

## DANTE BUEBOS AND SARMELITO BUEBOS, PETITIONERS, V.S. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 163938. March 28, 2008*

Ponente: REYES, R.T., J.

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### REYES, R.T., J.:

THE law on arson has always been a constant source of confusion not only among members of the bar, but also among those of the bench. The bewilderment often centers on what law to apply and what penalty to impose.

In this case, the Court is again tasked to determine whether petitioners are liable for simple arson or arson of an inhabited house which merits a penalty of up to reclusion perpetua.

Before the Court is a petition to review on certiorari under Rule 45 the Decision[1] of the Court of Appeals (CA), affirming with modification that[2] of the Regional Trial Court in Tabaco, Albay, finding petitioners Dante Buebos and Sarmelito Buebos guilty of arson.

### The Facts

On January 1, 1994 around 3:00 o'clock in the morning, Adelina B. Borbe was in her house at Hacienda San Miguel, Tabaco, Albay watching over her sick child.[3] She was lying down when she heard some noise around the house. She got up and looked through the window and saw the four accused, Rolando Buela, Sarmelito Buebos, Dante Buebos and Antonio Cornel, Jr. congregating in front of her hut.[4] When she went out, she saw the roof of her nipa hut already on fire. She shouted for help. Instead of coming to her immediate succor, the four fled.[5]

At some distance away, Olipiano Berjuela heard Adelina scream for help. Olipiano was then drinking with Pepito Borbe to celebrate New Year's Eve. Olipiano immediately ran to the place and saw a number of people jumping over the fence. When he focused his flashlight on them, he was able to identify Sarmelito Buebos, Dante Buebos and Antonio Cornel, Jr.[6] He also saw Rolando Buela running away.[7]

On complaint of Adelina, petitioners Dante and Sarmelito Buebos, together with Rolando Buela and Antonio Cornel, Jr., were indicted for arson in an Information bearing the following accusations:

That on or about the 1st day of January, 1994 at 3:00 o'clock in the Barangay Hacienda, Island of San Miguel, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to cause damage, did then and there wilfully, unlawfully, feloniously and maliciously set on fire the nipa roof of the house of ADELINA B. BORBE, to the latter's damage and prejudice.

ACTS CONTRARY TO LAW.[8]

The prosecution evidence portraying the foregoing facts was principally supplied by private complainant Adelina Borbe and Olipiano Berjuela.

Upon the other hand, denial and alibi were the main exculpating line of petitioners and their co-accused. The trial court summed up the defense evidence in the following tenor:

The defense contended that the accused were at different places at the time of the incident; Rolando Buela claimed to be at sitio Tugon, Malictay, San Miguel, Tabaco, Albay as there was a novena prayer at his parents' house on occasion of the death anniversary of his late grandfather; Dante Buebos also claimed to have been at Romeo Calleja's having gone there in the evening of December 30, 1993 and left the place at 12:00 o'clock noontime of January 1, 1994; Sarmelito Buebos asserted that he was at his residence at sitio Malictay, Hacienda, San Miguel, Tabaco, Albay on the day the incident happened and that he never left his house; Antonio Cornel, Jr. likewise claimed to be at his residence at Añgas after having visited his in-laws; that he only came to know of the accusation five (5) days after the incident happened when he visited his parents at Malictay; witnesses were likewise presented by the accused to corroborate their testimonies.[9]

#### RTC and CA Dispositions

On April 7, 1998, the RTC found all of the accused guilty beyond reasonable doubt of arson. The dispositive part of the judgment of conviction reads:

WHEREFORE, from all the foregoing, this Court finds accused ROLANDO BUELA, DANTE BUEBOS, SARMELO BUEBOS and ANTONIO CORNEL, JR. GUILTY beyond reasonable doubt for the crime charged; accordingly, each of the accused is hereby sentenced to suffer the indeterminate penalty ranging from six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum; and to pay the cost.

SO ORDERED.[10]

Via a notice of appeal, the four accused elevated the matter to the appellate court. In their appeal, they contended that (1) the trial court erred in finding them guilty of the crime of arson; (2) that the trial court erred in finding conspiracy; and (3) the trial court erred in failing to give weight and credence to their defense of denial and alibi.

On November 13, 2003, through an eight-page decision penned by Associate Justice Eliezer R. de los Santos, the CA disposed of the appeal in this wise:

WHEREFORE, in view of the foregoing, the decision appealed from is hereby AFFIRMED with MODIFICATION. Each of the accused-appellant is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) years of prision correccional as minimum to ten (10) years of prision mayor as maximum.

SO ORDERED.[11]

In downgrading the penalty, the CA opined that the accused could only be convicted of simple arson, punishable by prision mayor, and not for burning of an inhabited house, which is punishable by imprisonment ranging from reclusion temporal to reclusion perpetua. According to the appellate court, the information failed to allege with specificity the actual crime committed. Hence, the accused should be found liable only for arson in its simple form.[12]

#### Issues

Dissatisfied, Dante and Sarmelito Buebos have resorted to the present recourse. The following arguments are now raised for the Court's consideration:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF

THE TRIAL COURT ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE;

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT CONSPIRACY EXISTED IN THE CASE AT BAR.[13]

### Our Ruling

#### Overview of the law on arson

The confusion surrounding arson has been confounded by the dearth of annotation on this part of our penal law. Certainly, the law on arson is one of the least commented in this jurisdiction. For the guidance of the bench and bar, a brief legislative history of the body of laws on arson is in order.

Previously, arson was defined and penalized under nine different articles of the Revised Penal Code: Article 320 (destructive arson), Article 321 (other forms of arson), Article 322 (cases of arson not included in the preceding articles), Article 323 (arson of property of small value), Article 324 (crimes involving destruction), Article 325 (burning one's own property to commit arson), Article 326 (setting fire to property exclusively owned by the offender, Article 326-a (in cases where death resulted as a consequence of arson), and Article 326-b (prima facie evidence of arson).

On March 7, 1979, citing certain inadequacies that impede the successful enforcement and prosecution of arsonists, then President Ferdinand E. Marcos issued Presidential Decree (P.D) No. 1613. P.D. 1613 supplanted the penal code provisions on arson. The pertinent parts of the said presidential issuance read:

SECTION 1. Arson. - Any person who burns or sets fire to the property of another shall be punished by prision mayor.

The same penalty shall be imposed when a person sets fire to his own property under circumstances which expose to danger the life or property of another.

SECTION 2. Destructive Arson. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed if the property burned is any of the following:

- Any ammunition factory and other establishments where explosives, inflammable or combustible materials are stored;
- Any archive, museum, whether public or private, or any edifice devoted to culture, education or social services;
- Any church or place of worship or other building where people usually assemble;
- Any train, airplane or any aircraft, vessel or watercraft, or conveyance for transportation of persons or property;
- Any building where evidence is kept for use in any legislative, judicial, administrative or other official proceedings;
- Any hospital, hotel, dormitory, lodging house, housing tenement, shopping center, public or private market, theater or movie house or any similar place or building;
- Any building, whether used as a dwelling or not, situated in a populated or congested area.

SECTION 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:

- Any building used as offices of the government or any of its agencies;
- Any inhabited house or dwelling;
- Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
- Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;
- Any rice mill, sugar mill, cane mill or mill central; and
- Any railway or bus station, airport, wharf or warehouse.

SECTION 4. Special Aggravating Circumstances in Arson. - The penalty in any case of arson shall be imposed in its maximum period:

- If committed with the intent to gain;
- If committed for the benefit of another;
- If the offender is motivated by spite or hatred towards the owner or occupant of the property burned;
- If committed by a syndicate. The offense is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons.

SECTION 5. Where Death Results from Arson. - If by reason of or on the occasion of arson death results, the penalty of reclusion perpetua to death shall be imposed.

SECTION 6. Prima Facie Evidence of Arson. - Any of the following circumstances shall constitute prima facie evidence of arson:

- If the fire started simultaneously in more than one part of the building or establishment.
- If substantial amount of flammable substances or materials are stored within the building not necessary in the business of the offender nor for household use.
- If gasoline, kerosene, petroleum or other flammable or combustible substances or materials soaked therewith or containers thereof, or any mechanical, electrical, chemical, or electronic contrivance designed to start a fire, or ashes or traces of any of the foregoing are found in the ruins or premises of the burned building or property.
- If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.
- If during the lifetime of the corresponding fire insurance policy more than two fires have occurred in the same or other premises owned or under the control of the offender and/or insured.
- If shortly before the fire, a substantial portion of the effects insured and stored in a building or property had been withdrawn from the premises except in the ordinary course of business.
- If a demand for money or other valuable consideration was made before the fire in exchange for the desistance of the offender or for the safety of other person or property of the victim.

SECTION 7. Conspiracy to Commit Arson. - Conspiracy to commit arson shall be punished by prision mayor in its minimum period.

SECTION 8. Confiscation of Object of Arson. - The building which is the object of arson including the land on which it is situated shall be confiscated and escheated to the State, unless the owner thereof can prove that he has no participation in nor knowledge of such arson despite the exercise of due diligence on his part.

On November 11, 1980, the law on arson was again revisited via P.D. No. 1744. The new law expanded the definition of destructive arson by way of reinstating Article 320 of the Revised Penal Code. The amendatory legislation also paved the way for the reimposition of the capital punishment on destructive arsonists.

When Republic Act (R.A.) No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes) was passed on December 13, 1993, Article 320 again underwent a revision. As it now stands, Article 320 of the Revised Penal Code is worded, thus:

Art. 320. Destructive Arson. - The penalty of reclusion perpetua to death shall be imposed upon any person who shall burn:

- One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.

- 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 conveyances 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.

- Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

- Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

- 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.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of reclusion perpetua to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of 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 or another violation of law.

The penalty of reclusion perpetua to death shall also be imposed upon any person who shall burn:

- Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government.

- In an inhabited place, any storehouse or factory of inflammable or explosive materials.

If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed.

Of course, with the repeal of the Death Penalty Law on June 24, 2006 through R.A. No. 9346, arson is no longer a capital offense.[14]

We proceed to the crux of the petition.

Circumstantial evidence points to  
petitioners' culpability

Petitioners score the CA for convicting them of arson based on circumstantial evidence. They argue that the

inference that they were responsible for the burning of private complainant's hut was not duly proven by the People.

Circumstantial evidence is defined as that evidence that "indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. Resort thereto is essential when the lack of direct testimony would result in setting a felon free." [15]

At the outset, We may well emphasize that direct evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. [16] Verily, resort to circumstantial evidence is sanctioned by Rule 133, Section 5 of the Revised Rules on Evidence. [17]

The following are the requisites for circumstantial evidence to be sufficient for a conviction: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused. [18]

After a careful review of the evidence presented by both parties, We find that the circumstantial evidence extant in the records is sufficient to identify petitioners as the authors of the burning of the hut of private complainant Adelina Borbe:

- Private complainant heard some noise emanating from outside her house at around 3:00 a.m.;
- When she went out to check the disturbance, private complainant saw petitioners, together with their two other co-accused, standing in front of the house;
- Moments later, the roof of her house caught fire;
- Petitioners and their cohorts absconded while private complainant desperately shouted for help.

The facts from which the cited circumstances arose have been proved through positive testimony. [19] Evidently, these circumstances form an unbroken chain of events leading to one fair conclusion - the culpability of petitioners for the burning of the hut. The Court is convinced that the circumstances, taken together, leave no doubt that petitioner perpetrated the arson.

Conspiracy evident from coordinated action of petitioners

Petitioners next contend that conspiracy was erroneously appreciated by both the trial and appellate courts. They posit that the finding of conspiracy was premised on speculation and conjecture.

The rule is well-entrenched in this jurisdiction that conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Corollarily, it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. The rule is that conviction is proper upon proof that the accused acted in concert, each of them doing his part to fulfill the common design. In such a case, the act of one becomes the act of all and each of the accused will thereby be deemed equally guilty of the crime

committed.[20]

In the case at bench, conspiracy was evident from the coordinated movements of petitioners Dante and Sarmelito Buebos. Both of them stood outside the house of private complainant Adelina. They were part of the group making boisterous noise in the vicinity. Petitioners also fled together while the roof of Adelina's house was ablaze. These acts clearly show their joint purpose and design, and community of interest.

We quote with approval the CA observation along this line:

Accused-appellant's assertion that conspiracy has not been established is belied by the accounts of the prosecution witness. The manner by which the accused- appellants behaved after the private complainant shouted for help clearly indicated a confederacy of purpose and concerted action on the part of the accused-appellants. Even if there is no direct evidence showing that all of the accused had prior agreement on how to set the roof of the house on fire, the doctrine is well settled that conspiracy need not be proved by direct evidence of prior agreement to commit the crime. Very seldom such prior agreement be demonstrable since, in the nature of things, criminal undertakings are only rarely documented by agreements in writing.[21]

### Crime committed and the penalty

The RTC sentenced all four accused to an indeterminate penalty ranging from six (6) years and one day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. On appeal, the CA reduced the sentence to six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. The CA ratiocinated:

The information charges accused-appellants with "violation of P.D. 1613" without specifying the particular provision breached. The information having failed to allege whether or not the burnt house is inhabited, and not having been established that the house is situated in a populated or congested area, accused-appellants should be deemed to have only been charged with plain arson under Section 1 of the decree. Under Section 1 of the decree, the offense of simple arson committed is punishable by prision mayor .

There being neither aggravating nor mitigating circumstances in the case at bar accused-appellants should be sentenced to suffer the penalty of prision mayor in its medium period as provided under Article 321, paragraph 1 of the Revised Penal Code, as amended, by Presidential Decree No. 1613. Applying the Indeterminate Sentence Law, the minimum penalty should be anywhere within the range of prision correccional.[22]

The legal basis of the trial court in convicting petitioners of arson is Section 3, paragraph 2 of P.D. No. 1613. The said provision of law reads:

SECTION 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

2. Any inhabited house or dwelling;

The elements of this form of arson are: (a) there is intentional burning; and (b) what is intentionally burned is an inhabited house or dwelling.[23] Admittedly, there is a confluence of the foregoing elements here. However, the information failed to allege that what was intentionally burned was an inhabited house or dwelling. That is fatal.

Sections 8 and 9 of the 2000 Rules of Criminal Procedure state:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or

subsection of the statute punishing it.

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances for the court to pronounce judgment.

Under the new rules, the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. Otherwise stated, the accused will not be convicted of the offense proved during the trial if it was not properly alleged in the information.[24]

Perusing the information, there was no allegation that the house intentionally burned by petitioners and their cohorts was inhabited. Rather, the information merely recited that "accused, conspiring, confederating and helping one another, with intent to cause damage, did then and there wilfully, unlawfully, feloniously and maliciously set on fire the nipa roof of the house of ADELINA B. BORBE, to the latter's damage and prejudice." [25]

Although the rule took effect only on December 1, 2000, while the petitioners were convicted by the RTC on April 7, 1998, it may be applied retroactively. It is elementary that rules of criminal procedure are given retroactive application insofar as they benefit the accused.[26]

In fine, petitioners can be convicted only of simple arson, under Section 1, paragraph 1 of P.D. No. 1613, punishable by prision mayor.

This is not a case of first impression. This Court has, on a number of occasions, modified the RTC and CA judgments for having applied the wrong law and penalty on arson. In *People v. Soriano*, [27] the accused was found guilty of destructive arson, then a capital offense. On automatic review, the Court held that he should be held liable only for simple arson. The explanation:

However, we believe that the applicable provision of law should be Sec. 3, par. 2, of PD 1613, 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." 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. 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.[28]

An oversight of the same nature was addressed by this Court in the more recent case of *People v. Malngan*.<sup>[29]</sup> Said the Court in *Malngan*:

The ultimate query now is which kind of arson is accused-appellant guilty of?

As previously discussed, there are two (2) categories of the crime of arson: 1) destructive arson, under Art. 320 of the Revised Penal Code, as amended by Republic Act No. 7659; and 2) simple arson, under Presidential Decree No. 1613. Said classification is based on the kind, character and location of the property burned, regardless of the value of the damage caused, 48 to wit:

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. 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. [Emphasis supplied]

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. 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. [Emphasis supplied]

To emphasize:

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 (as amended) 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. 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. [Emphasis supplied.]

Prescinding from the above clarification vis-à-vis the description of the crime as stated in the accusatory portion of the Information, it is quite evident that accused- appellant was charged with the crime of Simple Arson - for having "deliberately set fire upon the two-storey residential house of ROBERTO SEPARA and family x x x knowing the same to be an inhabited house and situated in a thickly populated place and as a consequence thereof a conflagration ensued and the said building, together with some seven (7) adjoining residential houses, were razed by fire." [Emphasis supplied]

The facts of the case at bar is somewhat similar to the facts of the case of *People v. Soriano*. The accused in the latter case caused the burning of a particular house. Unfortunately, the blaze spread and gutted down five (5) neighboring houses. The RTC therein found the accused guilty of destructive arson under paragraph 1 of Art. 320 of the Revised Penal Code, as amended by Republic Act No. 7659. This Court, through Mr. Justice Bellosillo, however, declared that:

"x x x [T]he applicable provision of law should be Sec. 3, par. 2, of PD 1613, 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 liberally 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."

As stated in the body of the Information, accused-appellant was charged with having intentionally burned the two-storey residential house of Robert Separa. Said conflagration likewise spread and destroyed seven (7) adjoining houses. Consequently, if proved, as it was proved, at the trial, she may be convicted, and sentenced accordingly, of the crime of simple arson. Such is the case "notwithstanding the error in the designation of the offense in the information, the information remains effective insofar as it states the facts constituting the crime alleged therein." "What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violate, x x x but the description of the crime charged and the particular facts therein recited."

There is, thus, a need to modify the penalty imposed by the RTC as Sec. 5 of PD No. 1613 categorically provides that the penalty to be imposed for simple arson is:

SEC. 5. Where Death Results from Arson. - If by reason of or on the occasion of arson death results, the penalty of reclusion perpetua to death shall be imposed. [Emphasis supplied]

Accordingly, there being no aggravating circumstance alleged in the Information, the imposable penalty on accused-appellant is reclusion perpetua.[30]

Now, to the penalty. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should range from six (6) years and one (1) day to twelve (12) years. Considering that no aggravating or mitigating

circumstance attended the commission of the offense, the penalty should be imposed in its medium period [eight (8) years and one (1) day to ten (10) years]. The minimum of the indeterminate sentence is prision correccional, which has a range of six (6) months and one (1) day to six (6) years, to be imposed in any of its periods.

The CA sentence is in accord with law and jurisprudence. We sustain it.

WHEREFORE, the petition is DENIED. The appealed judgment is AFFIRMED in full.

**SO ORDERED.**

Austria-Martinez, (Acting chairperson), Tinga, Chico-Nazario, and Nachura., JJ., concur.

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\*Vice Associate Justice Consuelo Ynares-Santiago, Chairperson, who is on official leave per Special Order No. 497 dated March 14, 2008.

\*\* Designated as additional member per Special Order No. 497 dated March 14, 2008.

[1] Rollo, 65-72. Penned by Associate Justice Eliezer R. de los Santos (now deceased), with Associate Justices B. A. Adefuin-de la Cruz and Jose C. Mendoza, concurring.

[2] Id. at 26-28. Criminal Case No. T-2563. Penned by Judge Mamerto M. Buban, Jr, RTC, Branch 18, Tabaco, Albay.

[3] TSN, September 7, 1995, p. 5.

[4] Id. at 6.

[5] Id. at 12.

[6] TSN, December 8, 1994, p. 14.

[7] Id. at 16.

[8] Id. at 25.

[9] Id. at 27.

[10] Id. at 28.

[11] Id. at 72.

[12] Id. at 71.

[13] Id. at 16.

[14] Those found guilty of destructive arson would now be meted the penalty of reclusion perpetua, without eligibility for parole.

[15] People v. Matito, G.R. No. 144405, February 24, 2004, 423 SCRA 617.

[16] People v. Casitas, G.R. No. 137404, February 14, 2003, 397 SCRA 382.

[17] Revised Rules on Evidence, Rule 133, Sec. 5 reads:

Sec. 5. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce conviction beyond a reasonable doubt.

[18] *People v. Casitas*, supra.

[19] TSN, September 7, 1995, pp. 4-29; TSN, December 8, 1994, pp. 3-38.

[20] *People v. Quinao*, G.R. No. 108454, March 13, 1997, 269 SCRA 495; *People v. Saul*, G.R. No. 124809, December 19, 2001, 372 SCRA 636; *People v. Mozar*, 215 Phil. 501 (1984).

[21] Rollo, p. 71.

[22] *Id.* at 71-72.

[23] *People v. Soriano*, G.R. No. 142565, July 29, 2003, 407 SCRA 367.

[24] *People v. Vallejo*, G.R. No. 125784, November 19, 2003, 416 SCRA 193.

[25] Rollo, p. 25.

[26] *People v. Vallejo*, supra.

[27] Supra note 23.

[28] *Id.* at 374-376.

[29] G.R. No. 170470, September 26, 2006, 503 SCRA 294.

[30] *People v. Malngan*, *id.* at 327-331.

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