

EDGARDO A. GAANAN, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 69809. October 16, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari asks for an interpretation of Republic Act (RA) No. 4200, otherwise known as the Anti-Wiretapping Act, on the issue of whether or not an extension telephone is among the prohibited devices in Section 1 of the Act, such that its use to overhear a private conversation would constitute unlawful interception of communications between the two parties using a telephone line.

The facts presented by the People and narrated in the respondent court's decision are not disputed by the petitioner.

"In the morning of October 22, 1975, complainant Atty. Tito Pintor and his client Manuel Montebon were in the living room of complainant's residence discussing the terms for the withdrawal of the complaint for direct assault which they filed with the Office of the City Fiscal of Cebu against Leonardo Laconic. After they had decided on the proposed conditions, complainant made a telephone call to Laconico (tsn, August 26, 1981, pp. 3-5).

"That same morning, Laconico telephoned appellant, who is a lawyer, to come to his office and advise him on the settlement of the direct assault case because his regular lawyer, Atty. Leon Gonzaga, went on a business trip. According to the request, appellant went to the office of Laconico where he was briefed about the problem. (Exhibit 'D', tsn, April 22, 1982, pp. 4-5).

"When complainant called up, Laconico requested appellant to secretly listen to the telephone conversation through a telephone extension so as to hear personally the proposed conditions for the settlement. Appellant heard complainant enumerate the following conditions for withdrawal of the complaint for direct assault"

"(a) the P5,000.00 was no longer acceptable, and that the figure had been increased to P8,000.00. A breakdown of the P8,000.00 had been made together with other demands, to wits: (a) P5,000.00 no longer for the teacher Manuel Montebon, but for Atty. Pintor himself in persuading his client to withdraw the case for Direct Assault against Atty. Laconico before the Cebu City Fiscal's Office;

"(b) Public apology to be made by Atty. Laconico before the students of Don Bosco Technical High School;

"(c) P1,000.00 to be given to the Don Bosco Faculty club;

"(d) transfer of son of Atty. Laconico to another school or another section of Don Bosco Technical High School;

"(e) Affidavit of desistance by Atty. Laconico on the Maltreatment case earlier filed against Manuel Montebon at the Cebu City Fiscal's Office, whereas Montebon's affidavit of desistance on the Direct Assault Case against Atty. Laconico to be filed later;

"(f) Allow Manuel Montebon to continue teaching at the Don Bosco Technical School;

"(g) Not to divulge the truth about the settlement of the Direct Assault Case to the mass media;

"(h) P2,000.00 attorney's fees for Atty. Pintor.

(tsn, August 26, 1981, pp. 47-48).

"Twenty minutes later, complainant called up again to ask Laconico if he was agreeable to the conditions. Laconico answered 'Yes'. Complainant then told Laconico to wait for instructions on where to deliver the money. (tsn, march 10, 1983, pp. 2-12).

"Complainant called up again and instructed Laconico to give the money to his wife at the office of the then Department of Public Highways. Laconico who earlier alerted his friend Colonel Zulueta of the Criminal Investigation Service of the Philippine Constabulary, insisted that complainant himself should receive the money. (tsn, March 10, 1982, pp. 26-33). When he received the money at the Igloo Restaurant, complainant was arrested by agents of the Philippine Constabulary.

"Appellant executed on the following day an affidavit stating that he heard complainant demand P8,000.00 for the withdrawal of the case for direct assault. Laconico attached the affidavit of appellant to the complaint for robbery/extortion which he filed against complainant. Since appellant listened to the telephone conversation without complainant's consent, complainant charged appellant and Laconico with violation of the Anti-Wiretapping Act."

After trial on the merits, the lower court, in a decision dated November 22, 1982, found both Gaanan and Laconico guilty of violating Section 1 of Republic Act No. 4200. The two were each sentenced to one (1) year imprisonment with costs. Not satisfied with the decision, the petitioner appealed to the appellate court.

On August 16, 1984, the Intermediate Appellate Court affirmed the decision of the trial court, holding that the communication between the complainant and accused Laconico was private in nature and, therefore, covered by Rep. Act No. 4200; that the petitioner overheard such communication without the knowledge and consent of the complainant; and that the extension telephone which was used by the petitioner to overhear the telephone conversation between complainant and Laconico is covered in the term "device" as provided in Rep. Act No. 4200.

In this petition for certiorari, the petitioner assails the decision of the appellate court and raises the following issues: (a) whether or not the telephone conversation between the complainant and accused Laconico was private in nature; (b) whether or not an extension telephone is covered by the term "device or arrangement" under Rep. Act No. 4200; (c) whether or not the petitioner had authority to listen or overhear said telephone conversation and (d) whether or not Rep. Act No. 4200 is ambiguous and, therefore, should be construed in favor of the petitioner.

Section 1 of Rep. Act No. 4200 provides:

"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:

It shall be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceeding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial,

to any other person: Provided, that the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in Section 3 hereof, shall not be covered by this prohibition."

We rule for the petitioner.

We are confronted in this case with the interpretation of a penal statute and not a rule of evidence. The issue is not the admissibility of evidence secured over an extension line of a telephone by a third party. The issue is whether or not the person called over the telephone and his lawyer listening to the conversation on an extension line should both face prison sentences simply because the extension was used to enable them to both listen to an alleged attempt at extortion.

There is no question that the telephone conversation between complainant Atty. Pintor and accused Atty. Laconico was "private" in the sense that the words uttered were made between one person and another as distinguished from words between a speaker and a public. It is also undisputed that only one of the parties gave the petitioner the authority to listen to and overhear the caller's message with the use of an extension telephone line. Obviously, complainant Pintor, a member of the Philippine bar, would not have discussed the alleged demand for an P8,000.00 consideration in order to have his client withdraw a direct assault charge against Atty. Laconico filed with the Cebu City Fiscal's Office if he knew that another lawyer was also listening. We have to consider, however, that affirmance of the criminal conviction would, in effect, mean that a caller by merely using a telephone line can force the listener to secrecy no matter how obscene, criminal, or annoying the call may be. It would be the word of the caller against the listener's.

Because of technical problems caused by the sensitive nature of electronic equipment and the extra heavy loads which telephone cables are made to carry in certain areas, telephone users often encounter what are called "crossed lines". An unwary citizen who happens to pick up his telephone and who overhears the details of a crime might hesitate to inform police authorities if he knows that he could be accused under Rep. Act 4200 of using his own telephone to secretly overhear the private communications of the would be criminals. Surely the law was never intended for such mischievous results.

The main issue in the resolution of this petition, however, revolves around the meaning of the phrase "any other device or arrangement." Is an extension of a telephone unit such a device or arrangement as would subject the user to imprisonment ranging from six months to six years with the accessory penalty of perpetual absolute disqualification for a public officer or deportation for an alien? Private secretaries with extension lines to their bosses' telephones are sometimes asked to use answering or recording devices to record business conversations between a boss and another businessman. Would transcribing a recorded message for the use of the boss be a proscribed offense? Or for that matter, would a "party line" be a device or arrangement under the law?

The petitioner contends that telephones or extension telephones are not included in the enumeration of "commonly known" listening or recording devices, nor do they belong to the same class of enumerated electronic devices contemplated by law. He maintains that in 1964, when Senate Bill No. 9 (later Rep. Act No. 4200) was being considered in the Senate, telephones and extension telephones were already widely used instruments, probably the most popularly known communication device.

Whether or not listening over a telephone party line would be punishable was discussed on the floor of the Senate. Yet, when the bill was finalized into a statute, no mention was made of telephones in the enumeration of devices "commonly known as a dictaphone or dictagraph, detectaphone or walkie talkie or tape recorder or however otherwise described." The omission was not a mere oversight. Telephone party lines were intentionally deleted from the provision of the Act.

The respondent People argue that an extension telephone is embraced and covered by the term "device" within the context of the aforementioned law because it is not a part or portion of a complete set of a telephone apparatus. It is a separate device and distinct set of a movable apparatus consisting of a wire and a set of telephone receiver not forming part of a main telephone set which can be detached or removed and can be transferred away from one place to another and to be plugged or attached to a main telephone line to get the desired communication coming from the other party or end.

The law refers to a "tap" of a wire or cable or the use of a "device or arrangement" for the purpose of secretly overhearing, intercepting, or recording the communication. There must be either a physical interruption through a wiretap or the deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken words.

An extension telephone cannot be placed in the same category as a dictaphone, dictagraph or the other devices enumerated in Section 1 of RA No. 4200 as the use thereof cannot be considered as "tapping" the wire or cable of a telephone line. The telephone extension in this case was not installed for that purpose. It just happened to be there for ordinary office use. It is a rule in statutory construction that in order to determine the true intent of the legislature, the particular clauses and phrases of the statute should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts. (see *Commissioner of Customs v. Esso Estandard Eastern, Inc.*, 66 SCRA 113,120).

In the case of *Empire Insurance Company v. Rufino* (90 SCRA 437, 443-44), we ruled:

"Likewise, Article 1372 of the Civil Code stipulates that 'however general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree.' Similarly, Article 1374 of the same Code provides that 'the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.'

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"Consequently, the phrase 'all liabilities or obligations of the decedent' used in paragraphs 5(c) and 7(d) should be then restricted only to those listed in the Inventory and should not be construed as to comprehend all other obligations of the decedent. The rule that 'particularization followed by a general expression will ordinarily be restricted to the former' is based on the fact in human experience that usually the minds of parties are addressed specially to the particularization, and that the generalities, though broad enough to comprehend other fields if they stood alone, are used in contemplation of that upon which the minds of the parties are centered. (*Hoffman v. Eastern Wisconsin R., etc., Co.*, 134 Wis. 603, 607; 115 NW 383, cited in *Francisco*, Revised Rules of Court (Evidence), 1973 ed., pp. 180-181."

Hence, the phrase "device or arrangement" in Section 1 of RA No. 4200, although not exclusive to that enumerated therein, should be construed to comprehend instruments of the same or similar nature, that is, instruments the use of which would be tantamount to tapping the main line of a telephone. It refers to instruments whose installation or presence cannot be presumed by the party or parties being overheard because by their very nature, they are not of common usage and their purpose is precisely for tapping, intercepting or recording a telephone conversation.

An extension telephone is an instrument which is very common especially now when the extended unit does not have to be connected by wire to the main telephone but can be moved from place to place within a radius of a kilometer or more. A person should safely presume that the party he is calling at the other end of the line probably has an extension telephone and he runs the risk of a third party listening as in the case of a party line or a

telephone unit which shares its line with another. As was held in the case of *Rathbun v. United States* (355, U.S. 107, 2 L Ed 2d 137-138):

"Common experience tells us that a call to a particular telephone number may cause the bell to ring in more than one ordinarily used instrument. Each party to a telephone conversation takes the risk that the other party may have an extension telephone and may allow another to overhear the conversation. When such takes place there has been no violation of any privacy of which the parties may complain. Consequently, one element of 605, interception, has not occurred."

In the same case, the Court further ruled that the conduct of the party would differ in no way if instead of repeating the message he held out his handset so that another could hear out of it and that there is no distinction between that sort of action and permitting an outsider to use an extension telephone for the same purpose.

Furthermore, it is a general rule that penal statutes must be construed strictly in favor of the accused. Thus, in case of doubt as in the case at bar, on whether or not an extension telephone is included in the phrase "device or arrangement", the penal statute must be construed as not including an extension telephone. In the case of *People v. Purisima*, 86 SCRA 542, 562, we explained the rationale behind the rule:

"American jurisprudence sets down the reason for this rule to be 'the tenderness of the law of the rights of individuals; the object is to establish a certain rule by conformity to which mankind would be safe, and the discretion of the court limited. (*United States v. Harris*, 177 US 305, 44 L Ed 780, 20 S Ct 609; *Braffith v. Virgin Islands* (CA3) 26 F2d 646; *Caudill v. State*, 224 Ind 531, 69 NE2d 549; *Jennings v. Commonwealth*, 109 Va 821, 63 SE 1080, all cited in 73 Am Jur 2d 452.) The purpose is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts." (*State v. Zazzaro*, 20 A 2d 737, quoted in *Martin's Handbook on Statutory Construction*, Rev. Ed. pp. 183-184)."

In the same case of *Purisima*, we also ruled that in the construction or interpretation of a legislative measure, the primary rule is to search for and determine the intent and spirit of the law. A perusal of the Senate Congressional Records will show that not only did our lawmakers not contemplate the inclusion of an extension telephone as a prohibited "device or arrangement" but of greater importance, they were more concerned with penalizing the act of recording than the act of merely listening to a telephone conversation.

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Senator Tanada. Another possible objection to that is entrapment which is certainly objectionable. It is made possible by special amendment which Your Honor may introduce.

Senator Diokno. Your Honor, I would feel that entrapment would be less possible with the amendment than without it, because with the amendment the evidence of entrapment would only consist of government testimony as against the testimony of the defendant. With this amendment, they would have the right, and the government officials and the person in fact would have the right to tape record their conversation.

Senator Tanada. In case of entrapment, it would be the government.

Senator Diokno. In the same way, under this provision, neither party could record and, therefore, the court would be limited to saying: "Okay, who is more credible, the police officers or the defendant?" In these cases, as experienced lawyers, we know that the Court go with the peace offices.

(Congressional Record, Vol. III, No. 33, p. 628, March 12, 1964).

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Senator Diokno. The point I have in mind is that under these conditions, with an agent outside listening in, he could falsify the testimony and there is no way of checking it. But if you allow him to record or make a

recording in any form of what is happening, then the chances of falsifying the evidence is not very much.

Senator Tanada. Your Honor, this bill is not intended to prevent the presentation of false testimony. If we could devise a way by which we could prevent the presentation of false testimony, it would be wonderful. But what this bill intends to prohibit is the use of tape record and other electronic devices to intercept private conversations which later on will be used in court.

(Congressional Record, Vol. III, No. 33, March 12, 1964, p. 629).

It can be readily seen that our lawmakers intended to discourage, through punishment, persons such as government authorities or representatives of organized groups from installing devices in order to gather evidence for use in court or to intimidate, blackmail or gain some unwarranted advantage over the telephone users. Consequently, the mere act of listening, in order to be punishable must strictly be with the use of the enumerated devices in RA No. 4200 or others of similar nature. We are of the view that an extension telephone is not among such devices or arrangements.

WHEREFORE, the petition is GRANTED. The decision of the then Intermediate Appellate Court dated August 16, 1984 is ANNULLED and SET ASIDE. The petitioner is hereby ACQUITTED of the crime of violation of Rep. Act No. 4200, otherwise known as the Anti-Wiretapping Act.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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