



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**PEOPLE  
OF THE  
PHILIPPINES,**

Plaintiff-Appellee,

- *versus* -

**G.R. No. 188107**

Present:

LEONARDO-DE CASTRO,  
Acting Chairperson,  
BERSAMIN,  
VILLARAMA, JR.,  
PEREZ,\* and  
REYES, JJ.

**RONALD M. DEL ROSARIO @  
“AGING,”**

Accused-Appellant.

Promulgated:

**DEC 05 2012**

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**DECISION**

**LEONARDO-DE CASTRO, J.:**

For review is the October 28, 2008 Decision<sup>1</sup> of the Court of Appeals in CA-G.R. CR.-H.C. No. 02653, which affirmed the Regional Trial Court's (RTC) September 27, 2006 Decision<sup>2</sup> in Criminal Case No. 03-0300, wherein accused-appellant Ronald M. del Rosario (Del Rosario), also known as Aging, was found guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

\* Per Special Order No. 1385 dated December 4, 2012.

<sup>1</sup> Rollo, pp. 2-13; penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia-Salvador and Arcangelita M. Romilla-Lontok, concurring.

<sup>2</sup> CA rollo, pp. 32-39.

*mm*

On May 6, 2003, Del Rosario was charged before the Las Piñas City RTC, Branch 275 of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The pertinent portion of the Information<sup>3</sup> reads as follows:

That on or about the 26<sup>th</sup> day of April, 2003, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorize[d] by law, did then and there willfully, unlawfully and knowingly sell, deliver, give away to another, distribute or transport 0.03 gram of Methylamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

Del Rosario pleaded not guilty to the charge upon his arraignment on July 3, 2003.<sup>4</sup>

During the pre-trial held on August 7, 2003, the prosecution dispensed with the testimony of Police Inspector Richard Allan B. Mangalip, the Forensic Chemist who examined the evidence related to this case, upon Del Rosario's counsel's stipulation that Mangalip was being presented in court to identify the items he examined, but with the qualification that he had no personal knowledge of the source of such items.<sup>5</sup>

On August 31, 2004, PO2 Rufino Dalagdagan's testimony was likewise dispensed with, upon Del Rosario's counsel's stipulation that PO2 Dalagdagan, if placed on the witness stand, would testify in accordance with the Police Investigation Report, identify Del Rosario as the person he had investigated, and identify the items turned over to him by the arresting officers, but with the qualification that he had no personal knowledge from whom the items were recovered.<sup>6</sup>

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<sup>3</sup> Records, p. 1.

<sup>4</sup> Id. at 14-16.

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

<sup>6</sup> Id. at 42.

During the trial, the prosecution placed on the witness stand PO2 Jerome Mendoza<sup>7</sup> and PO3 Herminio Besmonte.<sup>8</sup> The testimonies of Del Rosario<sup>9</sup> and Saulito Granada<sup>10</sup> were presented by the defense. The testimony of Del Rosario's father, Rolando del Rosario, was also presented by the defense; however, on June 27, 2006, it was ordered stricken off the record<sup>11</sup> for Rolando del Rosario's failure to appear for cross-examination despite notice.

The facts, as summarized by the Court of Appeals, from the records, is as follows:

Around 6:00 o'clock in the evening of April 26, 2003, PO2 Jerome Mendoza, PO2 Virgilio Dolleton and PO3 Herminio Besmonte, while on duty at the Office of the Drug Enforcement Unit of Las Piñas City, received information from a confidential informant about the illegal drug-selling activities of appellant, then known as a certain *alias* "Aging." The place of the illegal drug trade was pinpointed as Atis St., Golden Acres Subdivision, Talon 1, Las Piñas City.

The information was relayed to their Chief, Police Senior Inspector Vicente Vargas Raquion, who, acting on the information, organized a buy-bust team for [Del Rosario]'s entrapment. Chief Raquion provided a One Hundred Peso (₱100.00) Bill as buy-bust money and marked the same with his initials "VVR." After a short briefing, the intended buy-bust operation was recorded in the police blotter, after which, the team, composed of PO3 Besmonte as the poseur buyer, PO2 Mendoza and PO2 Dolleton, was deployed to the target area. The team reached the place at about [9 to]<sup>12</sup> 9:30 in the evening of April 26, 2003. The confidential informant met them there and led PO3 Besmonte to the house of [Del Rosario], while PO2 Mendoza and PO2 Dolleton positioned themselves and watched from a distance of more or less five (5) to six (6) meters. The confidential informant introduced PO3 Besmonte to [Del Rosario] who, at that time, was in front of his house. After talking with [Del Rosario], PO3 Besmonte handed the marked money to [Del Rosario] who took it, and, in turn, gave an item to PO3 Besmonte. The transaction having been consummated, PO3 Besmonte gave a signal by waving his hand. PO2

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<sup>7</sup> TSN, June 9, 2004.

<sup>8</sup> TSN, October 4, 2005.

<sup>9</sup> TSN, February 28, 2006.

<sup>10</sup> TSN, August 9, 2006.

<sup>11</sup> Records, p. 89.

<sup>12</sup> TSN, June 9, 2004, p. 8.

Mendoza and PO2 Dolleton, thus, responded. PO3 Besmonte apprised [Del Rosario] of his constitutional rights while PO2 Mendoza frisked appellant and recovered one (1) pair of scissors, one (1) bamboo clip and a black belt with a knife. [PO3 Besmonte said that upon reaching the office, he marked the plastic sachet with “RMR-April 26, ‘03” before turning it over to PO2 Dalagdagan, the investigator on duty that night.<sup>13]</sup>

[Del Rosario] was brought to the Office of the Drug Enforcement Unit [DEU] of Las Piñas City and the confiscated items, including the sachet containing white crystalline substance, and the ₱100 marked money were turned over to the duty investigator, PO3 Rufino Dalagdagan. [According to PO2 Mendoza,]<sup>14</sup> PO3 Dalagdagan placed [Del Rosario]’s initials “RMR” and the date “April 27, 03” on the confiscated sachet and prepared a request for its laboratory examination. When subjected to qualitative examination at the Southern Police District Crime Laboratory Office, the content of the plastic sachet was found to weigh 0.03 gram and tested positive for *methylamphetamine hydrochloride* or *shabu*, a dangerous drug.

[Del Rosario] interposed the defense of denial. He testified that he was in his house with his wife and his 10-month old child watching television when the three police officers, in civilian clothes, kicked the door open and forcibly entered his house, searched the same, and when they found nothing, handcuffed him for a purportedly fabricated charge of selling shabu. [Del Rosario] further narrated that his father, Rolando Del Rosario, summoned the officials of the Barangay and came to his rescue but [he] was still taken by the police officers. [Del Rosario] added that it was only in front of the Barangay officials that the police officers introduced themselves as such.

At the DEU Office, PO2 Dolleton allegedly asked for money from [Del Rosario] and for a night with [Del Rosario]’s wife in exchange for his release, but [Del Rosario] allegedly refused to give in to the police officer’s demands.

The defense presented another witness in the person of Saulito Granada, who testified that, from a distance of six (6) meters, he saw three (3) persons in civilian clothes carrying firearms inside the house of [Del Rosario]. These three persons allegedly kicked the door of [Del Rosario]’s house, ransacked the house, and arrested [Del Rosario] who was, at that time, wearing only his brief. Granada narrated that [Del Rosario]’s father and the Barangay officials arrived. The police officers allegedly did not introduce themselves and it was the Barangay officials who identified them and mentioned their names.<sup>15</sup> (Citations omitted.)

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<sup>13</sup> TSN, October 4, 2005, p. 15.

<sup>14</sup> TSN, June 9, 2004, p. 16.

<sup>15</sup> *Rollo*, pp. 4-7.

On September 27, 2006, the RTC rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered finding accused Ronald M. del Rosario GUILTY beyond reasonable doubt of Violation of Section 5 Art. II of R.A. 9165 and sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 and suffer the accessory penalty provided for by law and pay the costs.

Let the shabu in this case be sent to the Philippine Drug Enforcement Agency for proper disposition.<sup>16</sup>

In convicting Del Rosario, the RTC found the illegal sale by Del Rosario of the dangerous drug to have been clearly established. Moreover, the RTC rejected Del Rosario's claim that the police officers tried to extort money from him, and ascribed to the police officers the presumption that they performed their duties with regularity.<sup>17</sup>

Del Rosario appealed<sup>18</sup> this decision to the Court of Appeals, which, on October 28, 2008 affirmed the RTC.<sup>19</sup>

The Court of Appeals rebuffed Del Rosario's defenses of denial and extortion in light of the positive testimonies of the police officers and the inconsistent testimony of his only witness as to how the police officers were identified as such. Finding the task of assigning values to the testimony of a witness to belong to the RTC, the Court of Appeals accorded great weight and respect to the RTC's assessment of the witnesses' credibility in the case at bar. The Court of Appeals also agreed with the RTC that in the absence of evidence to the contrary, the police officers are presumed to have performed their duties regularly.<sup>20</sup>

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<sup>16</sup> CA *rollo*, p. 39.

<sup>17</sup> Id. at 38.

<sup>18</sup> Id. at 41.

<sup>19</sup> *Rollo*, p. 12.

<sup>20</sup> Id. at 8-9.

As to Del Rosario's allegation that the validity of the buy-bust operation was doubtful for non-compliance by the police officers with Section 21, Article II of Republic Act No. 9165, the Court of Appeals declared that there was no reason to question the identity of the confiscated dangerous drug in this case, as it was established during trial that the sachet of *shabu* presented in court was the same one recovered from Del Rosario.<sup>21</sup>

Aggrieved, Del Rosario is now before us<sup>22</sup> with the same errors he assigned in his Appellant's Brief,<sup>23</sup> to wit:

I

THE LOWER COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED NOTWITHSTANDING THE POLICE OFFICERS' FAILURE TO REGULARLY PERFORM THEIR OFFICIAL FUNCTIONS.<sup>24</sup>

Del Rosario posits that his guilt was not proven beyond reasonable doubt as he was convicted because of the weakness of his defense, rather than the strength of the prosecution's evidence. He highlighted the inconsistencies in the prosecution witnesses' testimonies, which are material to the establishment of the identity of the dangerous drug allegedly confiscated from him. Del Rosario also points out the non-compliance by

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<sup>21</sup> Id. at 10-11.

<sup>22</sup> Id. at 14-15.

<sup>23</sup> CA *rollo*, pp. 52-72.

<sup>24</sup> Id. at 54.

the police officers with the guidelines in the chain of custody of seized drugs.<sup>25</sup>

### *Issue*

The sole issue in this case is whether or not del Rosario's guilt for the illegal sale of *shabu*, a dangerous drug, was proven beyond reasonable doubt.

### *The Court's Ruling*

After a thorough deliberation, this Court resolves to ***acquit*** Del Rosario for the prosecution's failure to prove his guilt beyond reasonable doubt. This Court finds that the prosecution failed to satisfactorily establish that the plastic sachet of *shabu* presented in court was the same one confiscated from Del Rosario.

As Del Rosario asserts,<sup>26</sup> the Constitution<sup>27</sup> demands that an accused like him be presumed innocent until otherwise proven beyond reasonable doubt.<sup>28</sup> Section 2, Rule 133 of the Rules of Court likewise requires proof beyond reasonable doubt to justify a conviction in a criminal case; otherwise, the accused is entitled to an acquittal.

Del Rosario was charged and convicted for selling methylamphetamine hydrochloride, more popularly known as *shabu*, in violation of Section 5, Article II of Republic Act No. 9165, which provides:

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<sup>25</sup> Id. at 61 and 67.

<sup>26</sup> Id. at 61.

<sup>27</sup> Article III, Section 14(2).

<sup>28</sup> *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 783.

**SEC. 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>29</sup> Simply put, “[in] prosecutions for illegal sale of *shabu*, 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>30</sup>

We now look into pertinent provisions of the governing law and rules. Section 21 of Republic Act No. 9165 provides:

**SEC. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically

<sup>29</sup> *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 597.

<sup>30</sup> *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274-275.



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;

Its Implementing Rules and Regulations state:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/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: 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, further, that non-compliance 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.

While it is true that in many cases<sup>31</sup> this Court has overlooked the non-compliance with the requirements under the foregoing provisions, it did so only when the integrity and the evidentiary value of the seized items had been preserved.

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<sup>31</sup> *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368; *People v. Amansec*, supra note 30 at 594; *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 700-701; *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595; *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 447.

While it is admitted that the police officers failed to conduct an inventory and to photograph the seized *shabu* in Del Rosario's presence immediately after he was apprehended, as required under the above provisions, what creates a cloud on the admissibility of the evidence seized, the plastic sachet of *shabu* in particular, is the failure of the prosecution to prove that the sachet of *shabu* they presented in court was the very same one they confiscated from Del Rosario.

It must be remembered that to successfully prosecute a case of illegal sale of dangerous drugs, it is not enough that the buyer, seller, and consideration for the transaction are identified. It is equally important that the object of the case is identified with certainty. The prosecution must be able to account for each link in the chain of custody over the *shabu*, from the moment it was seized from Del Rosario, up to the time it was presented in court as proof of the *corpus delicti*, "i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction."<sup>32</sup> Elucidating on the importance of the foregoing, this Court, in *People v. Alcuizar*,<sup>33</sup> held:

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails. (Citation omitted.)

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<sup>32</sup> *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 243.

<sup>33</sup> G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,<sup>34</sup> which implements the Comprehensive Dangerous Drugs Act of 2002, defines “chain of custody” as follows:

“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 seized item shall include the identity and signature of the person who held temporary custody of the 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.

In *People v. Guru*,<sup>35</sup> this Court, citing *Malillin v. People*,<sup>36</sup> explained the importance of the chain of custody:

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.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit’s level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of

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<sup>34</sup> Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

<sup>35</sup> G.R. No. 189808, October 24, 2012.

<sup>36</sup> G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

strictness in the application of the chain of custody rule. (Citations omitted.)

This Court has reviewed and scrutinized in detail the testimonies of the prosecution witnesses and found glaring inconsistencies that relate to the identity of the prohibited drug allegedly confiscated from Del Rosario.

The patent inconsistency between the testimonies of PO2 Mendoza and PO3 Besmonte necessarily leads us to doubt that the plastic sachet of *shabu* identified in court is the same one allegedly seized from Del Rosario.

During his testimony, PO2 Mendoza averred that the plastic sachet of *shabu* seized from Del Rosario was marked by PO2 Dalagdagan upon its turn-over by PO3 Besmonte:

**Q. What did PO2 Besmonte do with those items [*i.e.*, the items confiscated from del Rosario]?**

**A. He confiscated the same and gave it to the investigator.**

**Q. What did PO2 Dalagdagan do with the items turned over to him by PO2 Besmonte?**

A. He put markings RMR, which is the initial of the suspect.

Q. What mark did he put on those items?

A. RMR and the date.

Q. If you will again see those items, will you be able to identify them?

A. Yes, Sir.

Q. I am showing to you a brown mailing envelope marked as Exh. "G" which contains a white mailing previously marked as Exh. "G-1" please examine the contents of this white mailing envelope and tell us if you could identify them?

The witness

A. This is the item brought by PO2 Besmonte.

The Court Interpreter

The witness is referring to Exh. "G-2".

Pros. Castillo

Q. Where is the marked place by PO2 Dalagdagan on that item?

The witness

A. **RMR April27,03.**<sup>37</sup> (Emphases supplied.)

When PO3 Besmonte testified, he not only contradicted PO2 Mendoza's testimony, he also contradicted his own statements both in his direct and cross examinations:

On direct examination, PO3 Besmonte testified that he turned over the confiscated plastic sachet of *shabu* to PO2 Dalagdagan, whom he said marked it with "RMR." Later, when he was asked to identify such plastic sachet, he identified the one marked as "RMR-2003-buy-bust" as the same one he seized from Del Rosario:

FISCAL CASTILLO:

Q What happened to the plastic sachet that [Del Rosario] gave you [in] exchange for the P100 bill buy-bust money?

A We turned it over to our Duty-Investigator.

Q What about the buy-bust money itself?

A Same.

Q To whom did you turn over?

A To PO3 Rufino Dalagdagan.

Q What did PO3 Dalagdagan do with those items after receiving them from you?

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<sup>37</sup>

TSN, June 9, 2004, pp. 15-16.

A He marked them and he prepared the Certification to bring them to Crime Lab.

**Q What marking did he put on the plastic sachet containing white crystalline substance?**

A **“RMR”, Sir.**

x x x x

Q Now, the plastic sachet that, according to you, was given to you by Ronald del Rosario in exchange for the P100 bill that you gave him on which later on was marked by PO3 Dalagdagan with the initial “RMR”, now, if that item will be shown to you, will you be able to identify it?

A Yes, Sir.

Q I am showing to you a plastic sachet containing white crystalline substance marked as **“RMR-2003-buy-bust”**, please tell us what is the relation of that item with the item handed to you by [Del Rosario] in exchange for P100 buy-bust money?

A **This is the item that I bought from him.** (Witness is referring to Exh. “G-2”).<sup>38</sup> (Emphases supplied.)

Upon cross-examination, PO3 Besmonte, again made conflicting declarations by stating that he marked the plastic sachet with “RMR-April 26,’03” before turning it over to PO2 Dalagdagan. Moreover, despite a categorical statement that the plastic sachet presented in Court was the same one he seized from Del Rosario, he could not explain why it was marked differently:

ATTY. CALMA:

Q Now, regarding the plastic sachet, to whom did you turn over the plastic sachet after taking it from the accused?

A I kept it, and when we arrived [at] the office, I turned it over to the Investigator on duty.

**Q And you marked the plastic sachet?**

A **Yes, Sir.**

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<sup>38</sup> TSN, October 4, 2005, pp. 9-11.

**Q And what is the marking?**

**A “RMR-April 26, ‘03”.**

Q Are you sure that that was the precise marking of the plastic sachet?

WITNESS

A Yes, Sir.

ATTY. CALMA:

Q I am showing it to you. Is this the sachet you are referring to?

A Yes, Sir.

**Q Can you read the marking of the sachet?**

**A “RMR-27 April 2003”.**

Q But you said you marked it “26”. You mean to say that this was not the plastic sachet recovered from the suspect?

X X X X

COURT:

Q How come that it is “27”?

**A Sir, it was “26”, but it will be the Investigator who will explain why it is “27”.<sup>39</sup> (Emphases supplied.)**

A reading of the foregoing readily shows how confused the police officers were as to the exact marking made on the plastic sachet, and as to who actually marked it. While PO2 Mendoza categorically stated the marking made on the plastic sachet and who did so, PO3 Besmonte, the police officer who had custody of the seized plastic sachet contradicted himself not only upon cross-examination, but also during his direct examination.

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<sup>39</sup> TSN, October 4, 2005, pp. 15-17.

The prosecution was not able to salvage the above inconsistencies with a logical and rational explanation. Moreover, it offered no explanation as to how PO3 Besmonte was able to identify the plastic sachet presented in court as the one he seized from Del Rosario, considering that it contained a marking different from the one he just said he made. PO3 Besmonte's testimony on the matter ended with the statement that the Investigator would be the best person to explain the different marking on the plastic sachet;<sup>40</sup> however, it must be remembered that the Investigator's testimony was already dispensed with early in the trial.

The Court of Appeals' explanation as to why the marking on the plastic sachet presented in court was different from the marking supposedly made by the one who actually seized such plastic sachet has no basis at all from the facts as borne by the records submitted to this Court. Therefore, this Court cannot subscribe to the Court of Appeals' pronouncement that there is no reason to doubt the identity of the subject dangerous drug in this case.

While it is true that Del Rosario's defense of denial is an inherently weak one, it bears stressing that his conviction should be based not on such weak defense, but on the strength of the evidence of the prosecution.<sup>41</sup>

In light of the foregoing, we find merit in Del Rosario's claim that the prosecution failed to discharge its burden of proving his guilt beyond reasonable doubt.

**WHEREFORE**, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02653 dated October 28, 2008

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<sup>40</sup> TSN, October 4, 2005, p. 18.

<sup>41</sup> *Cacao v. People*, G.R. No. 180870, January 22, 2010, 610 SCRA 636, 650.




is **REVERSED** and **SET ASIDE**. Accused-Appellant Ronald M. del Rosario, also known as Aging, is hereby **ACQUITTED** in Criminal Case No. 03-0300 for the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

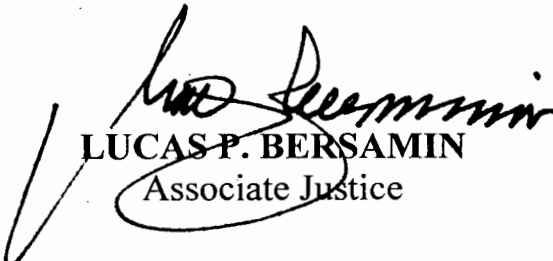
The Director of the Bureau of Corrections is **DIRECTED** to implement this Decision and to report to this Court on the action taken within five (5) days from receipt of this Decision.

No pronouncement as to costs.

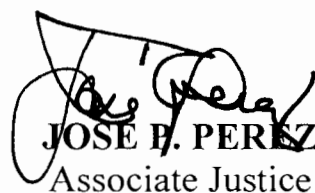
**SO ORDERED.**

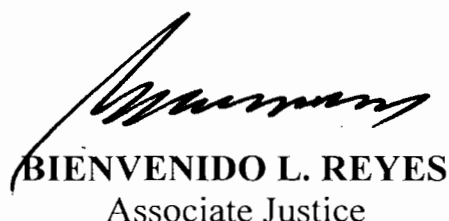
  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice  
Acting Chairperson, First Division

WE CONCUR:

  
LUCAS P. BERSAMIN  
Associate Justice

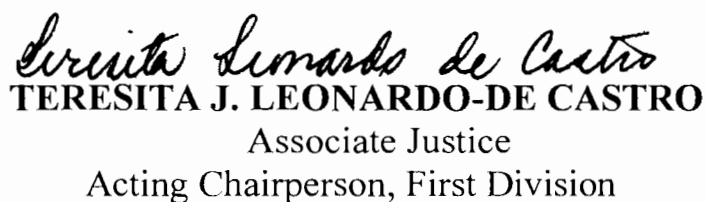
  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE B. PEREZ**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

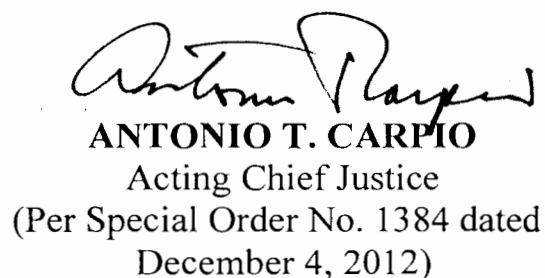
#### ATTESTATION

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.

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson, First Division

#### CERTIFICATION

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

  
**ANTONIO T. CARPIO**  
Acting Chief Justice  
(Per Special Order No. 1384 dated  
December 4, 2012)