' (Exhibit 1-17)

"1 ballot'S. Y. Abiera' (Exhibit

which the inspectors deposited in the spoiled-ballot box by mistake, instead of returning them to the white ballot-box."

As to the first assignment of error, section 404 of the Election Law relevantly provides:

* * * Provided, further, That in case there are two or more candidates for the same elective office who have the same name and surname, any one of them who has at any time been elected to any elective Insular, provincial, or municipal office may continue using the name and surname set forth in his previous certificate of candidacy, while the others shall be obliged to state in their certificates of candidacy, in addition to their name and surname, their second name or maternal family name; and in case these candidates present themselves for the first time for the same elective office, they shall all be obliged to state in the certificate of candidacy, in addition to their name and surname, the second name or maternal family name."

The record shows that prior to the election of June 5, 1928, the contestee, Simeon P. Abiera, had been holding the office of municipal president of Dao, Province of Antique, having been elected thereto in the general elections of June, 1925, under the following certificate of candidacy:

"CERTIFICATE OF CANDIDACY

"for municipal president
(Prior)

"1,. Simeon P. Abiera, do solemnly swear (or affirm,) that I announce, and permit to be announced, my candidacy for the office of municipal president of the municipality of Dao, Province of Antique; that I am a resident of said municipality of Dao; that I am a duly qualified elector in said municipality, and eligible to the office above-mentioned; and my post office address for all electoral purposes is Dao, Antique, P. I.

"I further swear (or affirm) that I am generally known by the name of Simeon P. Abiera, Simeon Abiera, Simeon O. Abiera.

(Sgd.) "Simeon P. Abiera
"Candidate"

It appears that in the certificate of candidacy for the office of municipal president of Dao, Province of Antique, filed by Simeon P. Abiera for the general elections of June, 1925, he stated that he was also known as Simeon Abiera; and that in the certificate of candidacy filed in the general elections of June 5, 1928, in the same municipality of Dao, Province of Antique, he claimed all votes cast in the name of Simeon Abiera or S. Abiera, among others, for the office of municipal president.

The contestant, Simeon Y. Abiera, on the contrary, did not state in his certificate of candidacy for municipal president of Dao, Province of Antique, in the general elections aforesaid, of June 5, 1928, that he was known by the names of Simeon Abiera and S. Abiera, nor did he claim votes cast in these names, thereby implying that he was not known simply as Simeon Abiera or S. Abiera.

Since the contestant and appellant, Simeon Y. Abiera, did not state in his certificate of candidacy that he was also known as Simeon Abiera or S. Abiera, he cannot claim, the votes cast in these names; such votes, however, may be claimed by the contestee and appellee, Simeon P. Abiera, who stated that he was known by said names, both in his certificate of candidacy filed in the general elections of June, 1925, and in that which he presented for the general elections held on June 5, 1928.

As to the second assignment of error, if, as we have stated in discussing the first assignment of error, Simeon P. Abiera is entitled to have the ballots cast in the name of Simeon Abiera, counted in his favor, and if. the idem

sonans rule may be applied to the names of Simon Abra, Simio Abera, Sinon Auira, and Simiun Abra, by reason of their sounding like Simeon Abiera, then the court below did not err in adjudicating to the latter the ballots in which said names appear.

With respect to the third assignment of error, the names of Cemor Paura, which may also be read Cemos P Aura (Exhibit H-3), C. P. Abrira, which may also be read C. P. Abuera (Exhibit H-4), Cumunon P. Abira (Exhibit H-5), P. P. Abeire, which may also be read S. P. Abeire (Exhibit H-6), P. A. Simon Abera, which may also be read Pa. Simeon Abera (Exhibit C-4), Simeon B. Abiera which may also be read Simeon P. Abiera (Exhibit 1-8) and S. B. Abiera, are also sufficiently similar to Simeon Abiera and S. Abiera to fall within the idem sonans rule (*Cailles vs. Gomez and Barbaza*, 42 Phil., 496; *Mandac vs. Samonte*, 49 Phil., 284), and therefore the lower court did not err in adjudicating these ballots to the contestee and appellee, Simeon P. Abiera.

As to the fourth assignment of error, the names Simon F. Abiera (Exhibit F-1), Semion J. Abiera, which may also be read Simeon F. Abiera (Exhibit F-2), and S. F. Abiera (Exhibit F-3) also resemble Simeon P. Abiera and S. P. Abiera enough to come within the idem sonans rule; therefore, the lower court did not err in adjudicating these ballots to Simeon P. Abiera.

With regard to the fifth assignment of error, although the contestant Simeon Y. Abiera did not state in his certificate of candidacy that he also is known by the names of Simeon Ysulat, Simeon A. Ysulat, SeY buira. (Exhibit B-2), and Simeon Abiera M, (Exhibit B-3), as there appears to be no one else who bears them, and as it clearly appears that the voters who wrote said names in their ballots intended to vote for him, he is entitled to have them counted in his favor.

Ballot Exhibit B-1, cannot be adjudicated to him because the name in the space for municipal president^ not S. Y. Abiera but S. O. Abiera.

The ballots bearing the initials S Y A, S A Abira, S A Abiera, and S1 A Abeyra cannot be adjudicated to the contestant-appellant Simeon Y. Abiera, because mere initials are not a sufficient identification of the candidate, and the capital A placed between the S and the word "Abira" is neither identical with nor similar in sound to any initial of the contestant.

As to the sixth assignment of error, the ballot bearing the name of Y Ceneeon (Exhibit H-13) cannot be counted for the contestant, because, although the word Ceneeon sounds like the Christian name Simeon, the initial Y, though possibly standing for the maternal surname Ysulat, is not sufficient to identify the contestant; but he is entitled to ballots made out with the names S. Y. Abiera (Exhibit H- 14), S. A. Ysulat (Exhibit H-15), and Simeon Y. Abiera, which clearly indicate the intention of the electors who wrote those names to vote for the contestant Simeon Y. Abiera.

Lastly, with reference to the seventh assignment of error, the ballots bearing the names of Semeyon Sulat (Exhibit 1-16) and S. Y. Abiera (Exhibits 1-17 and 1-18) must also be adjudicated to the contestant Simeon Y. Abiera, because they are clearly indicative of the intention of the voters who wrote said names in their ballots to vote for him.

Briefly, (1) The first, second, third, and fourth assignment of errors are groundless; (2) that the contestant is entitled to seven of the votes claimed in the fifth assignment of error; (3) that he is entitled to four of the votes claimed in the sixth assignment of error; (4) that he is entitled to three of the votes claimed in the seventh assignment of error. The contestant and appellant Simeon Y. Abiera is thus entitled to 14 additional votes, which, added to the 474 votes adjudicated to him by the court below, make 488 votes. Inasmuch as the court below adjudicated 489 votes to the contestee-appellee Simeon P. Abiera, the latter still has a majority of one vote over

his opponent.

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

Avanceña, C. J., Malcolm, Ostmnd, Johns and Romualdez, JJ., concur.

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