



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

**PEOPLE OF THE PHILIPPINES,** **G.R. No. 242827**  
 Plaintiff-Appellee, Present:

- versus -

**ROSEMARIE\* GABUNADA y**  
**TALISIC,**  
 Accused-Appellant.

BERSAMIN, C.J., Chairperson,  
 PERLAS-BERNABE,  
 JARDELEZA,  
 GESMUNDO, and  
 CARANDANG, JJ.

Promulgated:

**SEP 09 2019**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated April 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 09057, which affirmed the Joint Judgment<sup>3</sup> dated February 13, 2017 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case Nos. R-QZN-16-02795-CR and R-QZN-16-02796-CR finding accused-appellant Rosemarie Gabunada y Talisic (Gabunada) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

\* “Rose Marie” in some parts of the records.

<sup>1</sup> See Notice of Appeal dated June 1, 2018; *rollo*, p. 12.

<sup>2</sup> Id. at 2-11. Penned by Associate Justice Mario V. Lopez with Associate Justices Victoria Isabel A. Paredes and Carmelita Salandanan Manahan, concurring.

<sup>3</sup> CA *rollo*, pp. 25-37. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

<sup>4</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,” approved on June 7, 2002.

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### The Facts

This case stemmed from two (2) Informations<sup>5</sup> filed before the RTC accusing Gabunada of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that in the early morning of March 19, 2016, policemen of the Quezon City District Anti-Illegal Drug – Special Operation Task Group successfully conducted a buy-bust operation against Gabunada, during which one (1) plastic sachet containing white crystalline substance was recovered from her. When Gabunada was searched incidental to her arrest, the policemen recovered four (4) other plastic sachets also containing white crystalline substance from her. The seized sachets were then marked, and thereafter, inventoried and photographed in the presence of Gabunada and Barangay Kagawad Leonardo Sinque (Kgd. Sinque). Thereafter, Gabunada and the seized items were taken to the police headquarters where the necessary paperworks for examination were prepared. The seized items were then brought to the crime laboratory for examination, where they tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.<sup>6</sup>

In defense, Gabunada denied the charges against her, claiming instead, that she was in SM Bicutan in the afternoon of March 18, 2016 to meet her relative. She was waiting to board a jeepney on her way home when she was stopped by a man and a woman who introduced themselves as police officers. The said officers suddenly arrested her and took her to Camp Karingal in Quezon City. Thereafter, at around 3:00 in the morning of March 19, 2016, a police woke her up, boarded her in a vehicle, and brought her near Balintawak Market along EDSA, Quezon City, where she saw a barangay kagawad sign an “Inventory of Seized Items.” Gabunada was also asked to sign the document, but she refused. She was then brought back to Camp Caringal, and it was only at that time that she first saw the alleged *shabu*, money, and an Octagon paper bag on top of a table.<sup>7</sup>

In a Joint Judgment<sup>8</sup> dated February 13, 2017, the RTC found Gabunada guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: (a) in Criminal Case No. R-QZN-16-02795-CR, to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000.00; and (b) in Criminal Case No. R-QZN-16-02796-CR, to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.<sup>9</sup> The RTC found that the prosecution had established beyond reasonable doubt that Gabunada indeed sold one (1) plastic bag containing

<sup>5</sup> Both dated March 21, 2016. Criminal Case No. R-QZN-16-02795-CR is for violation of Section 5, Article II of RA 916, while Criminal Case No. R-QZN-16-02796-CR is for violation of Section 11, Article II of RA 9165 (See records, pp. 3-6)

<sup>6</sup> *Rollo*, pp. 2-4.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *CA rollo*, pp. 25-37.

<sup>9</sup> *Id.* at 36.

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dangerous drugs to the poseur-buyer during a buy-bust operation, resulting in her arrest, and that during the search incidental thereto, she was found to be in possession of a red paper bag with four (4) more plastic bags of dangerous drugs. Moreover, it held that notwithstanding the absence of a Department of Justice (DOJ) representative or a media representative, the identity of the illegal drugs had been preserved under the chain of custody rule. On the other hand, the RTC did not give credence to Gabunada's defense of denial or frame-up due to her failure to prove any improper motive on the part of the buy bust team.<sup>10</sup> Aggrieved, Gabunada appealed<sup>11</sup> to the CA.

In a Decision<sup>12</sup> dated April 26, 2018, the CA affirmed the RTC ruling.<sup>13</sup> It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Gabunada, and that the integrity and evidentiary value of the seized items had been preserved due to the arresting officers' substantial compliance with the chain of custody rule. It added that the absence of a representative from the DOJ or the media was not fatal, as there was substantial compliance on the requisite witnesses of the inventory and photograph of the seized items.<sup>14</sup>

Hence, this appeal seeking that Gabunada's conviction be overturned.

### The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>15</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>16</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to

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<sup>10</sup> See *id.* at 33-36.

<sup>11</sup> See Notice of Appeal dated February 14, 2017; *id.* at 12.

<sup>12</sup> *Rollo*, pp. at 2-11.

<sup>13</sup> *Id.* at 10.

<sup>14</sup> See *id.* at 7-10.

<sup>15</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA, 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

<sup>16</sup> See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.* at 313; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

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prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.<sup>17</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>18</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>19</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>20</sup>

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>21</sup> a representative from the media AND the Department of Justice (DOJ), and any elected public official;<sup>22</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service<sup>23</sup> (NPS) OR the media.<sup>24</sup> The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>25</sup>

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<sup>17</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>18</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 19; *People v. Sanchez*, supra note 19; *People v. Magsano*, supra note 19; *People v. Manansala*, supra note 19; *People v. Miranda*, supra note 19, at 53; and *People v. Mamangon*, supra note 19, at 313. See also *People v. Viterbo*, supra note 20.

<sup>19</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

<sup>20</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>21</sup> Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.’” As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and “Manila Bulletin” (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

<sup>22</sup> Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>23</sup> The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010]).

<sup>24</sup> Section 21 (1), Article II of RA 9165, as amended by RA 10640

<sup>25</sup> See *People v. Miranda*, supra note 19, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.<sup>26</sup> This is because “[t]he law has been ‘crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.’”<sup>27</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>28</sup> As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>29</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>30</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>31</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>32</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>33</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>34</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>35</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the

<sup>26</sup> See *People v. Miranda*, *id.* at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 21, at 1038.

<sup>27</sup> See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, *id.*

<sup>28</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>29</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>30</sup> Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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.**”

<sup>31</sup> Section 1 of RA 10640 pertinently states: “**Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**”

<sup>32</sup> *People v. Almorfe*, *supra* note 33.

<sup>33</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>34</sup> See *People v. Manansala*, *supra* note 19.

<sup>35</sup> See *People v. Gamboa*, *supra* note 21, citing *People v. Umipang*, *supra* note 21, at 1053.

accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>36</sup>

Notably, the Court, in *People v. Miranda*,<sup>37</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”<sup>38</sup>

In this case, it would initially appear that the policemen complied with the witness requirement under RA 9165, as amended by RA 10640,<sup>39</sup> considering that the Inventory of Seized Properties/Items<sup>40</sup> contains the signatures of an elected public official, *i.e.*, Kgd. Sinque, and a media representative, *i.e.*, Ernie Dela Cruz (Dela Cruz). However, a more circumspect examination of the records would show that Dela Cruz was not present during the conduct of inventory and photography of the seized items. In fact, Dela Cruz himself admitted on re-direct and re-cross examination that one of the arresting police officers merely brought the aforementioned inventory form to him for his signature, two (2) days after the buy-bust, inventory, and photography occurred, *viz.*:

### REDIRECT-EXAMINATION

[Atty. Gil A. Valera]: A while ago, Mr. Witness, you said that when you signed this document, you also read the date of this Inventory of Seized Properties/Items, which appears as March 19, 2016?

[Dela Cruz]: Yes, sir.

Q: When did you sign this per your Affidavit?

A: March 21, sir.

Q: And why is it that when you signed this on March 21, you still signed it, despite reading the document that it stated March 19, 2016?

A: When I signed this document, sir, it was undated.

Q: I repeat, when you signed this document, you did not see any date on this Inventory?

A: Yes, sir.

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<sup>36</sup> See *People v. Crispo*, supra note 19.

<sup>37</sup> Supra note 19.

<sup>38</sup> See *id.* at 61.

<sup>39</sup> The arrest was made on March 19, 2016; hence RA 10640, which was enacted in 2014, is already in effect.

<sup>40</sup> Records, p. 71

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Q: Again, when you signed this on March 21, you said that you signed this in your office?

A: Yes, sir.

Q: Why is it that you still signed it, despite that in this document, it says that the document was prepared in Gubat sa [Siudad], EDSA Balintawak?

A: When I signed that document, sir, that information was not indicated.

THE COURT:

Q: Why did you sign it?

A: When I was asked to sign it, Your Honor, this address of Gubat sa [Siudad] was not indicated in that Inventory.

Q: Were the Items indicated in the Inventory Receipt already there when you signed that document?

A: Yes ma'am, but the address of Gubat sa [Siudad] was not yet indicated thereof.

x x x x

ATTY. VALERA:

Q: When you signed that document in your office, by the way, where is your office located?

A: At Police Station 10 of Kamuning Quezon City, sir.

Q: You said that you were a member of the Quezon City Press Corp[s], as indicated in that document, where is that office of Quezon City Press Corp[s]?

A: Beside the Police Station 10, sir.

Q: It is not inside?

A: Not inside, sir.

Q: And you said in your Affidavit that when you signed that, it was Police Officer Bibe who approached (sic) to sign that; what items if any did she show to you?

A: One plastic sachet of drugs, sir.

Q: Only one sachet?

A: Yes, sir.

THE COURT:

Q: And why did you sign this Inventory when they indicated several items such as [c]ellphone, bag containing six sealed transparent plastic bags?

A: That is the only item presented to me, Your Honor, because at that time, I was also in a hurry to go to Batangas.

Q: Is that your usual practice to sign documents which are incomplete?

A: PO2 Bibe is my friend that is why I signed that document.

Q: So, you always do that to a friend?

A: No, Your Honor.

Q: You are a media representative?

A: Yes, Your Honor.

**[RE]CROSS-EXAMINATION**

[Assistant Prosecutor Nilda Ordoño]: When you signed that document, you said that some spaces herein were left blank, why did you still sign it?

[Media Representative Dela Cruz]: I thought that the date I signed it will be the one that they would indicate in the Inventory, ma'am.

Q: Considering that you are a media representative, did you report this incident to your newspaper Remate?

A: Yes, ma'am.

Q: And what is the basis of your report?

A: That the accused was arrested, ma'am.

Q: The Inventory of Seized Properties is that the basis of your report as a reporter?

A: No, ma'am, it was based solely on the actual incident on how the accused was arrested.

Q: Where did you get that story?

A: From their report, ma'am.

Q: From whom, from the Police?

A: Yes, ma'am.<sup>41</sup>

As may be gleaned from the foregoing, the inventory was *not* conducted in the presence of Dela Cruz, as the arresting policemen already prepared the inventory form days before it was brought to him for his signature. As discussed, the witness requirement mandates the presence of the required witnesses *during* the conduct of the inventory, so as to ensure that the evils of switching, planting, or contamination of evidence will be adequately prevented. Hence, non-compliance therewith puts the onus on the prosecution to provide a justifiable reason therefor, especially considering that the rule exists to ensure that protection is given to those whose life and liberty are put at risk.<sup>42</sup> Unfortunately, no such explanation was proffered by the prosecution to justify this glaring procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Gabunada were compromised, which consequently warrants her acquittal.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated April 26, 2018 of the Court of Appeals in CA-G.R. CR No. 09057 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rosemarie Gabunada y Talisic is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

<sup>41</sup> TSN, November 16, 2016, pp. 5-8.

<sup>42</sup> See *People v. Cariño*, G.R. No. 233336, January 14, 2019, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 336-337.

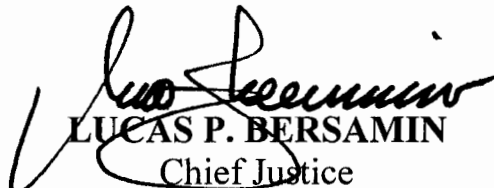
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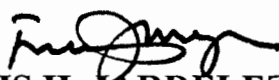


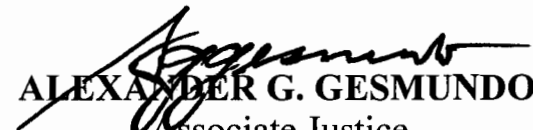
**SO ORDERED.**

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

**WE CONCUR:**

  
**LUCAS P. BERSAMIN**  
Chief Justice  
Chairperson

  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**ROSMARIE D. CARANDANG**  
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.

  
**LUCAS P. BERSAMIN**  
Chief Justice