

2 Phil. 423

[ G.R. No. 1103. August 19, 1903 ]

**THE UNITED STATES AND MARIANO BENIFAYO, COMPLAINANTS AND APPELLEES, VS, EUSTAQUIO RABADILLAS, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**ARELLANO, C.J.:**

The defendant is charged with having obtained from Mariano Benifayo, by means of intimidation, 50 of the 100 pesos which he had demanded of him. The accused, who was a sergeant in the Constabulary, took Benifayo from his house by means of two armed soldiers, and, pretending that Benifayo had been sent for by the Court of First Instance, told him that he would bind him and send him there if he did not sign a promissory note for 100 pesos. The court below, upon proof of the crime, condemned the defendant to eight years and one day of *presidio mayor*, with the costs, considering as aggravating circumstances that the accused availed himself of his official position, and also the abuse of authority, and the commission of the crime with the aid of armed men, citing paragraphs 9, 11, and 14 of article 10 of the Penal Code. None of these circumstances should be considered in aggravation of the offense, as in this particular case they are all but part of the intimidation which gives the quality of robbery to the taking of the property of another, and the, last two circumstances mentioned are identical with respect to the purpose of the crime. The penalty is therefore excessive.

But this case should not be decided in accordance with the Penal Code. On the 8th of March, 1902, the date on which the crime was committed, Act No. 175, by which the Insular police was organized, was in force, that act having been passed June 18, 1901. The crime committed by the sergeant in his official capacity being punished by section 19 of the act by imprisonment from one to ten years, the case should be decided in accordance with that law.

We therefore condemn Eustaquio Rabadillas to four years' imprisonment and to the

payment of the costs.

*Torres, Cooper, Willard, Mapa, and McDonough, JJ., concur.*

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