

**PABLO DELGADO, EUGENIO ZAMORA AND PIO MANALO,
PETITIONERS-APPELLANTS, HON. MARCIANO ROQUE, AS ACTING
EXECUTIVE SECRETARY, HON. DOMINADOR E. CHIPECO, AS
PROVINCIAL GOVERNOR OF LA...**

G.R. No. L-8260. May 27, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The appellants had filed in November of 1952 an action in the Court of First Instance of Laguna for a writ of certiorari to review and set aside the order of the then Executive Secretary Marciano Roque, ordering the closure of the cockpit "Bagong Sabungan" in Sta. Cruz, Laguna, owned by appellants, for violation of the terms of Executive Order 318, Series of 1941, prohibiting the construction and operation of cockpits within a radius of 1000 lineal meters from any church, public building, school, park, etc.

It is stipulated that the cockpit in question was less than one thousand meters from the Seventh Day Adventist church in Sta. Cruz, Laguna; that the said church measures 5 1/2 x 14 meters; that it is the only Seventh Day Adventist's Church in the whole town of Sta. Cruz; that the members of said religious group regularly assemble therein for worship on Saturdays, and occasionally on Thursdays; and that the cockpit was constructed under a permit regularly issued by the municipal authorities and license fees thereon have been regularly paid.

Upon such facts, the Court of First Instance held that the construction of the cockpit was in violation of the Executive Order and dismissed the action. Whereupon, the decision was appealed to this Court.

Section 2 of Executive Order No. 318, Ser. 1941, issued by the President under authority of Commonwealth Act 601, provides as follows:

"2. No cockpit shall be constructed or permitted to operate within a radius of one thousand lineal meters from any City Hall or municipal building, provincial building, public plaza, public school, Church, hospital, athletic stadium, public park, or any institution of learning or of charity; neither shall permit be issued for the construction or operation of a cockpit on a lot which is not provided with sufficient space for parking and the public road or highway shall not be used for such purpose."

Appellants contend: (1) that by the term "church" used in the aforesaid provision, "what is contemplated - - - are regular churches where big congregations flock habitually on Sundays for their religious services", and (2) that "small chapels, particularly those which conduct their services on days other than Sundays and which are not resorted to by big congregations should not be deemed included."

The contention is unmeritorious. The word "church" is defined as "the place where a society of persons professing the Christian religion regularly assemble for worship" (Bouvier's Law Dictionary); "a house of worship for a parish" (Webster). The essential characteristic{ therefore, is the devotion of the place to religious services held with regularity, and not the size of the building or of the congregation that assembles therein. The appellants'

insistence in terming the structure a "chapel" in no way alters the case.

That the church in question should be closed on Sundays when the cockpit of appellants is in operation is quite irrelevant. Not only are cockpit games also held occasionally on weekdays, as pointed out by the Court below, but it does not appear from the Executive Order that the prohibition was predicated exclusively upon the interference of the cockpit games with the activities carried in the buildings enumerated in its section 2. It will be noticed that cockpits are likewise forbidden within one thousand meters from public schools and government buildings, although customarily such buildings are closed during Sundays, like the Church of the Seventh Day Adventists.

However, during the pendency of this appeal, the Legislature has approved Republic Act No. 979, reducing the prescribed distance from 1000 to 500 meters only, and it became a law on May 21, 1954. Said act provides:

"SEC. 1. Section one of Republic Act Numbered Nine hundred and thirty-eight is hereby amended to read as follows:

"Sec. 1. The municipal or city board or council of each chartered city and the municipal council of each municipality and municipal district hall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction: Provided however, that no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of five hundred lineal meters from any public buildings, schools, hospitals and churches. And provided, further, That this Act shall not apply to establishments operating by virtue of Commonwealth Act Numbered Four hundred eighty-five nor to pre-war establishments that owned, before the outbreak of the war on December seven, nineteen hundred and forty-one, concrete building for the purpose and have reconstructed such building and resumed operation before the approval of this Act."

In our opinion, the appellants herein are entitled to the benefits of this Act in so far as it favors them, in the same manner that an accused is entitled to claim the benefit of a repeal or favorable alteration, before final sentence, of the statute which he is charged with having violated (U.S. vs. Cuna, 12 Hill. 241; People vs. Tamayo, 61 Phil. 225; Peo. vs. Sindiong and Pastor, G.R. No. L-335, Feb. 12, 1947), for the prohibition in Executive Order No. 318 is in the nature of a penal statute, since it is in derogation of ordinary rights and violation thereof carries with it the forfeiture of the license to operate.

"The repeal of a statute imposing a penalty operates to defeat all actions pending for its recovery, whether maintained in the name of the state or that of a private individual; and so strictly is this rule enforced that it defeats a pending action even where the repealing act is passed after verdict or pending on appeal from a judgment of the trial Court." (59 C.J., 1191, sec. 728).

Should it appear, therefore, that the distance between the Seventh Day Adventist's Church and the cockpit of appellants is less than the 500 lineal meters now prescribed by Rep. Act No. 979, the appellants would be entitled to relief. Unfortunately, the records before us do not establish the exact distance by competent and satisfactory evidence. Hence, a remand is imperative.

In view of the foregoing, the decision appealed from is set aside, and the records shall be remanded to the Court of origin, with instructions to reopen the case and to proceed in accordance with our pronouncements in this decision.

Without costs.

So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Paras, C.J., and Jugo, J., did not take part.

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