

PABLO L. TORRES, PETITIONER, VS. ESTEBAN MAYO, RESPONDENT.*G.R. No. 46920. December 02, 1939*

Ponente: VILLA-REAL, J.

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In the general elections held on December 14, 1937, the herein petitioner, Pablo L. Torres, and the herein respondent, Esteban Mayo, were candidates for the office of mayor of the municipality of Lipa, Province of Batangas. At the conclusion of the voting and after the canvassing of all the votes cast in all the election precincts of said municipality by the municipal board of canvassers, said board declared that Torres obtained a total of 4,352 votes and Mayo, 4,845 votes, and proclaimed the former mayor-elect of the municipality of Lipa, with a plurality of seven (7) votes.

As Esteban Mayo did not agree with the result, he filed timely and in due form the corresponding written protest with the Court of First Instance of Batangas. After the proper proceedings and the taking of evidence, said court rendered, on August 10, 1938, a decision declaring the therein protestee and herein petitioner, Pablo L. Torres, mayor-elect of said municipality of Lipa with 4,377 votes, or with a plurality of thirty-one votes over the therein protestant and herein respondent, Esteban Mayo, to whom 4,346 votes were adjudicated.

From the foregoing decision, Esteban Mayo took an appeal to the Court of Appeals, his appeal being docketed as CA-G. R. No. 4034.

On August 1, 1939, the Third Division of the Court of Appeals rendered a decision, which, reversing that of the Court of First Instance of Batangas, declared the therein protestant and appellant and herein respondent, Esteban Mayo, mayor-elect of the said municipality of Lipa with a plurality of two (2) votes inasmuch as he obtained a total of 4,368 votes against 4,366 votes for the therein protestee and appellee and herein petitioner, Pablo L. Torres.

On August 26, 1939, the herein petitioner filed a motion wherein he prayed for the reconsideration of the aforementioned decision of the Third Division of the Court of Appeals on the ground that the adjudication of some ballots in favor of the respondent and the rejection of others which had been adjudicated to said petitioner by the Court of First Instance of Batangas, were contrary to law and to the rules established by this Court on election matters.

Upon the denial of said motion, the petitioner now comes to this court on appeal by way of a petition for certiorari.

Examining the ballots whose admission or rejection by the Court of Appeals is the subject of assignments of error, we find the following:

The ballot Exhibit T-162, which the petitioner claims, alleging that it contains a vote cast in his favor which the Court of Appeals has held invalid and rejected, for the reason that "G. jorres" appears written on the space thereof for the office of mayor, should be admitted, because the letter "G" may stand for the Tagalog salutation "Guinoo",

which is equivalent to "Sr." in Spanish (Cailles vs. Gomez, 42 Phil., 496; Valenzuela vs. Carlos, 42 Phil., 428).

The ballot Exhibit M-133 which the respondent claims for himself as containing a vote in his favor and in which there appears written on the last space for the votes for councilors the name "Concordio Robles", which is neither the name nor surname of any candidate for councilor, and which ballot the Court of Appeals admitted, considering the name "Concordio Robles" as a scattered vote, is good; and the said court was correct in admitting it, inasmuch as, according to section 464 of the Election Law as it has been amended by Acts Nos. 3210 and 3387, when a name not belonging to any candidate appears written, the ballot will not be annulled, but will be considered as a scattering vote. (Salak vs. Espinosa, 53 Phil., 162; Aviado vs. Talens, 52 Phil., 665; Termanoy vs. Logrono, G. R. No. 36501 [March 17, 1932], unpublished; Namocatcat vs. Adag, 52 Phil., 789; Cailles vs. Gomez, 42 Phil., 522; Valenzuela vs. Carlos, 42 Phil., 482).

The ballot Exhibit T-217, claimed by the petitioner and rejected by the Court of Appeals on the belief that it was signed by the voter named "P. Rongkillo" or countermarked with that name which the voter wrote below the last space for councilor, after filling the eight spaces for councilors, is admissible, since it appears that "P. Rongkillo" is the name of a candidate for councilor; and the Court of Appeals erred in considering said name as that of the voter who prepared the ballot. The name, therefore, does not constitute a violation of the secrecy of suffrage. The inclusion in a ballot of the name of a candidate in excess of the number of offices fixed by law, does not render that ballot void, but it shall be considered as a scattering vote. The ballot Exhibit T-217 should, therefore, be admitted as a vote in favor of the petitioner.

The ballot Exhibit M-12, which is claimed by the respondent and which the Court of Appeals admitted because the words "Gone. Res" appearing on the space for the office of councilor had been written by a person other than the voter, is valid and its admission is proper.

The ballot Exhibit M-134, which is claimed by the respondent and which the Court of Appeals admitted for the reason that it did not believe that the words "Bo Kopino Sayao", written on the space for councilor, constitute signs or marks, inasmuch as in its opinion they are idem sonans with "Rufino Sayas", the name of one of the candidates for that office, is properly admitted.

With reference to the ballot Exhibit T-180 of the petitioner, which the Court of Appeals rejected as marked with the word "cab", written on the last space for the office of mayor, after the name of Loreto Macuha, said word does not in itself constitute a sign, for, Loreto Macuha not having been a candidate for councilor, the writing of said name was sufficient to mark the ballot without the necessity of adding the word "cab", if that had been the voter's intention, and because "cab" could have been the abbreviation of "cabeza", a very usual form of address in the barrios. The name of Loreto Macuha may, therefore, be considered as a scattering vote which does not render said ballot invalid, and must, accordingly, be admitted. (Authorities supra.)

In regard to the ballot Exhibit M-16, which the respondent claims as a vote in his favor and which the Court of Appeals held valid and admissible, we cannot consider it, inasmuch as the question raised by the petitioner with respect thereto is one of fact.

The ballots Exhibits M-160 and M-99, which are claimed by the respondent and which the Court of Appeals admitted for the reason that, in its opinion, the words "maximo kalao", which appear on the second space for councilor on Exhibit "M-160", and the only name "macemo kalao", which appears on one of the spaces for councilor on Exhibit M-99, show the elector's intention to vote for Moises Kalaw, the name of one of the candidates for the office of mayor, and do not constitute marks, must be admitted as valid; not because they reveal the elector's intention to vote for Moises Kalaw, but because of the fact that, as the assemblyman, Hon. Maximo Kalaw, whose name is very hard to confuse with that of Moises Kalaw, is well-known in the province of

Batangas, the unschooled elector might have wanted said Maximo Kalaw for councilor. Accordingly, the votes cast in favor of the latter must be considered as scattering ones, and the admission of the ballots in favor of the respondent is proper.

The ballot Exhibit T-143, which the petitioner claims and which the Court of Appeals has rejected since it considered it having been written by two different hands, with two different pencils and in two different forms, in violation of the secrecy of suffrage, must be admitted, inasmuch as by its general appearance as by the formation of the capital and small letters and the characteristic features thereof, said ballot has been written by only one hand.

The ballot Exhibit M-3 wherein "S. Mayo" appears written, the ballot Exhibit J-6 in which "S. Mayo" appears, and the ballot Exhibit M-117 wherein "I. Mayo" appears written, which the respondent claims and which the Court of Appeals has admitted on the ground that an elector with some instruction in English usually confuses the letter "S" with "ES" in the same manner as "I" with "E", when they are pronounced, and that in writing the letters "S" and "I" the electors might have wanted to write the letter "E" in "Esteban", are valid and their admission is proper (*Moya vs. Del Fierro*, G. R. No. 46863, promulgated November 18, 1939.)

The ballots Exhibit M-100, wherein "Estiban" appears written on the space for the office of Mayor, and "Mayo" on the space for the office of Vice-Mayor; and "M-126", wherein "Estiban" appears written on the space for the office of Mayor, and "Maio" on the space for the office of Vice-Mayor, which were admitted by the Court of Appeals as votes in favor of the respondent Mayo, on the ground that the elector's intention to vote for this candidate for the office of Mayor is manifest, have been correctly admitted.

With reference to ballot Exhibit M-122, in which the elector began to write the name "Estiban Mayo" on the line reserved for the office of Mayor, but finished doing so much below the same line and towards the space for Vice-Mayor, and which the Court of Appeals held valid on account of the fact that the elector's intention to vote for the respondent Esteban Mayo for Mayor is manifest, the admission thereof is proper.

The ballot Exhibit M-6, wherein appears written "ESTEBAN Mayo", with the word "ESTEBAN" in print; the ballot Exhibit M-40 wherein the names voted for councilor, "F. INFANTE", "F. LANTIN" and "Jose LANTIN", appear written in print, with the exception of the Christian name "Jose"; and the ballot Exhibit M-46, wherein appear written in capital letters the names "ESTEBAN MAYO", "P. TAPIA" and "T. MAKALA", who were voted for Mayor, Vice-Mayor and councilor, respectively, were admitted by the Court of Appeals as votes in favor of the respondent, for the reason that said letters in print and the capital ones are not marks. Their admission is correct. (*Coscolluela vs. Gaston*, 35 Off. Gaz., 343, and cases therein cited.)

The ballot Exhibit M-140, which the respondent claims and which the Court of Appeals has admitted as a valid vote in his favor, for the reason that the mark "X" which appears after the name "Silverio Conejo" on the space for the office of member of the Provincial Board, had been placed by another person after the ballot had already been revised by the commissioners and without the knowledge or consent of the elector who prepared it, is good.

The ballot Exhibit M-72, which the respondent claims and which the Court of Appeals admitted as a valid vote in his favor inasmuch as on the space thereof for Mayor "E. Miyo", which is idem sonans with the name of the respondent E. Mayo, and not "e narcio" or "E. Narcio", is written, is likewise good.

The ballot Exhibit M-51, of the respondent, wherein appears written "Mayon" on the space for the office of Mayor, and "istiban Maio" on the space for councilor, was admitted by the Court of Appeals as a valid vote in favor of said respondent on the ground that "Mayon" is idem sonans with "Mayo", there being no other candidate for the office of Mayor with the same name than the respondent. Said admission is correct.

The ballot Exhibits T-189 to T-199, inclusive, which the petitioner claims and which the court of appeals rejected on the ground that they were found in the red box for spoiled ballots of precinct No. 23 and that they were in excess of the ballots used and found in the white box, as the election return shows, cannot be considered by us, for the reason that the question raised in connection with them is one of fact.

Coming now to the admissibility of the ballots of the petitioner and the rejection of those of the respondent, which the latter alleges to be erroneous, we find that the ballot Exhibit T-2, claimed by the petitioner and admitted by the Court of Appeals as a valid vote because what appears written on the space thereof for Mayor, or "Atty. P. Torres (Pres. at present)" has not been considered by said court as a distinguishing mark but as a prefix or title, is good and its admission is proper. (Cailles vs. Gomez, supra; Valenzuela vs. Carlos, supra.)

The ballot Exhibit T-181, claimed by the petitioner and admitted by the Court of Appeals as a valid vote as it did not believe that "Agosti Bugao", written on the space for Vice-Mayor, is a distinguishing mark, but is perhaps the name of a person who was not a candidate to the office, in which event the vote may be considered as a scattering one, is good and its admission is proper. (Authorities, supra.)

The admission by the Court of Appeals of the ballots set forth below, on the ground that the words, which appear written on the space corresponding to the office of Mayor in each one of them, are idem sonans with the name of the petitioner Pablo L. Torres, is correct:

- Exhibit T-120—Pablo Fores
- Exhibit T-86—Pablo Fores
- Exhibit T-92—Pablo Fores
- Exhibit T-136—Pablo Fores
- Exhibit T-151—Pablo L. Fores
- Exhibit T-228—Pablo L. Fores
- Exhibit T-140—Pablo Tines
- Exhibit T-130—Paloloris
- Exhibit T-161—Pablo delitures
- Exhibit T-175—Padlo tosisi
- Exhibit T-178—Pobl tuy
- Exhibit T-186—Panlo lores
- Exhibit T-207—Pablo clitores
- Exhibit T-215—P. uitorrz
- Exhibit T-219—Paballo toras
- Exhibit T-176—pablo touieris
- Exhibit T-115—Pablo L. dis
- Exhibit T-118—le loris
- Exhibit T-96—Pablo Fores

The ballot Exhibit M-61, claimed by the respondent and rejected by the Court of Appeals as it was of the opinion that the words "e Maoe" or "E. o G. Maoe o Mavee" which appear written on the space for the office of Mayor, are not idem sonans with the name of the respondent Esteban Mayo, and for the further reason that it is difficult to determine the intention of the one who prepared it, is properly rejected.

The ballot Exhibit M-58, claimed also by the respondent and rejected by the Court of Appeals inasmuch as "istiban Mayo" appears written on the space for provincial board member, is inadmissible as a vote in favor of said respondent and its rejection is not erroneous.

As the ballot Exhibit M-43 is not before us, we must accept the conclusion of the Court of Appeals that it was prepared by two different hands.

Recapitulating all that has been said above, we hold that the ballot Exhibits T-162, T-217, T-180 and T-143, or four in number, must be admitted, which, added to the 4,366 ballots which, the Court of Appeals has found, contain legal and valid votes in favor of the petitioner, Pablo L. Torres, make a total of 4,370, or two votes more than those which the same court has adjudicated to the respondent Esteban Mayo, or 4,368 votes.

Wherefore, the writ prayed for is granted, the decision sought to be set aside thereby is reversed, and the petitioner is declared Mayor-elect of Lipa with a plurality of two (2) votes over the respondent, with costs against the latter.

Avanceña, C. J., Imperial, Diaz and Concepcion, JJ., concur.

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