

# FIRST DIVISION

[ G.R. No. 242692, July 13, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID JAMES PIS-AN Y DIPUTADO, ACCUSED-APPELLANT.**

## DECISION

**REYES, J. JR., J.:**

Assailed in this ordinary appeal<sup>[1]</sup> is the March 28, 2018 Decision<sup>[2]</sup> of the Court of Appeals-Cebu City (CA) in CA-G.R. CR-HC No. 02422 affirming the September 12, 2016 Judgment<sup>[3]</sup> of the Regional Trial Court (RTC) of Dumaguete City, Negros Oriental, Branch 30 in Criminal Case No. 2015-22801, finding accused-appellant David James Pis-an y Diputado (Pisan) guilty beyond reasonable doubt of violation of Section 11 (illegal possession), Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

### The Facts

On February 16, 2015, Pis-an was placed under surveillance after the police received a tip from a confidential informant that the former was involved in drug dealing. The police then conducted a test-buy operation and was able to recover from Pis-an one transparent plastic sachet which yielded positive results for *shabu* per Chemistry Report No. 063-15<sup>[4]</sup> dated February 16, 2015, issued by Police Chief Inspector Josephine Suico Llena (PCInsp. Llena).

Thus, on February 18, 2015, Police Officer 3 Derek T. Alcoran (PO3 Alcoran) applied for a search warrant before the RTC of Dumaguete City, Negros Oriental.<sup>[5]</sup> That same day, Search Warrant (SW) No. 10-2015 6 was issued by Executive Judge Gerardo A. Paguio, Jr., authorizing the search of Pis-an's residence located in Barangay (Brgy.) Camanjac, Dumaguete City.

On February 25, 2015, a team headed by PO2 Eugene A. Calumba (PO2 Calumba) and PO2 Dexter S. Banua (PO2 Banua) discussed their individual assignments and plan of action. After receiving the coordination control number from the local Philippine Drug Enforcement Agency (PDEA), the team marched to implement SW No. 10-2015. Upon reaching the house of Pis-an, the police officers, along with *Brgy. Kagawad* Raul Dicen (*Brgy. Kagawad* Dicen), enforced the warrant and seized the following:

1. One (1) red com purse containing 14 pieces of heat-sealed transparent plastic sachets each containing white crystal line substance;
2. Four (4) pieces of disposable lighters;
3. Two (2) pieces of plastic straws;

4. Two (2) pieces of metal clips;
5. Three (3) pieces of assorted needles;
6. Three (3) pairs of scissors;
7. Seven (7) pieces of tin foil;
8. Two (2) pieces of improvised tooters; and
9. A total of P3,050 in various denominations.

All the items were carried out to the porch of the house where PO2 Calumba marked<sup>[7]</sup> them while PO2 Banua took photos. Afterwards, an inventory was made in the presence of Pis-an and *Brgy. Kagawad* Dicen; together with media practitioner Juancho Gallarde (Gallarde) and Department of Justice (DOJ) representative Anthony Chilius Benlot (Benlot), who had both arrived by then.<sup>[8]</sup> Thereafter, Pis-an and the seized items were brought to the Provincial Intelligence Branch (PIB) satellite office where a Memorandum Request for Laboratory Examination and Drug Test<sup>[9]</sup> and a Return of Search Warrant<sup>[10]</sup> were prepared and signed by PO2 Calumba.

That afternoon, at the crime laboratory, PCInsp. Llena received the confiscated items from PO2 Calumba and proceeded to conduct confirmatory tests thereon. In her Chemistry Report No. D-079-15,<sup>[11]</sup> PCInsp. Llena stated that the 14 pieces of transparent plastic sachets containing white crystalline substance have a total aggregate weight of 9.38 grams and all tested positive for methamphetamine hydrochloride or *shabu*. PCInsp. Llena also examined the urine sample taken from Pis-an and, as inscribed in her Chemistry Report No. DT-068-15,<sup>[12]</sup> the same also tested positive for the presence of methamphetamine.

Consequently, Pis-an was charged under an Amended Information<sup>[13]</sup> dated March 10, 2015, viz.:

That on or about the 25<sup>th</sup> day of February, 2015 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused DAVID JAMES PIS-AN y DIPUTADO, without authority of law and legal justification, did, then and there willfully, unlawfully and feloniously possess or have under his custody and control fourteen [14] pieces transparent plastic sachets containing white crystalline substance weighing 3.25 grams, 4.13 gram[s], 0.28 gram, 0.24 gram, 0.26 gram, 0.23 gram, 0.16 gram, 0.11 gram, 0.15 gram, 0.18 gram, 0.13 gram, 0.07 gram, 0.13 gram, 0.06 gram, with a total aggregate weight of 9.38 grams which substances after examination conducted on specimen were found positive to the test of Methamphetamine Hydrochloride, also known as [*shabu*], a dangerous drug, in violation of [R.A.] No. 9165.

That the accused was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-068-15.

Contrary to Section 11 Article II of [R.A.] No. 9165. (Underscoring supplied)

Arraigned thereon, Pis-an entered a "not guilty" plea<sup>[14]</sup> whereupon trial on the merits ensued.

During trial, Pis-an denied the charge against him and testified that (i) on February 25, 2015, at around 5:00 a.m., police officers barged through their gates and demanded to search the place;<sup>[15]</sup> and (ii) he asked to see the search warrant but PO2 Calumba replied that there was no need to show the same as it was already signed by higher authorities.<sup>[16]</sup> Pis-an contended that he was not able to witness the search as he was made to stay on the porch of the house.<sup>[17]</sup>

### **The RTC Ruling**

The RTC rendered its Judgment dated September 12, 2016, convicting Pis-an of the crime charged, the *fallo* of which reads:

**WHEREFORE,** in the light of the foregoing, the Court hereby finds the accused [Pis-an] GUILTY beyond reasonable doubt of the offense of illegal possession of 9.38 grams of *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of twenty (20) years and one (1) day to life imprisonment and to pay a fine of Four Hundred Thousand Pesos ([P]400,000.00).

The fourteen (14) heat-sealed transparent plastic sachets with markings "DJP-SW1 02/25/15" to "DJP-SW14 02/25/15", respectively, and containing a total aggregate weight of 9.38 grams of Methamphetamine Hydrochloride or *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 [Pis-an] 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.

Aggrieved, Pis-an elevated his conviction before the CA.

### **The CA Ruling**

In its March 28, 2018 Decision, the CA affirmed the ruling of the RTC. In doing so, the CA held that the prosecution was able to prove all the elements required to secure Pis-an's conviction. Moreover, the CA observed that the integrity and evidentiary value of the seized drugs were properly preserved as each link in the chain of custody rule was duly established by the prosecution. Further, the CA opined that Pis-an's allegation that no search warrant was shown to him was belied

by the fact that his signature appears thereon.

Thus, the dispositive portion of the decision states:

**WHEREFORE**, the Judgment dated September 12, 2016, issued by the [RTC], Branch 30, Dumaguete City in Criminal Case No. 2015-22801 convicting accused-appellant [Pis-an] of Violation of Section 11, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act is hereby **AFFIRMED**.

With costs against [Pis-an].

**SO ORDERED.**

Hence, this appeal.

The Court required<sup>[18]</sup> both parties to file their respective supplementary briefs; however, they opted not to file the same.

### **Issue**

Here, as in all criminal cases, the primordial issue is whether the guilt of the accused has been established beyond reasonable doubt.

### **Our Ruling**

The appeal, after a judicious review, fails.

For the charge of illegal possession of a dangerous drug to prosper, it must be proven that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.<sup>[19]</sup>

In the case at bench, the courts *a quo* correctly held that all the aforementioned elements are present here, since: (i) by virtue of SW No. 10- 2015, a valid search warrant, the police officers recovered, among others, 14 heat-sealed transparent plastic sachets containing white crystalline substance which later tested positive for methamphetamine hydrochloride or *shabu*; (ii) such possession is not authorized by law as Pis-an himself admitted during the pre-trial;<sup>[20]</sup> and (iii) the prohibited drugs were uncovered from Pis-an's house which was a *prima facie* evidence of knowledge or *animus possidendi*. Verily, the factual findings of the CA affirming those of the RTC are binding upon this Court absent any showing that such findings are tainted with arbitrariness, capriciousness or palpable error.<sup>[21]</sup>

In addition, the Court agrees that the police officers duly complied with the chain of custody rule under Section 21, Article II of R.A. No. 9165<sup>[22]</sup> and its Implementing

Rules and Regulations.<sup>[23]</sup>

The Court, in *Aranas y Dimaala v. People*,<sup>[24]</sup> declared that:

[T]o 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. 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. 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, a representative from the media AND the DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media. 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." (Citations omitted)

Records reveal that right after Pis-an was arrested, the police officers immediately took custody of the seized items and marked them right there and then. They also conducted the requisite inventory and photography in the presence of all three (3) insulating witnesses as required by R.A. No. 9165 prior to its amendment, namely: Brgy. Kagawan Dicen; media practitioner Gallarde; and DOJ representative Benlot. Thereafter, PO2 Calumba delivered the confiscated drugs to PCInsp. Llena for laboratory examination. Later, confirmatory tests on all 14 heat-sealed transparent plastic sachets would yield a positive finding for the presence of methamphetamine hydrochloride or more commonly known as *shabu*. Clearly, therefore, the chain of custody over the seized drugs remained unbroken as the recovery and proper handling of the *corpus delicti* were sufficiently shown.

Undeniably, Pis-an was caught in possession of 9.38 grams of *shabu* and the illegal possession of such quantity of dangerous drugs is punishable under Section 11, paragraph 2 (2), Article II of R.A. No. 9165, as follows:

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of x x x methamphetamine hydrochloride or "*shabu*"[.]

However, as succinctly pointed out by Justice Mario V. Lopez in his Reflections, the maximum penalty of life imprisonment may only be imposed when the crime of illegal possession was committed in the presence of two or more persons or in a