



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 199689

Present:

- versus -

SERENO, CJ.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

**HERMANOS CONSTANTINO,
JR. y BINAYUG, a.k.a. "JOJIT,"**
Accused-Appellant.

Promulgated:

MAR 12 2014

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DECISION

LEONARDO-DE CASTRO, J.:

This appeal challenges the Decision¹ dated July 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03353, affirming the Decision² dated April 15, 2008 of the Regional Trial Court (RTC), Branch 5 of Tuguegarao City, Cagayan, in Criminal Case No. 10516, which found accused-appellant Hermanos Constantino, Jr. y Binayug, a.k.a. "Jojit" (Constantino), guilty of the crime of illegal sale of methamphetamine hydrochloride, more popularly known as *shabu*, under Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information³ filed before the RTC charged Constantino, as follows:

That on January 20, 2005, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of the Honorable Court, the above-named accused, without authority of law and without permit to sell, transport, deliver and distribute dangerous drugs, did then and there willfully, unlawfully and feloniously sell, transport, distribute and deliver two (2) heat-sealed transparent plastic sachets containing 0.14 gram of

¹ *Rollo*, pp. 2-16; penned by Associate Justice Ricardo R. Rosario with Associate Justices Hakim S. Abdulwahid and Danton Q. Bueser, concurring.

² Records, pp. 143-147; penned by Presiding Judge Jezarene C. Aquino.

³ Id. at 1.

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Methamphetamine Hydrochloride commonly known as “shabu”, a dangerous drug to a member of the PNP, Tuguegarao City who acted as a poseur-buyer; that after receiving the two (2) plastic sachets, the poseur-buyer simultaneously handed to the accused the marked money consisting of one (1) piece of FIVE HUNDRED PESO BILL (₱500.00) with Serial No. QP278070 and five (5) pieces of ONE HUNDRED PESO BILL with Serial Nos. SM989053, PS724429, XM484584, BB048002, and EK6900025 or a total of ₱1,000.00 and this led to the apprehension of the accused and the confiscation of the dangerous drug together with the buy-bust money by the said apprehending law enforcers of the Tuguegarao City Police Station who formed the buy bust team in coordination with the PDEA.

When arraigned on July 8, 2005, Constantino pleaded not guilty to the crime charged.⁴ Thereafter, pre-trial and trial on the merits ensued.

Evidence for the prosecution presented the following version of events:

On January 20, 2005, at around 2:00 in the afternoon, Police Superintendent (P/Supt.) Mariano Rodriguez (Rodriguez), the Chief of Police of Tuguegarao City, received a report from a confidential informant (CI) that a certain Jojit was selling illegal drugs in the said city. P/Supt. Rodriguez immediately formed a buy-bust group composed of Senior Police Officer (SPO) 2 Noel Taguam (Taguam), SPO2 Alexander Tamang (Tamang), SPO1 Arthur Blaquera (Blaquera), Police Officer (PO) 3 Edwin Hernandez (Hernandez), and PO3 Rolando Domingo (Domingo). PO3 Domingo was designated as the poseur-buyer. The buy-bust money, consisting of one ₱500.00 bill and five ₱100.00 bills, were dusted with fluorescent powder and their respective serial numbers were recorded in the police blotter.⁵

Around 8:00 in the evening of the same day, the team proceeded to Reynovilla St., Caritan Centro, Tuguegarao City, the place where, according to the CI, Jojit was selling *shabu*. PO3 Domingo positioned himself beside a street light while the rest of the team hid behind a nearby concrete fence. After waiting for about 45 minutes, Constantino arrived on board a tricycle. PO3 Domingo recognized Constantino as the Jojit described by the CI. PO3 Domingo approached Constantino and asked him if he was Jojit. When Constantino replied in the affirmative, PO3 Domingo next asked, “*Mayroon ka bang stuff?*” (“Do you have stuff?”) In response, Constantino inquired of PO3 Domingo how much he wanted to buy. PO3 Domingo said he wanted to buy ₱1,000.00 worth of *shabu*, simultaneously handing over the buy-bust money to Constantino, who, in turn, handed two plastic sachets to PO3 Domingo. Thereupon, PO3 Domingo turned his cap backwards, the pre-arranged signal for the consummated sale. Upon seeing the signal, the other

⁴ Id. at 36.

⁵ TSN, July 25, 2006, pp. 8-9.

members of the buy-bust team approached the scene at once and arrested Constantino, from whom SPO2 Taguam recovered the buy-bust money.⁶

Thereafter, Constantino was brought to the police station where the recovered drugs and money were turned over to the investigator, SPO2 Tamang.⁷ The recovered drugs were then marked with the initials “A-1” and “A-2.” The incident was recorded in the police blotter with an inventory of the recovered drugs and money.⁸

Later that evening, at around ten o’clock, P/Supt. Rodriguez and SPO2 Tamang submitted to the Philippine National Police (PNP) Crime Laboratory Services, Camp Marcelo Adduru, Tuguegarao City, a request for laboratory examination of two plastic sachets with white crystalline substance marked as “A-1” and “A-2” to determine the presence of dangerous drugs;⁹ as well as both hands of Constantino, one piece ₱500.00 bill, and five pieces ₱100.00 bills, to determine the presence of the ultra violet powder.¹⁰ Per Chemistry Report No. D-08-2005¹¹ and Physical Identification Report No. PI-04-2005,¹² prepared by Police Senior Inspector (P/SInsp.) Mayra Matote Madria,¹³ Forensic Chemist, the contents of the two plastic sachets tested positive for Methamphetamine Hydrochloride; while the other specimens tested positive for the presence of bright-yellow ultraviolet fluorescent powder.

Constantino denied the accusation against him and asserted that he was merely framed-up.

According to Constantino, at around 8:00 in the evening on January 20, 2005, he was enjoying a joyride with his friend, Jeff Abarriao, on the latter’s motorcycle, within the vicinity of Caritan Centro. After 30 minutes, Constantino decided to go home. While walking along Reyno or Reynovilla St., two vehicles suddenly stopped, one in front and the other behind him. Five men, all in civilian clothes, alighted from the two vehicles. Two of the men held Constantino’s hands, while another poked a gun at him, asking him where he came from and ordering him to bring out the *shabu*. Constantino answered that he did not know what the men were talking about. The men then forced Constantino into one of the vehicles. Inside the vehicle, one of the men frisked and searched Constantino, and told him that he was being arrested for selling *shabu*. The men, who were now apparently police officers, brought Constantino to the Tuguegarao City Police Station. At the police station, the police officers took Constantino’s cellphone and

⁶ Id. at 11-16.

⁷ Id. at 17.

⁸ Id. at 21-22.

⁹ Records, p. 54; Exhibit “F.”

¹⁰ Id. at 55; Exhibit “F-1.”

¹¹ Id. at 56; Exhibit “D.”

¹² Id. at 53; Exhibit “C.”

¹³ By the time P/SInsp. Madria testified before the RTC on October 7, 2005, she already got married and was using her married name Mayra Matote Madria Tulauan.

wallet. Also at the police station, one of the arresting police officers brought out two pieces of plastic sachets and money and turned it over to one of his companions. At around 9:30 in the evening, the police officers brought Constantino to the PNP Crime Laboratory, but nothing happened because he heard that the person who was supposed to conduct the examination was not around, so, Constantino was brought back to the police station.¹⁴

The following day, January 21, 2005, the police officers again brought Constantino to the PNP Crime Laboratory. Along the way, one of the police escorts forced Constantino to hold a certain amount of money. Constantino tried to resist but he could not really do anything because he was handcuffed. After his examination, Constantino was detained and was told that he was suspected of selling *shabu*.

The RTC promulgated its Decision on April 15, 2008, finding Constantino guilty as charged. The trial court rejected the arguments of the defense, thus:

1. The Prosecution failed to give a detailed account of the arrangement with the accused for the purchase of the shabu.

The Court's response: The testimony of PO3 Domingo was detailed enough, corroborated by other witnesses. It is the defense that has failed to show in what crucial detail the prosecution's account is wanting.

2. The police officers categorically admitted that they did not personally know the accused until they were at the alleged place of transaction.

The Court's response: Substantive law does not require this; the rules of evidence do not. Did they know he was Jojit? Yes, from the description given the informant. Domingo asked whether he was Jojit. He answered "Yes".

3. The arresting officers failed to comply with the requirements of Article II, Section 21 of R.A. 9165 that requires that an inventory be taken and that photographs be taken of the items seized.

The Court's comment: The Police Blotter Entry No. 0270 enumerates the items seized. This, the Court holds to be substantial compliance. Even assuming, without admitting, that not all the requirements may not have been complied with, these omissions do not operate to exclude the evidence nor to cause suppression thereof. They are directory, not mandatory provisions.

4. The chain of custody was not established with certainty.

The Court's comment: The chain is not difficult to trace, and has been established by evidence, thus:

¹⁴ TSN, September 3, 2007, pp. 5-11.

- a. Exhibit “B”: The police blotter recording that on 20 January 2005 at 2100 hours, mentioning the two sachets of shabu which according to the blotter the accused admitted he handed over to Domingo; Domingo had testified that the markings A-1 NBT and A-2 NBT were placed on the sachets by Investigator Alexander Tamang;
- b. Exhibit “F”: Dated January 20, 2005, a request to the PNP Crime Lab Services for the examination of “two plastic sachet (sic) with white crystalline substance marked A1 and A2”;
- c. Exhibit “D”: Chemistry Report No. D-08-2005 completed 21 January 2005 reporting a qualitative examination of the contents of two heat-sealed sachets marked as A1 NBT and A2 NBT and identifying the substance as “Methamphetamine Hydrochloride”.

5. There was no prior coordination with PDEA.

The Court’s response: None was needed. Exhibit “H” clearly evidences that SPO1 Blaquera was authorized to conduct anti-drug operations. Domingo also answered the question about coordination with PDEA when he testified: “During that time 3 representatives of the Intelligence Operatives were deputized in the PDEA in the persons of Noel Taguiam, Arthur Blaquera and the Chief of Police.”

Hermanos testified in his behalf and his testimony can be reduced to the following story:

- 1 He went on a joy-ride that night with his friend aboard a motorcycle;
- 2 Tiring, he alighted and started to walk along Reyno Villa Street;
- 3 He was accosted by police officers who, at the time, he did not know to be police officers;
- 4 They took him to the police station and produced the sachets;
- 5 Next day, while on the way to the Crime Lab, they forced him to hold marked bills, although he was cuffed.

All told, it is a story that is meant to endeavor to explain the circumstances around the accused’s arrest and apprehension. For one thing, it is self-serving; for another, we are not told any reason why the police officers should have wanted to apprehend him – a supposedly guiltless man; third, the Court never heard the testimony of his friend with whom he was supposed to have had a joy-ride that night. In sum, his story does not convince this Court.¹⁵ (Citations omitted.)

¹⁵

Records, pp. 145-147.

The RTC imposed the following sentence upon Constantino:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of Violation of Sec. 5, Art. II of R.A. 9165 and sentences him to suffer the penalty of **LIFE IMPRISONMENT** and a fine of ₱500,000.00.¹⁶

Maintaining his innocence, Constantino appealed to the Court of Appeals, arguing that:

1. The trial court gravely erred in giving full credence to the testimonies of the prosecution witnesses despite the patent irregularities in the conduct of the buy-bust operation.
2. The trial court gravely erred in convicting accused-appellant despite the prosecution's failure to establish that chain of custody of the drug specimens allegedly confiscated from the accused-appellant.
3. The trial court gravely erred in convicting the accused-appellant despite the prosecution's failure to establish the identity of the prohibited drugs constituting the *corpus delicti* of the offense.

In its Decision dated July 29, 2011, the Court of Appeals affirmed *in toto* the judgment of conviction of the RTC against Constantino. The appellate court held that Constantino's defense of frame-up was not worthy of credence as his version of the incident was not at all corroborated. Constantino was caught *in flagrante delicto* selling *shabu* to PO3 Domingo, who acted as the poseur-buyer, therefore, he was legally arrested without a warrant. The appellate court also found that the chain of custody of the *shabu* had been preserved from the time said drugs were confiscated from Constantino to the time the same drugs were delivered to the crime laboratory and thereafter retrieved and presented as evidence before the trial court. Lastly, the appellate court stressed that between the positive and categorical declarations of the prosecution witnesses, on one hand, and the unsubstantial denial or negative statements of the appellant, on the other hand, the former generally prevails; and that negative averments, unsubstantiated by clear and convincing evidence, deserve no weight in law, especially *vis-a-vis* the time-tested presumption of regularity of performance of official duty on the part of the apprehending officers.

In the end, the Court of Appeals decreed:

WHEREFORE, the Decision of the Regional Trial Court of Tuguegarao City, Branch 5, dated 15 April 2008, in Criminal Case No. 10516, is **AFFIRMED**.¹⁷

Consequently, Constantino comes before this Court seeking the reversal of his conviction by the trial court and the Court of Appeals.

¹⁶ Id. at 147.

¹⁷ *Rollo*, p. 15.

In his Supplemental Brief, Constantino contests his conviction, averring inconsistencies in the testimonies of the prosecution witnesses, particularly, on the circumstances of the marking of the two plastic sachets containing *shabu* allegedly confiscated from him. Different people claim to have made the marking “NBT” on the two plastic sachets and gave various explanations as to what the initials “NBT” stand for. In short, Constantino argues that the prosecution failed to establish a crucial link in the chain of custody of the *shabu* in this case.

The appeal is impressed with merit.

Admittedly, denial is an inherently weak defense, consistently viewed with disfavor by the courts, being a self-serving negative evidence. In view, however, of the constitutional presumption that an accused is innocent until the contrary is proven beyond reasonable doubt, the burden lies on the prosecution to overcome such presumption by presenting the required quantum of evidence. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense.¹⁸

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. 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.”¹⁹ And in the prosecution of these offenses, the primary consideration is to ensure that the identity and integrity of the seized drugs and other related articles have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.²⁰

Article II, Section 21(1) of Republic Act No. 9165 lays down the procedure to be followed in the seizure and custody of dangerous drugs:

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 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

¹⁸ *People v. Magpayo*, G.R. No. 187069, October 20, 2010, 634 SCRA 441, 447.

¹⁹ *People v. Del Rosario*, G.R. No. 188107, December 5, 2012, 687 SCRA 318, 326-327.

²⁰ *People v. Secreto*, G.R. No. 198115, February 27, 2013, 692 SCRA 298, 307.

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[.]

Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 describes in more detail how the foregoing procedure is to be applied:

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 police officers are enjoined to strictly comply with the procedure prescribed by law, the IRR also explicitly excuses non-compliance under justifiable grounds, but only if the integrity and evidentiary value of the seized items have been properly preserved by the apprehending officers. The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, series of 2002,²¹ 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

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Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

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 *Mallillin v. People*,²² the Court discussed how the chain of custody of seized items is established:

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. (Citations omitted.)

Thus, the following links must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turn over and submission of the marked illegal drugs seized from the forensic chemist to the court.²³

After a careful scrutiny of the testimonies of the prosecution witnesses, the Court finds glaring inconsistencies affecting the integrity of the *shabu* purportedly confiscated from Constantino. The inconsistent testimonies of PO3 Domingo, PO3 Hernandez, and P/SInsp. Tulauan as to who, when, and where the two plastic sachets of *shabu* were marked lead the Court to question whether the two plastic sachets of *shabu* identified in court were the very same ones confiscated from Constantino. The doubtful markings already broke the chain of custody of the seized *shabu* at a very early stage.

To recall, the first crucial link in the chain of custody is seizure and marking of the illegal drug. In this case, PO3 Domingo, as poseur-buyer, received two plastic sachets of *shabu* from Constantino in exchange for ₱1,000. However, PO3 Domingo himself did not put any markings on the two plastic sachets of *shabu*. Instead, upon arrival of the buy-bust team with Constantino at the police station, PO3 Domingo turned over the two plastic sachets of *shabu* to the investigator, SPO2 Tamang, who was also a member of the buy-bust team. PO3 Domingo testified that it was SPO2 Tamang who

²² 576 Phil. 576, 587 (2008).

²³ *People v. Enriquez*, G.R. No. 197550, September 25, 2013.

put the marking “NBT” on the said sachets of *shabu*. Below are the excerpts from PO3 Domingo’s testimony:

Q If that plastic sachets which was sold to you by Hermanos Constantino is shown to you will you be able to identify the same?

A Yes, ma’am.

Q How were you able to identify the plastic sachets?

A There is an initials (sic), ma’am.

Q What initials are you referring to?

A A-1 initial NBT and A-2 initial NBT.

Q Who placed those initials in the plastic sachets?

A The Investigator, ma’am.

Q And who is the investigator?

A **Alexander Tamang**, ma’am.

Q Where did he place those initials?

A In the police station after the apprehension, ma’am.²⁴ (Emphasis supplied.)

However, PO3 Hernandez, another member of the buy-bust team, categorically pointed to SPO2 Taguiam, also a member of the buy-bust team, as the one who put the marking “NBT” on the plastic sachets upon the team’s return to the police station, thus:

PROS. NICOLAS:

Q During the buy bust operation you stated that the accused handed to the poseur buyer in the person of PO3 Rolando Domingo two plastic sachets containing as you claimed methamphetamine hydrochloride, have you seen these plastic sachets at that time when they handed to PO3 Rolando Domingo?

A Yes, sir.

Q If these two plastic sachets will be shown to you again today will you be able to tell that these two plastic sachets were the same plastic sachets that were handed by the accused to PO3 Rolando Domingo?

A Yes, sir.

Q I am showing to you these two plastic sachets kindly tell us if these are the plastic sachets that were handed to PO3 Rolando Domingo?

A These are the ones, sir.

Q Why do you say that these are the two plastic sachets handed by the accused?

A Because I was there and I saw the accused handed the two plastic sachets to PO3 Rolando Domingo, sir.

²⁴ TSN, July 25, 2006, pp. 20-21.

Q Why do you know that these are the same plastic sachets?

A These are the ones, sir.

Q Mr. Witness, there are markings on these two plastic sachets, do you know whose markings are these?

x x x x

A It was **Noel B. Taguiam**, sir.

The witness is pointing to the marking NBT partly hidden.

COURT:

Q Who is Noel B. Taguiam?

A A member of the buy bust team also, sir.

PROS. NICOLAS:

Q You stated this NBT was placed by one Noel B. Taguiam, why do you know that he was the one who placed this?

A Because I was present during that time when he placed his initial, sir.

Q Do you know when this Noel B. Taguiam placed those initials on those two plastic sachets?

A After we conducted the buy bust operation, sir.

Q How soon Noel B. Taguiam placed those initials after the conduct of the buy bust operation?

A After a few hours, sir.

Q Where did he place those initials?

A In our office, sir.²⁵ (Emphasis supplied.)

To complicate things even further, P/SInsp Tulauan,²⁶ the Forensic Chemist, also declared before the trial court that the marking “NBT” on the two plastic sachets of *shabu* were made by SPO3 Nelson B. Tamaray (Tamaray), the duty officer who received the specimens at the crime laboratory. P/SInsp. Tulauan testified:

PROS. ISRAEL:

Q When you received these two specimens Madam Witness, will you please tell us the physical appearance of these items when you received the same?

A They were heat-sealed and with markings “A-1” and “A-2,” your Honor.

B And will you please point to us these markings “A-1” and “A-2” when you received these items Madam Witness?

A This is the markings “A-1” and “A-2,” Ma’am.

²⁵ TSN, April 2, 2007, pp. 13-14.

²⁶ See note 13.

INTERPRETER:

The witness is pointing to the markings “A-1” and “A-2” with the use of a black pentel pen.

PROS. ISRAEL:

Q There is another marking in this plastic sachet Madam Witness marked as NBT, what is this marking all about?

A That is the marking of **SPO3 Nelson B. Tamaray**, Ma’am.

Q Is he authorized to make the necessary marking which was requested to be examined Madam Witness?

A Yes, Ma’am because he is the one who received the specimen from the one who deliver it, Ma’am.

Q In this second plastic sachet Madam Witness which you identified earlier, that there is a marking “A-1,” there is another marking NBT, what is this marking all about Madam Witness?

A That is the marking of **SPO3 Nelson B. Tamaray**, Ma’am.²⁷ (Emphases supplied.)

On cross-examination, P/SInsp. Tulauan confirmed her previous declaration that SPO3 Tamaray had claimed making the marking on the sachets of *shabu*:

Atty. Aquino

Madam Witness, with respect to that marking made which are “A1” and “A-2”, they are not your markings, is it not?

A Yes, sir.

Q And with respect also to that NBT marked and placed in that exhibit which you have earlier identified, you did not see this duty officer placed his markings thereon, is it not?

A Yes sir but I asked him who placed that marking and he said that he was the one who placed the initial NBT, sir.²⁸

The Court already emphasized in *People v. Zakaria*²⁹ the importance of marking the seized item right after seizure:

Crucial in proving the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. Moreover, the value of marking of the evidence is to separate the marked evidence from the *corpus* of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, “planting” or contamination of evidence. A failure to mark at the time of

²⁷ TSN, October 7, 2005, pp. 20-21.

²⁸ Id. at 25-26.

²⁹ G.R. No. 181042, November 26, 2012, 686 SCRA 390, 403.

taking of initial custody imperils the integrity of the chain of custody that the law requires. (Citation omitted.)

Herein, the prosecution is completely silent as to why PO3 Domingo, the poseur-buyer, despite having immediate custody of the two plastic sachets of *shabu* purchased from Constantino, failed to immediately mark the seized drugs before turning over the custody of the same to another police officer. This lapse in procedure opened the door for confusion and doubt as to the identity of the drugs actually seized from Constantino during the buy-bust and the ones presented before the trial court, especially considering that three different people, during the interval, supposedly received and marked the same. To clarify the matter, the prosecution could have presented as witness either SPO2 Tamang or SPO2 Taguiam to directly validate the marking in court, but unfortunately, the prosecution chose to dispense with the testimonies of both officers. This omission diminished the importance of the markings as the reference point for the subsequent handling of the evidence. As a consequence, an objective person could now justifiably suspect the *shabu* ultimately presented as evidence in court to be planted or contaminated.³⁰

The failure of the prosecution to establish the evidence's chain of custody is fatal to its case as the Court can no longer consider or even safely assume that the integrity and evidentiary value of the confiscated dangerous drug were properly preserved.³¹

In light of the foregoing, Constantino is acquitted of the crime charged, not because the Court accords credence to his defense of frame-up, but because the prosecution failed to discharge its burden of proving his guilt beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03353, affirming the Decision dated April 15, 2008 of the Regional Trial Court, Branch 5 of Tuguegarao City, Cagayan, in Criminal Case No. 10516, is **REVERSED and SET ASIDE**. Appellant Hermanos Constantino, Jr. y Binayug, a.k.a. "Jojit," is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt and is **ORDERED** to be immediately released from detention unless he is confined for another lawful cause.

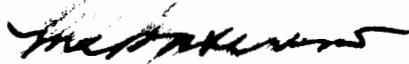
³⁰ *People v. Catalan*, G.R. No. 189330, November 28, 2012, 686 SCRA 631, 644.

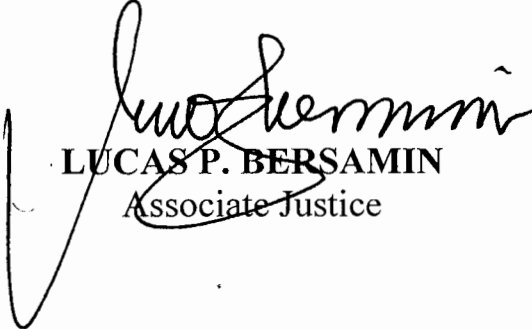
³¹ *People v. Magpayo*, supra note 18 at 452-453.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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