

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOAQUIN PABALAN ET AL., DEFENDANTS. JOAQUIN PABALAN, APPELLANT.*G.R. No. 13020. December 20, 1917*

Ponente: MALCOLM, J.

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A superstitious cult called Mina (or Baycot) has existed in the vicinity of the municipality of Calamba, Province of Laguna. A description of this society by one of the witnesses to this action is as follows: "The people, who are members of this association, make excavations in the river banks and ask the spirits where money can be found; and a person who in connivance would be hidden near the place gives the answer, and then whoever is the victim leaves money there expecting it to be exchanged for gold; this has happened many times in Calamba." A person by the name of Gabriel Bautista was supposed to know where the money of this society was secreted. By order of Joaquin Pabalan, sergeant of police of the municipality of Calamba, his house was searched. By order of the same Pabalan, he was conducted to the municipal building and maltreated to make him confess as to the whereabouts of the money. Bautista thus describes what happened to him: "They made me stand on a box and hanged me up, having my two hands one over the other on a piece of bamboo, and then they took away the box which served as a place to stand on and left me hanging in that position." Once suspended, Bautista was asked where the money was, and if one Adriano was the voice of the matanda (old man); to which Bautista answered that he did not know. Adriano Herrero may also have been subjected to the same treatment, but he is now a leper confined on the Island of Culion, and was not called upon to testify.

A word should be added as to the contention of the appellant. Emphasis is laid on the point that two other accused were acquitted by the trial judge. But such acquittal of policemen, apparently merely acting under the orders of their chief, is not sufficient to exculpate the person directly responsible for the crime. All the evidence converges on the one fact that the appellant ordered the torture of an apparently innocent person. Quite recently in the case of *United States vs. Santos* ([1917], 36 Phil., 853), this court went far in an effort to protect police officers who act in good faith in a legitimate effort to protect society. The opposite side of the shield is just as strongly condemnatory of barbarous action by police officers. The policeman who, taking advantage of his public position, maltreats a private citizen, merits no judicial leniency. The methods sanctioned by medieval practice are surely not appropriate for an enlightened democratic civilization. While the law protects the police officer in the proper discharge of his duties, it must at the same time just as effectively protect the individual from the abuse of the police.

The facts before us constitute the crime of coercion by induction. (See *U. S. vs. Cusi* [1908], 10 Phil., 413.) Joaquin Pabalan, without authority of law, by means of violence compelled Gabriel Bautista to do something against his will. (Art. 497, Penal Code.) Since advantage was taken by the offender of his public position as sergeant of police, the penalty must be imposed in the maximum degree. Moreover, we feel justified in fixing this penalty at the highest point permitted by the Code. To substantiate this last statement, let us recall that if Bautista had been maltreated by a member of the Constabulary and not by a policeman, the member of the Constabulary

would have been liable to imprisonment for a term not exceeding five years or by a fine not exceeding ten thousand pesos, or both. (Act No. 619, sec. 2; Administrative Code of 1917, sec. 2685.) In a case which discloses facts not nearly as aggravated as those herein, this court sentenced a detective of the Constabulary to imprisonment for one year. (U. S. vs. Frank [1906], 6 Phil., 433.)

The judgment of the lower court is modified by sentencing the defendant and appellant to six months of arresto mayor, with the accessory penalties provided by law, to pay a fine of P650, or to suffer subsidiary imprisonment in case of insolvency not to exceed one-third of the term of imprisonment, and to pay one-third of the costs of the first instance and all the costs of this instance. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Street and Avancena, JJ., concur.

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