

DOMINGO CACHO, PROTESTANT AND APPELLANT, VS. JOSE ABAD, PROTESTEE AND APPELLEE.*G.R. No. 43761. December 06, 1935*

Ponente: MALCOLM, J.

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The court is, called upon in this case to decide as to who shall be proclaimed elected governor of the distant Province of Batanes in the last general elections. As will presently appear, electoral preference was nearly equally balanced.

Four candidates contested for the governorship. Following the election, the provincial board of canvassers found that candidate Jose Abad had received 485 votes as against 482 for candidate Domingo Cacho, or a majority of three votes for the former. After a motion of protest had been heard in the Court of First Instance, the judge thereof rendered a decision confirming this result but reducing Abad's majority to two votes. On appeal Cacho submits that he was elected with a majority of one vote, at least, and Abad submits that he was elected with a majority of six votes, at least.

Appellant's assignment of errors raises two issues. But the question suggested by the second error need not detain us long, because excepting that candidate Jose Abad appears to have prepared one ballot for an illiterate voter, as shown by Exhibit 0, there is extant in the record no further evidence demonstrative of a deduction that a vote should be taken away from Abad's total. (Election Law, Section 453, as amended.) The outcome is determined by a ruling on the first assigned error relative to two ballots, and this ruling in turn is determined by a subsidiary one of whether or not these ballots should be considered marked.

Section 442 of the amended Election Law, in describing official ballots, prescribes a legend thereon reading, "Do not make any mark on this ballot or write anything thereon but the names of the candidates you vote for. Any violation of this instruction will invalidate the ballot." This injunction is enforced by section 452 of the same law which makes it "unlawful to erase any printing from the ballot or to add any distinguishing feature thereto, or to intentionally tear or deface the same, or to make any mark thereon other than the names of the candidates voted for." Finally, section 463 of the amended Election Law provides that it shall be the duty of the board of inspectors to examine the ballots "for marked ballots, and if any such be found they shall be placed in a package securely sealed and inscribed 'marked ballots' together with the signature of the inspectors and be returned in the same manner as provided for excess ballots. Marked ballots shall in no case be counted. * * *."

That is the law. On and around it sundry rules have been enunciated by the courts. These rules have been gathered together in treatises like Laurel's Rules On The Appreciation of Ballots, Chapters II and III, and Francisco's The Conduct In Court of Election Cases, Chapter XXX. (See further 20 C. J., pp. 162 et seq. and 9 R. C. L., pp. 1135 et seq.) Yet after all possible has been said on the subject, it remains true that exact rules cannot be laid down by which, apart from the evidence afforded by the ballot itself, it may be determined whether particular marks are distinguishing marks. It also remains true that the secrecy of the ballot must be maintained, and to accomplish this

object precautions must be taken against persons in the polling place being able to ascertain the ballot cast by a voter. It final ^ remains true that a spirit of liberality must animate election boards and courts in order that the will of the electorate may be effectuated. Voters should not be disenfranchised retroactively for technical causes by reviewing authorities. No ballot should be discarded as marked unless its character as such is unmistakable. The contrast is always between marks that were apparently accidentally, carelessly, or innocently made, which do not invalidate the ballot, and marks designedly placed¹ thereon by the voter with a view to possible future identification of the ballot, which do invalidate it.

At this point, taking under view the two ballots in question, we find the first with the figure "8" appearing after a name for senator and the second with a mark which the appellant claims is the number "7" appearing in the line for municipal vice president, but which on examination is found to be merely a rough continuation of the name "Hermogenes Gonzales". The first ballot contains a superfluous and distinguishing mark easily identifying the ballot, while the second ballot does not.

In accordance with the foregoing, deducting one vote from Jose Abad's total, he still retains a margin over his rival, thus making unnecessary a discussion of the appellee's assignment of errors. Wherefore, the judgment will be affirmed and Jose Abad declared elected governor of the Province of Batanes by a majority of one. So ordered, with the costs of this instance taxed against the appellant.

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

Judgment affirmed.

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