

3 Phil. 349

[G.R. No. 1434. February 23, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANTONIO DE LOS REYES, DEFENDANT AND APPELLANT.

D E C I S I O N

MCDONOUGH, J.:

The defendant is charged with the crime of treason, committed as follows:

That on November 21, 1902, in Manila, he did feloniously, treasonably, etc., levy war against, adhere to and give aid and comfort to the enemies of, the United States and of the Philippine Islands, in that on or about August 30, 1902, he accepted a commission in the regular army of the "Filipino republic" and served as a captain and carried arms in such army and continued in such office and continued to carry arms as aforesaid between the said dates of August 30, 1902, and November 21, 1902, the said "Filipino republic" being an attempted government organized by various persons against the authority of the United States Government and that of the Philippine Islands and having for its object the overthrow by armed insurrection of the regularly constituted government in said Islands.

The defendant was convicted in the Court of First Instance of Manila and sentenced to imprisonment for a term of twenty years and to pay a fine of \$5,000.

The evidence upon which the court below based this conviction is substantially as follows:

A Constabulary detective testified that he met the defendant in Bacord, city of Manila, November 21, 1902; that a companion of the witness told him that the defendant was a captain in the Katipunan Society; that thereupon they detained

the defendant and took him aside into a clump of trees where they talked to him and got him to admit that he was an officer of the Katipunan. The officers took the defendant to his house, where they searched his trunk and found in it and took away a revolver and a captain's commission, under seals. The following is a copy of this commission:

"SUPREME PRESIDENCY OF THE PHILIPPINE ISLANDS.

"By reason of the qualifications of Antonio de los Reyes and the good service rendered by him to the fatherland, the supreme president has seen fit to appoint him captain in the regular army of these Islands.

"It is therefore ordered that all persons render him the corresponding honors and obey all orders which he may issue for the good of the service.

"K. K., the 30th of August,
1902.

CENON NIGDAO,

"S. K., Minister of War.

"A. G. DEL
ROSARIO,,

"S. K., Supreme President,

"TO DON ANTONIO DE LOS
REYES,

*"Appointed Captain in the Regular Army
of these Philippine
Islands."*

This Constabulary detective further testified that one Cenon Nigdao was a lieutenant-colonel in command of the whole Katipunan forces, but at that time had been captured and was a prisoner at Pasig.

The witness was asked what this Katipunan Society is, and in reply stated that it is an organization for forming an independent government for the Philippines, not letting their headquarters or whereabouts be known to the American Government, and to gain forces and arms by any means they can; sometimes they use force in securing members.

When asked if he knew any of the armed forces of the society, he said that they made an attack on May 30 upon a Government force of the United States Army. He said he had not seen the defendant with the insurgent forces.

Another witness for the prosecution testified that he had been informed of this so-called government known as the Tagalog republic, or Katipunan, through captured documents; that they had armed forces approximating 300 men, and that he knew their seals and recognized the seals on Exhibit A, the commission of the defendant, as those of the organization.

The next witness called by the prosecution was Cenon Nigdao, who stated that he was a tailor, 28 years of age, and secretary of war of the Katipunan. He identified the signatures on Exhibit A. He stated that the Katipunan is the national party. Its purpose is to defend the rights of the country and to ask of the American Government the freedom of this country.

He further stated that when he gave this commission to the defendant he told him to keep it, and when the time came for them to ask for liberty the people could not do him any harm.

The witness named the secretary of the National party, the minister of the interior, the minister of state, minister of war, and minister of justice of the association.

On cross-examination this "secretary of war," who had held office only for one week, testified that he commanded no forces; did not know that defendant made any use of his commission; that they did not take up arms because they were here in Manila; and that he was living in the same house with the defendant and gave him the commission there.

Another witness sworn for the prosecution stated that he was not a member of the Katipunan, but was a member of the National party ever since he left Bilibid Prison; that the "secretary of war" appointed him a lieutenant-colonel and he held the commission three months but had no soldiers to command; and that there was no army when Cenon Nigdao was living at Bacord.

He said he was sent out to Baliuag by one Santiago and stayed there about three months, and when he found out that there was nothing doing he surrendered

himself and one revolver to the president.

If we reject, as we must, the confession of the defendant made to the Constabulary officer, because it was not made in open court as required by law (sec. 9, act of Congress passed March 8, 1902), we have but very little in the case upon which to base a charge of treason. Even what there is contradictory. The charge is that the defendant took arms against the Government in the regular army of the "Philippine republic," whereas one witness for the prosecution swears that the Katipunan is the treasonable organization, another says that body is known as the "Tagalog republic," and another, the so-called secretary of war, who commanded no troops, but to whom the Government presumably gave credit because he testified for the prosecution, stated that the Katipunan was the "National party" and the object of that party was to obtain from the United States, by peaceable means, the independence of the Philippine Islands.

The confession of the accused being disposed of, the only other question to be considered is whether the testimony of one witness that he issued to the defendant the captain's commission above-mentioned, and the testimony of another witness that he found this commission in the defendant's trunk, is sufficient to satisfy the requirements of the statute that "no person in the Philippine Islands shall under the authority of the United States be convicted of treason * * unless on the testimony of two witnesses to the same overt act * * *."

There is no proof whatever that the accused did any other act in connection with this charge than to receive this commission. On the contrary the "secretary of war" testified that they did not take up arms because they remained here in Manila.

I am of the opinion that the mere acceptance of the commission by the defendant, nothing else being done, was not an overt act of treason within the meaning of the law. Blackstone says that "as treason is the highest civil crime which (considered as a member of the community) any man can possibly commit, it ought, therefore, to be the most freely ascertained."

The state of affairs disclosed by the evidence—the playing of the game of government, like children, the secretaries and colonels and captains, the

pictures of flags and seals and commissions all on paper, for the purpose of duping and misleading the ignorant and the vicious—should not be dignified by the name of treason.

Those engaged in this plotting and scheming in the pretense of establishing an independent government in these Islands, with nothing behind them, without arms or soldiers or money, and without the possibility of success, are simply engaged in deluding themselves and perhaps innocent followers and in filling the cells of Bilibid Prison.

Even though not guilty of treason, they may be tried for other lesser crimes.

The case of the United States vs. Magtibay,^[1] recently decided by this court, involved much the same question as this, and is followed.

The judgment below is therefore reversed and the defendant acquitted, but without prejudice to the prosecuting authorities to proceed against the defendant for such other crime or crimes as the evidence discloses. The costs are adjudged *de officio*.

Arellano, C. J., Torres, Willard, and Mapa, JJ.,
concur.
Johnson, J., disqualified.

^[1] 2 Phil. Rep., 703.
