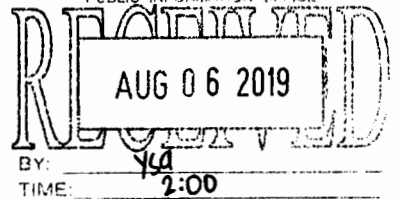




Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,*
 Plaintiff-Appellee,

G.R. No. 199813

Present:

- versus -

BERSAMIN, C.J.,
Chairperson,
DEL CASTILLO,
JARDELEZA,**
GESMUNDO, and
CARANDANG, JJ.

ALLAN BERMEJO y DE
GUZMAN,
 Accused-Appellant.

Promulgated:

JUN 26 2019

X-----


DECISION

CARANDANG, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision¹ dated February 8, 2011 and the Resolution² dated June 2, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03997, which affirmed the Decision dated May 18, 2009 of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 48, finding petitioner Allan Bermejo y De Guzman guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) and imposing the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).



* Corrected title.

** On official leave.

¹ Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rebecca De Guia-Salvador and Elihu A. Ybañez, concurring; *rollo*, pp. 22-34.

² *Id.* at 36.

The Facts of the Case

The Information³ charging petitioner Allan Bermejo y De Guzman (Bermejo) for violation of Section 5, Article II of RA 9165 reads as follows:

That on or about the 12th day of February, 2003, at more or less 11:30 o'clock in the evening, along Rizal Avenue, Dagomboy Village, Bgy. San Miguel, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously sell and trade two (2) heat sealed plastic sachet of Methamphetamine Hydrochloride commonly known as Shabu, a regulated drug, weighing more or less 0.2 grams, without being authorized by law to possess and sell the same.

CONTRARY TO LAW.⁴

Bermejo, duly assisted by counsel, entered a plea of “not guilty” during the arraignment.⁵ Trial on the merits ensued. The prosecution presented the testimonies of PO3 Rosauro Ordoñez Rodillo, PO2 Benjamin Eleazar Martinez, Police Senior Inspector Mary Jane Cordero, SPO3 Saul B. Eleazar, and Roger Abendanio. Bermejo was the lone witness for the defense.

Version of the prosecution

Bermejo was arrested pursuant to a buy-bust operation conducted by the members of the Philippine National Police (PNP) stationed at Puerto Princesa City, under the Drug Enforcement Action Division (DEAD).

Prior to the buy-bust operation, members of the team conducted surveillance on the activities of Bermejo.⁶ It was found out that Bermejo was indeed selling *shabu*.⁷ Police Senior Inspector Jerome Enriquez (PSI Enriquez) immediately formed a buy-bust team and planned an entrapment operation against Bermejo. The buy-bust team was composed of PO3 Rosauro Ordoñez Rodillo (PO3 Rodillo), PO2 Benjamin Eleazar Martinez (PO2 Martinez), SPO3 Saul B. Eleazar (SPO3 Eleazar), SPO2 Renato Badajos, and PSI Enriquez, the team leader. The civilian asset, Roger Abendanio, acted as the poseur-buyer. Four (4) pieces of ₱100.00 bills were marked by SPO3 Eleazar with “SBE” at the upper left hand portion thereof and were turned-over to PO3 Rodillo to be used as marked money by the civilian asset.

On February 12, 2003 at around 11:30 o'clock in the evening, the buy-bust team proceeded to the Balik Harap Sing Along and Refreshment Parlor located along Rizal Avenue, Puerto Princesa City. They parked their tinted van in front of said establishment and let their civilian asset transact with Bermejo. The civilian asset then went out of the van and talked to Bermejo. The members of the buy-bust team were left inside the van where they can see

³ RTC records, p. 1.

⁴ Id.

⁵ Id. at 33; RTC order dated March 24, 2003.

⁶ TSN, May 30, 2003, p. 5.

⁷ Id. at 16.

in plain view the transaction between the civilian asset and Bermejo, which was more or less two (2) meters in distance.⁸

After a short while, the buy-bust team saw the civilian asset handling to Bermejo the four (4) marked ₱100.00 bills in exchange for two (2) sachets of white crystalline substance suspected to be “*shabu*.” When the transaction was consummated, the civilian asset made the pre-arranged signal by removing the white towel from his head. PO3 Rodillo and PO2 Martinez immediately went out of the van and arrested Bermejo. The police officers informed Bermejo of his constitutional rights, then he was brought to the police station and turned over to the duty investigator.

While on their way to the police station, PO3 Rodillo handed over to SPO3 Eleazar the buy-bust money and the two (2) plastic sachets containing the suspected “*shabu*” which he marked with the initials “SBE-1” and “SBE-2” upon arrival at the police station. An *Inventory of Seized/Confiscated Items* (Exh. “B”)⁹ was prepared and signed by PO3 Rodillo, PO2 Martinez and representatives from the DOJ, media and a barangay kagawad. The specimen was later submitted for laboratory examination which yielded positive result for the presence of methamphetamine hydrochloride or “*shabu*”, per Chemistry Report No. D-0031-03¹⁰ prepared by Police Inspector Rhea Fe B. Dela Cruz, Forensic Chemist of the Regional Crime Laboratory of Calapan City.

Version of petitioner

Bermejo denied the charge. He testified¹¹ that on February 12, 2003, at around 10:30 p.m., he fetched his wife at the boarding house of her niece, on Abad Santos Extension. They boarded a tricycle but Bermejo alighted at the corner of Rengel Road and Rizal Avenue Extension to buy *chao-long* (rice noodles) while his wife proceeded to Kristine Bar to leave the keys of the boarding house with her niece. While Bermejo was on his way to the *chao-long* store, a van suddenly stopped beside him. Police officers alighted and he was apprehended. Bermejo was immediately brought to the police station. He further testified that he saw Roger Abendanio, the civilian asset, that night. Bermejo claimed that Roger was driving the van of the police officers who arrested him. Bermejo personally knows Roger who was working as a helper in the truck where he would usually load dried fish bought from a certain Rio Tuba.

Ruling of the RTC

In a Decision¹² dated May 18, 2009, the RTC convicted Bermejo for violation of Section 5, Article II of RA 9165 and sentenced him to suffer the

⁸ TSN, May 30, 2003, p. 7.

⁹ RTC records, p. 274.

¹⁰ Id. at 277.

¹¹ TSN, September 22, 2008.

¹² Penned by Presiding Judge Perfecto E. Pe; RTC records, pp. 297-307.

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penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00). The RTC ruled that the elements of illegal sale of drugs were proven by the prosecution. The integrity and evidentiary value of the two (2) plastic sachets of *shabu* were preserved, as testified by PO3 Rodillo. The dispositive portion of the May 18, 2009 Decision reads:

WHEREFORE, in view of the foregoing, the prosecution having satisfactorily proven the guilt of accused **ALLAN BERMEJO**, the Court hereby found him **GUILTY** beyond reasonable doubt for the crime of Violation of **Section 5, Article II of R.A. 9165** for illegal sale of dangerous drugs and to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00).

The confiscated two (2) heat-sealed plastic sachets containing methamphetamine hydrochloride is hereby ordered to be turned over to the local office of the Philippine Drug enforcement Agency (PDEA) for proper disposition.

IT IS SO ORDERED.¹³

Bermejo moved for reconsideration but it was denied by the RTC in the Order¹⁴ dated June 10, 2009.

Bermejo filed an appeal before the CA.

Ruling of the CA

On February 8, 2011, the CA issued a Decision affirming *in toto* the RTC Decision. The CA ruled that the testimonial as well as the physical evidence presented by the prosecution clearly established the elements of the offense charged. Bermejo, who claimed that he was illegally apprehended and that no illegal drug transaction actually took place, failed to present any witness who could corroborate his statement. Anent the contention of Bermejo that the police officers failed to comply with the provisions of paragraph 1, Section 21 of RA 9165, the CA declared that the prosecution's evidence had established the unbroken chain of custody of the seized drugs from the buy-bust team, to the investigating officer and to the forensic chemist. SPO3 Eleazar marked the confiscated sachets of *shabu* with his initials "SBE-1" and "SBE-2" while on their way to the police station and were entered in the police blotter upon arrival thereat. The markings were done immediately prior to the turnover of the items to the investigation section of the PNP, which forwarded the items to the forensic chemist for examination. The CA further stated that the failure to inventory and photograph the confiscated drug will not render the seizure void as long as the integrity and evidentiary value of the drugs are properly preserved by the apprehending officers.



¹³ Id. at 307.

¹⁴ Id. at 326.

As to the assertion of Bermejo that it was an error on the part of the RTC to allow and admit the prosecution's formal offer of evidence despite the lapse of five (5) months from the time the prosecution was given ten (10) days to formally offer its evidence, the CA ruled that the prosecution orally offered its evidence the earliest possible time after the trial court gave ten (10) days to the prosecution to file its formal offer of evidence. Further, the CA stated that Bermejo failed to move for reconsideration after the trial court issued its Order¹⁵ dated September 22, 2008 admitting the exhibits or even questioning the same through *certiorari*. Lastly, the CA declared that Bermejo was not denied his right to speedy trial. The delays in the trial of the case were all due to unavailability of the witnesses and continuances were granted to serve the ends of justice.

Bermejo moved for reconsideration but it was denied in the CA Resolution dated June 2, 2011.

Hence, this petition.

Issues

-A-

THE HONORABLE COURT OF APPEALS ERRED IN ITS APPRECIATION OF THE INTEGRITY OF THE EVIDENCE DESPITE FAILURE OF THE GOVERNMENT TO PROVE THE CHAIN OF CUSTODY.

-B-

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE CIVILIAN ASSET TO BE A CREDIBLE WITNESS DESPITE EVIDENCE TO THE CONTRARY.

-C-

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING THE EVIDENCE FORMALLY OFFERED MORE THAN FIVE (5) MONTHS AFTER THE DATE IT WAS ORDERED TO DO SO. COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT IS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.

-D-

THE HONORABLE COURT OF APPEALS FAILED TO APPRECIATE THAT THE DELAY IN THE PROSECUTION OF THE ACCUSED DENIED HIM HIS RIGHT TO SPEEDY TRIAL.

In the Resolution¹⁶ dated October 5, 2011, this Court, without necessarily giving due course to the petition, required respondent to file Comment thereon, not a motion to dismiss, within the (10) days from notice.

¹⁵ Id. at 264.

¹⁶ *Rollo*, p. 40-41.

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Respondent filed its Comment¹⁷ on January 31, 2012 asserting the same arguments in its Brief¹⁸ filed with the CA. Among others, respondent avers that the prosecution was able to establish the chain of custody of the subject illegal drug, thus maintaining the identity and integrity of the *corpus delicti*. From the time the subject *shabu* was confiscated from Bermejo's person to its presentation in the trial court, the prosecution preserved its identity. Despite failure to mark the *shabu* at the scene of the crime, both PO3 Rodillo, who made the arrest, and SPO3 Eleazar, who actually made the markings, and who both testified in this case, were present from the time the subject *shabu* was bought from Bermejo to the time it was brought to the police station for marking. Further, SPO3 Eleazar was present from the time of the arrest to the time the subject *shabu* was brought to the crime laboratory. Thus, the chain of custody was not broken. Also, the elements of the crime have been sufficiently established by the prosecution. Roger Abendanio, the poseur-buyer positively identified Bermejo as the person who sold to him the sachet of *shabu*. Respondent can no longer assail his credibility as a witness more so if the findings of fact of the trial judge who saw the witness testify are sustained by the CA.

Preliminarily, the Court notes that Bermejo filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty in which case, the appeal shall be made by a mere notice of appeal filed before the CA. Bermejo clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of life imprisonment. Nonetheless, in the interest of substantial justice, the Court will treat his petition, filed within the 15-day period, as an ordinary appeal in order to resolve the substantive issue at hand with finality.¹⁹

Likewise, the Comment filed shall be treated as respondent's Supplemental Brief. In *Ramos, et al. v. People*,²⁰ the Court held that:

[I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²¹ (Citation omitted)

¹⁷ Id. at 61-87.

¹⁸ CA *rollo*, pp. 119-152.

¹⁹ *Ramos, et al. v. People*, 803 Phil. 775, 783 (2017).

²⁰ 803 Phil. 775 (2017).

²¹ Id. at 783.

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Ruling of the Court

The appeal is meritorious.

After a judicious examination of the entire records of the case, the Court found material facts and circumstances that the trial court had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived at by the trial court. While the Court understands the importance of buy-bust operations as an effective method of apprehending drug pushers who are the scourge of society, We are likewise aware that buy-bust operation is susceptible to abuse. It is for this reason that the Court must be extra vigilant in trying drug cases.²²

In every prosecution for the illegal sale of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of sale are present, the fact that the dangerous drug illegally sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.²³

In *People v. Zakaria, et al.*,²⁴ the Court ruled that:

To discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the *corpus delicti*, or the body of the crime. The prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. That proof of the *corpus delicti* depends on a gapless showing of the chain of custody. x x x.²⁵ (Citations omitted)

In *People v. Jefferson Del Mundo y Abac, et al.*,²⁶ the Court ruled that:

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would be able to describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.²⁷



²² *People v. Tiu*, 460 Phil. 95, 103 (2003).

²³ *People v. Jefferson Del Mundo y Abac, et al.*, G.R. No. 208095, September 20, 2017.

²⁴ 699 Phil. 367 (2012).

²⁵ *Id.* at 378-379.

²⁶ *People v. Jefferson Del Mundo y Abac, et al.*, *supra*.

²⁷ *Id.*

We have carefully examined the records and found glaring gaps in the chain of custody that seriously taint the integrity of the *corpus delicti*. We agree with petitioner's assertion that the *corpus delicti* was not proven as the chain of custody was defective. There are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court.

In *People v. Siaton*,²⁸ the Court said that:

Jurisprudence has been instructive in illustrating the links in the chain that need to be established, *to wit*:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²⁹ (Citation omitted)

I. Seizure and Marking (First Link)

Paragraph 1 of Section 21 of the original Republic Act No. 9165 (2002) provides the requirements for ensuring the integrity and evidentiary value of the seized item:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

This is reiterated in paragraph 1 of Section 21 of the amended³⁰ Republic Act No. 9165 (2013):

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media, who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided, That*

²⁸ 789 Phil. 87 (2016).

²⁹ Id. at 98-99.

³⁰ Amended by Republic Act No. 10640.



the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Records show that it was the civilian asset who acted as the poseur buyer. The buy-bust team, who was inside a tinted van, saw the civilian asset handing to Bermejo the four (4) marked ₱100.00 bills in exchange for two (2) sachets of white crystalline substance suspected to be “*shabu*.” When the transaction was consummated, the civilian asset made the pre-arranged signal by removing the white towel from his head and it was then that PO3 Rodillo and PO2 Martinez went out of the van and arrested petitioner. From the testimony of the civilian asset, after buying the two sachets from petitioner, he crossed the street, went to the van of the police officers, and then gave the two (2) plastic sachets to PO3 Rodillo who was inside the van.³¹ While on the way to the police station, PO3 Rodillo gave the two (2) sachets to SPO3 Eleazar. However, it was at the police station where SPO3 Eleazar marked the two (2) sachets with his initials “SBE-1” and “SBE-2.”

In *People v. Saragena*,³² the Court held that:

[I]n a warrantless search as in this case, the marking of the drug must be done in the presence of the accused and at the earliest possible opportunity. The earliest possible opportunity to mark the evidence is immediately at the place where it was seized, if practicable, to avoid the risk that the seized item might be altered while in transit. In *People v. Sabdula*:

x x x x

Marking after seizure is the starting point in the custodial link; hence, it is vital that *the seized contraband be immediately marked* because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, “planting,” or contamination of evidence.³³ (Citation omitted and italics in the original)

PO3 Rodillo and SPO3 Eleazar failed to explain why they had to wait to arrive at the police station before marking the seized sachets. Likewise, there is no showing that the seized sachets were marked in the presence of Bermejo. What the prosecution established was that Bermejo refused to sign the inventory receipt.³⁴ However, they failed to prove the presence of Bermejo at the time of marking. The presence of the accused is necessary at the time

³¹ TSN, April 16, 2008, pp. 8, 11-12.

³² G.R. No. 210677, August 23, 2017.

³³ Id.

³⁴ TSN, May 30, 2003, p. 13.

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the marking is done in order to assure that the identity and integrity of the drugs were properly preserved. "Failure to comply with this requirement is fatal to the prosecution's case."³⁵

Further, although it appears that the *Inventory of Seized/Confiscated Items* (Exhibit "B")³⁶ was signed by the representatives from the DOJ, media and a barangay kagawad, PO3 Rodillo and SPO3 Eleazar failed to declare that said receipt had been signed in the presence of Bermejo or of his representative. In fact, SPO3 Eleazar testified that the representatives from the DOJ, media and a barangay kagawad signed the receipt the day after the arrest or on February 13, 2003, indicating the absence of Bermejo at the time they signed the same.³⁷

The police officers likewise failed to take photographs of the seized drugs. Moreover, they failed to offer any explanation for its noncompliance.

The last paragraph of Section 21(a) contains a saving *proviso* to the effect that "noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." But in order for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen. That did not happen in this case because the prosecution neither recognized nor explained the lapses.³⁸

II. Turn Over to Investigating Officer (Second Link)

It appears that SPO3 Eleazar was the investigating officer to whom PO3 Rodillo turned over the two (2) sachets of *shabu*. It was likewise SPO3 Eleazar who submitted the sachets to the crime laboratory for laboratory examination.

III. Turnover for Laboratory Examination (Third Link)

The obvious evidentiary gaps in the chain of custody happened in the third link.

SPO3 Eleazar testified that he, together with PSI Enriquez, brought the two (2) sachets (specimen) to Camp Vicente Lim in Calamba, Laguna.³⁹ The Request for Laboratory Examination (Exhibit "D")⁴⁰ was dated February 13, 2003. It was received by the Regional Crime Lab Office 4 on February 17,

³⁵ *People v. Ismael*, 806 Phil. 21, 37 (2017).

³⁶ RTC records, p. 274.

³⁷ TSN, October 8, 2007, p. 13.

³⁸ *People v. Zakaria*, supra note 24, at 382.

³⁹ TSN, October 8, 2007, p.7.

⁴⁰ RTC records, p. 276.

2003 at 2:20 p.m. by a certain "PO2 Buyuccammo."⁴¹ It is important to note that the person who received the Request with the specimen was not the chemist who conducted the examination. The prosecution failed to give details as to how the specimen was handled while under the custody of P02 Buyucammo and how the same was turned over to Police Inspector Rhea Fe B. Dela Cruz, the Forensic Chemist. What further baffles this Court is the fact that the laboratory examination was conducted in Camp E Navarro, Calapan City (Mindoro Oriental) as shown in the Chemistry Report (Exhibit "E"),⁴² when, according to SPO3 Eleazar, they submitted the specimen to the crime laboratory in Laguna. The prosecution did not endeavor to explain how the specimen was transferred from Camp Vicente Lim in Calamba, Laguna to Camp E Navarro in Calapan City, Oriental Mindoro.

More so, it is quite evident from the Chemistry Report (Exhibit "E") that the weight of the specimen is different from that stated in Request. While it was stated in the Request that the two (2) sachets weigh more or less 0.2 gram, in the Chemistry Report, on the other hand, the sachets each weigh 0.3 gram or a total of 0.6 gram.⁴³

The chain of custody should have been clearly established by the prosecution considering the testimony of SPO3 Eleazar that they did not only bring the specimen subject matter of this case but other items which were purchased or recovered from the suspects of other cases. Thus, the possibility of mix up with other specimens is not far from happening. SPO3 Eleazar testified, *viz*:

ATTY. AGUILAR:

Q: So when was it finally handed over the chemist?

A: I think, sir, it was a month ago after the operation. Because during that time we were going to Laguna, so we brought that item including the other items which were purchased or recovered from the suspects of other cases.

COURT:

Q: So there were many shabu and marijuana that were brought by you to Laguna?

A: Yes, Your Honor. But I think, Your Honor, they were all shabu, Your Honor, during that time, no marijuana.

Q: All shabu?

A: Yes, Your Honor.

Q: Different suspects?

A: Yes, Your Honor.⁴⁴

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⁴¹ Id.

⁴² Id. at 277.

⁴³ Id. (Exh. "E")

⁴⁴ TSN, October 8, 2007, p. 7.

In the course of the trial, a re-examination was conducted on the specimen upon manifestation of the prosecution.⁴⁵ Per Order dated May 25, 2005, Police Senior Inspector Mary Jane Cordero (PSI Cordero) was directed by the trial court to conduct another laboratory examination on the specimen which was previously examined by Police Inspector Rhea Fe B. Dela Cruz.⁴⁶ However, it was only on March 20, 2006 that a laboratory examination was conducted by PSI Cordero as shown in the Chemistry Report (Exhibit "F").⁴⁷ PSI Cordero testified that their office received a copy of the May 25, 2005 Order on March 20, 2006 which prompted her to actually conduct an examination of the substance on that day.⁴⁸

PSI Cordero testified that the specimen was turned over by the crime laboratory of Calapan City to the provincial crime laboratory in Tiniguiban, Puerto Princesa City and received by their evidence custodian. Regrettably, no specific details were given as to who turned over the specimen, who is the evidence custodian in Tiniguiban, Puerto Princesa City who received the same, and how the specimen was handled while in the custody of these persons. Clearly, these are glaring gaps in the chain of custody that seriously taints the integrity of the *corpus delicti*.

IV. Submission to the Court (Fourth Link)

Considering the substantial gaps that happened in the third link, there is no certainty that the two (2) sachets of white crystalline substance presented in court as evidence were the same sachets seized from Bermejo. While it was PSI Cordero, the forensic chemist, who brought the specimen to the Court, given the obvious evidentiary gaps in the chain of custody as shown above, the Court concludes that the integrity and the evidentiary value of the seized items were not preserved.

Conclusion

In sum, the Court finds that the prosecution failed to: (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. Consequently, the Court is constrained to acquit Bermejo for failure of the prosecution to prove his guilt beyond reasonable doubt.

WHEREFORE, premises considered, the instant petition treated as appeal is **GRANTED**. The assailed Decision dated February 8, 2011 and Resolution dated June 2, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03997 are **REVERSED** and **SET ASIDE**.

⁴⁵ RTC Records, p.111.

⁴⁶ See Order dated March 20, 2006, id. at 151. Police Inspector Rhea Fe B. Dela Cruz, the chemist who originally examined the specimen, "cannot come to Palawan due to financial constraints."

⁴⁷ Id. at 278.

⁴⁸ TSN, July 10, 2006, pp. 16-17.



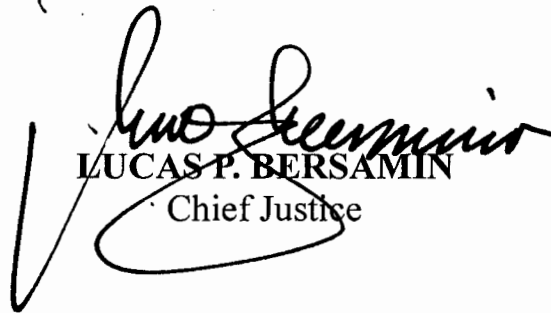
Accordingly, ALLAN BERMEJO y DE GUZMAN is hereby **ACQUITTED** on reasonable doubt.

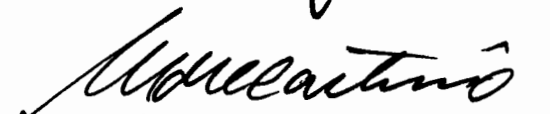
The Director of the Bureau of Corrections is directed to cause the immediate release of Allan Bermejo y De Guzman, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

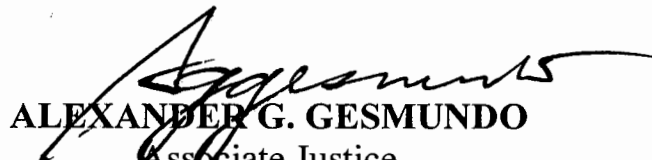

ROSMARID D. CARANDANG
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice


MARIANO C. DEL CASTILLO
Associate Justice

(on official leave)
FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



LUCAS P. BERSAMIN
Chief Justice