

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BENITO CUSI ET AL., DEFENDANTS, BENITO CUSI, APPELLANT.*G.R. No. 3699. March 18, 1908*

Ponente: TORRES, J.

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In the early morning of March 19, 1906, Benito Cusi, chief of the municipal police of Bauan, Batangas, accompanied by the other accused person, Juan Corona, and four more members of the municipal police under his command, went to the house of Mariano Macaraig, situated in the barrio of Natunuan, municipality of San Jose, of said province, because of a robbery that had been committed at Dagatan on the previous night, and in order to arrest the said Macaraig, who, from reports received, was one of the thieves. When the two accused persons went to the house of said Macaraig, they found him sleeping in his room. Thereupon Benito Cusi woke him up and dragged him out of the room and commenced to hit him with the butt end of his revolver, compelling him to confess his guilt as one of the robbers who had assaulted some individuals on the highway the night before. After the arrested man, Macaraig, had passed out of the house, the defendant Cusi continued hitting him with a rifle, and because the maltreated man fell into a ditch he slapped and kicked him, and when he got up the other defendant, Juan Corona, struck him with the side of a bolo. Macaraig was then bound with a rope made of bamboo and conducted to the barrio of San Mariano, where he was again maltreated and exposed to the sun until noon of the said day. All of this was done in order to compel him to confess his guilt.

Honorata Arellano, Macaraig's wife, and a companion of the same, Domingo Atienza, witnessed part of the ill treatment, as did also Francisco Mitra, a lieutenant of the barrio who arrived at the place where Macaraig was being maltreated shortly after being called by a policeman by order of the accused Cusi, Macaraig was examined a few days later by the municipal physician, who found that he had several bruises and a circular wound on the arms, the effect of the tying, although the wound was not serious.

A complaint was filed by the provincial fiscal charging Benito Cusi and Juan Corona with the crime of coercion, and the corresponding proceedings were instituted; a demurrer to the complaint was overruled. The judge, after trial, rendered judgment on the 2d of November, 1906, sentencing Benito Cusi to the penalty of six months of arresto mayor, to pay a fine of 1,500 pesetas, and in case of insolvency to suffer the corresponding subsidiary imprisonment, which, however, should not exceed one-third of the principal penalty, and to pay the costs; the other defendant, Juan Corona, was acquitted. From said judgment Benito Cusi has appealed.

The crime defined by article 497 of the Penal Code, and qualified as coercion, has been fully proven in this case, as may be seen from the facts stated above, inasmuch as by means of violence and ill treatment Mariano Macaraig was compelled by the accused, Benito Cusi, to confess against his will that he was one of the thieves who assaulted Teofilo Garcia and Leandro Bulanhagui at the sitio of Dagatan, between the barrios of Pila and San Mariano, on the previous night, the 18th of March, 1906; the ill treatment of Mariano Macaraig, who was arrested in his house on the morning of the 19th following and by which he was obliged to make a confession, is testified to not only by himself but also by the wife and a companion of the injured person, and the lieutenant of

the barrio of Natunuan who was called by a policeman by order of the accused, Benito Cusi, and who saw the accused and his companions on the road not far from the house of Macaraig when the accused Cusi still continued to illtreat him in order to compel him to confess his culpability. When Mitra, the lieutenant of the barrio, saw what the defendant was doing, he said, according to the witness, "Why are you illtreating that man?" The accused Cusi answered, "He is a highway robber." The maltreated man then said, "Mr. Councilor, I am an innocent man," to which the policeman replied, "What councilor are you talking about when you are one of the highway robbers of Dagatan, and if you do not admit it we will kill you." The accused further said to Mariano Macaraig, "If you do not say that you are one of the highway robbers I will shoot you;" and the arrested man replied, "Even if you shoot me I can not say anything because I am entirely innocent." The defendant then continued to maltreat him until he fell to the ground, and when he managed to get up lie was conducted at daylight to the barrio of San Mariano by order of the accused.

Notwithstanding the denial and the exculpatory allegations of the defendant, as well as the declarations of the policemen and roundsmen who accompanied them, and of Teofilo Garcia and Leandro Bulanhagui, who it is said, were the victims of a robbery committed on the night previous to the arrest of Macaraig, the record contains complete proof of the culpability of the accused as the duly convicted author of the crime of coercion; notwithstanding the fact that his said witnesses affirmed his denial, that they had not seen him maltreating the arrested man for the purpose of compelling him to confess that he was one of the persons who robbed certain travelers at the sitio of Dagatan on the night of the 18th of March, such attestations can in no way invalidate the substantial and uniform testimony of the eyewitnesses, which testimony confirms the statements of the person who suffered the ill treatment inflicted for the exclusive purpose of forcing from him an acknowledgment and confession of guilt and participation in the robbery. This testimony is, moreover, corroborated by the examination made by a physician a few days after the affair.

The affirmations of the defense and the declarations of the witnesses of the accused, apart from being contra-dictory, are notoriously incompatible with the result of the evidence of the prosecution, and with the existence of the bruises upon the injured person. The record contains no data whatever to indicate that the wounds were inflicted at the cuartel of the Constabulary where Macaraig was taken a few days later. As appears at folio 94 of the record, counsel for the accused attempted to prove by means of the declaration of Sergeant Macario Sulit, of the Constabulary, that the party arrested and coerced, Mariano Macaraig, at the time when he was turned over to the said sergeant showed no bruises whatever on his body, but the said attorney gave up or waived such plea, because Sergeant Sulit stated that he was unwilling to testify, and then pointed out as evidence of the ill treatment received by Macaraig at the cuartel of Constabulary, the information filed by the fiscal against said Sergeant Sulit and others; but this last pretension of the defense was overruled by the court.

Even if it were true that Mariano Macaraig had also been maltreated at the cuartel of Constabulary by reason of the robbery imputed to him, the punishable act of which Benito Cusi is charged would be none the less true, for its commission appears fully proven in the case. One ill treatment must not be confused with another; such acts may have been performed one after the other, but the truth is that the charge against Benito Cusi is clearly proven in the case, and it was so considered by the trial judge in the judgment appealed from, which is declared to be in accordance with the law; the case of the other defendant, Juan Corona, can not be dealt with in this decision, for the reason that he was acquitted by the said judgment.

With regard to the imputation that the court erred when overruling the demurrer based on double jeopardy, the record does not show the nature of the complaint filed with the court of the justice of the peace, nor the facts stated in the same, nor that a trial was ever had; it appears that the hearing did not take place and was postponed to another day. Therefore, there was no regular trial in accordance with the law. On the other hand, there is no

evidence to show that the complaint was an amended complaint, and not an original one as it appears in the record; hence there is no possible reason for this court to consider that the court below erred when over-ruling the demurrer based on double jeopardy.

For the reasons above set forth, it is our opinion that the judgment appealed from should be affirmed, as we hereby do affirm the same, provided, however, that only one-half of the costs of the first instance, and all of the costs in this second instance, shall be imposed upon the defendant, with the accessory penalties of article 61 of the code. So ordered.

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

Carson and Willard, JJ., dissent.

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