

IRINEO MOYA, PETITIONER, VS. AGRIPINO GA. DEL FIERRO, RESPONDENT.*G.R. No. 46863. November 18, 1939*

Ponente: LAUREL, J.

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This is a petition for review by certiorari of the judgment of the Court of Appeals in the above entitled case declaring the respondent, Agripino Ga. del Fierro, the candidate-elect for the office of mayor of the municipality of Paracale, Province of Camarines Norte, with a majority of three votes over his rival, Irineo Moya. In the general elections held on December 14, 1937, the parties herein were contending candidates for the aforesaid office. After canvass of the returns the municipal council of Paracale, acting as board of canvassers, proclaimed the petitioner as the elected mayor of said municipality with a majority of 102 votes. On December 27, 1937, the respondent filed a motion of protest in the Court of First Instance of Camarines Norte which, on December 7, 1938, sustained the election of the petitioner with a plurality of 91 votes. Upon appeal from the decision of the Court of First Instance of Camarines Norte, the Court of Appeals, on July 13, 1939 rendered the judgment hereinbefore mentioned which is sought by the petitioner to be reviewed and reversed upon the errors alleged to have been committed by the Court of Appeals:

- In admitting and counting in favor of the respondent, 8 ballots either inadvertently or contrary to the controlling decisions of this Honorable Court.
- In admitting and counting in favor of the respondent, 3 ballots marked "R. del Fierro."
- In admitting and counting in favor of the respondent, 7 ballots marked "Rufino del Fierro."
- In admitting and counting in favor of the respondent, 72 ballots marked "P. del Fierro."

Taking up seriatim the alleged errors, we come to the first assignment involving the eight (8) ballots now to be mentioned. (1) With reference to ballot Exhibit F-175 in precinct No. 2, alleged to have been inadvertently admitted in favor of the respondent, such inadvertence raises a question of fact which could have been corrected by the Court of Appeals and which we are not in a position to determine in this proceeding for review by certiorari. Upon the other hand, if the error attributed to the Court of Appeals consisted in having admitted ballot Exhibit F-175 in precinct No. 2 instead of the ballot bearing the same number corresponding to precinct No. 1, and this latter ballot clearly appears admissible for the respondent because the name written on the space for mayor is "Primo del Fierro" or "Pimo del Fierro", the error is technical and deserves but scanty consideration. (2) Ballot Exhibit F-26 in precinct No. 3 was erroneously admitted for the respondent by the Court of Appeals, the name written on the space for mayor being "G. T. Krandes." It is true that on the fourth line for councilor "Alcalde Pinong del Fierro" appears; but the intention of the elector is rendered vague and incapable of ascertaining and the ballot was improperly counted for the respondent. As to this ballot, the contention of the petitioner is sustained (3) Ballot Exhibit F-77 in precinct No. 2 should also have been rejected by the Court of Appeals. The ballot bears the distinguishing mark "O. K." placed after the name "M. Lopis" Written on space for

vice-mayor. The contention of the petitioner in this respect is likewise sustained. (4) Ballot Exhibit F-9 in precinct No. 2 was properly admitted for respondent. On this ballot the elector wrote within the space for mayor the name of Regino Guinto, a candidate for" the provincial board and wrote the respondent's name immediately below the line for mayor but immediately above the name "M. Lopez" voted by him for vice-mayor. The intention of the elector to vote for the respondent for the office of mayor is clear under the circumstances. (5) Ballot F-131 in precinct No. 1 was also properly counted for the respondent On this ballot the elector wrote the respondent's name on the space for vice-mayor, but, apparently realizing his mistake, he placed an arrow connecting the name of the respondent to the word "Mayor" (Alcalde) printed on the left side of the ballot. The intention of the elector to vote for the respondent for the office of mayor is thus evident, in the absence of proof showing that the ballot had been tampered with. (6) Ballot F-7 in precinct No. 5 is admissible for the respondent and the Court of Appeals committed no error in so adjudicating. Although the name of the respondent is written on the first space for member of the provincial board, said name is preceded by the word "prisidinti" and immediately followed in the next line by "Bice" Culastico Palma, which latter name is followed in the next line by word "consehal" and the name of a candidate for this position. The intention of the elector to vote for the respondent for the office of mayor being manifest, the objection of the petitioner to the admission of this ballot is overruled. (7) Ballot F-1 in precinct No. 2 is valid for the respondent. On this ballot the Christian name of the respondent was written on the second space for member of the provincial board, but his surname was written on the proper space for mayor with no other accompanying name or names. The intention of the elector being manifest, the same should be given effect in favor of the respondent. (8) Ballot F-44 in precinct No. 2 wherein "Agripino F. Garcia" appears written on the proper space, is valid for the respondent. In his certificate of candidacy the respondent gave his name as "Agripino Ga. del Fierro." The conclusion of the trial court, upheld by the Court of Appeals, that the letter "F" stands for "Fierro" and "Garcia" for the contraction "Ga." is not without justification and, by liberal construction, the ballot in question was properly admitted for the respondent.

The second error assigned by the petitioner refers to three ballots, namely, Exhibit F-119 in precinct No. 1 Exhibit F-24 in precinct No. 2, and Exhibit F-6 in precinct No. 4. These three ballots appear to be among the 75 ballots found by the Court of Appeals as acceptable for the respondent on the ground that the initial letter "F" stands for "Pino" in "Pino del Fierro" which is a name mentioned in the certificate of candidacy of the respondent. The petitioner contends that the initial letter is "R" and not "P". Even if we could reverse this finding, we do not feel justified in doing so after examining the photostatic copies of these ballots attached to the herein petition for certiorari. The second assignment of error is accordingly overruled.

Upon the third assignment of error, the petitioner questions the correctness of the judgment of the Court of Appeals in adjudicating to the respondent the seven ballots wherein "Rufino del Fierro" was voted for the office of mayor. We are of the opinion that the position taken by the Court of Appeals is correct. There was no other candidate for the office of mayor with the name of "Rufino" or similar name and, as the respondent was distinctly identified by his surname on these ballots, the intention of the voters in preparing the same was undoubtedly to vote for the respondent for the office for which he was a candidate.

The fourth assignment of error deals with the 72 ballots wherein "P. del Fierro" was voted for the office of mayor, and it is the contention of the petitioner that said ballots should not have been counted by the Court of Appeals in favor of the respondent. For the identical reason indicated under the discussion of petitioner's second assignment of error, namely, that "P" stands for "Pino" in "Pino del Fierro" which is a name mentioned in the certificate of candidacy of the respondent, we hold that there was no error in the action of the Court of Appeals in awarding the said ballots to the respondent.

With the exception of ballot marked as Exhibit F-26 in precinct No. 3 and ballot marked as Exhibit F-77 in

precinct No. 2, we are inclined to accept the rest of the disputed ballots for the respondent not only for the specific reasons already given but also and principally for the more fundamental reason now to be stated. 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 justifiable 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).

It results that, even crediting the petitioner with the two ballots herein held to have been erroneously admitted by the Court of Appeals for the respondent, the latter still wins by one vote. In view whereof it becomes unnecessary to consider the counter-assignment of errors of the respondent.

With the modification of the decision of the Court of Appeals, the petition for the writ of certiorari is hereby dismissed, without pronouncement regarding costs.

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

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