

5 Phil. 575

[G.R. No. 2295. January 31, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MATEO CRUZ, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

Mateo Cruz, the appellant in this case, was found guilty under the provisions of section 7 of Act No. 619 of the Philippine Commission, in that being a member of the Constabulary, and having received pay and being duly enlisted therein, he absented himself therefrom without leave, and with intent not to return thereto.

The evidence of record fully sustains the findings of the trial court, and we find no error in the proceedings prejudicial to the rights of the accused.

Counsel for the appellant contends that the judgment is void and should be set aside because it does not appear from the record that the accused was given a preliminary hearing, and because the complaint upon which the accused was tried does not show upon its face that the complainant had sworn to the facts set out therein. It is a sufficient answer to these contentions that no objection was made on these grounds in the court below, and furthermore it does not affirmatively appear that no preliminary hearing was had, or that the complaint was not in fact a sworn complaint, in accordance with the provisions of section 4 of General Orders, No. 58.

Counsel for appellant further assigns as error the fact that the certificate of a chief or assistant chief of Constabulary setting out the facts constituting the offense, together with a list of the witnesses, was not introduced in evidence. It appears from the record, however, that a statement of facts and a list of witnesses was certified to the court by one of the assistant chiefs of the Constabulary, in accordance with the provisions of section 9 of Act No. 619, and there is nothing in that section which makes it necessary that such certificate

should be introduced in evidence.

The judgment of the trial court should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.

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