

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WONG CHUEN MING, AU WING CHEUNG, TAN SOI TEE, LIM CHAN FATT, CHIN KOK WEE, CHIN KIN YONG, YAP BOON AH, CHIN KONG SONG, CHI...

G.R. Nos. 112801-11. April 12, 1996

Ponente: PADILLA, J.

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PADILLA, J.:

Wong Chuen Ming and Au Wing Cheung appeal from a decision[*] of the Regional Trial Court, Branch 109 of Pasay City, finding them, as well as their co-accused, guilty beyond reasonable doubt of violating Section 15, Article III of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972.

Appellants Wong Chuen Ming and Au Wing Cheung, both British (Hongkong) nationals, together with Tan Soi Tee, Chin Kok Wee, Lim Chan Fatt, Chin Kin Yang, Yap Boon Ah, Chin Kong Song, Chin Kin Fah, Chai Min Huwa and Lim Nyuk Sun, all Malaysian nationals, were charged with unlawfully transporting into the country Methamphetamine Hydrochloride or "shabu." Eleven (11) separate criminal informations were filed against all of the accused individually, setting forth similar allegations:

"That on or about the 7th day of September, 1991, about 1:00 o'clock in the afternoon in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously transport without lawful authority [3.40 kilograms in Criminal Case No. 91-1524 filed against Wong Chuen Ming; 3.45 kilograms in Criminal Case No.91-1525 to 91-1534 filed against all other accused individually], more or less of Methamphetamine Hydrochloride, as (sic) regulated drug commonly known as "SHABU."

CONTRARY TO LAW."[1]

At their respective arraignments, all accused with the assistance of their counsels, pleaded not guilty to the charge. The counsel of accused-appellant Au Wing Cheung earlier filed a petition for reinvestigation and deferment of his arraignment but the same was denied by the trial court for lack of merit. Accused-appellant Au Wing Cheung was arraigned on 20 September 1991 and with the assistance of counsel, he likewise entered a plea of not guilty.

The trial court conducted a joint and/or consolidated trial of all the cases upon motion by the prosecution considering that the State had common testimonial and documentary evidence against all accused. The prosecution presented four (4) witnesses, namely, (1) Danilo Gomez, a customs examiner assigned at the Ninoy Aquino International Airport (NAIA) Customs Office; (2) Zenaida Reyes Bonifacio, Chief of the Collection Division and Acting Duty Collector of the Customs Office at the NAIA; (3) Elizabeth Ayonon, a forensic chemist at the Philippine National Police Crime Laboratory, and (4) Capt. Rustico Francisco, Officer in Charge (OIC) of the Philippine National Police Narcotics Command Detachment at the NAIA. The case for the prosecution, as culled from the testimonies of its witnesses, may be summarized as follows:

On 7 September 1991, at about 1:000' clock in the afternoon, Philippine Air Lines (PAL) Flight PR No. 301 from Hongkong arrived at the Ninoy Aquino International Airport (NAIA) in Pasay City, Metro Manila. Among the many passengers who arrived on board said flight were the eleven (11) accused, namely, Wong Chuen Ming, Au Wing Cheung, Tan Soi Tee, Chin Kok Wee, Lim Chan Fatt, Chin Kin Yong, Yap Boon Ah, Chin Kong Song, Chin Kin Fah, Chai Min Huwa and Lim Nyuk Sun. Their respective passports showed that Wong Chuen Ming and Au Wing Cheung are the only British (Hongkong) nationals in the group while the rest are all Malaysian nationals. Their passports also revealed that all the accused Malaysians (except Lim Chan Fatt) originally came from Malaysia, traveled to Singapore and Hongkong before proceeding to Manila. Upon the other hand, Wong Chuen Ming and Au Wing Cheung, as well as Lim Chan Fatt, directly came from Hongkong to Manila. All accused arrived in Manila as a tour group arranged by Select Tours International Co., Ltd. Accused-appellant Au Wing Cheung, an employee of Select Tours International Co., Ltd. acted as their tour guide.

After passing through and obtaining clearance from immigration officers at the NAIA, the tour group went to the baggage claim area to retrieve their respective checked-in baggages. They placed the same in one pushcart and proceeded to Express Lane 5 which at that time was manned by customs examiner Danilo Gomez. Au Wing Cheung handed to Gomez the tour group's passengers' manifest, their baggage declarations and their passports.

Gomez testified that he instructed the tour group to place their baggages on the examiner's table for inspection. They were directed to hold on to their respective baggages while they wait for their turn to be examined. Chin Kong Song's baggage was first to be examined by Gomez. Gomez put his hand inside the baggage and in the course of the inspection, he found three (3) brown colored boxes similar in size to powdered milk boxes underneath the clothes. The boxes were marked Alpen Cereals and as he found nothing wrong with them, Gomez returned them inside the baggage and allowed Chin Kong Song to go. Following the same procedure, Gomez next examined the baggage of Wong Chuen Ming. Gomez again found and pulled out two (2) boxes of Alpen Cereals from said baggage and like in the previous inspection, he found nothing wrong with them and allowed Wong Chuen Ming to go. The third baggage to be examined belonged to Lim Nyuk Sun. When Gomez pulled out another three (3) boxes of Alpen Cereals from said baggage, he became suspicious and decided to open one of the boxes with his cutter. Inside the box was a plastic bag containing white crystalline substance. Alarmed, Gomez immediately called the attention of Appraiser Oreganan Palala and Duty Collector Zenaida Reyes Bonifacio to his discovery.[2]

Bonifacio testified that upon learning about the boxes containing the white crystalline substance, she immediately ordered the tour group to get their baggages and proceed to the district collector's office. Chin Kong Song and Wong Chuen Ming, who were previously cleared by Gomez, were also brought inside together with the rest of the group. Inside the collector's office, Gomez continued to examine the baggages of the other members of the tour group. He allegedly found that each baggage contained one (1), two (2) or three (3) boxes similar to those previously found in the baggages of Chin Kong Song, Wong Chuen Ming and Lim Nyuk Sun. A total of thirty (30) boxes of Alpen Cereals containing white crystalline substance were allegedly recovered from the baggages of the eleven (11) accused. As Gomez pulled out these boxes from their respective baggages, he bundled said boxes by putting masking tape around them and handed them over to Bonifacio. Upon receipt of these bundled boxes, Bonifacio called out the names of accused as listed in the passengers' manifest and ordered them to sign on the masking tape placed on the boxes allegedly recovered from their respective baggages. Also present at this time were Capt. Rustico Francisco and his men, agents of the Bureau of Customs and several news reporters. A few minutes later, District Collector Antonio Marquez arrived with General Job Mayo and then NBI Deputy Director Mariano Mison.[3]

Capt. Francisco testified that shortly after all boxes of Alpen Cereals were recovered, he conducted a field test on

a sample of the white crystalline substance. His test showed that the substance was indeed "shabu." Capt. Francisco immediately informed the eleven (11) accused that they were under arrest. Thereafter, all accused, as well as the Alpen Cereals boxes which were placed inside a big box, were brought to Camp Crame.[4]

At Camp Crame, accused were asked to identify their signatures on the boxes and after having identified them, they were again made to sign on the plastic bags containing white crystalline substance inside the boxes bearing their signatures. The examination by Elizabeth Ayonon, a forensic chemist at the Philippine National Police Crime Laboratory at Camp Crame, confirmed that the white crystalline substance recovered from accused was "shabu." [5] The total weight of "shabu" recovered was placed at 34.45 kilograms.[6]

For their part, the defense interposed by all accused was basically anchored on the testimony of their co-accused Lim Chan Fatt, a technician and self-confessed "call boy," who admitted being responsible for bringing the boxes of Alpen Cereals into the country although he denied any knowledge that they contained "shabu." Lim Chan Fatt testified that except for Chin Kong Song and Lim Nyuk Sun, all other accused were unknown or complete strangers to him until their trip to the Philippines on 7 September 1991. With respect to Chin Kong Song and Lim Nyuk Sun, Lim Chan Fatt allegedly met them at his boarding house in Hongkong where the two (2) temporarily lived a few days before said trip. According to Lim Chan Fatt, prior to their departure date, a certain Ah Hong, a co-boarder and a Hongkong businessman, approached him and asked him if he could kindly bring with him boxes of cereals to the Philippines. Ah Hong promised Lim Chan Fatt that a certain Ah Sing will get these boxes from him at the Philippine airport and for this trouble, Ah Sing will see to it that Lim Chan Fatt will have a good time in the Philippines. Ah Hong allegedly even opened one (1) box to show that it really contained cereals. Lim Chan Fatt acceded to Ah Hong's request as he allegedly found nothing wrong with it. Consequently, Ah Hong delivered to Lim Chan Fatt thirty (30) boxes of Alpen Cereals. Since his baggage could not accommodate all thirty (30) boxes, Lim Chan Fatt requested Chin Kong Song and Lim Nyuk Sun to accommodate some of the boxes in their baggages. Lim Chan Fatt claimed that he entrusted five (5) boxes to Chin Kong Song and another five (5) to Lim Nyuk Sun. He allegedly placed four (4) boxes inside a hand carried plastic bag while the rest were put inside his baggage.[7]

On the basis of this testimony, the defense endeavored to show that only Lim Chan Fatt, Chin Kong Song and Lim Nyuk Sun were responsible for bringing boxes of Alpen Cereals into the country and even then they cannot be held liable for violation of Section 15, Article II of R.A. No. 6425, as amended, as they allegedly had no knowledge that these boxes contained "shabu."

The defense also presented as witnesses accused Chin Kong Song and Lim Nyuk Sun and accused-appellants Au Wing Cheung and Wong Chuen Ming. Accused-appellants denied that boxes of Alpen Cereals were recovered from their baggages. They claimed that they affixed their signatures on the boxes only because they were threatened by police authorities who were present during the examination inside the collector's office. Accused-appellant Au Wing Cheung maintained that he was a bona fide employee of Select Tours International Co., Ltd. and that he had no prior knowledge that the tour group he was supposed to accompany to the Philippines brought boxes containing "shabu." [8] For his part, accused-appellant Wong Chuen Ming tried to dissociate himself from the other accused by testifying that he was not a part of their group. He claimed that he was originally booked with another travel agency, Wing Ann Travel Co., for a five-day Cebu tour. This Cebu tour was allegedly cancelled due to insufficient number of clients and accused-appellant was subsequently transferred to and accommodated by Select Tours.[9] The other accused who did not take the witness stand opted to adopt as their own all testimonial and documentary evidence presented in court for the defense.

On 29 November 1991, the trial court rendered judgment, the dispositive part of which reads as follows:

"xxx xxx xxx

In view of all the foregoing evidences, the Court finds that the prosecution has proven the guilt of all the accused in all the criminal cases filed against them for Violation of Section 15, Art. III, R.A. 6425 as amended and hereby sentences them as follows:

In Criminal Case No. 91-1524 entitled People of the Philippines vs. WONG CHUEN MING, the Court sentences Wong Chuen Ming to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III of R.A. 6425 as amended.

In Criminal Case No. 91-1525 entitled People of the Philippines vs. CHIN KIN YONG, the Court hereby sentences Chin Kin Yong to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation 15 (sic), Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1526 entitled People of the Philippines vs. AU WING CHEUNG, the Court hereby sentences Au Wing Cheung to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1527 entitled People of the Philippines vs. YAP BOON AH, the Court hereby sentences Yap Boon Ah to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1528 entitled People of the Philippines vs. TAN SOT TEE, the Court hereby sentences Tan Soi Tee to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1529 entitled People of the Philippines vs. CHIN KONG SONG, the Court hereby sentences Chin Kong Song to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1530 entitled People of the Philippines vs. CHIN KOK WEE, the Court hereby sentences Chin Kok Wee to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1531 entitled People of the Philippines vs. CHIN KIN FAH, the Court sentences Chin Kin Fah to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1532 entitled People of the Philippines vs. LIM CHAN FATT, the Court hereby sentences Lim Chan Fatt to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1533 entitled People of the Philippines vs. CHAI MIN HUWA, the Court hereby sentences Chai Min Huwa to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, Art. III, R.A. 6425 as amended.

In Criminal Case No. 91-1534 entitled People of the Philippines vs. LIM NYUK SUN, the Court hereby sentences Lim Nyuk Sun to life imprisonment and a fine of Twenty Thousand (P20,000.00) Pesos for Violation of Section 15, R.A. 6425 as amended.

Likewise, the thirty (30) Alpen cereal boxes found to contain a total of 34.450 kilograms of Methamphetamine Hydrochloride or shabu is hereby forfeited and the same is hereby ordered burned and/or destroyed in the presence of this Court, representative of the Department of Justice, National Bureau of Investigation, Dangerous Drugs Board, Bureau of Customs and the Narcotics Command (Narcom) at the San Lazaro crematorium before the same falls in the hands of future victims and further compound the already epidemic proportions of the drug menace in the country.

SO ORDERED." [10]

Thereafter, all accused through counsel filed with the trial court their joint notice of appeal. [11] However, on 7 April 1992, accused Chin Kong Song, Lim Nyuk Sun, Chin Kok Wee and Chai Min Huwa withdrew their notice of appeal. [12] This Court then directed those accused who did not withdraw their appeal to file their respective appellant's brief. Only accused-appellants Wong Chuen Ming and Au Wing Cheung filed their joint appeal brief, hence, the Court was constrained to dismiss the appeal pertaining to accused Lim Chan Fatt, Ching Kin Yong, Tan Soi Tee, Yap Boon Ah and Chin Kin Fah. [13] Consequently, the Court is now only concerned with the appeal of accused-appellants Wong Chuen Ming and Au Wing Cheung as the decision of the trial court has already become final and executory with respect to accused Chin Kong Song, Lim Nyuk Sun, Chin Kok Wee, Chai Min Huwa, Lim Chan Fatt, Chi Kin Yong, Tan Soi Tee, Yap Boon Ah and Chin Kin Fah.

In their appeal brief, accused-appellants Wong Chuen Ming and Au Wing Cheung make the following assignment of errors:

I.

THE LOWER COURT ERRED WHEN IT FAILED TO REALIZE THAT THE JOINT REPRESENTATION BY PREVIOUS COUNSEL OF APPELLANTS WITH THE GROUP OF NINE MALAYSIANS ACCUSED NOT ONLY PREJUDICED THE FORMER BUT ALSO AMOUNTED TO THE DEPRIVATION OF THEIR CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL AND DUE PROCESS.

II.

THE LOWER COURT ERRED IN FAILING TO HOLD THAT THE APPREHENDING CUSTOMS OFFICERS VIOLATED APPELLANTS' MIRANDA RIGHTS.

III.

THE LOWER COURT ERRED IN NOT EXCLUDING THE INADMISSIBLE EVIDENCE OBTAINED IN VIOLATION OF APPELLANTS' MIRANDA RIGHTS.

IV.

THE LOWER COURT ERRED WHEN IT RELIED ON THE PRESUMPTION OF REGULARITY IN THE DISCHARGE OF OFFICIAL DUTIES, DESPITE THE PAUCITY AND LACK OF CREDIBILITY OF THE PROSECUTION'S EVIDENCE.

V.

THE LOWER COURT ERRED WHEN IT DISREGARDED THE CLEAR ABSENCE OF ANIMUS POSSIDENDI ON THE PART OF THE APPELLANTS. [14]

Accused-appellants' contention that they were deprived of their right to counsel and due process when their previous counsels also represented the other accused despite "conflicting interests" is not well-taken. After going over the lengthy transcripts taken during the trial, the Court is satisfied that said counsels tried to present all the defenses available to each of the accused and that they did not, in any way, put in jeopardy accused-appellants' constitutional right to counsel. It does not appear from the records that the effectiveness of accused-appellants' previous counsels was diminished by the fact that they also jointly represented the other accused.

The Court, however, finds merit in the other contentions raised by accused-appellants in their appeal brief. These contentions shall be discussed jointly considering that the issues they raise are interrelated and deal with the question of whether or not the guilt of accused-appellants was proven beyond reasonable doubt.

At the outset, the Court holds that the signatures of accused on the boxes, as well as on the plastic bags containing "shabu," are inadmissible in evidence. A careful study of the records reveal that accused were never informed of their fundamental rights during the entire time that they were under investigation. Specifically, accused were not informed of their Miranda rights i.e. that they had the right to remain silent and to counsel and any statement they might make could be used against them, when they were made to affix their signatures on the boxes of Alpen Cereals while they were at the NAIA and again, on the plastic bags when they were already taken in custody at Camp Crame.

Prosecution witness Danilo Gomez admitted this fatal lapse during cross-examination:

"Atty. Tomas:

What did you tell these passengers before you made them sign this bunch of cartons?

A:

It was Collector Bonifacio who call (sic) their names and as soon as their luggages are examined and pulled, the three boxes, I wrap it in a masking tape and requested them to sign their names.

Q:

You just told them to sign this matter?

A:

Yes.

Q:

No preliminaries?

A:

No.

Q:

At that time that each one of the passengers were made to sign, was there any lawyer representing them?

A:

None.

Q:

You did not even inform them of their constitutional rights?

A:

No."[15] (Italics supplied)

Capt. Rustico Francisco also admitted that he did not inform the accused of their rights when he placed them under arrest:

"Atty. Zoleta:

So, after the result of that sample examined which yielded positive result, you immediately placed the accused under arrest, is that correct?

A:

I informed that that they are under arrest for bringing transporting to the country suspected methamphetamine hydrochloride or "shabu."

xxx

Q:

How did you announce your authority to the accused?

A:

I told Mr. Paul Au to tell his companions that we are placing them under arrest for transporting methamphetamine hydrochloride into the country.

Q:

And it is at this very moment that you informed them of their right, is that correct?

A:

I did not inform them of their right."^[16](Italics supplied)

It is also not shown from the testimony of Elizabeth Ayonon that accused were informed of their rights when they were again made to affix their signatures on the plastic bags:

"Atty. Tomas:

You said all the signatures were already there when brought to your laboratory for examination. With that answer, do you mean to tell even the signature inside the cereal box and transparent plastic bag were already there when you examined said specimen?

A:

Only the brown box labelled Alpen.

Q:

Who made the signature inside the cereal box and on the transparent plastic bag?

A:

Me, sir, because I asked them to identify. The interpreter asked them to identify their signature. So, in return I have to tell them please affix your signature for proper identification since they are reflected on the box.

Q:

What did you tell the accused when you required them to make their signatures?

A:

The interpreter told them to affix their signature for proper identification on the transparent plastic bag since their signature appeared on the carton box."^[17]

By affixing their signatures on the boxes of Alpen Cereals and on the plastic bags, accused in effect made a tacit admission of the crime charged for mere possession of "shabu" is punished by law. These signatures of accused are tantamount to an uncounselled extra-judicial confession which is not sanctioned by the Bill of Rights (Section 12[1][3], Article III, 1987 Constitution). They are, therefore, inadmissible as evidence for any admission wrung

from the accused in violation of their constitutional rights is inadmissible against them.[18] The fact that all accused are foreign nationals does not preclude application of the "exclusionary rule" because the constitutional guarantees embodied in the Bill of Rights are given and extend to all persons, both aliens and citizens.[19]

Without the signatures of accused on the boxes of Alpen Cereals and on the transparent plastic bags, the prosecution is left with the testimonies of its witnesses to establish that all the eleven (11) accused transported "shabu" into the country. Among the prosecution witnesses, only customs examiner Danilo Gomez testified that all the seized baggages, including those owned by accused-appellants Wong Chuen Ming and Au Wing Cheung, contained a box or boxes of "shabu." His testimony was given credence by the trial court since he was presumed to have performed his duties in a regular manner. However, Gomez' testimony inculcating accused-appellants was not corroborated by other prosecution witnesses.

Customs collector Zenaida Bonifacio stated during cross-examination that she cannot recall if each and everyone of accused were found in possession of any box or boxes of Alpen Cereals.[20] More significantly, the testimony of NARCOM officer Capt. Rustico Francisco casts doubt on the claim of Gomez that he recovered boxes of "shabu" from the baggages of accused-appellants:

"Court:

Clarificatory questions from the Court, you said that you were at the arrival area immediately after the arrival of all these accused when your attention was called by the customs examiner, is that correct?

A:

Yes, Your Honor.

Court:

So that you can truly say that you could note or witness the actual examinations of the baggages of all the accused persons here?

A:

Yes, Your Honor.

Court:

You realize, of course, the seriousness of the charges against these persons?

A:

Yes, Your Honor.

Court:

As a matter of fact, they could stay in jail for life?

A:

Yes, Your Honor.

Court:

Now in all candor and sincerity, did you actually see with your own two eyes any box being recovered from the bag of Au Wing Cheung? If you are not sure, don't answer.

A:

.I am not sure.

Court:

How about from the bag of Wong Chuen Ming, the other tourist from Hongkong. In all candor and sincerity did you actually see with your own two eyes a box being recovered from his bag?

A:

I am not sure.

Court:

There are nine other accused in these cases. In all fairness and sincerity, other than the two, did you actually see with your own two eyes boxes of cereals being recovered from the bags of the other Malaysians accused in these cases?

A:

.For the nine others, I am very sure, I am very sure that cereal boxes containing shabu, I am very sure.

Court:

Without any exception?

A:

.Yes, Your Honor, for the nine."[21](Italics supplied)

While Capt. Francisco was categorical in stating that boxes of "shabu" were recovered from the baggages belonging to the other nine (9) accused Malaysians, he admitted that he was not sure whether Gomez actually recovered boxes of "shabu" from accused-appellants' baggages. Hence, the presumption of regularity in the performance of duties accorded to Gomez cannot, by itself, prevail over the constitutional right of accused-appellants to be presumed innocent especially in the light of the foregoing testimonies of other prosecution witnesses.[22]

There are other circumstances that militate against the conviction of accused-appellants. First, accused-appellants are British (Hongkong) nationals while all the other accused are Malaysians. It is difficult to imagine how accused-appellants could have conspired with the other accused, who are total strangers, when they do not even speak the same language. Second, overwhelming evidence consisting of testimonies of accused-appellant Au Wing Cheung's superiors was presented to show that he was a bona fide employee of Select Tours International Co., Ltd. Third, evidence showed that accused-appellant Wong Chuen Ming was not originally part of the tour group arranged by Select Tours but he was only accommodated by the latter at the last minute when his package tour to Cebu was cancelled by Wing Ann Travel Co. Finally, as testified to by Capt. Francisco, both accused-appellants adamantly refused to sign on the transparent plastic bags containing "shabu":

"Court:

You made mention about two persons two of the accused who refused to sign the plastic bags containing the suspected shabu. Did you say that?

A:

Yes, Your Honor.

Court:

Did you not go out of your way to inquire the reasons of the two for not wanting to sign knowing of course that your duty as a law officer is not only to see to it that the guilty are prosecuted but to spare the innocent? Did you inquire why they refused to sign?

A:

I inquired.

Court:

What was the reason of the two?

A:

They told me their baggages did not contain any prohibited drugs.

Court:

Now again, think very carefully and try to recall vividly the time when these two refused to sign and go over the faces of the eleven accused and tell the court if you can remember or recall the looks of the two accused who refused to sign. Before you do that look very carefully at their faces.

A:

Wong Chuen Ming, the one with the tattoo.

Q:

Now, you mentioned two persons look at the faces of the 10 others. Aside from the one with a tattoo and look for the other one.

A:

The other one is the tour leader."^[23]

All the foregoing circumstances taken together with the findings of the Court persuade us to hold that accused-appellants' participation in the illegal transportation of "shabu" into the country has not been proven beyond reasonable doubt. To paraphrase an admonition expressed by the Court in a recent case, "[m]uch as We share the abhorrence of the disenchanted public in regard to the proliferation of drug pushers (or drug smugglers, as in this case), the Court cannot permit the incarceration of individuals based on insufficient factual nexus of their participation in the commission of an offense."^[24]

WHEREFORE, the decision appealed from is hereby REVERSED and another one entered ACQUITTING Wong Chuen Ming and Au Wing Cheung of the crime charged, based on reasonable doubt. Their immediate release is hereby ORDERED unless they are detained for some other lawful cause. Costs de officio.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[*] Penned by Judge Lilia C. Lopez.

[1] Informations in Criminal Cases Nos. 91-1524 to 91-1534 filed by Senior State Prosecutor George C. Dee; Rollo, pp. 30-51. Brackets supplied.

[2] TSN, testimony of Danilo Gomez, 25 September 1991, pp. 4-13.

- [3] TSN, testimony of Zenaida Reyes Bonifacio, 27 September 1991, pp. 4-11.
- [4] TSN, testimony of Capt. Rustico Francisco, 2 October 1991 pp. 11-32.
- [5] Exhibit NN- 1.
- [6] Exhibit NN-7.
- [7] TSN, testimony of Lim Chan Fatt, 14 October 1991, pp. 4-22.
- [8] TSN, testimony of Au Wing Cheung.
- [9] TSN, testimony of Wong Chuen Ming, 15 October 1991, pp. 13-20.
- [10] RTC Decision, pp. 28-30; Rollo, pp. 88-90.
- [11] Rollo, p. 92.
- [12] Motion to Withdraw Notice of Appeal, Original Records, Volume III, pp. 35-36.
- [13] Resolution dated 27 February 1995; Rollo, p. 280.
- [14] Appeal Brief, p. 4; Rollo, p. 150.
- [15] TSN, testimony of Danilo Gomez, 26 September 1991, p. 84.
- [16] TSN, testimony of Capt. Rustico Francisco, 2 October 1991, pp. 32-33
- [17] TSN, testimony of Elizabeth Ayonon, 26 September 1991, p. 44.
- [18] People vs. Bandin, 226 SCRA 299 (1993); People vs. Bagano, 181 SCRA 747 (1990).
- [19] Villegas vs. Hui Chiong Tasia Pao Ito, 86 SCRA 270 (1978).
- [20] TSN, testimony of Zenaida Bonifacio, 27 September 1991, p. 62.
- [21] TSN, testimony of Capt. Rustico Francisco, 30 October 1991, p. 14.
- [22] People vs. Melosantos, 245 SCRA 560(1995); People vs. Salcedo, 145 SCRA 345 (1993).
- [23] TSN, testimony of Capt. Rustico Francisco, 2 October 1991, p. 44.
- [24] People vs. Melosantos, *supra*, at 587.

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