

PEDRO J. VELASCO, PLAINTIFF-APPELLANT, VS. MANILA ELECTRIC CO., WILLIAM SNYDER, ITS PRESIDENT; JOHN COTTON AND HERMENEGILDO B. REYES, ITS VICE-PRESIDENTS; AND ANASTACIO A. AGAN,...

G.R. No. L-18390. August 06, 1971

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

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

The present case is a direct appeal (prior to Republic Act 5440) by the herein plaintiff-appellant, Pedro J. Velasco (petitioner in L-14035; respondent in L-13992)[1] from the decision of the Court of First Instance of Rizal, Quezon City Branch, in its Civil Case No. 1355, absolving the defendants from a complaint for the abate-ment of the sub-station as a nuisance and for damages to his health and business in the amount of P487,600.00.

In 1948, appellant Velasco bought from the People's Homesite and Housing Corporation three (3) adjoining lots situated at the corner of South D and South 6 Streets, Diliman, Quezon City. These lots are within an area zoned out as a "first residence" district by the City Council of Quezon City. Subsequently, the appellant sold two (2) lots to the Meralco, but retained the third lot, which was farthest from the street-corner, whereon he built his house.

In September, 1953, the appellee company started the construction of the sub-station in question and finished it the following November, without prior building permit or authority from the Public Service Commission (vs. Meralco vs. Public Service Commission, 109 Phil. 603). The facility reduces high voltage electricity to a current suitable for distribution to the company's consumers, num-bering not less than 8,500 residential homes, over 300 commercial establishments and about 30 industries (T. s. n., 19 October 1959, page 1765). The substation has a rated capacity of "2 transformers at 5000 Kva each or a total of 10,000 Kva without fan cooling; or 6250 Kva each or a total of 12,500 Kva with fan cooling" (Exhibit "A-3"). It was constructed at a distance of 10 to 20 meters from the ap-pellant's house (T. s. n., 16 July 1956, page 62; 19 December 1956, page 343; 1 June 1959, page 29). The company built a stone and cement wall at the sides along the streets but along the side adjoining the appellant's property it put up a sawale wall but later changed it to an interlink wire fence.

It is undisputed that a sound unceasingly emanates from the substation. Whether this sound constitutes an action-able nuisance or not is the principal issue in this case.

Plaintiff-appellant Velasco contends that the sound constitutes an actionable nuisance under. Article 694 of the Civil Code of the Philippines, reading as follows:

"A nuisance is any act, omission, es-tablishment, business, condition of pro-perty or anything else which:

- (1) Injures or endangers the health or safety of others; or
- (2) Annoys or offends the senses;

XXXX XXXXX XXXXX"

because subjection to the sound since 1954 had disturbed the concentration and sleep of said appellant, and impaired his health and lowered the value of his property. Wherefore, he sought a judicial decree for the abatement of the nuisance and asked that he be declared entitled to recover compensatory, moral and other damages under Article 2202 of the Civil Code.

"ART. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant."

After trial, as already observed, the court below dismissed the claim of the plaintiff, finding that the sound of the substation was unavoidable and did not constitute nuisance; that it could not have caused the diseases of anxiety neurosis, pyelonephritis, ureteritis, lumbago and anemia; and that the items of damage claimed by plaintiff were not adequately proved. Plaintiff then appealed to this Court.

The general rule is that everyone is bound to bear the habitual or customary inconveniences that result from the proximity of others, and so long as this level is not surpassed, he may not complain against them. But if the prejudice exceeds the inconveniences that such proximity habitually brings, the neighbor who causes such disturbance is held responsible for the resulting damage^[2], being guilty of causing nuisance.

While no previous adjudications on the specific issue have been made in the Philippines, our law of nuisances is of American origin, and a review of authorities clearly indicates the rule to be that the causing or maintenance of disturbing noise or sound may constitute an actionable nuisance (V. Ed. Note, 23 ALR, 2d 1289). The basic principles are laid down in *Tortorella vs. Traiser & Co., Inc.* 90 ALR 1206:

"A noise may constitute an actionable nuisance, *Rogers vs. Elliott*, 146 Mass. 349, 15 N. E. 768, 4 Am. St. Rep. 316, *Stevens v. Rockport Granite Co.*, 216 Mass. 486, 104 N. E. 371, Ann. Cas. 1915B, 1054, *Stodder v. Rosen Talking Machine Co.*, 241 Mass. 245, 135 N. E. 251, 22 A. L. R. 1197, but it must be a noise which affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent. Injury to a particular person in a peculiar position or of specially sensitive characteristics will not render the noise an actionable nuisance. *Rogers v. Elliott*, 146 Mass. 349, 15 N. E. 768, 4 Am. St. Rep. 316. In the conditions of present living noise seems inseparable from the conduct of many necessary occupations. Its presence is a nuisance in the popular sense in which that word is used, but in the absence of statute noise becomes actionable only when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener. What those limits are cannot be fixed by any definite measure of quantity or quality. They depend upon the circumstances of the particular case. They may be affected, but are not controlled, by zoning ordinances. *Beane v. H. J. Porter Inc.* 280 Mass. 538, 182 N. E. 823, *Marshal v. Holbrook*, 276 Mass. 341, 177 N. E. 504, *Strachan v. Beacon Oil Co.*, 251 Mass. 479, 146 N. E. 787. The delimitation of designated areas to use for manufacturing, industry or general business is not a license to emit every noise profitably attending the conduct of any one of them. *Beane v. H. J. Porter, Inc.* 280 Mass. 538, 182 N. E. 823. The test is whether rights of property of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who though creating a noise is acting with reasonable regard for the rights of those affected by it. *Stevens v. Rockport Granite Co.*, 216 Mass. 486, 104 N. E. 371, Ann. Cas. 1915B, 1054."

With particular reference to noise emanating from electrical machinery and appliances, the court, in *Kentucky & West Virginia Power Co. v. Anderson*, 156 S. W. 2d 857, after a review of authorities, ruled as follows:

"There can be no doubt but that commercial and industrial activities which are lawful in themselves may

become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable. It is no defense that skill and care have been exercised and the most improved methods and appliances employed to prevent such result. *Wheat Culvert Company v. Jenkins*, 246 Ky. 319, 55 S. W. 2d 4; 46 C. J. 683, 705; 20 R. C. L. 438; Annotations, 23 A. L. R. 1407; 90 A. L. R. 1207. Of course, the creation of trifling annoyance and inconvenience does not constitute an actionable nuisance, and the locality and surroundings are of im-portance. The fact that the cause of the complaint must be substantial has often led to expressions in the opinions that to be a nuisance the noise must be deafening or loud or excessive and un-reasonable. Usually it was shown to be of that character. The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities, rendering adjacent property less comfortable and valuable. If the noise does that it can well be said to be substantial and unreasonable in degree; and reasonableness is a question of fact dependent upon all the circumstances and conditions. 20 R. C. L. 445, 453; *Wheat Culvert Company v. Jenkins*, supra. There can be no fixed standard as to what kind of noise constitutes a nuisance. It is true some witnesses in this case say they have been annoyed by the humming of these transformers, but that fact is not con-clusive as to the non-existence of the cause of complaint, the test being the effect which is had upon an ordinary person who is neither sensitive nor immune to the annoy-ance concerning which the complaint is made. In the absence of evidence that the com-plainant and his family are supersensitive to distracting noises, it is to be assumed that they are persons of ordinary and normal sensibilities. *Roukovina v. Island Farm Creamery Company*, 160 Minn. 335, 200 N. W. 350, 38 A. L. R. 1502.

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In *Wheat Culvert Company vs. Jenkins*, supra, we held an injunction was properly decreed to stop the noise from the operation of a metal culvert factory at night which interfered with the sleep of the occupants of an adjacent residence. It is true the clanging, riveting and hammering of metal plates produces a sound different in charac-ter from the steady hum or buzz of the elec-tric machinery described in this case. In the *Jenkins* case the noise was loud, dis-cordant and intermittent. Here it is inter-minable and monotonous. Therein lies the physical annoyance and disturbance. Though the noise be harmonious and slight and trivial in itself, the constant and monotonous sound of a cricket on the hearth, or the drip of a leaking faucet is irritating, uncomfortable, distracting and disturbing to the average man and woman. So it is that the intolerable, steady monotony of this ceaseless sound, loud enough to inter-fere with ordinary conversation in the dwelling, produces a result generally deemed sufficient to constitute the cause of it an actionable nuisance. Thus, it has been held the continuous and monotonous playing of a phonograph for advertising purposes on the street even though there were various records, singing, speaking and instrumental, injuriously affected plaintiff's employees by a gradual wear on their nervous systems, and otherwise, is a nuisance authorizing an injunction and damages. *Frank F. Stodder et al. v. Rosen Talking Machine Company*, 241 Mass. 245, 135 N.E. 251, 22 A. L. R. 1197."

The principles thus laid down make it readily ap-parent that inquiry must be directed at the character and intensity of the noise generated by the particular substation of the appellee. As can be anticipated, charac-ter and loudness of sound being of subjective appreciation in ordinary witnesses, not much help can be obtained from the testimonial evidence. That of plaintiff Velasco is too plainly biased and emotional to be of much value. His exaggerations are readily apparent in paragraph V of his amended complaint, signed by him as well as his counsel, wherein the noise complained of as ?

"fearful hazardous noise and clangor are produced by the said electric trans-former of the MEC's substation, approxi-mating a noise of a reactivated about-to-explode volcano, perhaps like the nerve wracking noise of the torture chamber in Germany's Dachau or Buchenwald" (Record on Appeal, page 6)

The estimate of the other witnesses on the point of inquiry are vague and imprecise, and fail to give a de-finite idea of the intensity of the sound complained of. Thus:

OSCAR SANTOS, Chief Building Inspector, Department of Engineering, Quezon City ---- "the sound (at the front door of plaintiff Velasco's house) becomes noticeable only when I tried to concentrate" (T. s. n., 16 July 1956, page 50)

SERAFIN VILLARAZA, Building Inspector --- "like a high pitch note." (the trial court's description as to the imitation of noise made by witness: "..... more of a hissing sound) (T. s. n., 16 July 1956, pages 59-60)

CONSTANCIO SORIA, City Electrician "---- humming sound" "of a running car". (T. s. n., 16 July 1956, page 87)

JOSE R. ALVAREZ, Sanitary Engineer, Quezon City Health Department ----- "..... substation emits a continuous rumbling sound which is audible within the premises and at about a radius of 70 meters." "I stayed there from 6:00 p. m. to about 1:00 o'clock in the morning" "increases with the approach of twilight." (T.s.n., 5 September 1956, pages 40-44)

NORBERTO S. AMORANTO, Quezon City Mayor --? (for 30 minutes in the street at a distance of 12 to 15 meters from sub-station) "I felt no effect on myself." no [piercing noise]" (T.s.n., 18 September 1956, page 189)

PACIFICO AUSTRIA, architect, appellant's neighbor: "..... like an approaching airplane around five kilometers away." (T.s.n., 19 November 1956, pages 276-277)

ANGEL DEL ROSARIO, radiologist, appellant's neighbor: "..... as if it is a running motor or a running dynamo, which disturbs the ear and the hearing of a person." (T.s.n., 4 December 1956, page 21)

ANTONIO D. PAGUIA, lawyer ---- "It may be likened to the sound emitted by the whistle of a boat at a far distance but it is very audible." (T.s.n., 19 December 1956, page 309)

RENE RODRIGUEZ, sugar planter and sugar broker, appellant's neighbor --- "It sounds like a big motor running continuously." (T.s.n., 19 December 1956, page 347)

SIMPLICIO BELISARIO, Army captain --- (on a visit to Velasco) "I can compare the noise to an airplane C-47 being started - the motor." [Did not notice the noise from the substation when passing by, in a car, Velasco's house] (T.s.n., 7 January 1957, pages 11-12)

MANOLO CONSTANTINO, businessman, appellant's neighbor --- "It disturbs our concentration of mind." (T.s.n., 10 January 1957, page 11)

PEDRO PICA, businessman, appellant's neighbor: "..... we can hear it very well [at a distance of 100 to 150 meters]. (T.s.n., 10 January 1957, page 41.)

CIRENEO PUNZALAN, lawyer --- "..... a continuous droning, ... like the sound of an airplane." (T.s.n. 17 January 1957, page 385)

JAIME C. ZAGUIRRE, Chief, Neuro-Psychiatry Section, V. Luna Gen. Hospital ---- "comparatively the sound was really loud to bother a man sleeping." (T.s.n., 17 January 1957, page 406)

We are thus constrained to rely on quantitative measurements shown by the record. Under instructions from the Director of Health, samplings of the sound intensity were taken by Dr. Jesus Almonte using a sound level meter and other instruments. Within the compound of the plaintiff-appellant, near the wire fence serving as property line between him and the appellee, on 27 August 1957 at 11:45 a.m., the sound level under the sampaloc tree was 46-48 decibels, while behind Velasco's kitchen, the meter registered 49-50; at the same places on 29 August 1957, at 6:00 a.m., the readings were 56-59 and 61-62 decibels, respectively; on 7 September 1957, at 9:30 a.m., the

sound level under the sampaloc tree was 74-76 decibels; and on 8 September 1957 at 3:35 in the morning, the reading under the same tree was 70 decibels, while near the kitchen it was 79-80 decibels. Several measurements were also taken inside and outside the house (Exhibit "NN-7, b-f"). The ambient sound of the locality, or that sound level characteristic of it or that sound predominating minus the sound of the sub-station is from 28 to 32 decibels. (T.s.n., 26 March 1958, pages 6-7)

Mamerto Buenafe, superintendent of the appellee's electrical laboratory, also took sound level samplings. On 19 December 1958, between 7:00 to 7:30 o'clock in the evening, at the substation compound near the wire fence or property line, the readings were 55 and 54 and still near the fence close to the sampaloc tree, it was 52 decibels; outside but close to the concrete wall, the readings were 42 to 43 decibels; and near the transformers, it was 76 decibels (Exhibit "13").

Buenafe also took samplings at the North General Hospital on 4 January 1959 between 9:05 to 9:45 in the evening. In the different rooms and wards from the first to the fourth floors, the readings varied from 45 to 67 decibels.

Technical charts submitted in evidence show the following intensity levels in decibels of some familiar sounds: average residence: 40; average office: 55; average automobile, 15 feet: 70; noisiest spot at Niagara Falls: 92 (Exhibit "11-B"); average dwelling: 35; quiet office: 40; average office: 50; conversation: 60; pneumatic rock drill: 130 (Exhibit "12"); quiet home -- average living room: 40; home ventilation fan, outside sound of good home air-conditioner or automobile at 50 feet: 70 (Exhibit "15-A").

Thus the impartial and objective evidence points to the sound emitted by the appellee's substation transformers being of much higher level than the ambient sound of the locality. The measurements taken by Dr. Almonte, who is not connected with either party, and is a physician to boot (unlike appellee's electrical superintendent Buenafe), appear more reliable. The conclusion must be that, contrary to the finding of the trial court, the noise continuously emitted, day and night, constitutes an actionable nuisance for which the appellant is entitled to relief, by requiring the appellee company to adopt the necessary measures to deaden or reduce the sound at the plaintiff's house, by replacing the interlink wire fence with a partition made of sound absorbent material, since the relocation of the substation is manifestly impracticable and would be prejudicial to the customers of the Electric Company who are being serviced from the substation.

Appellee company insists that as the plaintiff's own evidence (Exhibit "NN-7(c)") the intensity of the sound (as measured by Dr. Almonte) inside appellant's house is only 46 to 47 decibels at the consultation room, and 43 to 45 decibels within the treatment room, the appellant had no ground to complain. This argument is not meritorious, because the noise at the bedrooms was determined to be around 64-65 decibels, and the medical evidence is to the effect that the basic root of the appellant's ailments was his inability to sleep due to the incessant noise with consequent irritation, thus weakening his constitution and making him easy prey to pathogenic germs that could not otherwise affect a person of normal health.

In *Kentucky and West Virginia Co., Inc. vs. Anderson*, 156 SW. 857, the average of three readings along the plaintiff's fence was only 44 decibels but, because the sound from the sub-station was interminable and monotonous, the court authorized an injunction and damages. In the present case, the three readings along the property line are 52, 54 and 55 decibels. Plaintiff's case is manifestly stronger.

Appellee company argues that the plaintiff should not be heard to complain because the sound level at the North General Hospital, where silence is observed, is even higher than at his residence. This comparison lacks basis because it has not been established that the hospital is located in surroundings similar to the residential zone where the plaintiff lived or that the sound at the hospital is similarly monotonous and ceaseless as the sound

emitted by the sub-station.

Constancio Soria testified that "The way the trans-formers are built, the humming sound cannot be avoided". On this testimony, the company emphasizes that the sub-station was constructed for public convenience. Admitting that the sound cannot be eliminated, there is no proof that it can not be reduced. That the sub-station is needed for the Meralco to be able to serve well its customers is no reason, however, why it should be operated to the detriment and discomfort of others.[3]

The fact that the Meralco had received no complaint although it had been operating hereabouts for the past 50 years with substations similar to the one in contro-versy is not a valid argument. The absence of suit neither lessens the company's liability under the law nor weakens the right of others against it to demand their just due.

As to the damages caused by the noise, appellant Velasco, himself a physician, claimed that the noise, as a precipitating factor, has caused him anxiety neurosis, which, in turn, predisposed him to, or is concomitant with, the other ailments which he was suffering at the time of the trial, namely, pyelonephritis, ureteritis and others; that these resulted in the loss of his professional income and reduced his life expectancy. The breakdown of his claims is as follows:

Loss of professional earnings	
P 12,600	
Damage to life expectancy	
180,000	
Moral damages	
100,000	
Loss due to frustration of sale of house	
125,000	
Exemplary damages	
25,000	
Attorneys' fees	
45,000	

A host of expert witnesses and voluminous medical literature, laboratory findings and statistics of income were introduced in support of the above claims.

The medical evidence of plaintiff's doctors preponderates over the expert evidence for defendant-appellee, not merely because of its positive character but also because the physicians presented by plaintiff had actually treated him, while the defense experts had not done so. Thus the evidence of the latter was to a large extent conjectural. That appellant's physical ailments should be due to infectious organisms does not alter the fact that the loss of sleep, irritation and tension due to excessive noise weakened his constitution and made him easy prey to the infection.

Regarding the amount of damages claimed by appellant, it is plain that the same are exaggerated. To begin with, the alleged loss of earnings at the rate of P19,000 per annum is predicated on the Internal Revenue assessment, Exhibit "QQ-1", wherein appellant was found to have undeclared income of P8,338.20 in addition to his declared

gross income of P10,975.00 for 1954. There is no competent showing, however, that the source of such undeclared income was appel-lant's profession. In fact, the inference would be to the contrary, for his gross income from the previous years 1951 to 1953 [Exhibits "QQ-1(d)" to "QQ-1(f)"] was only P8,085.00 P5,860.00 and P7,120.00, respectively, an average of P7,000.00 per annum. Moreover, while his 1947 and 1948 income was larger (P9,995.00 and P11,900.00), it appears that P5,000 thereof was the appellant's annual salary from the Quezon Memorial Foundation, which was not really con-nected with the usual earnings derived from practice as a physician. Considering, therefore, his actual earnings, the claimed moral damages of P100,000.00 are utterly dis-proportionate. The alleged losses for shortening of appel-lant's life expectancy are not only inflated but specula-tive.

As to the demand for exemplary or punitive damages, there appears no adequate basis for their award. While the appellee Manila Electric Company was convicted for erecting the substation in question without permit from the Public Service Commission, We find reasonable its explanation that its officials and counsel had originally deemed that such permit was not required as the installation was authorized by the terms of its franchise (as amended by Republic Act No. 150) requiring it to spend within 5 years not less than forty million pesos for maintenance and additions to its electric system, including needed power plants and substations. Neither the absence of such permit from the Public Service Commission nor the lack of permit from the Quezon City autho-rities (a permit that was subsequently granted) is incom-patible with the Company's good faith, until the courts finally ruled that its interpretation of the franchise was incorrect.

There are, moreover, several factors that mitigate defendant's liability in damages. The first is that the noise from the substation does not appear to be an exclusive causative factor of plaintiff-appellant's illnesses. This is proved by the circumstance that no other person in Velasco's own household nor in his immediate neighborhood was shown to have become sick despite the noise complained of. There is also evidence that at the time the plaintiff-appellant appears to have been largely indebted to various credit institutions, as a result of his unsuccessful gubernatorial campaign, and this court can take judicial cognizance of the fact that financial worries can affect unfavorably the debtor's disposition and mentality.

The other factor militating against full recovery by the petitioner Velasco is his passivity in the face of the damage caused to him by the noise of the substation. Realizing as a physician that the latter was disturbing or depriving him of sleep and affecting both his physical and mental well being, he did not take any steps to bring action to abate the nuisance or remove himself from the affected area as soon as the deleterious effects became noticeable. To evade them appellant did not even have to sell his house; he could have leased it and rented other premises for sleeping and maintaining his office and thus preserve his health as ordinary prudence demanded. Instead he obstinately stayed until his health became gravely affected, apparently hoping that he would thereby saddle appellee with large damages.

The law in this jurisdiction is clear. Article 2203 prescribes that "The party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question". This codal rule, which embodies the previous jurisprudence on the point[4], clearly obligates the injured party to undertake measures that will alleviate and not ag-gravate his condition after the infliction of the injury, and places upon him the burden of explaining why he could not do so. This was not done.

Appellant Velasco introduced evidence to the effect that he tried to sell his house to Jose Valencia, Jr., in September, 1953, and on a 60 day option, for P95,000.00, but that the prospective buyer backed out on account of his wife objecting to the noise of the substation. There is no reliable evidence, however, how much were appellant's lot and house worth, either before the option was given to Va-lencia or after he refused to proceed with the sale or even during the intervening period. The existence of a previous offer for P125,000.00, as claimed

by the plaintiff, was not corroborated by Valencia. What Valencia testified to in his deposition is that when they were negotiating on the price Velasco mentioned to him about an offer by someone for P125,000.00. The testimony of Valencia proves that in the dialog between him and Velasco, part of the subject of their conversation was about the prior offer, but it does not corroborate or prove the reality of the offer for P125,000.00. The testimony of Velasco on this point, standing alone, is not credible enough, what with his penchant for metaphor and exaggeration, as previously adverted to. It is urged in appellant's brief, along the lines of his own testimony, that since one (1) transformer was measured by witness Jimenez with a noise intensity of 47.2 decibels at a distance of 30.48 meters, the two (2) transformers of the substation should create an intensity of 94.4 decibels at the same distance. If this were true, then the residence of the plaintiff is more noisy than the noisiest spot at the Niagara Falls, which registers only 92 decibels (Exhibit "15-A").

Since there is no evidence upon which to compute any loss or damage allegedly incurred by the plaintiff by the frustration of the sale on account of the noise, his claim therefore was correctly disallowed by the trial court. It may be added that there is no showing of any further attempts on the part of appellant to dispose of the house, and this fact suffices to raise doubts as to whether he truly intended to dispose of it. He had no actual need to do so in order to escape deterioration of his health, as heretofore noted.

Despite the wide gap between what was claimed and what was proved, the plaintiff is entitled to damages for the annoyance and adverse effects suffered by him since the substation started functioning in January, 1954. Considering all the circumstances disclosed by the record, as well as appellant's failure to minimize the deleterious influences from the substation, this Court is of the opinion that an award in the amount of P20,000.00, by way of moderate and moral damages up to the present, is reasonable. Recovery of attorney's fees and litigation expenses in the sum of P5,000.00 is also justified --- the factual and legal issues were intricate (the transcript of the stenographic notes is about 5,000 pages, side from an impressive number of exhibits), and raised for the first time in this jurisdiction.[5]

The last issue is whether the City Engineer of Quezon City, Anastacio A. Agan, a co-defendant, may be held solidarily liable with Meralco.

Agan was included as a party defendant because he allegedly (1) did not require the Meralco to secure a building permit for the construction of the substation; (2) even defended its construction by not insisting on such building permit; and (3) did not initiate its removal or demolition and the criminal prosecution of the officials of the Meralco.

The record does not support these allegations. On the first plea, it was not Agan's duty to require the Meralco to secure a permit before the construction but for Meralco to apply for it, as per Section 1, Ordinance No. 1530, of Quezon City. The second allegation is not true, because Agan wrote the Meralco requiring it to submit the plan and to pay permit fees (T.s.n., 14 January 1960, pages 2081-2082). On the third allegation, no law or ordinance has been cited specifying that it is the city engineer's duty to initiate the removal or demolition of, or for the criminal prosecution of, those persons who are responsible for the nuisance. Republic Act 537, Section 24 (d), relied upon by the plaintiff, requires an order by, or previous approval of, the mayor for the city engineer to cause or order the removal of buildings or structures in violation of law or ordinances, but the mayor could not be expected to take action because he was of the belief, as he testified, that the sound "did not have any effect on his body".

FOR THE FOREGOING REASONS, the appealed decision is hereby reversed in part and affirmed in part. The defendant-appellee Manila Electric Company is hereby ordered to either transfer its substation at South D and South 6 Streets, Diliman, Quezon City, or take appropriate measures to reduce its noise at the property line

between the defendant company's compound and that of the plaintiff-appellant to an average of forty (40) to fifty (50) decibels within 90 days from finality of this decision; and to pay the said plaintiff-appellant P20,000.00 in damages and P5,000.00 for attorney's fees. In all other respects, the appealed decision is affirmed. No costs.

Concepcion, C.J., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur. Dizon and Castro, JJ., on official leave, did not take part.

[1] Decided in 30 September 1960 (109 Phil. 603).

[2] France, Cour de Cession, Decisions of, 19 April 1905 & 24 July 1908; Chambre des Requetes, 5 Dec. 1904. Cf. 33 Am. Jur. Nuisances, Section 47, pages 330-333: "No one is entitled to absolute quiet in the enjoyment of his property; he may only insist upon a degree of quietness consistent with the standard of comfort prevailing in the locality in which he dwells. The location and surroundings must be considered, since noise which amounts to a nuisance in one locality may be entirely proper in another. The character and magnitude of the industry or business complained of and the manner in which it is conducted must also be taken into consideration, and so must the character and volume of the noise, the time and duration of its occurrence, the number of people affected by it, and all the facts and circumstances of the case."

[3] Wheat Culvert Company vs. Jenkins, 246 Ky. 319, 55 SW. 2d. 4; 46 C. J. 683, 705.

[4] De Castelv vs. Cia. General de Tabacos, 49 Phil. 996; Lasam vs. Smith, 41 Phil. 657; De Guia vs. Manila Electric & Light Co., 40 Phil. 706.

[5] Civil Code of the Philippines, Article 2208, No. 11.

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