

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NESTOR G. SORIANO
ALIAS “BOY,” APPELLANT.***G.R. No. 142565. July 29, 2003*

Ponente: BELLOSILLO, J.

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WHAT STARTED OUT AS AN ORDINARY LOVERS' QUARREL turned out to be a nightmarish inferno for the residents of Datu Abing Street, Calinan, Davao City. The unmitigated passion and impulses incessantly burning in the heat of the moment ignited the series of events that resulted in the conflagration of 18 September 1998 mercilessly destroying the houses along its path. The age-old forewarning that "he who plays close to the fire shall ultimately be consumed by its flames" fits literally and figuratively into this tragic tale of lust, love, betrayal and isolation. After the smoke had dissipated and the heat simmered down, Nestor G. Soriano found himself charged before the RTC of Davao City with and later convicted of Destructive Arson penalized under Art. 320 of The Revised Penal Code, as amended by Sec. 10, par. 1, RA 7659, and sentenced to reclusion perpetua.[1]

The factual backdrop: About midnight of 17 September onto the early dawn of 18 September 1998 accused-appellant Nestor G. Soriano was having an argument with his live-in partner Honey Rosario Cimagala concerning their son Nestor, Jr., nicknamed "Otoy." Honey worked as Guest Relations Officer (GRO) in a Metro Manila beer house. The disagreement stemmed from the fact that Honey's brother, Oscar Cimagala, took their child out without the consent of accused-appellant who wanted both Honey and Otoy instead to return with him to Manila. But Honey refused. As their discussion wore on accused-appellant intimated to Honey his desire to have sex with her, which he vigorously pursued the night before with much success. This time Honey did not relent to the baser instincts of Nestor; instead, she kicked him as her stern rebuke to his sexual importuning.

Incensed by her negative response, Nestor nastily retorted: "[S]he is now arrogant and proud of her brother who now supported (sic) her and her children." [2] He added that since he returned from Manila, the house had become "unlucky," referring to that belonging to her aunt Fe Cimagala then occupied by Honey located at Datu Abing Street, Calinan, Davao City.[3]

In the heated exchanges, Nestor struck Honey in the forehead. "You are hurting me," she snapped back, "just like what you did to me in Manila." [4]

Nestor then moved away as he muttered: "It is better that I burn this house," [5] and then took a match from the top of a cabinet, lighted a cigarette and set fire to the plastic partition that served as divider of Honey's room.[6]

With her naked body precariously draped in a towel, Honey instinctively took off her covering and doused off the flame with it. Then she rushed to her cabinet in the room to get a T-shirt and put it on. But Nestor did his worst; he went to Honey's room and set on fire her clothes in the cabinet.

Honey fled to the ground floor; Nestor followed her. As the conflagration was now engulfing the second story of the house, Honey frantically shouted to her uncle Simplicio Cabrera, who was residing next door, "Boy is setting

the house on fire," referring to Nestor.[7]

On the ground floor Nestor grappled with Honey and choked her as he dragged her towards the kitchen. She told him that it would be better for him to kill her than to set the house on fire as it would endanger the neighboring houses. After initially pointing a knife at Honey, Nestor finally laid down his knife and hurriedly went back to the second floor only to see the entire area in flames. They had no choice but to leave as the fire spread rapidly to the neighboring houses. As a result, the house occupied by Honey was totally burned together with five (5) neighboring houses[8] owned individually by Fructuosa Jambo, Ruth Fernandez, Orlando Braña, Simplicio Cabrera and Perla Clerigo.[9]

Subsequently, on 21 September 1998 an Information was filed against accused-appellant Nestor G. Soriano alias "Boy" for Arson.[10] On 30 October 1998, the Information was amended to specify the charge as Destructive Arson[11] under Art. 320, Sec. 10, as amended by RA 7659 and PD 1613. Again on 18 January 1999,[12] upon prior motion of accused through counsel for reinvestigation, the prosecution filed a second Amended Information charging the accused with the same crime of arson but "under Art. 320, Sec. 10 as amended by RA 7659 and PD 1744," and adding the phrase "motivated by spite or hatred towards the occupant of the property," as a special aggravating circumstance, further including the name of "Orlando Braña" whose house worth P1,000,000.00 was also burned.

In the trial, Honey Rosario Cimagala, Oscar Cimagala, Fructuosa Jambo, Ruth Fernandez, Orlando Braña, Simplicio Cabrera and Perla Clerigo, among others, were presented as witnesses for the prosecution.

Accused-appellant was the lone witness for his defense.

On 3 September 1999, the RTC of Davao City, Branch 17, found Nestor G. Soriano alias Boy guilty of Destructive Arson as charged pursuant to RA 7659, Sec. 10, par. 1, as amended, and sentenced him to reclusion perpetua. The court a quo also ordered him to pay the complainants whose houses were likewise burned together with that of Fe Cimagala in the following manner: Fructuosa Jambo, Simplicio Cabrera, Perla Clerigo, Orlando Braña and Oscar Cimagala P1,000,000.00 each as estimated value of their respective houses, including another amount of P100,000.00 each as moral damages and P50,000.00 each by way of exemplary damages, and the costs of suit.

Arson is the malicious burning of property. Under Art. 320 of The Revised Penal Code, as amended, and PD 1613, Arson is classified into two kinds: (1) Destructive Arson (Art. 320) and (2) other cases of arson (PD 1613). This classification is based on the kind, character and location of the property burned, regardless of the value of the damage caused.

Article 320 of The Revised Penal Code, as amended by RA 7659, contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons.[13] The classification of this type of crime is known as Destructive Arson, which is punishable by reclusion perpetua to death. The reason for the law is self-evident: to effectively discourage and deter the commission of this dastardly crime, to prevent the destruction of properties and protect the lives of innocent people. Exposure to a brewing conflagration leaves only destruction and despair in its wake; hence, the State mandates greater retribution to authors of this heinous crime. The exceptionally severe punishment imposed for this crime takes into consideration the extreme danger to human lives exposed by the malicious burning of these structures; the danger to property resulting from the conflagration; the fact that it is normally difficult to adopt precautions against its commission, and the difficulty in pinpointing the perpetrators; and, the greater impact on the social, economic, security and political fabric of the nation.

If as a consequence of the commission of any of the acts penalized under Art. 320, death should result, the mandatory penalty of death shall be imposed.

On the other hand, PD 1613 which repealed Arts. 321 to 326-B of The Revised Penal Code remains the governing law for Simple Arson. This decree contemplates the malicious burning of public and private structures, regardless of size, not included in Art. 320, as amended by RA 7659, and classified as other cases of arson. These include houses, dwellings, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves and other industrial establishments.[14] Although the purpose of the law on Simple Arson is to prevent the high incidence of fires and other crimes involving destruction, protect the national economy and preserve the social, economic and political stability of the nation, PD 1613 tempers the penalty to be meted to offenders. This separate classification of Simple Arson recognizes the need to lessen the severity of punishment commensurate to the act or acts committed, depending on the particular facts and circumstances of each case.

Under Sec. 4 of PD 1613, if special aggravating circumstances are present in the commission of Simple Arson, the penalty under Sec. 3 shall be imposed in its maximum period: (a) If committed with intent to gain; (b) If committed for the benefit of another; (c) If the offender is motivated by spite or hatred towards the owner or occupant of the property burned; and, (d) If committed by a syndicate, or group of three (3) or more persons. If by reason, or on the occasion of Simple Arson death results, the penalty of reclusion perpetua to death shall be imposed.

Although intent may be an ingredient of the crime of Arson, it may be inferred from the acts of the accused. There is a presumption that one intends the natural consequences of his act; and when it is shown that one has deliberately set fire to a building, the prosecution is not bound to produce further evidence of his wrongful intent.[15] If there is an eyewitness to the crime of Arson, he can give in detail the acts of the accused. When this is done the only substantial issue is the credibility of the witness.[16] In the crime of Arson, the prosecution may describe the theatre of the crime and the conditions and circumstances surrounding it. Evidence of this type is part of the *res gestae*. [17]

It is well settled in our jurisdiction that the factual findings of the court *a quo* as well as the conclusions on the credibility of witnesses are generally not disturbed. We have no cogent reason to deviate from this rule in the case at bar.

On the basis of the categorical testimony of Honey Rosario Cimagala positively identifying accused-appellant as the one responsible for the burning of the house of Fe Cimagala in the early morning of 18 September 1998, the trial court found the accused Nestor G. Soriano guilty as charged.

The accused's denial of the crime cannot be an adequate defense against the charge. In *People v. Mahinay*[18] we held that mere denial by witnesses particularly when not corroborated or substantiated by clear and evidencing evidence cannot prevail over the testimony of credible witnesses who testify on affirmative matters. Denial being in the nature of negative and self-serving evidence is seldom given weight in law. Positive and forthright declarations of witnesses are even held to be worthier of credence than a self-serving denial.

We agree with the court *a quo* that the quantum of proof required to convict an accused in a criminal case has been satisfied in the present dispute. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[19]

The legal basis of the trial court for convicting accused-appellant is Art. 320, par. 1, of The Revised Penal Code, as amended by RA 7659, Sec. 10, par. 1. Under this provision, a person found guilty of Destructive Arson is

punishable by reclusion perpetua to death where the burning affects one (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions.

However, we believe that the applicable provision of law should be Sec. 3, par. 2, of PD 1613,[20] which imposes a penalty of reclusion temporal to reclusion perpetua for other cases of arson as the properties burned by accused-appellant are specifically described as houses, contemplating inhabited houses or dwellings under the aforesaid law. The descriptions as alleged in the second Amended Information particularly refer to the structures as houses rather than as buildings or edifices. The applicable law should therefore be Sec. 3, par. 2, of PD 1613, and not Art. 320, par. 1 of the Penal Code. In case of ambiguity in construction of penal laws, it is well-settled that such laws shall be construed strictly against the government, and literally in favor of the accused.

The elements of arson under Sec. 3, par. 2, of PD 1613 are: (a) there is intentional burning; and (b) what is intentionally burned is an inhabited house or dwelling. Incidentally, these elements concur in the case at bar.

The nature of Destructive Arson is distinguished from Simple Arson by the degree of perversity or viciousness of the criminal offender. The acts committed under Art. 320 of The Revised Penal Code constituting Destructive Arson are characterized as heinous crimes "for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society." [21] On the other hand, acts committed under PD 1613 constituting Simple Arson are crimes with a lesser degree of perversity and viciousness that the law punishes with a lesser penalty. In other words, Simple Arson contemplates crimes with less significant social, economic, political and national security implications than Destructive Arson. However, acts falling under Simple Arson may nevertheless be converted into Destructive Arson depending on the qualifying circumstances present.

In the present case, the act committed by accused-appellant neither appears to be heinous nor represents a greater degree of perversity and viciousness as distinguished from those acts punishable under Art. 320 of The Revised Penal Code. No qualifying circumstance was established to convert the offense to Destructive Arson. The special aggravating circumstance that accused-appellant was "motivated by spite or hatred towards the owner or occupant of the property burned" cannot be appreciated in the present case where it appears that he was acting more on impulse, heat of anger or risen temper rather than real spite or hatred that impelled him to give vent to his wounded ego.[22] Nothing can be worse than a spurned lover or a disconsolate father under the prevailing circumstances that surrounded the burning of the Cimagala house. Thus, accused-appellant must be held guilty of Simple Arson penalized under Sec. 3, par. 2, of PD 1613 for the act of intentionally burning an inhabited house or dwelling.

In addition, we find that there exists a mitigating circumstance that should have been appreciated by the trial court in determining the penalty to be imposed on the accused-appellant: a circumstance similar and analogous to passion and obfuscation.[23] An impulse of invidious or resentful feelings contemplates a situation akin to passion and obfuscation. This circumstance is mitigating since, like passion and obfuscation, the accused who acts with these feelings suffers a diminution of his intelligence and intent, a reduction in his mental and rational faculties.

It has been satisfactorily shown by the court a quo that the lovers' quarrel between Nestor Soriano and Honey Rosario Cimagala ignited the chain of events that led to the conflagration that occurred in the early dawn of 18 September 1998. Passions were inflamed in the evening of 17 September 1998 due to the impending return of Soriano to Manila the following day with the prospect of leaving behind in Davao his son Otoy who bears his

namesake "Nestor Jr." But reason, unfortunately, did not prevail; emotions took control of the events that were to unfold. His efforts went to naught; his attempts to win back his forbidden love were likewise thwarted. Verily, the resentment accused-appellant felt came from the realization that he may never see his son again once he left Davao; that his utter frustration in trying to convince Honey Rosario Cimagala to return to Manila with their son brought with it a reduction of his rational faculties within that moment in time. Although emanating from lawful sentiments, the actuations of accused-appellant led to his criminal act of burning the Cimagala home, and other neighboring houses. In other words, accused-appellant was in a state of extreme emotional stress.

Mr. Justice Adam C. Carson, in his concurring opinion in *United States v. Butardo*,^[24] gives his view on the graduation of penalties for the crime of Arson under the Spanish Penal Code. In the old law on which The Revised Penal Code is based, he comments that the authors clearly had in mind certain considerations in imposing penalties of exceptional severity in the various cases of arson. The observations of Mr. Justice Carson in *Butardo* are thus still relevant in our contemporary interpretation of criminal law:

The authors of the Spanish Penal Code, in imposing penalties of exceptional severity in certain cases of arson, clearly had in mind:

First. The extreme danger to which human lives may be exposed by the malicious burning of dwelling houses and the like;

Second. The danger to property resulting from widespread conflagrations;

Third. The fact that it is extremely difficult to adopt precautions against the commission of the crime, and to discover the perpetrators after its commission.

Formerly, where these elements marked the commission of the crime, the single penalty prescribed by law was that of death, but this severity was finally relaxed, and while exceptionally severe penalties are still imposed in such cases, the authors of the Penal Code appear to have endeavored to graduate these penalties in accordance with the degree of danger to life and property, resulting from the commission of the crime.

To this end the severest penalties are prescribed for the malicious burning of edifices in which large numbers of persons are assembled. Less harsh, but still very severe penalties are imposed on those setting fire to dwelling houses and other buildings more or less permanently occupied. Less severe penalties on those guilty of burning unoccupied dwellings, the penalty being more or less severe as the house appeared to be situated so as to make a widespread conflagration more or less probable. And finally, sufficient, but not notably harsh penalties are prescribed in cases where the property of others is set on fire under conditions which do not suggest special danger to human life or the likelihood of considerable destruction of property.

In a concurring opinion, this time in *U.S. v. Burns*, Mr. Justice Ignacio Villamor explains the rationale behind the penalties for Arson:^[25]

In the opinion of Groizard, one of the most famous commentators on the Spanish Penal Code, of which ours is but a copy, "it is the potential damage that is considered here in fixing the grave penalty of *cadena temporal* to *cadena perpetua*. The risk which a person runs who may be found in a place that is burned, whether it be a building, a farm-house, a hut or shelter, or a vessel in port, is what constitutes the gravity which is the object of this crime; just as the damaging intent of the agent, manifested by his setting fire to a place where he knows there is one or more persons, gives an idea of his subjective perversity."

The same author adds: "In the classification of the crime attention must be given to the intention of the author. When fire is used with the intent to kill a determined person who may be in a shelter, and that object is secured, the crime committed is not that defined herein, but that of murder, penalized in article 418 (art. 403 of the Penal Code of the Philippines), with the penalty of *cadena temporal* in its maximum degree to death" (Groizard, Vol. 8, p. 45).

Accused-appellant is undoubtedly responsible for the fire that occurred in the wee hours of 18 September 1998 that razed to the ground the Cimagala home and a number of other houses in the vicinity. Still, we believe that the record shows that the elements discussed by Mr. Justice Carson in his separate concurring opinion in Butardo are wanting. We are therefore not adequately convinced that imposing the exceptionally severe penalty of reclusion perpetua is proper in the case at bar.

First. There appears to be no reckless disregard for human lives indicative of a cold, calculating, wicked and perverse intention to burn the Cimagala home. The action of accused-appellant was the result of a lovers' tiff between him and Honey over their son, Otoy, and concerning the future of their unbridled relationship. His spontaneous, albeit criminal, act was carried out without any intention to exterminate human lives. His purpose in going to Davao was to convince his lover to move back with him to Manila and bringing along their son Otoy.

Second. Neither was there any reckless disregard for the rights of the neighboring property owners. The criminal act of burning the Cimagala home was carried out by accused-appellant in a diminished emotional state, which mitigates his criminal liability to a lesser degree of criminality.

Third. The testimony of Honey clearly points to accused-appellant as the perpetrator of the crime. However, the conduct of accused-appellant after he consummated the crime, i.e., when he set fire to the clothes of Honey, is material in determining the severity of the penalty to be imposed. After his impulsive act of setting fire to both the plastic partition of the room and Honey's clothes, he attempted to mend his ways immediately by attempting to put out the flames although it was too late. His act of burning Honey's clothes set in motion a chain of events that spun out of control and led to the blaze that destroyed houses in its path. However, despite the mayhem caused by accused-appellant, he never fled the scene of the crime; in fact, he watched helplessly as the flames consumed the Cimagala home and the neighboring houses. He did not resist the police authorities when he was invited for questioning at the police station to shed light on the incident.

Thus, applying Mr. Justice Carson's exceptional severity standard as regards the imposition of penalties for the crime of Arson, the degree of criminality involved in the accused-appellant's act is lessened by the fact that he acted on an impulse that diminished his reasoning faculties, thus mitigating the punishment to be imposed. The proper penalty to be imposed should therefore take into consideration the analogous mitigating circumstance to passion and obfuscation under Art. 13, par. 10, as discussed above, in relation to Art. 64, par. 2, of The Revised Penal Code.[26]

Under Sec. 3, par. 2, of PD 1613, in relation to Art. 64, par. 2, of The Revised Penal Code, the imposable penalty for simple arson is reclusion temporal to reclusion perpetua the range of which is twelve (12) years and one (1) day to reclusion perpetua. Applying the Indeterminate Sentence Law, the penalty next lower in degree to the imposable penalty is prision mayor the range of which is six (6) years and one (1) day to twelve (12) years in any of its periods. Under the circumstances, it is believed that an indeterminate prison term of six (6) years four (4) months and twenty (20) days of prision mayor minimum as minimum to fourteen (14) years two (2) months and ten (10) days of the minimum of reclusion temporal to reclusion perpetua as maximum may be imposed on the accused.

As to the award of damages, this Court has consistently held that proof is required to determine the reasonable amount of damages that may be awarded to the victims of conflagration. As a rule, therefore, actual or compensatory damages must be proved and not merely alleged. We believe that the records do not adequately reflect any concrete basis for the award of actual damages to the offended parties. The court a quo granted the award solely on the bare assertions of the complaining witnesses. Moral damages cannot be awarded in this case, as there is no evidentiary basis to justify it. However, accused-appellant's civil liability is beyond cavil; what

needs to be resolved is the amount of indemnity he should pay to the owners of the burned houses for the damage caused. In lieu thereof, this Court may award temperate or moderate damages to the victims of the conflagration in accordance with Art. 2224 of the Civil Code. Indeed, the records evince that the victims suffered some pecuniary loss although the amount thereof cannot be proved with certainty. Consequently, temperate damages in the amount of P250,000.00 which is considered reasonable under the circumstances should be awarded to each of the complaining witnesses or their heirs as the case may be.

Exemplary or corrective damages should likewise be awarded as a way to correct future conduct of this nature and preserve the public good. Such damages are designed to reshape behavior that is socially deleterious in its consequences.[27] Hence, exemplary or corrective damages in the amount of P50,000.00 for each of the above-mentioned complaining witnesses or their heirs is fair and just under the premises.

It must be noted that accused-appellant became an unwitting victim of his own extra-marital indiscretions. His flawed emotional disposition coupled with a lapse in judgment became his own undoing as he now languishes in jail for choosing the road to perdition. Although he has no one to blame but himself for his vicissitudes, we believe that the lessons to be learned from this sad and miserable chapter of his life are more than adequate from which he can gain insight and wisdom, while he sits patiently in his prison cell waiting for the day when he can once again breathe the invigorating air of freedom.

WHEREFORE, Decision of the Regional Trial Court of Davao City finding accused-appellant Nestor G. Soriano guilty of Destructive Arson is MODIFIED to Simple Arson under Sec. 3, par. 2, of PD 1613, and the penalty imposed on him REDUCED to an indeterminate prison term of six (6) years four (4) months and twenty (20) days of prison mayor minimum as minimum to fourteen (14) years two (2) months and ten (10) days of reclusion temporal minimum as maximum. Temperate damages in the amount of P250,000.00 and exemplary damages of P50,000.00 are AWARDED to each of complaining witnesses Fructuosa L. Jambo, Simplicio B. Cabrera, Francisco Clerigo, Orlando Braña and Oscar T. Cimagala. Costs against accused-appellant.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr. and Tinga, JJ., concur.

[1] Decision penned by Presiding Judge Renato A. Fuentes, RTC-Br. 17, Davao City, promulgated 3 September 1999; Rollo, pp. 47-48.

[2] Id. at 23.

[3] Id. at 22.

[4] Id. at 23.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Id at 24.

[9] Id. at 33.

[10] Id. at 8.

[11] Id. at 9.

[12] Id. at 11.

[13] Under Art. 320, as amended, the enumeration of the instances for Destructive Arson is exclusive: (a) one (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burning, or committed on several or different occasions; (b) any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade workshop, meetings and conferences, or merely incidental to a definite purpose, such as but not limited to, hotels, motels, transient dwellings, public conveyance or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not; (c) any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure; (d) any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities; (e) any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance; (f) when committed by two (2) or more persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission of another violation of law; (g) any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government; (h) in an inhabited place, any storehouse or factory of inflammable or explosive material.

[14] Sec. 3 of PD 1613 enumerates the Other Cases of Arson which are punishable by the penalty of reclusion temporal to reclusion perpetua: (a) Any building used as offices of the government or any of its agencies; (b) Any inhabited house or dwelling; (c) Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel; (d) Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest; (e) Any rice mill, sugar mill, cane mill, or mill central; and, (f) any railway or bus station, airport, wharf or warehouse.

[15] Curtis, A Treatise on the Law of Arson (1st ed., 1986), Sec. 283 at 303.

[16] Id., Sec. 287 at 307.

[17] Id., Sec. 302 at 323.

[18] G.R. No. 125311, 17 March 1999, 304 SCRA 767.

[19] Sec. 2, Rule 133, Rules of Court.

[20] The relevant provision of PD 1613 states:

"Sec. 3. Other Cases of Arson. - The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following x x x x

- Any inhabited house or dwelling x x x x"

[21] See Preamble, RA 7659.

[22] See *People v. Gutierrez*, G.R. No. 100699, 5 July 1996, 258 SCRA 70.

[23] Art. 13, par. 10, The Revised Penal Code.

[24] 11 Phil. 60, 62 (1908). See Carson, J., concurring.

[25] 41 Phil. 418, 440 (1921). See Villamor, J., concurring.

[26] "Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the following rules, according to whether there are or are no mitigating or aggravating circumstances x x x x 2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period x x x x"

[27] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. V (2d Ed., 1992), p. 663, citing cases.

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