



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**THE PEOPLE OF THE PHILIPPINES,**

Plaintiff-Appellee,

G.R. No. 239635

Members:

- versus -

CARPIO, *Chairperson*  
\*PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR., and  
LAZARO-JAVIER, *JJ.*

**JOSE BENNY VILLOJAN, JR. y BESMONTE alias "Jay-ar,"**

Accused- Appellant.

Promulgated:

22 JUL 2019

*HM Cabalag Perlas-Bernabe*

X-----X

**DECISION**

**LAZARO-JAVIER, J.:**

**The Case**

This is an appeal from the Decision<sup>1</sup> dated October 23, 2017, of the Court of Appeals in CA-G.R. CR HC No. 02074 entitled *People of the Philippines v. Jose Benny Villojan, Jr. y Besmonte alias "Jay-ar,"* affirming appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165) also known as the Comprehensive

\* On Official leave.

<sup>1</sup> Penned by Associate Edward B. Contreras, with Associate Justice Edgardo L. Delos Santos and Associate Justice Gabriel T. Robeniol, concurring, *CA rollo*, pp. 114-127.

*[Handwritten mark]*

Dangerous Drugs Act of 2002.

### **The Proceedings Before the Trial Court**

#### ***The Charges***

Appellant Jose Benny Villojan y Besmonte alias “Jay-ar” was charged under the following Informations:

#### **Criminal Case No. 2013-02-8319**

That on or about the 25<sup>th</sup> of April, 2012, in the Municipality of San Jose, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being a person authorized by law, did then and there, willfully, unlawfully and feloniously have in his possession and control one (1) tea bag of marijuana leaves weighing 0.147 gram.

Contrary to the provisions of Section 11 (Article II) of Republic Act No. 9165.<sup>2</sup>

#### **Criminal Case No. 2013-02-8320**

That on or about the 25<sup>th</sup> of April, 2012, in the Municipality of San Jose, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and feloniously, sell and deliver to PO2 Aubrey Baldevia, eight (8) tea bags of marijuana leaves weighing 3.667 grams, worth Php800.00 which was seized in the course of the buy-bust operation, then said specimen was examined and evaluated by the Antique Provincial Crime Laboratory Office, PNP Provincial Command, Bugante Point, San Jose, Antique and found the same as marijuana, a dangerous drug.

Contrary to the provisions of Section 5, Article II of R.A. 9165.<sup>3</sup>

On arraignment, appellant pleaded not guilty to both charges.<sup>4</sup> Trial ensued.

#### ***The Prosecution’s Version***

The testimonies of Police Chief Inspector (PCI) Cirox T. Omero, PO2 Aubrey Baldevia, PO1 Marlon M. Grejaldo, and PO1 Genus L. David may be synthesized, viz:

The name of appellant Jose Benny Villojan y Besmonte alias “Jay-ar”

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<sup>2</sup> Record, p. 1.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 36.

appeared on the drug watchlist of San Jose Police Force in Antique. On April 23, 2012, the San Jose Police Force successfully launched a test-buy operation on appellant. It resulted in a consummated sale of marijuana between the police and appellant.<sup>5</sup>

Two (2) days later, or on April 25, 2012, a buy bust-team was organized to entrap appellant. The members of the buy-bust team were PO2 Aubrey Baldevia, PO2 Franklin Alonsagay, PO2 Mateo Villavert, PO2 Rocky Luzarita, representatives from the Provincial Anti-Illegal Drugs Task Group and Philippine Drug Enforcement Agency (PDEA), and five (5) more members from the Intelligence Group (PO2 Victor Crepe, SPO3 Emmanuel Salvador, PO2 Copias, PO1 Barcemo, PO1/PO2 Aguilar).<sup>6</sup> PO2 Baldevia was designated as poseur buyer. Before heading to the designated place, the confidential informant (CI) talked to appellant on the phone about a prospective customer who wanted to buy (“score”) marijuana.<sup>7</sup> The CI agreed to bring the customer to appellant’s place in the afternoon.<sup>8</sup>

Around 1 o’clock in the afternoon, the buy-bust team proceeded to Camp Agape in Brgy. Funda Dalipe approximately thirty (30) to fifty (50) meters away from appellant’s house.<sup>9</sup> Together with the CI, PO2 Baldevia waited for appellant while the other team members posted themselves nearby.<sup>10</sup>

Shortly later, appellant arrived on board a motorcycle.<sup>11</sup> He alighted from the motorcycle and got introduced to PO2 Baldevia. Appellant asked PO2 Baldevia how much she was going to buy. Appellant quoted ₱100.00 per tea bag of marijuana. She replied eight (8) tea bags.<sup>12</sup> Appellant retrieved eight (8) tea bags from his pocket and handed them to PO2 Baldevia who, in turn, paid him ₱800.00.<sup>13</sup> Thereupon, PO2 Baldevia announced she was a police officer and she was arresting appellant. The latter immediately turned away and ran toward his house.<sup>14</sup>

Meantime, not far from the *locus criminis*, PO2 Rocky Luzarita, PO2 Mateo Villavert, and PO2 Franklin Alonsagay alighted from their parked car and ran after appellant.<sup>15</sup> After getting hold of appellant, PO2 Alonsagay did a body search on appellant and recovered from his pocket a tea bag of marijuana leaves and a ₱50.00 bill.<sup>16</sup>

The police, thereafter, proceeded with the marking and inventory of the

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<sup>5</sup> Sworn Statement, *Id.* at 17.

<sup>6</sup> TSN, July 24, 2013, p. 19.

<sup>7</sup> *Id.* at 11.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 12.

<sup>10</sup> Sworn Statement, Record, p. 14.

<sup>11</sup> TSN, July 24, 2013, p. 12.

<sup>12</sup> Sworn Statement, Record, p. 15.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 16.

seized items in the presence of Provincial Prosecutor Cezar Dan T. Alecando, John Pagunsan of 106.9 Hot PM, Peter Zaldivar of Barbaza Coop TV, and Barangay Kagawad Arman Leong-on.<sup>17</sup> PO2 Rocky Luzarita took photos of appellant. PO2 Franklin Alonsagay also took photos of the witnesses while signing the inventory receipt.<sup>18</sup> Appellant was later brought to the San Jose Police Station.<sup>19</sup>

Meantime, per request for laboratory examination issued by Deputy Chief of Police PI Jose Partisala, PO2 Baldevia brought the confiscated nine (9) tea bags of marijuana leaves to the crime laboratory.<sup>20</sup> The request and the items were received by PO1 Marlon Grejaldo, a Police Community Non-Commissioned Officer (PCNO).<sup>21</sup> PO1 Grejaldo recorded the items in the logbook and turned them over to PCI Omero<sup>22</sup> for laboratory examination. PCI Omero did the physical, chemical, and confirmatory examinations on the specimens which yielded positive results for marijuana.<sup>23</sup>

After the tests, PCI Omero secured the items inside a sealed plastic bag and turned them over for safekeeping to custodian PO1 Genus David.<sup>24</sup> PCI Omero's findings were contained in his Chemistry Report No. D-010-2012.<sup>25</sup> A separate Chemistry Report No. D-09-2012 was also submitted by PCI Omero for the specimen obtained during the earlier test-buy operation launched on appellant.<sup>26</sup> PCI Omero retrieved from PO1 David the previously seized marijuana tea bags for presentation in court.

The prosecution offered<sup>27</sup> the following documentary and object evidence: (1) Judicial Affidavit of PCI Cirox T. Omero (Exhibit "A");<sup>28</sup> (2) Plastic bag containing nine (9) tea bags of marijuana with markings "JBBB-1 to JBBB-9" (Exhibit "B"); (3) Chemistry Report No. D-010-2012 dated April 25, 2012 (Exhibit "C");<sup>29</sup> (4) Plastic sachet containing marijuana with marking "D-09-2012 OCT" (Exhibit "D"); (5) Chemistry Report No. D-09-2012 dated April 23, 2012 (Exhibit "E");<sup>30</sup> (6) Sworn Statement of PO2 Aubrey F. Baldevia (Exhibit "F");<sup>31</sup> (7) Request for Laboratory Examination (Exhibit "G");<sup>32</sup> Photos of appellant (Exhibits "H," "I," "J," and "K");<sup>33</sup> (8) Photos taken during inventory of the seized items (Exhibits "L," "M," "N," and "O");<sup>34</sup> (9) Receipt/Inventory of Seized Articles dated April 25, 2012

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<sup>17</sup> *Id.*

<sup>18</sup> TSN, July 24, 2013, pp. 6-7.

<sup>19</sup> Sworn Statement, Record, p. 16.

<sup>20</sup> *Id.*

<sup>21</sup> TSN, August 14, 2013, pp. 2-4.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> Judicial Affidavit, Record, pp. 53-54.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Record, pp. 88-96.

<sup>28</sup> *Id.* at 52-55.

<sup>29</sup> *Id.* at 26.

<sup>30</sup> *Id.* at 24.

<sup>31</sup> *Id.* at 14-18.

<sup>32</sup> *Id.* at 25.

<sup>33</sup> *Id.* at 29.

<sup>34</sup> *Id.* at 30.

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signed by PO2 Aubrey F. Baldevia (Exhibit "P");<sup>35</sup> (10) Judicial Affidavit of PO1 Marlon M. Grejaldo (Exhibit "Q");<sup>36</sup> and (11) Judicial Affidavit of PO1 Genus L. David (Exhibit "R").<sup>37</sup>

### *The Defense's Version*

Appellant Jose Benny Villojan himself and Salvacion Narboneta testified for the defense. Their testimonies may be summarized, in this wise:

Appellant denied that he sold tea bags of marijuana to PO2 Baldevia. He claimed that on April 25, 2012, on his way to deliver the list of names of persons who had "utang" with the sari-sari store, a police officer held him at gunpoint. He later identified the police officer as PO2 Franklin Alonsagay.<sup>38</sup> The latter ordered him to lie prone on the ground. Before he could even comply, PO2 Alonsagay had already handcuffed and pushed him to the ground.<sup>39</sup> He could see from where he was lying down several tea bags of dried marijuana leaves and two (2) pieces of ₱100.00 bills.<sup>40</sup> And while he was handcuffed, PO2 Alonsagay inserted something in his pocket. He subsequently discovered that these items were actually one (1) tea bag of dried marijuana leaves and one (1) piece of ₱50.00 bill.<sup>41</sup>

Appellant belied the alleged presence of representatives from the DOJ, media, and barangay as witnesses during the inventory.<sup>42</sup> He claimed that there were actually no witnesses present during his unlawful arrest.<sup>43</sup>

Salvacion Narboneta essentially corroborated appellant's testimony. She testified that in the afternoon of April 25, 2012, she was in her residence in Dalipe when she heard a commotion outside. She saw appellant being chased by police officers.<sup>44</sup> When the police officers were able to catch up with appellant, one of them pointed a gun at appellant while the others looked on.<sup>45</sup> The police officers showed appellant a cellophane wrapped in paper.<sup>46</sup> But the cellophane did not come from appellant himself.<sup>47</sup> Aside from the police officer who was pointing a gun at appellant, there were at least four (4) other police officers with him, one (1) female and three (3) male.<sup>48</sup> It was PO2 Alonsagay who frisked but got nothing from appellant.<sup>49</sup>

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<sup>35</sup> *Id.* at 20.

<sup>36</sup> *Id.* at 64-66.

<sup>37</sup> *Id.* at 67-69.

<sup>38</sup> Counter Affidavit, Record, p. 31.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> TSN, October 8, 2014, p. 4.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 7.

<sup>47</sup> *Id.*

<sup>48</sup> TSN, October 8, 2014, p. 5.

<sup>49</sup> *Id.* at 6.

Narboneta denied having seen Fiscal Dela Cruz or any member of the media around during appellant's arrest.<sup>50</sup> When she asked the police why appellant was being arrested, none of them responded.<sup>51</sup> After his arrest, appellant was made to board a police vehicle and brought to the municipal hall.<sup>52</sup>

The defense did not offer any documentary evidence.

### **The Trial Court's Ruling**

By Judgment<sup>53</sup> dated November 25, 2014, the trial court found appellant guilty as charged in both cases. It held that the prosecution was able to establish with moral certainty that appellant was in possession of, and had sold to a police officer during the buy-bust operation, tea bags containing dried marijuana leaves. The forensic chemist confirmed that the eight (8) tea bags sold by appellant to the police officer and one (1) which was separately recovered from appellant were confirmed to be marijuana, a prohibited drug. The trial court disregarded appellant's defenses of denial and frame-up and the so-called inconsistent testimony of Salvacion Narboneta. It gave more credence to the positive and categorical testimonies of the prosecution witnesses. The trial court, thus, ruled:

WHEREFORE, judgment is hereby rendered finding the accused JOSE BENNY VILLOJAN, JR. guilty beyond reasonable doubt of the two (2) criminal offenses for which he has been charged in the two above-entitled cases, hereby:

- (1) IMPOSING upon the said accused the penalty of life imprisonment and a fine of Php500,000.00 in Criminal Case No. 2013-02-8320 and, independently and separately, the penalty of imprisonment of twelve (12) years and one (1) day and a fine of Php300,000.00 in Criminal Case No. 2013-02-8319;
- (2) DISQUALIFYING the said accused from exercising his civil rights such as the rights of parental authority and guardianship, either as to the person or property of any ward, the rights to dispose of such property by any act or any conveyance inter vivos, as well as from exercising his political rights such as the rights to vote and be voted for;
- (3) DECLARING the confiscation and forfeiture in favor of the government, to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and destruction, the "eight (8) tea bags of marijuana leaves weighing 3.667 grams" in Criminal Case No. 2013-02-8320 and the "one (1) tea bag of marijuana leaves weighing 0.147 gram" in Criminal Case No. 2013-02-8319; and
- (4) PRONOUNCING no cost.


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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 7.

<sup>52</sup> *Id.*

<sup>53</sup> Record, pp. 123-142.



SO ORDERED.

### **The Court of Appeals' Proceedings**

Appellant appealed the verdict of conviction on the following grounds: (1) no buy-bust operation actually took place; and (2) the chain of custody rule was breached. The Office of the Solicitor General (OSG), through Assistant Solicitor General Thomas M. Laragan and Associate Solicitor Leo Adrian B. Morillo maintained that the prosecution had established beyond reasonable doubt appellant's guilt of the twin offenses charged.

By Decision<sup>54</sup> dated October 23, 2017, the Court of Appeals sustained the verdict of conviction. It held that the elements of both illegal sale and illegal possession of drugs had been indubitably established - appellant was caught *in flagrante delicto* selling marijuana to PO2 Baldevia, a poseur buyer, who, in exchange for the drugs, paid appellant ₱800.00. Too, another tea bag of marijuana was recovered from appellant when a member of the arresting team bodily searched him.

### **The Present Appeal**


Appellant now faults the Court of Appeals for affirming the trial court's verdict of conviction. Appellant attacks the credibility of prosecution witnesses who allegedly fabricated the story of the test-buy and buy-bust operations. For if truly he sold illegal drug to the police officers during the alleged test-buy operation, why did they not arrest him right there and then? Too, where the request for laboratory examination of the supposed drug purportedly took place on *April 22, 2012*, how could the test-buy operation possibly have taken place only *post facto* on *April 23, 2012*?

Appellant further asserts that PO2 Baldevia's testimony itself negates the existence of the so-called buy-bust operation, i.e., (1) Appellant supposedly threw away some of the ₱100.00 bills he received from the poseur buyer during the hot pursuit launched on him by the police officers; (2) The prosecution did not enter in the police blotter the markings written on the buy-bust money nor were the supposed bills offered in evidence; (3) The CI and appellant allegedly agreed to meet with appellant in the latter's house, yet, the CI, poseur buyer, and the rest of the buy-bust team proceeded to Camp Agape to wait for appellant with nary an explanation why the venue of the sale was suddenly changed. These details, according to appellant, raise serious doubts whether a buy-bust operation truly happened.

More, appellant points to the following missing links in the chain of custody of the alleged seized items which render their identity and integrity questionable: (a) It was unclear where and when the marking of the seized

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<sup>54</sup> Penned by Associate Justice Edward B. Contreras with Associate Justice Edgardo Delos Santos and Associate Justice Gabriel T. Robeniol, concurring, *CA rollo*, pp. 114-127.



drugs was done. The law requires that marking be done immediately after confiscation, yet, the testimonial and documentary evidence on record failed to establish these details; (b) There is dearth of evidence on who actually received the alleged seized drugs during their turn-over from PO2 Baldevia to the investigating officer at the police station. Apart from the police blotter and request for laboratory examination, it was unclear whether there were other police officers who took hold of the alleged seized marijuana before the same were submitted for laboratory analysis; and (c) PO2 Baldevia and all other persons who came in contact with the seized drugs failed to show the manner by which they handled, kept, or stored the same while in their custody. It was, thus, unclear whether the items had been safeguarded from any possible tampering, alteration, contamination, or switching. The *corpus delicti* involving illegal drugs is the drug itself. Absent any showing that the drugs presented in evidence were the very same drugs seized from the accused, acquittal is in order.

The OSG counters that the evidence thus far adduced had established with moral certainty the elements of both illegal possession and illegal sale of marijuana. In the sale of dangerous drugs, the prosecution had indubitably established the identity and integrity of appellant as seller, PO2 Baldevia as buyer, the confiscated drugs themselves, and the delivery of the drugs and payment therefor which transpired between PO2 Baldevia and appellant. As defined and penalized under Section 11, Article II of RA 9165, in the charge of illegal possession of prohibited drugs, the prosecution was able to prove beyond reasonable doubt that appellant was freely and consciously in possession of illegal drugs which he was not otherwise authorized to possess.

Finally, contrary to appellant's claim, the prosecution was able to demonstrate an unbroken chain of custody of the seized illegal drugs: **First**, the marijuana tea bags seized from appellant by PO2 Baldevia were inventoried and marked by PO2 Baldevia herself at the place of arrest; **Second**, after marking and inventory of the illegal drugs, PO2 Baldevia personally brought them to the crime laboratory where the items were received by PO1 Grejaldo who, in turn, signed the request for laboratory examination and entered the necessary details in the logbook; **Third**, PO1 Grejaldo handed the seized drugs to PCI Omero who conducted the laboratory examinations on the seized drugs, yielding positive results for marijuana. PCI Omero reduced the laboratory findings through a written report which was also submitted in court; **Fourth**, PCI Omero transferred the seized drugs to PO1 David for safekeeping. PCI Omero retrieved the illegal drugs from PO1 David for presentation in evidence. As clearly outlined, the unbroken chain of custody of the illegal drugs here was amply established.

### Issue

Was the prosecution able to prove appellant's guilt of violation of Sections 5 and 11, Article II of RA 9165?



## Ruling

The essential elements in the prosecution for illegal sale of marijuana are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>55</sup>

To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>56</sup>

In both cases of violation of Article 5 (illegal sale) and violation of Article 11 (illegal possession), the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.

Since the confiscated illegal drugs themselves must be presented in evidence, the prosecution ought to prove that their integrity had been preserved from the moment they were recovered from the accused up until their presentation in court as evidence. Indeed, primordial importance must be given to “the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.”<sup>57</sup>

The chain of custody rule performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved so much so that unnecessary doubts as to their identity are removed.<sup>58</sup> This is done through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.<sup>59</sup>

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines “*chain of custody*,” viz:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the

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<sup>55</sup> See *People v. Honrado*, 683 Phil. 45, 52 (2012) (citations omitted).

<sup>56</sup> See *People v. Gayoso*, 808 Phil. 19, 30 (2017).

<sup>57</sup> *Id.* at 22.

<sup>58</sup> See *People v. Villarta, et al*, 740 Phil. 279, 295 (2014).

<sup>59</sup> See *People v. Ditona, et al*. 653 Phil. 529, 533 (2010), citing *People v. Sitco, et al*, 634 Phil. 627, 640 (2010), *People v. Nandi*, 639 Phil. 134 144 (2010).

person who held temporary custody of seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

The chain of custody requires that law enforcers or any person who came in possession of the seized drugs must observe the procedure for proper handling of the seized substance to remove any doubt that it was changed, altered, modified, or planted before its presentation in court as evidence. The chain of evidence is constructed by proper exhibit handling, storage, labeling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.<sup>60</sup>

The strict observance of the chain of custody finds greater significance in buy-bust operations where there are undeniably serious abuses by law enforcement officers. *People v. Caranto*<sup>61</sup> elucidates:

The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People v. Tan*, when we recognized that “by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.”

There are four (4) links in the chain of custody: 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.<sup>62</sup> To prove that the illegal drugs presented in court are the very same drugs seized from accused, the prosecution must establish that there had been no break in any of the four (4) links in the chain.

The Court keenly notes that here, the second link had been seriously breached.

In her Sworn Statement, PO2 Baldevia stated that after the marking and inventory of the seized marijuana tea bags, she personally brought them to the crime laboratory for forensic analysis, *viz*:

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<sup>60</sup> *People v. Balibay, et al*, 742 Phil. 746, 756 (2014).

<sup>61</sup> 728 Phil. 507, 517-518 (2014) (citations omitted)

<sup>62</sup> See *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015) (citation omitted).

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Q20. – What else happened after the inventory of the recovered items from JOSE BENNY VILLOJAN?

A – We photographed all recovered items for documentation.

Q21. – After you photographed all recovered items, what did you do?

A – I personally submitted MARIJUANA leaves to the Provincial Crime Laboratory Office, Antique Police Provincial Office, Bugante Point, San Jose, Antique on (sic) the afternoon of April 25, 2012 which yielded POSITIVE result with Chemistry Result Number D-10-2012 and total weight of 3.814 grams.

Q22. – What else did you to, (sic) after you arrest(ed) and PO2 Franklin Alonsagay apprised JOSE BENNY VILLOJAN @ Jay-ar, of his constitutional rights?

A – We brought JOSE BENNY VILLOJAN @ Jay-ar to SAN JOSE POLICE STATION San Jose, Antique and turned over him to duty Desk Officer for custody and proper disposition while the appropriate charges is being prepared, and we did not harm, force, coerce nor intimidate said JOSE BENNY VILLOJAN @ Jay-ar since he was in our custody until he was turned over to the Desk Officer of San Jose Police Station.

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On cross, PO2 Baldevia reiterated she personally submitted the seized items to the crime laboratory, thus:

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Q: Madam Witness, you bought eight tea bags, according to you from Benny Villojan?

A: Yes, Sir.

Q: And you identified those tea bags which you bought from Benny Villojan and you have submitted to the crime laboratory at the Antique Police Provincial Office, is that correct?

A: Yes, Sir.

Q: How many teabags where (sic) you able to submit to the Crime Laboratory at the Antique Provincial Police Office?

A: I submitted a total of nine (9) teabags of marijuana. Eight (8) of which were the teabags I bought, Sir.

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Conspicuously, missing from PO2 Baldevia's sworn statement and testimony are the material details of the supposed turn-over of the seized drugs

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<sup>63</sup> Record, p. 16.

<sup>64</sup> TSN, July 24, 2013, p. 14.

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to the investigating officer at the police station *before* their submission for laboratory examination. The second link involves the turn-over of the confiscated drugs to the police station, the recording of the incident, and the preparation of the necessary documents such as the request for laboratory examination of the seized drugs. Since it is not remote that the handling police officer came in contact with the seized drugs during this procedure, it is, therefore, necessary that such officer/s be identified and accounted for and made to explain about the steps he/she/they had undertaken to ensure that the integrity and evidentiary value of the illegal drugs were not compromised while in his/her/their possession.

Here, there was no clear testimony about these crucial details. In *People v. Dahil*,<sup>65</sup> the Court overturned the conviction of the accused because of the gaps in the chain of custody, specifically on the second link. The Court elucidated:

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Second Link: Turnover of the Seized Drugs by the Apprehending Officer to the Investigating Officer

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.

The investigator in this case was a certain SPO4 Jamisolamin. Surprisingly, there was no testimony from the witnesses as to the turnover of the seized items to SPO4 Jamisolamin. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized items. Again, the case of the prosecution is forcing this Court to resort to guesswork as to whether PO2 Corpuz and SPO1 Licu gave the seized drugs to SPO4 Jamisolamin as the investigating officer or they had custody of the marijuana all night while SPO4 Jamisolamin was conducting his investigation on the same items.

In *People v. Remigio*, the Court noted the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer. The apprehending officer kept the alleged shabu from the time of confiscation until the time he transferred them to the forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.

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<sup>65</sup> 750 Phil. 212, 234-235 (2015) (citations omitted).

Notably, records bear the request for laboratory examination issued by a certain PI Jose Partisala. According to PO2 Baldevia, she presented this request including the seized items to the crime laboratory. And yet, neither PI Partisala nor the investigating officer testified in court to shed light on their participation in the handling of the seized drugs. Such deviation from the prescribed procedure is fatal to the prosecution's case for it raises serious doubts on the preservation of the integrity and evidentiary value of the seized illegal drugs. In *People v. Enad*,<sup>66</sup> the Court held that when the police officers who confiscated the dangerous drugs testified that they brought the accused and the seized item to the police station without identifying the police officer to whose custody the seized item was actually given, the second link in the chain of custody is deemed not to have been established.

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is persistent doubt on the identity of the drug. For apart from proving the presence of the elements of possession or sale with the same degree of certitude, it must be established that the substance illegally possessed and sold is the same substance offered in court as exhibit.<sup>67</sup> Otherwise, a verdict of acquittal becomes indubitable.

Here, the gap in the chain of custody raises serious uncertainty on whether the drugs presented in evidence were the very drugs traded during the buy-bust operation involving appellant. With this lingering doubt here pervading, the Court is strongly constrained to acquit appellant.

In any event, PO2 Baldevia was hard put to state the necessary precautions she ought to have strictly employed to ensure the seized illegal drugs were not contaminated, changed, or altered in transit and while in her custody.

In light of the prosecution's failure to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from appellant, a verdict of acquittal here is in order.

**ACCORDINGLY**, the appeal is **GRANTED**. The Decision dated October 23, 2017 of the Court of Appeals in CA-G.R. CR HC No. 02074 is **REVERSED and SET ASIDE**. Appellant **JOSE BENNY VILLOJAN, JR. y BESMONTE** is **ACQUITTED** of violation of Section 11, Article II of RA 9165 in Criminal Case No. 2013-02-8319 and violation of Section 5, Article II of RA 9165 in Criminal Case No. 2013-02-8320.

The Director of the Bureau of Corrections is ordered to (a) immediately **RELEASE JOSE BENNY VILLOJAN, JR. y BESMONTE** from custody, unless he is being held for some other lawful cause; and (2) **SUBMIT** his compliance report within five (5) days from notice.

<sup>66</sup> See 780 Phil. 346, 367 (2016), citing *People v. Capuno*, 655 Phil. 226, 242 (2011).

<sup>67</sup> See *People v. Hementiza*, 807 Phil. 1017, 1038 (2017), citing *People v. Lorenzo*, 633 Phil. 403 (2010).

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Let entry of judgment be immediately issued.

**SO ORDERED.**



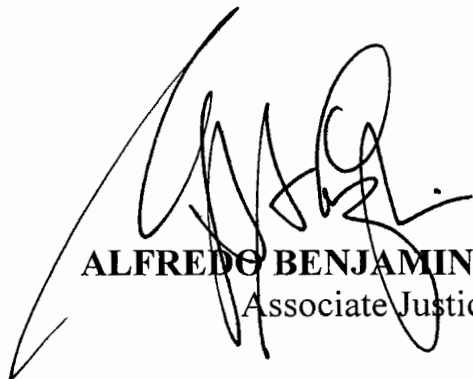
**AMY C. LAZARO-JAVIER**  
Associate Justice

**WE CONCUR:**

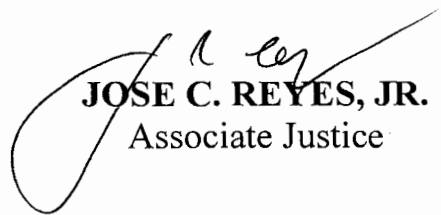


**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

(On official leave)  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice

**ATTESTATION**

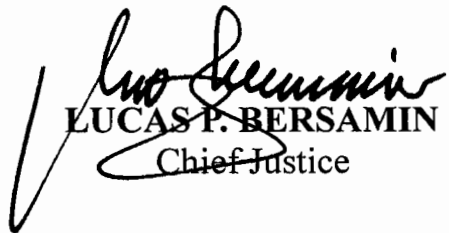
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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



**LUCAS P. BERSAMIN**  
Chief Justice

