

## EN BANC

**[ G.R. No. 121592, July 05, 1996 ]**

**ROLANDO P. DELA TORRE, PETITIONER, VS. COMMISSION ON ELECTIONS AND MARCIAL VILLANUEVA, RESPONDENTS.**

## RESOLUTION

**FRANCISCO, J.:**

Petitioner Rolando P. Dela Torre via the instant petition for certiorari seeks the nullification of two resolutions issued by the Commission on Elections (COMELEC) allegedly with grave abuse of discretion amounting to lack of jurisdiction in SPA No. 95-047, a case for disqualification filed against petitioner before the COMELEC.<sup>[1]</sup>

The first assailed resolution dated May 6, 1995 declared the petitioner disqualified from running for the position of Mayor of Cavinti, Laguna in the last May 8, 1995 elections, citing as the ground therefor, Section 40(a) of Republic Act No. 7160 (the Local Government Code of 1991)<sup>[2]</sup> which provides as follows:

"Sec. 40. *Disqualifications.* The following persons are disqualified from running for any elective local position:

"(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment within two (2) years after serving sentence;

"(b) x x x x x x x x x."

In disqualifying the petitioner, the COMELEC held that:

"Documentary evidence x x x established that herein respondent (petitioner in this case) was found guilty by the Municipal Trial Court, x x x in Criminal Case No. 14723 for violation of P.D. 1612, (otherwise known as the Anti-fencing Law) in a Decision dated June 1,1990. Respondent appealed the said conviction with the Regional Trial Court x x x, which however, affirmed respondent's conviction in a Decision dated November 14,1990. Respondent's conviction became final on January 18,1991.

"X X X                      X X X                      X X X

"x x x, there exists legal grounds to disqualify respondent as candidate for Mayor of Cavinti, Laguna this coming elections. Although there is 'dearth of jurisprudence involving violation of the Anti-Fencing Law of 1979 or P.D.1612' x x x, the nature of the offense under P.D. 1612 with

which respondent was convicted certainly involves moral turpitude x x x."

[3]

The second assailed resolution, dated August 28, 1995, denied petitioner's motion for reconsideration. In said motion, petitioner claimed that Section 40 (a) of the Local Government Code does not apply to his case inasmuch as the probation granted him by the MTC on December 21, 1994 which suspended the execution of the judgment of conviction and all other legal consequences flowing therefrom, rendered inapplicable Section 40 (a) as well.[4]

The two (2) issues to be resolved are:

1. Whether or not the crime of fencing involves moral turpitude.
2. Whether or not a grant of probation affects Section 40 (a)'s applicability.

Particularly involved in the first issue is the first of two instances contemplated in Section 40 (a) when prior conviction of a crime becomes a ground for disqualification - i, e., "*when the conviction by final judgment is for an offense involving moral turpitude.*" And in this connection, the Court has consistently adopted the definition in Black's Law Dictionary of "*moral turpitude*" as:

"x x x an act of baseness, vileness, or depravity in the private duties which a man owes his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman or conduct contrary to justice, honesty, modesty, or good morals."[5]

Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine".

[6] In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not[7], the rationale of which was set forth in "*Zari v. Flores*,"[8] to wit:

"It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited."[9]

This guideline nonetheless proved short of providing a clear-cut solution, for in "*International Rice Research Institute v. NLRC*,"[10] the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely

classifying a crime as *malum in se* or as *malum prohibitum*. There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.<sup>[11]</sup>

The Court in this case shall nonetheless dispense with a review of the facts and circumstances surrounding the commission of the crime, inasmuch as petitioner after all does not assail his conviction. Petitioner has in effect admitted all the elements of the crime of fencing. At any rate, the determination of whether or not fencing involves moral turpitude can likewise be achieved by analyzing the elements alone.

Fencing is defined in Section 2 of P.D.1612 (Anti-Fencing Law) as:

"a. x x x the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft."<sup>[12]</sup>

From the foregoing definition may be gleaned the elements of the crime of fencing which are:

"1. A crime of robbery or theft has been committed;

"2. The accused who is not a principal or accomplice in the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which have been derived from the proceeds of the said crime;

"3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and [Underscoring supplied.]

"4. There is, on the part of the accused, intent to gain for himself or for another."<sup>[13]</sup>

Moral turpitude is deducible from the third element. Actual knowledge by the "fence" of the fact that property received is stolen displays the same degree of malicious deprivation of one's rightful property as that which animated the robbery or theft which, by their very nature, are crimes of moral turpitude. And although the participation of each felon in the unlawful taking differs in point in time and in degree, both the "fence" and the actual perpetrator/s of the robbery or theft