

JOSE C. CAPALLA, PROTESTANT AND APPELLANT, VS. RAMON C. TABIANA, PROTESTEE AND APPELLEE.*G. R. No. 44566. March 31, 1934*

Ponente: LAUREL, J.

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At the general elections of June 5, 1934, Jose G. Capalla and Ramon C. Tabiana were candidates for the office of municipal president of Leon in the Province of Iloilo. The municipal council of Leon, acting as municipal board of canvassers, proclaimed Ramon C. Tabiana as the candidate-elect for that office, he having received 836 votes as against 809 votes received by Jose C. Capalla. Protest was filed by Capalla against the election of Tabiana. In that protest only precincts 1, 2 and 4 were involved. The protest was heard in the Court of First Instance of Iloilo and after trial, that court found that the protestant had received 782 valid votes as against 756 valid votes received by the protestee, and accordingly rendered decision upholding the protest and declaring the protestant, Jose C. Capalla, the president-elect of the municipality of Leon, Province of Iloilo, with a majority of 26 votes. The protestee, Ramon C. Tabiana, appealed and this court in a decision promulgated on May 18, 1935 (G. R. No. 42986 [61 Phil., 1046]) found that the protestant-appellee, Jose C. Capalla, received 786 votes and the protestee-appellant, Ramon C. Tabiana, 760 votes or the same majority of 26 votes in favor of the protestant-appellee, and affirmed the decision of the trial court with costs against the protestee-appellant. Thereafter, counsel for the protestee-appellant, Ramon C. Tabiana, presented a motion for reconsideration alleging among other things that the lower court did not make any pronouncement or finding of facts as regards 64 ballots and failed to adjudicate them in favor of the protestee-appellant. The motion for reconsideration was decided by this court on July 31, 1935 (61 Phil., 1056). The dispositive part of the decision is as follows:

"The foregoing means that the decision of this court in this case heretofore promulgated will stand as guide to the trial court, except as it discusses the third and seventh assigned errors. The new trial will be confined to the adjudication of ballots in precinct No. 4 of Leon, Iloilo, which were not adjudicated in the trial judge's decision. The evidence submitted regarding these ballots and alleged fraud will stand and may be taken into consideration and other evidence on these questions may be tendered by the parties. With the observations above made, the decision of this court in this case, promulgated on May 18, 1935, will be set aside, and the record remanded immediately to the court of origin for prompt action at a new trial in accordance with instructions herein made. So ordered, without special pronouncement as to costs in this instance."

The records of this case were accordingly remanded to the court of origin for further proceedings and, on October 10, 1935, the trial court rendered its decision adjudicating to the protestant-appellee, Jose C. Capalla, a total of 802 votes and to the protestee-appellant, Ramon C. Tabiana, a total of 820 votes or a majority of 18 votes in favor of the original protestee-appellant, Ramon C. Tabiana.

From the decision rendered by the trial court on October 10, 1935, the protestant-appellee, Jose C. Capalla, now protestant-appellant, appeals to this court. This is the second time then that this case is being elevated to this court on appeal. In his brief, the protestant-appellant, Jose C. Capalla, makes the following assignment of errors:

"I. The trial court erred in taking cognizance of the case on a new trial inasmuch as the one-year period provided for in paragraph 2 of section 479 of the Election Law has already expired.

"II. The trial court erred in considering and in admitting eighty-four (84) ballots as part of the questioned ballots in precinct 4 of the municipality of Leon, Province of Iloilo.

"III. The trial court erred in counting sixty-four (64) ballots specified below as valid votes in favor of protestee-appellee.

"Suberror: The trial court erred in not annulling the election in precinct No. 4 of the municipality of Leon, Province of Iloilo.

"IV. The trial court finally erred in not declaring the protestant-appellant, Jose C. Capalla, municipal president-elect of the municipality of Leon, Province of Hoilo."

In the first assignment of error, it is contended by the protestant-appellant, Jose C. Capalla, that the trial court had no jurisdiction to hear and decide the case on a new trial because at that time the one-year period prescribed in paragraph 2, section 479 of the Election Law, within which proceedings in election contests should be terminated, had already expired. The motion of protest was filed by the herein protestant-appellant on June 25, 1934 and it is contended that when the case was heard on a new trial in the court below on September 24, 1935, pursuant to the order of this court, the one-year period had already prescribed. The protestant-appellant relies on the case of *Portillo vs. Salvani* ([1930], 54 Phil., 543) in which it was held that the requirement that "All proceedings in an electoral contest shall be terminated within one year" is mandatory and that if such proceedings are not terminated within that period the trial court loses authority over the case at the expiration thereof. In the later case of *Cacho vs. Abad* ([1935], "61 Phil., 606), however, it was held that the last sentence of paragraph 2 of section 479 of the Election Law relates exclusively to proceedings in Courts of First Instance. In this case it was said:

"* * * This court has assumed jurisdiction of a considerable number of election cases which arrived here after the expiration of the year period without any protest being made against this practice, which, it is believed, conforms to the purpose of the Election Law and is not in any way in conflict with the decision in *Portillo vs. Salvani*, supra."

The doctrine laid down in this case of *Cacho vs. Abad*, supra, was adhered to in the more recent case of *Salcedo vs. Hernandez* ([1935], 62 Phil., 584) where it was held that the Election Law cannot be deemed to restrict "the inherent jurisdiction of the Supreme Court to remand an election case where it is necessary and proper in order to achieve the ends of justice." The first assignment of error is, therefore, overruled.

In the second assignment of error, the protestant-appellant, Jose G. Capalla, alleges that the trial court erred in admitting 84 ballots. It appears that at the new trial held in accordance with the order of this court in its decision of July 31, 1935, the protestant-appellant, through his counsel, in addition to the evidence theretofore presented offered 20 ballots cast in precinct No. 4 and marked as Exhibits 38 to 55 (18 ballots) and Exhibits EKE and LLL (2 ballots) (s. n., session of September 27, 1935, p. 5) which ballots were admitted by the trial court (*ibid.*, p. 6). Likewise, the protestee-appellee, Ramon C. Tabiana, through his counsel, offered as additional evidence 66 ballots also cast in precinct No. 4 and marked as Exhibits XX to GGG (10 ballots), PPP to SSS (4 ballots), III to JJJ (2 ballots), TTT to VW (3 ballots), XXX to JJJJ (13 ballots), KEEK to AAAAA (16 ballots), BBBB to GGGG (6 ballots), HHHH to QQQQ (10 ballots), XXXXXXXX to YYYY- YYYY (2 ballots) (s. n., session of September 27, 1935 p. 7) which ballots were also admitted by the trial court. (*Ibid.*, p. 8.) The 86 ballots just enumerated, minus Exhibits JJJJ and IIIII, which two ballots appear to have been rejected by the trial court in its decision of October 10, 1935, for the reason that Ramon C. Tabiana, protestee-appellee, was improperly voted for therein, are the 84 ballots referred to in the second assignment of error of the protestant-appellant, Jose C. Capalla,

and alleged by him to have been improperly admitted by the trial court. The protestant-appellant insists that the court below erred in receiving and passing upon the said 84 ballots, which include the 20 ballots offered by him as additional evidence, in view of the stipulation alleged by him to have been made by the parties in the original trial of the protest in the Court of First Instance of Hoilo to the effect that the protestee-appellee, Ramon C. Tabiana, received 56 valid votes in his favor and the protestant-appellant, Jose C. Capalla, received 39 valid votes in his favor in precinct No. 4 in the municipality of Leon, Hoilo, and that there were only 3 disputed ballots claimed by the protestee-appellee, and that the protestee-appellee having failed to prove any error or mistake in connection with this stipulation made in the trial on December 7, 1934, the court improperly accepted these 84 ballots in the new trial. This contention cannot be sustained. The decision of this court of July 31, 1935 set aside its original decision of May 18, 1935, and remanded the records of the case to the court below for a new trial which "will be confined to the adjudication of ballots in precinct No. 4 of Leon, Iloilo, which were not adjudicated in the trial judge's decision." It is not denied by the protestant-appellant, Jose C. Capalla, that the 84 ballots (together with the 2 ballots marked Exhibits JJJJ and IIIII) were all presented as evidence in the new trial. As above stated, 66 of the ballots were claimed and offered as evidence by the protestee-appellee, Ramon C. Tabiana, and 20 were claimed and presented as evidence by the protestant-appellant, Jose C. CapaDa. These 86 ballots were not considered and adjudicated by the court a quo in the original trial of the case. There does not seem to be any doubt, therefore, that these 86 ballots were the very ballots which the trial court failed to adjudicate in favor of either the protestant-appellant or the protestee-appellee in the original trial and as to which this court, on July 31, 1935, directed the trial court to make pronouncements and findings of fact. The second assignment of error, therefore, is overruled.

In the third assignment of error, the protestant-appellant, Jose C. Capalla, challenges the action of the trial court in admitting 64 ballots as valid votes in favor of the protestee-appellee, Ramon C. Tabiana, and in this connection presents an alternative petition for the annulment of the election in precinct No. 4, municipality of Leon, Hoilo, should it not be possible to segregate the aforesaid 64 ballots from the rest of the ballots cast in that precinct. In the amended motion of protest filed by the protestant-appellant, Jose C. Capalla, dated July 23, 1934, it was alleged that some 62 voters registered on the basis of education illegally voted as incapacitated persons without having taken the required oath of incapacity prescribed in section 427, in relation to sections 431 and 432, of the Election Law. Notwithstanding the fact that evidence was presented by the protestant-appellant, Jose G. Capalla, to prove this allegation contained in subparagraph K of paragraph 6 of his amended motion of protest, the trial court in its original decision of December 18, 1934 did not make any finding or pronouncement in regard thereto. Neither did this court in its original decision of May 18, 1935, affirming the decision of the trial court, make any reference to this point raised in the pleadings of the protestant-appellant, Jose C. Capalla. This is due to the fact that both the trial court and this court considered the stipulation between the parties, already mentioned in passing upon the protestant-appellant's second assignment of error, as binding and conclusive with respect to the number of valid votes obtained by the contestant in precinct No. 4, namely 39 votes for the protestant-appellant, Jose C. Capalla, and 56 votes for the protestee-appellee, Ramon C. Tabiana; In the decision of this court of July 31, 1935, ordering a new trial with reference to unadjudicated ballots in precinct No. 4, appears this statement: "The evidence submitted regarding these ballots and alleged fraud will stand and may be taken into consideration and other evidence on these questions may be tendered by the parties." In the new trial held pursuant to the order of this court the contending parties reproduced all the evidence theretofore presented and admitted in the original trial of the case. The evidence, therefore, presented by the protestant in support of his allegation contained in subparagraph K of paragraph 6 of his amended motion of protest of July 23, 1934, to the effect that voters qualified by reason of education voted with the aid of helpers without having first taken the required oath of incapacity, was before the trial court and should have been considered and specific finding and pronouncement made in its decision in the retrial ordered by this court. This the trial court did not do. However, in order to avoid

further delay in the disposition of this case. and in view of the conclusion arrived at by this court in relation to the alleged illegal voting of 62 educated voters above referred to, we shall here dispose of this contention of the protestant-appellant, Jose C. Capalla, in relation to his alternative petition for the annulment of the election in precinct No. 4.

Under section 452, taken in connection with section 432, subsection (e) and section 453, of the Election Law, an elector registered on the basis of educational qualification must personally prepare his ballot on election day and may be assisted in the preparation of his ballot only if he has filed with the board of election inspectors at any of its two meetings for registration and revision a sworn statement of his incapacity. (See *Kiamzon vs. Pugada* [1930], 54 Phil., 755; *Escudero vs. Hagos* [1932], 56 Phil., 833; *Reyes vs. Mendiola* [1932], 56 Phil., 851; *Ignacio vs. Navarro* [1932], 57 Phil., 1000.) In order, however, to avoid ballots prepared by helpers for educated voters the following conditions must exist: (1) The voters must have registered on the basis of education and not as illiterates; (2) they must have been helped in the preparation of their ballots without first taking the oath of incapacity required by law; (3) the ballots prepared for these educated electors must be identified; and (4) it must be clearly shown for whom or in whose favor the ballots were cast by them. All of these conditions must concur before the ballots of educated voters prepared with the aid of helpers may be rejected as illegal. Let us subject the ballots referred to, to the test.

According to Exhibit 56 which is a list of the names and qualifications of electors and the persons who helped them in the preparation of their ballots in precinct No. 4 of Leon. Iloilo, which list is admitted by both parties (s. n., p. 102), Benito Tabiana aided 19 electors, 6 of whom were registered on the basis of education and 13 on the basis of property or office; Aurelio Calacasan aided 7 electors, 8 of whom were registered on the basis of education and 4 on the basis of property or office; Francisco Capuspos aided 4 electors, 3 of whom were registered on the basis of education and one on the basis of property; Gil Tabifranca aided 12 electors, 3 of whom were registered on the basis of education and 9 on the basis of property or office; Juan Cahipo aided 8 electors, 6 of whom were registered on the basis of education and 2 on the basis of property or office; Emilio Cabardo aided 20 electors, 12 of whom were registered on the basis of education and 8 on the basis of property or office. According to this Exhibit 56, therefore, 77 electors voted in precinct No. 4 with the help of others, 37 of which electors were registered on the basis of education and 40 on the basis of property or office. We have compared this Exhibit 56 with the registry list of voters in precinct No. 4, marked Exhibit P, and we found that although Exhibit 56 contains a few minor mistakes in the spelling of some names and in the registry numbers* of some voters, the qualifications indicated therein tally perfectly with those appearing in Exhibit P.

It is apparent that the 37 educated voters prepared their ballots with the aid of helpers without first taking the required oath of incapacity. We have found no sworn statements of these educated voters in the records and we have been referred to none. The ballots of these 37 educated voters are, therefore, illegal. But, as has been observed, in order that they may be rejected it is also necessary to identify the ballots and determine, finally for which candidate they were cast and from whom they should be deducted.

Only three of the helpers were able to identify the ballots prepared by them. They are Benito Tabiana who identified 10 ballots, to wit, Exhibits XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFP and GGG (s. n., pp. 35, 36), Francisco Capuspos who identified 4 ballots, to wit, Exhibits III, JJJ, KKK and LLL (s. n., p. 44) and Emilio Cabardo who identified 20 ballots, to wit, Exhibits 38 to 55, 8-X and 8-Y (s. n., pp. 101, 102). But Benito Tabiana is contradicted by the handwriting expert, Pablo R. Verzosa, who added to the 10 ballots identified by Tabiana (our more ballots, namely, Exhibits PPP, QQQ, RRR and SSS (s. n., pp. 52, 53). The testimony of this expert is in turn contrary to the demonstrative table on page 26a of the brief of the protestant-appellant, Jose C. Capalla, and to Exhibit 56, where Tabiana is shown to have prepared 19 ballots. As to Francisco Capuspos, we notice that he

admitted that two of the ballots identified by him (Exhibits EEK and LLL) do not exactly appear to be in his handwriting (s. n., pp. 44, 45). Besides, the handwriting expert, Pablo R. Verzosa, pointed to five ballots (Exhibits III, JJJ, TTT, UUU and VW) as being the ones prepared by this helper (s. n., p. 53), 3 of which ballots as will be noted are different from those identified by the helper, the expert stating that Exhibits KEK and LLL were not prepared by Capuspos (s. n. p. 57). It should also be observed that both Francisco Capuspos and Emilio Cabardo, in preparing ballots both for educated and for illiterate electors, voted not only for one but for both candidates. Of the seven ballots alleged to have been prepared by Francisco Capuspos, 5 were cast in favor of the protestee-appellee, Ramon C. Tabiana, to wit, Exhibits III, JJJ, TTT, UUU and VW, and 2 in favor of the protestant-appellant, Jose C. Capalla, to wit, Exhibits KEK and LLL. Of the 20 ballots alleged and claimed to have been prepared by Emilio Cabardo, 18 were cast in favor of the protestant-appellant, to wit, Exhibits 38 to 55, and 2 in favor of the protestee-appellee, to wit Exhibits 8-X and 8-Y. There is no evidence of record which would indicate to us the particular ballots prepared by the helpers for the 37 educated voters. Not even the protestant-appellant, Jose C. Capalla, in the new trial held in the court below, was able to identify them, when asked by the trial judge to do so (p. 3, s. n., session of September 24, 1935). We are, at a loss then to point to the particular ballots prepared by the helpers for educated voters. We can not identify them. And assuming the illegality of the 37 ballots, we certainly can not reject more than that number.

Under the circumstances, we do not find ourselves justified in disturbing the action taken by the trial court in adjudicating in the new trial the additional 20 votes in favor of the protestant-appellant, Jose C. Capalla, and the additional 64 votes in favor of the protestee-appellee, Ramon C. Tabiana.

With respect to the alternative petition of the protestant-appellant for the annulment of the election in precinct No. 4 of Leon, Iloilo, only a few words need be said. Courts are slow in annulling elections. It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step. (*Gardiner vs. Romulo* [1914], 26 Phil., 521; *Garchitorena vs. Crescini and Imperial* [1918], 39 Phil., 258, 288; *Fernandez vs. Mendoza* [1932], 57 Phil., 687, 689; *Ignacio vs. Navarro* [1932], 57 Phil., 1000; *Cailles vs. Gomez and Barbaza* [1921], 42 Phil., 496; *Bulan vs. Gaffud* [1927], 49 Phil., 906; *Demeterio vs. Lopez* [1927], 50 Phil., 45, 48; *Dayrit vs. Lazatin* [1935], G. R. No. 43149 [61 Phil., 1057].) We do not think that there is sufficient reason for the annulment of the election in precinct No. 4, municipality of Leon, Iloilo. The third assignment of error is, therefore, overruled.

The fourth assignment of error need not be considered.

Twenty (20) additional votes should, therefore, be added to the total of 786 votes which this court in its decision of May 18, 1935, affirming the original decision of the trial court, adjudicated to the protestant-appellant, Jose C. Capalla, and sixty-four (64) additional votes should be added to the 760 votes awarded to the protestee-appellee, Ramon C. Tabiana, in the same decision, giving the same majority of 18 votes in favor of the protestee-appellee, Ramon C. Tabiana, awarded by the trial court.

As thus modified, the judgment of the trial court will be affirmed without special pronouncement as to costs.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Recto, JJ., concur.

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