ADDITIONAL JURISPRUDENCE ON MEDIA FREEDOM

by Victor Avecilla

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LIBEL / PRIVILEGED COMMUNICATION

GMA Network, Inc. v. Bustos
G.R. No. 146848, October 17, 2006, 504 SCRA 638
Second Division Decision / Justice Cancio C. Garcia

FACTS

In August 1987, the Board of Medical Examiners of the Professional Regulation Commission (PRC) conducted the licensure examination for physicians. Nine hundred forty-one (941) of the 2,835 examinees failed the examination. In February 1988, more than 200 of those who flunked the licensure examination filed a petition for *mandamus* before the Regional Trial Court in the City of Manila to compel the PRC and the Board of Medical Examiners to re-check their test papers. According to them, the checking of the answers to the test questions and the computation of the test scores were attended with serious, flagrant errors, and that the said errors vitiated the results of the examinations.

Rey Vidal, a news reporter of GMA Network, Inc., covered the filing of the said petition for *mandamus*, obtained a copy of it, and reported its contents in *Headline News*, an evening news program of GMA Network, Inc. Aside from the actual footage taken of the filing of the petition for *mandamus*, the news program also included a file footage taken of a past, unrelated event—physicians and medical personnel wearing black

armbands to protest against the management of the Philippine General Hospital (PGH) sometime in 1982.

The unsuccessful examinees found the news coverage "false, malicious and one-sided" and exposed them to hatred, contempt, and ridicule in that it gave the impression that the PGH protest was directed against them. They then filed a civil case for damages arising from defamation against GMA Network, Inc. and Vidal before the Regional Trial Court in Makati.

Defendants GMA Network, Inc. and Vidal denied any wrongdoing and argued that the telecast was a concise and objective narration of a matter of public concern, done without malice, and protected under the press freedom clause of the 1987 Constitution. They also maintained that the footage was accompanied by an appropriate voice-over which negates the contention of the unsuccessful examinees that the report exposed them to hatred, contempt, and ridicule.

Ruling in favor of GMA Network, Inc. and Vidal, the trial court held that the questioned news coverage was a straight news report, devoid of comments or remarks, of the acts and conduct of public officials, namely the members of the Board of Medical Examiners. For this reason, said the trial court, the said news report is privileged and protected under the 1987 Constitution.

The unsuccessful examinees appealed the ruling of the trial court to the Court of Appeals (CA). After due proceedings, the appellate court ruled that the news report is not legally actionable because it was made on the occasion of qualified privileged communication: It merely lifted or quoted from the contents and allegations of the petition for *mandamus*. Unlike the trial court, however, the CA found malice in the inclusion of the footage about the 1982 demonstration at the PGH in the news report because it failed to indicate that it was just a file footage. Such failure, according to the CA, gave the impression that the demonstration at the PGH was related to the filing of the petition for *mandamus*. Thus, the CA ruled in favor of the

unsuccessful examinees and ordered the defendants to pay damages.

GMA Network, Inc. and Vidal brought their case to the Supreme Court (SC) to resolve the following issues—whether or not the news report in question is libelous; and whether or not the inclusion of the 1982 footage about the PGH demonstration in the news report constitutes malice.

RULING

An award of damages in favor of the unsuccessful examinees, the SC said, "presupposes the commission of an act amounting to defamatory imputation or libel, which, in turn, presupposes malice." The SC added that although every defamatory imputation is presumed to be malicious, the presumption does not exist in matters considered privileged.

Privileged matters, the SC said, may be absolute or qualified. Elaborating further, the SC stressed that in absolutely privileged communication, malice, and/or good faith on the part of the author or source is of no moment because the mere fact that the communication is absolutely privileged provides an absolute bar to the filing of any complaint in court. Speeches and debates in the Congress, the SC said, are examples of absolutely privileged communication.

In qualified privileged communication, the SC continued, the freedom from liability for an otherwise defamatory utterance is conditioned on the absence of express malice, and that the writer or author is susceptible to a suit or finding of libel, provided the prosecution establishes malice. Examples of qualified privileged communication, the SC said, are those enumerated under Article 354 of the Revised Penal Code, including fair and true reports, without any comments or remarks, of judicial proceedings. The SC likewise said that the enumeration under Article 354 of the Revised Penal Code is not an exclusive list of qualified privileged communication because

the SC had the occasion to rule in *Borjal v. Court of Appeals* that "the constitutional guarantee of freedom of speech and of the press has expanded the privilege to include fair commentaries on matters of public interest."

According to the SC, the news report in question was basically a narration by a news writer doing his job, devoid of comments or remark, of the contents of the petition for *mandamus*. For this reason, the SC held, the same is deemed qualified privileged communication.

The SC did not agree with the finding of the CA that the inclusion of the 1982 footage of the PGH protest in the questioned news report amounted to malice because it failed to indicate that it was a file footage. On the contrary, the SC pointed out, the 1982 footage actually indicated therein that it was, indeed, a file video. The SC went on to say that even if the 1982 footage did not indicate that it was a file video, the failure to so indicate it is of no moment as far as the legal situation of the questioned news report is concerned. For the SC, the 1982 "video footage was not libel in disguise; standing without accompanying sounds or voices, it was meaningless, or, at least, conveyed nothing derogatory in nature." In fact, the SC added, the 1982 footage was accompanied by a narration of the contents of the petition for *mandamus*, and there was nothing in the news report to indicate an intent on the part of the television network and the news reporter concerned to use the old footage to create another news story, one different from what was reported. The SC likewise stated that there is nothing in the said footage which consists of an attack, let alone a false one, against the honesty, character, or integrity of any of the unsuccessful examinees. Malice, the SC went on, is even negated by the facts that GMA Network, Inc. and Vidal do not personally know and did not have any personal dealings with the unsuccessful examinees.

"Personal hurt or embarrassment or offense, even if real," the SC said, is not automatically equivalent to defamation." The law against defamation, the SC continued, "protects one's interest

in acquiring, retaining, and enjoying a reputation 'as good as one's character and conduct' in the community." Concluding the point, the SC said, "Clearly then, it is the community, not personal standards, which shall be taken into account in evaluating any allegations of libel and any claims for damages on account thereof."

The SC stated that the failure or indisposition of the television network and the news reporter to obtain and telecast the side of the unsuccessful examinees is not an indication of malice because the business of a reporter is to report what the public has the right to know, not to comment on news and events. To stress the point further, the SC cited a United States appellate court ruling which states that "a reporter...may rely on statements made by a single source even though they reflect only one side of the story without fear of libel prosecution by a public official."

All told, the SC found no legal basis for awarding damages to the unsuccessful examinees, and declared that the subject news report was a fair and true report made without malice, and therefore entitled to the protection and immunity provided by the rule on privileged matters under Article 354 (2) of the Revised Penal Code.

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Editor's Note: The full text of the decision of the Supreme Court's Second Division (G.R. No. 146848) promulgated on October 17, 2006 may be retrieved from http://www.supremecourt.gov.ph/jurisprudence/2006/october2006/146848.htm.

Chavez v. Gonzales
G.R No. 168338, February 15, 2008
En Banc / Chief Justice Reynato Puno

FACTS

On June 5, 2005, Press Secretary Ignacio Bunye held a press conference to announce that the political opposition was planning to destabilize the administration of President Gloria Macapagal-Arroyo by releasing an audiotape of a mobile telephone conversation allegedly between the President and Virgilio Garcillano, a commissioner of the Commission on Elections. The conversation was allegedly acquired through unauthorized wiretapping and it purportedly embodied instructions by the President that the said election official ought to manipulate the results of the May 2004 presidential elections in her favor.

Two days later, Atty. Alan Paguia, former counsel of deposed President Joseph Estrada, released to the media an alleged tape recording of the wiretap. It purportedly contained the conversations of, among others, President Arroyo, First Gentleman Jose Miguel Arroyo, and Commissioner Garcillano.

Soon thereafter, audiotapes and compact discs containing the alleged wiretapped conversations were circulating in the metropolis. It appears that several media organizations gained access to the said recordings.

On June 8, 2005, Sec. Raul Gonzales of the Department of Justice held a press briefing where he warned reporters and media organizations that they may be held liable under the Anti-Wiretapping Act if they publish or broadcast the said recordings. He added that persons in possession of them, as well as those who publish or broadcast them, were committing a continuing offense and are subject to arrest by just about anybody who may have knowledge that the crime is being committed in their presence.

In another press briefing held the next day, Secretary Gonzales announced that he ordered the National Bureau of Investigation (NBI) to go after media organizations "found to have caused the spread, the playing, and the printing of the contents of a tape" of an alleged wiretapped conversation involving the President about fraud in the May 2004 elections. Gonzales said that he was going to start with *Inq7.net*, an online publication jointly operated by the *Philippine Daily Inquirer* and the GMA-7 television network due to the capability of the medium to disseminate the recordings more widely than conventional media. He also announced his plan to invite editors and managers of *Inq7.net* and GMA-7 to a probe. The Secretary was supposed to have said, "I have asked the NBI to conduct a tactical interrogation of all concerned."

On June 11, 2005, the National Telecommunications Commission (NTC) issued a press release captioned "NTC Gives Fair Warning to Rradio and Television Owners/Operators to Observe Anti-Wiretapping Law and Pertinent Circulars on Program Standards." Calling the contents of the aforesaid recordings "false information" because the contents thereof have not been authenticated, the NTC press release carried a warning to all broadcast media organizations that their licenses to operate radio and television facilities will be suspended, revoked, or cancelled if they broadcast the said recordings.

Days later, on June 14, 2005, the NTC held a dialogue with the Board of Directors of the Kapisanan ng mga Brodkaster ng Pilipinas (KBP) where the NTC assured the KBP that the press release did not violate the constitutional freedom of speech, of expression, and of the press, and the right to information. Accordingly, the NTC and the KBP came out with a joint press statement announcing that the NTC respects and will not hinder freedom of the press and the right to information on matters of public concern, and that all the NTC requests from the KBP is that press freedom be exercised with responsibility. For its part of the statement, the KBP declared that its members will observe the standards of responsible broadcasting, and that no false

statements or willful misrepresentations are made in their treatment of news and news commentaries.

Former Solicitor General Francisco Chavez, however, took legal action against Secretary Gonzales and the NTC by filing a petition for *certiorari* and prohibition before the Supreme Court. Alleging that the acts of the respondents (i.e., Secretary Gonzales and the NTC) are violations of the freedom of expression and of the press and the right of the people to information on matters of public concern, Chavez asked the Supreme Court to annul their acts and to prohibit them from committing similar acts in the future.

The Office of the Solicitor General, as counsel for the respondents, denied that the acts of the respondents were a transgression of constitutional rights and argued that the NTC warning was valid because broadcast media enjoy lesser constitutional guarantees compared to print media, and that the warning was issued pursuant to the mandate of the NTC to regulate the telecommunications industry. It was also stressed that even up to that time, most of the broadcast media continue to broadcast the recordings, but within the parameters agreed upon by the NTC and the KBP. Also, it was pointed out that the press statements of the respondents were never reduced in or followed up with formal orders or circulars. In fine. the government posited that the publication or broadcasting of the recordings violated the Anti-Wiretapping Act and this, in turn, threatened the security of the State.

RULING

The Supreme Court came out with a lengthy discourse on constitutional issues relating to press freedom and freedom of expression. It went on to affirm that the broadcast media enjoy lesser constitutional protection compared to the print media because of the limited frequencies available for broadcast

activities, the pervasiveness of the broadcast media, and their unique accessibility to children.

In addition, the Court reiterated that the clear and present danger test applies to legal disputes involving free speech, press freedom, and freedom of expression in the Philippines, but pointed out that the test applies only when the challenged act of the government is a content-based regulation. Where the infringement is content-neutral, the Court explained, the clear and present danger test will not be applied and, in its stead, only a substantial government interest is required for the validity of the regulation.

According to the Court, the acts committed by the respondents in this case are in the nature of content-based regulations because they outlaw the possession, publishing, or broadcasting of a recording of the wiretapped conversation allegedly between the President and a ranking poll official. Being content-based regulations, they call for the application of the clear and present danger test. Inasmuch as the regulations are content-based, the Court continued, they must be subjected to the strictest scrutiny with the government bearing the burden of overcoming the presumption that the said regulations are unconstitutional. For emphasis, the Court said that this test applies to all media, including the broadcast media.

The Court held that not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. Laws are of different kinds and some of them provide norms of conduct which, even if violated, have only an adverse effect on the private comfort of a person without endangering national security. There are laws of great significance but their violation, by itself and without more, do not warrant the suppression of free speech and press freedom. In fine, a violation of law is just a factor, a vital one to be sure, which should be weighed in adjudging whether or not to restrain freedom of speech and of the press. The totality of the injurious effects of the violation to private and public interest must be calibrated in

the light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and press freedom, the breach of which can lead to greater evils. On this score, the Court concluded that the State failed to show that the feared violation of the Anti-Wiretapping Act clearly endangers the security of the State.

In addition, the Court held that it is not decisive that the press statements made by the respondents were not reduced in or followed up with formal orders or circulars. It is sufficient that the press statements were made by the respondents while in the exercise of their official functions, with Gonzales as Secretary of Justice and the NTC as the government agency regulating the broadcast media. Any act done in an official capacity for and in behalf of the government, such as a speech uttered, is covered by the rule on prior restraint. The concept of an "act" does not limit itself to acts already converted to a formal order or official circular. Otherwise, the non-formalization of an act into an official order or circular will result in the easy circumvention of the prohibition against prior restraint. The acts of the respondents in this case should be struck down because they constitute impermissible prior restraint on the right of free speech and press freedom.

The Court noted that the warnings made by the respondents had a chilling effect on the media because they came from no less than the NTC, a regulatory agency which can cancel the permits of broadcast media, and from the Secretary of Justice, the alter ego of the President, who wields the awesome power to prosecute those perceived to be violating the laws of the land. To illustrate the point, the Court pointed out that after the warnings were made, the KBP inexplicably joined the NTC in issuing an ambivalent joint press statement.

Petitioner Chavez was lauded by the Court for fighting this battle for freedom of speech and press freedom by his lonesome. The Court scored the media, saying "the silence on

the sidelines on the part of some media practitioners is too deafening to be the subject of misinterpretation."

In the end, the Court said that there are no hard and fast rules when it comes to slippery constitutional issues, and the limits and construct of relative freedoms are never set in stone. Issues revolving on their construct must be decided on a case-to-case basis, always based on the peculiar shapes and shadows of each case. However, where the challenged acts are patent violations of a constitutionally protected right, the Court must be swift in striking them down as nullities *per se* because a blow too soon struck for freedom is preferable to a blow too late.

Accordingly, the Court granted the relief prayed for and nullified the acts of the respondents on the ground that they amount to unconstitutional prior restraint on the exercise of freedom of speech and press freedom.

Justices Santiago and Reyes concurred in the *ponencia* of the Chief Justice, Justices Gutierrez, Carpio, Azcuna, Tinga and Velasco filed separate concurring opinions, Justices Martinez and Morales concurred in the separate opinion of Justice Carpio, and Justice Quisumbing concurs in the result and in the separate opinion of Justice Carpio.

SEPARATE CONCURRING OPINION

Justice Carpio voted to declare the press release issued by the NTC unconstitutional. According to him, the rule, which recognizes no exception, is that there can be no content-based prior restraint on protected expression. The tape recording in question is protected expression because it gravely affects the sanctity of the ballot. Public discussion on the sanctity of the ballot is indisputably a protected expression that cannot be subject to prior restraint. Also, it is absurd for the NTC to ban the tape recording when, admittedly, it does not even know if the tape recording in question contains false information or willful misrepresentation. The NTC press release is a classic

form of prior restraint. Only the courts may impose content-based prior restraint but only as far as unprotected expression is concerned.

DISSENTING OPINION

Justices Nazario, De Castro and Nachura dissented. For them, the assailed press statements do not infringe on the rights of free speech and press freedom. What the NTC did was a valid exercise of its regulatory authority over the broadcast media. The so-called "chilling effect" mentioned in the majority opinion is illusory because even in the absence of the said press statements, existing laws and regulations authorize the revocation of licenses of broadcast stations if they are found to have violated existing laws or the terms of their authority. Moreover, from the time the assailed press releases were issued and up to the present, the feared criminal prosecution and license revocation never materialized. They remain imaginary concerns even after the contents of the tapes had been extensively publicized.

CRITIQUE

Even if the respondents never came out with the press releases in question, all media of communication, the broadcast media in particular, are still covered by valid, existing laws limiting their freedom on the undisputed premise that absolute freedom renders the Bill of Rights meaningless. The same laws also authorize agencies like the NTC to make policy statements and issuances which are not contrary to the Constitution and existing laws. With or without the said press statements, broadcast media are still subject to restraints imposed by existing law. In this light, how press statements made by executive department officials and which embody existing constitutional and statutory restrictions, and nothing more, can be considered to have a chilling effect on the media, much less amount to prior restraint on the media themselves, simply escapes reason. It must be emphasized that the free speech and press freedom clauses of the Constitution are undoubtedly prohibitions directed against legislation, not executive action.