

EN BANC

[G.R. No. 155076, January 13, 2009]

LUIS MARCOS P. LAUREL, PETITIONER, VS. HON. ZEUS C. ABROGAR, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 150, PEOPLE OF THE PHILIPPINES & PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

On February 27, 2006, this Court's First Division rendered judgment in this case as follows:

IN LIGHT OF ALL THE FOREGOING, the petition is **GRANTED**. The assailed Orders of the Regional Trial Court and the Decision of the Court of Appeals are **REVERSED and SET ASIDE**. The Regional Trial Court is directed to issue an order granting the motion of the petitioner to quash the Amended Information.

SO ORDERED.^[1]

By way of brief background, petitioner is one of the accused in Criminal Case No. 99-2425, filed with the Regional Trial Court of Makati City, Branch 150. The Amended Information charged the accused with theft under Article 308 of the Revised Penal Code, committed as follows:

On or about September 10-19, 1999, or prior thereto in Makati City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to gain and without the knowledge and consent of the Philippine Long Distance Telephone (PLDT), did then and there willfully, unlawfully and feloniously take, steal and use the international long distance calls belonging to PLDT by conducting International Simple Resale (ISR), which is a method of routing and completing international long distance calls using lines, cables, antennae, and/or air wave frequency which connect directly to the local or domestic exchange facilities of the country where the call is destined, effectively stealing this business from PLDT while using its facilities in the estimated amount of P20,370,651.92 to the damage and prejudice of PLDT, in the said amount.

CONTRARY TO LAW.^[2]

Petitioner filed a "Motion to Quash (with Motion to Defer Arraignment)," on the ground that the factual allegations in the Amended Information do not constitute the

felony of theft. The trial court denied the Motion to Quash the Amended Information, as well petitioner's subsequent Motion for Reconsideration.

Petitioner's special civil action for certiorari was dismissed by the Court of Appeals. Thus, petitioner filed the instant petition for review with this Court.

In the above-quoted Decision, this Court held that the Amended Information does not contain material allegations charging petitioner with theft of personal property since international long distance calls and the business of providing telecommunication or telephone services are not personal properties under Article 308 of the Revised Penal Code.

Respondent Philippine Long Distance Telephone Company (PLDT) filed a Motion for Reconsideration with Motion to Refer the Case to the Supreme Court En Banc. It maintains that the Amended Information charging petitioner with theft is valid and sufficient; that it states the names of all the accused who were specifically charged with the crime of theft of PLDT's international calls and business of providing telecommunication or telephone service on or about September 10 to 19, 1999 in Makati City by conducting ISR or International Simple Resale; that it identifies the international calls and business of providing telecommunication or telephone service of PLDT as the personal properties which were unlawfully taken by the accused; and that it satisfies the test of sufficiency as it enabled a person of common understanding to know the charge against him and the court to render judgment properly.

PLDT further insists that the Revised Penal Code should be interpreted in the context of the Civil Code's definition of real and personal property. The enumeration of real properties in Article 415 of the Civil Code is exclusive such that all those not included therein are personal properties. Since Article 308 of the Revised Penal Code used the words "personal property" without qualification, it follows that all "personal properties" as understood in the context of the Civil Code, may be the subject of theft under Article 308 of the Revised Penal Code. PLDT alleges that the international calls and business of providing telecommunication or telephone service are personal properties capable of appropriation and can be objects of theft.

PLDT also argues that "taking" in relation to theft under the Revised Penal Code does not require "asportation," the sole requisite being that the object should be capable of "appropriation." The element of "taking" referred to in Article 308 of the Revised Penal Code means the act of depriving another of the possession and dominion of a movable coupled with the intention, at the time of the "taking," of withholding it with the character of permanency. There must be intent to appropriate, which means to deprive the lawful owner of the thing. Thus, the term "personal properties" under Article 308 of the Revised Penal Code is not limited to only personal properties which are "susceptible of being severed from a mass or larger quantity and of being transported from place to place."

PLDT likewise alleges that as early as the 1930s, international telephone calls were in existence; hence, there is no basis for this Court's finding that the Legislature could not have contemplated the theft of international telephone calls and the unlawful transmission and routing of electronic voice signals or impulses emanating from such calls by unlawfully tampering with the telephone device as within the coverage of the Revised Penal Code.

According to respondent, the "international phone calls" which are "electric currents or sets of electric impulses transmitted through a medium, and carry a pattern representing the human voice to a receiver," are personal properties which may be subject of theft. Article 416(3) of the Civil Code deems "forces of nature" (which includes electricity) which are brought under the control by science, are personal property.

In his Comment to PLDT's motion for reconsideration, petitioner Laurel claims that a telephone call is a conversation on the phone or a communication carried out using the telephone. It is not synonymous to electric current or impulses. Hence, it may not be considered as personal property susceptible of appropriation. Petitioner claims that the analogy between generated electricity and telephone calls is misplaced. PLDT does not produce or generate telephone calls. It only provides the facilities or services for the transmission and switching of the calls. He also insists that "business" is not personal property. It is not the "business" that is protected but the "right to carry on a business." This right is what is considered as property. Since the services of PLDT cannot be considered as "property," the same may not be subject of theft.

The Office of the Solicitor General (OSG) agrees with respondent PLDT that "international phone calls and the business or service of providing international phone calls" are subsumed in the enumeration and definition of personal property under the Civil Code hence, may be proper subjects of theft. It noted that the cases of *United States v. Genato*,^[3] *United States v. Carlos*^[4] and *United States v. Tambunting*,^[5] which recognized intangible properties like gas and electricity as personal properties, are deemed incorporated in our penal laws. Moreover, the theft provision in the Revised Penal Code was deliberately couched in broad terms precisely to be all-encompassing and embracing even such scenario that could not have been easily anticipated.

According to the OSG, prosecution under Republic Act (RA) No. 8484 or the *Access Device Regulations Act of 1998* and RA 8792 or the *Electronic Commerce Act of 2000* does not preclude prosecution under the Revised Penal Code for the crime of theft. The latter embraces unauthorized appropriation or use of PLDT's international calls, service and business, for personal profit or gain, to the prejudice of PLDT as owner thereof. On the other hand, the special laws punish the surreptitious and advanced technical means employed to illegally obtain the subject service and business. Even assuming that the correct indictment should have been under RA 8484, the quashal of the information would still not be proper. The charge of theft as alleged in the Information should be taken in relation to RA 8484 because it is the elements, and not the designation of the crime, that control.

Considering the gravity and complexity of the novel questions of law involved in this case, the Special First Division resolved to refer the same to the Banc.

We resolve to grant the Motion for Reconsideration but remand the case to the trial court for proper clarification of the Amended Information.

Article 308 of the Revised Penal Code provides:

Art. 308. *Who are liable for theft.* - Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

The elements of theft under Article 308 of the Revised Penal Code are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

Prior to the passage of the Revised Penal Code on December 8, 1930, the definition of the term "personal property" in the penal code provision on theft had been established in Philippine jurisprudence. This Court, in *United States v. Genato*, *United States v. Carlos*, and *United States v. Tambunting*, consistently ruled that any personal property, tangible or intangible, corporeal or incorporeal, *capable of appropriation* can be the object of theft.

Moreover, since the passage of the Revised Penal Code on December 8, 1930, the term "personal property" has had a generally accepted definition in civil law. In Article 335 of the Civil Code of Spain, "personal property" is defined as "*anything susceptible of appropriation and not included in the foregoing chapter (not real property)*." Thus, the term "personal property" in the Revised Penal Code should be interpreted in the context of the Civil Code provisions in accordance with the rule on statutory construction that where words have been long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute, in which they are used, the words used in such statute should be construed according to the sense in which they have been previously used.^[6] In fact, this Court used the Civil Code definition of "personal property" in interpreting the theft provision of the penal code in *United States v. Carlos*.

Cognizant of the definition given by jurisprudence and the Civil Code of Spain to the term "personal property" at the time the old Penal Code was being revised, still the legislature did not limit or qualify the definition of "personal property" in the Revised Penal Code. Neither did it provide a restrictive definition or an exclusive enumeration of "personal property" in the Revised Penal Code, thereby showing its intent to retain for the term an extensive and unqualified interpretation. Consequently, any property which is not included in the enumeration of real properties under the Civil Code and capable of appropriation can be the subject of theft under the Revised Penal Code.

The only requirement for a personal property to be the object of theft under the penal code is that it be capable of appropriation. It need not be capable of "asportation," which is defined as "carrying away."^[7] Jurisprudence is settled that to "take" under the theft provision of the penal code does not require asportation or carrying away.^[8]

To appropriate means to deprive the lawful owner of the thing.^[9] The word "take" in the Revised Penal Code includes any act intended to transfer possession which, as held in the assailed Decision, may be committed through the use of the offenders'

own hands, as well as any mechanical device, such as an access device or card as in the instant case. This includes controlling the destination of the property stolen to deprive the owner of the property, such as the use of a meter tampering, as held in *Natividad v. Court of Appeals*,^[10] use of a device to fraudulently obtain gas, as held in *United States v. Tambunting*, and the use of a jumper to divert electricity, as held in the cases of *United States v. Genato*, *United States v. Carlos*, and *United States v. Menagas*.^[11]

As illustrated in the above cases, appropriation of forces of nature which are brought under control by science such as electrical energy can be achieved by tampering with any apparatus used for generating or measuring such forces of nature, wrongfully redirecting such forces of nature from such apparatus, or using any device to fraudulently obtain such forces of nature. In the instant case, petitioner was charged with engaging in International Simple Resale (ISR) or the unauthorized routing and completing of international long distance calls using lines, cables, antennae, and/or air wave frequency and connecting these calls directly to the local or domestic exchange facilities of the country where destined.

As early as 1910, the Court declared in *Genato* that ownership over electricity (which an international long distance call consists of), as well as *telephone service*, is protected by the provisions on theft of the Penal Code. The pertinent provision of the Revised Ordinance of the City of Manila, which was involved in the said case, reads as follows:

Injury to electric apparatus; Tapping current; Evidence. - No person shall destroy, mutilate, deface, or otherwise injure or tamper with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service, nor tap or otherwise wrongfully deflect or take any electric current from such wire, meter, or other apparatus.

No person shall, for any purpose whatsoever, use or enjoy the benefits of any device by means of which he may fraudulently obtain any current of electricity or any telegraph or telephone service; and the existence in any building premises of any such device shall, in the absence of satisfactory explanation, be deemed sufficient evidence of such use by the persons benefiting thereby.

It was further ruled that even without the above ordinance the acts of subtraction punished therein are covered by the provisions on theft of the Penal Code then in force, thus:

Even without them (ordinance), the right of the ownership of electric current is secured by articles 517 and 518 of the Penal Code; the application of these articles in cases of subtraction of gas, a fluid used for lighting, and in some respects resembling electricity, is confirmed by the rule laid down in the decisions of the supreme court of Spain of January 20, 1887, and April 1, 1897, construing and enforcing the provisions of articles 530 and 531 of the Penal Code of that country, articles 517 and 518 of the code in force in these islands.

The acts of "subtraction" include: (a) tampering with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring