



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

“G.R. No. 245251 (People of the Philippines v. Archie Aaron Borromeo y Villanueva)

The Case

This appeal assails the Decision¹ dated September 4, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09189 affirming appellant’s conviction for violation of Section 5, Article II of Republic Act 9165 (RA 9165).

The Charge

Appellant was charged with violation of Sections 5, 11, and 12, Article II of RA 9165, for the sale of 0.12 gram of methamphetamine hydrochloride, otherwise known as “shabu”, possession of three (3) heatsealed transparent plastic sachets of the same drug weighing a total of 2.76 grams, and possession of drug paraphernalia, under three (3) separate Informations, viz:

Criminal Case No. 2014-4444-D-MK (Illegal Sale)

That on or about the 8th day of September 2014, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly sell, trade, deliver and/or distribute to PO3 JAYSON C. RAEL, acting as poseur buyer, one (1) small

- over – sixteen (16) pages ...

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¹ Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Carmelita Salandanan Manahan and Ronaldo Roberto B. Martin; *Rollo*, pp. 3-15.

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plastic sachet containing 0.12 gram of Methamphetamine Hydrochloride, a dangerous drug, in violation of [Section 5, Article II of RA 9165].

CONTRARY TO LAW.²

Criminal Case No. 2014-4443-D-MK (Illegal Possession)

That on or about the 8th day of September 2014, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control three (3) small heat sealed transparent plastic sachets containing a total of 2.76 grams of white crystalline substance which yielded positive result for the presence of methamphetamine hydrochloride, a dangerous drug, in violation of [Section 11, Article II of RA 9165].

CONTRARY TO LAW.³

Criminal Case No. 2014-4442-D-MK (Possession of Drug Paraphernalia)

That on or about the 8th day of September 2014, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control one (1) improvised water pipe containing traces of white crystalline substance which yielded positive for the presence of methamphetamine hydrochloride, a dangerous drugs (sic) and two (2) disposable lighters, which are instrument (sic), apparatus or other paraphernalia fit or intended for smoking or introducing *shabu*, a dangerous drug, into the body.

CONTRARY TO LAW.⁴

On arraignment, appellant pleaded "not guilty" to all the charges.⁵

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² *Rollo*, p. 3.

³ *Id.* at p. 4.

⁴ *Id.*

⁵ *Record*, p. 79.

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The Proceedings Before the Trial Court

PO3 Jayson C. Rael, PO2 Norberto Saboriendo, PO2 Manuel Diquit and PCI Margarita Libres testified for the prosecution while appellant testified as sole witness for the defense.

The Prosecution's Evidence

On September 8, 2014, the Marikina City Police Station Anti-Illegal Drugs – Special Operations Task Group received a report from a confidential informant that an alias “Poleng” was selling illegal drugs at Block 70-71 Ampalaya Street, Barangay Tumana, Marikina City. A buy bust team headed by Police Inspector Jerry Flores was then organized with PO3 Jayson C. Rael, as poseur buyer. The team submitted the Pre-Operational Report and Coordination Form to the Philippine Drug Enforcement Agency (PDEA). As buy bust money, PO3 Rael also prepared a Five Hundred Peso bill (₱500.00) and marked it “JR”.⁶

On even date, about 5:30 in the afternoon, the buy bust team, together with the confidential informant, proceeded to the target area. PO3 Rael and the informant headed to Block 70-71, Ampalaya Street while the rest of the team posted themselves outside the alley.

Meantime, appellant opened the door to the informant and PO3 Rael. The informant asked appellant for one “Poleng”. Appellant replied that “Poleng” was not around. PO3 Rael and the informant informed appellant they would just wait for “Poleng”. Appellant invited them and asked what they needed from “Poleng”. PO3 Rael answered, “*iiskor kami*” then appellant asked how much they were going to buy. PO3 Rael replied, “*limang piso lang pero gusto namin panalo*”. At the same time, he gave the buy bust money to appellant who slipped it into his pocket. Appellant then retrieved a small black paper box on top of a cabinet and got one heat-sealed transparent plastic sachet containing white crystalline substance. Appellant handed the sachet to PO3 Rael, who then phoned PO2 Saboriendo to signal that the transaction had been completed.⁷

Thereupon, the backup team barged into the house and arrested appellant. PO3 Rael recovered from appellant the buy bust money as well as the black paper box. Inside it were three (3) heat-sealed plastic sachets containing white crystalline substance, two (2) open

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⁶ Rollo, p. 5.

⁷ Id.

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plastic sachets of the same substance, and one pack of empty plastic sachets. On top of the cabinet, the team also found two (2) disposable lighters, an improvised water pipe, a pair of scissors, and a digital weighing scale. At the *situs criminis*, PO3 Rael marked the seized items in appellant's presence. He marked the plastic sachet containing white crystalline substance subject of the sale with A- "AVB-BUYBUST 9/8/14" and the three (3) heat-sealed plastic sachets and two (2) open plastic sachets containing the same substance B- "AVB-BUYBUST 9/8/14", C- "AVB-BUYBUST 9/8/14", D- "AVB-BUYBUST 9/8/14", E- "AVB-BUYBUST 9/8/14" and F- "AVB-BUYBUST 9/8/14", respectively. Thereafter, an inventory was made and photographs were taken by PO2 Norberto Saboriendo in the presence of Kagawad Geronides Capacio, Kagawad Crispin Carurucan, Councilor Frankie Ayuson, and media representative Cesar Barquilla.⁸

Thereafter, the team brought appellant to the police station where he got detained. PO3 Rael turned over the confiscated items to the crime laboratory. Forensic Chemist Margarita Libres personally received from PO3 Rael the letter-request for the conduct of qualitative examination and the marked plastic sachets containing white crystalline substance. The qualitative examination yielded positive results for *methamphetamine hydrochloride*, a dangerous drug. Forensic Chemist Libres issued her Physical Science Report No. MCSO-D-104-14.⁹

The prosecution offered as documentary evidence the Letter Request for Laboratory Examination,¹⁰ Physical Science Report No. MCSO-D-10414,¹¹ Pre-operational Report dated September 8, 2014,¹² Coordination Form dated September 8, 2014,¹³ Inventory of Evidence,¹⁴ and Chain of Custody Form.¹⁵

The Defense's Evidence

Appellant testified that on September 8, 2014, he was preparing dinner at home when a man wearing what seemed to be a bullet-proof vest entered his house and asked for a certain "Poleng".

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⁸ *Id.* at 6.

⁹ Record, pp. 89-90.

¹⁰ Record, p. 8.

¹¹ *Id.* at 9.

¹² *Id.* at 14.

¹³ *Id.* at 15.

¹⁴ *Id.* at 12.

¹⁵ *Id.* at 13.

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He replied that he did not know “Poleng”. Around ten (10) police officers then arrived and searched his house. The police officers allegedly found a plastic sachet and one of them uttered: “*Ayusin na ang mga gamit, tatawagin ko na si Konsehal Ayuson.*” When the councilor arrived, he told him they would not charge him if he revealed to them where “Poleng” was but he repeatedly insisted he did not even know “Poleng”. He was later taken to the police station and told “*makipag-areglo daw sa kanila*”. He replied he did not have money so the police prepared some documents and he got detained.¹⁶

The defense did not offer any documentary evidence.

The Trial Court’s Ruling

By Decision dated November 29, 2016,¹⁷ the trial court found appellant guilty of violation of Section 5, Article II of RA 9165 (illegal sale); but it acquitted him of violation of Sections 11 (illegal possession of dangerous drugs) and 12 (illegal possession of drug paraphernalia) of the same law, thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case Nos. 2014-4442 and 4443-D-MK, **ACQUITTING** the accused ARCHIE AARON BORROMEO y VILLANUEVA of violation of Sections 12 and 11, Article II of RA 9165, on grounds of reasonable doubt; and
2. In Criminal Case No. 2014-4444-D-MK, finding the accused ARCHIE AARON BORROMEO y VILLANUEVA guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165. Accused is sentenced to suffer the penalty of LIFE IMPRISONMENT, and to pay a fine of ₱500,000.00.

Let the illegal drugs and drug paraphernalia subject of these cases be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The genuine money amounting to P1,400.00 confiscated in Criminal Case No. 2014-4443-D-MK is ordered escheated in favor of the government and accordingly transmitted to the Bureau of Treasury for proper disposition.

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¹⁶ *Rollo*, p. 7.

¹⁷ Penned by Judge Anjanette N. De Leon Ortile; Record, pp. 207-216.

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Send copies of this Decision to the PDEA, the National Police Commission (NAPOLCOM) and the Office of the Vice Mayor, Marikina City.

SO ORDERED.¹⁸

The trial court found that poseur buyer PO3 Rael's testimony, as corroborated by other members of the buy-bust team, attested to the fact that appellant sold him *shabu* during a legitimate buy-bust operation. The testimonies of the arresting officers should be accorded credence as their testimonial accounts were consistent with the documentary and object evidence. Too, no ill motive was shown to have impelled the prosecution witnesses to falsely testify against appellant.¹⁹

As for the compliance with the chain of custody rule, the trial court ruled that the same remained unbroken from the point of seizure to presentation of the seized dangerous drugs in court. The marking and inventory of the confiscated items were done at the *situs criminis* right after appellant's arrest. The inventory was witnessed by three (3) elected officials and a media representative. Appellant together with the seized items were then brought to the police station. From the time the drugs were seized up to the time they were brought to the crime laboratory for qualitative testing, the evidence was in PO3 Rael's custody.²⁰

Appellant's defenses of denial and frame-up deserved scant consideration for being self-serving and uncorroborated. Appellant was caught selling dangerous drugs in *flagrante delicto* by the buy bust team.²¹

The Proceedings before the Court of Appeals

Appellant faulted the trial court for finding him guilty of violation of Section 5 of RA 9165 when no buy bust operation in fact took place. Assuming there was indeed a buy bust operation, it was improbable that appellant would readily sell *shabu* to PO3 Rael who was a total stranger to him. Lastly, the prosecution failed to establish compliance with the chain of custody rule. PO3 Rael did not testify as to the manner the confiscated items were handled immediately after

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¹⁸ Record, p. 216.

¹⁹ *Id.* at 213.

²⁰ *Id.* at 213-214.

²¹ *Id.* at 214.

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seizure. Too, the supposed testimony of PCI Libres failed to show the circumstances surrounding the turnover and submission of the specimens to her prior to their presentation in court.²²

On the other hand, the Office of the Solicitor General (OSG) maintained that appellant's arrest was the result of a legitimate buy bust operation as he was caught in the act of selling *shabu*. The integrity and evidentiary value of the *corpus delicti* were also preserved.

The Court of Appeals' Ruling

By Decision dated September 4, 2018,²³ the Court of Appeals affirmed. It agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. PO3 Rael narrated in detail how the transaction transpired from the time he arrived at Block 70-71 Ampalaya Street and met appellant up until the time he handed the marked money in exchange for one plastic sachet containing 0.12 gram of *shabu*. The chain of custody of the *corpus delicti* was also proved by the prosecution to have been preserved.²⁴

Although there was no representative from the Department of Justice (DOJ) during the inventory and photograph, this lapse will not necessarily render the seized item inadmissible. PO3 Rael explained that PI Flores called the DOJ but was not able to get any representative from said agency to attend the inventory and photograph.²⁵

It dismissed appellant's allegation that no buy bust operation actually took place. The factual circumstances established by the prosecution left no doubt that appellant was caught in the act of selling dangerous drugs during a buy bust operation.²⁶

Lastly, as to the alleged improbability that he would readily sell *shabu* to a stranger (PO3 Rael), the Court of Appeals held that drug dealers are now becoming more audacious in selling because of the drug industry's lucrativeness. Also, what matters is not an

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²² *Rollo*, p. 49.

²³ Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Carmelita Salandanan Manahan and Ronaldo Roberto Martin; *Rollo*, pp. 3-15.

²⁴ *Rollo*, p. 8.

²⁵ *Id.* at 13.

²⁶ *Id.*

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existing familiarity between the buyer and the seller but their agreement and the acts constituting the sale and delivery of the illegal drugs.²⁷

The Present Appeal

Appellant now asks the Court to reverse the assailed disposition of the Court of Appeals and prays anew for his acquittal. In compliance with Resolution dated April 8, 2019,²⁸ both the OSG and appellant manifested²⁹ that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the arresting police officers comply with the chain of custody rule?

Ruling

The appeal is meritorious.

The dangerous drugs allegedly seized from appellant and those which he purportedly sold to PO3 Rael constitute *corpus delicti* here. Bearing the burden of proving the elements of the offense and the *corpus delicti* itself, the prosecution must establish the identity and integrity of the dangerous drugs in order to support a verdict of conviction.³⁰ It must prove that the dangerous drugs seized from appellant are truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

The alleged violation was committed on September 8, 2014. **RA 9165 as amended by RA 10640** is therefore the applicable law, *viz:*

- (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

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²⁷ *Id.* at 14.

²⁸ *Id.* at 22-23.

²⁹ *Id.* at 33-40.

³⁰ *Calahi v. People*, G.R. No. 195043, November 20, 2017, 845 SCRA 12, 20, *citing People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

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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, 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 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.

This provision contains 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 and their presentation in court for identification and destruction. This record includes the identity and signature of the person who held temporary custody of the seized items, the date and time when the transfer of custody was made in the course of the items' safekeeping and use in court as evidence, and their final disposition.³¹

*People v. Omamos*³² reiterated that the following four (4) links in the chain of custody must be proved:

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

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

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

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

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³¹ *Largo v. People*, G.R. No. 201293. June 19, 2019.

³² G.R. No. 223036, July 10, 2019.

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We discuss the first, second, and fourth links.

For the **first link**, appellant asserts that the absence of a DOJ representative during the inventory and photograph of the seized items in question is fatal to the cause of the prosecution.

The chain of custody procedure ordains that the apprehending team must, immediately after seizure and confiscation, conduct a physical inventory and photograph these items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as two (2) required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media **AND** the DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640,³³ an elected public official and a representative of the National Prosecution Office (NPS)³⁴ **OR** the media. The presence of these witnesses safeguards *"the establishment of the chain of custody and removes any suspicion of switching, planting, or contamination of evidence."*³⁵

Appellant's arrest took place on September 8, 2014 or after the effectivity of RA 10640. Thus, the required witnesses here are an elected public official and a representative of the NPS or the media.

Here, PO3 Rael testified:

Prosec. Abijay, Jr.: So after recovering these pieces of evidence, what did you do with this (sic) evidence?

A: After that, I placed my signature the one that I bought from him, the one piece of transparent plastic sachet and after that, we asked him for his identity and he told me that his name is Aaron Borromeo y Villanueva, 23 years old, single, tubong Bulan, Sorsogon, and lives at Block 70-71 Ampalaya St., Brgy. Tumana, Marikina City.

Q: After knowing the identity of the person you arrested, what did you do with the evidence?

A: I placed my marking on the evidence that I bought from him, the one heat sealed transparent plastic sachet. I put the

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³³ RA 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015.

³⁴ The NPS falls under the DOJ. (See Section I of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

³⁵ See *People v. Alfredo Doctolero, Jr.*, G.R. No. 243940, August 20, 2019.

markings of AVB-buy bust and the date of his arrest, sir 9/8/14 and then I signed it, sir.

Q: Why did you place the initial AVB-buy bust on that plastic sachet that you bought from him?

A: Because that's the initial of the name of the accused, sir.

Q: Where did you mark the evidence?

A: At the area where he was arrested, sir.³⁶

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x x x

x x x

Q: That pieces of evidence that you recovered in the black box and also in the shelves, what did you do with them?

A: The three pieces heat-sealed plastic transparent sachets that I recovered from the box, I placed a marking AB1, AB2, AB3 and I put the date 9/8/14 and I signed it and the two plastic sachets with traces of suspected shabu, I also put marking AB4 and 5 9/8/14 and I also signed it, sir.³⁷

As for the inventory and photograph, PO3 Rael testified that after marking the seized items, an inventory and photograph of the seized items were taken by PO2 Saboriendo in the presence of Kagawad Geronides Capacio, Kagawad Crispin Carurucan, Councilor Frankie Ayuson, and media representative Cesar Barquilla, viz.³⁸

Q: After marking the evidence, what else did you do?

A: I made an inventory in the presence of [an] elected barangay official and the media representative and city councilor Frankie Ayuson, sir.

Q: And where did you make this inventory?

A: I made the marking and the inventory at the area where he was arrested, sir.

Q: After you made this inventory of evidence, what did you do with the inventory of evidence?

A: It was signed by the media representative and local officials, sir.

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x x x

x x x

Q: Now, what proof can you show that this media representative, these barangay officials and councilor Frankie Ayuson were present when you made this inventory?

A: At the time that I marked the evidence and when the elected barangay officials signed this, PO2 Saboriendo took photographs of the same, sir.

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³⁶ TSN, April 13, 2015, pp. 9-10.

³⁷ *Id.* at 10.

³⁸ *Id.* at 10-11.

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A: (pointing at the photograph exhibits) These are the two barangay officials, the one sitting at the right portion of the table are the two barangay officials and the one at the right portion is also Ayuson and the person standing beside Ayuson is me, sir.³⁹

From PO3 Rael's testimony, while the inventory and photograph of the seized items were conducted in the presence of the required witnesses *i.e.* elective officials and media representative, the marking was done only in appellant's presence.

In *People v. Escara*,⁴⁰ the Court emphasized that the presence of the witnesses from the DOJ or the media, and from public elective office at the time of apprehension is mandatory. The insulating presence of these witnesses during the seizure and marking of the dangerous drugs will prevent the evils of switching, planting or contamination of the *corpus delicti*. Their presence at the time of seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug.

In fine, the **first link** had been incipiently broken.

The **second link** refers to the turnover of the dangerous drug seized by the apprehending officer to the investigating officer. Unfortunately, here, PO3 Rael failed to identify the person to whom the seized items were turned over at the police station. He merely testified that he was the one who prepared the request for laboratory examination on the seized items.⁴¹

The probability of the integrity and identity of the *corpus delicti* being compromised is present at every single time the prohibited item is being handed over from one person to another. It was therefore imperative for the prosecution to have presented as witness the investigating officer, and anyone else for that matter who may have handled the drug after him. From the time the specimens were placed under his custody until the time they were brought to court - the threat of tampering, alteration, or substitution of the *corpus delicti* exists.

Without the investigating officer's testimony, there is no guarantee that the *corpus delicti* had been preserved. This alone, therefore, is sufficient to warrant appellant's acquittal.

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³⁹ *Id.* at 11-12.

⁴⁰ G.R. No. 212170, June 19, 2019.

⁴¹ TSN, April 13, 2015, pp. 14-15.

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As for the **third link** pertaining to the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination, PO3 Rael testified that he personally delivered the seized items to the crime laboratory. PO3 Rael also identified the dangerous drug items presented in court as the same items he handed over to PCI Margarita Libres for laboratory examination.⁴² PCI Libres also testified that the letter-request, accompanied by the seized items were submitted to her by PO3 Rael.⁴³

Lastly, for the **fourth link**, although the prosecution presented forensic chemist PCI Libres who testified that the contents of the six (6) plastic sachets marked as A-“AVB-BUYBUST 9/8/14”, B-“AVBBUYBUST 9/8/14”, C-“AVB-BUYBUST 9/8/14”, D-“AVB-BUYBUST 9/8/14”, E-“AVB-BUYBUST 9/8/14” and F-“AVB-BUYBUST 9/8/14” turned over to her by PO3 Rael tested positive for *methamphetamine hydrochloride*, she failed to discuss how the seized items were handled and stored post-examination.⁴⁴ No evidence was presented to show to whom PCI Libres turned over the specimens after they were examined and where and how these specimens were stored prior to presentation in court.

In *People v. Bermejo*,⁴⁵ the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drugs submitted for laboratory examination, viz:

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*.

In sum, the final link, just like the first and second links, had also been breached.

Surely, these lapses in the chain of custody rule cast serious doubts on the identity and the integrity of the *corpus delicti*. The

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⁴² *Id.*

⁴³ Record, p. 89.

⁴⁴ *Rollo*, p. 15.

⁴⁵ G.R. No. 199813. June 26, 2019.

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metaphorical chain did not link at all, albeit it unjustly deprived appellant of his right to liberty. *Mallilin v. People*⁴⁶ ordained:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would 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.

The Court concedes that RA 9165 as amended by RA 10640 contains a saving clause allowing liberality whenever there are compelling reasons to otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.⁴⁷ The Court, however, cannot apply such liberality in this case.

Here,⁴⁸ the prosecution did not at all offer any explanation as for the absence of the investigating officer's testimony, much less, his or her identity. Too, lack of discussion on how the forensic chemist handled the dangerous drugs from the time she took possession of the same until their presentation in court would render the saving clause inapplicable. For this reason, there is no occasion for the proviso "as long as the integrity and the evidentiary value of the seized items are properly preserved", to even come into play.

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 as amended by RA 10640 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.⁴⁸

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⁴⁶ 576 Phil. 576, 587 (2008).

⁴⁷ See RA 10640.

⁴⁸ Supra note 46.

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In cases involving sale of dangerous drugs, life imprisonment to death await violators. Thus, to eradicate wrongful arrests and, worse, convictions, safeguards against abuses of power in the conduct of drug-related arrests must strictly be implemented. The pernicious practice of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.⁴⁹

If the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, the Court must acquit as a matter of right.⁵⁰

WHEREFORE, the appeal is **GRANTED** and the Decision dated September 4, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09189, **REVERSED** and **SET ASIDE**.

Archie Aaron Borromeo y Villanueva is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to: (a) cause the immediate release of Archie Aaron Borromeo y Villanueva from custody unless he is being held for some other lawful cause or causes, (b) and to submit his report on the action taken within five (5) days from notice. Let entry of judgment be immediately issued.

SO ORDERED. *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

By:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁴⁹ *People v. Luna*, G.R. No. 219164, March 21, 2018.

⁵⁰ G.R. No. 230070, March 14, 2018.

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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09189)

The Hon. Presiding Judge
Regional Trial Court, Branch 156
1800 Marikina City
(Crim. Case No. 2014-4444-D-MK)

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
DOJ Agencies Building
Diliman, 1101 Quezon City

Mr. Archie Aaron V. Borromeo (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

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