

DOMINGO VALBUENA, PETITIONER AND APPELLANT, VS. ANDRES V. TAPALES AND EMILIO ORAYANI, RESPONDENTS. ANDRES V. TAPALES, APPELLEE.

G.R. No. 36130. January 29, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

At the general election in the municipality of Lubang, Province of Mindoro, June 2, 1931, Andres Tapales, Domingo Valbuena, and Emilio Orayani were candidates for the office of president of that municipality. At the termination of the election the municipal councilors, constituted as a municipal board of canvassers, examined the statements filed by the election inspectors and found that Andres Tapales had received 371 votes, while Domingo Valbuena and Emilio Orayani obtained only 366 and 172 respectively. Consequently, the municipal board of canvassers declared Tapales municipal president. Domingo Valbuena thereupon filed a protest with the Court of First Instance of Mindoro, and Tapales in answer to Valbuena, presented a counter protest.

After the revision of the votes it was found that 21 votes in favor of Valbuena were written by one and the same person, notwithstanding the fact that none of the electors had been registered as illiterate or unfit for preparing their ballots. In the opinion of the judge of the court below, the 21 votes were tainted with fraud, and he therefore rejected them. At the instance of the counsel for Valbuena, the judge also rejected 8 votes given Tapales and which had been written by one man, though his handwriting differed from the appearance of the aforesaid 21 ballots. The total result was that the judge gave Tapales 350 votes and Domingo Valbuena 342. Valbuena appealed to this court.

We cannot find any error in the judgment of the court below. The case depends principally on the 21 votes referred to above, and it is quite clear that the person who prepared the votes did not do so in good faith. The following statement of the minutes of the board of the election inspectors in the fifth precinct of the municipality shows clearly that such was the case. The copy of the statement reads as follows:

"Lucio P. Villas as an elector who interred [entered] the voting booth asked for a ballot to write on his candidates whom he liked to write. He interred [entered] the booth after giving him the ballot but for a few minutes he came back to inspectors if he can asked for another ballot telling that he was mistaken and he burned the ballot for his innocence and presented the ash when we asked him the ballot.

"As we believed that he spoiled the ballot No. A 18 for his innocence we gave him another ballot but one of us, the inspector was opposed.

"But when we opened the two boxes to be counted at 7 p. m. we found the number of this spoiled ballot was inside. So we believed that this man had done something wrong against the law.

"There were also nine spoiled ballots when we opened the boxes to be counted as read.

"(Sgd.) FRANCISCO MASANGKAY, Inspector

"(Sgd.) L. TORRELIZA, Inspector

"(Sgd.) NORBERTO VILLAMAR

"Chairman"

A similar statement in the counter-protest of Andres Tapales is also of some importance and reads as follows in translation into English:

"(d) In pursuance of a plan to commit fraud carried out by the contestant's inspectors and partisans, over twenty-two of the ballots cast in his name are in the same hand-writing, having been filled in outside the polling place, by having recourse to the use of a ballot now known by the name of lanzadera in the following manner:

"A certain voter named Lucio Villas received a ballot bearing the number 18 from one of the inspectors. He went into one of the booths, but after a while came out asking for another ballot saying the first had been burned up, though he did not show it to them. Over the protest of the contestee's inspector, the contestant's inspectors gave Lucio Villas another ballot. After casting one of the ballots he had received into the ballot box, he left the polling place with the other, which he delivered to a leader of the contestant's. In this manner over twenty-two of the ballots for this candidate were filled in outside the polling place. For when the ballots were counted after the voting, none was lacking, not even the one Lucio Villas said was burned."

The statement was made under oath and has not been denied by the contestant, and when the ballot box was opened, counsel for the contestee at once set those 22 ballots apart, marking them as Exhibits 62 to 83 (Exhibit 61 had then been withdrawn). Thereafter the contestant's counsel arose and asked that 8 of contestee's ballots should be rejected because they had been prepared by one and the same person. The trial judge granted the request and rejected the ballots. In these circumstances, it might, perhaps, be said that the contestant is not in position to demand that his 21 ballots be admitted when he had demanded that the contestee's 8 ballots of the same kind should be rejected.

In our opinion, the judgment of the court below is correct, and it is affirmed with the costs and incidental expenses in both instances in favor of the appellee, Andres V. Tapales. So ordered.

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

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