



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

EDMUND SYDECO y SIONZON,
Petitioner,

G.R. No. 202692

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
BRION,*
VILLARAMA, JR.,
REYES, and
PERLAS-BERNABE,** *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

November 12, 2014

X-----*Wilfredo Brion*-----X

DECISION

VELASCO, JR., *J.*:

Assailed and sought to be set aside in this petition for review under Rule 45 are the December 28, 2011 Decision¹ and July 18, 2012 Resolution² of the Court of Appeals (CA) in CA-G.R. CR No. 33567. The assailed issuances affirmed the decision³ of the Regional Trial Court (RTC) of Manila, Branch 12, in Criminal Case Nos. 09-270107-08 which, in turn, affirmed that of the Metropolitan Trial Court (MeTC) in Manila adjudging petitioner Edmund Sydeco (Sydeco) guilty of drunk driving and resisting arrest.⁴

The factual backdrop:

* Additional Member per Raffle dated November 10, 2014.

** Acting Member per Special Order No. 1866 dated November 4, 2014.

¹ Penned by Associate Justice Hakim S. Abdulwahid with the concurrence of Associate Justices Michael P. Elbinas and Leoncia Real-Dimagiba, Annex "A" Petition, *rollo*, pp. 25-37.

² Annex "E", Petition, *id.* at 51-52.

³ Annex "H", Petition, *id.* at 90-98.

⁴ Annex "K", Petition, *id.* at 105-120.

On July 20, 2006, separate Informations, one for Violation of Section 56(f) of Republic Act No. (RA) 4136⁵ and another, for Violation of Article 151 of the Revised Penal Code (RPC)⁶ were filed against petitioner Sydeco with the MeTC in Manila and eventually raffled to Branch 14 of that court. The accusatory portions of the interrelated informations, docketed as Crim. Case No. 052527-CN for the first offense and Crim. Case No. 052528-CN for the second, respectively read:

1. Crim. Case No. 052527-CN

That on or about June 11, 2006, in the City of Manila, Philippines, the said accused, being then the driver and owner of a car, did then and there willfully and unlawfully, drive, manage and operate the same along Roxas Blvd. cor. Quirino Avenue, Malate, in said city, while under the influence of liquor, in violation of Section 56(f) of Republic Act 4136.

Contrary to law.

2. Crim. Case No. 052528-CN

That on or about June 11, 2006, in the City of Manila, Philippines, the said accused, did then and there willfully and unlawfully resist and disobey P/INSP Manuel Aguilar, SPO2 Virgilio Paulino, SPO4 Efren Bodino and PO3 Benedict Cruz III, bona fide member of the Philippine National Police, Malate Police Station-9, duly qualified and appointed, and while in the actual performance of their official duties as such police officers, by then and there resisting, shoving and pushing, the hands of said officers while the latter was placing him under arrest for violation of Article 151 of the Revised Penal Code.

Contrary to law.

By Order of September 19, 2006, the MeTC classified the cases as falling under, thus to be governed by, the Rule on Summary Procedure.

When arraigned, petitioner, as accused, pleaded “Not Guilty” to both charges.

⁵ Land Transportation and Traffic Code:

SECTION 56. Penalty for Violation. – The following penalties shall be imposed for violations of this Act: x x x

(f) Driving a motor vehicle while under the influence of liquor x x x a fine of not less than one thousand pesos or imprisonment of not less than three nor more than six months, or both, at the discretion of the court.

⁶ Art. 151. **Resistance and disobedience to a person in authority or the agents of such person.** — The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties; When the disobedience to an agent of a person in authority is not of a serious nature, the penalty of *arresto menor* or a fine ranging from 10 to 100 pesos shall be imposed upon the offender.

During the trial of the two consolidated cases, the prosecution presented in evidence the oral testimonies of SPO4 Efren Bodino (Bodino),⁷ PO2 Emanuelle Parungao⁸ and Ms. Laura Delos Santos,⁹ plus the documents each identified while in the witness box, among which was Exh. “A”, with sub-markings, the *Joint Affidavit of Arrest*¹⁰ executed by SPO2 Bodino and two other police officers. The defense’s witnesses, on the other hand, consisted of Sydeco himself, his wife, Mildred, and Joenilo Pano.

The prosecution’s version of the incident, as summarized in and/or as may be deduced from, the CA decision now on appeal is as follows:

On or about June 11, 2006, P/Insp. Manuel Aguilar (Aguilar), SPO4 Bodino, PO3 Benedict Cruz III and another officer were manning a checkpoint established along Roxas Boulevard corner Quirino Ave., Malate, Manila when, from about twenty (20) meters away, they spotted a swerving red Ford Ranger pick up with plate number XAE-988. Petitioner was behind the wheel. The team members, all in uniform, flagged the vehicle down and asked the petitioner to alight from the vehicle so he could take a rest at the police station situated nearby, before he resumes driving.¹¹ Petitioner, who the policemen claimed was smelling of liquor, denied being drunk and insisted he could manage to drive. Then in a raised voice, petitioner started talking rudely to the policemen and in fact yelled at P/Insp. Aguilar blurting: “P...g ina mo, bakit mo ako hinuhuli.” At that remark, P/Insp. Aguilar, who earlier pointed out to petitioner that his team had seen him swerving and driving under the influence of liquor, proceeded to arrest petitioner who put up resistance. Despite petitioner’s efforts to parry the hold on him, the police eventually succeeded in subduing him who was then brought to the Ospital ng Maynila where he was examined and found to be positive of alcoholic breath per the Medical Certificate issued by that hospital, marked as Exh. “F”. Petitioner was then turned over to the Malate Police Station for disposition.¹²

Petitioner, on the other hand, claimed to be a victim in the incident in question, adding in this regard that he has in fact filed criminal charges for physical injuries, robbery and arbitrary detention against P/Insp. Aguilar *et al.* In his *Counter-Affidavit*¹³ and his *Complaint-Affidavit*¹⁴ appended thereto, petitioner averred that, in the early morning of June 12, 2006, he together with Joenilo Pano and Josie Villanueva, cook and waitress, respectively, in his restaurant located along Macapagal Ave., Pasay City, were on the way home from on board his pick-up when signaled to stop by police officers at the area immediately referred to above. Their flashlights trained on the inside of the vehicle and its occupants, the policemen then asked the

⁷ One of the apprehending officers.

⁸ Investigating Officer.

⁹ Medical Records Custodian of Ospital ng Maynila.

¹⁰ Annex “P” of Petition, *rollo*, p. 126.

¹¹ *Id.* at 108.

¹² Annex “R”, Petition, *id.* at 129.

¹³ Annex “T”, Petition, *id.* at 134.

¹⁴ Annex “U” Petition, *id.* at 136-138.

petitioner to open the vehicle's door and alight for a body and vehicle search, a directive he refused to heed owing to a previous extortion experience. Instead, he opened the vehicle window, uttering, "*plain view lang boss, plain view lang.*" Obviously irked by this remark, one of the policemen, P/Insp. Aguilar, as it turned out, then told the petitioner that he was drunk, pointing to three cases of empty beer bottles in the trunk of the vehicle. Petitioner's explanation about being sober and that the empty bottles adverted to came from his restaurant was ignored as P/Insp. Aguilar suddenly boxed him (petitioner) on the mouth and poked a gun at his head, at the same time blurting, "*P...g ina mo gusto mo tapusin na kita dito marami ka pang sinasabi.*" The officers then pulled the petitioner out of the driver's seat and pushed him into the police mobile car, whereupon he, petitioner, asked his companions to call up his wife. The policemen then brought petitioner to the Ospital ng Maynila where they succeeded in securing a medical certificate under the signature of one Dr. Harvey Balucating depicting petitioner as positive of alcoholic breath, although he refused to be examined and no alcohol breath examination was conducted. He was thereafter detained from 3:00 a.m. of June 12, 2006 and released in the afternoon of June 13, 2006. Before his release, however, he was allowed to undergo actual medical examination where the resulting medical certificate indicated that he has sustained physical injuries but negative for alcohol breath. Ten days later, petitioner filed his *Complaint-Affidavit* against Dr. Balucating, P/Insp. Aguilar and the other police officers.

Petitioner also stated in his counter-affidavit that, under Sec. 29 of R.A. 4136, or the Land Transportation and Traffic Code, the procedure for dealing with a traffic violation is not to place the erring driver under arrest, but to confiscate his driver's license.

On June 26, 2009, the MeTC rendered judgment finding petitioner guilty as charged, disposing as follows:

WHEREFORE, premises considered, the prosecution having established the guilt of the accused beyond reasonable doubt, his conviction of the offenses charges is hereby pronounced.

Accordingly, he is sentenced to:

1. Pay a fine of two hundred fifty pesos (P250.00) for Criminal Case No. 052527-CN; and
2. Suffer imprisonment of straight penalty of three (3) months and pay a fine of two hundred fifty pesos (P250.00) for Criminal Case No. 052528-CN.

For lack of basis, no civil liability is adjudged.

The Branch Clerk of Court is directed to certify to the Land Transportation Office the result of this case, stating further the data required under Section 58¹⁵ of Republic Act 4136.

Therefrom, petitioner appealed to the RTC on the main submissions that the MeTC erred in: 1) according credit to the medical certificate issued by Dr. Balucating, although the records custodian of Ospital ng Maynila was presented to testify thereon instead of the issuing physician, and 2) upholding the veracity of the joint affidavit of arrest of P/INSP Manuel Aguilar, SPO4 Efren Bodino, and PO3 Benedict Cruz III, considering that only SPO4 Bodino appeared in court to testify.

By Decision¹⁶ dated February 22, 2010, the RTC affirmed the conviction of the petitioner, addressing the first issue thus raised in the appeal in the following wise: Dr. Balucating's failure to testify relative to petitioner's alcoholic breath, as indicated in the medical certificate, is not fatal as such testimony would only serve to corroborate the testimony on the matter of SPO4 Bodino, noting that under the Rules of Court,¹⁷ observations of the police officers regarding the petitioner's behavior would suffice to support the conclusion of the latter's drunken state on the day he was apprehended.¹⁸

Apropos the second issue, the RTC pointed out that the prosecution has the discretion as to how many witnesses it needs to present before the trial court, the positive testimony of a single credible witness as to the guilt of the accused being reasonable enough to warrant a conviction. The RTC cited established jurisprudence¹⁹ enunciating the rule that preponderance is not necessarily with the greatest number as "[W]itnesses are to be weighed, not numbered."

Following the denial by the RTC of his motion for reconsideration, petitioner went to the CA on a petition for review, the recourse docketed as CA-G.R. CR No. 33567. By a Decision dated December 28, 2011, as would be reiterated in a Resolution of July 18, 2012, the appellate court affirmed that of the RTC, thus:

¹⁵ SECTION 58. Duty of Clerks of Court. – It is hereby made the duty of clerks of the Court of First Instance, the City Court or Municipal Court trying traffic violation cases to certify to the Commission the result of any case, whether criminal or civil, involving violations of any provision of this Act or of other laws and ordinances relating to motor vehicles. Said certificate shall specifically contain the name of the driver or owner of the vehicle involved, his address, the number of his license and/or of the certificate or registration of his vehicle, and the date thereof, and the offense of which he was convicted or acquitted.

¹⁶ *Rollo*, p. 90-98, 98.

¹⁷ Sec. 50. *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —

(a) The identity of a person about whom he has adequate knowledge;
(b) A handwriting with which he has sufficient familiarity; and
(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.

¹⁸ *Rollo*, p. 45.

¹⁹ *People v. Dela Cruz*, G.R. No. 175929, December 16, 2008, 574 SCRA 78, 90.

WHEREFORE, the petition is DENIED. The assailed Decision dated February 22, 2010 of the RTC, Manila, Branch 12, is AFFIRMED.

SO ORDERED.

Hence, this petition on the following stated issues:

- I. The CA erred in upholding the presumption of regularity in the performance of duties by the police officers; and
- II. The CA erred in giving weight to the Medical Certificate issued by Dr. Harvey Balucating, in the absence of his testimony before the Court.

The petition is meritorious.

Prefatory, the rule according great weight, even finality at times, to the trial court's findings of fact does hold sway when, as here, it appears in the record that facts and circumstances of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.²⁰ Corollary, it is basic that an appeal in criminal prosecutions throws the whole case wide open for review, inclusive of the matter of credibility and appreciation of evidence.²¹

Peace officers and traffic enforcers, like other public officials and employees are bound to discharge their duties with prudence, caution and attention, which careful men usually exercise in the management of their own affairs.²²

In the case at bar, the men manning the checkpoint in the subject area and during the period material appeared not to have performed their duties as required by law, or at least fell short of the norm expected of peace officers. They spotted the petitioner's purported swerving vehicle. They then signaled him to stop which he obeyed. But they did not demand the presentation of the driver's license or issue any ticket or similar citation paper for traffic violation as required under the particular premises by Sec. 29 of RA 4136, which specifically provides:

SECTION 29. Confiscation of Driver's License. – Law enforcement and peace officers of other agencies duly deputized by the Director shall, **in apprehending a driver for any violation of this Act** or any regulations issued pursuant thereto, or of local traffic rules and regulations x x x **confiscate the license of the driver concerned and**

²⁰ *People v. Laxa*, G.R. No. 138501, July 20, 2001, 361 SCRA 622.

²¹ *Willy Tan y Chua v. People*, G.R. No. 148194, April 12, 2002; *Olimpio Pangonorom Metro Manila Transit Corporation v. People*, G.R. No. 143380, April 11, 2005.

²² *Balais v. Abuda*, A.M. No. R-565-P, November 27, 1986.

issue a receipt prescribed and issued by the Bureau therefor which shall authorize the driver to operate a motor vehicle for a period not exceeding seventy-two hours from the time and date of issue of said receipt. The period so fixed in the receipt shall not be extended, and shall become invalid thereafter. x x x (Emphasis added.)

Instead of requiring the vehicle's occupants to answer one or two routinary questions out of respect to what the Court has, in *Abenes v. Court of Appeals*,²³ adverted to as the motorists' right of "free passage without [intrusive] interruption," P/Insp. Aguilar, et al. engaged petitioner in what appears to be an unnecessary conversation and when utterances were made doubtless not to their liking, they ordered the latter to step out of the vehicle, concluding after seeing three (3) empty cases of beer at the trunk of the vehicle that petitioner was driving under the influence of alcohol. Then petitioner went on with his "plain view search" line. The remark apparently pissed the police officers off no end as one of them immediately lashed at petitioner and his companions as "mga lasing" (drunk) and to get out of the vehicle, an incongruous response to an otherwise reasonable plea. Defense witness, Joenilo Pano, graphically described this particular event in his *sinumpaang salaysay*, as follows:

x x x matapos kami huminto ay naglapitan sa amin ang mga pulis, nag flash light sa loob ng sasakyan at sa aming mga mukha.

x x x isang pulis ang nag-utos sa amin na kami ay magsi-baba at buksan ang pintuan ng nasabing sasakyan.

x x x dahil doon sinabi ni Kuya sa mga pulis, na hindi pwede iyon at pinigilan niya ako at ang aking kasama kong waitress na bumaba.

x x x iginiit ni Kuya sa mga pulis ang salitang "PLAIN VIEW LANG BOSS, PLAIN VIEW LANG" pero iyon ay hindi nila pinansin. Sa halip as isang pulis ang nagsabi na "MGA LASING KAYO HETO MAY CASE PA KAYO NG BEER".

x x x habang nagpapaliwanag si Kuya, isang pulis ang biglang kumuha ng susi ng sasakyan habang ang isang pulis ang biglang sumuntok sa bibig ni Kuya, nagbunot ng baril at tinutukan sa ulo si Kuya.

x x x dahil doon ay nagmakaawa ako na wag barilin si Kuya subalit ako rin ay tinutukan ng baril.

x x x na matapos suntukin si Kuya ay pinagtulungan siya ng mga pulis na ilabas sa sasakyan at nang mailabas siya ay pinagtulakan siya ng mga pulis sa gilid ng kalsada habang hawak ang kanilang baril.²⁴

Pano's above account ironically finds in a way collaboration from the arresting officers themselves who admitted that they originally had no intention to search the vehicle in question nor

²³ G.R. No. 156320, February 14, 2007.

²⁴ *Rollo*, pp. 139-140.

subject its occupants to a body search. The officers wrote in their aforementioned joint affidavit:

x x x x

That we arrested the suspect, Edmund Sydeco y Siozon x x x for violation of RA 4136 (Driving under the influence of liquor), and violation of Article 151 of the RPC (Resisting Arrest) x x x committed on or about 3:30A.M., June 11, 2006 along x x x Malate, Manila. x x x He began to raise his voice and converse with us rudely without considering that we are in uniform, on duty and performing our job. P/INSP Manuel Aguilar pointed out that we saw him swerving and driving under the influence of liquor that was why we are **inviting him to our police station in which our intention was to make him rest for a moment before he continue to drive.** x x x (Emphasis added.)

In fine, at the time of his apprehension, or when he was signaled to stop, to be precise, petitioner has not committed any crime or suspected of having committed one. “Swerving,” as ordinarily understood, refers to a movement wherein a vehicle shifts from a lane to another or to turn aside from a direct course of action or movement.²⁵ The act may become punishable when there is a sign indicating that swerving is prohibited or where swerving partakes the nature of reckless driving, a concept defined under RA 4136, as:

SECTION 48. Reckless Driving. – No person shall operate a motor vehicle on any highway recklessly or without reasonable caution considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather, or so as to endanger the property or the safety or rights of any person or so as to cause excessive or unreasonable damage to the highway.

Swerving is not necessarily indicative of imprudent behavior let alone constitutive of reckless driving. To constitute the offense of reckless driving, the act must be something more than a mere negligence in the operation of a motor vehicle, and a willful and wanton disregard of the consequences is required.²⁶ Nothing in the records indicate that the area was a “no swerving or overtaking zone.” Moreover, the swerving incident, if this be the case, occurred at around 3:00 a.m. when the streets are usually clear of moving vehicles and human traffic, and the danger to life, limb and property to third persons is minimal. When the police officers stopped the petitioner’s car, they did not issue any ticket for swerving as required under Section 29 of RA 4136. Instead, they inspected the vehicle, ordered the petitioner and his companions to step down of their pick up and concluded that the petitioner was then drunk mainly because of the cases of beer found at the trunk of the vehicle. On re-direct examination, SPO4 Bodino testified:

²⁵ Merriam-Webster Collegiate Dictionary, 10th Ed. 1997.

²⁶ *Caminos, Jr. v. People*, G.R. No. 147437, May 8, 2009, 587 SCRA 348, 357.

- Q: On that particular date, time and place ... what exactly prompted you to arrest the accused (sic) the charged in for Viol. of Section 56(f) of R.A. 4136?
- A: Noong mag check-up kami, naamoy namin na amoy alak siya at yung sasakyan ay hindi maganda ang takbo.
- Q: Now you stated in your affidavit of arrest Mr. Witness that you spotted the vehicle of the accused swerving, is that correct?
- A: Yes, sir.
- Q: Is that also the reason why you apprehended him?
- A: Yes, sir.
- Q: And what happened after Mr. Witness, when you approached the vehicle of the accused?
- A: The accused was in a loud voice. He was asking, "Bakit daw siya pinahihinto?"

x x x x

- Q: How do you describe the resistance Mr. Witness?
- A: He refused to ride with us going to the hospital, Your Honor.

x x x x²⁷

Going over the records, it is fairly clear that what triggered the confrontational stand-off between the police team, on one hand, and petitioner on the other, was the latter's refusal to get off of the vehicle for a body and vehicle search juxtaposed by his insistence on a plain view search only. Petitioner's twin gestures cannot plausibly be considered as resisting a lawful order.²⁸ He may have sounded boorish or spoken crudely at that time, but none of this would make him a criminal. It remains to stress that the petitioner has not, when flagged down, committed a crime or performed an overt act warranting a reasonable inference of criminal activity. He did not try to avoid the road block established. He came to a full stop when so required to stop. The two key elements of resistance and serious disobedience punished under Art. 151 of the RPC are: (1) That a person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender; and (2) That the offender resists or seriously disobeys such person or his agent.²⁹

There can be no quibble that P/Insp. Aguilar and his apprehending team are persons in authority or agents of a person in authority manning a legal checkpoint. But surely petitioner's act of exercising one's right against unreasonable searches³⁰ to be conducted in the middle of the night cannot, in context, be equated to disobedience let alone resisting a lawful order in

²⁷ Records, p. 491.

²⁸ *Abenes v. Court of Appeals*, G.R. No. 156320, February 14, 2007, 515 SCRA 690.

²⁹ Reyes, *The Revised Penal Code*, Book II, 18th ed., 2008, p. 154 .

³⁰ 1987 Constitution of the Republic of the Philippines, Article III , Section 2.

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

contemplation of Art. 151 of the RPC. As has often been said, albeit expressed differently and under dissimilar circumstances, the vitality of democracy lies not in the rights it guarantees, but in the courage of the people to assert and use them whenever they are ignored or worse infringed.³¹ Moreover, there is, to stress, nothing in RA 4136 that authorized the checkpoint-manning policemen to order petitioner and his companions to get out of the vehicle for a vehicle and body search. And it bears to emphasize that there was no reasonable suspicion of the occurrence of a crime that would allow what jurisprudence refers to as a “stop and frisk” action. As SPO4 Bodino no less testified, the only reason why they asked petitioner to get out of the vehicle was not because he has committed a crime, but because of their intention to invite him to Station 9 so he could rest before he resumes driving. But instead of a tactful invitation, the apprehending officers, in an act indicative of overstepping of their duties, dragged the petitioner out of the vehicle and, in the process of subduing him, pointed a gun and punched him on the face. None of the police officers, to note, categorically denied the petitioner’s allegation about being physically hurt before being brought to the Ospital ng Maynila to be tested for intoxication. What the policemen claimed was that it took the three (3) of them to subdue the fifty-five year old petitioner. Both actions were done in excess of their authority granted under RA 4136. They relied on the medical certificate issued by Dr. Balucating attesting that petitioner showed no physical injuries. The medical certificate was in fact challenged not only because the petitioner insisted at every turn that he was not examined, but also because Dr. Balucating failed to testify as to its content. Ms. Delos Santos, the medical record custodian of the Ospital ng Maynila, testified, but only to attest that the hospital has a record of the certificate. The trial court, in its decision, merely stated:

At the outset, the records of the case show that the same were not **testified upon by the doctor who issued it**. Instead, the Records Custodian of the Ospital ng Maynila was presented by the Prosecution to testify on the said documents.

However, although the doctor who examined the accused was unable to testify to affirm the contents of the Medical Certificate he issued (re: that he was found to have an alcoholic breath), this court finds that the observation of herein private complainants as to the accused’s behavior and condition after the incident was sufficient.

Under Section 50 of Rule 130 of the Revised Rules of evidence:

The opinion of a witness for which proper basis is given, may be received in evidence regarding

x x x x

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person

³¹ *Ynot v. IAC*, 148 SCRA 659.

Under Section 15 of the Revised Rules on Summary Procedure, “at the trial, the affidavits submitted by the parties shall constitute the direct testimonies of the witnesses who executed the same.”³²

In sum, the MeTC, as echoed by RTC and CA later, did not rely on the medical certificate Dr. Balucating issued on June 12, 2006 as to petitioner’s intoxicated state, as the former was not able to testify as to its contents, but on the testimony of SPO4 Bodino, on the assumption that he and his fellow police officers were acting in the regular performance of their duties. It cannot be emphasized enough that smelling of liquor/alcohol and be under the influence of liquor are differing concepts. Corollarily, it is difficult to determine with legally acceptable certainty whether a person is drunk in contemplation of Sec. 56(f) of RA 4136 penalizing the act of driving under the influence of alcohol. The legal situation has of course changed with the approval in May 2013 of the *Anti-Drunk and Drugged Driving Act of 2013* (RA 10586) which also penalizes driving under the influence of alcohol (DUIA),³³ a term defined under its Sec. 3(e) as the “act of operating a motor vehicle while the driver’s blood alcohol concentration level has, after being subjected to a breath analyzer test reached the level of intoxication as established jointly by the [DOH], the NAPOLCOM] and the [DOTC]. And under Sec. 3(g) of the IRR of RA 10586, a driver of a private motor vehicle with gross vehicle weight not exceeding 4,500 kilograms who has BAC [blood alcohol concentration] of 0.05% or higher shall be conclusive proof that said driver is driving under the influence of alcohol. Viewed from the prism of RA 10586, petitioner cannot plausibly be convicted of driving under the influence of alcohol for this obvious reason: he had not been tested beyond reasonable doubt, let alone conclusively, for reaching during the period material the threshold level of intoxication set under the law for DUIA, i.e., a BAC of 0.05% or over. Under Art. 22 of the RPC,³⁴ penal laws shall be given retroactive insofar as they are favorable to the accused. Section 19 of RA 10586 expressly modified Sec. 56(f) of RA 4136. Verily, even by force of Art. 22 of the RPC in relation to Sec. 3(e) of RA 10586 alone, petitioner could very well be acquitted for the charge of driving under the influence of alcohol, even if the supposed inculpatory act occurred in 2006.

Parenthetically, the Office of the City Prosecutor of Manila, per its *Resolution*³⁵ of November 21, 2006 found, on the strength of another physical examination from the same Ospital ng Maynila conducted by Dr. Devega on the petitioner on the same day, June 12, but later hour, probable cause for slight physical injuries against P/Insp. Aguilar et al. That finding to

³² *Rollo*, pp. 110-111.

³³ Sec. 5. Punishable Act.- It shall be unlawful for any person to drive a motor vehicle while under the influence of alcohol, dangerous drugs and/or similar substances.

³⁴ Art. 22. Retroactive effect of penal laws.- Penal laws shall have retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

³⁵ *Rollo*, pp. 167-170.

be sure tends to indicate that the police indeed manhandled the petitioner and belied, or at least cancelled out, the purported Dr. Balucating's finding as to petitioner's true state.

The Court must underscore at this juncture that the petitioner, after the unfortunate incident, lost no time in commencing the appropriate criminal charges against the police officers and Dr. Balucating, whom he accused of issuing Exh. "F" even without examining him. The element of immediacy in the filing lends credence to petitioner's profession of innocence, particularly of the charge of disobeying lawful order or resisting arrest. Certainly not to be overlooked is the fact that petitioner, in so filing his complaint, could not have possibly been inspired by improper motive, the police officers being complete strangers to him and vice versa. Withal, unless he had a legitimate grievance, it is difficult to accept the notion that petitioner would expose himself to harm's way by filing a harassment criminal suit against policemen.

Conviction must come only after it survives the test of reason.³⁶ It is thus required that every circumstance favoring one's innocence be duly taken into account.³⁷ Given the deviation of the police officers from the standard and usual procedure in dealing with traffic violation by perceived drivers under the influence of alcohol and executing an arrest, the blind reliance and simplistic invocation by the trial court and the CA on the presumption of regularity in the conduct of police duty is clearly misplaced. As stressed in *People v. Ambrosio*,³⁸ the presumption of regularity is merely just that, a presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. And to be sure, this presumption alone cannot preponderate over the presumption of innocence that prevails if not overcome by proof that obliterates all doubts as to the offender's culpability. In the present case, the absence of conclusive proof being under the influence of liquor while driving coupled with the forceful manner the police yanked petitioner out of his vehicle argues against or at least cast doubt on the finding of guilt for drunken driving and resisting arrest.

In case of doubt as to the moral certainty of culpability, the balance tips in favor of innocence or at least in favor of the milder form of criminal liability. This is as it should be. For, it is basic, almost elementary, that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its evidence and not on the weakness of the defense.


³⁶ *People v. Castro*, G.R. No. L-42478 October 4, 1989.

³⁷ *People v. Dramayo*, G.R. No. L-21325, October 29, 1971, 42 SCRA 59.

³⁸ G.R. No. 135378, April 14, 2004, 427 SCRA 312.

WHEREFORE, in light of all the foregoing, the appealed Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 33567 are hereby **REVERSED** and **SET ASIDE**. Petitioner is hereby acquitted of the crimes charged in Criminal Case No. 052527-CN and Criminal Case No. 052528-CN.

No pronouncement as to costs.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:




ARTURO D. BRION
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



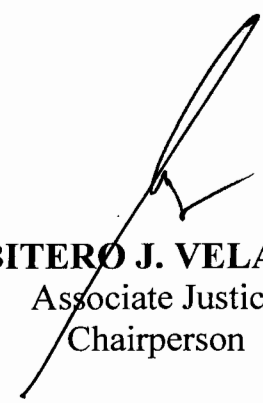
BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice