

[ G.R. No. 2189. November 03, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO BAUTISTA ET AL., DEFENDANTS AND APPELLANTS.**

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

**CARSON, J.:**

The appellants in this case were convicted in the Court of First Instance of Manila of the crime of conspiracy to overthrow, put down, and destroy by force the Government of the United States in the Philippine Islands and the Government of the Philippine Islands, as defined and penalized in section 4 of Act No. 292 of the Philippine Commission.

The appellant Francisco Bautista was sentenced to four years' imprisonment, with hard labor, and \$3,000 fine, and Aniceto de Guzman and Tomas Puzon, and each of them, to three years' imprisonment, with hard labor, and a fine of \$2,000, and all and each of the said appellants to pay their proportionate share of the costs of the trial and to undergo subsidiary imprisonment in the event of insolvency and failure to pay their respective fines.

The evidence of record conclusively establishes that during the latter part of the year 1903 a *junta* was organized and a conspiracy entered into by a number of Filipinos, resident in the city of Hongkong, for the purpose of overthrowing the Government of the United States in the Philippine Islands by force of arms and establishing in its stead a government to be known as the *Republica Universal Democratica Filipinos*; that one Prim Ruiz was recognized as the titular head of this conspiracy and one Artemio Ricarte as chief of the military forces to be organized in the Philippines in the furtherance of the plans of the conspirators; that toward the end of December, 1903 the said Ricarte came to Manila from Hongkong in hiding on board the steamship *Yuensang*; that after his arrival in the Philippines he held a number of meetings in the city of Manila and the adjoining provinces whereat was perfected the above-mentioned conspiracy hatched in Hongkong; that at these meetings new members were taken into the conspiracy and plans made for the enlistment of an army of revolution

and the raising of money by national and private loans to carry on the campaign; that to this end bonds were issued and commissions as officers in the revolutionary army were granted to a number of conspirators, empowering the officers thus appointed to raise troops and take command thereof; and that the conspirators did in fact take the field and offered armed resistance to the constituted authorities in the Philippines, only failing in their design of overthrowing the Government because of their failure to combat successfully with the officers of the law who were sent against them and of the failure of the people to rise *en masse* in response to their propaganda.

It further appears from the evidence that the appellant Francisco Bautista, a resident of the city of Manila, was an intimate friend of the said Ricarte; that Ricarte wrote and notified Bautista of his coming to Manila and that, to aid him in his journey, Bautista forwarded to him secretly 200 pesos; that after the arrival of Ricarte, Bautista was present, taking part in several of the above-mentioned meetings whereat the plans of the conspirators were discussed and perfected, and that at one of these meetings Bautista, in answer to a question of Ricarte, assured him that the necessary preparations had been made and that he "held the people in readiness."

It further appears that the appellant, Tomas Puzon, united with the conspirators through the agency of one R. Muñoz, who was proven to have been a prime leader of the movement, in the intimate confidence of Ricarte, and by him authorized to distribute bonds and nominate and appoint certain officials, including a brigadier-general of the signal corps of the proposed revolutionary forces; that at the time when the conspiracy was being brought to a head in the city of Manila, Puzon held several conferences with the said Muñoz whereat plans were made for the coming insurrection; that at one of these conferences Muñoz offered Puzon a commission as brigadier-general of the signal corps of the revolutionary forces and that Puzon accepted the commission and voluntarily united himself with the conspirators and undertook to do his part in organizing troops; and that at a later conference he assured the said Muñoz that he had things in readiness, meaning thereby that he had duly organized in accordance with the terms of his commission.

Puzon at the trial declared that he had never united himself with the conspirators; that he had accepted the appointment as brigadier-general of the signal corps of the revolutionary forces with no intention of ever taking any further action in the matter, and merely because he did not wish to vex his friend Muñoz by refusing to do so; and that when Muñoz offered him the appointment as brigadier-general he did so in "a joking tone" and that he, Puzon, did not know that Ricarte was in Manila organizing the conspiracy at that time.

These statements, however (except in so far as they corroborate the testimony of Muñoz as to the fact that he had had several interviews with Puzon at which plans were entered into for the advancement of the cause of the conspirators), can not be accepted as true in the light of a written statement signed by Puzon himself at the time when he was first arrested, part of which is as follows:

“Q. What is your name and what is your age, residence, and occupation?—A. My name is Tom&s Puzon; born in Binondo, in the Province of Manila; 37 years of age; married; by profession a teacher of primary and secondary schools, and residing in Calle Concepcion, No. 195, district of Quiapo.

“Q. Do you know Artemio Ricarte?—A. Personally I do not know him, but by name, yes.

“Q. Did you have any information that Ricarte was in these Islands and with what object he came here? And if you know it to be true, through whom did you get such information?—A. In the first place I had notice of his coming to the Islands as well as his object by reading the newspapers of Manila, and secondly because J. R. Munoz told me the same on one occasion when I was in his house to visit him.

“Q. Did you acquire this information through any other person?—A. No, sir; I have no more information than that which I have mentioned.

“Q. Are you a part of this new revolution presided over by Ricarte?—A. Yes, sir.

“Q. What is the employment (empleo) which you have in this organization and who is it who invited you to join it?—A. J. R. Muñoz, who is general of division of this new organization, spoke to me with much insistence, asking me to accept employment as brigadier-general, chief of signal corps, to which I, on account of his request and in view of the fact that the said Muñoz is a friend of mine from my youth, acceded; nevertheless I have organized absolutely nothing in respect to this matter.

“Q. Did you accept this employment and did they give you any commission for it?—A. Yes, sir; I accepted said employment and although they gave me an order to organize my brigade I did not do it, because I had neither the confidence nor

the will.

“Q. If you didn’t have faith in the said organization nor the will to carry out what was intrusted to you, why did you accept employment as general of the brigade?—A. I accepted it on account of friendship and not to vex a friend, but I never had the intention of fulfilling the obligations.”

Puzon, When on the stand in his own behalf, did not deny that he made this statement, but he attempted to explain it away by saying that when he made it he was so excited that he did not know just what he was saying. He does not allege that improper means were taken to procure the confession, and it was proven at the trial that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or promise of reward or leniency. The accused appears to be an intelligent man and was for eighteen years a school-teacher and later a telegraph operator under the Spanish Government, and during the insurrection he held a commission as an officer in the signal corps of the revolutionary army. His confession is clear and intelligible and in no way supports his pretense that he was so excited as not to know what he was saying when he made it, and its truth and accuracy in so far as it inculcates him is sustained by other evidence of record in this case.

It is contended that the acceptance or possession of an appointment as an officer of the military forces of the conspiracy should not be considered as evidence against him in the light of the decisions of this court in the cases of the United States vs. Antonio de los Reyes<sup>[1]</sup> (2 Off. Gaz., 364), United States vs. Silverio Nunez et al.<sup>[2]</sup> (3 Off. Gaz., 408), United States vs. Eusebio de la Serna et al.<sup>[3]</sup> (3 Off. Gaz., 528), and United States vs. Bernardo Manalo et al.<sup>[4]</sup> (4 Off. Gaz., 570). But the case at bar is to be distinguished from these and like cases by the fact that the record clearly discloses that the accused actually and voluntarily accepted the appointment in question and in doing so assumed all the obligations implied by such acceptance, and that the charge in this case is that of conspiracy, and the fact that the accused accepted the appointment is taken into consideration merely as evidence of his criminal relations with the conspirators. In the first of these cases—the United States vs. De los Reyes—the accused was charged with treason, and the court found that the mere acceptance of a commission by the defendant, nothing else being done either by himself or by his companions, was not an “overt act” of treason within the meaning of the law, but the court further expressly held that—

“The state of affairs disclosed by the evidence, \* \* \* the playing of the game of

government like children, the secretaries, 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 visionary, \* \* \* should not be dignified by the name of treason.”

In the second case—the United States vs. Nunez et al.— wherein the accused were charged with brigandage, the court held that, aside from the, possession of commissions in an insurgent band, there was no evidence to show that they had committed the crime and, “moreover, that it appeared that they had never united with any party of brigands and never had been in any way connected with such parties unless the physical possession of these appointments proved such relation,” and that it appeared that each one of the defendants were separately approached at different times by armed men while working in the field and were virtually compelled to accept the commissions.”

In the case of the United States vs. de la Serna et al. it was contended that de la Serna had confessed that “he was one of the members of the pulajanes, with a commission as colonel,” but the court was of opinion that the evidence did not sustain a finding that such confession had in fact; been made, hence the doctrine laid down in that decision, “that the mere possession of such an appointment, when it is not shown that the possessor executed some external act by virtue of the same, does not constitute sufficient proof of the guilt of the defendant,” applies only to the case of Enrique Oamonas, against whom the only evidence of record was “the fact that a so-called appointment of sergeant was found at his house.”

In the case of the United States vs. Bernardo Manalo et al. there was testimony that four appointments of officials in a revolutionary army were found in a trunk in the house of one Valentin Colorado, and the court in said case reaffirmed the doctrine that “the mere possession of documents of this kind is not sufficient to convict,” and held, furthermore, that there was “evidence in the case that at the time these papers were received by the, appellant, Valentin Colorado, he went to one of the assistant councilmen of the barrio in which he lived, a witness for the Government, showed him the envelope, and stated to him that he had received these papers; that he didn’t know what they were and requested this councilman to open them. The councilman did not wish to do that but took the envelope and sent it to the councilman Jose Millora. We are satisfied that this envelope contained the appointments in question and that the appellant did not act under the appointment but immediately reported the receipt of them to the authorities.”

It is quite conceivable that a group of conspirators might appoint a person in no wise connected with them to some high office in the conspiracy, in the hope that such person would afterwards accept the commission and thus unite himself with them, and it is even possible that such an appointment might be forwarded in the mail or otherwise, and thus come into the possession of the person thus nominated, and that such appointment might be found in his possession, and, notwithstanding all this, the person in whose possession the appointment was found might be entirely innocent of all intention to join the conspiracy, never having authorized the conspirators to use his name in this manner nor to send such a commission to him. Indeed, cases are not unknown in the annals of criminal prosecutions wherein it has been proven that such appointments have been concealed in the baggage or among the papers of the accused persons, so that when later discovered by the officers of the law they might be used as evidence against the accused. But where a genuine conspiracy is shown to have existed as in this case, and it is proven that the accused voluntarily accepted an appointment, as an officer in that conspiracy, we think that this fact may properly be taken into consideration as evidence of his relations with the conspirators.

Counsel for appellants contend that the constitutional provision requiring the testimony of at least two witnesses to the same overt act, or confession in open court, to support a conviction for the crime of treason should be applied in this case, but this court has always held, in conformance with the decisions of the Federal courts of the United States, that the crime of conspiring to commit treason is a separate and distinct offense from the crime of treason, and that this constitutional provision is not applicable in such cases. (*In re Bollman*, 4 Cranch, 74; *U. S. vs. Mitchell*, 2 Dall., 348.)

The evidence of record does not sustain the conviction of Aniceto de Guzman. The finding of his guilt rests substantially upon his acceptance of a number of bonds from one of the conspirators, such bonds having been prepared by the conspirators for the purpose of raising funds for carrying out the plans of the conspiracy, but it does not affirmatively appear that he knew anything of the existence of the conspiracy or that, when he received the bonds wrapped in a bundle, he knew what the contents of the bundle was, nor that he ever, on any occasion, assumed any obligation with respect to these bonds. He, himself, states that when he opened the bundle and discovered the nature of the contents he destroyed them with fire, and that he never had any dealings with the conspirators in relation to the conspiracy or the object for which it was organized. We are of opinion, therefore, that the judgment and sentence before us, in so far as it affects the said Aniceto de Guzman, should be reversed, with his proportionate share of the costs of both instances *de officio*, and that the said Aniceto de Guzman should be acquitted of the crime with which

he is charged and set at liberty forthwith, and that the judgment and sentence of the trial court, in so far as it applies to Francisco Bautista and Tomas Puzon, should be, and is hereby, affirmed, except in so far as it imposes subsidiary imprisonment in the event of insolvency and failure to pay their respective fines, and, there being no authority in law for such provision, so much of the sentence as undertakes to impose subsidiary imprisonment is hereby reversed.

After ten days let judgment be entered in accordance herewith, when the record will be returned to the trial court for execution. So ordered.

*Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.*

*Mapa and Willard, JJ., concur as to the penalty imposed upon Bautista and dissent as to that imposed upon Puzon.*

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<sup>[1]</sup> 3 Phil. Rep., 340.

<sup>[2]</sup> 4 Phil. Rep., 448.

<sup>[3]</sup> 4 Phil. Rep., 441.

<sup>[4]</sup> Page 364, supra.