

[G.R. No. 1571. December 28, 1904]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BASILIO RECAÑO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant in this case was charged with the crime of *lesiones graves*, and was tried by the judge of the Court of First Instance of the Province of Bataan. He was found guilty and sentenced to be imprisoned for the period of three years six months and twenty-one days of *prision correccional*, and to pay the injured party the sum of five hundred pesos, and the costs; and in case the defendant should be insolvent, to subsidiary imprisonment.

The evidence shows that on the afternoon of the 11th of July, 1903, in California Street, of the pueblo of Balanga, a quarrel took place between Pascual Mendoza and Buenaventura Pardillo, in front of the house of the defendant; that the said defendant was in his house at the beginning of this quarrel between the two mentioned parties; that during the quarrel the defendant came down out of his house, and with a bolo struck and stabbed the said Buenaventura Pardillo two different times; the first blow inflicted a wound upon the hand and the other upon the elbow of the said Buenaventura Pardillo. There is no evidence to show what was the occasion of the interference in the said struggle by the defendant.

The evidence further shows that thirty-one days expired before the wounds inflicted by the defendant upon Pardillo were cured; that as a result of the wounds Pardillo could not apply himself to his usual work or trade; that Pardillo had expended for medicine and medical aid fifty-four Mexican pesos.

The trial court found that these facts were sufficient to constitute the crime of *lesiones graves*, provided for and punished in subsection 2 of article 416 of the Penal Code.

The evidence shows by two witnesses (folios 8 and 20 of the record) that the defendant was drunk at the time he inflicted the blows upon said Pardillo. There is no proof in the record that he had been in the habit of getting drunk, or that he was an habitual drunkard. Subsection 6 of article 9 of the Penal Code provides that drunkenness shall constitute an extenuating circumstance when the act was committed in that state, if the intoxication was not habitual. This fact was not considered by the court.

Under the decisions of the supreme court of Spain this circumstance should have been considered by the court as an extenuating circumstance, and it is our duty, under the present Penal Code, to take into consideration the fact that the accused was drunk on the occasion of the commission of the crime, as an extenuating circumstance. Considering this fact as an extenuating circumstance, under subsection 2 of article 81 the minimum penalty of *prision correccional* provided for by section 2 of article 416 should be imposed upon the defendant. The defendant, Basilio Recano, is therefore sentenced to be imprisoned for a period of two years four months and one day of *prision correccional*, to pay the costs of the trial, and to pay the offended party, Buenaventura Pardillo, the sum of five hundred pesos, and in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the law.

The sentence of the Court of First Instance of the Province of Bataan is therefore modified to conform with the above. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.
