

## THIRD DIVISION

**[ G.R. No. 202692, November 12, 2014 ]**

**EDMUND SYDECO Y SIONZON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

Assailed and sought to be set aside in this petition for review under Rule 45 are the December 28, 2011 Decision<sup>[1]</sup> and July 18, 2012 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 33567. The assailed issuances affirmed the decision<sup>[3]</sup> 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.<sup>[4]</sup>

The factual backdrop:

On July 20, 2006, separate Informations, one for Violation of Section 56(f) of Republic Act No. (RA) 4136<sup>[5]</sup> and another, for Violation of Article 151 of the Revised Penal Code (RPC)<sup>[6]</sup> 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.

During the trial of the two consolidated cases, the prosecution presented in evidence the oral testimonies of SPO4 Efren Bodino (Bodino),<sup>[7]</sup> PO2 Emanuelle Parungao<sup>[8]</sup> and Ms. Laura Delos Santos,<sup>[9]</sup> plus the documents each identified while in the witness box, among which was Exh. "A", with sub-markings, the *Joint Affidavit of Arrest*<sup>[10]</sup> 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.<sup>[11]</sup> 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.<sup>[12]</sup>

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*<sup>[13]</sup> and his *Complaint-Affidavit*<sup>[14]</sup> 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 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 kapang sinasab.*" 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 58<sup>[15]</sup> 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 Decision<sup>[16]</sup> 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,<sup>[17]</sup> 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.<sup>[18]</sup>

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 jurisprudence<sup>[19]</sup> enunciating the rule that preponderance is not necessarily with the greatest number as "[Witnesses 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:

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.<sup>[20]</sup> 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.<sup>[21]</sup>

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.<sup>[22]</sup>

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 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 routine questions out of respect to what the Court has, in *Abenes v. Court of Appeals*,<sup>[23]</sup> 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:

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

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

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

xxx 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