

6 Phil. 406

[ G.R. No. 2736. August 30, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN GINER, DEFENDANT  
AND APPELLANT.**

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

**TORRES, J.:**

In a written complaint filed on the 29th of June, 1904, the defendant, Juan Giner, was charged by the provincial fiscal of Occidental Negros with the crime of homicide, in that he having met one Tomas Pandes about 5 o'clock in the evening of the 16th of June, 1904, on the road leading to the barrio of Castellana, from the town of Pontevedra, and upon arriving at a cross road, he called to the said Pandes, and the latter not responding, he fired a shot at him with a revolver which he carried, but missed him, whereupon, the said Pandes turned back and engaged the defendant in a fight during which the latter again fired a shot at the said Pandes and killed him instantly. From the record then existing in the office of the provincial fiscal, it appears that there had been some ill feeling between the defendant and the deceased.

The case having proceeded to trial upon the said complaint, the court entered judgment on the 29th of April, 1905, sentencing the defendant, Juan Giner, to twelve years and one day imprisonment (*reclusion temporal*) with the accessories provided by law, to indemnify the heirs of the deceased in the sum of 1,000 pesos, Philippine currency, and to pay the costs of the proceedings. The court further directed that the revolver, which was then in the hands of the clerk of the courts be confiscated. From this sentence the defendant appealed to this court.

The evidence of record conclusively shows that Giner fired two shots with his revolver at the deceased, Tomas Pandes, the first one while the latter was walking along the road with his back to him, which merely burned the left sleeve of the shirt worn by the deceased, and caused a slight abrasion on his arm, the second when they were fighting, face to face, the

bullet entering the body above the left breast, and remaining within; that prior to the occurrence the defendant, Giner, was standing at the intersection of a street and the road leading to the barrio of Castellana, when the deceased Pandes, happened to pass by on his way from Magallon accompanied by Casimiro Miranda; that Miranda, who was about 100 yards in the rear of Pandes, saw everything that happened; that the road at this point was straight and there were no obstacles to obstruct his view; that before the first shot was fired, the defendant, Giner, called to the deceased Pandes to come to him, but the latter paid no attention, whereupon Giner fired at him as above stated; that the deceased immediately turned back and engaged the defendant in a fight, during which the defendant fired a second shot and killed the deceased on the spot; that Miranda did not go to the assistance of his companion, the deceased, for fear of being shot himself; and that the deceased carried no weapon whatever, but had an umbrella and a trombone.

The above facts were fully proved at the trial and show that the crime committed was that of homicide as defined and punished in article 404 of the Penal Code, the deceased Tomas Pandes, having been unlawfully killed by the defendant during a fight. Because the accused discharged his revolver a few moments before without result, this does not show, nor is there anything in the case that will permit us, to qualify the crime as murder.

The defendant, who pleaded not guilty, admitted that the deceased, Tomas Pandes, fell to the ground as a result of the second shot. There is no doubt, therefore, that he, the defendant, fired the shot that caused the instantaneous death of the deceased. The only thing that remains for us to decide is the degree of responsibility incurred by the defendant, and whether or not he is exempt from criminal liability as he alleges to be.

We accept the conclusions of law contained in the judgment of the court below, particularly those relating to the alleged exemption of the accused, and accordingly hold that he is neither entirely nor partially exempt from such liability, it not having been shown that in killing the deceased he acted in self-defense or at least in accordance with the greater number of requisites exempting from liability as required by paragraph 4 of article 8 of the Penal Code.

The defendant, Giner, must have had some ill feeling toward the deceased, Tomas Pandes, since the latter had refused to permit a daughter of his to accept the proposals of the defendant, and the defendant, without just cause therefor, had constantly persecuted Pandes, whom he had accused of robbery and had subsequently sued for the sum of 16 pesos. The deceased, however, was acquitted of the charge of robbery upon the

insufficiency of the evidence and the defendant's action to recover the 16 pesos was dismissed.

The foregoing facts and the further fact that the defendant Giner had, three days before the occurrence, caused the arrest of the deceased, whom he had already threatened with a revolver upon the latter refusal to accompany him to his house, there being nothing that could possibly justify such action on his part, and the still further fact that the defendant fired at the deceased while the latter was with his back to him simply because he failed to heed his call, show that the defendant is guilty of the crime charged in the complaint and that the allegations made by him in his own defense are absolutely unfounded.

According to the unbroken line of decisions of our courts in order that the defendant may avail himself of exemption from liability at the trial it is incumbent upon him to prove the facts showing that he is exempt from criminal liability, with the same degree of certainty as the existence of the crime itself.

There is nothing to show that the deceased, without provocation on the part of the defendant, assaulted the latter in such a manner that the defendant was compelled to defend himself.

The contradictions in the testimony of the defendant and that of his witnesses in regard to the assault alleged to have been made by the deceased upon the defendant with a club, the fact that the said club was found at a certain distance from the place of the occurrence, while as a matter of fact, if the deceased had such a club then in his possession he would have dropped it on the very spot where he was killed; the fact that the deceased was shot above the left breast; the fact that the club in question was not found until about three days after the occurrence; and finally, the fact that the body of the accused presented no evidence of his having been beaten, is the best proof that" he is not exempt from criminal liability as alleged.

The short struggle that preceded the death of the deceased was undoubtedly provoked by the first shot fired by the accused, a fact fully proven in the case.

Therefore, there is no evidence of the existence of the three requisites provided in paragraph 4 of article 8 of the Penal Code, that would exempt the defendant from criminal liability, and he should be punished in accordance with the provisions of article 404 of the said code, no circumstance exempting him from liability having been proved. Nor can we take into consideration the extenuating circumstance provided in paragraph 7 of article 9 of

the said code, as the loss of self-control and reason should immediately precede the commission of the crime, and the natural excitement attending every fight can not be confused with excitement produced in the mind of a person who has been so injured in his feelings as to make him lose his reason and self-control. It has been proved that Giner, far from having been provoked by the deceased, Pandes, fired at the latter, without justification therefor, while Pandes was with his back toward him. No aggravating circumstances attended the commission of the crime.

For the reasons hereinbefore set forth, we hereby affirm the judgment of the court below, and sentence the defendant to fourteen years eight months and one day imprisonment (*reclusion temporal*) the minimum penalty of the medium degree, with the accessories provided in article 59 of the Penal Code, with the costs of this instance. After the expiration of ten days from the date of final judgment let the record be remanded to the court below for execution. So ordered.

*Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.*

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