

FELIX V. KATIPUNAN, PETITIONER AND APPELLANT, VS. JULIO A. ANTIPORDA, RESPONDENT AND APPELLEE.*G.R. No. 43043. December 19, 1935*

Ponente: AVANCEÑA, C.J.

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The Court of First Instance in this case declared Antiporda municipal president-elect of Binangonan, Rizal, with a majority of 10 votes over the protestant Katipunan. This court, upon appeal, affirmed said decision, having found, after considering the grounds of the appeal, that the protestee still had a majority of four votes over the protestant. A petition for reconsideration of the decision of this court was filed and it was granted. Consequently, the decision rendered by this court on July 30, 1935 (not reported), was set aside and the case was set for rehearing in accordance with the rules. The case is now before us again for decision on its merits.

The petitioner and appellant assigns as the court's first error its failure to count in his favor 73 of the 89 ballots cast in precinct No. 3 after 6 o'clock in the afternoon of the election day by voters who were unable to vote at that time but were within a radius of 50 meters from the precinct.

The most salient facts relative to this error are as follows:

At 5:30 o'clock in the afternoon, Lieutenant Simplicio Juban of the Constabulary, who was at the precinct as representative of the Department of the Interior, saw many voters within fifty meters thereof. When this precinct was closed for voting at 6 or 6,15 p. m., many voters were within said radius. When Lieutenant Juban returned at 7.20 he saw within said radius many voters who complained to him of not having been allowed to vote and, after he had transmitted this protest to the election inspectors and the majority of the latter had ignored it, he reported the matter to the provincial fiscal. While this was taking place, the appellant Katipunan, who had been informed of this anomaly and who, likewise, appealed to the provincial fiscal for help, came to Manila, at the suggestion of said provincial fiscal, to report the matter to the Secretary of the Interior. Lieutenant Juban, who returned to the precinct at 9 p. m., saw that a list of 94 of these voters (Exhibit C), to which other names were added up to 107, had already been prepared which he checked by calling the names contained therein. At 11 o'clock, the provincial fiscal arrived at the precinct with a communication from the Secretary of the Interior ordering that the voters, who had not been able to cast their votes at the closing of the precinct, be allowed to do so. Upon proceeding with the voting, in compliance with this order, 89 of the 107 voters contained in the list Exhibit C cast their votes, the voting having been finished at dawn of the following day. The majority of the election inspectors did not count these 89 votes but wrapped them and later placed them in the red box. When this protest was heard in the Court of First Instance, the Honorable Judge also refused to count these 89 votes, of which 73 are claimed by the appellant and 10 by the appellee.

Evidence was presented by the appellant to the effect that those 89 voters, whose names appear in the list Exhibit C, were within the radius of 50 meters at the closing of the precinct. Lieutenant Juban testified that upon leaving the precinct at 5:30 p. m. and returning at 7.20, there were about 60 voters within said radius. The very witnesses

for the protestee admitted that there were 25 voters within this radius at the closing of the precinct.

It is, therefore, undisputed that there were voters within the radius of 50 meters at the closing of the voting. The law provides that in such case these voters should be allowed to vote, even after 6 o'clock in the afternoon.

The evidence is preponderant in the sense that the voters, who voted after 6 p. m. and whose names appear in the list Exhibit C, with the exception, perhaps, of one named Julio Unilongco, were within the radius ~@f 50 meters at the closing of the precinct. Many of them so testified upon being presented as witnesses. That list was started when, after the precinct had been closed, the majority of the inspectors refused to allow those who claimed that they were entitled to vote, to do so; and when Lieutenant Juban returned to the precinct at night said list had already been prepared consisting of 94 names. According to said Lientenant Juban's estimate, he saw about 60 voters within the radius of 50 meters shortly before and after 6 p. m.

The appellee attempted to prove that some minutes before and 15 minutes after 6, and before the precinct was declared closed, inspector Anore announced aloud that those who had not yet voted could still cast their votes. Said inspector Anore, policeman Dizon and the other inspector Julio Churbo testified on this point. This testimony was contradicted by the other inspector Natividad and numerous witnesses presented by the appellant, who affirmed that upon the closing of the precinct they tried to vote but were not allowed to do so and when they protested against this anomaly, their protest was ignored. It is really incredible that these voters, who waited for the opportunity to vote, should fail to do so upon being informed that they could still vote, notwithstanding the fact that it was already past 6 o'clock. Judging from the circumstances, these 89 voters were not indifferent to their right to vote when they persisted in claiming this right even at the cost of remaining all night and until dawn around the precinct.

We see no importance in inspector Anore's testimony that the 25 voters whom he saw within the radius of 50 meters at the closing of the precinct informed him that they had already voted, for this is not true. The truth is that these voters had not yet cast their votes. Furthermore, said inspector Anore stated positively that he had counted these voters and that he did so after they had given him that information. If it were true that those voters informed him that they had already voted, there would have been absolutely no necessity of counting them. But, on the other hand, the fact that this inspector counted them, as he affirms, leads to the belief that said voters, really had complained relative to their right to vote.

The circumstances that it was not the election inspectors who made the list Exhibit C and that it was not they who distributed the identification cards, as required by law, which the court gives in its decision as a ground for not counting these 89 votes, are of no moment if it is borne in mind that these requisites could not have been complied with in view of the attitude of the majority of the inspectors.

It clearly appears, upon examination, that the 89 ballots referred to in the first alleged error are valid, 64 in favor of the petitioner and 10 in favor of the respondent.

We have examined the 40 ballots claimed by the respondent in this instance and found that only 5 are valid, the rest not being so, of which 10 were found with their coupons in the red box, one is illegible, 5 in favor of "J. Anti", and 19 in favor of "J. A."

By adding these 10 ballots in favor of the respondent to the majority of 10 votes conceded to him by the court in the appealed decision, and 5 of the 40 ballots claimed by him in this instance, making a total of 25 votes, the petitioner would have a majority of 39. votes over the respondent, even without considering whether or not the petitioner is entitled to the other votes claimed by him in his appeal.

For these considerations, reversing the appealed judgment, the appellant is declared lawfully elected to the office

of municipal president of Binangonan, Province of Rizal, with the costs of both instances to the appellee. So ordered.

Malcolm, Villa-Real, Diaz, and Recto, JJ., concur.

CONCURRING

ABAD SANTOS, J.,

While adhering to the views expressed in my concurring opinion when this case came up for decision for the first time, I now concur in the result of the majority decision, in view of the fact that, upon a rehearing, a majority of the members of the court, including myself, have reached the conclusion that, even without taking into consideration the 89 ballots cast in precinct No. 3 between 12 a. m. and 2.30 a. m. of the day following the date fixed for the election, the appellant Felix V. Katipunan obtained a majority of the votes legally cast for the office of municipal president of Binangonan, Province of Rizal.

CONCURRING

VICKERS, J.,

I concur. I wish to add, however, that I do not agree with the action of the court in voting to restrict the decision to a single assignment of error merely because the resolution of it was sufficient to dispose of the case. All the questions raised and reargued were considered and decided by the court, and the parties are entitled to know the ruling of the court thereon, more especially since it was found that the appellant Katipunan was elected without taking into consideration the votes cast after the polls were closed.

HULL, J., with whom concur Imperial, Butte, and Goddard, JJ., dissenting:

After a careful consideration of the evidence of record, we cannot concur in the finding of fact that 89 or 105 or any such number of voters were within the yard of the voting place waiting to cast their ballots when the polls were closed by the election inspectors.

The evidence is conflicting, and the trial judge, who had the advantage of seeing the witnesses testify on the stand, arrived at just the opposite conclusion on this question of fact from that of the majority of this court.

This is not the first time that a dispute has arisen in the municipality of Binangonan, Province of Rizal, as the polls had been kept open after six o'clock in that municipality in the general election on the 6th of June, 1916, as shown by the contested election case of Lino Luna vs. Rodriguez (39 Phil., 208),

The municipal election that we are now considering was hotly contested, and a number of interested partisans doubtless remained in the vicinity of the polling booths all day long, among whom would be a number who had already voted.

I think it is clear from the whole record that when the polls were closed at 6.15 almost all present in the yard were curiosity seekers. Had there been eighty to a hundred voters about to be disenfranchised together with the visitors, the voting precinct would have been packed with humanity. The fact that the polls remained open for fifteen minutes to enable those present who wanted to vote, to vote, is certainly opposed to the idea that the majority of

the election inspectors in this precinct desired to close the polls unlawfully and so deprive qualified voters of their right to exercise their franchise.

In the case of Lino Luna vs. Rodriguez, above-mentioned, this court said:

"Experience and observation has taught legislatures and courts that, at the time of a hotly contested election, the partisan spirit of ingenious and unscrupulous politicians will lead them beyond the limits of honesty and decency and by the use of bribery, fraud and intimidation, despoil the purity of the ballot and defeat the will of the people at the polls. Such experience has led the legislatures to adopt very stringent rules for the purpose of protecting the voter in the manner of preparing and casting his ballot to guard the purity of elections. (Paulino vs. Cailles, 37 Phil., 825.)

"The infinite ingenuity of violent partisan spirit in evading the rules and regulation of elections and the use of bribery, fraud and intimidation has made necessary the establishment of elaborate and rigid rules and regulations for the conduct of elections. The very elaborateness of these rules has resulted in their frequent violation and the reports of the courts are replete with cases in which the result of an election has been attacked on the ground that some provision of the law has not been complied with. Presumably, all the provisions of the election laws have a purpose and should therefore be observed. (Detroit vs. Rush, 82 Mich., 532; 10 L. R. A., 171; 9 R. C. L., 1091; Patton vs. Watkins, 131 Ala., 387; 90 Am. State Rep., 43f 72.)"

The general language thus enunciated can well be applied to the present case. The list of the voters was not certified by a disinterested person until 10.30 p. m., so sufficient opportunity existed for the protestant to have recruited a large number of his followers who had not voted and were not present at the time the polls were closed, and as he has now succeeded by the decision of this court in having such votes counted, they control the result of this close election. These belated votes have an entirely different proportion to the votes that were regularly cast. The number of votes in the white box in this precinct, which neither party desired to open, contained 186 for Katipunan and 152 for Antiporda, while of the belated ballots, 10 were for Antiporda and 73 were claimed by Katipunan. In other words, a slight majority in the regular votes became over seven to one in the questionable votes.

In the desire to have a fair election and to extend the right to eligible voters to cast their votes that has animated the majority of this court, they are establishing a precedent that may be utilized to thwart honest elections in the future. Introduction into these Islands of that odious and scandalous political device known in American politics as "midnight voting" is something that none of us want. The election inspectors who received these 89 ballots certified truthfully that these be Hots were cast at about 2 a. m. of the day after the election. The Election Law (sec. 446) provides that the polls shall be open from seven o'clock in the morning until six o'clock in the afternoon and "voters arriving after that hour shall not be permitted to vote."

We are therefore compelled to register our dissent to the counting of these ballots.

Judgment reversed.

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