

GREGORIO J. BORJA, CONTESTANT AND APPELLEE, VS. MANUEL H. ROXAS, CONTESTEE AND APPELLANT.

G.R. No. 36131. February 04, 1932

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This case relates to the election for the office of municipal president of Jalajala, Province of Rizal. Manuel H. Roxas, the contestee, appealed from the decision rendered by the Court of First Instance of that province, the dispositive part of which reads as follows:

"Wherefore, it is held that at the general elections of June 2, 1931 the contestant Gregorio J. Borja obtained one hundred and seven (107) lawful votes as against the contestee Manuel H. Roxas who only obtained ninety-two (92), both of them being candidates for the office of municipal president of Jalajala, Rizal; * * * and everything, with costs and incidental expenses in favor of the contestants herein and against the herein contestees, Manuel H. Roxas and Alejandro Felix.

"Let a copy of this judgment be sent to the municipal council of Jalajala, Rizal, in order that it may, as municipal board of canvassers, correct its election returns of the general elections held on June 2, 1931, in accordance with this decision, and proclaim those persons elected who are mentioned in the dispositive part hereof. * * *"

At the general elections held on June 2, 1931, the contestant Gregorio J. Borja and the contestee-appellant Manuel H. Roxas were rival candidates for the office of municipal president of Jalajala, Province of Rizal. The former belonged to the Democrata Party while the latter was affiliated with the Nacionalista-Consolidado Party and both of them had been chosen by their respective groups. On June 3d of the same year, after all the legal votes cast in the only two precincts within the municipality had been counted, the municipal council of Jalajala, acting as the municipal board of canvassers, declared through resolution No. 25, series of 1931, that the appellee Borja had obtained 107 votes and the appellant Roxas 130, proclaiming the latter municipal president elect.

The appellee contested the appellant's election alleging, among other grounds, that 32 votes had been counted for him which were included in 56 illegal votes cast by persons who had been declared not entitled to vote or take part in the election. With regard to this point, both parties admit and the court held that through proceedings taken prior to June 2, 1931, fifty-six electors had been excluded from the voters' list; but although due notice thereof was served on the election inspectors, a majority of them allowed thirty-two of those excluded electors to take part, and in fact, they did vote on the day of the election. Based on this fact which was admitted by both parties, the court deducted the 32 illegal votes from the total number obtained by the appellant Roxas, thereby resulting a plurality of 15 votes in favor of the appellee Borja.

The whole question is whether the court acted correctly in excluding the 32 votes illegally cast, from the appellant's votes, and whether such action is supported by any competent and convincing evidence. The evidence considered by the court, and upon which its finding is based entirely, is

circumstantial, because as a matter of fact, neither party adduced direct evidence. Said evidence is as follows:

" (1) In the southern part of this Province of Rizal, there is a large estate known as Jalajala, and within said estate is the municipality of Jalajala.

"(2) The estate belongs to the Borja family, from Pateros, Rizal, and one of the coowners is the contestant Gregorio J. Borja.

"(3) When application was filed for the registration of the title to the estate, not a few of the occupants presented an opposition, and many of them left the place going else where when the rights of the applicants were recognized by law and the judgments to that effect were executed.

"(4) During the period preceding the election, and with a view to the last general election, the partisans of contestant Borja obtained from this court decisions prohibiting some fifty-six electors from noting, who had been opponents in the registration proceedings of the estate.

"(5) Copies of these judgments were furnished the election inspectors in the two precincts of said municipality of Jalajala, some days before June 2, 1931, when the last general" election took place.

"(6) The majority of those inspectors were Nacionalista partisans, although by inclination or sentiment, fictitious or real, they are Communists, for these, among other, reasons: (a) That the then municipal president—who has, perhaps (or without perhaps), had a hand in their appointment—officially announced his candidacy for the governorship of this province in representation of the Communist Party; and (6) that the contestee Manuel H. Roxas was announced by the Communist paper Titis (Exhibit G), as candidate for representative of the second district of this Province of Rizal, .although, after all was said and done, he decided to be the Nacionalista candidate for the presidency of that municipality, and was officially announced as such.

"(7) On the day of the election, thirty-two (32) out of those fifty-six electors with judgments against them, succeeded in voting in those two precincts, over the objection of the minority inspector who belongs to the Democrata Party, upon the specious ground that their names were already in the voters' lists. (Exhibits D, D-1, and E.)

* * * * *

"As may be seen, had there been no manifest disobedience to the orders of this court, there would have been no reason for the protest of the petitioners herein with regard to the result of the election; but as thirty-two (32) people voted at the election without being entitled to do so, their votes must be deducted from the number obtained by the respondents herein, for it can hardly be conceived, in the opinion of the court, that those electors voted for the contestants and their partisans."

It follows, therefore, that in finding that the 32 illegal votes were cast for the appellant, and in excluding them from the total number obtained by him, the court relied exclusively upon these facts established by purely circumstantial evidence: (a) That in the municipality of Jalajala there was a large estate belonging to the appellee and others; (b) that when these applied for the Torrens title to said estate, a number of persons opposed the registration; (c) that the fifty-six electors excluded were among those opponents; (d) that those fifty-six electors had been excluded at the instance of the appellee's partisans; (e) that the majority of the election inspectors were Nacionalistas, though of Communistic inclinations, and only one was a Democrata; (f) that the appellant was a candidate of the Nacionalista party but allowed himself to be announced by the Communist paper Titis as a candidate for representative of the second district of the Province of Rizal; and (g) that the thirty-two voters who voted illegally did so over the protest and objection of the Democrata inspector.

After carefully considering this aspect of the case, we are of the opinion that such circumstantial evidence is

insufficient to lead us to the reasonably convincing conclusion that the aforesaid thirty-two illegal voters voted for the contestee-appellant. The necessary and sufficient circumstantial evidence in this case must be such that it should not lead to any other reasonably convincing conclusion than that such votes were cast for the appellant. The circumstance that those thirty-two excluded voters were among the opponents in the registration proceeding filed by the appellee; that they were so excluded from the voters' list at the instance of the appellee's partisans, and that the majority of the election inspectors were Nacionalistas with Communistic tendencies, does not constitute sufficient ground for reasonably, and without prejudice, believing that they all voted for the appellant, who was himself a candidate for the Nacionalista-Consolidado Party. To believe otherwise would be to admit that the voter is guided by selfish and partisan feelings, and that in casting his vote he follows neither his reason nor his own convictions.

The rule uniformly established in cases of this sort is that the party alleging that a certain number of illegal votes have been cast in favor of a candidate must adduce the best evidence to prove it, and clearly the best evidence, here would have consisted in the identification of the illegal ballots and the testimony of the voters who prepared them, which the contestant-appellee did not do in this case.

"* * * where the ballots cast by the illegal voters can be identified they should of course be rejected. Ordinarily, however, it is impossible to identify the ballots except through extrinsic evidence, and so the question must be solved by determining who the illegal voters were and then ascertaining how they voted. In this proceeding it is clear that the voter is in the best position to know for whom he voted, but circumstantial evidence is also competent to prove that fact; and where the facts and circumstances from which the finding is made are clearly established, and the inference is the only one which can fairly and reasonably be deduced therefrom, the court should not hesitate to act on circumstantial evidence and therefrom find the ultimate fact. * * * " (9 R. C. L., sec. 141, pp. 1149-1150.)

It is suggested in the appellee's brief that the burden of proving in whose favor the 32 illegal votes were cast rested upon the appellant, as contestee, and that having failed to adduce competent evidence upon this point, he must suffer the consequence of such omission, by having the 32 votes deducted from him. We cannot approve this proposition, because in our opinion, it is not the true and best doctrine. Although this rule was followed in one case, we are convinced that the weight of authority holds that he who alleges that illegal votes have been cast must prove his allegation, and show, furthermore, that those votes were cast for his opponent.

"Upon the theory that the illegal voter can be called as a witness and compelled to disclose for whom he voted (which is beyond doubt the true theory), it would be easy in such a case as the one stated to call the illegal voters and require them to testify to the fact. It still remains, however, a question whether they shall be called at the instance of the contestant upon the theory that the burden of proof is upon him to make out his case, or at the instance of the respondent upon the theory that because he is advantaged by the general result he must show that all illegal votes were cast for his opponent or suffer them to be deducted from his own vote. The court adopted the latter theory, but we think the safer rule would be for the contestant to show not only that a certain number of illegal votes were polled, but also to show, if he can, that they were cast for his opponent. It is not intended by this to assert that the rule above quoted from Duffey's case is positively erroneous, but only to intimate a doubt, and to express the opinion that the ordinary principle which requires the party holding the affirmative to prove the facts, and all the facts, necessary to make out his case, is the better rule, and that it will in all cases be safer to follow it. * * * " (McCrary on Elections, 4th edition, pp. 367-368.)

Inasmuch as it has been shown that 32 illegal votes were cast for the office of municipal president and that the evidence does not show for which of the two candidates they were cast, the election for that office is quashed because the number of illegal votes is sufficient to affect and alter the final result. In this connection we have not lost sight of the theory, upheld by some courts, that in such cases the illegal votes may be divided proportionately

among the candidates; but we have arrived at the firm conviction that such a practice is not the best rule, nor is it supported by the weight of authority. When, for some reason or other, it cannot be determined for whom the illegal votes have been cast, and the number of such votes alters the result of an election, the same must be quashed with respect to the disputed office.

"* * * An election cannot be allowed by law to depend on an uncertainty. The majority must be susceptible of proof. Accordingly the general rule has been established that the reception of illegal votes at an election does not affect its validity unless it is shown that their reception affected the result; but that where so many persons vote in violation of the law that the result is placed in doubt if the illegal votes are excluded, the court should annul the election. * * *" (9 R. C. L., sec. 140, p. 1148 and cases therein cited.)

"While it is well settled that where enough illegal votes are cast at an election to change the result or leave it in doubt the election is void, yet it is equally well settled that the result of an election will not be disturbed because of illegal votes received unless the aggregate of such votes would change the result. * * *" (20 C. J., sec. 224, p. 182 and cases therein cited.)

The appellant's contention, contained in his first assignment of error, that the 32 illegal votes should not be deducted because the orders of exclusion issued by the court arrived two or three days before the election, but after the last day fixed by law for the revision of the voters list, is unfounded. Section 437 of the Revised Administrative Code, which treats of the exclusion of names from the voters' list does not fix any period within which the court must issue the order and give notice to the inspectors; it does provide that the application for exclusion must be decided without delay, and that the decision should be communicated to the parties interested. Section 438 provides that upon receipt of a petition for inclusion or exclusion, the date and hour of its filing must be noted, and that the courts taking cognizance thereof must decide it within ten days thereafter. In default of allegation and proof that the order or orders of exclusion were issued, and notice thereof given, with unnecessary delay and outside the ten days fixed, it must be presumed that they were promulgated in accordance with law, and that notice thereof was given the inspectors within the legal period and as soon as the application or applications for exclusion and the evidence submitted by the parties had been duly considered by the court. Whereas, the law contains no positive provision declaring the orders of exclusion so issued illegal, and whereas it appears that they were received by the inspectors in time, several days before the election, it is held that such orders issued for the purpose of excluding the thirty-two voters in question, were valid, that the inspectors were in duty bound to correct the lists in conformity therewith, and that they should not have permitted them to vote.

Wherefore, the judgment appealed from is reversed, and it is held that neither of the contending candidates has been legally elected to the office of municipal president of Jala-jala, Province of Rizal, and that the election for such office is quashed. In accordance with the provisions of section 483 of the Election Law, let a certified copy of this judgment be sent to the chief of the Executive Bureau and to the provincial board of Rizal.

One half of the costs and legal expenses of the first instance and, those of this appeal shall be defrayed by appellant and appellee in equal parts. So ordered.

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

DISSENTING

STREET, VILLAMOR, and OSTRAND, JJ.

Accepting the facts set out in the majority opinion, and especially the circumstantial evidence described on pages 3 and 4 thereof, and concurring as we do in the rules laid down for deducting illegal votes, we have little to say in

support of our dissent so far as the appreciation of such circumstantial evidence is concerned.

In the present case the majority hold that the election of the municipal president of Jalajala is illegal, because thirty two voters who were challenged and disqualified by the court from voting, were nevertheless permitted to cast their votes for the office of municipal president in the election held in the municipality of Jalajala, Rizal, on June 2, 1931, it being noted that the court's order disqualifying said voters was received by the election inspectors two days before the election.

According to the judgment appealed from, Borja obtained 107 votes in said election, and Roxas 124. The court, finding that the thirty-two disqualified voters had voted for Roxas, deducted them from him, leaving only ninety two votes for him. Hence this appeal.

That votes illegally cast in an election must be deducted is a question already decided in this jurisdiction. We are all agreed that in order to make such deduction evidence, either direct or circumstantial, must be presented to show which of the candidates received those votes. The difficulty arises when an attempt is made to ascertain in favor of which of the two contending candidates such votes were cast. The majority of the court maintain that the circumstantial evidence of record is insufficient to show in favor of which candidate those votes were cast.

The judge who took cognizance of the protest found, in view of the circumstantial evidence, that such votes were cast for the appellant, Roxas. With all due respect to the majority, we believe it is unreasonable to assume that the 32 votes challenged before the court by the appellee or his partisans, and disqualified by said court from voting, voted for said appellee. If, at the instance of the appellee, the court decided the petitions for exclusion against said voters, disqualifying them from casting their ballot in Jalajala during the past election, what reason is there for assuming that in voting, as they actually did, they would vote for the very person who challenged them, that is, the appellee? If the election inspectors of the minority to which the appellee belongs, objected to the admission of said voters at the polls, and notwithstanding that objection they were permitted to vote by the election inspectors of the majority, to which the appellant belongs, what motive can there be for assuming, that should such electors cast their votes, as they did, they would do so for the appellee Borja ?

Furthermore, the record shows that the thirty-two voters are followers or partisans of the appellant, and notoriously opposed to the owners of the Jalajala estate, whence they were expelled when registration proceedings were instituted, so that they even joined the so-called Communist group, one member of which set fire to the house on the Jalajala estate. How is it possible to believe or to imagine that such voters cast their votes for the appellee,

Gregorio J. Borja, who is one of the joint owners of that estate?

It is possible for a voter, for one reason or another, to abstain from voting in an election for a certain candidate belonging to his party; but, ordinarily, and in general, the electoral masses vote for the candidates of their party, or of the political affiliation or group to which they themselves belong. We think this is elementary in elections, and in judging of the conduct of men under certain circumstances, we believe the best resolution is that based upon the general rule and not the exception.

A careful consideration of all the circumstances we have mentioned, assuming that the thirty-two voters all voted at the election in question, at which only two candidates received votes for the office of municipal president, leads us to the inevitable conclusion that said electors voted illegally in favor of the appellant Manuel H. Roxas, and we are convinced that the court a quo did right in deducting the 32 disputed votes from him.

It should be kept in mind that the intervention of the thirty-two voters in the election here in question, was made possible by the disobedience of the election inspectors of the appellant's party to the order of the court directing the

exclusion of said electors from the voters' list, and it is obvious that the innocent voters should not be made to suffer for a punishable act committed by the inspectors, by depriving them of the exercise of popular sovereignty appertaining to them, called suffrage.

We believe it would be interesting to review our jurisprudence and see in what cases the court was obliged to annul an election in a precinct or municipality. In *Manalo vs. Sevilla* (24 Phil., 609 [decided in 1913]) the election was annulled in the precinct of Jalajala, Rizal, in view of the following irregularities:

- "(1) The registry lists were improperly prepared and signed;
- "(2) not enough voting booths were prepared and furnished; there should be a booth for every 50 voters and one for a fractional part thereof;
- "(3) the ballot boxes were not presented to the public for inspection prior to the opening of the polls as required by law;
- "(4) no person, aside from the election officials, was permitted inside the polling place except the person engaged in casting his ballot;
- "(5) voters were not permitted freely to approach and enter the polling place or witness the balloting as required by law;
- "(6) voters and the public generally were prohibited from approaching the polling place or entering the same;
- "(7) voters desiring to vote were not permitted to approach or enter the polling place except in alphabetical order, and then only singly and as called by the policemen guarding the entrance;
- "(8) the entrance to the polling place was guarded by officers of the law under instructions from the election officials to permit no one to enter except those designated by such officials;
- "(9) the election was carried on as follows: The chairman of the board of inspectors called the name of a voter; the name was taken up by the policemen guarding the door and repeated to the body of electors which was kept waiting thirty meters from the polling place; the voter whose name was called, if present, thereupon stepped forward and was permitted to enter the polling place and vote; after he retired another name was called and the process repeated."

In *Gardiner vs. Romulo* (26 Phil., 521 [decided in 1914]), the election was declared null and void in five precincts of the municipality of Camiling, Tarlac, on account of numerous frauds and irregularities, to wit:

- "(1) Irregularities in the selection of polling stations and the construction of the voting booths;
- "(2) the disappearance of blank ballots after delivery thereof to the municipal treasurer, and the subsequent markings of the remainder by the various election boards;
- "(3) frauds practiced by the inspectors in the preparation of the ballots of illiterate voters;
- "(4) other irregularities and frauds in connection with the preparation and counting of the ballots;
- "(5) intimidation and threats employed by Romulo and his partisans on the day of the election."

In *Lino Luna vs. Rodriguez* (39 Phil., 208 [decided in 1918]), the court said:

"It has been announced in many decisions that the rules and regulations, for the conduct of elections, are mandatory before the election, but when it is sought to enforce them after the elections, they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election

Law were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object. When the voters have honestly cast their ballots, the same should not be nullified simply because the officers appointed under the law to direct the election and guard the purity of the ballot have not done their duty. The law provides a remedy, by criminal action, against them. They should be prosecuted criminally, and the will of the honest voter, as expressed through his ballot, should be protected and upheld."

In *Garchitorena vs. Crescini and Imperial* (39 Phil., 258 [decided also in 1918]), the court said:

"Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts. They should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which do, in fact, defeat the true expression of the opinion and wishes of the voters of said municipality or precinct. * * * 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 precincts 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."

In *Valenzuela vs. Carlos and Lopez de Jesus* (42 Phil., 428 [decided in 1921]), it was held that:

"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."

In *Cailles vs. Gomez and Barbaza* (42 Phil., 496 [decided also in 1921]), the election in the second precinct of Bay, Laguna, was annulled because of the following irregularities, to wit:

"(1) 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;

"(2) 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;

"(3) 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;

"(4) the illiterate voters were not required to take the prescribed oath of their incapacity;

"(5) the registry lists and the minutes of the election were not properly kept; and, lastly,

"(6) after the boxes were locked, the municipal secretary opened them and tampered with the ballots and mixed them."

In *Mandac vs. Samonte* (49 Phil., 284 [decided in 1926]), the election was annulled in two precincts of Currima, Ilocos Norte. The court said:

"We have carefully examined the 173 ballots found in the ballot boxes in the two precincts of Currima and are persuaded that these ballots were altered after the election in such a way that, due to the erasures and rewriting found in many of the ballots of the protestant as well as in those of the protestee, it is really difficult, as the trial court held, to ascertain the true result of the election in that municipality with respect to the office of provincial governor."

And recently in *Demeterio vs. Lopez* (50 Phil., 45, [decided in 1927]), it was held:

"Elections should never be held void unless they are clearly illegal; it is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained. It has been held that gross irregularities not amounting to fraud do not vitiate an election. (20 C. J., 181, sec. 222.)"

And once more, citing 20 Corpus Juris, pages 179-181 it was held:

"* * * But the power to throw out an entire division is one which ought to be exercised with the greatest care and only under circumstances which demonstrate beyond all, reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation, and threats from exercising their franchise."

Comparing the cases cited with the contest under consideration, we see at a glance that there are no such irregularities, frauds, or violations of the law here which produced the nullity of the election in a precinct or municipality; and, it will be seen further, that there is no difficulty in deducting the 32 illegal votes in question and determining, with reasonable certainty, the result of the election, according to the evidence of record.

And without the necessity of repeating the same principles laid down by this Supreme Court in the cases cited recommending that extreme caution be used in the exercise of the power to annul an election authorized by law, we believe that the judgment appealed from should be affirmed, with costs against the appellant.

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