

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE GREGORIO MONTEJO, JUDGE, COURT OF FIRST INSTANCE, ZAMBOANGA CITY AND BASILAN CITY, MAYOR LEROY S. BROWN, DETECTIVE JOAQU...

G.R. No. L-14595. May 31, 1960

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2e75bb6956e0/>

CONCEPCION, J.:

This is a special civil action for certiorari, with mandamus and preliminary injunction, against Hon. Gregorio Montejo, as Judge of the Court of First Instance of the cities of Zamboanga and Basilan, and the defendants in Criminal Case No. 672 of said court.

In the petition herein, which was filed by the prosecution in said criminal case, it is prayed that, pending the final determination thereof, a writ of preliminary injunction issue, enjoining respondent Judge from proceeding with the trial of said case; that, after due hearing, the rulings of respondent Judge, rejecting some evidence for the prosecution therein and not permitting the same to propound certain questions, be set aside; that said respondent Judge be ordered to admit the aforementioned evidence and permit said questions; and that Senator Roseller Lim be declared, contrary to another ruling made by respondent Judge, disqualified by the Constitution from appearing as counsel for the accused in said criminal case. Soon, after the filing of the petition, we issued the writ of preliminary injunction prayed for, without bond.

In their respective answers, respondents alleged, in substance, that the ruling complained of are in conformity with law.

Respondents Leroy S. Brown, Mayor of Basilan City, Detective Joaquin R. Pollisco, Patrolman Graciano Lacerna (alias Dodong) and Mohamad Hasbi, Special Policemen Dionisio Dinglasa, Moro Yakan, Hadjaratil, Moro Alo, and several John Does, are charged, in said Criminal Case No. 672, with murder. It is alleged in the information therein that, during May and June, 1958, in the sitio of Tipo-Tipo, district of Lamitan, City of Basilan, Mayor Brown "organized groups of police patrol and civilian commandoes", consisting of regular and special policemen, whom he "armed with pistols and high power guns", and then "established a camp", called sub-police headquarters—hereinafter referred to as sub-station—at Tipo-Tipo, Lamitan, which was placed under his command, orders, direct supervision and control, and in which his codefendants were stationed; that criminal complaints were entertained in said sub-station, in which defendant Pollisco acted as investigating officer and exercised authority to order the apprehension of persons and their detention in the camp, for days or weeks, without due process of law and without bringing them to the proper court; that, on or about June 4, and 5, 1958; one Yakan Awalin Tebag was arrested by order of Mayor Brown, without any warrant or complaint filed in court, and then brought to, and detained in, the aforementioned sub-station; that while on the way thereto, said Awalin Tebag was maltreated, pursuant to instructions of Mayor Brown, concurred in by Pollisco, to the effect that Tebag be mauled until such time as he shall surrender his gun; that, once in the sub-station, Tebag, whose hands were securely tied,

was subjected, by defendants Lacerna, Hasbi, Pollisco, Dinglasa, and other special policemen, to further and more severe torture, in consequence of which Tebag died; that, in order to simulate that Tebag had been killed by peace officers in the course of an encounter between the latter and a band of armed bandits of which he formed part, the body of Tebag was brought, early the next morning, to a nearby isolated field, where defendant Hasbi fired twice at said dead body from behind, and then an old Japanese rifle, supplied by Mayor Brown, was placed beside said body; and that, in furtherance of the aforementioned simulation, a report of said imaginary encounter, mentioning Tebag as the only member of, a band of armed bandits whose identity was known, was submitted and respondent Hasbi caused one of his companions to shoot him on the left arm.

During the trial of said criminal case, respondent Judge rejected the following evidence for the prosecution therein:

- Exhibit A—A report of Capt. F. G. Sarrosa, Commanding Officer of the PC Detachment in Basilan City, who investigated the case, showing that on June 5, 1958, he and Lt. Clemente Antonio, PAF, found nine (9) detainees in the Tipo-Tipo sub-station. This was part of the chain of evidence of the prosecution to prove that persons used to be detained in the aforementioned sub-station by the main respondents herein, without either a warrant of arrest or a complaint filed in court.
- Exhibit C—Letter of Atty. Doroteo de Guzman to the officer in charge of the sub-station, dated June 4, 1958, inquiring as to the whereabouts of Awalin Tebag, who, according to the letter, was arrested in his house, by policemen, on June 4, 1958. Capt. Sarrosa took possession of this letter in the course of his aforementioned investigation.
- Exhibits G, G-1, G-2 and G-3—These are the transcript of the testimony of Tebag's mother, before the City Fiscal of Basilan City, when she asked an autopsy of the body of her son.
- Exhibits J to V—Consisting of the following, namely: a sketch of the sub-station; pictures of several huts therein, indicating their relative positions and distances; a picture depicting how the body of Tebag was taken from a camarin in the sub-station; a picture showing how Patrolman Hasbi was shot by a companion, at his request; and a picture, Exhibit T, demonstrating how Mayor Brown allegedly gave the Japanese rifle, Exhibit Y, to Hasbi, to be planted beside Tebag's body.

Although referred to by Yakan Carnain, Arit, Lianson, Kona Amenola, and Asidin, in the course of their testimony as witnesses for the prosecution, these exhibits were not admitted in evidence, which were presented to show how they were able to observe the movements in the sub-station, the same being quite small.

- Exhibits X (a "barong") and X-1 (a scabbard)—Amenola said that these effects were given to him by Mayor Brown in the latter's office, and that he then saw therein the Japanese rifle, Exhibit Y, which was later placed beside the dead body of Awalin Tebag.
- Exhibits DD, DD-1, FF, JJ, KK and LL—These show that on April 28, 1958, Yakan Kallapattoh and Fernandez (Pilnandiz) executed affidavits admitting participation in a given robbery; that an information therefor (Exh. KK) was filed against them on May 2, 1958, with the municipal court of Basilan City (Criminal Case No. 1774); and that, in compliance with warrants for their arrest then issued, they were apprehended and detained in the sub-station, thus corroborating the testimony of prosecution witness Yakans Amenola, Carnain Asidin and Arip to the effect that Kallapattoh and Fernandez (Pilnandiz) were, together with them, in the aforementioned sub-station, when Tebag was maltreated and died therein, on June 4, 1958, as well as confirming Pollisco's statement, Exhibit TT-18, before the City Fiscal of Basilan city, on June 21, 1958, admitting that Fernandez was in the sub-station on June 5, 1958, on account of the warrant of arrest adverted to. Through the exhibits in question the prosecution

sought, also, to bolster up its theory that Kallapattoh and Fernandez disappeared from the sub-station after Tebag's death, because the main respondents herein illegally released them to prevent them from revealing the circumstances surrounding said event.

- Exhibits II, II-1, and MM—These are sketches of a human body and pictures purporting to show the points of entrance, as well as of exit, of two (2) bullet wounds found on the body of Tebag. Respondent Judge rejected these exhibits and did not allow Dr. Rosalino Reyes, Chief of the Medico-Legal Section of the National Bureau of Investigation, to answer questions asked by the prosecution, to establish that the trajectories of said bullet wounds were parallel to each other, which, the prosecution claims, would have been impossible had Tebag been alive when he sustained said wounds.

- Respondent Judge sustained, also, the objections to certain questions propounded to said Dr. Reyes, to show that the injuries sustained by Tebag in the large intestines must have been inflicted when Tebag was dead already, and did not allow Dr. Reyes to draw lines on Exhibits II and MM, indicating the connection between the points of entrance and those of exit of said wounds.

- Exhibits Z, Z-1, Z-2—These are records of the office of the City Fiscal of Basilan City showing that the Japanese rifle, Exhibit Y, two rounds of ammunitions and one empty shell were received by said Office from the Police Department of Basilan City on June 17, 1958.

These exhibits were presented to show that said rifle tallies with the description thereof given by prosecution witness Kona Amenola, in his affidavit, dated June 14, 1958, when said weapon was still in the possession of respondent Pollisco, and, hence, to establish Amenola's veracity.

Likewise, the following rebuttal evidence for the prosecution were rejected by respondent Judge, viz:

- Exhibits OO to OO-8—These are daily records of events of the police department, Lamitan District, Basilan City, including the Tipo-Tipo region. They do not mention the killing therein, by the police patrol, of any outlaw on June 5, 1958, thereby contradicting the reports (Exhs. 12 and 12-A) of respondent Pollisco and Hasbi about it. Respondent Judge did not allow the record clerk of the City Fiscal's office to identify said exhibits, upon the ground that it was too late to present him although when the exhibits were marked by the prosecution it reserved the right to identify them as part of official records.

- Exhibits PP, QQ to QQ-3—Respondent Pollisco had testified that on June 4, 1958, Hadji Aisa inquired about one Awalin; that he told Aisa that Awalin was taken by Mayor Brown to the seat of the city government; and that he (Pollisco) suggested that Datu Unding be advised not to worry, because there was no evidence against Awalin. To impeach the veracity of Pollisco, the prosecution presented the exhibits under consideration, for the same show that one Dong Awalin (who is different from Awalin Tebag) was apprehended on May 27, 1958, and released on bail on June 23, 1958; that Pollisco could not have truthfully informed Aisa on June 4, 1958, what Dong Awalin had been taken by Mayor Brown to the seat of the city government and that there was no evidence against him; for he was then a detention prisoner; and that Pollisco could not have had in mind, therefore, said Dong Awalin as the Awalin about whom Aisa had inquired. Indeed, Exhibits TT-13 to TT-16 show that, testifying before the City Fiscal, respondent Pollisco said that he twice ordered Patrolman Lacerna on June 4, 1958, to bring Awalin Tebag to him (Pollisco) for investigation.

- Exhibits SS to SS-7—These are the testimonies before the City Fiscal, of defense witness Mohammad Sali who, on cross examination by the prosecution, denied having given it. Thus the predicate therefor was established by the prosecution which sought thereby to impeach Sali's veracity.

- Exhibits TT, TT-1 to TT-25—These are the testimonies, before the City Fiscal of the main respondents herein,

who gave a different story before respondent Judge. The prosecution thus sought to impeach their veracity as witnesses in their own behalf, after laying down the predicate in the course of their cross examination.

- Exhibits UU, UU-1 to UU-3—These are sworn statements made by defendant Hasbi before the City Fiscal. They were presented in rebuttal, after laying down the predicate, to impeach his testimony in court.

- Exhibits RR, RR-1, XX and XX-1—With these exhibits the prosecution tried to rebut Pollisco's testimony to the effect that prosecution witness Lianson Arip had a grudge against him, he (Pollisco) having charged him with theft in the City Fiscal's Office. It appears from said exhibits that Arip's affidavit, implicating Pollisco, was dated June 8, 1958, whereas Pollisco's affidavit, charging Arip with theft, was dated June 20, 1958, so that said statement of Arip could not have been influenced by Pollisco's subsequent act.

In contrast with the severe and rigorous policy used by respondent Judge in dealing with the aforementioned evidence for the prosecution, petitioner herein cites the liberality with which the lower court admitted, as evidence for the defense, records of supposed achievements of the Tipo-Tipo sub-station (Exhibits 9 to 9-G, 10 to 10-1, 17 to 17-C, 19 to 19-A, 20 to 20-1, 21 and 22), a congratulatory communication (Exh. 24), and a letter of commendation to a peace officer assigned thereto (Exh. 7), including an article in the Philippine Free Press (Exhs. 23 and 23 A).

Upon a review of the record, we are fully satisfied that the lower court had, not only erred, but, also, committed a grave abuse of discretion in issuing the resolutions complained of, in rejecting the aforementioned direct and rebuttal evidence for the prosecution, and in not permitting the same to propound the questions already adverted to. It is obvious to us that said direct and rebuttal evidence, as well as the aforementioned questions, are relevant to the issues involved in Criminal Case No. 672. Although it is not possible to determine with precision, at this stage of the proceedings, how far said exhibits may affect the outcome of that case, it is elemental that all parties therein are entitled to a reasonable opportunity to establish their respective pretense. In this connection it should be noted that, in the light of the allegations of the amended information in said case and of the records before us, the issue of the guilt or innocence of the accused therein is bound to hinge heavily upon the veracity of the opposing witnesses and the weight attached to their respective testimony. Hence, the parties should be allowed a certain latitude in the presentation of their evidence lest they may be so hampered that the ends of justice may eventually be defeated or appear to be defeated. The danger of leading to such result must be avoided, particularly in cases of the nature, importance and significance of the one under consideration.

With respect to the question whether or not Senator Roseller Lim may appear as counsel for the main respondents herein, as defendants in said criminal case, the Constitution provides that no Senator or Member of the House of Representatives shall "appear as counsel * * * in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation of his office * * * (Art. VI, Sec. 17, Const. of the Phil.). The issue, therefore, is whether the defendants in Criminal case No. 672 are "accused of an offense committed in relation" to their office.

A mere perusal of the amended information therein readily elicits an affirmative answer. It is alleged in said amended information that "Leroy S. Brown, City Mayor of Basilan City, as such, has organized groups of police patrol and civilian commandoes consisting of regular policemen and * * * special policemen, appointed and provided by him with pistols and high power guns* and then "established a camp * * * at Tipo-Tipo," which is under his "command, * * * supervision and control," where his codefendants were stationed, entertained criminal complaints and conducted the corresponding investigations, as well as assumed the authority to arrest and detain persons without due process of law and without bringing them to the proper court, and that, in line with this set-up established by said Mayor of Basilan City as such, and acting upon his orders, his codefendants arrested and

maltreated Awalin Tebag, who died in consequence thereof.

It is apparent from these allegations that, although public office is not an element of the crime of murder in abstract, as committed by the main respondents herein, according to the amended information, the offense therein charged is intimately connected with their respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, they had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. The co-defendants of respondent Leroy S. Brown, obeyed his instructions because he was their superior officer, as Mayor of Basilan City.

The case of Montillo vs. Hilario and Crisologo, 90 Phil., 49, relied upon by respondent Judge, in overruling the objection of the prosecution to the appearance of Senator Roseller Lim, is not in point, for, as stated in the decision therein:

"From the allegations of the information it does not appear that the official positions of the accused were connected with the offense charged. In fact, the attorneys for the prosecution stated that the motives for the crimes were personal with political character. It does not even appear, nor is there assertion, that the crimes were committed by the defendants in line of duty or in the performance of their official functions." (*Italics supplied.*) Such is not the situation obtaining in the case at bar.

Wherefore, the rulings complained of are set aside and reversed and respondent Judge is hereby enjoined to admit the aforementioned direct and rebuttal evidence for the prosecution, as well as to permit the formulation, of the questions already referred to, with costs against the respondents herein. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.
Reyes, J.B.L., and Endencia, JJ., took no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.