

TERESITA SALCEDO-ORTANEZ, PETITIONER, VS. COURT OF APPEALS, HON. ROMEO F. ZAMORA, PRESIDING JUDGE, BR. 94, REGIONAL TRIAL COURT OF QUEZON CITY AND RAFAEL S. ORTANEZ, RESPONDENTS.

G.R. No. 110662. August 04, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review under Rule 45 of the Rules of Court which seeks to reverse the decision* of respondent Court of Appeals in CA G.R. SP No. 28545 entitled “Teresita Salcedo-Ortanez versus Hon. Romeo F. Zamora, Presiding Judge, Br. 94, Regional Trial Court of Quezon City and Rafael S. Ortanez”.

The relevant facts of the case are as follows:

On 2 May 1990, private respondent Rafael S. Ortanez filed with the Regional Trial Court of Quezon City a complaint for annulment of marriage with damages against petitioner Teresita Salcedo-Ortanez, on grounds of lack of marriage license and/or psychological incapacity of the petitioner. The complaint was docketed as Civil Case No. Q-90-5360 and raffled to Branch 94, RTC of Quezon City presided over by respondent Judge Romeo F. Zamora.

Private respondent, after presenting his evidence, orally formally offered in evidence Exhibits “A” to “M”.

Among the exhibits offered by private respondent were three (3) cassette tapes of alleged telephone conversations between petitioner and unidentified persons.

Petitioner submitted her Objection/Comment to private respondent’s oral offer of evidence on 9 June 1992; on the same day, the trial court admitted all of private respondent’s offered evidence.

A motion for reconsideration from petitioner was denied on 23 June 1992.

A petition for certiorari was then filed by petitioner in the Court of Appeals assailing the admission in evidence of the aforementioned cassette tapes.

On 10 June 1993, the Court of Appeals rendered judgment which is the subject of the present petition, which in part reads:

“It is much too obvious that the petition will have to fail, for two basic reasons:

(1) Tape recordings are not inadmissible per se. They and any other variant thereof can be admitted in evidence for certain purposes, depending on how they are presented and offered and on how the trial judge utilizes them in the interest of truth and fairness and the even handed administration of justice.

(2) A petition for certiorari is notoriously inappropriate to rectify a supposed error in admitting evidence adduced during trial. The ruling on admissibility is interlocutory; neither does it impinge on jurisdiction. If it is

erroneous, the ruling should be questioned in the appeal from the judgment on the merits and not through the special civil action of certiorari. The error, assuming gratuitously that it exists, cannot be anymore than an error of law, properly correctible by appeal and not by certiorari. Otherwise, we will have the sorry spectacle of a case being subject of a counterproductive ‘ping-pong’ to and from the appellate court as often as a trial court is perceived to have made an error in any of its rulings with respect to evidentiary matters in the course of trial. This we cannot sanction.

WHEREFORE, the petition for certiorari being devoid of merit, is hereby DISMISSED”.[1]

From this adverse judgment, petitioner filed the present petition for review, stating:

“Grounds for Allowance of the Petition”

“10. The decision of respondent [Court of Appeals] has no basis in law nor previous decisions of the Supreme Court.

10.1 In affirming the questioned order of respondent judge, the Court of Appeals has decided a question of substance not theretofore determined by the Supreme Court as the question of admissibility in evidence of tape recordings has not, thus far, been addressed and decided squarely by the Supreme Court.

11. In affirming the questioned order of respondent judge, the Court of Appeals has likewise rendered a decision in a way not in accord with law and with applicable decisions of the Supreme Court.

11.1 Although the questioned order is interlocutory in nature, the same can still be [the] subject of a petition for certiorari.”[2]

The main issue to be resolved is whether or not the remedy of certiorari under Rule 65 of the Rules of Court was properly availed of by the petitioner in the Court of Appeals.

The extraordinary writ of certiorari is generally not available to challenge an inter-locutory order of a trial court. The proper remedy in such cases is an ordinary appeal from an adverse judgment, incorporating in said appeal the grounds for assailing the interlocutory order.

However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow certiorari as a mode of redress.[3]

In the present case, the trial court issued the assailed order admitting all of the evidence offered by private respondent, including tape recordings of telephone conversations of petitioner with un-identified persons. These tape recordings were made and obtained when private respondent allowed his friends from the military to wire tap his home telephone.[4]

Rep. Act No. 4200 entitled “An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and for other purposes” expressly makes such tape recordings inadmissible in evidence. The relevant provisions of Rep. Act No. 4200 are as follows:

“Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape-recorder, or however otherwise described. x x x”

“Section 4. Any communication or spoken word, or the existence, contents, substance, purport, or meaning of the same or any part thereof, or any information therein contained, obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial,

quasi-judicial, legislative or administrative hearing or investigation.”

Clearly, respondents trial court and Court of Appeals failed to consider the afore-quoted provisions of the law in admitting in evidence the cassette tapes in question. Absent a clear showing that both parties to the telephone conversations allowed the recording of the same, the in-admissibility of the subject tapes is mandatory under Rep. Act No. 4200.

Additionally, it should be mentioned that the above-mentioned Republic Act in Section 2 thereof imposes a penalty of imprisonment of not less than six (6) months and up to six (6) years for violation of said Act.[5]

We need not address the other arguments raised by the parties, involving the applicability of American jurisprudence, having arrived at the conclusion that the subject cassette tapes are inadmissible in evidence under Philippine law.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP No. 28545 is hereby SET ASIDE. The subject cassette tapes are declared inadmissible in evidence.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

* Penned by Justice Emeterio C. Cui with Justices Jainal D. Rasul and Alfredo G. Lagamon concurring.

[1] Rollo, pp. 24-25.

[2] Rollo, p. 11.

[3] Marcelo v. de Guzman, G.R. No. L-29077, 29 June 1982, 114 SCRA 657.

[4] TSN, 9 December 1992, p. 4.

[5] Sec. 2. Any person who wilfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with accessory penalty of perpetual absolute dis-qualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.”

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