

**RODRIGO V. FONTELERA AND AMADO A. FONTELERA,
PETITIONERS, VS. HONORABLE JUDGE AUGUSTO M. AMORES AND
MARY AGNES BURNS, RESPONDENTS.***G.R. No. L-41361. March 08, 1976*

Ponente: FERNANDO, J.

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One of the most valued judicial prerogatives is the implied power to punish for contempt. Its exercise, however, may at times give rise to the vexing question of whether in view of the conjunction in a single person of the role of both prosecutor and judge, the action taken may be arbitrary and thus offends against the due process clause. In this certiorari and mandamus proceeding, the former is intended to correct what is alleged to be a grave abuse of discretion not only because petitioner Rodrigo V. Fontelera, was found guilty of contempt, but also because his motion for indirect contempt against private respondent, Mary Agnes Burns, where he was joined by the other petitioner, Amado A. Fontelera, was summarily dismissed, and the latter, on the assumption that such order of dismissal would be set aside, is for the purpose of having respondent Judge hear such motion for indirect contempt. The basic issue is whether such assailed manifestation of judicial power calls for the interposition of the corrective authority of this Tribunal. As will be shown, the use of offensive language giving rise to the contempt citation did merit the imposition of the fine. There is basis, however, for the nullification of the dismissal of the indirect contempt charge as the failure to appear on time of a party-movant should not automatically be visited with a rejection of his plea. There is, to that extent, merit to this petition for certiorari and mandamus.

The facts alleged in the petition were not denied in private respondent's comment, which was considered as the answer. It turned out that respondent Judge of the Court of First Instance of Zambales, Branch I, decided a civil case wherein private respondent was the defendant and petitioner Amado A. Fontelera was the plaintiff, with its dispositive portion reading as follows: "[Wherefore] Judgment is hereby rendered enjoining the respondent and her agents from gathering and picking up fruits from the mango trees on the land and described in paragraph 2 of the complaint; that the proceeds of the sale of the mango trees which were gathered by the respondent and her man which were deposited by the receiver, Mayor Dangal Gucvarra of Subic, Zambales with the court be delivered to the plaintiff Amado Fontelera under proper receipt, with costs against defendant." [1] It was then stated that private respondent as well as her counsel and her agents disregarded such decision "by gathering and picking mango fruits from the mango trees," on April 8, 1975, resulting in a motion by petitioner Amado A. Fontelera to declare such parties in contempt. [2] There was an answer filed by private respondent Mary Agnes Burns on May 21, 1975. [3] The motion for contempt contained a notice of the time and place of hearing, with the specific request that it be held at 10:00 o'clock in the morning of June 17, 1975. [4] Petitioners with their witnesses, it was asserted, were at the sala of respondent Judge on such date and at such time, but they were informed that their motion was denied because they were not there earlier when the matter was heard. [5] There was a motion for reconsideration filed by petitioners on June 27, 1975. [6] In the answer to such motion for reconsideration, private respondent asked that petitioners be punished for direct contempt. [7] Respondent Judge

then on July 25, 1975 issued an order directing petitioner, Rodrigo V. Fontelera, to show cause at a hearing on August 5, 1975 why he should not be held in contempt of Court for having made the following statements: "This is tyranny or capricious and whimsical exercise of power. * * * It sparkles the rays of prejudice and personal hostility." [8] Then on August 5, 1975, respondent Judge in an order gave petitioner Rodrigo V. Fontelera five days within which to file an answer to the contempt charge. [9] Finally, on August 27, 1975, respondent Judge found petitioner Rodrigo V. Fontelera guilty of direct contempt of court and sentenced him to pay a fine of P200.00. [10] Hence this petition.

As noted at the outset, while the finding of direct contempt cannot be set aside, certiorari and mandamus lie to nullify the order of respondent Judge dismissing summarily the motion by petitioners for indirect contempt and, therefore, he may be compelled by mandamus to hear such motion.

1. The governing principle for the exercise of the implied constitutional power to punish for contempt was recently set forth in *People v. Estenzo*. [11] A relevant excerpt from the opinion therein rendered follows: "It is not open to dispute that implied in the judicial power vested in courts under the Constitution is the inherent power to punish for contempt. Ever since the establishment of the present judicial system, such a prerogative has been exercised with the approval of the Court. There are a number of decisions dealing with direct contempt. It cannot be denied either that unless exercised with restraint and judiciousness, this power lends itself to manifestations of whim, caprice, and arbitrariness. There is a compelling and exigent need therefore for judges to take the utmost care lest prejudice, innate or covert hostility to personality of counsel, or previous incidents lead them to characterize conduct susceptible of innocent explanation as slights on the dignity of the court. It is ever timely to remember how easy it is to overstep the dividing line that should separate the prosecutor from the judge, when both roles are merged in the same person. The infusion of personal element may go unnoticed. Even if such were not the case, objectively viewed, such an impression may be difficult to avoid by laymen. That is a consideration that cannot be overlooked. It is important that public confidence in judicial impartiality and fairness be not impaired. It is not so much for the sake of the judge alone then, but much more so for vindicating the popular belief in court proceedings being marked by calmness and dignity, that there should be a curb on the otherwise human failing of detecting disrespect in conduct or statements from counsel that could not satisfy the highest standard of politeness or courtesy. When an occurrence of such character presents itself, an admonition or warning should suffice. There must be caution and hesitancy on the part of judges against the exercise of this awesome prerogative under such circumstances. 'The power to punish for contempt,' as was pointed out by Justice Malcolm in *Villavicencio v. Lukban*, 'should be exercised on the preservative and not on the vindicative principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.'" [12]

2. With due regard to the guidelines thus above set forth, it cannot be successfully maintained that no direct contempt was committed by petitioner Rodrigo V. Fontelera. In his motion for reconsideration, he did go further than is warranted by zealous advocacy, with the charge of "tyranny" hurled against respondent Judge, and with the accusation of "prejudice and personal hostility" contained in the rather awkwardly-phrased next sentence. They are imputations derogatory to the character of a man on the bench, expressed in intemperate language amounting to vilification. Had he limited himself to his reference of "capricious and whimsical exercise of power," more or less sacramental phrases to show denial of due process, it would have not been likely that he would be in the predicament he finds himself at present. He went too far, however, and he had only himself to blame. Our previous decisions from *Carag vs. Warden of the Jail of Cagayan*, [13] penned by Justice Malcolm, sustain the action of respondent Judge. Accuracy demands, however, the statement that it is only from *Lualhati v. Albert*, [14] decided three years later, in 1932, this Court, speaking once more through the same jurist, where it was alleged in a motion for new trial that it would be impossible for the respondent Judge in that case to accord the accused "a

completely impartial trial" and that "it becomes absolutely necessary * * * to do justice" to her, that this Tribunal first exercised the power that a pleading filed with a court could supply the basis for a finding of direct contempt. Since then that principle has been adhered to.

3. It is to be admitted that the patience of petitioners was sorely taxed. The summary dismissal of their motion did irk them. In their state of mind, it could have been viewed as a provocation. To paraphrase an old saw, the nether regions have no fury like a party frustrated. So it did seem. They naturally would assume that their motion for indirect contempt, if substantiated, and they brought their own witnesses to the deed denounced, called for an order in their favor. They had no doubt that there was disobedience. There was disrespect shown to the court. Its dignity was assailed. It does not matter that the amount involved in these inflationary times was trifling. A principle was involved. They were the victors in a lawsuit. The fruits, literally, of such triumph should belong to them and to them alone. There was then a violation of their property rights. That was not a matter to be taken lightly, at least not by persons for whom, to follow Tawney, the sense of possession runs deep. They felt they were entitled to redress. That led to their motion for indirect contempt against private respondent. They were not even heard just because they were late by an hour at the most. There is basis for the claim, therefore, that respondent Judge acted too hastily. The right to a hearing is an indispensable element of due process. It is not to be lost by conduct, which, while not innocent, is not sufficiently tinged with culpability. It would appear, therefore, that fairness and justice, implicit in the concept of due process, can only be satisfied if, on the facts of this case, the order denying the motion to punish private respondent for indirect contempt is set aside so that the matter in question be duly heard.

WHEREFORE, the writ of certiorari is granted to nullify the order of June 17, 1975 denying a motion for indirect contempt. Such order is hereby declared to be of no force and effect. The writ of mandamus is granted so that respondent Judge, or whoever is assigned in his stead may calendar such motion of petitioners to declare private respondent Mary Agnes Burns and her agents in contempt of Court. No costs.

Barredo, Antonio, Aquino, and Concepcion Jr., JJ., concur.

[1] Petition, par. 2.

[2] Ibid, par. 4.

[3] Ibid, par. 6.

[4] Ibid, par. 7.

[5] Ibid, par. 8.

[6] Ibid, par. 9.

[7] Ibid, par. 10.

[8] Ibid, par. 11.

[9] Ibid, par. 12.

[10] Ibid, par. 14.

[11] L-24522, May 29, 1975, 64 SCRA 211.

[12] Ibid, 213-215. Villavicencio v. Lukban is reported in 39 Phil. 778 (1919). Direct contempt cases, in addition to Villavicencio v. Lukban, follow: In re Aguas, 1 Phil. 1 (1901); U.S. v. Ney, 8 Phil. 146 (1907); Jones v.

Harding, 9 Phil. 279 (1907); Narcida v. Bowen, 22 Phil. 365 (1912); Carag v. Warden of the Jail of Cagayan, 53 Phil. 85 (1929); Lualhati v. Albert, 57 Phil. 86 (1932); Salcedo v. Hernandez, 61 Phil. 724 (1935); Medina v. Rivera, 66 Phil. 151 (1938); Rivera v. Arellano, 82 Phil. 744 (1949); Torres v. Teodoro, Sr., 101 Phil. 422 (1957); Matutina v. Buslon, 109 Phil. 140 (1960); Malolos v. Reyes, L-16135, Feb. 25, 1961, 1 SCRA 559; Dizon v. de Borja, AC No. 163-J, Jan. 28, 1971, 37 SCRA 46; Ocampo v. Domingo, L-27632, February 28, 1972, 43 SCRA 286; Gardones v. Delgado, AM No. 120-MJ, July 23, 1974, 58 SCRA 58.

[13] 53 Phil. 84 (1929).

[14] 57 Phil. 86.

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