

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANNY GODOY, ACCUSED-APPELLANT.***G.R. No. 115908. March 29, 1995*

Ponente: REGALADO, J.

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For separate resolution, as an incident arising from these criminal cases under automatic review by the court, is a complaint<sup>[1]</sup> filed by Judge Eustaquio Z. Gacott, Jr. of the Regional Trial Court of Palawan and Puerto Princesa City, Branch 47, to cite for indirect contempt Mauricio Reynoso, Jr., a columnist, and Eva P. Ponce de Leon, publisher and chairman of the editorial board, respectively, of the Palawan Times. His Honor's complaint is based on an article written by respondent Reynoso, Jr. in his column, "On the Beat," and published in the July 20, 1994 issue of said newspaper which is of general circulation in Puerto Princesa City.

The pertinent portions of the article complained of are hereunder reproduced, with the alleged contemptuous statements italicized for ready identification as the particulars equivalent to the innuendo in a libel charge:

Isang maalab na issues (sic) pa ay ang DEATH THREATS laban kono kay Judge Eustaquio Gacott, Jr. ng mga pamilya ng kanyang sinentensiyahan ng Double Death Penalty. Sinabi ni Wilmar Godoy sa DWRM programa na wala silang pagbabantang ginawa umano, at hindi nila ito kailan man isinaisip. Umaasa na lamang sila sa magiging resulta ng review ng Korte Suprema. Ayon naman kay Gacott sa kanyang interview sa DYPR ay totoong pinagbabantaan siya ng mga Godoy. Kaya ayon marami siyang Security na armado, in full battle gear. Kung totoo ito, bakit hindi niya kasuhan ang mga ito? Ito rin ang katanungan ni Mr. Tony Omega Diaz, ang station manager ng DYPR. O bale ba gumawa siya ng sariling MULTO pagkatapos ay takot na takot siya sa multong kanyang ginawa.

Usap-usapan pa rin ang kaso ni Godoy. Ito raw ay isang open book maging sa kanyang mga co-teachers sa Pulot na nagli-live in si Godoy at ang babaing si Mia Taha. Matagal na ang kanilang ugnayan. Meron ding "balita" ewan kung totoo, na noong si Godoy daw ay nasa Provincial Jail pa ay dinadalaw siya ni Taha at kumakain pa sila sa labas kasama ang isang Provincial Guard. Ito rin ang dahilan kung bakit ipinagpilitan ni Judge Gacott na madala kaagad sa Muntinlupa sa National Bilibid Prisons si Godoy kahit na ang kaso ay naka-apela pa.

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Pero mayroon payo si Atty. Telesforo Paredes, Jr. sa mga mamamayan ng Palawan, mag-ingat kayo sa paglalakad at baka kung hindi kayo madapa ay madulas daw kayo. Dahil ayon daw kay Judge Gacott, base sa kanyang interview sa Magandang Gabi Bayan, "Tagilid na raw ang mundo. Maraming nagpapatunay daw dito, maski sa kapitolyo." Joke lang. Pero isang warning din sa may mga nobya, na mag-ingat sa pag-break sa inyong girlfriend, dahil baka mademanda kayo at masentensiyahan ng double death penalty, lalo na kung kay Judge Gacott, dahil alam na ninyo, tagilid ang laban diyan.

The complaint avers that the article tends to impede, obstruct, belittle, downgrade and degrade the administration

of justice; that the article contains averments which are disrespectful, discourteous, insulting, offensive and derogatory; that it does not only cast aspersions on the integrity and honesty of complainant as a judge and on his ability to administer justice objectively and impartially, but is an imputation that he is biased and he prejudges the cases filed before him; and that the article is sub judice because it is still pending automatic review.

Respondent Mauricio Reynoso, Jr. contends in his Comment[2] that his article does not intend to impede nor obstruct the administration of justice because the same was published after complainant had promulgated his decision in the case; that such publication will not affect or influence the review by the Supreme Court of the criminal case, considering that the Palawan Times is circulated only in the City of Puerto Princesa and some parts of Palawan; that the comments made therein were made in good faith and in the exercise of the freedom of expression and of the press; that while the article may contain unfavorable comments about complainant, it cannot be considered as having the tendency to degrade or impede the administration of justice; and that the complaint, which is for contempt of a judge of a regional trial court, was erroneously filed with the Supreme Court contrary to Section 4, Rule 71 of the Rules of Court.

Respondent Eva P. Ponce de Leon, in her Comment[3] and Supplemental Comment[4] asserts that the article is merely in reaction to the television interview given by complainant in the show, "Magandang Gabi Bayan," last June 18, 1994 wherein the latter defended his decision in Criminal Cases Nos. 11640-41, entitled "People vs. Godoy; that the article is no longer sub judice as the same was published only after complainant had rendered his decision and had already lost jurisdiction over the case; that the article cannot be considered contemptuous and defamatory in the absence of a clear and present danger that it will tend directly or indirectly to impede, obstruct, or ridicule the administration of justice; that it constitutes a valid exercise of the constitutionally guaranteed freedom of the press, that a reading of the subject article in its entirety will show that the same does not constitute contempt but, at most, is merely a fair criticism which did not intend to malign nor place him in disrepute in the performance of his functions; and that respondent Ponce de Leon cannot be held liable for contempt because she did not have either actual knowledge of, or personal connection with, the authorship or publication of the allegedly contemptuous article, since she had just returned from the United States when the same was published.

On the issue of whether the specified statements complained of are contumacious in nature, we are inclined, based on an overall perusal and objective analysis of the subject article, to hold in the negative. We have read and reread the article in its entirety and we are fully convinced that what is involved here is a situation wherein the alleged disparaging statements have been taken out of context. If the statements claimed to be contumelious had been read with contextual care, there would have been no reason for this contempt proceeding.

In our aforesaid evaluation, we were sufficiently persuaded to favorably consider the following explanation of respondent Ponce de Leon in her Supplemental Comment:

On the other hand, a reading of the subject article in its entirety will show that the same does not constitute contempt, but at most, merely constitutes fair criticism.

The first portion of the article reads:

"Isang maalab na issues (sic) pa ay ang DEATH THREATS laban kono kay Judge Eustaquio Gacott, Jr. ng mga pamilya ng kanyang sinentensiyahan ng Double Death Penalty. Sinabi ni Wilmar Godoy sa DWRM programa na wala silang pagbabantang ginawa umano, at hindi nila ito kailan man isinaisip. Ayon naman kay Gacott sa kanyang interview sa DYPR ay totoong pinagbantaan siya ng mga Godoy. Kaya ayon marami siyang Security na armado, in full battle gear. Kung totoo ito, bakit hindi niya kasuhan ang mga ito? Ito rin ang katanungan ni Mr. Tony Omega Diaz, ang station manager ng DYPR. O bale ba gumawa siya ng sariling MULTO pagkatapos ay takot na takot siya sa multong kanyang ginawa."

The foregoing does not even deal with the merits of the case, but with the public accusations being made by Complainant that he is being given death threats by the family of the accused, Danny Godoy. The article only makes a justifiable query as to why Complainant does not file the appropriate charges if his accusations are true.

Usap-usapan pa rin ang kaso ni Godoy. Ito raw ay isang open book maging sa kanyang mga co-teachers sa Pulot na nagli-live in si Godoy at ang babaing si Mia Taha. Matagal na ang kanilang ugnayan. Meron ding "balita" ewan kung totoo, na noong si Godoy daw ay nasa Provincial Jail pa ay dinadalaw siya ni Taha at kumakain pa sila sa labas kasama ang isang Provincial Guard. Ito rin ang dahilan kung bakit ipinagpilitan ni Judge Gacott na madala kaagad sa Muntinlupa sa National Bilibid Prisons si Godoy kahit na ang kaso ay naka-apela pa." (Italics supplied)

The foregoing is merely a report of rumors regarding the accused Danny Godoy. They are not presented as facts by respondent Mauricio Reynoso, Jr. In fact, he even goes to the extent of acknowledging that he himself does not know if the rumors are true or not.

The subject article then offers the following analysis:

"Malaking epekto ang desisyon ng Korte Suprema sa dalawang tao, kay Danny Godoy at Judge Gacott. Kung babaliktarin ng Supreme Court ang decision ni Gacott, lalaya si Godoy, si Gacott naman ang masisira, ang kanyang aspirations na maitaas sa Court of Appeals at eventually makasama sa mga miyembro ng korte suprema ng bansa. Kung papaboran naman si Gacott ay sigurado na ang kamatayan ni Godoy, at double pa pero si Gacott maitataas pa ang puwesto. Tayo naman, hintay lamang tayo ng ano mang magiging developments ng kaso."

The foregoing is nothing more than a fair analysis. For indeed, if the Honorable Court affirms the Decision of Complainant, the accused Danny Godoy would be meted the death sentence. On the other hand, if the Decision is reversed, this may adversely affect the aspirations of Complainant to be promoted to the Court of Appeals, and eventually to the Honorable Court.

Finally, the subject article reads:

"Pero mayroong payo si Atty. Telesforo Paredes, Jr. sa mga mamamayan ng Palawan, mag-ingat kayo sa paglalakad at baka kung hindi kayo madapa ay madulas daw kayo. Dahil ayon daw kay Judge Gacott, base sa kanyang interview sa Magandang Gabi Bayan, "Tagilid na raw ang mundo. Maraming nagpapatunay daw dito, maski sa kapitolyo." Joke lang. Pero isang warning din sa may mga nobya, na mag-ingat sa pag-break sa inyong girlfriend, dahil baka mademanda kayo at masentensyahan ng double death penalty, lalo na kung kay Judge Gacott, dahil alam na ninyo, tagilid ang laban diyan."

Again, the subject article merely reports what Atty. Telesforo Paredes, Jr. allegedly said. But more importantly, the foregoing is merely a reaction not so much to Complainant's Decision, but to the public statements made by Complainant in the national television show "Magandang Gabi Bayan."

Snide remarks or sarcastic innuendoes do not necessarily assume that level of contumely which is actionable under Rule 71 of the Rules of Court. Neither do we believe that the publication in question was intended to influence this Court for it could not conceivably be capable of doing so. The article has not transcended the legal limits for editorial comment and criticism. Besides, it has not been shown that there exists a substantive evil which is extremely serious and that the degree of its imminence is so exceptionally high as to warrant punishment for contempt and sufficient to disregard the constitutional guaranties of free speech and press.

It has been insightfully explained and suggested that a judge will generally and wisely pass unnoticed any mere hasty and unguarded expression of passion, or at least pass it with simply a reproof. It is so that in every case

where a judge decides for one party, he decides against another; and oftentimes both parties are beforehand equally confident and sanguine. The disappointment therefore, is great, and it is not in human nature that there should be other than a bitter feeling, which often reaches to the judge as the cause of the supposed wrong. A judge, therefore, ought to be patient, and tolerate everything which appears as but the momentary outbreak of disappointment. A second thought will generally make a party ashamed of such outbreak, and the dignity of the court will suffer none by passing it in silence.[5]

Prescinding from the foregoing adjudgment, the Court observes that there are two primary issues presented in this incident which deserve a more extended disquisition, firstly, because of their importance and frequent involvement in contempt proceedings filed in the courts, and, secondly, by reason of the fact that there are numerous and variant pronouncements on the subject of contempt which need to be clarified. The principal issues are (1) whether or not there can be contempt of court in case of post-litigation statements or publications; and (2) which court has jurisdiction over a contempt committed against the trial court while the case is pending on appeal. Other cognate and related issues must also be discussed so as to provide judicial guidance on the present state of our statutory and case laws thereon.

Before we go into a more intensive analysis of said issues, however, it may be beneficial for purposes thereof to preliminarily revisit and expound on the nature and implications of a special civil action for contempt or of any initiatory pleading therefor filed as an incident in the main case. That exercise will further explain and justify our disposition of the contempt charge herein.

## I

### Prefatorial Considerations

The exercise of the power to punish for contempt has a dual aspect, primarily, the proper punishment of the guilty party for his disrespect to the court, and, secondarily, his compulsory performance of some act or duty required of him by the court and which he refuses to perform. Due perhaps to this twofold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal.[6] However, the line of demarcation between acts constituting criminal contempt, as distinguished from civil contempt, is quite indistinct. The confusion in attempts to classify civil and criminal contempts is due to the fact that there are contempts in which both elements appear; or there are contempts which are neither wholly civil nor altogether criminal, but partake of the characteristics of both; or it is also possible that the same act may constitute both a civil and criminal contempt.

#### A. As to the Nature of the Offense.

A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.[7] On the other hand, civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.[8]

A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court.[9]

It has further been stated that intent is a necessary element in criminal contempt, and that no one can be punished

for a criminal contempt unless the evidence makes it clear that he intended to commit it. On the contrary, there is authority indicating that since the purpose of civil contempt proceedings is remedial, the defendant's intent in committing the contempt is immaterial. Hence, good faith or the absence of intent to violate the court's order is not a defense in civil contempt.[10]

#### B. As to the Purpose for which the Power is Exercised

A major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court; private parties have little, if any, interest in the proceedings for punishment. Conversely, if the contempt consists in the refusal of a person to do an act that the court has ordered him to do for the benefit or advantage of a party to an action pending before the court, and the contemnor is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court; the party in whose favor that judgment was rendered is the real party in interest in the proceedings. Civil contempt proceedings look only to the future. And it is said that in civil contempt proceedings, the contemnor must be in a position to purge himself.[11]

#### C. As to the Character of the Contempt Proceeding

It has been said that the real character of the proceedings is to be determined by the relief sought, or the dominant purpose, and the proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial.[12]

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.[13]

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience. The rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings. It has been held that a proceeding for contempt to enforce a remedy in a civil action is a proceeding in that action. Accordingly, where there has been a violation of a court order in a civil action, it is not

necessary to docket an independent action in contempt or proceed in an independent prosecution to enforce the order. It has been held, however, that while the proceeding is auxiliary to the main case in that it proceeds out of the original case, it is essentially a new and independent proceeding in that it involves new issues and must be initiated by the issuance and service of new process.[14]

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.[15]

Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. In proceedings for civil contempt, there is no presumption, although the burden of proof is on the complainant, and while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence. It has been said that the burden of proof in a civil contempt proceeding lies somewhere between the criminal "reasonable doubt" burden and the civil "fair preponderance" burden.[16]

On the basis of the foregoing legal principles which are now well settled, it can be safely concluded that under paragraph (d) of Section 3, Rule 71 of the Rules of Court on indirect contempt, any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice, constitutes criminal contempt.

## II

Whether or not Post Litigation Publications can be the Subject of Contempt Proceedings

### A. Effect of Freedom of Speech and Press Guaranties

In the case of *In re Sotto*,[17] this Court had the opportunity to define the relation between the courts and the press, quoting therein the statements made by Judge Holmes in *U.S. vs. Sullen*,[18] thus:

The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this Court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.

Hence, a person charged with contempt of court for making certain utterances or publishing writings which are clearly opprobrious may not, ordinarily, escape liability therefor by merely invoking the constitutional guaranties of freedom of speech and press. Liberty of speech and the press must not be confused with an abuse of such liberties. Obstructing, by means of the spoken or written word, the administration of justice by the courts has been described as an abuse of the liberty of speech or the press such as will subject the abuser to punishment for contempt of court.

Guaranties of free speech and a free press, as they appear in the Constitution, are frequently couched so as to impute responsibility for any abuse of the privilege, and it is sometimes recognized that with respect to whether

an allegedly scandalous publication or utterance is to be treated as a contempt, a line must be drawn between those speeches or writings which are protected by the privilege of free speech and a free press and those which constitute an abuse of it.

The right of freedom of the press is only a specific instance of the general right of freedom of speech; persons engaged in the newspaper business cannot claim any other or greater right than that possessed by persons not in that business.[19]

## B. Different Doctrines or Schools of Thought

In the case of *In re Francisco Brillantes*,[20] Justice Perfecto explained in his dissenting opinion that "as to whether contempt may be committed for criticizing a tribunal after the same has rendered decision or taken final action on a matter which is the subject of criticism, there are two schools of thought represented, respectively, by what we may call the English doctrine and the American doctrine, the first for the affirmative and the last one for the negative. The question now is to determine which of the two doctrines is more conformable to reason and justice and, therefore, should be adopted and applied by our tribunals."

### 1. The English Doctrine

According to Justice Perfecto, the rule in England is that there can be contempt of court even after the case has been terminated. He then proceeded to ramify:

In England comments upon the court's action in a concluded case, where libelous or calculated to bring the court into disrepute, were freely punishable as contempt under the early common law. Distinction between pending and concluded matters does not seem to have been made. Any comment impairing the dignity of the court was punishable as contempt regardless of the time at which made.

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The whole theory of the early common law of contempt is admirably delivered by Wilmot, J., in *King vs. Almon*, x x x. The publication there complained of was a volume containing a diatribe against Lord Mansfield for allowing an amendment of pleading as of course, and apparently from corrupt motives, in a concluded case, and further charging him with having introduced a practice to defeat the efficacy of the writ of habeas corpus. It is there said: "The arraignment of the justice of the judges is arraigning the King's justice; it is an impeachment of his wisdom and goodness in the choice of his judges, and excites in the mind of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and, whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls for a more rapid and immediate redress than any other obstruction whatever - not for the sake of the judges as private individuals, but because they are the channels by which the Kings' justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for giving justice that free, open, and uninterrupted current which it has for many ages found all over this Kingdom, and which so eminently distinguishes and exalts it above all nations upon the earth \* \* \*. The constitution has provided very apt and proper remedies for correcting and rectifying the involuntary mistakes of judges, and for punishing and removing them for any voluntary perversions of justice. But, if their authority is to be trampled upon by pamphleteers and newswriters, and the people are to be told that the power given to the judges for their protection is prostituted to their destruction, the court may retain its power some little time; but I am sure it will instantly lose all its authority, and the power of the court will not long survive the authority of it: Is it possible to stab that authority more fatally than by charging the court, and more particularly the chief justice, with having introduced a rule to subvert the constitutional liberty of the people? A greater scandal could not be published \* \*

\*. It is conceded that an act of violence upon his person when he was making such an order would be contempt punishable by attachment. Upon what principle? For striking a judge in walking along the streets would not be a contempt of the court. The reason, therefore, must be, that he is in the exercise of his office, and discharging the function of a judge of this court; and, if his person is under this protection, why should not his character be under the same protection? It is not for the sake of the individual, but for the sake of the public, that his person is under such protection; and, in respect of the public, the imputing of corruption and the perversion of justice to him, in an order made by him at his chambers, is attended with much more mischievous consequences than a blow; and therefore the reason of proceeding in this summary manner applies with equal, if not superior, force, to one case as well as the other. There is no greater obstruction to the execution of justice from the striking a judge than from the abusing him, because his order lies open to be enforced or discharged, whether the judge is struck or abused for making it."

## 2. The American Doctrine

In American jurisprudence, the general rule is that defamatory comments on the conduct of a judge with respect to past cases or matters finally disposed of do not constitute contempt, even though libelous and reflecting on the integrity of the judge and the court.[21] It has been said that the power to punish as a contempt a criticism concerning a case made after its termination is denied under the theory that such a power is not necessary as a safeguard to the proper functioning of the court as a judicial tribunal. And it has been said that comments, however stringent, relating to judicial proceedings which are past and ended are not contempt of court even though they may be a libel against the judge or some other officer of the court. There is even the view that when a case is finished, the courts and judges are subject to the same criticisms as other people and that no comment published in connection with a completed case, however libelous or unjust, is punishable as contempt of court. Thus it is said that the remedies of a judge who suffers abuse at the hands of the press, not amounting to contempt, are the same as those available to persons outside the judiciary.[22]

To the same effect was the holding in *People ex rel. Supreme Court vs. Albertson*,[23] where it was declared that —

The great weight of authority is to the effect that — in so far as proceedings to punish for contempt are concerned — comment upon the behavior of the court in cases fully determined in the particular court criticized is unrestricted under our constitutional guaranty of liberty of the press and free speech, especially in the absence of a statute of direct application to the contrary. This view in brief is based upon the theory that — keeping our constitutional guaranties in mind — libelous publications which bear upon the proceedings of a court while they are pending may in some way affect their correct determination, and are properly the subject of contempt proceedings. On the other hand, such publications or oral utterances of entirely retrospective bearing come within the sphere of authorized comment unless they affect a judge personally, when he has his remedy in an action of libel or slander, as does any other individual thus offended. He has the right to bring an action at law before a jury of his peers.

Along similar lines, in *Ex Parte McLeod*,[24] the court ruled that:

The right of a court to punish, as for contempts, criticisms of its acts, or even libels upon its officers, not going to the extent, by improper publications, of influencing a pending trial, x x x would not only be dangerous to the rights of the people, but its exercise would drag down the dignity and moral influence of these tribunals. Such criticism is the right of the citizen, and essential not only to the proper administration of justice, but to the public tranquility and contentment. Withdrawing power from courts to summarily interfere with such exercise of the right of the press and freedom of speech deprives them of no useful power.

Likewise, the State Supreme Court of Montana in *State ex rel. Metcalf vs. District Court*,<sup>[25]</sup> pointed out that the legal proceedings involved therein was not pending when the alleged libelous article was published, then referred to the guaranty of freedom of speech and the press, and eventually held that the publication involved was not punishable as contempt. It declared that so long as the published criticism does not impede the due administration of the law, it is better to maintain the guaranty of the Constitution than to undertake to compel respect or punish libel by the summary process of contempt.

Finally, in holding that persons who had published newspaper articles alleging that a designated judge had been intentionally partial and corrupt in the trial of certain causes which had been decided and were not pending when the publication occurred could not be punished as for contempt the court, in *State ex rel. Attorney General vs. Circuit Court*,<sup>[26]</sup> cited a number of cases supporting the view that libelous newspaper comments upon the acts of a court in actions past and ended do not constitute contempt. It pointed out that some of such decisions took the position that to punish such publications would constitute a serious invasion of constitutional guaranties of free speech and a free press.

It ratiocinated in this manner: "Important as it is that courts should perform their grave public duties unimpeded and unprejudiced by illegitimate influences, there are other rights guaranteed to all citizens by our Constitution and form of government, either expressly or impliedly, which are fully as important, and which must be guarded with an equally zealous care. These rights are the rights of free speech and of free publication of the citizens' sentiments on all subjects. It seems clear to us that so extreme a power as to punish for contempt because of libelous publications as to past litigation, is inconsistent with, and would materially impair, the constitutional rights of free speech and free press."

However, even under American jurisprudence, as shall hereafter be demonstrated, the aforesaid rulings are not without exceptions. There is ample authority that, under proper circumstances, constitutional guaranties of freedom of speech and liberty of the press do not protect contemptuous publications relating to court proceedings even though such publications are not made until after the pendency of the litigation in question.<sup>[27]</sup>

### 3. The Philippine Doctrine

In the Philippine setting, as we have noted, there are conflicting views on this issue which have to be analyzed and, if possible, reconciled. On that exordial indication, we have digressed into these aspects of the law on contempt and seized upon this incident in the criminal cases at bar in order to essay a rapprochement of such views into what we may call the Philippine doctrine.

In the early cases decided by this Court involving contempts through newspaper publications, the rule was that contemptuous publications were actionable only if committed with respect to pending suits. Apparently, the weight of authority then was to the effect that criticism of the conduct of a judge or a court with regard to matters finally disposed of does not constitute contempt, even though it may be libelous.

That rule first found application in the case of *In re Lozano, et al.*<sup>[28]</sup> and was reiterated in the subsequent cases of *In re Abistado*,<sup>[29]</sup> and *People vs. Alarcon, et al.*,<sup>[30]</sup> where this Court, speaking through Justice Malcolm, tersely stated:

The rule is well established that newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitute criminal contempt which is summarily punishable by the courts. The rule is otherwise after the cause is ended. x x x (6 R.C.L., pp. 508-515).

It will be noted that the aforequoted conclusion was arrived at after a short discourse presented by the ponente on the existing divergence of opinions on the matter between the English and American courts. But the learned

justice, notwithstanding his preference for and application of the American doctrine, nonetheless thereafter made the recommendatory observation that "(w)ith reference to the applicability of the above authorities, it should be remarked first of all that this court is not bound to accept any of them absolutely and unqualifiedly. What is best for the maintenance of the judiciary in the Philippines should be the criterion."

It seems that this view was shared by then Associate Justice Moran when he dissented from the majority opinion in the aforecited case of *People vs. Alarcon, et al.*, which upheld the doctrine enunciated in *Lozano and Abistado*, in this wise: "I know that in the United States, publications about courts, after the conclusion of a pending case, no matter how perverse or scandalous, are in many instances brought within the constitutional protection of the liberty of the press. But while this rule may find justification in that country, considering the American temper and psychology and the stability of its political institutions, it is doubtful whether a similar toleration of gross misuse of liberty of the press would, under our circumstances, result in no untoward consequences to our structure of democracy yet in the process of healthful development and growth."

Such perception could probably impelled Justice Moran to deviate from the then accepted doctrine, with this rationalization:

Contempt, by reason of publications relating to courts and to court proceedings, are of two kinds. A publication which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding, constitutes criminal contempt which is summarily punishable by courts. This is the rule announced in the cases relied upon by the majority. A publication which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute, constitutes likewise criminal contempt, and is equally punishable by courts. In the language of the majority, what is sought, in the first kind of contempt, to be shielded against the influence of newspaper comments, is the all important duty of the courts to administer justice in the decision of a pending case. In the second kind of contempt, the punitive hand of justice is extended to vindicate the courts from any act or conduct calculated to bring them into disfavor or to destroy public confidence in them. In the first, there is no contempt were there is no action pending, as there is no decision which might in any way be influenced by the newspaper publication. In the second, the contempt exists, with or without a pending case, as what is sought to be protected is the court itself and its dignity. Courts would lose their utility if public confidence in them is destroyed.

That dissenting opinion was impliedly adopted in the subsequent case of *In re Brillantes*,<sup>[31]</sup> where the editor of the *Manila Guardian* was declared in contempt of court for publishing an editorial, stating that the 1944 Bar Examination were conducted in a farcical manner, even after the case involving the validity of said examinations had been terminated. This was followed by *In re Almacen*<sup>[32]</sup> where the Court stated categorically that the rule that bars contempt after a judicial proceeding has terminated had lost much of its validity, invoking therein the ruling in *Brillantes* and quoting with approval the dissenting opinion in *Alarcon*.

It appears, therefore, that in the two latest cases decided by this Court, the general rule that there can be no contempt in post-litigation publications is not necessarily all-embracing under certain situations. From the shift in judicial approach in *Brillantes* to the position announced in *Almacen*, it can inevitably be concluded that the termination of the case is not a guaranty of immunity from the contempt charged for publications or utterances which are defamatory or libelous, depending on the purpose and effects thereof. In other words, one may still be cited for contempt of court even after a case has ended, where such punitive action is necessary to protect the court and its dignity and to vindicate it from acts or conduct intended or calculated to degrade, ridicule or bring the court into disfavor and thereby erode or destroy public confidence in that court.

This qualified distinction is not without justification and, in fact, was also foreshadowed by the concurring

opinion of Justice Briones in *Brillantes* wherein, after noting the conflicting views on the amenability of the contemnor during the pendency or after the termination of the judicial proceeding in the court involved as illustrated by the English and American doctrines thereon, he advanced the proposition that —

x x x esta distincion no tiene mucha importancia. Lo importante para mi es ver si la critica lanzada por el recurrido es falsa y esta concebida en terminos tales que "tiende directamente a degradar la administracion de justicia," x x x es indiferente si versa sobre un asunto o negociacion totalmente terminada o no; el desacato existe entonces y debe ser castigado.

x x x Se trata simplemente de la facultad inherente en los tribunales de reprimir y castigar todo acto que tiende a embarazarles y obstruirles en su funcion de administrar justicia, x x x.

The rationale for making a qualification to the rule generally considered as the American doctrine, which rule as herein qualified we now adopt and refer to as the Philippine doctrine on this issue, is profoundly and eloquently explicated by Justice Moran in *Alarcon*, to wit:

It is true that the Constitution guarantees the freedom of speech and of the press. But license or abuse of that freedom should not be confused with freedom in its true sense. Well-ordered liberty demands no less unrelaxing vigilance against abuse of the sacred guaranties of the Constitution than the fullest protection of their legitimate exercise. As important as is the maintenance of a free press and the free exercise of the rights of the citizens is the maintenance of a judiciary unhampered in its administration of justice and secure in its continuous enjoyment of public confidence. "The administration of justice and freedom of the press, though separate and distinct are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and the laws, from which the former receives its prerogatives and the latter its jurisdiction." (*U.S. vs. Sullens*, 36 Fed., 2d, 230.) Democracy cannot long endure in a country where liberty is grossly misused any more than where liberty is illegitimately abridged.

xxx xxx xxx

If the contemptuous publication made by the respondent herein were directed to this Court in connection with a case already decided, the effect of the rule laid down by the majority is to deny this court the power to vindicate its dignity. The mischievous consequences that will follow from the situation thus sought to be permitted, are both too obvious and odious to be stated. The administration of justice, no matter how righteous, may be identified with all sorts of fancied scandal and corruption. Litigants, discontented for having lost their cases, will have every way to give vent to their resentment. Respect and obedience to law will ultimately be shattered, and, as a consequence, the utility of the courts will completely disappear.

It may be said that respect to courts cannot be compelled and that public confidence should be a tribute to judicial worth, virtue and intelligence. But compelling respect to courts is one thing and denying the courts the power to vindicate themselves when outraged is another. I know of no principle of law that authorizes with impunity a discontented citizen to unleash, by newspaper publications, the avalanche of his wrath and venom upon courts and judges. If he believes that a judge is corrupt and that justice has somewhere been perverted, law and order require that he follow the processes provided by the Constitution and the statutes by instituting the corresponding proceedings for impeachment or otherwise. As Mr. Justice Palmer, in speaking of the duty of courts and court officers, has wisely said:

"Would it be just to the persons who are called upon to exercise these powers to compel them to do so, and at the same time allow them to be maltreated or libelled because they did so? How would a suitor like a jurymen trying his case who might expect he would be assaulted, beaten, his property destroyed, or his reputation blasted, in case he decided against his opponent? Apply the same thing to judges, or the sheriff, and how long

could organized society hold together? With reference to a judge, if he has acted corruptly, it is worse than a mere contempt. But it is apparent it would not be right that the court of which he is a member should determine this, and consequently the law has provided a plain and easy method of bringing him to justice by a petition to Parliament; but, while the law authorizes this, it does not allow infamous charges to be made against him by persons, either in the newspapers or otherwise, with reference to how he has or shall discharge the duties of his office. It must be apparent to all right thinking men that, if such were allowed to be indulged in, it must end in the usefulness of the court itself being destroyed, however righteous its judges may act. From what I have said it must not be supposed that I think that the decisions of the court, or the actions of the judges, or other persons composing the court, are not to be discussed; on the contrary, I would allow the freest criticism of all such acts if done in a fair spirit, only stopping at what must injure or destroy the court itself and bring the administration of the law into disrepute, or be an outrage on the persons whose acts are discussed or when such discussion would interfere with the right decision of the cause before the court."

We do not hesitate to hereby give our imprimatur to the aforequoted opinion which, we fully believe, conforms to basic dogmatic teachings on judicial and professional conduct requiring respect for and the giving of due deference to the judicial system and its members — ethical standards which this Court has, time and again, been trying to inculcate in the minds of every member of the Bar and the public in general.

#### 4. Cautela on the Balancing of Interests

On the bases of the foregoing authorities, it is evident that a line has to be drawn between those utterances or writings which are protected by the privileges of free speech and a free press and those which constitute an abuse thereof, in determining whether an allegedly scurrilous publication or statement is to be treated as contempt of court. But to find the line where the permissible right of free speech ends and its reprehensible abuse begins is not always an easy task. In contempt proceedings, it was held that this line must usually be defined by the courts themselves, and in such cases its location is to be established with special care and caution.[33]

In so doing, it becomes necessary to give the subject that careful examination commensurate with its importance, mindful that, on the one hand, the dignity and authority of the courts must be maintained, while, on the other, free speech, a free press, and the liberty of the citizen must be preserved. Both are equally valuable rights. If the court is shorn of its power to punish for contempt in all proper cases, it cannot preserve its authority, so that even without any constitutional or statutory guaranty this power is inherent in the court. But the Constitution itself, in the Bill of Rights, guarantees free speech and liberty of the press. Of course, it was never intended, under the guise of these constitutional guaranties, that the power of the court should be trenched upon.[34]

How to determine whether an act or utterance is covered by the protective mantle of the constitutional guaranty of liberty of the press or whether it is already outside or an abuse thereof, is an altogether different matter. We have perforce to draw from tenets in American jurisprudence, although with discriminating choice, since after all our present doctrines on contempt vis-a-vis constitutional limitations trace their roots in the main to the lessons laid down and born of the social and judicial experience in that jurisdiction.

The liberty of the press consists in the right to publish with impunity the truth, with good motives and for justifiable ends, whether it respects governments or individuals; the right freely to publish whatever the citizen may please and to be protected against any responsibility for so doing, except in so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals. The true liberty of the press is amply secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society to inquire into the motives of such publications, and to distinguish between those which are meant for use and reformation, and with an eye solely to the public good, and those which are intended merely to delude and

defame. To the latter description, it is impossible that any good government should afford protection and impunity.

The liberty of the press means that anyone can publish anything he pleases, but he is liable for the abuse of this liberty. If he does this by scandalizing the courts of his country, he is liable to be punished for contempt. In other words, the abuse of the privilege consists principally in not telling the truth. There is a right to publish the truth, but no right to publish falsehood to the injury of others with impunity. It, therefore, does not include the right to malign the courts, to libel and slander and utter the most flagrant and indecent calumnies about the court and its officers, nor to invade the sanctuaries of the temples of justice. Such practices and such miscreants ought to be condemned, and the courts would deserve condemnation and abolition if they did not vigorously and fearlessly punish such offenders. Such practices are an abuse of the liberty of the press, and if the slander relates to the courts, it concerns the whole public and is consequently punishable summarily as a criminal contempt. It is therefor the liberty of the press that is guaranteed, not the licentiousness. It is the right to speak the truth, not the right to bear false witness against your neighbor.[35]

This brings to fore the need to make a distinction between adverse criticism of the court's decision after the case is ended and "scandalizing the court itself." The latter is not criticism; it is personal and scurrilous abuse of a judge as such, in which case it shall be dealt with as a case of contempt.[36]

It must be clearly understood and always borne in mind that there is a vast difference between criticism or fair comment on the one side and defamation on the other. Where defamation commences, true criticism ends. True criticism differs from defamation in the following particulars: (1) Criticism deals only with such things as invite public attention or call for public comment. (2) Criticism never attacks the individual but only his work. In every case the attack is on a man's acts, or on some thing, and not upon the man himself. A true critic never indulges in personalities. (3) True criticism never imputes or insinuates dishonorable motives, unless justice absolutely requires it, and then only on the clearest proofs. (4) The critic never takes advantage of the occasion to gratify private malice, or to attain any other object beyond the fair discussion of matters of public interest, and the judicious guidance of the public taste.[37]

Generally, criticism of a court's rulings or decisions is not improper, and may not be restricted after a case has been finally disposed of and has ceased to be pending. So long as critics confine their criticisms to facts and base them on the decisions of the court, they commit no contempt no matter how severe the criticism may be; but when they pass beyond that line and charge that judicial conduct was influenced by improper, corrupt, or selfish motives, or that such conduct was affected by political prejudice or interest, the tendency is to create distrust and destroy the confidence of the people in their courts.[38]

Moreover, it has been held that criticism of courts after a case is finally disposed of, does not constitute contempt and, to this effect, a case may be said to be pending so long as there is still something for the court to do therein. But criticism should be distinguished from insult. A criticism after a case has been disposed of can no longer influence the court, and on that ground it does not constitute contempt. On the other hand, an insult hurled to the court, even after a case is decided, can under no circumstance be justified. Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; but to hurl the false charge that the Supreme Court has been committing deliberately so many blunders and injustices would tend necessarily to undermine the confidence of the people in the honesty and integrity of its members, and consequently to lower or degrade the administration of justice, and it constitutes contempt.[39]

The Philippine rule, therefore, is that in case of a post-litigation newspaper publication, fair criticism of the court,

its proceedings and its members, are allowed. However, there may be a contempt of court, even though the case has been terminated, if the publication is attended by either of these two circumstances: (1) where it tends to bring the court into disrespect or, in other words, to scandalize the court;<sup>[40]</sup> or (2) where there is a clear and present danger that the administration of justice would be impeded. And this brings us to the familiar invocation of freedom of expression usually resorted to as a defense in contempt proceedings.

On the first ground, it has been said that the right of free speech is guaranteed by the Constitution and must be sacredly guarded, but that an abuse thereof is expressly prohibited by that instrument and must not be permitted to destroy or impair the efficiency of the courts of the public respect therefor and the confidence therein.<sup>[41]</sup>

Thus, in *State vs. Morril*,<sup>[42]</sup> the court said that any citizen has the right to publish the proceedings and decisions of the court, and if he deems it necessary for the public good, to comment upon them freely, discuss their correctness, the fitness or unfitness of the judges for their stations, and the fidelity with which they perform the important public trusts reposed in them; but he has no right to attempt, by defamatory publications, to degrade the tribunal, destroy public confidence in it, and dispose the community to disregard and set at naught its orders, judgments and decrees. Such publications are an abuse of the liberty of the press; and tend to sap the very foundation of good order and well-being in society by obstructing the court of justice. Courts possess the power to punish for contempt libelous publications regarding their proceedings, present or past, upon the ground that they tend to degrade the tribunals, destroy public confidence and respect for their judgments and decrees, so essentially necessary to the good order and well-being of society, and most effectually obstruct the free course of justice.

Then, in *In re Hayes*,<sup>[43]</sup> it was said that publishers of newspapers have the right, but no higher right than others, to bring to public notice the conduct of the courts, provided the publications are true and fair in spirit. The liberty of the press secures the privilege of discussing in a decent and temperate manner the decisions and judgments of a court of justice; but the language should be that of fair and honorable criticism, and should not go to the extent of assigning to any party or the court false or dishonest motives. There is no law to restrain or punish the freest expressions of disapprobation that any person may entertain of what is done in or by the courts. Under the right of freedom of speech and of the press the public has a right to know and discuss all judicial proceedings, but this does not include the right to attempt, by wanton defamation, groundless charges of unfairness and stubborn partisanship, to degrade the tribunal and impair its efficiency.

Finally, in *Weston vs. Commonwealth*,<sup>[44]</sup> it was ruled that the freedom of speech may not be exercised in such a manner as to destroy respect for the courts, the very institution which is the guardian of that right. The dignity of the courts and the duty of the citizens to respect them are necessary adjuncts to the administration of justice. Denigrating the court by libelous attacks upon judicial conduct in an ended case, as well as one which is pending before it, may seriously interfere with the administration of justice. While such an attack may not affect the particular litigation which has been terminated, it may very well affect the course of justice in future litigation and impair, if not destroy, the judicial efficiency of the court or judge subjected to the attack.

Anent the second ground, the rule in American jurisprudence is that false and libelous utterances present a clear and present danger to the administration of justice.<sup>[45]</sup> To constitute contempt, criticism of a past action of the court must pose a clear and present danger to a fair administration of justice, that is, the publication must have an inherent tendency to influence, intimidate, impede, embarrass, or obstruct the court's administration of justice.<sup>[46]</sup> It is not merely a private wrong against the rights of litigants and judges, but a public wrong, a crime against the State, to undertake by libel or slander to impair confidence in the judicial functions.<sup>[47]</sup>

Elucidating on the matter, this Court, in *Cabansag vs. Fernandez, et al.*,<sup>[48]</sup> held as follows:

x x x The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.

xxx xxx xxx

Thus, speaking of the extent and scope of the application of this rule, the Supreme Court of the United States said: "Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom of speech and press only if the evils are extremely serious and the degree of imminence extremely high. x x x The possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press." x x x

No less important is the ruling on the power of the court to punish for contempt in relation to the freedom of speech and press. We quote: "Freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice." x x x

And in weighing the danger of possible interference with the courts by newspaper criticism against the free speech to determine whether such criticism may constitutionally be punished as contempt, it was ruled that "freedom of public comment should in borderline instances weigh heavily against a possible tendency to influence pending cases." x x x

The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree. x x x

Although Cabansag involved a contempt committed during the pendency of a case, no compelling reason exists why the doctrines enunciated therein should not be made applicable to vituperative publications made after the termination of the case. Whether a case is pending or not, there is the constant and ever growing need to protect the courts from a substantive evil, such as invective conduct or utterances which tend to impede or degrade the administration of justice, or which calumniate the courts and their judges. At any rate, in the case of *In re Bozorth*,<sup>[49]</sup> it was there expressly and categorically ruled that the clear and present danger rule equally applies to publications made after the determination of a case, with the court declaring that a curtailment of criticism of the conduct of finally concluded litigation, to be justified, must be in terms of some serious substantive evil which it is designed to avert.

Adverting again to what was further said in *State vs. Shepherd*, supra, let it here be emphasized that the protection and safety of life, liberty, property and character, the peace of society, the proper administration of justice and even the perpetuity of our institutions and form of government, imperatively demand that everyone — lawyer, layman, citizen, stranger, newspaperman, friend or foe — shall treat the courts with proper respect and shall not

attempt to degrade them, or impair the respect of the people, or destroy the faith of the people in them. When the temples of justice become polluted or are not kept pure and clean, the foundations of free government are undermined, and the institution itself threatened.

### III

Jurisdiction in Contempt Proceedings where the Alleged Contumely is Committed Against a Lower Court while the Case is Pending in the Appellate or Higher Court

In whatever context it may rise, contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. As a matter of practical judicial administration, jurisdiction has been felt properly to rest in only one tribunal at a time with respect to a given controversy. Partly because of administrative considerations, and partly to visit the full personal effect of the punishment on a contemnor, the rule has been that no other court than the one condemned will punish a given contempt.[50]

The rationale that is usually advanced for the general rule that the power to punish for contempt rests with the court condemned is that contempt proceedings are *sui generis* and are triable only by the court against whose authority the contempts are charged;[51] the power to punish for contempt exists for the purpose of enabling a court to compel due decorum and respect in its presence and due obedience to its judgments, orders and processes;[52] and in order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof, for to submit the question of disobedience to another tribunal would operate to deprive the proceeding of half its efficiency.[53]

There are, however, several jurisprudentially and statutorily recognized exceptions to the general rule, both under Philippine and American jurisprudence, viz.:

1. Indirect contempt committed against an inferior court may also be tried by the proper regional trial court, regardless of the imposable penalty.[54]
2. Indirect contempt against the Supreme Court may be caused to be investigated by a prosecuting officer and the charge may be filed in and tried by the regional trial court, or the case may be referred to it for hearing and recommendation where the charge involves questions of fact.[55]
3. In *People vs. Alarcon, et al.*, supra, this Court ruled that "in the interrelation of the different courts forming our integrated judicial system, one court is not an agent or representative of another and may not, for this reason, punish contempts in vindication of the authority and decorum which are not its own. The appeal transfers the proceedings to the appellate court, and this last court becomes thereby charged with the authority to deal with contempts committed after the perfection of the appeal." The apparent reason is that both the moral and legal effect of a punishment for contempt would be missed if it were regarded as the resentment of personal affronts offered to judges. Contempts are punished as offenses against the administration of justice, and the offense of violating a judicial order is punishable by the court which is charged with its enforcement, regardless of the court which may have made the order.[56] However, the rule presupposes a complete transfer of jurisdiction to the appellate court, and there is authority that where the contempt does not relate to the subject matter of the appeal, jurisdiction to punish remains in the trial court.[57]
4. A court may punish contempts committed against a court or judge constituting one of its parts or agencies, as in the case of a court composed of several coordinate branches or divisions.[58]

5. The biggest factor accounting for the exception is where the singular jurisdiction of a given matter has been transferred from the contemned court to another court. One of the most common reasons for a transfer of jurisdiction among courts is improper venue. The cases involving venue deal primarily with the question whether a change of venue is available after a contempt proceeding has been begun. While generally a change of venue is not available in a contempt proceeding, some jurisdictions allow such a change in proper circumstances.[59]
6. A new court wholly replacing a prior court has jurisdiction to punish for violations of orders entered by its predecessor, although where the successor court is created by a statute which does not extinguish jurisdiction in the predecessor, an affirmative transfer of jurisdiction before the contempt occurs is necessary to empower the successor court to act.[60]
7. Transfers of jurisdiction by appellate review have produced numerous instances where contempt against the trial court has been punished in the appellate court, and vice versa. Some appellate courts have taken the view that a contempt committed after an appeal is taken is particularly contemptuous of the appellate court because of the tendency of such contempts to upset the status quo or otherwise interfere with the jurisdiction of such court.[61]
8. A judge may disqualify himself, or be disqualified, on a contempt hearing or in the main case, which circumstance may require a transfer of jurisdiction, but where a judge is disqualified only in the main case, because of matters which do not disqualify him in a contempt proceeding, the regular judge should sit in the contempt proceeding. Likewise, where the regular judge is absent or otherwise unavailable and an order is entered by another judge and made returnable to the proper court, the regular judge may punish for violations of orders so entered.[62]
9. Where the same act is a contempt against two or more courts, it is no bar to contempt proceedings in one of them that there is also a contempt against the other.[63]
10. While professional disciplinary proceedings have been resorted to as a punishment for contempt, the more recent view is that punishment is of secondary importance to the need to protect the courts and the people from improper professional practice. To the substantial extent that disciplinary action remains a punishment, disciplinary measures imposed by another court that the one contemned furnish an exception to the rule against punishing for contempt of another court.[64]
11. Some contemptuous acts are also crimes, usually misdemeanors, which are often punishable in other courts than those against which the contemptuous act was done.[65]
12. Finally, a conviction for contempt against another court has been allowed to stand on the basis that the failure of the defendant to make timely objection operated as a waiver of the right to be tried before the court actually contemned.[66]

The rule, as now accepted and deemed applicable to the present incident, is that where the entire case has already been appealed, jurisdiction to punish for contempt rests with the appellate court where the appeal completely transfers the proceedings thereto or where there is a tendency to affect the status quo or otherwise interfere with the jurisdiction of the appellate court. Accordingly, this Court having acquired jurisdiction over the complaint for indirect contempt against herein respondents, it has taken judicial cognizance thereof and has accordingly resolved the same.

#### IV

Appropriate Remedies where the Alleged Contemptuous Statement is also Claimed to be Libelous

Under the American doctrine, to repeat, the great weight of authority is that in so far as proceedings to punish for

contempt are concerned, critical comment upon the behavior of the court in cases fully determined by it is unrestricted, under the constitutional guaranties of the liberty of the press and freedom of speech. Thus, comments, however stringent, which have relation to judicial proceedings which are past and ended, are not contemptuous of the authority of the court to which reference is made. Such comments may constitute a libel against the judge, but it cannot be treated as in contempt of the court's authority.

On this score, it is said that prosecution for libel is usually the most appropriate and effective remedy.[67] The force of American public opinion has greatly restrained the courts in the exercise of the power to punish one as in contempt for making disrespectful or injurious remarks, and it has been said that the remedy of a judge is the same as that given to a private citizen.[68] In such a case, therefore, the remedy of a criminal action for libel is available to a judge who has been derogated in a newspaper publication made after the termination of a case tried by him, since such publication can no longer be made subject of contempt proceedings.

The rule, however, is different in instances under the Philippine doctrine earlier discussed wherein there may still be a contempt of court even after a case has been decided and terminated. In such case, the offender may be cited for contempt for uttering libelous remarks against the court or the judge. The availability, however, of the power to punish for contempt does not and will not prevent a prosecution for libel, either before, during, or after the institution of contempt proceedings. In other words, the fact that certain contemptuous conduct likewise constitutes an indictable libel against the judge of the court contemned does not necessarily require him to bring a libel action, rather than relying on contempt proceedings.[69]

The fact that an act constituting a contempt is also criminal and punishable by indictment or other method of criminal prosecution does not prevent the outraged court from punishing the contempt.[70] This principle stems from the fundamental doctrine that an act may be punished as a contempt even though it has been punished as a criminal offense.[71] The defense of having once been in jeopardy, based on a conviction for the criminal offense, would not lie in bar of the contempt proceedings, on the proposition that a contempt may be an offense against the dignity of a court and, at the same time, an offense against the peace and dignity of the people of the State.[72] But more importantly, adherence to the American doctrine by insisting that a judge should instead file an action for libel will definitely give rise to an absurd situation and may even cause more harm than good.

Drawing also from American jurisprudence, to compel the judge to descend from the plane of his judicial office to the level of the contemnor, pass over the matter of contempt, and instead attack him by a civil action to satisfy the judge in damages for a libel, would be a still greater humiliation of a court. That conduct would be personal; the court is impersonal. In our jurisdiction, the judicial status is fixed to such a point that our courts and the judges thereof should be protected from the improper consequences of their discharge of duties so much so that judicial officers have always been shielded, on the highest considerations of the public good, from being called for questioning in civil actions for things done in their judicial capacity.

Whenever we subject the established courts of the land to the degradation of private prosecution, we subdue their independence, and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden the licentious to trample upon everything sacred in society, and to overturn those institutions which have hitherto been deemed the best guardians of civil liberty.[73]

Hence, the suggestion that judges who are unjustly attacked have a remedy in an action for libel, has been assailed as being without rational basis in principle. In the first place, the outrage is not directed to the judge as a private individual but to the judge as such or to the court as an organ of the administration of justice. In the second place, public interests will gravely suffer where the judge, as such, will, from time to time, be pulled down and disrobed of his judicial authority to face his assailant on equal grounds and prosecute cases in his behalf as a private

individual. The same reasons of public policy which exempt a judge from civil liability in the exercise of his judicial functions, most fundamental of which is the policy to confine his time exclusively to the discharge of his public duties, applies here with equal, if not superior, force.[74]

## V

Whether or not the Same Contemptuous Conduct of a Member of the Bar can be the Subject of both a Contempt Proceeding and an Administrative Disciplinary Action

With the foregoing discussion of the appropriate remedies available to a judge, we feel that this issue with respect to proper remedies against an erring member of the Bar should consequentially be addressed, by way of reiteration, since conflicting and erroneous remedies are sometimes resorted to by aggrieved tribunals or parties.

The basic rule here is that the power to punish for contempt and the power to disbar are separate and distinct, and that the exercise of one does not exclude the exercise of the other.[75] A contempt proceeding for misbehavior in court is designed to vindicate the authority of the court; on the other hand, the object of a disciplinary proceeding is to deal with the fitness of the court's officer to continue in that office, to preserve and protect the court and the public from the official ministrations of persons unfit or unworthy to hold such office.[76] The principal purpose of the exercise of the power to cite for contempt is to safeguard the functions of the court and should thus be used sparingly on a preservative and not on the vindictive principle.[77] The principal purpose of the exercise of disciplinary authority by the Supreme Court is to assure respect for orders of such court by attorneys who, as much as judges, are responsible for the orderly administration of justice.[78]

Moreover, it has been held that the imposition of a fine as a penalty in a contempt proceeding is not considered res judicata to a subsequent charge for unprofessional conduct.[79] In the same manner, an attorney's conviction for contempt was not collaterally estopped by reason of a subsequent disbarment proceeding in which the court found in his favor on essentially the same facts leading to conviction.[80] It has likewise been the rule that a notice to a lawyer to show cause why he should not be punished for contempt cannot be considered as a notice to show cause why he should not be suspended from the practice of law, considering that they have distinct objects and for each of them a different procedure is established. Contempt of court is governed by the procedures laid down under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by Rules 138 and 139 thereof.[81]

Although apparently different in legal bases, the authority to punish for contempt and to discipline lawyers are both inherent in the Supreme Court and are equally incidents of the court's basic power to oversee the proper administration of justice and the orderly discharge of judicial functions. As was succinctly expounded in *Zaldivar vs. Sandiganbayan, et al.*: [82]

There are, in other words, two (2) related powers which come into play in cases like that before us here: the Court's inherent power to discipline attorneys and the contempt power. The disciplinary authority of the Court over members of the Bar is broader than the power to punish for contempt. Contempt of court may be committed both by lawyers and non-lawyers, both in and out of court. Frequently, where the contemnor is a lawyer, the contumacious conduct also constitutes professional misconduct which calls into play the disciplinary authority of the Supreme Court. Where the respondent is a lawyer, however, the Supreme Court's disciplinary authority over lawyers may come into play whether or not the misconduct with which the respondent is charged also constitutes contempt of court. The power to punish for contempt of court does not exhaust the scope of disciplinary authority of the Court over lawyers. The disciplinary authority of the Court over members of the Bar is but corollary to the Court's exclusive power of admission to the Bar. A lawyer is not merely a professional but also an officer of the court and as such, he is called upon to share in the task and responsibility of dispensing justice and resolving

disputes in society. Any act on his part which visibly tends to obstruct, pervert, or impede and degrade the administration of justice constitutes both professional misconduct calling for the exercise of disciplinary action against him, and contumacious conduct warranting application of the contempt power.

With this rounding out of the subordinate and principal issues in resolving this incident, we feel that the guidelines we have laid down will provide assistive references for the lower courts in disciplinary matters arising before them.

Coming back to the incident for resolution, arising as a spin-off from the criminal cases at bar, we reiterate what we have declared at the outset, absolving respondents from the charges proffered by complainant judge for the reasons therein stated.

WHEREFORE, on the foregoing premises, the complaint for indirect contempt against herein respondents Mauricio Reynoso, Jr. and Eva P. Ponce de Leon is hereby DISMISSED.

**SO ORDERED.**

Narvasa, C.J., Feliciano, Padilla, Bidin, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

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[\*] In the interest of an early and separate disposition, this complaint for indirect contempt was assigned to the writer of this resolution for adjudication of this incident, independent of the principal criminal cases which shall await the corresponding administrative and judicial action of the Court En Banc after the filing of all requisite pleadings therein.

[1] Rollo, 73.

[2] Ibid., 98.

[3] Ibid., 133.

[4] Ibid., 142. Complainant thereafter filed a Reply, and the Court dispensed with the Rejoinder of respondent Ponce de Leon for non-filing despite several extensions granted to her.

[5] In re Pryor, 26 Am. Rep. 747, cited in Francisco, Rules of Court, 1993 ed., Vol. IV-B, Part II, 334.

[6] Perkins vs. Director of Prisons, 58 Phil. 271 (1933).

[7] 17 C.J.S., Contempt, Sec. 5(1), p. 10.

[8] Ibid., Sec. 6, p. 14.

[9] Ibid., Sec. 7, pp. 15-16.

[10] 17 Am. Jur. 2d, Contempt, Sec. 8, p. 14.

[11] Ibid., Sec. 4, pp. 7-8.

[12] 17 C.J.S., Contempt, Sec. 62(4), p. 152.

[13] Ibid., Sec. 62(5), 154-156.

[14] Ibid., Sec. 62(6), pp. 157-160.

[15] Ibid., Sec. 63, p. 160.

[16] Ibid., Sec. 84(2) to (4), pp. 213-222.

[17] 82 Phil. 595 (1949).

[18] 36 F. 2d 220.

[19] 17 Am. Jur. 2d, Contempt, Sec. 58, pp. 58-59.

**[20] 42 O.G. 59.**

[21] 17 C.J.S., Contempt, Sec. 30(b), p. 85.

[22] Ibid., Sec. 61, p. 61.

**[23] 159 ALR 1379.**

**[24] 120 F. 130.**

**[25] 155 P. 278.**

**[26] 38 LRA 554.**

[27] See, for instance, *Burdett vs. Commonwealth*, 48 SE 878; *State vs. Shepherd*, 76 SW 79; *Holtzman vs. Tobin*, 340 NYS 2d 286; 12 Am. Jur., Contempt, Sec 36, pp. 415-417; 17 Am. Jur. 2d, Contempt, Sec. 61, pp. 60-61.

[28] 54 Phil. 801 (1930).

[29] 57 Phil. 669 (1932).

[30] 69 Phil. 265 (1939).

[31] *Supra*, Fn 20.

[32] L-27654, February 18, 1970, 31 SCRA 562.

**[33] 159 ALR 1391.**

[34] Ibid., 1393.

[35] *State vs. Shepherd*, 76 S.W. 79.

[36] *State vs. Hildreth*, 74 A. 71.

[37] *State vs. Shepherd*, *supra*.

[38] 17 C.J.S., Contempt, Sec. 25, p. 64.

[39] Moran, *Rules of Court*, Vol. 3, 1980 ed., p. 365.

[40] There is ample jurisprudence exemplifying instances of contemptuous post-litigation publications which have been found to constitute an affront against the dignity of the court, and the contemnor declared guilty of contempt. In these cases, the courts were unanimous in holding that a wide chasm exists between fair criticism, on the one hand, and abuse and vilification of the courts and the judges thereof, on the other.

**[41] 159 ALR 1391.**

- [42] 16 Ark. 384.
- [43] 73 So. 362.
- [44] 77 S.E. 2d 405.
- [45] 17 C.J.S., Contempt, Sec. 25, p. 64.
- [46] Ibid., Sec. 30(b), p. 86.
- [47] State vs. Shepherd, *supra*, Fn. 35.
- [48] 102 Phil. 152 (1957).
- [49] 118 A. 2d 430.
- [50] 99 ALR 2d 1103.
- [51] Chemical Fireproofing Corp. vs. Bronska, 553 S.W. 2d 710.
- [52] 17 Am. Jur. 2d, Contempt, Sec. 84, p. 7d8.
- [53] In re Debs, 158 U.S. 564.
- [54] Section 4, Rule 71, Rules of Court.
- [55] Section 4, Id., Id.
- [56] Menuet vs. Grimes Candy Co., 83 NE 82.
- [57] 99 ALR 2d 1118.
- [58] 17 C.J.S., Contempt, Sec. 51, pp. 126-127.
- [59] 99 ALR 2d 1103-1105.
- [60] Ibid., loc. cit.
- [61] Ibid., loc. cit.
- [62] Ibid., loc. cit.
- [63] Ibid., loc. cit.
- [64] Ibid., loc. cit.
- [65] Ibid., loc. cit.
- [66] Ibid., loc. cit.
- [67] Cheadle vs. State, 11 N.E. 426.
- [68] State vs. New Mexican Printing Co., 177 P. 751.
- [69] Coon vs. State, 134 NE 194.
- [70] Jurney vs. MacCracken, 294 U.S.125; Steube vs. State, 2 O.C.D. 216, cited in 4 Dec. Digest 1964.
- [71] 17 C.J.S., Contempt, Sec. 60, pp. 136-137.

[72] Ex Parte Morris, 227 P. 914.

[73] Coons vs. State, supra, Fn. 69.

[74] Dissenting opinion of Moran, J. in People vs. Alarcon, et al., supra, citing Hamilton vs. Williams, 26 Ala. 529; Busteed vs. Parson, 54 Ala. 403; Ex Parte McLeod, 120 Fed. 130; Coons vs. State, supra.

[75] In re Isserman, 87 A.2d 903.

[76] In re Schofield, 66 A.2d 675.

[77] Balasabas vs. Aquilizan, etc., G.R. No. 51414, July 31, 1981, 106 SCRA 489.

[78] In re Daly, 171 NW 2d 818.

[79] In re Hawke, 63 NE 2d 553.

[80] Howell vs. Thomas, 566 F. 2d 469.

[81] Balasabas vs. Aquilizan, supra.

[82] G.R. Nos. 79690-79707, October 7, 1988, 166 SCRA 316.

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