

**NICANOR CARAG, PETITIONER, VS. THE WARDEN OF THE PROVINCIAL JAIL, TUGUEGARAO, CAGAYAN, AND HONORABLE CATALINO SEVILLA, JUDGE OF FIRST INSTANCE OF CAGAYAN, RESPONDENTS.**

*G.R. No. 30280. March 25, 1929*

Ponente: MALCOLM, J.

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**MALCOLM, J.:**

This is a petition for a writ of habeas corpus. It has been instituted by Nicanor Carag, an attorney-at-law residing in the Province of Cagayan. The respondents are the warden of the provincial jail at Tuguegarao, Cagayan, and the Honorable Catalino Sevilla, Judge of First Instance of Cagayan.

On the morning of September 5, 1928, in the court presided over by Judge Catalino Sevilla, the case of Manuel Guzman vs. Francisco Turingan et al., an election contest, was called for trial. Attorneys Baldomero Pobre and Angel Hernando appeared for the contestant and Attorney Nicanor Carag appeared for the contestee. Before proceeding with the trial of the case, the Judge asked the attorneys, for the contestant what were the grounds of the protest. In reply, the attorneys for the1 contestant briefly explained their side of the case. Thereupon, the Judge asked the attorney for the contestee what was the nature of his counter-protest and defense. He replied that it consisted of a general denial and special defenses. What then took place in court was not written down in stenographic form by the court stenographer, but has been gathered by the stenographer from the recollections of those present. As the record is thus reconstructed, and as to this we do not think there can be any real dispute, it consists of the following:

"COURT. Please state in a few words of what the answer consists. Mr. CARAG. It only consists of a general denial of all the facts alleged in the protest and certain special defenses.

"COURT. What are those special defenses? Mr. CARAG. Your Honor, I don't remember now; they are in the record.

"COURT. Read your answer, Mr. CARAG. Let the clerk of court read it.

"COURT. Read it; you can read ifc better because you are the lawyer who drafted it. Mr. CARAG. It is better, Your Honor, if the clerk reads it.

"COURT. That is the duty of the attorney and not the clerk. Mr. CARAG. Your Honor, due to the speech of yesterday, I am somewhat tired, and would request that the clerk or someone be ordered to read the answer.

"COURT. You have a good voice, and I believe that you can read it better than the clerk; it is not necessary that you do so in a loud voice; you can read in a low voice just as you are talking now. Mr. CARAG. I have a hoarse voice, and I will lose my voice if I read. I cannot read now.

"COURT. The court orders you to read the answer. Mr. CARAG. I cannot read.

"Court. Your attention is called to the fact that the court orders you to read that answer, and if you do not obey, it will impose a punishment upon you. Mr. CARAG. I am disposed to suffer that punishment.

"COURT TO SHERIFF. Sheriff, the court orders you to confine Attorney Nicanor Carag in jail for disobedience and insubordination to the order of the court. Mr. Carag. Right now I am going to the jail; but also I would like to make it known that right now I am going to present a writ of habeas corpus to the Supreme Court for my liberty.

(Afterwards came the sheriff, Mr. Modesto Calimag.)

"COURT TO SHERIFF. Have you confined Mr. Carag in the jail? SHERIFF. Yes, sir.

"COURT. Outside or inside? SHERIFF. No sir; inside."

In view of Attorney Carag's alleged defiant and disrespectful attitude toward the court, Judge Sevilla issued the following order:

"Attorney Nicanor Carag having committed during the trial of this, election contest, case No. 1484, a manifest disobedience and insubordination to the order of this court, consisting in not reading the answer of the protestee whom he represents, and it not being true that his voice was hoarse as stated by him, and said fault having been committed in facie curias, this court orders the immediate arrest of Attorney Nicanor Carag and his confinement in the provincial jail of Cagayan for the period of ten days from this date September 5, 1928, at 9 a. m., unless said Attorney Nicanor Carag complies with the order of this court, reading before it in open session the answer of his client, in which case his immediate release will be ordered. Let a copy of this order be immediately transmitted to the interested party, Attorney Nicanor Carag. (Sees. 132, 231, 237, 240, C. C. P.)"

By virtue of the order of the Court of First Instance, Nicanor Carag was placed in the provincial jail of Cagayan on September 5, 1928. He remained there until 9.45 p. m. of September 6, 1928, when he was released temporarily pursuant to directions from this court given by reason of the institution of the petition for habeas corpus.

There can be no doubt as to the nature of the facts which gave rise to this incident in the Court of First Instance of Cagayan. Indeed, the statement of the facts made in the memorandum for the petitioner does not differ in any marked degree from the allegations made in the answer of the respondent judge. Although the parties have been afforded every opportunity to present their depositions\* only the depositions of the respondents have been offered.

Counsel for the petitioner submits that the following propositions of law should govern the decision of this case, viz.:

"1. That the respondent judge was without legal power or authority to make summary or direct contempt of acts which, from their nature, did not constitute such summary or direct contempt.

"2. That we should not go beyond the four corners of the order of the respondent judge, dated September 5, 1928, committing the petitioner to the provincial jail, to find whether or not there was summary or direct contempt in this case. If the facts stated in that order as the basis thereof do not constitute summary or direct contempt, no subsequent statement or explanation of the respondent judge can make them so.

"3. That there was no contempt in this case, either direct or constructive for the reason that the respondent judge had no jurisdiction or legal power to compel the petitioner to do the act ordered and the petitioner was under no legal obligation to obey every whim and caprice of the respondent judge."

The above argument brings us in natural sequence to the law. The Judge in finding Mr. Carag guilty of contempt purported to act under authority of section 231 of the Code of Civil Procedure. Said section provides:

"A Court of First Instance or a judge of such court at chambers, may punish summarily, by fine not exceeding two hundred pesos, or by imprisonment not exceeding ten days, or both, a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice, including the refusal of a person present in court to be sworn as a witness or to answer as a witness when lawfully required." In connection with this section, there should be taken into view a portion of section 132 of the Code of Civil Procedure. This section in part provides:

"The trial must proceed in the following order, unless the judge, for special reasons, otherwise directs:

"1. The plaintiff, after stating the issue and his case, must produce the evidence on his part; but he may read the complaint as his statement of the case, if the judge so directs;

"2. The defendant shall then state his defense and offer his evidence in support thereof; but he may read his answer as his statement of defense, if the judge so directs"

It is thus self-evident that when the Judge directed the attorney to read his answer, His Honor was acting within his jurisdiction. While the permissive word "may" appears in the law, this language does not in any degree qualify the superior authority of the court. When, therefore, the court requested the attorney to read his answer, and when the attorney refused to do so, the attorney was guilty of direct contempt because of misbehavior in the presence of the court.

The excuse was made by the attorney for not acceding to the order of the court that he, the attorney, was hoarse. But certain it is that the attorney had sufficient voice to make such audible representations of his alleged ailment as to be understood by the Judge and those present. The evidence cannot be reviewed for the purpose of determining the guilt or innocence of the person detained. The justice or propriety of the commitment is not open to review. If the court in committing a person for contempt acted within its jurisdiction, its action is final and the writ of habeas corpus will not lie. (29 C. J., pp. 96-98.)

There has recently been before the court the petition of Eulogio Supnit for a writ of habeas corpus in which the dispute was as to the tone of voice in which Mr. Supnit made his statements before the court, and as to which the presiding judge drew the deduction that the tone of voice was provocative and loud (In re Supnit, No. 30133).[1] Curiously enough the scales now swing to the other extreme, and it is now urged that the attorney was so physically handicapped by a weak voice as to be unable to respond to the invitation of the Judge to read the answer. In both instances, the courts to whom the contempts were offered and in whose presence they arose were the best judges of their nature. The action of Judge Sevilla in fixing the appropriate punishment should be sustained.

The returns to the application for the writ of habeas corpus are found sufficient, and in accordance therewith, the petition for habeas corpus is dismissed, with costs against the petitioner, and the bond presented for the temporary release of the petitioner is cancelled.

Johnson, Street, Ostrand, Johns, Romualdez, and Villar Real, JJ., concur.

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[1] Promulgated December 12, 1928, not reported.

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