

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FLAVIANO AQUINO, DEFENDANT AND APPELLANT.

G. R. No. 15975. September 07, 1920

Ponente: CARSON, J.

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CARSON, J.:

If the trial judge was justified in accepting as true the testimony of the witnesses for the prosecution and in rejecting as false the testimony of the witnesses for the defense in so far as it tends to put in doubt the evidence of the prosecution, there can be no reasonable doubt of the guilt of the appellant of the crime of which he was convicted in the court below, committed in the manner and form set out in the opinion of the trial judge.

We find nothing in the record which would justify us in disturbing the findings by the trial judge as to the degree of credit which should be accorded the various witnesses who testified before him; and following our well-settled practice in this regard, we accept these findings, and with them, the conclusions of the trial judge as to the guilt of the accused.

The accused having voluntarily gone upon the witness stand to testify in his own behalf, there was no error in the rulings of the trial judge which permitted the prosecution to recall him to testify as to his statement made at the preliminary investigation before the justice of the peace, with a view to the impeachment of the truth of his voluntary statement at the trial by the introduction of a conflicting and contradictory statement made by him in the course of the preliminary investigation.

Counsel for the appellant contends that the trial judge erred in admitting the record of the proceedings had before the justice of the peace in the course of the preliminary investigation.

It appears that after the accused had testified in his own behalf and the defense had rested, the fiscal offered in evidence the record of these proceedings, apparently for the purpose of having the court compare the statement of the accused at the preliminary hearing with his statements made while testifying in his own behalf. Counsel for the defense very properly objected, and the trial judge correctly advised counsel that while the record of the preliminary investigation might properly be introduced for the purpose of impeaching the testimony of the accused in his own behalf or the testimony of any of the witnesses called at the trial, nevertheless it could not properly be admitted or considered for that purpose until and unless the record was duly identified and the accused or the witness whose testimony it was proposed to impeach were given an opportunity to challenge its correctness or to make such explanation as they desired of any real or apparent contradictions in the testimony. The trial judge then intimated that if requested, he would permit the accused to be recalled or to return to the witness stand voluntarily in order that he might have an opportunity to challenge or explain the statement which it was alleged he had made at the preliminary investigation. The action of the trial judge in this connection appears to have been eminently correct, and well calculated to secure the ends of justice, and at the same time to protect the substantial rights of the accused.

We find no error in the proceedings prejudicial to the rights of the accused, and we conclude that the judgment

entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Mapa, C. J., Araullo, Malcolm, Avanceña, Moir and Villamor, JJ., concur.

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