



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 203434  
PHILIPPINES,

Plaintiff-Appellee,

Present:

- versus -

MARCELINO VITERBO y  
REALUBIT and RONALD  
VITERBO y REALUBIT,  
Accused-Appellants.

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

JUL 23 2014 *H. H. Cabalag*

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DECISION

PERLAS-BERNABE, J.:

Before the Court is an appeal assailing the Decision<sup>1</sup> dated February 29, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03409 finding accused-appellants Marcelino Viterbo y Realubit (Marcelino) and Ronald Viterbo y Realubit (Ronald) guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act No. (RA) 9165,<sup>2</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

On March 4, 2003, a confidential informant (CI) reported to the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP), Regional Office V that there were persons peddling

<sup>1</sup> *Rollo*, pp. 2-13. Penned by Associate Justice Michael P. Elbinias, with Associate Justices Japar B. Dimaampao and Agnes Reyes-Carpio, concurring.

<sup>2</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.”

illegal drugs in Barangay Tinago, City of Ligao, Albay. Immediately, Police Senior Inspector Dennis Vargas (PS/Insp. Vargas), a member of the Philippine Drug Enforcement Agency (PDEA), formed a team composed of six (6) police officers to conduct a buy-bust operation.<sup>3</sup> Senior Police Officer 4 Fernando Cardona (SPO4 Cardona) of the CIDG<sup>4</sup> was designated as the poseur-buyer, while Police Officer 2 Leonardo Garcia (PO2 Garcia) and Police Officer 2<sup>5</sup> Emerito Zamora (PO2 Zamora) were assigned as arresting officers.<sup>6</sup> A 500-peso bill was marked with the initials “NL” which was then given to SPO4 Cardona.<sup>7</sup>

Together with the CI, the buy-bust team proceeded to the target area (near the house of the accused-appellants along Mabini St., Barangay Tinago), and arrived thereat at around 5 o’clock in the afternoon of the same day. SPO4 Cardona and the CI were tasked to negotiate with them,<sup>8</sup> while the rest of the buy-bust team strategically positioned themselves nearby to observe the transaction.<sup>9</sup>

Upon meeting the accused-appellants, the CI introduced SPO4 Cardona, who expressed interest in buying *shabu* worth ₱500.00. As SPO4 Cardona handed the marked money to Marcelino, the latter told his brother, Ronald, who was standing beside him, to give the *shabu* to SPO4 Cardona. Ronald then reached inside his pocket and produced two (2) transparent plastic sachets allegedly containing *shabu* which he gave to SPO4 Cardona who, upon receipt thereof, executed the pre-arranged signal by scratching his head. Thereupon, PO2 Garcia and PO2 Zamora immediately rushed in, apprehended accused-appellants and apprised them of their constitutional rights. SPO4 Cardona kept the two (2) sachets in his possession and, together with the rest of the buy-bust team, brought accused-appellants, the marked money, and the plastic sachets to the PDEA Office at Camp General Simeon A. Ola, Legazpi City.<sup>10</sup>

At the PDEA Office, SPO4 Cardona marked the plastic sachets with “FTC-1” and “FTC-2,”<sup>11</sup> respectively, while PS/Insp. Vargas prepared the request for laboratory examination<sup>12</sup> (laboratory request) of the substances found in the plastic sachets.<sup>13</sup> SPO4 Cardona and another policeman brought the laboratory request and the plastic sachets to the PNP Regional Crime Laboratory Office 5, but since no chemist was available that evening, they returned to the PDEA Office. The following day, or on March 5, 2003, the

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<sup>3</sup> *Rollo*, p. 3.

<sup>4</sup> Transcript of Stenographic Notes (TSN), November 27, 2003, p. 7.

<sup>5</sup> “Police Officer 3” in some parts of the records.

<sup>6</sup> *Id.* at 8-10.

<sup>7</sup> TSN, November 27, 2003, p. 22; TSN, August 17, 2005, pp. 6-7.

<sup>8</sup> TSN, November 27, 2003, p. 12.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.* at 14-17, 24-25, and 36-37; *rollo*, p. 4.

<sup>11</sup> *Id.* at 31.

<sup>12</sup> Records, p. 7.

<sup>13</sup> *Rollo*, p. 4.

plastic sachets together with the laboratory request were brought by another policeman to the same crime laboratory for examination.<sup>14</sup>

Upon qualitative examination, Police Inspector Josephine Macura Clemen (P/Insp. Clemen), a forensic chemist, found that the contents of the two (2) plastic sachets submitted for analysis, which weighed 0.0932 gram and 0.0869 gram, respectively, yielded positive results for methamphetamine hydrochloride, otherwise known as *shabu*. Her findings were contained in Chemistry Report No. D-089-03<sup>15</sup> dated March 5, 2003.

Subsequently, accused-appellants were charged in an Information<sup>16</sup> dated April 10, 2003 for violation of Section 5, in relation to paragraph (b) of Section 26, Article II of RA 9165, as follows:

That at or about five o'clock in the afternoon of March 4, 2003 at Mabini Street, Barangay Tinago, City of Ligao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, having in their possession, custody and control methamphetamine hydrochloride commonly known as "*shabu*", did then and there willfully, unlawfully and feloniously sell two heat-sealed transparent plastic sachets with a total weight of 0.1801 gram of *shabu*, a prohibited drug, to a poseur-buyer in consideration of the amount of FIVE HUNDRED PESOS (₱500.00) without any authority or permit from the concerned government agency to possess and sell the same.

ACTS CONTRARY TO LAW.

When arraigned, accused-appellants, assisted by counsel, entered a plea of not guilty to the crime charged.<sup>17</sup>

In defense, accused-appellants denied the charges against them and claimed that on March 4, 2003, at around 2 o'clock in the afternoon, four (4) armed men entered their house in Mabini St., Barangay Tinago and introduced themselves as members of the CIDG.<sup>18</sup> The CIDG members then asked Ronald, who had just arrived from Manila early that morning and was then preparing to return that same afternoon,<sup>19</sup> where his brother Marcelino was. When Ronald answered that he was Marcelino's brother, he was slapped, mauled, and handcuffed. Thereafter, the men searched the area and took some of his personal belongings.<sup>20</sup> As the group of men dragged Ronald outside the house, Marcelino arrived. The men asked the latter if he was Marcelino, and when he answered in the affirmative, they mauled him

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<sup>14</sup> See CA *rollo*, p. 86.

<sup>15</sup> Records, p. 9.

<sup>16</sup> Id. at 50-51.

<sup>17</sup> Id. at 70.

<sup>18</sup> See TSN, January 17, 2007, pp. 8-10.

<sup>19</sup> See id. at 6-8.

<sup>20</sup> See id. at 10-12.

as well.<sup>21</sup> They brought the accused-appellants to Camp General Simeon A. Ola, Legazpi City and, the following day, to the Office of the City Prosecutor.<sup>22</sup>

### **The RTC Ruling**

In a Judgment<sup>23</sup> dated March 24, 2008, the Regional Trial Court of Ligao City, Branch 14 (RTC), in Crim. Case. No. 4591, convicted accused-appellants as charged and sentenced each of them to suffer the penalty of life imprisonment and ordered them to pay a fine in the amount of ₱500,000.00.

In convicting accused-appellants, the RTC found that the prosecution was able to establish the elements of “drug-pushing,” namely: (a) the act of selling, trading, administering, dispensing, delivering, giving away to another, distributing, dispatching in transit or transporting; (b) any dangerous drug; and (c) without authority of law. It held that the fact of sale or delivery of the dangerous drug in two (2) plastic sachets was established through the testimonies of SPO4 Cardona, the poseur-buyer, and PO2 Garcia and PO2 Zamora, the arresting officers.<sup>24</sup> Moreover, the RTC found that the testimonies of the prosecution witnesses were clear and substantially straightforward, bereft of any evidence of improper or corrupt motives.<sup>25</sup>

Corollarily, the lack of a written physical inventory, as required under Section 21, Article II of RA 9165, did not affect the prosecution’s case, as it is a formal requirement intended merely to ensure the regularity of the buy-bust operation. Its absence alone cannot impede the case considering that the essential elements of the crime had been established.<sup>26</sup>

On the other hand, the RTC refused to give credence to the defense offered by accused-appellants, finding their testimonies regarding their alleged mauling and unlawful arrest to be highly doubtful. It pointed out that no complaint had been filed nor did the accused-appellants’ family seek the help of the police authorities, which runs counter to the reaction of “persons whose loved-ones have been recent victims of a ‘brutal police frame-up or illegal arrest.’”<sup>27</sup>

Aggrieved, accused-appellants elevated the case to the CA, asserting that the testimonies of the prosecution witnesses contained material inconsistencies with respect to the specific moment when SPO4 Cardona made the pre-arranged signal to indicate that the transaction had been

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<sup>21</sup> See *id.* at 13-15.

<sup>22</sup> See *id.* at 15-18.

<sup>23</sup> CA *rollo*, pp. 29-46. Penned by Presiding Judge Edwin C. Ma-alat.

<sup>24</sup> *Id.* at 42.

<sup>25</sup> *Id.* at 43.

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

<sup>27</sup> See *id.* at 44-45.

consummated, and that the prosecution failed to present the original money bill used for the sale, presenting only the photocopy instead.<sup>28</sup> Likewise, they argued that the identity of the illegal drugs allegedly confiscated from them was not established with moral certainty, in the absence of a physical inventory or photographs thereof. They insisted that the drugs were not marked at the place where they were supposedly seized; hence, the chain of custody thereof was not clearly established. They therefore concluded that these circumstances cast serious doubt that a sale of illegal drugs transpired.<sup>29</sup>

### **The CA Ruling**

In a Decision<sup>30</sup> dated February 29, 2012, the CA affirmed accused-appellants conviction, finding that SPO4 Cardona's positive identification of them as the sellers of *shabu* during the conduct of the buy-bust operation prevails over their defense of denial, which was inherently weak.<sup>31</sup> Debunking accused-appellants' argument that there were inconsistencies in the testimonies of the prosecution witnesses, the CA held that the purported inconsistencies even strengthened rather than diminished the prosecution's case as they erased suspicions of a rehearsed testimony.<sup>32</sup>

Neither did the failure of the prosecution to present the original money bill used in the transaction affect its case, considering that the illegal drugs subject of the buy-bust operation were duly presented and identified in court.<sup>33</sup>

Finally, the CA held that the failure of the buy-bust team to conduct a physical inventory as well as take photographs of the confiscated items, as required under Section 21, Article II of RA 9165, was not fatal for as long as the integrity and evidentiary value of the said items were properly preserved, which it found to be so in this case. Likewise, the marking of the items at the PDEA Office instead of the place of confiscation is of no moment, as "marking" also contemplates one made at the nearest police station or office of the apprehending team. The CA also found that there was no break in the chain of custody of the illegal drugs.<sup>34</sup>

Dissatisfied, accused-appellants are now before the Court praying for their acquittal through the instant appeal.

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<sup>28</sup> Brief for the Accused-Appellant; id. at 73-75.

<sup>29</sup> See id. at 75-78.

<sup>30</sup> *Rollo*, pp. 2-13.

<sup>31</sup> Id. at 7.

<sup>32</sup> Id. at 8.

<sup>33</sup> See id. at 9.

<sup>34</sup> See id. at 10-11.

### The Issue Before the Court

The sole issue to be resolved by the Court is whether or not accused-appellants are guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of RA 9165.

### The Court's Ruling

The appeal has merit.

In every prosecution for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must concur: (a) the identities of the buyer and seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it.<sup>35</sup> As the dangerous drug itself forms an integral and key part of the *corpus delicti* of the crime, **it is therefore essential that the identity of the prohibited drug be established beyond reasonable doubt.**<sup>36</sup> Thus, **the prosecution must be able to account for each link in the chain of custody over the dangerous drug,** from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*.<sup>37</sup> Elucidating on the custodial chain process, the Court, in the case of *People v. Cervantes*,<sup>38</sup> held:

As a mode 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. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone 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. x x x.<sup>39</sup>

The chain of custody requirement “ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed.”<sup>40</sup>

In relation thereto, Section 21(1), Article II of RA 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, *viz.*:

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<sup>35</sup> *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 697.

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

<sup>37</sup> See *People v. Del Rosario*, G.R. No. 188107, December 5, 2012, 687 SCRA 318, 329.

<sup>38</sup> 600 Phil. 819 (2009).

<sup>39</sup> *Id.* at 836.

<sup>40</sup> *People v. Adrid*, *supra* note 35, at 697.

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 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.

x x x x

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.***

x x x x (Emphasis supplied)

While non-compliance with the prescribed procedural requirements will not automatically render the seizure and custody of the items void and invalid, this is true only when (a) there is a justifiable ground for such non-compliance, **and** (b) the integrity and evidentiary value of the seized items

are properly preserved.<sup>41</sup> Hence, any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated items.

A punctilious examination of the records in this case shows that the prosecution failed to establish the identity of the substance allegedly confiscated from the accused-appellants, militating against a finding of guilt beyond reasonable doubt.

SPO4 Cardona, the poseur-buyer who transacted with accused-appellants, testified that he kept in his possession and custody the two (2) plastic sachets containing the illegal substance from the time they were confiscated up to the time that he marked them in the PDEA Office. Together with a companion, he brought the confiscated items as well as the laboratory request to the PNP Regional Crime Laboratory Office 5 in Camp General Simeon A. Ola, Legazpi City on the evening of March 4, 2003. However, he was unable to deliver the confiscated items and the laboratory request because he was informed that there was no chemist to conduct the examination at the time. As such, he decided to return to the PDEA Office, bringing with him the items and the laboratory request. The following day, someone else delivered the confiscated items and the laboratory request to the crime laboratory. On direct examination, SPO4 Cardona testified:<sup>42</sup>

PROSECUTOR VASQUEZ:

X X X X

Q: Now, who brought that request to the PNP Crime Laboratory together with the alleged *shabu*?

SPO4 CARDONA:

A: At that time when we brought that request together with the item, I was with another person but I could not remember anymore the said person because during that time I was already tired.

Q: What time did you go to the Crime Laboratory, what time?

A: Around 7:30.

Q: Were you able to deliver the request as well as the suspected methamphetamine hydrochloride?

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<sup>41</sup> *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 813.

<sup>42</sup> TSN, November 27, 2003, pp. 18-20.



- A: We were not able to give the item together with the request letter because no one was there anymore although there were people there but the chemist was no longer there. So, we have to return back the following morning.
- Q: You mean, the persons who were inside the Crime Laboratory were not authorized to receive the request?
- A: They were authorized to do that however, during that time the chemist was not there.
- Q: You said that the following morning you returned back to the PNP Crime Laboratory, that was already March 5 because you conducted the buy-bust operation March 4, is it not?
- A: Yes, Sir.
- Q: What time did you go back to the Crime Laboratory?
- A: More or less 9:00 o'clock in the morning.
- Q: And who was the person who delivered the request as well as the substance to be examined?
- A: The following day, **I did not have any participation in the handing over of the request as well as the alleged *shabu*. It was member of the PDEA and CIDG who brought said request and alleged *shabu* to the Crime Laboratory.**
- Q: Now, you were not one of those who brought the request as well as the suspected drug?
- A: Yes. That night when we went there, I was there together with another person but the following day, I was not with them anymore.

x x x x (Emphasis supplied)

Hence, while SPO4 Cardona initially had custody of the seized items prior to its turnover to the crime laboratory, it is clear that he had already relinquished possession thereof to another person and that he was not the person who successfully delivered them to the crime laboratory. His testimony on cross-examination is revelatory.<sup>43</sup>

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<sup>43</sup> Id. at 30-31.

ATTY. BARREDA:

x x x x

Q: From the Crime Laboratory, you were still in possession of the specimens, is that correct?

SPO4 CARDONA:

A: Yes, Sir.

Q: Then you went back to the PDEA Office at Camp Ola, is that correct?

A: Yes, Sir.

Q: When you arrived at the PDEA Office at Camp Ola, you were still in possession of the two (2) plastic sachets, is that correct?

A: Yes, Sir after that I turned it over to the PDEA member.

Q: To whom did you turn over that particular specimens?

A: **Captain Vargas.**

Q: So, Captain Vargas was in possession of the two (2) plastic sachets after you turned it over to him?

A: Yes, Sir.

Q: Did Captain Vargas issue any receipt to you acknowledging receipt of those two specimens?

A: No, Sir.

x x x x (Emphasis supplied)

From the foregoing testimony, it is clear that the confiscated items changed hands before they were delivered to the crime laboratory, *i.e.*, from SPO4 Cardona to **“Captain Vargas” who, unfortunately, did not testify in this case in order to shed light on what happened to the seized items when they were turned over to his possession, or at the very least, to clarify if he was the person who successfully delivered the plastic sachets together with the laboratory request to the crime laboratory.** His testimony in this regard is significant, considering that the laboratory request,<sup>44</sup> on its lower left portion, reflects that it **was delivered by a certain**

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<sup>44</sup> Records, p. 7.

**“PO2 Zamora” who, the Court notes, was likewise not presented in court to explain his role in the chain of custody of the seized items.** What was established, instead, was that the seized items and the laboratory request were received by the clerk of the crime laboratory, who turned them over to P/Insp. Clemen, the forensic chemist who performed the qualitative examination on the substances. Part of P/Insp. Clemen’s testimony on direct examination reads:<sup>45</sup>

PROSECUTOR VASQUEZ:

Q: Now, can you tell this Honorable Court how it came about that you were, that you came in possession of these two (2) specimens submitted to you for chemical examination?

P/INSP. CLEMEN:

A: It was given to me by the duty receiving clerk on that day in the person of Ofelia Garcia, Sir.

Q: When you said receiving clerk, which office are you referring to?

A: Receiving clerk of our office, Regional Crime Laboratory, Region V.

x x x x

Q: All right. Now, was there any information relayed to you by the receiving clerk regarding these two (2) plastic sachets, these specimens?

A: Yes, Sir. She told me that she received the specimens and she turned it over to me together with the letter request coming from the PDEA of Region V, Sir.

Q: Why, what do you mean by PDEA?

A: Philippine Drug Enforcement Agency.

Q: All right. Who was the signatory of that letter requesting you for chemical examination?

A: It was Dennis Vargas.

x x x x

Likewise, the following transpired during P/Insp. Clemen’s cross-examination:<sup>46</sup>

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<sup>45</sup> TSN, September 18, 2003, pp. 13-14.

<sup>46</sup> TSN, September 18, 2003, pp. 21-22.

ATTY. BARREDA: Now, again Madam Witness, the specimens, specimen A as well as B were turned over to your office not directly, rather were turned over to you by the requesting party, am I right?

P/INSP. CLEMEN:  
A: By the receiving clerk, Sir.

Q: No, I mean the specimens A and B were turned over to you by the requesting party?

PROSECUTOR VASQUEZ: What do you mean by requesting party?

P/INSP. CLEMEN:  
A: But not directly turned over to me by the –

PROSECUTOR VASQUEZ: What do you mean by requesting party? The one requested for the chemical examination?

ATTY. BARREDA: The party who requested for the chemical examination of the specimens.

PROSECUTOR VASQUEZ: Well, according to the witness from the PDEA.

ATTY. BARREDA: Precisely, Your Honor I am asking the witness whether her office received the specimens from the requesting party.

PROSECUTOR VASQUEZ: Obviously there was already an answer. **The specimen was turned over by the PDEA to the receiving clerk. The receiving clerk gave it to her for examination.**

x x x x (Emphasis supplied)

Based on the foregoing testimonies, therefore, it has been established that P/Insp. Clemen received the plastic sachets from their clerk, Ofelia Garcia (Garcia), who, in turn, accepted it together with the laboratory request from a representative of the PDEA. **However, the records are devoid of evidence to indicate the PDEA member/agent who specifically delivered the items to her.**

Clearly, while the custodial link began and ended with SPO4 Cardona, there were substantial gaps in the chain of custody of the seized items, particularly the events that transpired from the time the items left the hands of SPO4 Cardona on the night of March 4, 2003 and turned over to the possession of “Captain Vargas,” as well as the identity of the PDEA agent who brought them together with the laboratory request to Garcia, the receiving clerk of the crime laboratory, in the morning of the following day. While the laboratory request was prepared and signed by PS/Insp. Vargas, whom the Court reasonably presumes to be the same “Captain Vargas” referred to in SPO4 Cardona’s testimony, there is dearth of evidence showing that he was the same person who brought the items to Garcia, taking into consideration the fact that the laboratory request accompanying the items was signed/delivered by “PO2 Zamora.” **These are crucial missing links in this case which should have been clearly accounted for in order to establish the integrity and evidentiary value of the seized items.**

The prosecution’s case is further weakened by the fact that the seized items were delivered not on the same day of the buy-bust operation, **but only the following day.** To the Court’s mind, the considerable amount of time that had transpired from the conduct of the buy-bust operation until the same were brought for laboratory examination, especially when viewed together with the above-mentioned considerations, figures into a gaping hiatus in the chain of custody of the said items, which is extremely fatal to the cause of the prosecution.

Thus, in the light of the foregoing, the Court concludes that there exists reasonable doubt on the integrity and evidentiary value of the confiscated items, necessitating therefor strict compliance with the provisions of Section 21, Article II of RA 9165. As it has been established that there was non-compliance with its provisions, *i.e.*, that there was no physical inventory or photographs of the seized evidence, nor was there any representative from the media, or the Department of Justice, or any elected public official present during the subject seizure and confiscation, it is therefore clear that the identity of the prohibited drugs had not been established by proof beyond reasonable doubt, hence, rendering improper accused-appellants’ conviction. Verily, the presentation of the drugs which constitute the *corpus delicti* of the crime calls for the necessity of proving with moral certainty that they are the same seized items.<sup>47</sup> Failing in which, the acquittal of the accused on the ground of reasonable doubt becomes a matter of right.<sup>48</sup>

**WHEREFORE,** the appeal is **GRANTED.** Accused-appellants Marcelino Viterbo y Realubit and Ronald Viterbo y Realubit are hereby **ACQUITTED** of the crime of violation of Section 5, Article II of Republic


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<sup>47</sup> See *People v. Almorfe*, G.R No. 181831, March 29, 2010, 617 SCRA 52, 61.

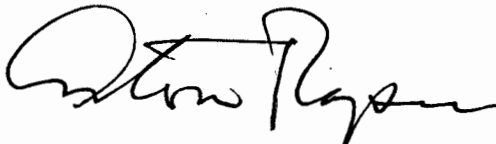
<sup>48</sup> See *Mallillin v. People*, 576 Phil. 576, 593 (2008).

Act No. 9165. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held for any other cause. Accordingly, the Decision dated February 29, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 03409 is **REVERSED** and **SET ASIDE**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

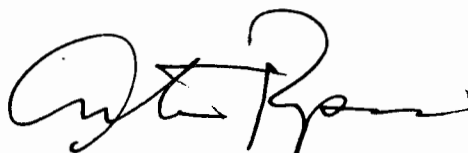
  
**ARTURO D. BRION**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL REREZ**  
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**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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

**MARIA LOURDES P. A. SERENO**

Chief Justice