

be governed by the decisions of *Nuval vs. Guray*, 52 Phil. 649, and especially *Tansecos vs. Arteché*, 57 Phil. 235. As a matter of fact, respondent's case is worse than that of Arteché in the case last cited. For, while Arteché practised his profession in Manila, with occasional visits to his hometown of Catbalogan, Samar, he at least voted twice in Catbalogan, in 1922 and 1925, and in 1931, Arteché sought to cancel his registration in Manila; the respondent Quirino on the other hand never registered or sought to exercise his profession or any political rights in his home town prior to 1951.

For the foregoing considerations, I vote for the reversal of the decision appealed from.

(*Perfecto Fayon, Petitioner-Appellant, vs. Eliseo Quirino, Respondent-Appellee*, (C.A.) G. R. No. 8905-R, promulgated August 24, 1953.)

#### SECTION 149 (13), REVISED ELECTION CODE

NO BALLOT SHOULD BE DISCARDED AS MARKED UNLESS ITS CHARACTER AS SUCH IS UNMISTAKABLE; THE BALLOT IS NOT CONSIDERED MARKED EVEN THOUGH A PERSON NOT A REGISTERED CANDIDATE IS VOTED FOR.

FACTS: This is an appeal by Electona the protestee-appellant from the decision of the C. F. I. of Oriental Negros. Said C. F. I. decided the election protest filed by Echaves in favor of the latter.

Herminio Electona and Jesus Echaves, both registered candidates, contended for the office of mayor for the municipality of Santa Catalina, Oriental Negros. Electona was proclaimed elected with 835 votes. Echaves filed a protest challenging the election results in precincts 6, 7, 8, and 9. Electona also filed a counter-protest with respect to precincts 4, 5, and 10. After hearing, the court rendered its decision declaring Echaves as mayor with 805 votes and for Electona 772 votes only.

Electona comes on appeal assigning several errors committed by the trial court.

HELD: In determining this case the court is guided by the fundamental principle that a ballot which has been cast carries the

presumption that it reflects the will of the voter and hence extreme caution should be observed before it is invalidated.

In this case the trial court erroneously invalidated ballots cast for the appellant as marked, for on said ballots, where appellant was voted, other persons who were not registered candidates were voted. The appellate court validated such ballots and other ballots.

From an examination of the ballots it is clear that the trial court acted in contravention of the principle that "no ballot should be discarded as marked unless its character as such is unmistakable." The contrast is always between marks that were accidentally, carelessly or innocently made, which do not invalidate the ballot; and marks designedly placed thereon by the voter with a view to possible future identification of the ballot, which do invalidate it.

The law has foreseen that a person not being a candidate may be voted for and should such person be eventually voted for, the ballot is invalid with respect to him only.<sup>1</sup> A name that is preceded by a prefix or followed by a qualifying circumstance does not invalidate the ballot. A ballot containing a name which means blowing with the mouth is not extraordinary because there are persons bearing names that are funnier.

From our adjudication, Electona has received 530 votes to which should be added his unquestioned votes in precincts 1, 2, and 3, making a total of 830 votes.

We adjudicate to Echaves 588 votes to which we should add his uncontroverted votes in precincts 1, 2, and 3, making a total of 811 votes.

We, hereby, declare Herminio Electona elected municipal mayor of Santa Catalina with a majority of 19 votes over Jesus Echaves. (*Jesus Echaves, Protestant-Appellee, vs. Herminio Electona, Protestee-Appellant*, (C.A.) G. R. No. 9601-R, promulgated July 15, 1953.)<sup>2</sup>

<sup>1</sup> "Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as a stray vote but shall not invalidate the whole ballot." (Sec. 149, Rule 13, Revised Election Code.)

<sup>2</sup> In the case of *Raymundo vs. de Ungria* (G. R. No. L-43044, prom.