



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** which reads as follows:*

**“G.R. No. 243394 (*People of the Philippines v. George Futalan y Raday*).**

The conviction of the accused for the offense of illegal sale of dangerous drugs is the subject of review in this appeal assailing the Court of Appeals-Cebu City’s (CA) Decision<sup>1</sup> dated April 27, 2018 in CA-G.R. CR. HC No. 02471, which affirmed the Regional Trial Court’s (RTC) Judgment dated November 4, 2016 in Criminal Case No. 2015-22884.

**ANTECEDENTS**

On March 9, 2015, the Siaton Municipal Police Station of Negros Oriental conducted a surveillance operation against George Futalan y Raday (George) based on the information that he is selling illegal drugs. Accordingly, Police Officer 1 Rocky Kisay (PO1 Kisay), together with the confidential informant, met George in front of an elementary school at Barangay Sumaliring, Siaton. The informant introduced PO1 Kisay to George as someone interested to buy ₱9,000.00 worth of *shabu*. However, George told PO1 Kisay that the *shabu* would be available the next day. After the meeting, PO1 Kisay relayed the incident to Chief Intelligence Officer SPO4 Rodolfo Narvas (SPO4 Narvas).

The following day at 6:30 a.m., SPO4 Narvas planned a buy-bust operation and designated PO1 Kisay as poseur-buyer and PO2 Edwin Tubat (PO2 Tubat) as back-up. The other team members served as perimeter

---

<sup>1</sup> *Rollo*, pp. 4-13. penned by Associate Justice Edward B. Contreras with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Louis P. Acosta.

security. After coordinating with the Philippine Drug Enforcement Agency, the buy-bust team proceeded to the elementary school. At around 7:50 a.m., PO1 Kisay saw George and asked him if he had the items. Thereafter, George handed three plastic sachets to PO1 Kisay. After examining the sachets, PO1 Kisay gave the buy-bust money to George consisting of a ₱500.00 bill bundled with bogus money made from cut-out cartolina. At that moment, PO1 Kisay arrested George with the help of PO2 Tubat, who immediately responded after the transaction was consummated.<sup>2</sup> PO1 Kisay then turned-over George to the other members of the buy-bust team. Afterwards, PO1 Kisay signed and marked the three sachets with “GF-BB1-03-10-15,” “GF-BB2-03-10-15,” and “GF-BB3-03-10-15.”<sup>3</sup> At the police station, the buy-bust team photographed and inventoried the seized items in the presence of George, the *barangay* captain, and a media representative. The witnesses signed the inventory receipt except George.<sup>4</sup>

PO1 Kisay placed the items inside a sealed envelope and brought them to the crime laboratory. Thereat, a representative from the Department of Justice (DOJ) arrived,<sup>5</sup> who examined the contents of the envelope and signed the inventory receipt. PO1 Kisay resealed and signed the envelope and turned it over to PO2 Robert John Pama,<sup>6</sup> who later gave the specimens to forensic chemist PCI Josephine Llena. After qualitative examination, the substances tested positive for the presence of Methamphetamine Hydrochloride.<sup>7</sup> With these findings, George was charged with violation of Section 5, Article II of RA No. 9165, docketed as Criminal Case No. 2015-22884, thus:

That on or about the 10<sup>th</sup> day of March 2015 at around 7:50 o'clock in the morning, in Barangay Sumaliring, Siaton, Negros Oriental, [*sic*] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously sell and/or deliver to a police poseur buyer, three (3) pieces heat sealed transparent plastic sachet [*sic*] containing Methamphetamine Hydrochloride, locally known as “shabu” with the total weight of 0.91 gram, without authority of law.

CONTRARY TO LAW.<sup>8</sup>

George denied the accusation and claimed that he was on his way to work onboard a motorcycle when a policeman dressed in civilian clothes flagged him down. The police officer invited him to the police station for questioning. Thereat, he was forced to admit ownership of the items placed on top of a table.<sup>9</sup>

<sup>2</sup> TSN, September 6, 2016, Testimony of PO1 Kisay, pp. 6-7.

<sup>3</sup> *Rollo*, p. 6.

<sup>4</sup> Folder of Exhibits, Exh. “G,” p. 6.

<sup>5</sup> TSN, September 6, 2016, Testimony of PO1 Kisay, pp. 9-10.

<sup>6</sup> TSN, September 5, 2016, Testimony of PO2 Pama, pp. 4-5.

<sup>7</sup> *CA rollo*, p. 41.

<sup>8</sup> RTC records, p. 2.

<sup>9</sup> TSN, October 5, 2016, Testimony of George, pp. 3-5.

On November 4, 2016, the RTC convicted George of illegal sale of dangerous drugs. The RTC gave credence to the prosecution's version on the transaction between George and PO1 Kisay and held that there was an unbroken chain of custody, to wit.

**WHEREFORE**, in the light of the foregoing, the Court hereby finds the accused George Futralan y Raday GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 0.91 gram of *shabu* in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The three (3) heat-sealed transparent plastic sachets with markings "GF-BB1-03-10-15" to "GF-BB3-03-10-15," respectively, with a total weight of 0.91 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused George Futralan y Raday shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>10</sup>

Aggrieved, George elevated the case to the CA docketed as CA-G.R. CR. HC No. 02471. On April 27, 2018, the CA affirmed the RTC's findings, viz.:

WHEREFORE, in view of the foregoing, the Appeal is DENIED. The Judgment dated November 4, 2016, of the Regional Trial Court of Negros Oriental, Branch 30, Dumaguete City, in Criminal Case No. 2015-22884, finding appellant George Futralan y Raday, guilty beyond reasonable doubt of Violating Section 5, Article II of R.A. No. 9165, is hereby AFFIRMED.

SO ORDERED.<sup>11</sup>

Hence, this appeal.

## RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.<sup>12</sup> Thus, it is essential to ensure that the substance

---

<sup>10</sup> CA rollo, p. 46.

<sup>11</sup> *Supra* note 1, at 12.

<sup>12</sup> *People v. Partoza*, 605 Phil. 883, 890 (2009).

recovered from the accused is the same substance offered in court.<sup>13</sup> Indeed, the prosecution must satisfactorily established the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.<sup>14</sup> Here, the records reveal a broken chain of custody.

Notably, prompt marking is the first stage in the chain of custody which operates to set apart the confiscated items from other materials. It forestalls switching, planting, or contamination of the seized evidence.<sup>15</sup> Thus, the confiscated items must be marked immediately upon confiscation in the presence of the accused.<sup>16</sup> In this case, the testimony of PO1 Kisay was unclear on whether George had the opportunity to witness the marking of the plastic sachets, to wit:

Q: So after his arrest, what did you do next?

A: The perimeter security arrived ma'am.

Q: Then what happened next?

A: **I turned over George Futralan to the perimeter security ma'am.**

Q: **So what happened after you turned him over?**

A: **I marked the shabu that I bought with my signature ma'am.**

Q: **Where did you mark it?**

A: **In the place of incident ma'am.**<sup>17</sup> (Emphases supplied.)

Worse, PO1 Kisay admitted that he reopened the sealed envelope containing the seized items and allowed the DOJ representative to examine their contents, and to sign the inventory receipt without the accused and the other insulating witnesses. This puts serious doubt as to the integrity and evidentiary value of the seized drugs. To be sure, the DOJ representative's cross-examination revealed who were present in the continuation of the inventory:

CROSS EXAMINATION BY ATTY. JASON BONDAL:

X X X X

Q: Mr. Witness, you earlier testified that you witnessed the inventory already at the Crime Laboratory?

A: Yes, sir.

*pc/w*

<sup>13</sup> *People v. Ismael*, 806 Phil. 21, 31-32 (2017).

<sup>14</sup> *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

<sup>15</sup> *People v. Gonzales*, 708 Phil. 121, 131 (2013).

<sup>16</sup> *People v. Reyes*, 797 Phil. 671, 686-687 (2016).

<sup>17</sup> TSN, September 6, 2016, Testimony of PO1 Kisay, p. 8.

Q: **Was it only you or there were other witnesses who witnessed the inventory at the Crime Laboratory?**

A: **Only me and the police, sir.**

x x x x

Q: And you said that when you went to the Crime Lab, the specimens were already placed inside the envelope?

A: Yes, sir.

x x x x

Q: So when you arrived at the Crime Lab, Mr. Witness, the items were not placed on the table?

A: Yes, sir.

Q: They have to open it again, Mr. Witness, and did you say that the envelope was already sealed?

A: **Yes, sir.**<sup>18</sup> (Emphases supplied.)

Taken together, the actions of the police operatives show a complete disregard of the required procedure. On this point, we reiterate that the provisions of Section 21, Republic Act No. 9165<sup>19</sup> embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the *very corpus delicti* of the crime. Hence, George must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.<sup>20</sup>

**FOR THESE REASONS**, the appeal is **GRANTED**. The Court of Appeals' Decision dated April 27, 2018 in CA-G.R. CR. HC No. 02471 is **REVERSED** and **SET ASIDE**. Accused-appellant George Futralan y Raday is **ACQUITTED** in Criminal Case No. 2015-22884, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director is likewise **ORDERED** to **REPORT** to this Court within five days from receipt of this Resolution the action that has been undertaken.

<sup>18</sup> TSN, September 13, 2016, Testimony of DOJ Representative Lyndon Abrio, pp. 5-6.

<sup>19</sup> "Comprehensive Dangerous Act of 2002."

<sup>20</sup> *People v. Gandawali*, G.R. No. 242516, June 8, 2020.

10/10

**SO ORDERED.**” (J. Rosario designated additional Member *per* Special Order No. 2797 dated November 5, 2020; on official leave).

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court

10 MAY 2021

PUBLIC ATTORNEY'S OFFICE (reg)  
Regional Special & Appealed Cases Unit  
Counsel for Accused-Appellant  
3<sup>rd</sup> Floor, Taft Commercial Center  
Metro Colon Carpark  
Osmeña Boulevard, 6000 Cebu City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 30  
Dumaguete City, 6200 Negros Oriental  
(Crim. Case No. 2015-22884)

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

COURT OF APPEALS (reg)  
Cebu City  
Visayas Station  
CA-G.R. CR. HC No. 02471

GEORGE R. FUTALAN (x)  
Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

JUDGMENT DIVISION (x)  
Supreme Court, Manila

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

THE SUPERINTENDENT (x)  
New Bilibid Prison  
1770 Muntinlupa City

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
PHILIPPINE JUDICIAL ACADEMY (x)  
Supreme Court, Manila

*Please notify the Court of any change in your address.*  
GR243394. 01/20/21 (186)URES(a)