

5 Phil. 697

[ G.R. No. 2430. March 09, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN LEANDRO VILLARIÑO AND EULALIO PEÑA, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**CARSON, J.:**

Juan L. Villariño and Eulalio Peña, the appellants in this case, were convicted of the crime of conspiracy, as defined and penalized in section 4 of Act No. 292 of the Philippine Commission, and sentenced the first to five years<sup>7</sup> imprisonment with hard labor and P4,000 fine, and the second to four years' imprisonment with hard labor and \$3,000 fine, respectively, and both to suffer the subsidiary imprisonment prescribed in the Penal Code in case of failure to pay fines imposed in criminal proceedings, and to the payment of their proportionate share of the costs.

The evidence introduced at the trial, including the confession of Juan L. Villariño, and various papers and documents proven to have emanated from him, corroborated by the testimony of several witnesses, fully sustains the finding of guilt as to him, and we find no prejudicial error in the proceedings leading up to the imposition of sentence. The court erred, however, in imposing subsidiary imprisonment in case of failure to pay the fine, there being no provision for such imprisonment in the act of the Commission defining and penalizing the crime of which he was convicted.

We do not think the evidence of record is sufficient to sustain a finding of guilt as to his co-accused, Eulalio Peña. There is no evidence whatever connecting him with the conspiracy in which it is alleged he took part, except only an alleged confession which he is said to have signed in one of the police stations of the city of Manila. In view of the circumstances under which this alleged confession is said to have been made, and in view, furthermore, of the form and manner in which it is drawn up, we are not prepared to approve a finding of guilt based solely thereon, uncorroborated by any testimony connecting the accused with the

crime which he is alleged to have committed. A document was introduced at the trial purporting to be a commission appointing the said Eulalio Peña brigadier-general of the armed forces which it is alleged the conspirators were organizing, but there is no evidence whatever to show that Peña ever received or accepted such appointment, or in fact knew of its existence. The prosecution attempted to connect him with this document by introducing evidence to show that one Ladislao Luna, near whose house the said document was discovered, and who himself was charged with being a member of the conspiracy, had stated that this commission, together with certain other papers and documents, had been entrusted to him by Peña for safe-keeping. This evidence, however, Was entirely inadmissible, as hearsay, Luna himself not having been put on the stand.

The judgment and sentence of the trial court, in so far as it relates to Juan Leandro Villariño, is hereby affirmed, except in so far as it attempts to impose upon him subsidiary imprisonment, as to which said judgment and sentence is reversed, and the judgment and sentence in so far as it applies to the said Eulalio Peña is reversed, and the said Eulalio Peña is hereby acquitted, and will be set at liberty forthwith.

The said Juan Leandro Villariño will pay his proportionate share of the costs of this appeal, those of Eulalio Peña being declared *de officio* in both instances. So ordered.

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

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