

[G.R. No. 2702. February 28, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISIDORO OLIVAN ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

The appellant in this case was found guilty of the offense of entering a house against the wishes of its owner (*allanamiento de morada*), and sentenced to two months and one day of *arresto mayor*, and to pay a fine of 325 pesetas, and one-half of the costs of the trial, and further, to subsidiary imprisonment as prescribed by law, in case of insolvency.

The evidence introduced at the trial establishes the guilt of the accused of the crime with which he is charged, but we are of opinion that in imposing the penalty the court should have taken into consideration, as an extenuating circumstance, the fact that in the commission of the offense the accused acted under an impulse of sudden passion, the result of a wordy quarrel which had arisen between himself and the owner of the house. (Case 7, article 9, Penal Code.)

We therefore modify the sentence as imposed by the trial court, by substituting the penalty of one month and one day of *arresto mayor* in its minimum degree for so much thereof as imposes two months and one day of *arresto mayor* in its medium degree, and thus modified the sentence appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

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

