

2 Phil. 433

[G.R. No. 1302. August 21, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. NARCISO CALIGAGAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

It is claimed by the counsel for the defendant in this court that the statements made in the preliminary investigation were improperly considered by the court below, citing in support of his claim decisions of this court. Testimony given in the preliminary hearing can never be considered by the Court of First Instance when the accused is there on trial unless it is reproduced in that court—that is, unless there is proof in that court of what was the testimony before the justice of the peace.

When there is such proof, the effect to be given to the testimony before the justice of the peace depends upon the person who gave it. If such person was the defendant, his statement has, at least, the effect of any extrajudicial confession made by him and is evidence proper to be taken into consideration against him, although he may have in the Court of First Instance retracted his confession.

On the other hand, if the person were not the defendant, his testimony before the justice can never be used to convict the defendant. If such a person testified before the justice that he saw the defendant commit the act, and in the Court of First Instance testifies that he did not, his first statement can not avail the Government. If, however, he testified before the justice that he did not see the defendant commit the act, and in the Court of First Instance testifies that he did, the defendant can there prove what his testimony was before the justice, for the purpose of impeaching his credibility as a witness.

In the case at bar the Government proved at the trial in the Court of First Instance that the defendant made certain statements before the justice in the preliminary investigation.

Those statements the Court of First Instance had a right to consider in deciding upon the guilt or innocence of the accused.

On the other hand, the witness Pangan before the justice testified that the deceased Capulong, before he died, told him that the defendant had wounded him. But at the trial in the Court of First Instance he testified that the deceased said nothing to him at the time. His first statement can not be used as evidence against the defendant.

Upon all the evidence that is proper to be considered, we think that the guilt of the defendant is proved but that he is entitled to the benefit of the attenuating circumstance of drunkenness.

The judgment is affirmed, with costs of this instance against the appellant.

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