



Republic of the Philippines
Supreme Court
Manila

EN BANC

LEODEGARIO A. LABAO, JR.,
Petitioner,

G.R. No. 212615

- versus -

COMMISSION ON ELECTIONS
and LUDOVICO L. MARTELINO,
JR.,

Respondents.

X ----- X
SHARON GRACE MARTINEZ-
MARTELINO,
Petitioner,

G.R. No. 212989

Present:

SERENO, CJ.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,** and
CAGUIOA, JJ.

- versus -

COMMISSION ON ELECTIONS
AND VICE MAYOR JOSE O.
ALBA, JR.,

Respondents.

Promulgated:

July 19, 2016

X ----- X
[Handwritten signature]

* On leave.
** No part.

[Handwritten initials]

DECISION**LEONARDO-DE CASTRO, J.:**

Before the Court are two consolidated Petitions:

G.R. No. 212615 is a Petition for *Certiorari* and Prohibition filed by Leodegario A. Labao, Jr. (Labao, Jr.) to annul and set aside the May 21, 2014¹ and September 24, 2013² Resolutions of the Commission on Elections (COMELEC) in SPA Case No. 13-294 (DC), entitled "*Ludovico L. Martelino, Jr. v. Leodegario A. Labao, Jr.*," disqualifying him as candidate for the position of Mayor of the Municipality of Mambusao, Capiz as well as nullifying his proclamation as the duly elected Mayor thereof.

And, **G.R. No. 212989** is a Petition for *Certiorari* and *Mandamus* filed by Sharon Grace Martinez-Martelino (Sharon) (*i*) to annul and set aside the aforementioned resolutions of the COMELEC but only as to the portion directing the application of the rules of succession (in case of a permanent vacancy in the Office of the Mayor) pursuant to Section 44 of the Local Government Code; and (*ii*) to compel the COMELEC to proclaim her, instead, as the duly elected Mayor of the Municipality of Mambusao, Capiz.

Both petitions were filed pursuant to Rule 64 in relation to Rule 65, of the Rules of Court, as amended.

The facts shared by both cases are as follows:

In a Petition for Disqualification dated May 8, 2013 filed before the COMELEC, Ludovico L. Martelino, Jr. (Ludovico) sought the disqualification of Labao, Jr. as candidate³ for Mayor of the Municipality of Mambusao, Capiz in the May 13, 2013 elections, on the ground that Labao, Jr. was a fugitive from justice. Ludovico essentially averred that there was an outstanding warrant for Labao, Jr.'s arrest in connection with the filing of an Information for Murder against him and four other persons; and that he had eluded arrest, thus, was at large.

The Information for murder stemmed from the assassination of Vice-Mayor Abel P. Martinez (Vice-Mayor Martinez) in front of his residence on May 4, 2012. The assailants of Vice-Mayor Martinez were not immediately known. But on December 20, 2012, one Roger D. Loreda (Loreda) executed an extrajudicial confession admitting his participation in the killing of Vice Mayor Martinez, and implicating Labao, Jr. as the mastermind thereof. On

¹ *Rollo* (G.R. No. 212615), pp. 35-43.

² *Id.* at 27-30.

³ Labao filed his Certificate of Candidacy as Mayor of Mambusao, Capiz on October 3, 2012. (*Rollo* [G.R. No. 212615], p. 44.)

April 4, 2013, the Department of Justice (DOJ) found probable cause to indict Labao, Jr. and four other persons for murder.

On April 10, 2013, an Information⁴ for murder was filed before the Regional Trial Court (RTC), Branch 21, Mambusao, Capiz. On the same day, warrants for the arrest of Labao, Jr. and four other personalities were issued.

On April 14, 2013, acting on a tip, members of the Philippine National Police (PNP) attempted but failed to apprehend Labao, Jr. at St. Paul's Hospital in Iloilo City where he was supposedly confined.⁵

In view of the above-described state of affairs, Ludovico filed the said petition for disqualification against Labao, Jr. alleging that the latter's "*flight from justice [was] apparent when he surreptitiously eluded arrest, that is, without proper discharge clearance from St. Paul's Hospital, at the time the PNP personnel tried to serve the warrant of arrest on him.*" He argued that Labao, Jr. qualified as a fugitive from justice as he went into hiding after he was charged in court to avoid criminal prosecution.⁶ It is for such reason that Labao, Jr. is considered a fugitive from justice and, thus, disqualified from running as mayor pursuant to Section 40 of the Local Government Code, viz.:

Section 40. Disqualifications. – The following persons are disqualified from running for any elective local position:

x x x x

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad[.]

In his Answer dated June 12, 2013, Labao, Jr. denied the assertion that he was a fugitive from justice. He countered that there was no charge against him when he filed his Certificate of Candidacy (COC); and that he was only implicated in the crime when Loreda filed his extrajudicial confession on December 20, 2012. Further, he asserted that:

14. On 10 April 2013 to 14 April 2013, respondent [Labao, Jr.] was confined at St. Paul's Hospital, Iloilo City due to constant chest pains occasioned by an enlarged heart that his Cardiologist recommended "Complete Management for Acute Coronary Syndrome, Plan to do Angiogram," per Clinical/Medical Abstract dated 13 April 2013 x x x.

15. Having been confined at said hospital, particularly at its Surgical Intensive Care Unit, respondent had no idea as to the truth or falsity of the allegations that the Murder charge against him were maliciously broadcasted/published over radio, tv and the newspapers.

⁴ Rollo (G.R. No. 212615), p. 45.

⁵ Id. at 28 and 49.

⁶ Id. at 50.

hmv

16. On or about 12 April 2013, respondent intended to submit himself to the jurisdiction of the court by filing a motion for hospital arrest with [Presiding Judge] Amular but he was informed that PJ Amular was in Boracay, Aklan and will report for work only on 15 April 2013, hence, the filing of that motion was rescheduled on 15 April 2013.

17. On 14 April 2013, respondent learned from his staff that police authorities had surrounded the hospital and they personally heard a police officer say "Shoot to kill si Labao." Instinctively, without any intent to elude arrest, but for the singular purpose of preserving his life, he was forced to leave the hospital.

18. On 15 April 2013, PJ Amular decided to inhibit himself from the Murder case after issuing the Warrant of Arrest against respondent with precipitate haste, per the Order of Inhibition dated 15 April 2013 x x x.

19. Immediately thereafter, the Murder case was referred to the Supreme Court for assignment to another court/judge as there is no pairing judge to try or hear the subject case in the Regional Trial Court of Mambusao, Capiz.

20. Since then, respondent had been preparing himself to undergo angiogram to improve his heart ailment as well as **awaiting the assignment by the Supreme Court of the Murder case to another court/judge so he can submit himself to the jurisdiction of the court by applying for hospital arrest and/or filing any other appropriate pleading.**

21. Until the Supreme Court has assigned the Murder case to another court/judge, the same cannot be prosecuted, without any fault on the part of respondent, as it was PJ Amular himself who was responsible in creating that consequential situation wherein the prosecution of the case was held in abeyance due to his inhibition.⁷

Finally, Labao, Jr. puts emphasis on the fact that he had already been proclaimed as the duly elected Municipal Mayor of Mambusao, Capiz on May 14, 2013.⁸

Ruling of the COMELEC First Division

In a Resolution dated September 24, 2013, the COMELEC First Division resolved to disqualify Labao, Jr., the dispositive part of which reads:

WHEREFORE, premises considered, the Commission **RESOLVED** as it hereby **RESOLVES** to: **DISQUALIFY** respondent Leodegario A. Labao Jr. as candidate for the position of Mayor of Mambusao, Capiz.⁹

⁷ Id. at 63-65.

⁸ Id. at 56.

⁹ Id. at 30.

Citing *Rodriguez v. Commission on Elections*,¹⁰ to wit:

[A] fugitive from justice x x x includes not only those who flee *after conviction to avoid* punishment but likewise who, after being charged, flee to avoid prosecution.

The definition thus indicates that the intent to evade is the compelling factor that animates one's flight from a particular jurisdiction. And obviously, there can only be an *intent to evade* prosecution or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.

Prescinding from the above definition, the COMELEC First Division held that Labao, Jr. was a fugitive from justice, *i.e.*, that his acts subsequent to the filing of the Information for murder and the issuance of a warrant of arrest indicate an unmistakable intent to evade prosecution. Particularly, it held that:

There is no question that an Information for Murder was already filed and pending in court against respondent. Likewise, there is no question that a warrant of arrest was issued against him as early as April 10, 2013. In fact, the arrest warrant was implemented during respondent's confinement at the hospital, only he was able to elude arrest. In other words, respondent knew that he is an accused for a capital offense and a warrant was already issued against him. Under such circumstance, therefore, he should have voluntarily surrendered to the authorities. The fact that respondent has not yet assumed office despite having been proclaimed as the duly elected Mayor of Mambusao, Capiz, militates against his insistence that he is in good faith.

Moreover, his insistence that he could not be considered as avoiding prosecution because the case has not yet been assigned to another court/judge is of no moment. The surrender of a person against whom a warrant of arrest has been issued does not depend upon the presence or the absence of a judge.

It also does not escape us that respondent even executed a Special Power of Attorney in favor of his wife authorizing her "to appear in all stages of the proceedings, if required, and if necessary, to testify and/or submit appropriate documentary evidence." While this is undoubtedly within respondent's prerogative, it is a clear indication that he does not wish to face the music by complying with the warrant of arrest which up to now is still outstanding.¹¹ (Emphasis supplied.)

Labao, Jr. moved for the reconsideration¹² of the above-quoted ruling based on the following grounds: (i) the petition for disqualification has ceased to be a pre-proclamation controversy as he had already been proclaimed as Mayor; (ii) the *Rodriguez* ruling on "fugitive from justice" did

¹⁰ 328 Phil. 624, 642 (1996).

¹¹ *Rollo* (G.R. No. 212615), p. 29.

¹² *Id.*, at 75-87.

Amw

not apply to him; and (iii) since he had already been proclaimed as winner, all doubts regarding his qualification should be resolved in his favor in order to breathe life to the will of the people.

On October 14, 2013, Sharon, the daughter of Vice-Mayor Martelino and wife of Ludovico, filed a *Motion to Intervene* in the COMELEC case as well as a *Motion for Reconsideration* of the September 24, 2013 Resolution of the COMELEC First Division. In her motions,¹³ she averred that she also ran for the same Mayoralty position as Labao, Jr. in the May 13, 2013 elections; that since Labao, Jr.'s disqualification made his candidacy illegitimate, the votes cast in his favor should be considered stray under Section 211, paragraph 24¹⁴ of the Omnibus Election Code; and that she obtained the second highest number of votes; hence, she should be proclaimed the winning Mayoralty candidate.

On November 4, 2013, the Liga ng mga Barangay-Mambusao Chapter (LBMC) also moved to intervene, arguing that the case, which was considered a pre-proclamation controversy, should be dismissed for having been rendered moot and academic by Labao, Jr.'s victory.¹⁵

In the meantime, RTC-Branch 21¹⁶ issued an Order¹⁷ on November 4, 2013 temporarily suspending the proceedings in consideration of a July 15, 2013 DOJ *Resolution*¹⁸ issued by Undersecretary Francisco F. Baraan III (*Baraan Resolution*) excluding Labao, Jr. from the Information for murder of Vice-Mayor Martinez. The *fallo* of the said RTC Order reads:

In view of the foregoing, the implementation of the warrant of arrest against accused Labao is lifted and temporarily suspended. Consequently, the proceedings against accused Labao is temporarily suspended until and after the final determination of [the] Motion for Reconsideration filed by the prosecution with the Department of Justice through the Police Provincial Office. All law enforcers[,] their deputies and agents or anyone acting for and on their behalf or authority are directed to immediately cease and desist from enforcing the Warrant of Arrest dated April 10, 2013 against Leodegario A. Labao, Jr. until further orders from this Court.¹⁹

¹³ Id. at 37.

¹⁴ **Sec. 211. Rules for the appreciation of ballots.** - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

¹⁵ *Rollo* (G.R. No. 212615), p. 37.

¹⁶ To which a judge had already been assigned.

¹⁷ *Rollo* (G.R. No. 212615), pp. 110-113.

¹⁸ Id. at 94-109.

¹⁹ Id. at 113.

me

Thus, in view of the said RTC Order, on November 6, 2013, Labao, Jr. filed a *Supplemental Motion for Reconsideration*²⁰ before the COMELEC on the ground that “*he is already a free man, and most certainly ‘not a fugitive from justice,’*” by virtue of the lifting and suspension of the implementation of the warrant of arrest by the RTC.

On November 14, 2013, however, DOJ Secretary Leila De Lima reversed the July 15, 2013 *Baraan Resolution*, effectively reinstating Labao, Jr. as an accused in the criminal case filed before RTC-Branch 21.²¹

In yet another twist of events, on May 21, 2014, resolving the issue of whether or not probable cause exists for the issuance of a warrant of arrest against Labao, Jr., RTC-Branch 21 issued another Order²² this time dismissing altogether the criminal complaint against Labao, Jr. on the ground of lack of probable cause.

Ruling of the COMELEC En Banc

In a Resolution dated May 21, 2014, the same day as the issuance of the above-mentioned RTC Order, the COMELEC *En Banc* denied Labao, Jr.’s motion, *viz.*:

WHEREFORE, the Motion for Reconsideration of **RESPONDENT LEODEGARIO A. LABAO, JR.** of the Resolution dated 24 September 2013 of the First Division is hereby **DENIED** for lack of merit and his disqualification as candidate for the position of Mayor of Mambusao, Capiz is hereby **AFFIRMED**.

Consequently, Respondent’s **PROCLAMATION** is hereby declared **NULL AND VOID**.

Accordingly, let the rules of succession provided under Section 44 of the Local Government Code apply.²³

In affirming Labao, Jr.’s disqualification, the COMELEC *En Banc* confirmed its First Division’s finding as to Labao Jr.’s intention to evade prosecution; thus, said candidate was a “fugitive from justice” as defined in *Rodriguez*. It explained that the phrase “fugitive from justice” contemplates two situations: 1) those who, after conviction flee to avoid punishment; and 2) those who, **after being charged, flee to avoid prosecution**; and Labao, Jr. falls under the second category.²⁴

²⁰ Id. at 114-116.

²¹ Id. at 38.

²² Id. at 141-153; penned by Judge Domingo L. Casiple, Jr.

²³ Id. at 42.

²⁴ Id. at 33-34.

In filling up the vacancy brought about by the disqualification of Labao, Jr., the COMELEC *En Banc* applied *Fermin v. Commission on Elections*²⁵ wherein this Court ruled that a disqualified candidate is merely prohibited to continue as a candidate, as opposed to a candidate whose certificate of candidacy is cancelled. A disqualified candidate may be substituted, and his certificate of candidacy subsists. In which case, the rule on succession under Section 44 of the Local Government Code (LGC) applies:

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor x x x.

With respect to the motions for intervention separately filed by Sharon and LBMC, the COMELEC *En Banc* denied both motions in view of the fact that they were filed after the conferences set for the case – in violation of Section 3, Rule 8 of the COMELEC Rules of Procedure, which provides that an intervention may be denied when it will unduly delay the rights of the original parties. Further, it held that passing upon the issue/s raised in the said motions would be inutile considering its disposition of Labao, Jr.'s motion for reconsideration that settles all the remaining issues, *i.e.*, who shall replace Labao, Jr.²⁶

Hence, the two petitions separately filed by Labao, Jr. and Sharon before this Court.

The Issues

In his petition docketed as **G.R. No. 212615**, Labao, Jr. prays for the annulment and setting aside of the COMELEC Resolutions on the following grounds:

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT:

1.) ENTERTAINED A PRE-PROCLAMATION CONTROVERSY EVEN AFTER PETITIONER WAS PROCLAIMED AS THE DULY ELECTED MUNICIPAL MAYOR OF MAMBUSAO, CAPIZ; AND,

2.) DISQUALIFIED PETITIONER AS MUNICIPAL MAYOR OF MAMBUSAO, CAPIZ ON THE PREMISE THAT HE IS A FUGITIVE FROM JUSTICE NOTWITHSTANDING THAT THERE IS NO MORE WARRANT OF ARREST AGAINST HIM AND THE CRIMINAL CHARGE FOR MURDER AGAINST HIM HAD ALREADY BEEN DISMISSED FOR LACK OF PROBABLE CAUSE.²⁷

²⁵ 595 Phil. 449, 469 (2008).

²⁶ *Rollo* (G.R. No. 212989), pp. 34-35.

²⁷ *Rollo* (G.R. No. 212615), p. 14.

Labao, Jr. insists that the COMELEC should have dismissed the case against him on account of his proclamation as Mayor of Mambusao, Capiz; thus, he argues that the disqualification case has ceased to be a pre-proclamation controversy.

On the other hand, in her petition docketed as **G.R. No. 212989**, Sharon seeks the annulment and setting aside of the COMELEC *En Banc* Resolution but only that portion that directs the application of the rules on succession in case of permanent vacancy in the Office of the Mayor provided under Section 44 of the Local Government Code. It is Sharon's submission that, pursuant to *Maquiling v. Commission on Elections*,²⁸ having garnered the second highest number of votes next to Labao, Jr., she should be proclaimed as the duly elected Mayor of Mambusao since the COMELEC already disqualified Labao, Jr. In fine, she anchors her petition on the following arguments:

I. Whether petitioner should be allowed to intervene in SPA No. 13-294 (DC);

II. Whether the qualification and/or disqualification requirements of a candidate, as mandated by the [C]onstitution and law, must be possessed during the filing of the certificate of candidacy and on the day of the election; and

III. Whether petitioner should be declared the winning candidate and proclaimed as Mayor of Mambusao.²⁹

This Court's Ruling

Re: G.R. No. 212615

Labao, Jr.'s petition is meritorious.

The petition against Labao, Jr. was for disqualification and not a pre-proclamation controversy.

The petition filed by Ludovico against Labao, Jr. before the COMELEC, docketed as SPA Case No. 13-294 (DC), is not a pre-proclamation controversy. The Omnibus Election Code (OEC) clearly defines the term "pre-proclamation controversy." Pertinently, Section 241 thereof provides as follows:

²⁸ 709 Phil. 408 (2013).

²⁹ *Rollo* (G.R. No. 212989), p. 11.

MNL

Sec. 241. *Definition.* - A pre-proclamation controversy refers to **any question pertaining to or affecting the proceedings of the board of canvassers** which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, **or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.** (Emphasis supplied.)

Sections 233 to 236 of the OEC read:

Sec. 233. *When the election returns are delayed, lost or destroyed.* - In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.

The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election.

Sec. 234. *Material defects in the election returns.* - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction:

Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: *Provided, further,* That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

Sec. 235. *When election returns appear to be tampered with or falsified.* - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or

were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

Sec. 236. *Discrepancies in election returns.* - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same returns, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

From the foregoing provisions of the OEC, it is quite clear that the petition for disqualification filed by Ludovico docketed as SPA Case No. 13-294 (DC) in no way qualifies as a pre-proclamation controversy, having absolutely nothing to do with any matter or ground pertaining to or affecting the proceedings of the board of canvassers or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

Section 243 of the OEC further enumerates the issues which are proper subject matters of a pre-proclamation controversy as follows:

Sec. 243. *Issues that may be raised in pre-proclamation controversy.* - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- a. **Illegal composition or proceeding** of the board of canvassers;
- b. **The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies** in the same returns or in other authentic

copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

- c. **The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and**
- d. **When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.** (Emphasis supplied.)

In *Suhuri v. Commission on Elections*,³⁰ this Court held that the above “enumeration is restrictive and exclusive.”

Thus, in this case, the petition filed against Labao, Jr. does not come within the scope of a pre-proclamation controversy under the aforementioned OEC provision.

The grounds to file a petition for disqualification are provided for in Section 12 or 68 of the OEC, or under Section 40 of the Local Government Code.³¹ In the case at bar, the petition for disqualification against Labao, Jr. was based on Section 40(e) of the Local Government Code, quoted above, disqualifying “[f]ugitives from justice in criminal or non-political cases here or abroad” from running for any elective local position.

Labao, Jr. was not a fugitive from justice at the time that he was a candidate for Mayor of Mambusao, Capiz during the May 13, 2013 Elections.

Labao, Jr. relies much on the fact that, on May 21, 2014, one year after the conduct of the elections, the RTC had already dismissed the murder charge against him. But what matters in the resolution of the present cases is whether or not during the period starting from the time the Information for murder filed on April 10, 2013 until the day of the election, on May 13, 2013, Labao, Jr. can be considered a fugitive from justice, and, hence, disqualified to run for the position of Mayor of Mambusao, Capiz.

Based on settled jurisprudence, the term “*fugitive from justice*” includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, **flee to avoid prosecution.**³² In *Rodriguez v. Commission on Elections*,³³ this Court held that:

³⁰ 617 Phil. 852, 861 (2009).

³¹ *Fermin v. Commission on Elections and Dilangalen*, supra note 25 at 469.

³² *Marquez, Jr. v. Commission on Elections*, 313 Phil. 417, 423 (1995); *Rodriguez v. Commission on Elections*, supra note 10.

³³ *Rodriguez v. Commission on Elections*, supra note 10.

The definition thus indicates that the *intent to evade* is the compelling factor that animates one's flight from a particular jurisdiction. And obviously, **there can only be an intent to evade prosecution or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.** (Emphasis supplied.)

Such intent in these cases has not been established by the evidence on record.

The COMELEC anchored its finding that Labao, Jr. was a fugitive from justice from the fact that he was missed at the hospital when the warrant for his arrest was being served. No other substantial evidence was presented to prove that Labao, Jr. tried to hide from the authorities or that he left Mambusao, Capiz to avoid being arrested and prosecuted. On the part of Labao, Jr., he was able to show his presence in Mambusao, and his desire to participate in the proceedings before the DOJ and the RTC, by citing the following circumstances:

1. He took his Oath of Office as Municipal Mayor of Mambusao, Capiz, per the *Panunumpa sa Katungkulan* dated 25 June 2013,³⁴
2. He assumed office as Municipal Mayor of Mambusao, Capiz per the DILG Certification³⁵ dated 30 June 2013.
3. He served as Municipal Mayor and received his salary for the period from 1-3 July 2013, per certification by the Administrative Officer of the Request and Disbursement Voucher dated 3 October 2013.³⁶
4. He filed a Petition for Review before the DOJ which he verified on April 10, 2013, which led to the issuance of the "Baraan Resolution" dated 15 July 2013, resulting in the directive to exclude him in the criminal Information for Murder.
5. He participated in the proceedings before the RTC, Mambusao, Capiz which led to the issuance of the Orders dated 4 November 2013 and 21 May 2014, for the lifting/suspension of the Warrant of Arrest against him and finally, the dismissal of the Murder charge against him. (Citations omitted)³⁷

Moreover, there was no proof to show the efforts exerted by the police to locate Labao, Jr. and that despite such efforts, the warrant of arrest against him could not be served. Although Labao, Jr. had executed a Special Power of Attorney (SPA) in favor of his wife authorizing her "to appear in all stages of the proceedings, if required, and if necessary, to testify and/or

³⁴ *Rollo* (G.R. No. 212615), p. 57.

³⁵ *Id.* at 58.

³⁶ *Id.* at 59-60.

³⁷ *Id.* at 354-355.

submit appropriate documentary evidence,” again, it was not shown that the SPA was executed solely for the purpose of evading arrest.

Grave Abuse of Discretion on the Part of COMELEC

Given the foregoing, this Court finds that the pieces of evidence on record do not sufficiently establish Labao, Jr.’s intention to evade being prosecuted for a criminal charge that will warrant a sweeping conclusion that Labao, Jr., at the time, was evading prosecution so as to disqualify him as a fugitive from justice from running for public office.³⁸ Moreover, the dearth of evidence pointing to such intent hardly justifies the would-be disenfranchisement of 12,117 innocent voters of Mambusao, Capiz who voted for Labao, Jr.

Thus, the COMELEC *En Banc* Resolution dated May 21, 2014 should be struck down for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. This Court’s action finds anchor in *Jalover v. Osmeña*,³⁹ where it was explained that:

In exceptional cases, however, when the COMELEC’s action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction. (Citations omitted.)

This Court is hard-pressed to label Labao, Jr.’s actions as evasion of prosecution for him to be considered a fugitive from justice that would disqualify him to run as a candidate for Mayor of Mambusao, Capiz.

Re: G.R. No. 212989

In view of the findings of fact and law arrived at in G.R. No. 212615, it is no longer necessary to discuss the issues raised in the petition of Sharon who is seeking to succeed Labao, Jr. as Mayor of Mambusao, Capiz. Hence, the same is dismissed.

WHEREFORE, premises considered, the petition filed by Leodegario A. Labao, Jr. in G.R. No. 212615 is **GRANTED**. Consequently, the petition filed by Sharon Grace Martinez-Martelino in G.R. No. 212989 is **DISMISSED** for being moot and academic.

³⁸ Id. at 355.

³⁹ G.R. No. 209286, September 23, 2014, 736 SCRA 267, 280.

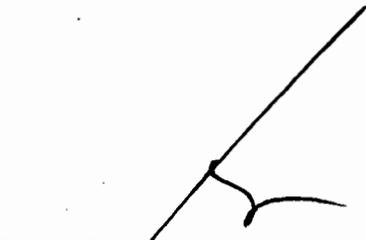
SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice

ON LEAVE
ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



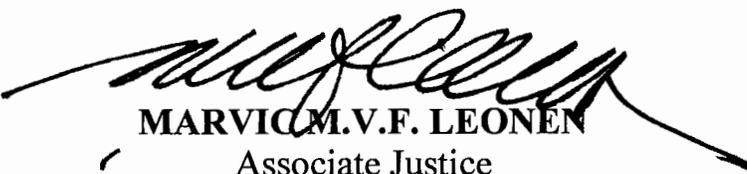
JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

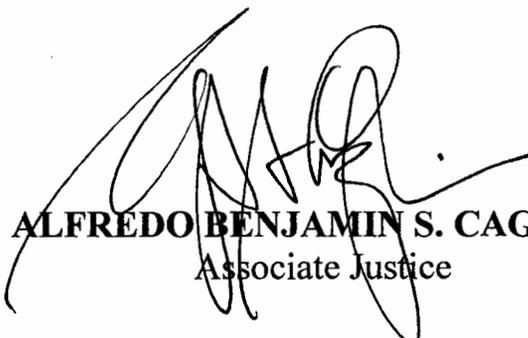


MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

*No part
prior O.S.G
action*



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

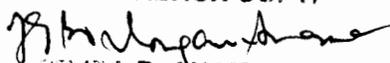
CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CLERK'S XEROX COPY:



FELISA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT