Republic of the Philippines

House of Representatives Electoral Tribunal

Electoral Tribunal Building
Commonwealth Avenue, Quezon City

MARY ELIZABETH TY-DELGADO,
Petitioner,

- versus -

HRET Case No. 13-022 (QW)
First District, Surigao del Sur

PHILIP ARREZA PICHAY,
Respondent.

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DISSENTING OPINION

BERSAMIN, *J.*:

Although I find the decision written for the Majority by Hon. Joselito Andrew R. Mendoza of Bulacan to be clear and scholarly, I respectfully **DISSENT** on two points.

First, I believe that the statutory ineligibilities are within the context of Rule 14 and Rule 17 of the 2011 HRET Rules. It cannot be disputed that the phrasing of Rule 14[1] and Rule 17[2] of the 2011 HRET Rules does not convey that the words "qualifications" in Rule 14 or "ineligibility" in Rule 17 are limited to or refer only to the qualifications set for Members of the House of Representatives under Article VI, Section 6 of the Constitution. For sure, Congress has the power to prescribe qualifications for elective

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[1] **RULE 14.** *Jurisdiction.* – The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.

[2] **RULE 17.** *Quo Warranto.* – A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The provisions of the preceding paragraph to the contrary notwithstanding, a petition for *quo warranto* may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure.

The rule on verification and consolidation provided in Section 16 hereof shall apply to petitions for *quo warranto*.

offices and other grounds for disqualification or ineligibility in addition to those already defined in the Constitution. The term "qualifications" used in Section 17,[3] Article VI of the Constitution, according to *Guerrero v. Commission on Elections*,[4] should be broadly interpreted as referring to the qualifications prescribed not only by the Constitution but also by the statutes like the Omnibus Election Code. A similarly broad interpretation should be extended to the terms "qualifications" in Rule 14 and "ineligibility" in Rule 17 of the 2011 HRET Rules in order to enable such terms to relate to the qualifications or disqualifications of a Member of the House of Representatives that the Constitution and the statutes may prescribe.

In view of the foregoing, the Tribunal, by virtue of its Constitutionally-vested authority of being the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives, has the jurisdiction to determine whether Pichay had all the qualifications and none of the disqualifications to allow him to continue serving as the Representative of his legislative district.

And, second, I am of the opinion that Pichay's conviction for libel disqualified him to be voted for public office. Respondent Pichay's conviction of several counts of libel as defined in Article 353 of the Revised Penal Code is not disputed. He firmly posits, however, that his conviction did not constitute a ground of his disqualification because it did not involve moral turpitude. In support of his position, he argues that: *firstly*, moral turpitude could not be ascribed to him because he was only the publisher; *secondly*, there could be no moral turpitude on his part because his penalty was a fine, not imprisonment; and, *thirdly*, his case was removed from the application of the prescriptive period set in Section 12 of the Omnibus Election Code.

Pichay's first argument in favor of being treated differently from his co-accused on the basis of his being only the publisher was already fully discussed and refuted by the decision promulgated on September 16, 2008 in G.R. No. 161032 (*Erwin Tulfo v. People and Atty. Carlos T. So*), and G.R. No. 161176 (*Susan Cambri, Rey Salao, Jocelyn Barlizo and Philip Pichay v. Court of Appeals, People and Carlos So*), by which the Supreme Court affirmed the conviction for four counts of libel of the several accused,

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[3] **Section 17.** The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

[4] G.R. No. 137004, July 26, 2000, 336 SCRA 458.

including Pichay in his capacity as the President of Carlo Publishing House, Inc., the publisher. The Supreme Court relevantly held as follows:

> Having discussed the issue of qualified privileged communication and the matter of the identity of the person referred to in the subject articles, there remains the petition of the editors and president of *Remate*, the paper on which the subject articles appeared.
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> **In sum, petitioners Cambri, Salao, Barlizo, and Pichay all claim that they had no participation in the editing or writing of the subject articles, and are thus not liable.**
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> **The argument must fail.**
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> **The language of Art. 360 of the RPC is plain. It lists the persons responsible for libel:**
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> > **Art. 360. *Persons responsible.*—Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.**
> >
> > **The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.**
>
> **The claim that they had no participation does not shield them from liability. The provision in the RPC does not provide absence of participation as a defense, but rather plainly and specifically states the responsibility of those involved in publishing newspapers and other periodicals. It is not a matter of whether or not they conspired in preparing and publishing the subject articles, because the law simply so states that they are liable as they were the author.**
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> **Neither the publisher nor the editors can disclaim liability for libelous articles that appear on their paper by simply saying they had no participation in the preparation of the same. They cannot say that Tulfo was all alone in the publication of *Remate*, on which the subject articles appeared, when they themselves clearly hold positions of authority in the newspaper, or in the case of Pichay, as the president in the publishing company.**
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> **As Tulfo cannot simply say that he is not liable because he did not fulfill his responsibility as a journalist, the other petitioners cannot simply say that they are not liable because they did not fulfill their responsibilities as editors and publishers. An editor or manager of a newspaper, who has active charge and control of its management, conduct, and policy, generally is held to be equally liable with the owner for the publication therein of a libelous article. On the theory that it is the duty of the editor or manager to know and control the**

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contents of the paper, it is held that said person cannot evade responsibility by abandoning the duties to employees, so that it is immaterial whether or not the editor or manager knew the contents of the publication. In *Fermin v. People of the Philippines*, the Court held that the publisher could not escape liability by claiming lack of participation in the preparation and publication of a libelous article. The Court cited *U.S. v. Ocampo*, stating the rationale for holding the persons enumerated in Art. 360 of the RPC criminally liable, and it is worth reiterating:

> **According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers.**
>
> **x x x x**
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> **In the case of State vs. Mason (26 L.R.A., 779; 26 Oreg., 273, 46 Am. St. Rep., 629), the question of the responsibility of the manager or proprietor of a newspaper was discussed. The court said, among other things (pp. 782, 783):**
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> > **"The question then recurs as to whether the manager or proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence prima facie to charge the manager or proprietor with the guilt of its publication.**
> >
> > **"The manager and proprietor of a newspaper, we think ought to be held prima facie criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent, x x x.**
> >
> > **"One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefore, whether he was individually concerned in the publication or not, x x x. Criminal responsibility for the acts of an agent or servant in the course of his employment necessarily implies some degree of guilt or delinquency on the part of the publisher; x x x.**

> **"We think, therefore, the mere fact that the libelous article was published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager."**

In the case of Commonwealth vs. Morgan (107 Mass., 197), this same question was considered and the court held that in the criminal prosecution of a publisher of a newspaper in which a libel appears, he is *prima facie* presumed to have published the libel, and that the exclusion of an offer by the defendant to prove that he never saw the libel and was not aware of its publication until it was pointed out to him and that an apology and retraction were afterwards published in the same paper, gave him no ground for exception. In this same case, Mr. Justice Colt, speaking for the court, said:

> **"It is the duty of the proprietor of a public paper, which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published." (Wharton's Criminal Law, secs. 1627, 1649; 1 Bishop's Criminal Law, secs. 219, 221; People vs. Wilson, 64 Ill., 195; Commonwealth vs. Damon, 136 Mass., 441.)**
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> **The above doctrine is also the doctrine established by the English courts. In the case of Rex vs. Walter (3 Esp., 21) Lord Kenyon said that he was "clearly of the opinion that the proprietor of a newspaper was answerable criminally as well as civilly for the acts of his servants or agents for misconduct in the management of the paper."**

This was also the opinion of Lord Hale, Mr. Justice Powell, and Mr. Justice Foster.

Lofft, an English author, in his work on Libel and Slander, said:

> **"An information for libel will lie against the publisher of a papers, although he did not know of its being put into the paper and stopped the sale as soon as he discovered it."**

In the case of People vs. Clay (86 Ill., 147) the court held that –

> **"A person who makes a defamatory statement to the agent of a newspaper for publication, is liable both civilly and criminally,**

> **and his liability is shared by the agent and all others who aid in publishing it."**
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> Under Art. 360 of the RPC, as Tulfo, the author of the subject articles, has been found guilty of libel, so too must Cambri, Salao, Barlizo, and Pichay. (Bold underscoring has been supplied for emphasis)

With the conclusive finding of their participation in various capacities in the publication of the libelous articles in the *Remate*, the Supreme Court aptly held all the accused, including Pichay, criminally liable for libel as if they were all the authors of the articles in question, ruling that their criminal liabilities were to the same extent regardless of their individual participations in the publication of the articles.

Under the second paragraph of Article 360 of the Revised Penal Code,[5] indeed, the responsibility of each of the persons criminally liable for libel is not distinguished or graduated according to whether they were the authors of the articles or the editors or business managers. Hence, as long as the accused in libel is any of the persons who published, exhibited, or caused the publication or exhibition of any defamatory writing or by similar means, he or she is held criminally responsible. It is basic in statutory construction that we should not distinguish where the law does not distinguish. Accordingly, we cannot distinguish between Pichay's criminal liability from

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[5] Article 360. *Persons responsible.* — Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however*, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila, or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: *Provided, further*, That the civil action shall be filed in the same court where the criminal action is filed and vice versa: *Provided, furthermore*, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: And, provided, finally, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions which have been filed in court at the time of the effectivity of this law.

Preliminary investigation of criminal action for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such action may be instituted in accordance with the provisions of this article.

No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de officio* shall be brought except at the instance of and upon complaint expressly filed by the offended party. (As amended by R.A. 1289, approved June 15, 1955, R.A. 4363, approved June 19, 1965).

the others' criminal liabilities only because he was the President of the company that published the articles instead of being their author. His criminal liability was the same as that of the others regardless of the nature, degree or capacity of his participation. The essence of the criminal liability was the malicious publication of the libelous articles. In this context, we consider to be significant that he has raised no issue against libel being a crime involving moral turpitude, and has taken issue only against ascribing moral turpitude to him despite his being only the President of the publishing company.

Anent the second argument, the imposition on Pichay of a mere fine as the penalty did not render the moral turpitude attached to his crime any less. It was not the form of the penalty imposed that defined whether the crime involved moral turpitude or not, but the nature or character of the crime. Offhand, it ought to be pointed out that libel, being defined and punished under the Revised Penal Code, is *malum in se.* The felony involves moral turpitude, which –

> xxx arises from the totality of all the above elements of libel that is to maliciously defame a specific natural or juridical person or to blacken the memory of one who is already dead through printed from thereby disseminating such unjustifiable act to a wider public.[6]

Anent moral turpitude for purposes of the election laws, the Court has cogently stated in *Teves v. Commission on Elections*:[7]

> Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.
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> x x x
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> Thus, in Dela Torre v. Commission on Elections, the Court clarified that:
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> > 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." 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, the rationale of which was set forth in "Zari v. Flores," to wit:

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[6] Aquino and Griño-Aquino, The Revised Penal Code (1997), volume 3, page. 537.
[7] G.R. No. 180363, April 28, 2009, 587 SCRA 1.

> 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.[8]

As regards the third argument, Pichay claims that he has remained eligible for the public office because he did not "serve a sentence" but only paid a fine.

This argument is legally unwarranted. What is crucial is that Pichay was convicted by final judgment of several counts of libel, a crime that involves moral turpitude. The ineligibility based on his conviction by final judgment for the crime involving moral turpitude is specifically dealt with in Section 12 of the *Omnibus Election Code*, to wit:

> Section 12. *Disqualifications.* – Any person who has been declared by competent authority insane or incompetent, or **has been sentenced by final judgment** for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or **for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.**
>
> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or **after the expiration of a period of five years from his service of sentence**, unless within the same period he again becomes disqualified. (Emphasis supplied.)

As a consequence, Pichay was ineligible to run for or to hold *any* public office because he did not show that he had been granted *plenary* pardon for his convictions. That he was not imprisoned did not matter; otherwise, the criminality attached to libel would be trivialized and obliterated. Only a plenary pardon could have lifted the ineligibility.

WHEREFORE, I respectfully **VOTE** to **FIND** and **DECLARE** that respondent **PHILIP ARREZA PICHAY** was **INELIGIBLE** to run for, and to hold the office of and serve as the Representative of the First District of Surigao del Sur, having been convicted by final judgment of four counts of libel, a crime involving moral turpitude.

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[8] Id. at 12-13.

LUCAS P. BERSAMIN
Member