

SERGIO BAUTISTA, PETITIONER, VS. HON. JOSE P. CASTRO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH IX (QUEZON CITY, COURT OF FIRST INSTANCE OF RIZAL, AND ROBERTO MIGUEL, RESPOND...

G.R. No. 61260. February 17, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks the reversal of the decision of respondent Court of First Instance (now Regional Trial Court) of Rizal, Branch 9, Quezon City rendered in an appealed election case and which decision proclaimed herein private respondent Roberto Miguel as the duly elected Barangay Captain of Barangay Teachers Village East, Quezon City, in the Barangay Elections held on May 17, 1982, with a plurality of twenty-four (24) votes over herein petitioner Sergio Bautista.

Both the petitioner Sergio Bautista and private respondent Roberto Miguel were candidates for the office above mentioned. After canvass, petitioner Bautista was proclaimed the winner by the Barangay Board of Canvassers on May 17, 1982 with a plurality of two (2) votes.

On May 25, 1982, Roberto Miguel filed a protest before the City Court of Quezon City, (docketed as Election Case No. 82-408) on the ground of fraud and illegal acts or practices allegedly committed by Bautista. The latter filed an answer but filed no counter-protest.

It appears that the results of the election in all the four (4) voting centers in Bgy. Teachers Village East, Quezon City were contested. A revision and recounting of the ballots was conducted which resulted in a tie. The votes obtained by each of the protagonists were as follows:

“1. In Voting Center No. 519:

MIGUEL = 126 votes

BAUTISTA = 180 votes

Protestant-appellant contested the ruling of the lower Court on the following ballots: Exhs. a, b, c, d, e, f, g, h, i, j, k, l, m, n, and o.

Protestee-appellee contested the ruling of the lower Court on the following ballots: Exhs. 1, 2, 3, 4 and 5.

“2. In Voting Center No. 520:

MIGUEL = 152 votes

BAUTISTA = 122 votes

Protestant-appellant contested the ruling of the lower Court on the following ballots: Exhs. P, Q and R.

“3. In Voting Center No. 521:

MIGUEL = 150 votes

BAUTISTA = 136 votes

Protestant-appellant contested the ruling of the lower Court on the following ballots: Exhs. 6 and 7.

“4. In Voting Center No. 522

MIGUEL = 222 votes

BAUTISTA = 212 votes

Protestant-appellant contested the ruling of the lower Court on the following ballots: Exhs. AA, BB, BB-1, BB-2 and CC.

Protestee-appellee contested the ruling of the lower court on the following ballots: Exhs. 8, 9, 9-a, 10, 10-a, 11, 11-a, 12, 12-a, 13, 14, 14-a, 15, 15-a, 16 and 16-a.

“5. Total Votes in all Voting Centers Nos. 519, 520, 521 and 522:

MIGUEL = 650

BAUTISTA = 650” (pp. 11-12, Rollo)

The trial court rendered a decision, the dispositive portion of which reads:

“ACCORDINGLY, Roberto Miguel is hereby declared to have received the same number of votes as the protestee Sergio Bautista for the position of Bgy. Captain of Bgy. Teachers Village East, Quezon City.” (p. 12, Rollo)

From this decision of the city court, protestant Roberto Miguel filed an appeal to the Court of First Instance of Rizal.* On July 29, 1982, judgment was rendered on the appeal which, as stated in the first portion of this decision, declared protestant Roberto Miguel the duly elected Barangay Captain of Bgy. Teachers Village East, Quezon City and setting aside as null and void the proclamation of protestee Sergio Bautista. The dispositive portion of the decision reads:

“WHEREFORE, judgment is hereby rendered declaring and proclaiming protestant-appellant ROBERTO MIGUEL as the duly elected Barangay Captain of Barangay Teachers Village East, Quezon City, in the Barangay elections held on May 17, 1982 with a plurality of twenty-four (24) votes over and above his protagonist protestee-appellee SERGIO BAUTISTA; setting aside as null and void the proclamation of protestee-appellee as the elected Barangay Captain made by the Barangay Board of Canvassers on May 17, 1982; sentencing protestee-appellee to pay protestant-appellant the costs and expenses that the latter has incurred in this protest, in accordance with Sec. 7 of COMELEC Resolution no. 1566, to wit:

P 25.00 for filing and research fee for petition of protest;

2,500.00 for cash deposit for expenses for revision of ballots;

25.00 for appellant docket and research fee;

50.00 for appeal bond deposit;

P2,600.00 Total

“The Clerk of Court is hereby directed to furnish copies of this Decision to the Commission on Elections, the Ministry of Local Governments, the Commission on Audit, and the Secretaries of the Sangguniang Bayan and

Sangguniang Barangay, in accordance with Sec. 15 of Comelec Resolution No. 1566.”

“SO ORDERED.” (pp. 87-88, Rollo)

Petitioner Sergio Bautista filed the instant petition for review by certiorari on August 13, 1982 on the following questions of law:

- 1) Whether or not the supposed opinion of a person, who was brought by private respondent but who was never presented as a witness, is competent and admissible evidence to support the appellate court’s (CFI) conclusion that no less than eighteen (18) votes cast in favor of your petitioner were written by one and the same person.
- 2) Whether or not a ballot which does not contain the signature of the poll chairman be considered a valid ballot.
- 3) Whether or not respondent judge acted correctly in its appreciation of the contested ballots (Exhibits “Z,” “Z-1,” “S,” “5,” “6,” “7.”

Considering that the term for the contested office had expired on June 7, 1988[1], this petition has become moot and academic. However, this case had already been submitted for decision as early as December 19, 1984, prior to the expiration of the contested office. Hence, We deem it proper to resolve this case on the merits and determine the true winner of that elections.

Anent the first question, petitioner Bautista questions the reliance by respondent court on the opinion of one Desiderio A. Pagui, who was never presented and qualified as an expert witness. The report of Pagui allegedly appeared only in the records of the case on file with the CFI which was attached in the Memorandum for Protestant Miguel.

The ballots involved in this objection of petitioner are exhibits “B” to “O” which all pertained to voting center No. 519 and Exhibits “T,” “T-1,” “U,” “U-1,” “V” and “V-1” from voting center No. 521. Respondent court ruled:

“b) Exhs. ‘B, C, D, E, F, G, H, I, J, K, L, M, N and O were counted by the lower court for BAUTISTA, over the objection of protestant-appellant that these ballots were written by a single hand. These ballots and the writings therein contained were the subject of QUESTIONED HANDWRITINGS EXAMINATIONS and PDIL REPORT NO. 09-682 of Atty. Desiderio A. Pagui, Examiner of Questioned Documents (Ret. Chief Document Examiner, NBI), who was allowed by the lower court to assist it in the appreciation of ballots contested by either party as having been written by a single hand and to take photographs of the questioned ballots, his report and photographs having been submitted by protestant-appellant to this Court accompanying his memorandum. The pertinent portions of the FINDINGS in the said report read as follows:

‘Comparative examinations between and among the various letter designs, their structural constructions and other characteristics appearing in Exhibits ‘B’ to ‘O’ inclusive, ‘T’, ‘T-1’, ‘U’, ‘U-1,’ ‘V’ and ‘V-1’, reveal the existence of significant identifying handwriting characteristics, more particularly in -

- ‘1. general style of writings;
- ‘2. size and proportion (sic) of letter designs; base and height alignments; and relationship between adjacent letters;
- ‘3. lateral spacing; and initial and terminal strokes;
- ‘4. structural constructions and more perplexed elements embedded in the structures of letter forms; and such characteristics are exemplified in the following words/names: x x x; and the scientific evaluation of the aforementioned writing characteristics includes the consideration of the idiosyncrasies of natural variation as shown in the numerous similar letter forms, although at some instances, the writer succeeded in having changed

the entire letter designs of certain letters (at different style), but somehow certain significant writing characteristics reappeared in the various letters during the process of writing, thus be able to connect one writing from the others as having emanated from one source.'

'The probative value of the above-mentioned writing characteristics are further augmented by the presence of unusual structural construction of letter forms and/or in combinations with adjacent letters, thus x x x.'

"The CONCLUSION of the said report states:

'The questioned handwritings appearing in Exhs. 'B' to 'O', inclusive, 'T', 'T-1', 'U', 'U-1', 'V' and 'V-1', were WRITTEN BY ONE AND THE SAME PERSON.'

Notwithstanding this report, this Court has taken pains and meticulous effort to examine with its naked eye the questioned ballots and handwritings, and compare the same with each other in order to determine whether or not they were indeed written by a single hand, and this Court is convinced beyond doubt that Exhs. B, C, D, E, F, G, H, K, L, M, N and O, were written by a single hand, considering the remarkable similarity if not almost identity of the writings on these ballots. The lower Court's ruling on these twelve (12) ballots is hereby reversed, and the twelve (12) votes for protestee-appellee based thereon should be deducted from him.

With respect to Exhs. I and J, this Court entertains some doubt on their having been written by a single hand, and therefore resolves the doubt in favor of the validity of these two (2) ballots, as votes for protestee-appellee. Therefore, the ruling of the lower Court counting Exhs. I and J for protestee-appellee stands." (pp. 78-80, Rollo)

The contention of petitioner that respondent court relied on the report of an alleged handwriting expert is misplaced. It should be noted that while respondent court considered the report of Atty. Pagui, it did not rely solely on the said report. In the words of respondent court, "(I)t has taken pains and meticulous effort to examine with its naked eye the questioned ballots and handwritings and compare the same with each other ..." In fact, in its effort to determine the true value of the contested ballots and in order not to disenfranchise bona fide voters, it counted certain ballots in favor of petitioner which the alleged handwriting expert found as written by only one person. It contradicted said report as regards Exhibits "I," "J," "V" and "V-1." The respondent court was circumspect in relying on its own findings on whether or not these contested ballots were prepared by one person. The ballots are the best evidence of the objections raised. Resort to handwriting experts is not mandatory. Handwriting experts, while probably useful, are not indispensable in examining or comparing handwriting, this can be done by the COMELEC (in this case, the court taking cognizance of the appeal in this election protest) itself (*Bacobo v. COMELEC*, G.R. No. 94173, November 21, 1990, 191 SCRA 576).

Petitioner also argues that respondent court misinterpreted and misapplied Section 36(f) of Comelec Resolution No. 1539. It allegedly failed to take into consideration the other provisions of said Section 36 of the Resolution.

We do not agree. Section 36 in its entirety provides:

"Sec. 36. Procedure in the casting of votes. (a) Identification of voter. - The chairman shall check in the certified list of voters the name of the person offering to vote. He shall then announce the voter's name distinctly in a loud tone. If there is no challenge, or if having been challenged and the question is decided in his favor, the voter shall be allowed to vote and he shall affix his signature on the proper space of the Voting Record (Comelec Form No. 5).

"(b) Delivery of ballot. - Before delivering the ballot to the voter, the chairman shall, in the presence of the voter, the other members of the board and the watchers present, affix his signature at the back thereof and write the serial number of the ballot in the space provided in the ballot, beginning with No. '1' for the first ballot issued, and so on consecutively for the succeeding ballots, which serial number shall be entered in the

corresponding space of the voting record. He shall then fold the ballot once, and without removing the detachable coupon, deliver it to the voter, together with a ballpen.

“(c) Instructions to the voter. If a voter so requests, the poll clerk shall instruct him on how to fill the ballot. The voter shall be reminded that he should fill the ballot secretly and return it folded so as not to show the names of the candidates he voted for. He shall also be warned not to use any other ballot; not to show the contents of his ballot; not to put any mark thereon; not to erase, deface or tear the same; and not to remove the detachable coupon.

“(d) Preparing the ballot. Upon receiving the ballot, the voter shall fill the ballot secretly.

“(e) Returning the ballot. (1) In the presence of all the members of the Board, the voter shall affix his right hand thumbmark on the corresponding space in the detachable coupon, and shall give the folded ballot to the chairman. (2) The chairman shall without unfolding the ballot or looking at its contents, and in the presence of the voter and all the members of the Board, verify if it bears his signature and the same serial number recorded in the voting record. (3) If the ballot is found to be authentic, the voter shall then be required to imprint his right hand thumbmark on the proper space in the voting record. (4) The chairman shall then detach the coupon and shall deposit the folded ballot in the compartment for valid ballot and the coupon in the compartment for spoiled ballots. (5) The voter shall then leave the voting center.

“(f) When ballot may be considered spoiled. Any ballot returned to the chairman with its coupon already detached, or which does not bear the signature of the chairman, or any ballot with a serial number that does not tally with the serial number of the ballot delivered to the voter as recorded in the voting record, shall be considered as spoiled and shall be marked and signed by the members of the board and shall not be counted.”

The ballots concerned were marked Exhibits “BB,” “BB-1” and “BB-2” from voting center No. 522. The respondent court ruled that:

“b) Exhs. BB, BB-1 and BB-2 were counted by the lower court for BAUTISTA over the objection of protestant-appellant that these ballots are not duly authenticated by the absence of the signature of the Chairman of the Board of Election Tellers at the back thereof. An examination of the back portion of these ballots reveals that it is completely blank of any signature or initial. The mandatory requirement of authentication of ballots is found in Sec. 14 of B.P. 222 and in Sec. 36 of COMELEC Resolution No. 1539, and the legal consequence for the absence of such authentication is stated precisely in Sec. 36, sub-par. (f), and generally in Sec. 152 of the 1978 Election Code, x x x.” (p. 84, Rollo)

The law (Sec. 14 of B.P. 222) and the rules implementing it (Sec. 36 of Comelec Res. No. 1539), leave no room for interpretation. The absence of the signature of the Chairman of the Board of Election Tellers in the ballot given to a voter as required by law and the rules as proof of the authenticity of said ballot is fatal. This requirement is mandatory for the validity of the said ballot.

As regards exhibit “Z” and “Z-1,” respondent court reversed the decision of the trial court which ruled that these were not marked ballots and hence, were valid votes for petitioner BAUTISTA. In reversing the trial court, respondent court ruled that the presence of an arrow with the words “and party,” was meant for no other purpose than to identify the voter.

We agree. It cannot be said that these writings were accidental. As a general rule, a voter must write on the ballot only the names of candidates voted for the offices appearing thereon. Certain exceptions, however, were provided in Section 149 of the Revised Election Code. For example, prefixes such as “Sr.,” “Mr.,” and the like and suffixes such as “hijo,” “Jr.,” etc. will not invalidate the ballot (par. 5). Initials (paragraph 15), nicknames or appellation of affection and friendship will not invalidate the ballot, if accompanied by the name or surname of the candidate, and above all, if they were not used as a means to identify the voter. Even under a liberal view, the words written

on the ballots under consideration cannot be considered as falling within the exception to the rule. Consequently, they are irrelevant expressions that nullified the ballots. (*Lloren v. CA*, et al., No. L-25907, January 25, 1967, 19 SCRA 110). Hence, respondent court excluded Exhibits “Z” and “Z-1.”

Exhibit “S” (Voting Center No. 521) was excluded by respondent court as a vote for petitioner. It held:

“a) Exh. S was counted by the lower court for BAUTISTA over the objection of protestant-appellant that this ballot was found in the small compartment of the ballot box for spoiled ballots and the said ballots appear to be in excess of the number of ballots actually used. The records show that as reflected in the MINUTES OF VOTING AND COUNTING OF VOTES found inside the ballot box, (1) there were 311 voters who cast their votes, and the ballots actually used bear Serial Nos. 1-311, (2) 1 voter did not return his/her ballot, 8 ballots were spoiled ballots and 302 ballots appreciated by the Board of Election Tellers. The questioned ballot, Exh. S, together with blank questioned ballot, was found by the Committee in the small compartment for spoiled ballots. It does clearly appear that these two(2) ballots, one of which is Exh. S, are in excess of the 311 ballots actually used and must be considered as ‘EXCESS BALLOTS’ under Sec. 151 of the 1978 Election Code and ‘shall not be read in the counting of votes.’ In view of the foregoing considerations, the ruling of the lower court on Exh. S is hereby reversed, and this ballot shall not be counted as a vote of protestee-appellee and therefore deducted from him.” (pp. 81-82, Rollo)

We affirm.

Petitioner objects to respondent court’s ruling rejecting Exh. “5.” The word “BLBIOY” was written in the space for Barangay Captain. “BIBOY,” petitioner’s nickname was duly registered in his certificate of candidacy. Section 155(11) of the 1978 Election Code provides:

“11. The use of nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid: Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality and stated in his certificate of candidacy, the same shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname.”

While the name written was “BLBIOY,” there was no doubt that the voter intended to vote for “BIBOY,” the nickname of which petitioner was popularly known and which nickname was duly registered in his certificate of candidacy. Hence, the respondent court’s decision as regards Exhibit “5” is reversed and the vote is counted for petitioner.

Exhibit “6” was invalidated by both respondent court and the city court as stray vote on the ground that petitioner’s name, written as “Bo. Barangay Bautista” was placed on the first line intended for councilmen. In the case of *Farin v. Gonzales and CA*, G.R. No. L-36893, September 28, 1973, 53 SCRA 237, cited by petitioner, it was ruled that where the name of a candidate is not written in the proper space in the ballot but is preceded by the name of the office for which he is a candidate, the vote should be counted as valid for such candidate. Such rule stems from the fact that in the appreciation of the ballot, the object should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty. In this case, while the name of petitioner was written in the space for barangay councilman, his name was preceded by the name of the office for which he is being elected, that as Punong Barangay or Barangay Captain (See Exh. “6”). The respondent court ruled that what was placed before the name BAUTISTA was Bo. Barangay and not Po. Barangay for Punong Barangay (or Barangay Captain). We believe however that the voter’s intention to vote for BAUTISTA as Barangay Captain was present and said vote should be counted in favor of petitioner.

Respondent court correctly invalidated Exhibit “7.” This ballot cannot be considered as a vote for petitioner

whose name was written seven (7) times in the ballot. The writing of a name more than twice on the ballot is considered to be intentional and serves no other purpose than to identify the ballot (*Katigbak v. Mendoza*, L-24477, February 28, 1967, 19 SCRA 543).

ACCORDINGLY, the decision of respondent court is MODIFIED as regards Exhibits “5” and “6.” Private respondent Roberto Miguel is declared the duly elected Barangay Captain of Barangay Teachers Village East, Quezon City, with a plurality of twenty-two (22) votes. The temporary restraining order issued by this Court on December 2, 1982 is hereby LIFTED.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, and Griño-Aquino, JJ., concur.

* This was the correct procedure under BP 222 as allowed by the 1973 Constitution Art. IX, Sec. 1(2) of the 1987 Constitution now requires the appeal to be made directly to the Commission on Elections (see *Flores v. Commission on Elections*, 184 SCRA 484).

[1] Under BP 222, Sec. 3, the term of office of the barangay officials elected under this Act shall be six years, which shall commence on June 7, 1982 and shall continue until their successors shall have been elected and shall have qualified. This term however was cut short by Proclamation No. 3 of the President dated March 25, 1986 particularly Sec. 2 of Art. 111 thereof, which provides:

“SECTION 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986.

Under the present administration, the first barangay election was conducted on March 28, 1989 by virtue of R.A. 6679 which provides in Section 1 thereof:

“SECTION 1. The elections of barangay officials set on the second Monday of November 1988 by Republic Act No. 6653 are hereby postponed and reset to March 28, 1989. They shall serve a term which shall begin on the first day of May 1989 and ending on the thirty-first day of May 1994.”

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