

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MAXIMO N. CRUZ, DEFENDANT AND APPELLANT.

G.R. No. 31265. November 12, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Maximo N. Cruz from the judgment of the Court of First Instance of Nueva Ecija convicting him of a violation of ordinance No. 4, series of 1928, of the municipality of Cabanatuan, and sentencing him to pay a fine of P200, with subsidiary imprisonment in case of insolvency, and costs.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court below in its judgment, to wit:

"1. The lower court erred in not declaring the zoning ordinance No. 4 of Cabanatuan of 1928 unconstitutional for being unjust, unreasonable, discriminatory, prohibitive of trade and depriving the accused equal protection of the laws.

"2. The lower court erred in not declaring unconstitutional the aforesaid ordinance as amended by resolution No. 327 of November 16, 1928.

"3. The lower court erred in not declaring the ordinance in question as beyond the power of the municipal council to enact.

"4. The lower court erred in trying and condemning the accused without due process of law.

"5. The lower court erred in not declaring the machine in question to be out of the zone of machineries."

On account of the close connection between the first and second assignments of error in appellant's brief, they will be discussed together.

Ordinance No. 4, series of 1928, of the municipality of Cabanatuan, as amended by resolution No. 327 of the council of said municipality, reads as, follows:

"[No. 23]

"ORDINANCE AMENDING THE ORDINANCE No. 4

"By virtue of the authority of section 2243 (letter [n]) of the Revised Administrative Code, the Municipal Council of Cabanatuan, Nueva Ecija, enacts:

"Section 1. Section 2 of the Ordinance No. 4, current series, is hereby amended to read as follows:

" 'SEC. 2. Any kind of engines are not allowed to be installed within the limit of the machinery zone as it is clearly defined by section 1 of the Ordinance No. 4, above-mentioned: Provided, however, That all kind of engines, machines and apparatus to be used for the establishment, construction and repairs of any potency of "delco lights and cinematographs," are hereby allowed"

"SEC. 2. Any violation of this ordinance will be punished, upon conviction, with a fine not less than P50 nor more than P200, or by imprisonment of not less than 30 nor more than 6 months, with a subsidiary imprisonment at the rate of W a day.

"SEC. 3. This ordinance shall take effect upon the approval of the Council, and shall repeal all previous ordinances and resolutions, or part of the same in conflict with the present.

"Approved with eight affirmative votes on November 16, 1928."

The appellant contends that said ordinance, as amended, is unconstitutional, discriminatory, unreasonable and prohibitive, and that it deprives the defendant of his right to equal protection of the laws.

It is a matter definitely settled by both Philippine and American cases, and the defendant-appellant so admits, that municipal corporations may, in the exercise of their police power, enact ordinances or regulations on zonification (43 Corpus Juris, 334). Within the powers granted to municipal councils in section 2238 of the Revised Administrative Code, the municipal council of Cabanatuan was authorized to enact the zonification ordinance with which we are now concerned.

The question to be decided now is whether said ordinance is illegal and unconstitutional.

The defendant-appellant contends that said ordinance is illegal because section 2243 (n) of said Revised Administrative Code, only authorizes municipal councils to regulate the installation of, and to provide for the inspection of steam boilers within the municipality, and not motor engines, and that the power to regulate does not include the power to prohibit.

Appellant's contention that the municipal council of Cabanatuan is only authorized by section 2243 (n) of the Administrative Code to regulate the installation of steam boilers, and that the engines in question not being steam but motor engines, said municipal council exceeded its powers in regulating their installation, is untenable. Considering the activities of modern life, and the progress of mechanical engineering, said authority must be construed to extend to motor engines, since both kinds of engines are dangerous in their handling and operation, and have the same end, namely, the development of motive power for industrial purposes.

As to the contention that the power to regulate does not include the power to prohibit, it will be seen that the ordinance copied above does not prohibit the installation of motor engines within the municipality of Cabanatuan but only within the zone therein fixed. If the municipal council of Cabanatuan is authorized to establish said zone, it is also authorized to provide what kind of engines may be installed therein. In banning the installation in said zone of all engines not excepted in the ordinance, the municipal council of Cabanatuan did no more than regulate their installation by means of zonification.

As to the contention that said ordinance discriminates in favor of Delco motor engines for light and cinematograph purposes as against other motor engines, such discrimination is not unreasonable nor unjust, for there is a great difference between a motor engine for sawing wood, and light and cinematograph machinery: the first is a nuisance due to the noise of its operation; whereas the second actually furnishes diversion and amusement. Such a classification being just and reasonable, the ordinance establishing it does not violate the defendant-appellant's constitutional right to equality before the law.

With regard to the question, likewise of constitutional right, whether or not the defendant-appellant has been tried and condemned without due process of law, inasmuch as he had not been given time to prepare his defense after having been arraigned, this question has already been decided in the case of *McMicking vs. Schields* (238 U. S., 99; 59 Law. ed., 1220, published in 41. Phil., 971), Moreover, it does not appear that the defendant invoked the right granted to him by section 30, General Orders, No. 68 to have at least two days within which to prepare for

trial, after arraignment and after he had entered the plea of not guilty.

For the foregoing considerations, we are of opinion and so hold: (1) That municipal councils are empowered to enact zonification ordinances within their jurisdiction in the exercise of their police power; (2) that within the zones so established, they may determine the kinds of machinery to be installed therein; (3) that the exception of the Delco Light and Cinematograph motor engine from all other motor engines for industrial purposes, is a just and reasonable classification.

By virtue whereof, and there being no error in the sentence appealed from, the same is affirmed in toto, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, Romualdez, JJ., concur.

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