

[G.R. No. 2723. August 09, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BERNARDO MANALO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

The court below convicted the defendants Bernardo Manalo, Francisco Cruz Asuncion (*alias* Tisat), Sotero, Batle, and Valentin Colorado, who have appealed.

It appears that Bernardo Manalo and Francisco Cruz Asuncion lived in Manila, Some written appointments of officials in a revolutionary army were, it is claimed, signed by these two appellants and sent to the Province of Zambales, where they were received by the other two appellants. Those appointments are in the record and they purport to be signed by Francisco Cruz Asuncion and also by Bernardo Manalo.

The only evidence in the case against Bernardo Manalo is testimony relating to certain confessions made by the different defendants at a preliminary hearing or investigation before the provincial governor, the provincial fiscal, and other persons. The provincial governor testified that Manalo at this time denied all connection with the affair, declared that he never signed any of these documents and never authorized anyone else to sign them for him. This is all the legal evidence there is in the case against him. Some of the other defendants in this preliminary examination made some statements in regard to this appellant, Manalo, but there was no testimony given by these other defendants during the trial in the Court of First Instance which in any way indicated the guilt of the latter; in fact, the only person who testified for any of the defendants at the trial was the appellant Francisco Cruz Asuncion, who denied all connection with the affair and swore that lie did not know Bernardo Manalo. Under these circumstances statements made by persons other than Manalo outside of the court and testified to by third persons are hearsay and not admissible against this appellant. (U. S. vs. Caligagan, 2 Phil. Rep., 433.)

As to the defendant Valentin Colorado, there is testimony that four of these appointments were found in a trunk in his house by one Jose" Millora. We have already held that the mere possession of a document of this kind is not sufficient to convict. (U. S. vs. Antonio de los Reyes,^[1] 2 Off. Gaz., 364; U. S. vs. Nuñez,^[2] 3 Off. Gaz., 408.)

Moreover, there is 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 did not 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. There are among the papers sent to this court certain typewritten documents purporting to be examinations of the defendants in this case, but these papers were not offered in evidence during the trial in the Court of First Instance and can not be considered as evidence against the appellants. The evidence is not sufficient to support the judgment against Valentin Colorado.

As to Sotero Batle, it was proved that he, being a soldier in the Constabulary stationed in Zambales, received from the appellant Francisco Cruz Asuncion a letter relating to this revolutionary organization. This letter was found in his trunk in the Constabulary quarters and with it a letter which was proved to be in his handwriting but not signed by his name nor addressed to any specific person. There is no evidence outside of this testimony that he took any action in connection with the matter. We do not think that he can be convicted under the testimony offered in this case against him.

As to the other appellant, Francisco Cruz Asuncion, it is proved that this letter found in the possession of Batle was sent by him. It bore his signature and, as we have said, referred to this proposed uprising. It also bore in various places thereon the impression of a seal indicating the military character of the organization. We think the evidence is sufficient to support the conviction of this defendant.

The judgment of the court below, so far as it relates to Bernardo Manalo, Sotero Batle, and Valentin Colorado, is reversed and they are acquitted, with the costs of both instances as to them *de officio*. As to the appellant Francisco Cruz Asuncion, the judgment of the court below is affirmed, with one-fourth of the costs of this instance against him. At the expiration of ten days after rendering judgment the case will be remanded to the court below for

proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

^[1] 3 Phil. Rep., 349.

^[2] 4 Phil. Rep., 441.
