

CEISANTO VILLAVIRAY, PROTESTANT AND APPELLEE, VS. CIRIACO ALVAREZ AND FLOBENCIO OLIVA, PROTESTEES. CIRIACO ALVAREZ, APPELLANT.*G. R. No. 42517. December 10, 1934*

Ponente: BUTTE, J.

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This is an election case which involves the office of municipal president of the municipality of Nasugbu in the Province of Batangas. In the elections held on June 5, 1934, Crisanto Villaviray and Ciriaco Alvarez were opposing candidates for said office. The municipal council of Nasugbu, acting as the canvassing board, adjudged 518 votes in favor of Ciriaco Alvarez and 515 votes in favor of Crisanto Villaviray and proclaimed the former duly elected. Thereupon Crisanto Villaviray filed his election protest in due form in the Court of First Instance of Batangas. That court recanvassed the votes and adjudicated 518 votes to Crisanto Villaviray and 509 votes to Ciriaco Alvarez. The latter appealed to this court and the cause was submitted on November 25, 1934.

The only question presented by the specifications of errors of the parties involves the reading of 36 contested ballots. We will take these up in the order presented in the specifications of errors.

The appellant's first assignment of error is as follows:

"Del Precinto No. 1, el Juzgado a quo erro al no adjudicar a favor de Ciriaco Alvarez, como votos de este, las balotas identificadas por exhibitos 2-1, 2-6 y 2-9 y al no rechazar como voto valido a favor de Crisanto Villaviray la balota identificada por Exhibit B-5."

Ballot No. 2-1 was correctly rejected because "Baris" does not sufficiently indicate the intention of the voter to vote for Ciriaco Alvarez.

Ballot No. 2-6 was correctly rejected because the name of the candidate was placed on the line intended for votes for members of the provincial board and not on the line for municipal president. It is deplorable that the prescribed form of ballot has induced this mistake to be committed in a great number of instances that have come to our attention in contested election cases. Voters would not be misled if the form were amended so that all the names of the candidates voted for should be written either on the same lines as the printed names of the offices or all on lines under the printed names of the offices instead of part one way and part the other way, as now in the prescribed form of ballot. Of course, the simplest way, the one in universal use elsewhere, would be to print the names of the candidates. Most of the difficulties in counting ballots and correctly deciding election contests would disappear.

Ballot No. 2-9 was correctly rejected because only the given name and no surname is written. Ballot No. B-5 was correctly counted because "Crisanto V" written on the line for votes for municipal president is a sufficient indication of the intention of the voter under the circumstances of this case. (Namocatcat vs. Adag, 52 Phil., 789, 792.)

The appellant's second assignment of error is as follows:

"Del Precinto No. 2, el Tribunal a quo errd al resolver que votos emitidos a favor de Ciriaco Alvarez, identificados por los exhibitos 4, 4-4, 4-5, 4-3, y 4-7 sean rechazados." Ballots 4, 4—4 and 4-5 upon which the name of Ciriaco Alvarez appears written in the proper place with sufficient distinctness should have been counted for him. The fact that on these three ballots out of a total of over a thousand votes three different persons were voted for another office who were not candidates does not destroy these ballots. They should be considered merely scattering votes under section 464 of the Election Law (Act No. 3387) approved December 3, 1927. These isolated cases do not indicate that the object of the voter was to mark his ballot so thai it might be identified. There is no ground for suspicion of collusion here as there was in the case of Illarde vs. Rodulfa (G. R. No. 30551, promulgated February 18, 1929, not reported), in which some 311 voters wrote on their ballots the name of a person who was not a candidate for office.

Ballot No. 4-3 was correctly rejected because the name of Ciriaco Alvarez was written on the line for votes for members of the provincial board and not for the municipal president.

Ballot No. 4-7 was rejected by the trial court because the first name of Alvarez was abbreviated "A" instead of "C". We have examined this ballot and compared it with the letter "C" in other names on the ballot and are clearly of the opinion that the court erred in reading the letter "C" to be an "A". This ballot should have been counted.

The third assignment of error of the appellant is as follows;

"Del Precinto No. 3 erro igualmente el Juzgado a quo al adjudicar a favor de Crisanto Villaviray como votos validos las siguientes balotas: Exhibitos F-1, F-2, F-3, F-4, las cuales deben ser rechazadas."

On ballot F-1 the voter wrote "Veray Alis". It is suggested in the appellee's brief but not supported by anything in the record that "Alis" is the maternal family name of the candidate Crisanto Villaviray. This ballot should have been rejected.

Ballot F-2 shows only the surname "Villaviray" correctly written. This court has repeatedly held that the surname alone is sufficient to identify the candidate unless there are other candidates of the same name to be voted for on the same ballot which might give rise to confusion. Ballots F-3 and F-4 correctly give the surname Villaviray. Doubt arises as to the reading of the given name. We have come to the conclusion that what is written is a sufficient suggestion of the name "Crisanto".

The fourth assignment of error of the appellant is as follows:

"Del Precinto No. 5, erro asimismo el Juzgado a quo al no adjudicar como votos validos a favor del apelante Ciriaco Alvarez las balotas identificadas por los exhibitos 8, 8-1, 8-8, 8-2, 8-8 y 8-9, y al adjudicar como voto valido a favor de Crisanto Villaviray la balota identificada por Exhibito H-4, cuando debe ser rechazada."

Ballots 8, 8-1, 8-2, 8-3, 8-9 leave no doubt in our minds that it was the intention of the writers to vote for the appellant "Alvarez for the office of municipal president.

With regard to ballot 8-8, the surname is correctly written. Doubt has arisen as to whether we should accept the abbreviation "S." as a sufficient abbreviation of the given name "Ciriaco". It is well known that "C" at the beginning of the name Ciriaco has commonly the same sound as "S". Furthermore, the name Ciriaco is frequently spelled Siriaco. An example of the latter is the name of the well known saint and martyr San Siriaco. Under these circumstances, we think these ballots should be counted. (Cf. Sinogba vs. Reganit, G. R. No. 36244, 57 Phil., 955.) However, had the initial been "M" or "R" or some other letter wholly different in sound from "C" or "S", the ballot would have been rejected.

Ballot H-4 should have been rejected because the name Villaviray is plainly written in handwriting different from

that of the rest of the names written on the ballot.

The protestant Crisanto Villaviray makes the following affirmative assignment of error:

"6. The lower court erred, however, in adjudicating 16 ballots, marked Exhibits 2-2, 2-3, 2-4, 2-5, 2-7 and 2-8 of precinct No. 1; Exhibits 4-1, 4-2, 4-6, 4-8, 4-9 and 4-10 of precinct No. 2; Exhibit 6-1 of precinct No. 3; and Exhibits 8-4, 8-5 and 8-6 of precinct No. 5, all of the municipality of Nasugbu, Province of Batangas, as valid votes in favor of the protestee-appellant Ciriaco Alvarez."

Ballots 2-2, 2-3, 2-4, 2-5, 4-6, 4-8, 4-9, 4-10 all sufficiently indicate the surname Alvarez.[1] The given name Ciriaco is indicated by the abbreviation "S" in view of what was said above with reference to ballot 8-8, the lower court did not err in admitting these ballots.

Ballot 2-7 is written, as nearly as we can make it out, "Siryaco Albiz" which appears on the proper line opposite the printed words "Municipal President". We have no doubt of the intention of the voter to cast his ballot for Ciriaco Alvarez. Ballot 2-8 appears to be written "Ceria Alvaris". We think this ballot too should be counted. Ballot 4-1 can easily be read "Ciriaco Alabaris" and should be counted. Ballot 4-2 seems to be written "Sariko Abs." The ballot is evidently written by a person almost illiterate and while in such cases a liberal allowance should be made for misspellings we cannot quite bring ourselves to the point of holding that the abbreviation "Abs." should be held idem sonans with Alvarez. This ballot should be rejected.

Ballots 6-1 which reads "C. Abares"; 8-4 which reads "Siryaco Alariz"; 8-5 "C. Abares"; 8-6 "C. Abaris", all seem to us to be entitled to acceptance under the rule of idem sonans and sufficiently to indicate the will of the voter to cast his ballot for the protestee Ciriaco Alvarez.

The revision of the ballots thus made added to the ballots uncontested gives Crisanto Villaviray 516 votes and Ciriaco Alvarez 518 votes. It results that the judgment appealed from must be reversed and Ciriaco Alvarez declared the duly elected municipal president of the municipality of Nasugbu, without special pronouncement as to costs in this instance. So ordered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

[1] Modified by Resolution of January 25, 1935.

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