

5 Phil. 47

[G.R. No. 2126. September 25, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SY VINCO, DEFENDANT
AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The appellant in this case was found guilty in the Court of First Instance of Cebu of the crime of *lesiones graves* (grave injuries) as denned and penalized in paragraph 4 of article 416 of the Penal Code.

It appears that in the course of a quarrel between the accused, Sy Vinco, and the complaining witness, Ong Suico, the former stabbed the latter with penknife, inflicting seven wounds, from which the injured man did not recover so as to be able to attend to his ordinary avocations for a period of a little more than thirty days.

It was also proven that the complaining witness had provoked the quarrel, both by the use of insulting and obscene language and further, by assaulting his adversary, seizing him with his hands and knocking his head against a wall.

On this state of facts the trial court found the existence of the extenuating circumstance set out in paragraph 5 of article 9 of the Penal Code, holding that the wounds were inflicted in vindication of a grave offense against the accused. We think, however, that in this case the finding of the existence of an extenuating circumstance should have been based upon the provisions of paragraph 1 of said article, the wounds having been inflicted in self-defense, but the accused not being entirely exempt from responsibility, because the injuries inflicted and the measures adopted to resist the unlawful aggression against his

person went far beyond those reasonably necessary for his protection.

The penalty imposed by the trial court is in strict accord with this view of the case and, modified in accordance with the foregoing principles, the judgment and the sentence appealed from is affirmed, with costs against the appellant. So ordered.

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

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