

2 Phil. 703

[G.R. No. 1317. November 23, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SIMEON MAGTIBAY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The defendant has been convicted of the crime of treason as defined in Act No. 292, section 1, and sentenced to death.

It was proved that he was a soldier in the Constabulary stationed at Imus, in the Province of Cavite; that on October 13, 1902, he deserted and was captured on October 27, 1902. When he was captured he stated to the inspector, according to the latter's testimony, that he had given the arms which he took with him to his general, Montalon. Upon his person was found a commission, making him a second lieutenant, signed by Montalon and dated October 14. The only witness to the finding of this commission was the inspector. There was evidence that, in October, Montalon was in armed rebellion against the Government and that there had been engagements in that month between his troops and the forces of the Constabulary.

Section 9 of the act of Congress of March 8, 1902, is as follows:

“SEC. 9. That no person in the Philippine Islands shall, under the authority of the United States, be convicted of treason by any tribunal, civil or military, unless on the testimony of two witnesses to the same overt act, or on confession in open court.”

Passing for the present the testimony of the defendant at the trial, there was no other evidence in the case to show that he had ever joined the forces of Montalon, except the testimony of the inspector as to the confession made when he was captured and the

commission as second lieutenant found upon his person. Under the act of Congress there can be no conviction, unless two witnesses testify to the same overt act of treason. There is no such testimony in this case. The evidence of the Government related exclusively to the desertion of the defendant and his capture.

The act of Congress provides that there may be a conviction upon a confession in open court. The defendant testified as a witness in his own behalf at the trial. He denied that he had deserted, but claimed that he had been carried off by force by soldiers of Montalón and taken to the latter's camp. He promised to serve them, and they made him a lieutenant and gave him a revolver. He remained with them two weeks, but he says that it was against his will and that he had no opportunity to escape, except the time when he was captured. This was not a confession within the meaning of the said section 9. The confession there mentioned means a confession of guilt. The section can not be extended so as to include admissions of facts made by him in giving his testimony after a plea of not guilty, from which admissions his guilt can be inferred. The evidence required by the act of Congress does not appear in this case.

It is unnecessary to consider the point made by the defendant's counsel that, in view of the official proclamations, there existed no state of insurrection or war in Cavite in October, 1902,

The judgment is reversed and the defendant acquitted only of the crime charged in this complaint, with the costs *de officio*, and without prejudice to the presentation of complaints for the other crimes of which the evidence in this case indicates that the defendant may be guilty.

Arellano, C. J., Torres, Cooper, Mapa, McDonough, and Johnson, JJ., concur.
