

SECOND DIVISION

[G.R. No. 142565, July 29, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NESTOR G. SORIANO ALIAS "BOY," APPELLANT.

DECISION

BELLOSILLO, J.:

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*,