

PRIMITIVO S. PEREZ, PETITIONER AND APPELLANT, VS. NICOMEDES SULLER, RESPONDENT AND APPELLEE.*G.R. No. 46710. November 18, 1939*

Ponente: LAUREL, J.

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As a result of the general elections held on December 14, 1937, the municipal board of canvassers of the municipality of San Manuel, Province of Pangasinan, proclaimed Primitivo S. Perez, the petitioner-appellant in this case, as the mayor-elect of said municipality with a majority of one vote, having obtained 1,290 votes as against 1,289 votes for his opponent Nicomedes Suller, the respondent-appellee herein. Suller, on December 21, 1937, filed his motion of protest with the Court of First Instance of Pangasinan, impugning the election of Perez. The Court of First Instance of Pangasinan declared Suller mayor-elect of San Manuel, Pangasinan, with a majority of 10 votes over Perez. From this judgment the latter appealed to the Court of Appeals, which rendered a decision confirming the election of Suller with a majority of 16 votes. We are now asked by the petitioner-appellant, Primitivo S. Perez, to review this decision of the Court of Appeals in these certiorari proceedings.

The only question presented for resolution has reference to the admissibility of 26 ballots in favor of the petitioner-appellant on which he appears to have been voted as "F. Ferez", "F. S. Ferez", "F. S. Perrez", or "F. Perez." There is no dispute as to the number of ballots and the names written thereon, and these controverted ballots appear listed on pages 6 to 8 of the brief for the petitioner-appellant and on pages 2 to 3 of the brief for the respondent-appellee as follows:

PRECINCT NO. 1

P-1 F. S. Perez

P-3
F. S. PerezP-4
F. Perez

PRECINCT NO. 2

P-16
F. S. PerezP-17
F. S. Perez

PRECINCT NO. 3

P-72
F. S. Perez

P-78 F. S. Peres

P-74 F. S. Peres

P-75 F. S. Peres

P-78 F. Perez

P-79 F. Perez

P-81 F. Peris

PRECINCT NO. 4

P-145 F. S. Peres

P-146 F. S. Peres

P-147 F. Peres

P-148 F. Peres

P-149 F. Peres

P-150 F. Peres

PRECINCT NO. 5

P-205 F. Piris

PRECINCT NO. 6

P-215 F. S. Perez

P-216 F. S. Peres

PRECINCT NO. 7

P-230 F. S. Ferez

PRECINCT NO. 8

P-263 F. Ferez

P-264 F. S. Perez

P-265 F. S. Perez

P-266 Alcaldi
F. S. Peris

We are of the opinion that all these 26 ballots are admissible for the petitioner-appellant and that the Court of Appeals committed an error in rejecting them. Said ballots sufficiently identify, in our opinion, the candidate Primitivo Perez, the erroneous initial of the Christian name accompanying the correct surname notwithstanding. In the case of Moya vs. Del Fierro, G. R. No. 46863, we said:

"As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type

of government, necessarily points to the enfranchised citizen as a partake of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality. Counsel for both parties have called our attention to the different and divergent rules laid down by this Court on the appreciation of ballots. It will serve no good and useful purpose for us to engage in the task of reconciliation or harmonization of these rules, although this may perhaps be undertaken, as no two cases will be found to be exactly the same in factual or legal environment. It is sufficient to observe, however, in this connection that whatever might have been said in cases heretofore decided, no technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, not from evidence aliunde. This rule of interpretation goes to the very root of the system. Rationally, also, this must be the justification for the suggested liberalization of the rules on appreciation of ballots which are now incorporated in section 144 of the Election Code (Commonwealth Act No. 357)."

We adhere in principle to the above-cited case. Counting, therefore, the 26 votes herein involved in favor of the petitioner-appellant, the latter will have a majority of 10 votes over the respondent-appellee.

The decision of the Court of Appeals will consequently be, as the same is hereby, reversed and the petitioner-appellant, Primitivo S. Perez, declared mayor-elect of the municipality of San Manuel, Pangasinan, without pronouncement regarding costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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