

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RODOLFO PATERNO Y MANUEL, DEFENDANT AND APPELLANT.

G. R. No. 12939. October 20, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

Rodolfo Paterno y Manuel, for throwing a cigarette butt at Plaza Miranda, was accused of violation of Section 1158 (anti-littering) of Revised Ordinance 1600 of the City of Manila. Found guilty by the Municipal Court and, on appeal, by the Court of First Instance of Manila, he was convicted and fined by the latter court in the sum of P20.00, pursuant to Section 1262 of the Revised Ordinance.

Appellant, while not directly questioning the legality of the ordinance as it is, nor his conviction under the facts of the case, nor the penalty imposed upon him, has, however, appealed and now assails the constitutionality of what he calls the operation or implementation of the ordinance. Thus, his assignment of errors:

- THE LOWER COURT ERRED IN HOLDING THAT REVISED ORDINANCE NO. 1600, SECTION 1158 IS LEGAL AND CONSTITUTIONAL ON ITS FACE, INSTEAD ON THE WAY IT IS OPERATED.
- THE LOWER COURT ERRED IN HOLDING THAT REVISED ORDINANCE NO. 1600, SECTION 1168, AS OPERATED, IS NOT UNDULY OPPRESSIVE UPON THE INDIVIDUAL.

He complains that the members of the Manila Police Department, in enforcing the ordinance, immediately arrest and detain for one hour and not exceeding six hours, as was due in his particular case, all violators of the ordinance, instead of merely serving them with a summons or ticket for their appearance in court, as provided in Section 43 of Republic Act No. 409 (Charter of Manila) for violation of any ordinance. As thus enforced, appellant submits that the ordinance, although reasonable on its face, becomes unreasonable and oppressive and, therefore, illegal and unconstitutional.

The flaw in this argument is that appellant confuses the application or operation of the ordinance as it is, and the act of the police officers in the performance of their functions as such in connection with the apprehension and prosecution of its violators. This misapprehension on the part of the appellant is made evident when he states in his brief:

The issue boils down to that part of Section 37, Republic Act No. 409, Charter, of Manila, which provides that peace officers have the power 'to arrest or cause to be arrested, without warrant of arrest, any offender when the offense is committed in their presence or within their view' ". (Appellant's brief, page 4).

The arrest was not a part of the offense or violation for which the accused was tried and convicted. Section 1158 of the Revised Ordinances does not provide for or indicate the manner by which the infractors or violators thereof would be arrested and prosecuted. It merely specifies the acts that would constitute "littering", which acts shall be punishable as misdemeanors pursuant to Section 1262 of the Revised Ordinances. How the violators are to be dealt with and brought to court are procedural matters entirely foreign to the ordinance itself, and the legality or

illegality of the procedure followed by the law enforcement agencies in cases of violations of said ordinance can not affect its validity or legality.

The legal situation where, while a municipal ordinance or regulation is reasonable on its face, it may be unreasonable or oppressive in its operation in a particular instance and, therefore, unenforceable therein, is illustrated in the case of *City of Acworth vs. Western & A. R. Co.* (159 Ga. 610; 126 SE 454). There, the city, in pursuance to the general welfare clause of its charter, enacted an ordinance requiring all railroad companies operating through the city to keep and maintain a human watchman at all crossings where said railroads cross the public highways or streets of the city, for the purpose of warning travelers of the approach of trains. The railroad company filed suit against the city seeking to enjoin the enforcement of the ordinance as to the petitioner on the ground that it (the railroad company) had erected and was already maintaining a system of signals at such street crossings, known as wig-wags, which were as efficient, if not more, as human watchmen, in safeguarding persons and property passing over such crossings; and, further, because the employment of human watchmen involved much heavier expenditures than the installation and maintenance of such system of signals. The State Supreme Court of Georgia, in finding for the railroad company and in affirming an interlocutory injunction, declared that although the ordinance on its face was reasonable and within the general welfare clause its effect and operation in the case of this particular railroad company was unreasonable and unconstitutional.

The situation of herein appellant is different. He does not claim that the anti-littering ordinance does not or should not apply as to him or as to the facts of the case. He does not pretend that the penalty provided for this misdemeanor, or that imposed on him, is unreasonable or oppressive. What he complains of specifically is that he was arrested, as allegedly all violators, instead of being merely served with a summons or ticket. It is this arrest that he assails as abusive and arbitrary. As it is, appellant should have directed his efforts against the particular acts or procedure which he believes to be illegal or unconstitutional and not against the instant ordinance the validity of which, at least on its face, he tacitly acknowledges and admits.

The judgment appealed from is hereby affirmed, with costs against the appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Gutierrez David, JJ., concur.

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