

**BASILIO MARTINEZ, PETITIONER, VS. JOSE GUTIERREZ DAVID,
JUDGE OF FIRST INSTANCE OF CAPIZ, AND BERNARDO NAVARRA,
RESPONDENTS.**

G.R. No. 46172. August 22, 1938

Ponente: AVANCEÑA, C. J.

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AVANCEÑA, C. J.:

In civil case No. 3623 of the Court of First Instance of Capiz, on election protest, in connection with the elections held on December 14,1937, the court declared, as the result of said elections for the office of councillors, as follows:

Names

Precincts

1

2

3

4

5

6

7

Total

Federico Andaya

198

87

133

133

123

83

109

868

Basilio Martinez

192

90

134

86

121

81

96

800

Aquilino Samson

119

190

126

57

152

77

110

831

Candelario Martinez

152

173

133

57

121

81

110

827

Salvador Kapunan

162

78

148

123

96

77

86

770

Fortunato Villareal

118

182

106

62

137

108

104

817

Bernardo Martinez

112

180

118

52

128

70

106

766

Bernardo Navarra

141

170

101

39

161

56

126

803

Baltazar Corcino

205

82

130

95

106

125

84

727

Whereupon, the court declared that the following six are, with respect to the number of votes obtained, the ones who were elected councillors:

Votes

1.

Federico Andaya

866

2.

Aquilino Samson

831

3.

Candelario Martinez

827

4.

Fortunato A. Villareal

817

5.

Bernardo Navarra

803

6.

Basilio Martinez

800

It should be noted that the last two, who obtained the last number of votes, are Basilio Martinez, with 800 votes, and Bernardo Navarra with 803 votes, and that Baltazar Corcino, who was one of the candidates voter for, obtained only 727 votes.

During the hearing of the protest, fifty-one ballots (A-1 to A-61) were questioned by Basilio Martinez who claimed that, notwithstanding the fact that 4 of them are in his favor, they should not be counted on the ground that they are marked ballots prepared by only one hand. The court, however, declared them to be valid, thereby overruling the objection of Basilio Martinez, and ordered them counted in favor of the persons appearing to have been voted for therein. These fifty-one ballots were, for this reason, included in the recount and adjudicated in favor of the candidates voted for therein, with the exception of Basilio Martinez to whom the four ballots, announced by him to have been cast in his favor, were not adjudicated.

After said decision had been rendered, Baltazar Corcino and Basilio Martinez sought the reconsideration thereof.

Corcino alleged that he obtained 827 votes, and not 727, as stated in the decision rendered, by reason of a typographical error. The court, considering this allegation to be well founded, admitted that Corcino really obtained 827 votes and declared him councilor-elect, as a consequence, thereby excluding Basilio Martinez, who had been proclaimed the sixth councilor-elect in the original decision.

Basilio Martinez, in turn, alleges in his motion for reconsideration that, inasmuch as the fifty-one ballots referred to above have been declared valid, the 4 ballots cast in his name should have been adjudicated to him. The court denied said petition and this court is of the opinion that, in so doing, it acted with evident abuse. In denying the petition of Basilio Martinez, the court based its opinion on the ground that Basilio Martinez did not ask that the four ballots in question be counted in his favor. This court finds this ground to be untenable. Basilio Martinez could not have made such petition during the hearing of the protest because he claimed that said fifty-one ballots, being marked ones, should not be counted in favor of the candidates voted for therein. However, Basilio Martinez announced that four of them had been cast in his favor. Before the original decision was rendered in the case,

Basilio Martinez could not ask for the adjudication to him of the four ballots, which he claimed should not be counted for illegal, inasmuch as it was not then known whether the court would declare them valid or not. After the decision of the court had been rendered, it was the chance of Basilio Martinez to make such claim, which he in fact did in his motion for reconsideration. According to all the foregoing, the court should have counted the four of the fifty-one ballots in question in favor of Basilio Martinez upon rendering its original decision, and, at all events, after Basilio Martinez had filed his motion for reconsideration. If necessary, the court should have given Basilio Martinez the opportunity to present and submit for examination said four ballots claimed by him to have been cast in his favor. The court, in not doing so, acted with evident abuse.

Wherefore, the judgment rendered on March 9, 1938, is set aside and, with respect to the four ballots claimed by Basilio Martinez to have been cast in his favor, the case is ordered remanded to the court of origin so that it may pass upon the claim of Basilio Martinez in connection with said four ballots and render the corresponding judgment in accordance with its findings, without special pronouncement as to the costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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