

**ASCENCION ICUTANIM, PETITIONER, VS. FERNANDO HERNANDEZ,
JUDGE OF FIRST INSTANCE OF CAPIZ, AND DEMETRIO VINSON,
PROVINCIAL FISCAL, RESPONDENTS.**

G.R. No. L-1709. June 08, 1948

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioner is charged with parricide for having killed his child of tender age. At the trial, the prosecution called to the witness stand his wife who is the mother of the deceased child. Petitioner objected to his wife testifying against him. The trial overruled the objection, on the ground that the crime committed is against her; and for that reason the rule invoked does not apply (section 26 [d], Rule 123).

Complaining that the overruling of the objection is not only against the law but also constitutes excess of jurisdiction and a grave abuse of discretion, petitioner seeks in this Court the annulment of said and a writ directing the respondent court to refrain from giving it effect until it hear from this Court as to what it should do in the premises.

Without going into the merits of the question raised by the petitioner, suffice it to say that a writ of certiorari lies only when on inferior tribunal exercising judicial functions has acted without or in excess of its jurisdiction or with grave abuse of discretion and there is no appeal or other adequate, plain speedy remedy in the ordinary course of law. Granting, arguendo, that the ruling of the respondent court is erroneous, the remedy to correct the mistake is by appeal. To allow parties litigant to come to this Court for the correction of errors committed in the course of the trial, which may be done on appeal, would unduly burden this Court with cases where the questions raised should be decided in the main cases to be brought to it on appeal.

Petition denied, with costs against the petitioner.

Parás, Actg. C.J., Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, and Tuason JJ., concur

PARÁS: Acting Chief Justice. I hereby certify that Mr. Chief Justice Moran voted for denial of the petition.

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