



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 193478

Present:

- versus -

SERENO, *CJ*, Chairperson,  
VELASCO,<sup>1</sup>  
LEONARDO-DE CASTRO,  
BERSAMIN, and  
REYES, *JJ*.

RODOLFO P. FERNANDEZ,  
NELSON E. TOBIAS, and FRANK  
R. BAAY,

Accused,

Promulgated:

NELSON E. TOBIAS,  
Accused-appellant.

**JUN 23 2014**

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DECISION

SERENO, *CJ*:

This is an appeal filed by accused-appellant Nelson E. Tobias from the Decision<sup>2</sup> dated 28 August 2009 issued by the Special Third Division and from the Resolution<sup>3</sup> dated 9 February 2010 issued by the Special Former Special Third Division of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02838.

THE ANTECEDENT FACTS

Rodolfo P. Fernandez, Nelson E. Tobias, Frank R. Baay, Joel B. Uy, Eduardo D. Manuel and Nenita P. Manuel were charged with violation of Section 5, in relation to Section 26, Article II of Republic Act (R.A.) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002. The Information<sup>4</sup> reads:

<sup>1</sup> Designated member in lieu of Associate Justice Martin S. Villarama due to prior action in the Court of Appeals per Raffle dated 27 September 2010.

<sup>2</sup> *Rollo*, pp. 2-19; Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Pampio A. Abarintos.

<sup>3</sup> *CA rollo*, pp. 496-497; Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Remedios Salazar-Fernando and Pampio A. Abarintos.

<sup>4</sup> *Id.* at 17.

That on or about the 22<sup>nd</sup> day of June 2004 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, conspiring and confederating together and mutually helping and aiding one another, did then and there, willfully, unlawfully and feloniously sell and deliver or distribute to a PDEA poseur-buyer one (1) kilo of white powder substance which was found positive to the test of cocaine, for an agreed amount of Two Million Pesos (P2,000,000.00), Philippine Currency without the corresponding license or prescription, in violation of the above cited law.

CONTRARY TO LAW.<sup>5</sup>

All the accused pleaded not guilty to the charge.<sup>6</sup>

### **PROSECUTION'S VERSION**

The prosecution presented eight witnesses, namely: (1) Police Inspector (P/Insp.) Antonietta Abillonar of the Philippine National Police (PNP) Crime Laboratory; (2) Philippine Drug Enforcement Agency (PDEA) operatives, Senior Police Officer (SPO) 3 Pedro Barbero, (3) Police Senior Inspector (P S/Insp.) Prospero Bona; (4) Police Officer (PO) 2 Martin Francia; (5) PO1 Rogelio Hernando; (6) SPO1 Catalino Gonzales, Jr.; (7) PO1 Narciso Padua; and (8) P S/Insp. Sandra Decena Go of the PNP Crime Laboratory.

Their testimonies reveal that on 16 June 2004, PO1 Padua met with the accused Fernandez, a retired Makati City police at the latter's house to negotiate Fernandez's possible surrender of 150 kilos of cocaine in exchange for a monetary reward. The two were known to each other due to their past positions in the police force. Not satisfied with the monetary award being offered, Fernandez instead asked Padua to find a buyer of the cocaine. Pretending to have a buyer, Padua asked for samples. Hence, on the night of 20 June 2004, Fernandez called up to tell him to go to the office of the Eagles of Makati on 21 June 2004 to receive the samples. The samples given by Fernandez were delivered to Bona, who brought it to a forensic chemist at the crime laboratory for examination. They turned out to be cocaine. Bona then formed a buy-bust team composed of Barbero, Hernando, and Gonzales as back-ups and Padua as the poseur-buyer. Also prepared was boodle money consisting of cut newspapers and photocopies of ₱1,000 bills supposedly amounting to ₱2 million, which was to be used as buy-bust money.<sup>7</sup>

On the morning of 22 June 2004, the team went to the house of Fernandez on board two vehicles and parked 20 meters away. Padua alighted, took a taxi and proceeded to the house where Fernandez was

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<sup>5</sup> Id.

<sup>6</sup> Records, pp. 40, 42, 50.

<sup>7</sup> *Rollo*, pp. 4-5.

waiting. The latter told him to wait because the person bringing the cocaine had not yet arrived. Twenty minutes after, a car with three persons on board stopped in front of the house and one of them, later identified as Tobias, alighted carrying a bag. Tobias, Fernandez and Padua went inside while the car, with the two remaining persons on board, left.<sup>8</sup>

Inside the house, Tobias showed the cocaine and gave it to Padua, while the latter handed the boodle money to the former. After the exchange, Padua sent missed calls to the team through his cellphone, the prearranged signal that the sale had been consummated. The team rushed to the house and arrested Fernandez and Tobias. The boodle money was found in the latter's possession. When interrogated, Tobias admitted that the two other persons in the car were Baay and Uy, who were waiting for him at the nearby McDonald's restaurant. The police officers went to the restaurant and arrested both men. Upon further interrogation, Fernandez and Tobias told the police that the cocaine came from Cagayan Valley and was brought to Manila by the spouses Manuel, who at that time were staying at the house of Tobias in Fort Bonifacio. The police proceeded to the identified house and arrested the spouses. A forensic chemist examined the seized evidence which yielded a positive result for cocaine.<sup>9</sup>

#### **DEFENSE'S VERSION**

Accused Fernandez<sup>10</sup> interposed the defense of denial. He asserted that he had invited Padua to help facilitate the licensing of the former's firearm. Upon learning that Padua had been assigned to PDEA, Fernandez asked him about the reward money if someone surrendered cocaine to PDEA. Padua asked for a sample as he handed him a brochure, "Operation Private Eye," in which the reward system for the surrender of drugs was spelled out. Fernandez supposedly relayed this information to Tobias and told the latter to bring samples. On 20 June 2004, Tobias said that he would arrive with the cocaine the next day. Fernandez then scheduled their meeting at his house on 21 June 2004. Padua arrived at 8:00 a.m., while Tobias and his friend "Mar" arrived an hour later. Allegedly, Fernandez asked if they brought the drugs, and Tobias answered in the affirmative. Meanwhile "Mar" brought out a wrapped item and gave it to Padua, who eventually left with the sample for testing. On the evening of the same day, Padua allegedly called up Fernandez and informed him that the item had been found positive for cocaine. The latter immediately told Tobias to bring the 150-kilo cocaine to be surrendered to Padua the following morning.

At 9:00 a.m. the following morning, Tobias arrived at the house of Fernandez. Padua, along with a companion, arrived looking for "Mar." Upon learning that "Mar" was not around, Padua poked a gun at both Tobias and Fernandez, handcuffed them, and placed

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<sup>8</sup> Id. at 5-6.

<sup>9</sup> Id. at 6.

<sup>10</sup> CA *rollo*, pp. 43-44.

them under arrest. The other PDEA operatives arrived and searched the house for the drugs, but Fernandez argued that it was with “Mar” who had not arrived. Padua insisted that he should tell them where “Mar” was, but Fernandez did not know. The latter also claimed that there was no cocaine confiscated from his house on 22 June 2004.

Nelson Tobias<sup>11</sup>, on the other hand, claimed having known Padua for a long time, but denied having knowledge of the existence of the 150 kilos of cocaine. Tobias also testified that he had accompanied his friend, PO Marino Manuel, to Fernandez’s house. They were supposed to meet Fernandez and Padua. Tobias was eventually told that the substance was really cocaine, and that he should bring the remaining stuff to be surrendered the following morning. He told Marino Manuel about the meeting and both agreed to meet at the designated place. When Tobias met with Fernandez the following morning, Padua and the other operatives arrived. They immediately looked for Marino Manuel, but he failed to show up. Tobias and Fernandez were arrested. Tobias claimed that his wallet, wrist watch, driver’s license, firearm license, ATM card and .45 cal pistol were confiscated by the PDEA operatives.<sup>12</sup>

After Tobias was arrested, he was brought inside a parked van and interrogated regarding his companions. He identified one of them as Joel Uy, whose name was in the phone book of the mobile phone confiscated from the former. The police officers then began contacting Joel Uy and asking about the whereabouts of Frank Baay. Thus, Tobias brought them to a McDonald’s branch along Boni Avenue, where they nabbed Baay and later, Joel Uy, whom they asked to return to that place. Thereafter they were all brought to the PDEA office in Quezon City, where they were investigated.<sup>13</sup>

Tobias admitted that he was a member of the Philippine Air Force, but that he had gone AWOL when he went to Japan to work.<sup>14</sup> He denied that Padua showed him a belt bag containing money as payment for the cocaine.<sup>15</sup>

Meanwhile, Frank Baay alleged that he was at the McDonald’s branch located at the corner of Boni and Barangka Streets to meet Joel Uy. The latter was supposed to give him the price quotation for a glass door and panel to be installed at the house of Baay’s neighbor. Around ten o’clock in the morning, Joel Uy arrived and invited Baay for a ride, as the former would just drop off a friend at a place nearby. When Baay boarded the car, he was introduced by Joel Uy to Nelson Tobias, the friend who later dropped off on Fabella St., after which they returned to McDonald’s. But after their brief conversation, Joey Uy left while Baay stayed behind to wait for a

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<sup>11</sup> Id. at 44.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id. at p. 45.

<sup>15</sup> Id.

friend from whom Baay would borrow money to pay for the latter's electric bills. While waiting for that friend, however, Baay was arrested by operatives from PDEA.<sup>16</sup>

For his part, Joel Uy<sup>17</sup> claimed to be a businessman engaged in contracting and installing glass windows, aluminum panels and aquariums. He admitted owning the green Mazda car driven by Nelson Tobias when the latter went to the house of Fernandez at No. 19 Fabella St., Mandaluyong City, at about ten o'clock in the morning of 22 June 2004. Joel Uy also admitted that he and Baay were also in that car driven by Tobias, who alighted upon reaching the destination. Joel Uy then took the wheels, made a U-turn and returned to McDonald's to drop off Baay. The latter proceeded to Malate to meet Engineer Arnel Alarcon, Paul Peteros and Wilson Segueria. While he was in Malate, Baay called and texted Joel Uy to ask him to come over. Past 2:00 p.m. the latter returned to McDonald's to look for Baay. Someone whom he later identified as Padua poked a gun at him. Joel Uy testified later that Padua took his car key, cell phone, wrist watch and wallet, which had not been returned to him until now.<sup>18</sup>

Finally, Eduardo Manuel<sup>19</sup> claimed that when he was arrested by Barbero, Bona and Hernando of PDEA, he was with his wife inside the house of Nelson Tobias in Fort Bonifacio. Prior to that date, he had known Tobias for four years, but met Fernandez, Baay and Uy only for the first time on that same date at the PDEA office. Earlier that day, he and his wife had just arrived at the house of Tobias from their hometown in Cagayan Valley. He was accompanying his wife, who was applying for a job. While he was resting in the living room, he heard someone knocking on the door. He opened it and three armed men entered introducing themselves as members of the police, whom he later identified as Hernando, Bona and Barbero. Then they poked him with their guns and searched the house looking for Marino Manuel. When Eduardo told them that Marino Manuel was his cousin, they got mad. They handcuffed him, brought him to the waiting car and left. Not long after, they decided to return to the house of Tobias because somebody said, "*Pare balikan natin ang babae dahil sigurado akong nanduon ang pera.*" Thus, they also took Eduardo's wife, and the two of them were brought to the PDEA headquarters in Quezon City.

### THE RULING OF THE RTC

The Regional Trial Court (RTC), Branch 214 of Mandaluyong City, rendered its Decision<sup>20</sup> dated 16 February 2007, the dispositive portion of which reads:

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 45-46.

<sup>20</sup> Id. at 40-50; Penned by Judge Edwin D. Sorongon.

**WHEREFORE**, judgment is hereby rendered as follows:

(a) accused **Rodolfo Fernandez, Nelson Tobias, Joel Uy and Frank R. Baay** are hereby found **guilty beyond reasonable doubt** of unlawfully selling, delivering, distributing one (1) kilo of cocaine in violation of Section 5, in relation to Section 26 of Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of TWO MILLION (P2,000,000.00) PESOS each**; and

(b) accused **Eduardo D. Manuel and Nenita P. Manuel** are hereby **ACQUITTED** for insufficiency of evidence and are hereby ordered **RELEASED** immediately from detention unless detained for some other legal cause or causes.

Further, the cocaine taken and seized from the accused during the aforesaid operation are forfeited and confiscated in favor of the Government and shall be turned over to the PDEA pursuant to law for proper disposal without delay. Likewise, the green Mazda car used by accused in the perpetration of the crime is ordered confiscated and forfeited in favor of the Government, and the evidence custodian of the said vehicle is directed to turn over the same to this court for its scheduled auction pursuant to Section 20, Article II of R.A. 9165.

SO ORDERED.<sup>21</sup>

Pending the appeal of Fernandez, Tobias, and Baay, Fernandez died of cardiac arrest on 22 February 2008. His death resulted in the dismissal of his appeal on 27 June 2008,<sup>22</sup> insofar as he was concerned, in a Resolution<sup>23</sup> dated 12 January 2011 issued by the Supreme Court Third Division. Henceforth, the appeal pertained only to Tobias and Baay.

In his Brief,<sup>24</sup> Tobias claimed that the arresting officers failed to comply with the chain-of-custody requirement and to preserve the integrity and evidentiary value of the seized dangerous drug.<sup>25</sup> On the other hand, Baay claimed in his Brief<sup>26</sup> that the prosecution had failed to establish the identity of the cocaine, as well as the whereabouts and the identity of the boodle money.<sup>27</sup>

### **THE RULING OF THE CA**

The CA affirmed the ruling of the RTC.

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<sup>21</sup> Id. at 50.

<sup>22</sup> Id. at 182.

<sup>23</sup> *Rollo*, pp. 55-56.

<sup>24</sup> *CA rollo*, pp. 297-314.

<sup>25</sup> Id. at 299.

<sup>26</sup> Id. at 197-267.

<sup>27</sup> Id. at 207.

For failure of co-accused-appellant Frank Baay to file a Petition before the Supreme Court from the CA Resolution dated 9 February 2010 denying his Motion for Reconsideration, the CA Decision became final and executory on 27 February 2009. In a Resolution<sup>28</sup> dated 31 May 2010, Partial Entry of Judgment was ordered issued by the CA as far as he was concerned.

Hence, this appeal solely concerning Tobias on the issue of the police officers' noncompliance with the chain-of-custody requirement. This issue, stated in his Brief and reiterated in his Supplemental Brief,<sup>29</sup> has been brought before this Court.

### **THIS COURT'S RULING**

We sustain the conviction of accused-appellant Nelson Tobias.

As stated in the Information, the accused were charged not only with the sale of cocaine but also with the delivery and distribution thereof, which is committed by the mere delivery of the prohibited drug. The consideration therefor is of no moment.<sup>30</sup> The law has defined "deliver" as "[a]ny act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration."<sup>31</sup> Upon a careful review of the records, we find that the elements of the crime as stated above were proven by the prosecution.

Padua clearly and convincingly testified that Fernandez had agreed to sell or deliver the cocaine to the former. This testimony, complemented by the testimonies of the other police officers, provided a clear picture of the transaction as well as the roles of Fernandez, Tobias, Baay and Uy. As observed by the trial court, Padua "testified in a clear, straightforward manner and despite the rigorous cross-examination by the defense counsels, did not waver or hesitate in his testimony, a clear proof that he was telling the truth."<sup>32</sup>

The accused failed to destroy the credibility of the police officers. They failed to show a plausible reason or ill motive on the part of the arresting officers to falsely impute to them such a serious and unfounded charge. What the accused offered were merely denials and allegations of frame-up. But these allegations are invariably viewed by this Court with disfavor, for they can easily be concocted but are difficult to prove.<sup>33</sup> Further, their bare denials were not proven by convincing evidence. Hence, full faith and credit are accorded to the police officers, for they are presumed

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<sup>28</sup> Id. at 503.

<sup>29</sup> *Rollo*, pp. 56-63.

<sup>30</sup> *People v. Eugenio*, 443 Phil. 411 (2003).

<sup>31</sup> R.A. 9165, Art. I, Sec.(3)(k).

<sup>32</sup> *CA rollo*, p. 46.

<sup>33</sup> *Espano v. CA*, 351 Phil. 798, 805 (1998).

to have performed their duties in a regular manner in the absence of proof to the contrary.<sup>34</sup>

The accused, too, in their attempt to discredit the police officers' testimonies, point to inconsistencies. In any event, we have time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not actually touching upon the central fact of the crime do not impair their credibility. Instead of weakening their testimonies, these inconsistencies tend to strengthen their credibility, because they discount the possibility of their being rehearsed.<sup>35</sup>

Meanwhile, in the present Petition, Tobias harps solely and exclusively on the absence of compliance with the chain-of-custody rule.

The rule on the chain of custody under R.A. 9165,<sup>36</sup> together with its implementing rules and regulations (IRR),<sup>37</sup> expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time these items were seized from the accused until the time they were presented in court.<sup>38</sup>

The rule also requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent claims it to be.<sup>39</sup> This requirement is essential to obviate the possibility of substitution, as well as to ensure that doubts regarding the identity of the evidence are

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<sup>34</sup> *People vs. Marcos*, 263 Phil. 853 (1990).

<sup>35</sup> *People vs. Bagawa*, 442 Phil. 245, 250 (2002).

<sup>36</sup> **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:

1.) The apprehending team having initial custody or 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 copy thereof.

<sup>37</sup> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 provides the definition of the concept of "chain of custody" as follows:

b. "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.

<sup>38</sup> *People v. Bautista*, G.R. No. 177320, 22 February 2012, 666 SCRA 518, 533.

<sup>39</sup> *Sales v. People*, G.R. No. 191023, 6 February 2013, 690 SCRA 141.



removed. The rule is meant to ensure the monitoring and tracking of the movements and custody of the seized prohibited item – from the accused, to the police, to the forensic laboratory for examination, and finally to its presentation in evidence in court. Ideally, the custodial chain would include testimony about every link in the chain or movement of the illegal drug, from the moment it is seized until it is finally adduced in evidence.<sup>40</sup> It cannot be overemphasized, however, that testimony supporting a perfect chain is almost always impossible to obtain.<sup>41</sup>

We have held that the failure of the prosecution to show compliance with the procedural requirements provided in Section 21 of Article II of R.A. 9165 and its IRR is not fatal.<sup>42</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.<sup>43</sup> As long as the chain of custody remains unbroken, the guilt of the accused will not be affected.<sup>44</sup>

A careful scrutiny of the records reveals – through testimonial, documentary and object evidence – that the chain-of-custody requirement was not broken.

The trial court notes that when SPO1 Padua,<sup>45</sup> who “testified in a clear, straightforward manner and despite the rigorous cross-examination by the defense counsels, did not waver or hesitate in his testimony,”<sup>46</sup> was asked how the evidence was preserved, he stated as follows:

A: Immediately upon confiscation of the said evidence it was turned over to the possession of Captain Bona and delivered to the Philippine National Crime Laboratory for examination and the PNCL is the one who holding [sic] the cocaine, sir. <sup>47</sup>

P S/Insp. Prospero Bona also took the witness stand and narrated how the seized item was handled as follows:

Q: Immediately after the taking from Tobias, what did you do to the item?

A: SPO1 Padua gave me the item, sir.

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<sup>40</sup> Id.

<sup>41</sup> *Castro v. People*, G.R. No. 193374, 15 August 2011, 655 SCRA 431, 440.

<sup>42</sup> *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521, citing *People v. Rivera*, 590 Phil. 894 (2008).

<sup>43</sup> Id. at 521, citing *People v. Del Monte*, 575 Phil. 576 (2008).

<sup>44</sup> *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 469-470, citing *People v. Rosialda*, supra note 38, at 522.

<sup>45</sup> TSN, 19 August 2004, pp. 22-27.

<sup>46</sup> CA rollo, p. 46.

<sup>47</sup> Rollo, p. 13.

A: x x x. I ordered the investigator to take hold of the items because the team leader is not the one who handles the evidences [sic], it is the office[r] on case. It was the investigator who take possession of the items, sir.<sup>48</sup>

SPO1 Catalino Gonzales, Jr.,<sup>49</sup> the investigator of the case, likewise took the witness stand and testified thus:

Q: Now, Mr. Witness, what did you do with this? You said you carry this from the place of arrest up to the PDEA office?

A: I let one of my colleagues, SPO3 Barbero, one of the arresting officers, to mark the evidence, ma'am.

SPO3 Barbero<sup>50</sup> testified, too, that he had marked the item with his initials "PGB," the date and his signature, after which, he submitted it to the crime laboratory together with a letter-request dated 22 June 2004.<sup>51</sup>

Finally, P/Insp. Antonietta Abillonar<sup>52</sup> of the PNP Crime Laboratory testified that she had conducted an examination of the submitted specimen and found it positive for the presence of cocaine as indicated in Chemistry Report No. D-271-04,<sup>53</sup> which was presented in court and made part of the evidence for the prosecution.

The links of the chain of custody of the illegal drug are all accounted for by the testimonies of the police officers who formed the buy-bust team: from the confiscation of the cocaine from petitioner Tobias by the poseur-buyer, SPO1 Padua; its turnover to the buy-bust team leader, P S/Insp. Bona, who gave it to SPO1 Gonzales, the investigator, and eventually to SPO3 Barbero who made the marking; to the forwarding of the seized item to the crime laboratory for a forensic examination; up to the presentation of the results to the court by P/Insp. Antonietta Abillonar. It is clear, then, that the chain-of-custody requirement was properly observed by the police officers and proven by the prosecution.

In the light of the foregoing, we see no reason to deviate from the RTC ruling and its affirmation by the CA. As to the penalty imposed by the RTC, we, too, find it in order and proper.

**WHEREFORE**, premises considered, the appeal is hereby **DENIED**. The assailed Decision dated 28 August 2009 issued by the Special Third Division and the Resolution dated 9 February 2010 issued by the Special Former Special Third Division of the Court of Appeals in CA-G.R. CR-H.C. No. 02838 are hereby **AFFIRMED** *in toto*.

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<sup>48</sup> TSN, 2 September 2004, pp. 39-40.

<sup>49</sup> TSN, 2 June 2005, p. 19.


<sup>50</sup> TSN, 12 August 2004, pp. 22-23.

<sup>51</sup> Records, p. 27.

<sup>52</sup> TSN, 13 April 2005, p. 22.

<sup>53</sup> Records, p. 9.

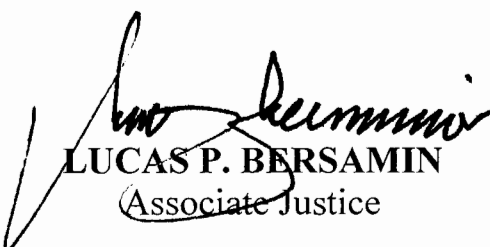
**SO ORDERED.**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

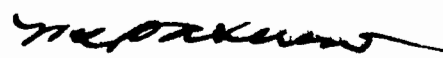
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the, 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