

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEOPOLDO ACACIO, DEFENDANT AND APPELLANT.*G.R. No. 12875. October 26, 1917*

Ponente: MALCOLM, J.

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The accused broke into the high school of Laoag, Ilocos Norte, by breaking a shell in a window and opening the window. He took from the building two microscopes (and possibly books), valued at P121.27, the property of the Government of the Philippine Islands. The witnesses for the prosecution clearly established these facts. The accused made various improbable and shifting statements in defense. For instance, he admitted having a microscope in his possession, but claimed he had bought it in the house of his aunt on November 10, 1916, from Mariano Agbayani, who died on December 3, 1916. Rebuttal evidence for the prosecution showed that Mariano Agbayani was bedfast, was absolutely unable to leave the house on November 10, 1916, and had had nothing in his possession resembling a microscope. One by one all of the questions, raised by the appellant and relating to the sufficiency of the evidence, could similarly be resolved.

Counsel alleges that the trial court erred in taking into consideration the confession of the defendant. Indeed the defendant has proved himself to be a faithful apostle of Ananias. The Attorney-General lists nine conflicting confessions and statements of the defendant. Because of such contradictions, counsel ingeniously argues that the court should not consider the confession—and should acquit the defendant. If a confession could be rejected on such ground, all that would be necessary in any case to dispense with a damaging confession would be for the accused to tell another story out of harmony with the preceding one. The rule is that a variation in the declarations of a witness is not always sufficient to discredit his testimony. (*U. S. vs. Briones* [1914], 28 Phil., 367.) Conflicting confessions by an accused would have, of course, the further effect of leading a court to put little or no faith in his testimony in defense.

The facts fall under article 508, next to the last paragraph, in connection with No. 2 of the same article, of the Penal Code. As the trial court took into account neither aggravating nor mitigating circumstance, the sentence imposed is in accord with the law. Therefore, judgment sentencing defendant and appellant to two years, eleven months, and eleven days of presidio correctional, with the accessory penalties provided by law, and the costs, is affirmed, with the addition of the return of the two microscopes in question to the Government of the Philippine Islands, or to indemnify the Government in the amount of P121.27, or to suffer subsidiary imprisonment in case of insolvency, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Street, JJ., concur.

Judgment affirmed.

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