

GUILLERMO LUALHATI, PETITIONER, VS. MARIANO A. ALBERT, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

G.R. No. 37430, August 22, 1932

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-37430/>

MALCOLM, J.:

The issue in these certiorari proceedings is whether it clearly appears from the record that Honorable Mariano A. Albert, as Judge of First Instance of Manila, acted without or in excess of jurisdiction in punishing Attorney Guillermo Lualhati for contempt of court by imposing a fine of P100 on the attorney.

In the case of the People of the Philippine Islands vs. Remedios Avelino de Linao, the accused was, after trial, convicted of the crime of frustrated parricide by Judge Mariano A. Albert. The accused appealed to the Supreme Court, which affirmed the decision of the lower court, G. R. No. 33909.[1] Before the judgment of the Supreme Court had become final, the court granted a motion for a new trial, and remanded the record to the court below for the accomplishment of this purpose.[2] Subsequently the appellate court denied a motion filed on behalf of the accused in which it was prayed that the court grant the petition of counsel to order the holding of the new trial allowed the defendant before any judge other than the trial judge. When the record in the case was received in the office of the clerk of the Court of First Instance of Manila, the case was, following the usual practice, assigned to Judge Albert" for hearing. Thereupon, counsel for the accused asked the judge to refrain from taking cognizance of the case at the new trial, which the judge refused to do. Still not satisfied, a few days before the dates fixed for the hearing, counsel filed what was called an "urgent motion" which, according to the trial judge, was caused to be published in the local papers even before the respondent judge had had a chance to pass upon the same. This motion reads as follows:

"URGENT MOTION

"Comes now undersigned counsel for the accused and to this Honorable Court respectfully states:

"1. Considering that the administration of justice will not, by any means, be affected by Honorable Mariano Albert, Judge of the Court of First Instance of the City of Manila, not taking cognizance of this case, it seems proper, in our judgment, that, in order to avoid any misinterpretation of the action taken by said judge during the trial of this case, and in order to grant the accused a completely impartial trial to which her constitutional right entitles her, this case be taken cognizance of and decided by any other judge of the City of Manila.

"2. That herein counsel sincerely believes that, for the proper administration of justice and for the purpose of protecting the accused against the prejudice which has been necessarily formed by the judge who had presided at the original trial of this case and who had already rendered a judgment convicting the herein accused, and considering that the conclusions of said judge are strongly against the accused in finding her guilty of the crime charged, and that said judge has already formed in his mind a firm and irrevocable conviction of the guilt of the accused as shown by his findings appearing in the judgment condemning the accused, it is now impossible

for her to obtain a completely impartial trial from said judge, Honorable Mariano Albert, wherefore, it becomes absolutely necessary that, to do justice to the accused and to avoid any misinterpretation of the action of Honorable Mariano Albert in this case, and because justice and equity so demand, this case be transferred to another branch presided over by another judge who did not have the slightest intervention in this case and, therefore, cannot have any prejudice against the herein accused.

"Wherefore, it is respectfully prayed that Honorable Mariano Albert transfer this case to any judge of the Court of First Instance of Manila in justice to the accused.

"Manila, March 23, 1932.

"(Sgd.) LAUREL, DEL ROSARIO & LUALHATI

"Attorneys for the Accused,

"601-607 Cu Unjieng Building

"Escolta, Manila."

Without loss of time, the trial judge summarily promulgated an order in which he found counsel in contempt of court and imposed a fine of P100 to be paid within twenty-four hours from receipt of the order, with an admonition that if not paid, five days imprisonment would result. As the trial judge construed the motion, "it is, therefore, evident that it is a part of the plan of the defense to avoid the new trial being presided over by the herein judge, and its principal object is to impress upon the mind of the public in general that the undersigned is not capable of administering justice to the accused pursuant to the facts and the law," On counsel being informed of the order of the court, a motion of reconsideration was presented by Attorney Guillermo Lualhati who assumed sole responsibility for the preparation of the motion found to be contemptuous, and who stated that he did not have the slightest intention of impeaching the honesty and rectitude of Judge Albert, and accordingly expressed a willingness to withdraw the motion from the record. The trial judge considered the explanation offered by Attorney Lualhati not satisfactory, but modified the previous order so as to have it directed exclusively against Lualhati. At this point, a petition for certiorari was presented in this court.

It would appear needless to repeat that the question before the court when the extraordinary remedy of certiorari is invoked relates exclusively to determining if the lower court exceeded its jurisdiction. It would likewise appear obvious that a discretionary power is lodged in trial courts, and that with the exercise of that discretion the appellate court should not, and properly can not, interfere unless there is a clear showing of an abuse of discretion. It would be fatal to orderly procedure if the Supreme Court should attempt to substitute its judgment for the judgment of trial judges. Further, it should be emphasized that section 8 of the Code of Civil Procedure provides the grounds for the disqualification of a judge, and that none of the reasons given in the motion constituted a ground for disqualification. Consequently, as this court has heretofore stated, considering the fact that the trial judge was not legally disqualified from trying the case, it was his duty to go forward with the trial. (Joaquin vs. Barretto [1913], 25 Phil., 281; Perfecto vs. Contreras [1914], 28 Phil., 538.) But even this does not state the case completely for the respondent judge, for it should be recalled that a motion had previously been presented to the Supreme Court and denied, and thereafter had been presented to the trial judge and denied, the "urgent motion" constituting the third effort to secure the disqualification of the trial judge.

On the other side of the case it is of course evident that the power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Also, the disclaimer in an effort to purge the contempt was wise, although simply tending to excuse and not to justify the act. We have no doubt that on more mature reflection, the lawyers representing the accused realized the impropriety of the action taken by a member of the firm, and would have been glad to find a means to undo what had been done.

Up to this point, little or no attention has been paid to the authorities. In truth, not one of them is found to be exactly controlling. The case of *Perfecto vs. Contreras*, supra, was one for libel in which the trial judge considered it his duty to proceed with the trial in the civil case notwithstanding he had been the presiding judge in the criminal case, and in which the Supreme Court sustained him for so doing. The case of *United States vs. Guanzon* ([1907], 9 Phil., 371), was a prosecution for contempt under the provisions of the Penal Code which the Supreme Court found, on the facts, did not constitute the offense of contempt. The recent case of *Carag vs. Warden of the Jail of Cagayan, and Sevilla* ([1929], 53 Phil., 85), in which the writ of habeas corpus was denied, was based on the proposition that 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. The remark was made that "The court to whom the contempt was offered and in whose presence it arose is the best judge of its nature." So much for the Philippine cases.

Harrison vs. State ([1880], 35 Ark., 458), concerned a motion for a new trial on the ground that the judge before whom the case was tried was "so prejudiced against the defendant that he did not give him a fair and impartial trial", which the court found to constitute contempt, the Supreme Court of Arkansas refusing to interfere by writ of certiorari. *Toledo Newspaper Co. vs. United States* ([1918], 247 U. S., 402), while likewise different on the facts, is yet indicative of the antagonistic trends of thought in the United States Supreme Court, since the majority headed by Chief Justice White upheld the District Judge who had found the defendants guilty of summary contempt and who had imposed a fine upon them because the publication tended to evoke public suspicion of the judge's integrity and fairness and bring him into public odium, while the contrary viewpoint was presented as only Justice Holmes could present it in a dissenting opinion in which it was said that "a judge of the United States is expected to be a man of ordinary firmness of character, and I find it impossible to believe that such a judge could have found in anything that was printed even a tendency to prevent his performing his sworn duty." We have to follow the majority rule.

The case most nearly on all fours with the one before us is the *Tweed Contempt Case*. In this case, the notorious Boss Tweed came to trial before Judge Davis, but the jury was unable to agree and was discharged. When the case came on for retrial, Judge Davis was again presiding over the court. So distasteful was Judge Davis to Tweed's counsel that they presented to him a paper setting forth the reasons why he should not proceed at the trial and, among other things, stated "The said Justice has formed, and upon a previous trial expressed, a most unqualified and decided opinion, unfavourable to the defendant, upon the facts of the case." At the conclusion of the trial, Judge Davis took action with reference to the paper signed by some of the most eminent lawyers in the State, and in a decision which has become a classic, summarily found them in contempt and imposed fines on the senior counsel, while letting the younger counsel off with words of advice (*Costigan's Cases on Legal Ethics*, pp. 176-179).

We quite agree with counsel for the petitioner that attorneys should ever be fearless in the discharge of their duties even in the face of a hostile court. To the client, as stated by the canons of legal ethics, the attorney owes entire devotion. This court has heretofore given evidence on more than one occasion, of its desire to safeguard the interests of attorneys. At the same time, the duty of the attorney to the courts is no less sacred, and can only be maintained by rendering no service involving any disrespect to the judicial office which he is bound to uphold. In this instance, the submission of a motion once previously denied by the appellate court which had granted the motion for a new trial, and once previously denied by the trial judge, asking for the disqualification of the judge on a ground not provided by law, which motion the judge construed as misbehaviour intended to make the public believe that he was incapable of administering justice to the accused, left the judge no other recourse, if he was to maintain his self respect as a judge, than to take action by way of finding the attorney who presented the motion in contempt of court. As a consequence, we are driven to the conclusion that the trial judge did not act without or in excess of jurisdiction and did not abuse his discretion when he found the petitioner in contempt of court.

Petition denied, with costs.

Avanceña, C. J., Street, Ostrand, Villa-Real, Hull, Vickers, and Imperial, JJ., concur.

[1] Promulgated March 10, 1931, not reported.

[2] 56 Phil., 360.

DISSENTING:

BUTTE, J.,

It is with considerable regret that I feel obliged to dissent from the decision of my brethren in this case and all the more so because of the high regard which I entertain for the learned judge who is the respondent.

I shall state my conclusions as succinctly as possible.

The law confers upon the courts the power to punish summarily for direct (criminal) contempts; but this power has its limitations, otherwise, it would become a means of judicial tyranny. It is conditioned upon the exercise of a sound discretion. Each case must be judged in the light of its special facts and circumstances.

In the present instance, I think there was an abuse of discretion which ought not to be ignored on the theory that the court had the general power to punish for contempt.

The majority opinion in this case finds nothing disrespectful on the face of the petitioner's "urgent motion". The motion asked the judge below to transfer the case in question, to another judge of the same court on the sole ground that "said judge has already formed in his mind a firm and irrevocable conviction of the guilt of the accused as shown by his findings appearing in the judgment condemning the accused." The motion is couched in courteous language. Neither the judge below nor this court pointed out any expressions in said motion that reflect on the personal honesty or rectitude of the judge. If the motion stood alone there is no reason to believe that the judge below would have held the petitioner in contempt.

What is there in the surrounding circumstances that makes the motion contemptuous?

It is intimated in the majority opinion that it is contemptuous because it is the third effort to secure the disqualification of the trial judge. Perhaps it is sufficient answer to this point to say that the motion was not too late and could have been granted by the trial judge.

Another circumstance mentioned is that the reason given in the motion, namely, that the same judge had previously convicted the defendant in the same case, is not a legal ground for disqualification. An examination of the motion discloses that counsel did not invoke section 8 of the Code of Civil Procedure. He asked that the case be transferred to some other judge of the Court of First Instance of Manila, which he might have done in accordance with what is the common practice among the judges of that court in cases involving considerations of delicacy for the trial judge. (See section 169, Administrative Code.) In other words, it is not necessary to assume that counsel asked, as a matter of right under the provisions of the Civil Code, that the trial judge should disqualify himself, but only that he should transfer the case to another judge in accordance with common practice. The trial judge might have arranged the transfer of the case to some other judge of the same court, irrespective of the decision of this court on the first certiorari proceeding denying the petition of counsel for this court to require him to do so. (Cf. *Concepcion vs. De Joya*, G. R. No. 19697.) It is true the "urgent motion" was the second time

counsel presented the matter to the trial judge, but surely we are not prepared to hold that it is evidence of contempt to try to get a judge to change his mind.

Another circumstance mentioned by the trial judge in his answer to this certiorari is that after the motion was filed the petitioner caused the motion to be given to the press before the judge had an opportunity to pass on it. As to this, we have no evidence, but assuming it true, I see nothing contemptuous in that act. The motion became a public document the moment it was filed. If there was nothing objectionable per se in the motion the widest possible publicity could not alter its character.

The respondent judge says of the motion that "it is evident that * * * its principal object is to impress upon the mind of the public in general that the undersigned is not capable of administering justice to the accused pursuant to the facts and law." It is not clear whether that is the mere conclusion of the judge or intended as a statement of fact. Nothing appears on the face of the motion to indicate that its principal object was anything else than to improve the chances of the petitioner's client. Certainly, the mere filing of such a motion hardly warrants the statement that its principal object is to create prejudice against the judge in the mind of the public. Nor is it clear how such prejudice, if created, would have influenced the judge in favor of the accused in the slightest degree.

The petitioner, in his motion for reconsideration, disclaimed that he had any intention to reflect on the honesty and rectitude of the trial judge in his motion for the transfer of the case to another judge. While I think this disclaimer was unnecessary, it should have been taken as proof of the petitioner's sincerity and as evidence that said motion was what it purported to be and nothing more.

It is not to be overlooked that in this case we are dealing with a criminal contempt and the general rule is applicable that the defendant is presumed to be innocent and he must be proved to be guilty beyond reasonable doubt. (*Gompers vs. Buck's Stove & Range Co.*, 221 U. S., 418, 444.)

Like my brethren, I have not been able to find any decision of authority that aids us very much in determining whether the petitioner has committed a contempt.

Joaquin vs. Barretto ([1913], 25 Phil., 281), doesn't touch the subject of contempts.

In the case of *Perfecto vs. Contreras* ([1914], 28 Phil., 538), a civil action for damages for libel was brought before the same judge who found the defendants guilty of criminal libel on the same facts. The defendants filed a motion asking the judge to disqualify himself on the ground that by reason of the former conviction, he "had already formed an opinion adverse to the defendants". So far from holding the mover in contempt, the trial judge took the motion in good part and made repeated efforts to secure some other judge to try the case. Failing in this, he considered it his duty to try the case because he could not disqualify himself under section 8 of the Code of Civil Procedure. There is no question of contempt in this case.

Harrison vs. State (35 Ark., 458) in which the defendant was fined for contempt for stating in a motion for new trial that the judge was so prejudiced against the defendant that he did not give him a fair and impartial trial, is clearly not in point for two reasons: First, because it deals with a motion for new trial and not a motion for disqualification; and second, the contemptuous language is a statement of fact after the trial and not one of belief of the pleader before trial, based upon reasonable and not captious grounds.

The case of *Carag vs. Warden of the Jail of Cagayan, and Sevilla* (53 Phil., 85) was an original action in this court for a writ of habeas corpus. The petitioner had been sentenced to be confined in the provincial jail for ten days for misconduct in the presence of the court, that is to say, for a direct (criminal) contempt. This court dismissed the petition saying "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." It is not to be presumed that when this court said the "action is final" it meant that a sentence for contempt could not be reviewed by any kind of a proceeding; but only that it could not be reviewed on a petition for habeas corpus. It is familiar law that a case cannot be retried on its merits in a habeas corpus proceeding, but the case before us is not a petition for writ of habeas corpus but a petition for writ of certiorari. It cannot be said that in the latter proceeding all that it is necessary to show to make the action of the court below final is that it has jurisdiction. Therefore, the case of Carag against the Warden of the Provincial Jail cannot be construed to disbar the petitioner of the only means of review available to him.

Referring to the so-called Tweed Contempt Case, an examination of Costigan's Cases on Legal Ethics, page 176, discloses that the citation is a quotation from a book by Theron G. Strong entitled "Landmarks of a Lawyer's Lifetime". Obviously, this book is not a legal authority in this court, nor can I find, after diligent search, that there is any such case in the reports. The decision quoted by Strong, as quoted by Costigan, is one of a State court of first instance. Decisions of such courts do not possess a semblance of authority in this court and it would be a work of supererogation to point out that the motion in the so called Tweed Case was offensive on its face, which is not true of the motion in the instant case.

The instant case may fairly be pointed out as one of first impression in these Islands, hence its importance. It seems to me that the following propositions are sound: First, that the judge of the Court of First Instance had the general authority to hear and determine whether or not this petitioner was guilty of contempt of court and to assess against him the fine here in question; second, that said authority is conditioned by the requirement that the court exercise a sound and reasonable discretion both in the appreciation of the facts and the assessment of the penalty; third, that this court may, on certiorari, review the merits of such cases and determine whether or not the court below overstepped the bounds of a sound and reasonable discretion; or, in other words, whether the alleged contemptuous conduct constitutes a contempt in law.

Finding no real substantial grounds for believing that the petitioner did, or intended to, commit an act of criminal contempt, I am constrained to register my dissent in this case.

VILLAMOR, J.:

I concur in the dissenting opinion of Justice Butte.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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