

2 Phil. 131

[G.R. No. 448. April 17, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PHILIP K. SWEET,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

The defendant in July, 1901, was connected with the Police Department of the city of Manila, under the Provost-Marshal-General, his position being that of Chief of the Secret Service Bureau. One Marcelino San Pedro and certain other individuals had been arrested upon suspicion of being concerned in an insurrectionary conspiracy in Pasig, and it was supposed that San Pedro had in his possession or under his control arms, ammunition, money, and supplies which had been collected for the purposes of the movement. An investigation was accordingly instituted at the police station, and, in the course thereof, San Pedro having denied all knowledge as to the conspiracy, the defendant, for the purpose of compelling him to disclose the whereabouts of the arms, struck him several times with a whip, drawing blood, as we think the evidence shows, but not injuring him so severely as to incapacitate him from working or to necessitate medical attendance. Nothing was shown by the defense which can constitute a justification or excuse for the assault.

The complaint was for *lesiones menos graves* under article 418 of the Code. The character of the injuries inflicted was not such as to bring the case within this article; it falls within article 588, No. 1, which punishes as a misdemeanor the infliction of injuries "which do not prevent the person injured from devoting himself to his customary labors, and do not require medical attendance."

The defendant was convicted under article 588, No. 1, of the Penal Code. This was in accordance with General Orders, No. 58, section 29.

In the application of penalties in cases of misdemeanor, the discretion of the court is not

controlled by the rules of the Code as to aggravating and extenuating circumstances. (Art. 605). That discretion was, we think in the present case, properly exercised, the sentence being fifteen days of *arresto* and *reprehsion*, the maximum of the penalty fixed by the law for the offense.

The judgment is affirmed with costs. Let the cause be returned to the court below for the execution of the judgment.

Arellano, C J., Torres, Cooper, Willard, and Mapa, JJ., concur.

McDonough, J., did not sit in this case.
