



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 16, 2019**, which reads as follows:*

**“G.R. No. 238834 (*People of the Philippines v. Mark Anthony Lalu y Gibe*).** – The Court **NOTES** the letter dated September 24, 2019 of CSSupt. Daisy S. Castillote, Officer-in-Charge of Inmates’ Documents and Processing Division of the Bureau of Corrections, Muntinlupa City, informing the Court that they have no record of confinement in the Bureau of accused-appellant Mark Anthony Lalu y Gibe, however, she undertakes to conduct a verification with all prison facilities to locate the whereabouts of accused-appellant.

Before this Court is an appeal from the Decision<sup>1</sup> dated September 8, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07553, affirming the Judgment<sup>2</sup> dated March 4, 2015 rendered by the Regional Trial Court (RTC), Branch 37 of Calamba City. The RTC found Mark Anthony Lalu y Gibe (appellant) guilty beyond reasonable doubt for violation of Sections 5, 11, and 12, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

*The Facts*

Appellant was charged with violation of Sections 5, 11, and 12, Article II of RA 9165.

The Informations respectively read as follows:

Criminal Case No. 19090-2012-C  
(For violation of Section 5, Article II [of] RA No. 9165)

That on or about the March 21, 2012, in Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully,

<sup>1</sup> *Rollo*, pp. 2-16; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Magdangal M. De Leon and Franchito N. Diamante, concurring.

<sup>2</sup> *CA rollo*, pp. 21-34; penned by Presiding Judge Caesar C. Buenagua.

unlawfully and feloniously, sell and deliver (1) heat-sealed transparent plastic sachet containing 0.02 gram of Methamphetamine Hydrochloride, a dangerous drug, without the corresponding authority of law.<sup>3</sup>

Criminal Case No. 19091-2012-C

(For violation of Section 12, Article II [of] RA No. 9165)

That on or about March 21 2012, in Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, have in his possession, custody and control five (5) folded aluminum foil strips with shabu residue, one (1) improvised aluminum tooter, one (1) improvised burner, one (1) pc. Lighter, one (1) bundle empty plastic sachets, a paraphernalia used and intended to be used for sniffing methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.<sup>4</sup>

Criminal Case No. 19092-2012-C

(For violation of Section 11, Article II [of] RA No. 9165)

That on or about March 21, 2012, in the Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess five (5) heat sealed transparent plastic sachets having a total net weight 0.63 grams of Methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.<sup>5</sup>

Upon arraignment, appellant pleaded not guilty to the charges.<sup>6</sup>

Trial ensued.

#### *Version of the Prosecution*

The Intelligence Section of Los Baños Police Station received an information about the illegal drug activities of appellant. The information was relayed to Chief of Police Conrado Masongsong, who then directed the team leader Police Inspector Errol Perez (P/Insp. Perez), PO2 Eduardo M. Cruz (PO2 Cruz), and PO1 Roderick A. Reyes (PO1 Reyes) to conduct a buy-bust operation. After coordinating with the Philippine Drug Enforcement Agency (PDEA) and preparing the Pre-Operation Report, the team prepared the ₱500-bill buy-bust money.<sup>7</sup> SPO1 Virgilio D. De Lima, Jr. (SPO1 De Lima) was designated as

<sup>3</sup> Rollo, p. 2.

<sup>4</sup> Id. at 3.

<sup>5</sup> Id. at 3.

<sup>6</sup> Id. at 24 (19092-12-C), at 27 (19091-12-C) and at 24 (19092-12-C).

<sup>7</sup> TSN May 30, 2014, pp. 4-8.

poseur-buyer, and the other team members as back up. Thereafter, the team, together with the informant, proceeded to appellant's house.<sup>8</sup>

When the police officers reached appellant's house, the informant called for the latter, who then went outside. The informant introduced SPO1 De Lima as the buyer and told appellant that they would "score." When appellant asked how much they would buy, SPO1 De Lima replied that they would be getting ₱500 worth of *shabu*. Appellant took one plastic sachet from his pocket and exchanged it for the ₱500-bill from SPO1 De Lima.<sup>9</sup> Thereafter, SPO1 De Lima removed his cap, as a signal to the other members of the team who were posted just outside the gate of the house, that the sale had already been consummated. SPO1 De Lima held appellant's hand and introduced himself as a police officer, but appellant managed to free himself and rushed inside his house. SPO1 De Lima ran after appellant and caught the latter in his bedroom. Thereafter, the police officers searched appellant's person, recovered the buy-bust money in his right pocket, and found a wallet with five plastic sachets containing white crystalline substance, which later turned positive for *shabu*.<sup>10</sup>

The police officers called the representatives from the *barangay* (Ruben Fernandez) and the media (Arjay Santiago) as they marked the plastic sachet subject of the sale with appellant's initials, "MGL."<sup>11</sup> The other five plastic sachets were marked with "MGL1" to "MGL5." The police officers also found strips of aluminum foil and empty plastic sachets on top of the table in appellant's living room. PO2 Cruz and PO1 Reyes conducted the inventory of the seized items. Next, appellant, the *barangay* representative, and the seized drugs were photographed. The seized drugs were then brought to the crime laboratory for examination, and yielded positive for the test for Methamphetamine Hydrochloride or *shabu*.<sup>12</sup>

During trial, the prosecution offered the following pieces of evidence: (1) *Pinagsamang Sinumpaang Salaysay* executed by SPO1 De Lima, P/Insp. Perez, PO2 Cruz, and PO1 Reyes; (2) six heat-sealed plastic sachet containing *shabu*; (3) Chemistry Report No. D-184-12; (4) Pre-Operational Report; (5) Coordination Form; (6) Receipt/Inventory of Property/ies Seized; (7) Certified photocopy of the ₱500-bill buy-bust money; (8) Photographs; and (9) Request for Laboratory Examination.<sup>13</sup>

<sup>8</sup> *Id.* at 9.

<sup>9</sup> *Id.* at 9-10.

<sup>10</sup> *Id.* at 10-14.

<sup>11</sup> *Rollo*, p. 5.

<sup>12</sup> *Id.*

<sup>13</sup> RTC records, pp. 124-125.

*Version of the Defense*

Appellant testified that on March 21, 2012, at around 5:00 P.M., he saw a man jump over the gate of his house. Once inside, the man opened the gate and let several men in. Suddenly, the men poked guns at him and ordered him to lie flat facing the floor. He was immediately handcuffed and brought to his room. The men searched his house for drugs, but found nothing. Later, another man (P/Insp. Perez) arrived and brought out an aluminum foil and a plastic sachet from his bag. P/Insp. Perez then alleged that the items belonged to appellant. When appellant denied ownership of the items, P/Insp. Perez got angry and hit him on his abdomen. Appellant was ordered to keep silent, otherwise, the police officers would also file charges against his sibling. Later on, appellant was taken to the municipal hall where he was detained.<sup>14</sup>

*Ruling of the RTC*

On March 4, 2015, the RTC held that all the elements of the offenses charged were sufficiently established by the prosecution through the testimony of SPO1 De Lima.<sup>15</sup> The RTC pronounced that *“given that the integrity and the evidentiary value of the seized specimens were preserved, the failure to strictly observe the procedures under Section 21 of RA 9165 is not fatal to prosecution’s case nor by itself warrant an acquittal.”*<sup>16</sup> The dispositive part of the Judgment of the RTC reads:

IN VIEW OF THE FOREGOING, in Criminal Case No. 19090-2012-C, the Court finds accused, MARK ANTHONY LALU y GIBE, GUILTY BEYOND REASONABLE DOUBT of violation of Section 5, Article II of Republic Act 9165. The accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

In Criminal Case No. 19092-2012-C, the Court likewise finds, accused, MARK ANTHONY LALU y GIBE, GUILTY BEYOND REASONABLE DOUBT of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY, as minimum, to FOURTEEN YEARS, as maximum, and to PAY A FINE OF THREE HUNDRED THOUSAND (P300,000.00) PESOS.

Finally, in Criminal Case No. 19091-2012-C, for lack of evidence and for failure of the prosecution to prove the guilt of accused beyond reasonable doubt, MARK ANTHONY LALU y GIBE is ACQUITTED

<sup>14</sup> Rollo, p. 6.

<sup>15</sup> CA rollo, p. 26.

<sup>16</sup> Id. at 32.

of violation of Section 12, Article II of Republic Act 9165.

The Branch Clerk of Court is hereby ordered to turn over the methamphetamine hydrochloride (shabu) subject of this case for proper disposition and destruction.

SO ORDERED.<sup>17</sup>

Aggrieved, appellant brought the case to the CA arguing that the trial court erred in relying on the prosecution's incredible version of facts. He also faulted the trial court for finding that there was an unbroken chain of custody.<sup>18</sup>

#### *Ruling of the CA*

The CA held that the elements of both illegal sale and illegal possession of dangerous drugs had been duly proven.<sup>19</sup> It affirmed the RTC's finding of appellant's guilt.<sup>20</sup> The CA also ruled that the integrity and evidentiary value of the seized drugs had been duly preserved.<sup>21</sup> It disposed as follows:

FOR THESE REASONS, the appeal is DENIED. The March 4, 2015 Decision of the Regional Trial Court, Calamba City, Branch 37, convicting accused-appellant MARK ANTHONY LALU y GIBE for violation of Sections 5 and 11, Article II of Republic Act No. 9165, as well as the penalties imposed upon him by the court *a quo*, is hereby AFFIRMED.

SO ORDERED.<sup>22</sup>

Insisting on his innocence, appellant interposes the present appeal. In separate manifestations, the parties state that they will no longer file supplemental briefs.<sup>23</sup>

#### *ISSUE:*

WHETHER OR NOT THE RTC AND THE CA ERRED IN FINDING THAT THE EVIDENCE OF THE PROSECUTION WAS SUFFICIENT TO CONVICT THE ACCUSED OF THE ALLEGED SALE AND POSSESSION OF METHAMPHETAMINE HYDROCHLORIDE OR SHABU, IN VIOLATION OF SECTIONS 5 AND 11, RESPECTIVELY, OF RA 9165.

<sup>17</sup> *Id.* at 33-34.

<sup>18</sup> *Rollo*, p. 8.

<sup>19</sup> *Id.* at 10-11.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.* at 13.

<sup>22</sup> *Id.* at 15.

<sup>23</sup> *Id.* at 28-29, 32-34.

Appellant claims that the police officers failed to observe the proper procedure laid down in Section 21(1) of RA 9165 because there was no proof that the investigators actually received the specimens from SPO1 De Lima. Likewise, there was no mention of any name who actually received the seized items at the crime laboratory in Camp Vicente Lim. No evidence custodian was ever mentioned. Moreover, there was no Chain of Custody form presented.<sup>24</sup> Thus, appellant submits that “*there is doubt as to whether the drugs allegedly seized from the appellant were the same ones subjected to laboratory examination and presented in court.*”<sup>25</sup>

#### *The Court's Ruling*

This Court grants the appeal.

At the onset, it must be emphasized that an appeal of a criminal conviction opens the entire records of the trial to review. Consequently, this Court, in the course of its review, may also examine any error even if not assigned by the accused.<sup>26</sup>

Appellant was charged with *illegal sale of dangerous drugs* and *illegal possession of dangerous drugs* respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The present case took place on March 21, 2012, when RA 9165 was not yet amended.

The elements necessary in every prosecution for the *illegal sale* of dangerous drugs are: (1) the identities of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.<sup>27</sup> Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged.<sup>28</sup>

On the other hand, to successfully prosecute a case of *illegal possession* of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>29</sup>

The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself.<sup>30</sup> In the case of *Casona v. People*,<sup>31</sup> this Court explained:

<sup>24</sup> CA rollo, pp. 77-78.

<sup>25</sup> *Id.* at 79.

<sup>26</sup> *Casona v. People*, G.R. No. 179757, September 13, 2017.

<sup>27</sup> *People v. Roble*, 663 Phil. 147, 157 (2011).

<sup>28</sup> *Id.*

<sup>29</sup> *People v. Alcuizar*, 662 Phil. 794, 808 (2011).

<sup>30</sup> *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

<sup>31</sup> *Supra* note 26.

Inasmuch as the dangerous drug itself constitutes the *corpus delicti* of the offense charged, its identity and integrity must be shown by the State to have been preserved. On top of the elements for proving the offense of illegal possession, therefore, is that the substance possessed is the very substance presented in court. The State must establish this element with the same exacting degree of certitude as that required for ultimately handing down a criminal conviction. To achieve this degree of certitude, the Prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of the *corpus delicti*. The process, though tedious, must be undergone, for the end is always worthwhile - the preservation of the chain of custody that will prevent unnecessary doubts about the identity of the evidence.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. This Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same, there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise, in which similar evidence was seized. or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.<sup>32</sup>

Without doubt, an unbroken chain of custody must be clearly shown to establish the *corpus delicti*.

Section 1(b) of Dangerous Drugs Board Regulation No. 1,<sup>33</sup> Series of 2002, implementing RA 9165, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody

<sup>32</sup> *People v. Hementiza*, *supra* note 30 at 1028.

<sup>33</sup> Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

were made in the course of safekeeping and use in court as evidence, and the final disposition.

The Court explained the importance of the chain of custody in the case of *Mallillin v. People*,<sup>34</sup> viz:

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.<sup>35</sup>

In order to avoid planting, tampering, substitution and contamination of the confiscated substance, Section 21 of RA 9165 provides for the manner by which law enforcement officers should handle the seized items in dangerous drugs cases:

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;

<sup>34</sup> 576 Phil. 576 (2008).

<sup>35</sup> *Id.* at 587.



2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

x x x x

Further, *People v. Kamad*<sup>36</sup> restated further are the links that the prosecution must establish in the chain of custody in a buy-bust situation as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.<sup>37</sup>

After a painstaking review of the records of this case, this Court finds that the prosecution failed to demonstrate that the police officers observed the chain of custody.

It must be reiterated that the offenses were committed in 2012; thus, the above mentioned former Section 21(1), Article II of RA 9165 is applicable that the drugs seized must be inventoried and photographed in the presence of the accused or his representative, a representative from the media and the Department of Justice (DOJ), and any elected public official, who are all required to sign the copies of the inventory and be given a copy thereof. It is clear that aside from the accused or his representative, the old Section 21(1) required three witnesses (one from the media, the DOJ, and an elected public official) to the inventory.

<sup>36</sup> *People v. Kamad*, 624 Phil. 289 (2010).

<sup>37</sup> *Id.* at 304.

In the present case, SPO1 De Lima readily admitted that there was no representative from the DOJ to witness the inventory.<sup>38</sup> Also, the inventory sheet<sup>39</sup> was not signed by appellant or his representative and the lacking witness from the DOJ. Both circumstances violate Section 21, Article II of RA 9165.

Moreover, a thorough review of the testimonies of SPO1 De Lima and P/Insp. Perez show some doubtful points as regards the marking, photographing, and inventory of the seized items, to wit:

1. The inventory sheet was signed by P/Insp. Perez. In fact, he admitted on re-cross<sup>40</sup> that he understood the truthfulness of the inventory sheet when he signed it. However, during cross-examination,<sup>41</sup> P/Insp. Perez was quoted:

Q: Who were present when these markings were placed?

A: I was not in the area, ma'am.

Also, SPO1 De Lima testified:<sup>42</sup>

Q: Who prepared the inventory?

A: PO2 Cruz and PO1 Reyes, ma'am.

From the above testimonies, P/Insp. Perez attested to the truthfulness of the inventory and signed it even if he was not around during the marking of the seized items and that he was not the one who prepared the inventory report.

2. During direct examination,<sup>43</sup> SPO1 De Lima testified:

Q: Where were you then when the inventory was prepared?

A: I was also there at the office, ma'am.

Q: The inventory was prepared where?

A: At the office of the Intelligence Section, ma'am.

However, on cross-examination,<sup>44</sup> the testimony of SPO1 De Lima was:

Q: So the inventory was conducted at the police station?

A: No, ma'am. At the place of the operation, ma'am.

These glaring inconsistencies in SPO1 De Lima's testimony leaves the Court to guess where the inventory of the seized items actually took place.

<sup>38</sup> TSN, June 18, 2014 p. 9.

<sup>39</sup> RTC records, p. 8.

<sup>40</sup> TSN, November 20, 2014 p. 17.

<sup>41</sup> *Id.* at 14.

<sup>42</sup> TSN May 30, 2014 p. 17.

<sup>43</sup> *Supra.*

<sup>44</sup> TSN, June 18, 2014, p. 10.

3. SPO1 De Lima testified that the marking and taking of photographs were done simultaneously.<sup>45</sup> However, the pictures submitted shows that the photographs were taken when the seized items were not yet marked.

It must be emphasized that the purpose of taking photographs is to provide proof that the marking actually took place in the presence of the required witnesses. More importantly, the photographs are supporting proof of what was actually marked and what mark has been placed on the seized items.

The circumstances mentioned above are clear cut non-observance of the mandatory requirements under Section 21(1) which thus casts doubt on the integrity of the dangerous drug supposedly seized from appellant. In fact, the court below even noted that there had been no strict compliance with the provisions of Section 21(1).<sup>46</sup> This creates reasonable doubt in the conviction of appellant for violations of Sections 5, and 11.

However, this Court is mindful of the rule<sup>47</sup> that the failure to faithfully observe the procedural requirements under Section 21(1) would not necessarily result in the acquittal of the accused, provided that the chain of custody remains unbroken. Nonetheless, the liberality could only be applied for justifiable grounds, and only when the evidentiary value and integrity of the illegal drug are properly preserved.<sup>48</sup>

In the instant case, the police officers never presented any justifiable ground for the above-mentioned lapses and non-observance of the mandatory requirements under Section 21(1).

It is well to stress that the obligation to tender the credible explanation for any non-compliance with the affirmative safeguards imposed by Section 21 pertain to the State, and its agents, and to no other. If the State and its agents do not discharge that obligation, then the evidence of guilt necessarily becomes suspect.<sup>49</sup>

<sup>45</sup> *Supra*.

<sup>46</sup> RTC records, p. 152.

<sup>47</sup> Sec. 21(a), Article II of the Implementing Rules and Regulations of RA 9165, viz.:

(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.

<sup>48</sup> *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

<sup>49</sup> *Casona v. People*, *supra* note 26.

In concluding that the integrity and evidentiary value of the seized drugs had been preserved, the CA relied on the request for laboratory examination and chemistry report.

The Court disagrees.

A careful perusal of the request<sup>50</sup> for laboratory examination of the seized items only shows that it was SPO1 De Lima who delivered the supposedly seized drugs to the PNP Crime Laboratory at Camp Vicente Lim. However, the person who received them was not identified. Surely, it was not PCI Donna Villa P. Huelgas (PCI Huelgas), forensic chemist, who initially received the supposedly seized drugs. Although, there was a signature of the recipient, the latter was not even identified by SPO1 De Lima during the trial. There is also nothing in the records that indicates the person who handed the seized drugs to PCI Huelgas. Further, there is neither any document nor testimony to establish what had happened to the supposedly seized drugs and who obtained custody thereof after the examination was completed in the morning of March 22, 2012.

It bears to note that the laboratory examination was completed on March 22, 2012, but the supposedly seized drugs were not yet turned over to the trial court as of January 30, 2014, or almost two years thereafter.<sup>51</sup> Again, this Court is left to guess what happened to the seized drugs, and who had custody of them for almost two years before they were turned over to the trial court.

The glaring lapse in the instant case is the lack of the chain of custody form, because the breaks or gaps in the chain of custody were very evident as shown through the circumstances mentioned above. They could have been remedied by the chain of custody form. However, the same was lacking, and again, no justification was proffered therefor.

This Court cannot merely gloss over the glaring procedural lapses committed by the police officers, especially when what had been allegedly seized from appellant was only 0.63 grams of shabu. Recent cases have highlighted the need to ensure the integrity of the seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused.<sup>52</sup>

In the present case, and to reiterate, there is no chain of custody form or any record regarding the movement and custody of the supposedly seized drugs. No document can show the identity and signature of the person who held temporary custody of the seized items, the date and time when the transfer of custody thereof was made in the course of safekeeping and use in court as evidence, and the final

<sup>50</sup> RTC records, p. 40.

<sup>51</sup> *Id.* at 62.

<sup>52</sup> *People v. Del Mundo*, *supra* note 48.

disposition. There is even no testimony to establish the chain of custody other than the sweeping and self-serving declaration by the prosecution. These lapses cannot be considered minor, as they are, in fact, fatal in establishing chain of custody.

In sum, the numerous lapses and non-observance of the mandatory requirements under Section 21(1) of RA 9165, without any justifiable reason, is fatal to the cause of the prosecution. In addition, the lack of chain of custody form or any similar document which could have recorded the movement and custody of the supposedly seized drugs is more fatal because it cannot be simply presumed that the supposedly seized drugs from appellant are the same specimens presented in court.

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. In both *illegal sale* and *illegal possession* of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.<sup>53</sup>

This Court holds that the totality of evidence and the circumstances obtaining here do not support a finding of guilt beyond reasonable doubt. The lapses committed by the apprehending team as well as the glaring gaps in the chain of custody create a serious doubt on whether the supposedly seized drugs from appellant were the same drugs presented in court as evidence. Hence, the *corpus delicti* has not been adequately proven.

In fine, reasonable doubt does exist in the present case, since the quantum of proof required for the conviction of appellant for *illegal sale* and *illegal possession* of dangerous drugs was not met. His acquittal is, therefore, in order.

**WHEREFORE**, the assailed Decision dated September 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07553 is **REVERSED** and **SET ASIDE**. Accused-appellant Mark Anthony Lalu y Gibe is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. CR-19090-2012-C. Further, accused-appellant Mark Anthony Lalu y Gibe is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. CR-19092-2012-C. Mark Anthony Lalu y Gibe is **ORDERED** immediately **RELEASED** from detention, unless he is detained for any other lawful cause.

<sup>53</sup> *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

**SO ORDERED.**” (Leonen, *J.*, on wellness leave).

Very truly yours,

*Misael D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Deputy Division Clerk of Court*

*9/16/19*

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Supreme Court, Manila  
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COURT OF APPEALS  
CA G.R. CR HC No. 07553  
1000 Manila

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Diliman, 1104 Quezon City

Judgment Division  
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Supreme Court, Manila

The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

CSSupt. Gerardo F. Padilla  
Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Mark Anthony Lalu y Gibe  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 37, Calamba City  
4027 Laguna  
(Crim. Case Nos. 19090-2012-C &  
19092-2012-C)

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Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 238834

-versus-

MARK ANTHONY LALU y  
GIBE,  
Accused-Appellant.

x-----/

**ORDER OF RELEASE**

**TO: The Director General**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Thru: **CSSupt. Gerardo F. Padilla**  
Chief Superintendent  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**GREETINGS:**

WHEREAS, the Supreme Court on October 16, 2019 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“**WHEREFORE**, the assailed Decision dated September 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07553 is **REVERSED** and **SET ASIDE**. Accused-appellant Mark Anthony Lalo y Gibe is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. CR-19090-2012-C. Further, accused-appellant Mark Anthony Lalo y Gibe is hereby **ACQUITTED**.”

for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. CR-19092-2012C. Mark Anthony Lalu y Gibe is **ORDERED** immediately **RELEASED** from detention, unless he is detained for any other lawful cause.

**SO ORDERED.**" (Leonen, *J.*, on leave.)

**NOW, THEREFORE,** You are hereby ordered to immediately release **MARK ANTHONY LALU y GIBE** unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **DIOSDADO M. PERALTA**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **16<sup>th</sup>** day of **October 2019**.

Very truly yours,

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Deputy Division Clerk of Court* 11/16/19

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
Legaspi Village, 1229 Makati City

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