

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EDUVIGIO MENDOZA, BALTAZAR CALIBOT, AND VIDAL CORTES, DEFENDANTS AND APPELLANTS.

G.R. No. 38076. November 04, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

Eduvigio Mendoza, Baltazar Calibot, and Vidal Cortes were accused in criminal case No. 2185 of the Court of First Instance of Mindoro with a violation of section 2654 of the Administrative Code, committed as follows:

"That on or about the 3d day of June, 1931, in the said municipality of Calapan, Province of Mindoro, Philippine Islands, and within the jurisdiction of this court, the said defendants, mutually conspiring and confederating together, wilfully, unlawfully and feloniously deposited in the official ballot box of the said precinct No. 7 of the municipality of Calapan fifty-one (51) official ballots prepared by them without the knowledge and consent of the electors who voted in the aforesaid precinct."

Upon the termination of the trial, Judge Pedro Ma. Sison found the defendants guilty as charged, and sentenced each of them to suffer one year of imprisonment and to pay a fine of P500, with subsidiary imprisonment in case of insolvency, and to pay the proportionate part of the costs.

The defendants appealed to this court, and their attorney now makes the following assignments of error:

"1. The lower court erred in declaring that after the counting of the ballots and before the closing of the two ballot boxes of precinct No. 7 of the municipality of Calapan, 54 filled ballots were introduced, but were not written nor ordered to be prepared by the electors of the said precinct.

"2. The lower court erred in supposing that after the counting of the ballots and before the ballot boxes of precinct No. 7 were delivered to the municipal treasurer of Calapan, the accused utilized or permitted to be utilized many of the excess ballots, filling them with the names of the candidates who naturally should belong to the political faction of the accused, as Felix del Rosario, in order to introduce the said ballots afterwards through the opening at the middle of the cover of the big ballot box or the box for valid ballots.

"3. The lower court erred in finding the accused guilty beyond reasonable doubt of violation of the law charged in the information, and condemning each one of the accused to suffer imprisonment of one year, to pay a fine of P500, suffering in case of insolvency the corresponding subsidiary imprisonment, and to pay the costs of the proceedings.

"4. The lower court erred finally in not acquitting the accused, with costs de oficio."

The case for the prosecution rests upon the testimony of Reynaldo de Claro, Santiago Miraples, Sisenando Bugarin, and Baltazar del Rosario, and the Exhibits A, B, C, D, E, F, G, H, I, I-1, J, J-1, K, and K-1.

Reynaldo de Claro, one of the inspectors in precinct No. 7, testified that after the closing of the polls he and the defendants began to count the ballots; that there were 149 ballots in the large white box for good ballots; that he

wrote down the names of the candidates while the defendant Eduvigio Mendoza, the chairman of the board of inspectors, read the ballots; that the reading of the ballots was finished before midnight, and the spoiled ballots placed in the red box; that the total of the ballots, including the spoiled ballots, was 149; that the good ballots were placed in the large box; that about 12 o'clock he protested because the defendants read the ballots rapidly, and then left the polling place; that he closed with a padlock the box containing the good ballots, but it was not sealed; that he did not remember how many ballots were used during the voting, nor how many ballots were left unused; that these unused ballots were outside, but the defendants Mendoza and Calibot said they ought to be placed in the ballot box; that when he left, the watchers of the Luna faction and a policeman, brother of the defendant Eduvigio Mendoza, were in the polling place; that he left without signing the election return and without securing the permission of the other inspectors; that Santiago Miraples left before he did; that when he left the counting of the ballots was completed, but that he was not sure as to the number of votes obtained by each candidate; that when he left the good ballots were already placed in the white box and the spoiled ballots in the red box.

Santiago Miraples testified that he was a watcher for the Leuterio faction; that the voting was finished by 4 o'clock in the afternoon; that the inspectors prepared the election return; that there were 149 ballots in the large box, 15 of which were found to be marked, and that these 15 ballots were tied together and placed in the small red box; that at 12 o'clock he returned to the polling place and saw there the defendants, a policeman, and some watchers; that he saw the defendants preparing the election return and putting some papers in the white box that looked like ballots; that he was about 4 meters away; that at that time he already knew the result of the election.

It appears that there were two factions in the last general election in Mindoro, the Leuterio faction and the Luna faction. The defendants belonged to the Luna faction. Reynaldo de Claro and Santiago Miraples, the principal witnesses for the prosecution in this case, belonged to the Leuterio faction. We are very suspicious of the good faith of the witness Reynaldo de Claro, and are of the opinion that his testimony is not worthy of much credit. He wilfully abandoned his post of duty as an election inspector, and the only reason he gave for so doing was that the defendants insisted on reading the ballots rapidly. It appears, however, from his own testimony that the reading of the ballots had already been finished when he left the polling place. It further appears that when he left the good ballots had been placed in the white box and the spoiled ballots in the red box, and that he closed these boxes with padlocks, although the unused ballots and other papers had not yet been placed in the box for good ballots. The excuse given by this witness for going away and wilfully neglecting his duty is obviously false and unworthy of credit. To say the least, his action, it seems to us, was designed to place the defendants in an embarrassing position. The testimony of Santiago Miraples is uncertain and of little consequence. Neither he nor Reynaldo de Claro, although they belonged to the faction opposed to that of the defendants, made any report of the alleged irregularities to the provincial fiscal or the provincial commander of the Constabulary or to any other person in authority.

Sisenando Bugarin, the municipal treasurer of Calapan, testified that the defendants delivered the ballot boxes to him about 5 or 6 o'clock on the morning of June 3, 1931, and that they were locked and sealed. He identified Exhibits A and B.

Baltazar del Rosario, the clerk of the Court of First Instance of Mindoro, identified Exhibits C, D, and F.

Exhibit A is the registry list of voters; Exhibit B, the receipt of the defendants for 300 official ballots, 30 sample ballots, and 2 ballot boxes; Exhibit C is the election return of precinct No. 7, showing that 149 persons voted, that 149 ballots were found in the ballot box, and that 15 ballots were rejected because marked; that there were 8 spoiled ballots, and that there were 141 ballots not used. This return was signed by the defendants Eduvigio Mendoza and Baltazar Calibot. Exhibit D is a pad containing 91 unused ballots. Exhibit E is the record of the

election protest of Demetrio Aboboto vs. Felix del Rosario and Agustin Quijano, case No. 557 of the Court of First Instance of Mindoro; and Exhibit F is the decision of the trial judge in that case. Exhibit H is the certificate of the candidacy of Felix del Rosario for municipal president. Exhibits G, I, I-1, J, J-1, K and K-1 relate to the appointment of the defendants.

The defendants Eduvigio Mendoza and Baltazar Calibot testified that during the voting and counting of the votes no irregularities were committed; that Reynaldo de Claro left the polling place on the pretext that he had a headache; that 149 qualified voters voted in the election and that this number of ballots was found in the ballot box; that of the three pads received by them from the municipal treasurer they used about one and one-half pads; that after Reynaldo de Claro had gone away they prepared the election return and the tally sheets and placed them inside the ballot box; that they rolled up the unused ballots and sealed the package; that they were unable to put them in the ballot box because Reynaldo de Claro had locked it and gone away; that Cornelio Escaris, an official watcher of the Leuterio faction, was present when they were preparing the election return and tally sheets and when they put them in the ballot box, which they afterwards delivered to the municipal treasurer of Calapan. They denied having placed in the ballot box the 51 ballots mentioned in the information.

The foregoing is a full and complete statement of the evidence presented in this case.

It is contended by the attorney for the appellants that Exhibits A to F were not offered in evidence by the provincial fiscal, and that the lower court erred in basing its decision on them, especially Exhibits E and F. The record shows that after the fiscal had caused the records we have mentioned as exhibits from A to H to be marked, he said: "Ofrecemos como Exhibits I e I-1, J, y J-1 K y K-1," and then described said exhibits. He then made the following statement: "Con la presentacion de estos exhibitos como pruebas, cerramos nuestras pruebas directas."

Although the foregoing statement of the fiscal was, under the circumstances, ambiguous, nevertheless it seems to have been taken for granted by the attorney for the defendants, as well as by the court, that all the exhibits that had been marked were offered in evidence, and they were all admitted by the court. The attorney for the defendants stated that he had no objection to Exhibit A; that he objected to Exhibit B for lack of identification; that he had no objection to Exhibit C; that he objected to Exhibit D as being impertinent, immaterial and irrelevant; that he objected to Exhibit F, the decision of the lower court in case No. 557, because it had been reversed by this court, and was therefore immaterial, impertinent and irrelevant; that he objected to Exhibit G as being immaterial, impertinent and irrelevant, and to Exhibit H for the same reasons; that he had no objection to the other exhibits.

Coming now to the merits of the case, we are of the opinion that the evidence presented in this case is insufficient to sustain the decision of the trial judge. The fiscal did not present the ballots in question, or any witness to prove the condition of the ballot boxes when they were first opened or the contents thereof. Although the admission of the evidence taken in the election protest (case No. 557) was not objected to by the attorney for the defendants herein, we are of the opinion that it ought not to have been admitted under the circumstances of this case, and that the conviction of the defendants cannot be justified by the evidence taken in the election protest. The record, Exhibit E, is proof of what took place in the election protest, but it is of no probatory value for the purpose of establishing the guilt of the defendants in the present criminal case; nor was the trial judge justified in basing his findings in the present case on the findings made by him in the decision of the election protest. The cases cited by the Solicitor-General are very different from the case at bar. In the case of the United States vs. Anastasio (6 Phil., 413, 414), the accused, with full knowledge of the consequences, under the advice of counsel, in open court, entered into an agreement for the submission of the case on the record taken in the former trial of the accused, which was based on the same facts though upon a complaint charging a different offense.

In the case of the United States vs. Raymundo (14 Phil., 416, 438), the defendants were tried separately. A part of

the evidence taken in the trial of Arcangel was admitted on the trial of Gutierrez by agreement of counsel and with the consent of the accused. The accused was given the privilege of recalling and cross-examining the witnesses whose testimony had been admitted under the agreement.

In the case of the United States vs. Laranja (21 Phil., 500), it appears that complaints were filed against Laranja and one Iyon, charging them with homicide. Iyon was tried first. When the case against Laranja was called, an agreement was made by the attorney for Laranja and the fiscal to admit the testimony taken in the case against Iyon.

The difference between the cases cited and the case at bar is obvious at once. The evidence now in question was taken in a civil case, in which these defendants had no interest. There was no stipulation in this case as to the admission of the testimony taken in the election protest. Two of the witnesses in the election protest testified in the present case. The issues of the two cases were different. The question at issue in the election protest was whether Demetrio Aboboto or Felix del Rosario received the greater number of votes for municipal president of Calapan. It involved seven precincts. Apparently, we are expected to search the record to find something that might be relevant in the present case. It may be stated in passing that the only complaint in the election protest as to precinct 7 was as to the rejection of the fifteen marked ballots. There was no allegation as to the 51 ballots now in question.

The fact that the attorney for the present defendants represented the respondent Felix del Rosario in the election protest is entirely immaterial. No admissions or stipulations made by him in that case affect the defendants in this case in the slightest degree.

The defendants were charged with a violation of section 2654 of the Administrative Code, and were convicted of a violation of said section. That section, as amended by Act No. 3387, reads as follows:

"Fraudulent alteration or deposit of ballot.—Any person who alters a ballot cast at an election or deposits a ballot in the ballot box provided by law for the preservation of ballots cast at an election or removes a ballot from any such ballot box shall be punished by imprisonment for not less than six months nor more than five years, and by a fine of not less than five hundred pesos nor more than two thousand pesos, and by deprivation of the right of suffrage and disqualification from public office for a period of not more than five years."

The English text of this section as it stands is obviously defective, as the headnote clearly shows that this section is only applicable when a person fraudulently deposits a ballot in the ballot box. The evidence of the Government, even if it had been produced in the proper way, would have been insufficient to sustain a finding that the defendants fraudulently deposited the ballots in question in the ballot box. It is admitted that the ballots cast at the election were correctly counted and reported by the defendant inspectors. There is no contention on the part of the prosecution that the result of the election was in any way affected by the alleged deposit of the 51 ballots in question in the ballot box.

The Solicitor-General suggests that the defendants placed the fifty-one ballots in the ballot box with a view of favoring the candidate of their faction in case the election should be protested. Even if it be assumed for the sake of argument that the defendants put the ballots in question in the ballot box, there is nothing to warrant the inference suggested.

For the foregoing reasons, the decision appealed from is reversed, and the appellants are acquitted, with the costs de oficio.

Street, Abad Santos, Hull, and Butte, JJ., concur.

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