RECENT TRENDS IN CRIMINAL LAW AND JURISPRUDENCE*

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One of the attractions of the legal profession is its timelessness. Indeed, a lawyer, although seventy (70) years of age, can still practice law for as long as his mind remains brilliant and his spirit ever driven. Endurance in the practice of the legal profession requires no less than a rigid discipline to keep up with law and jurisprudence; a lawyer who wants to keep on practicing law must constantly update himself on the statutes enacted, amended or repealed by the legislature and the doctrines and rulings pioneered, reiterated, modified or abandoned b the Supreme Court whose enunciations, by mandate of Article 8[1] of the Civil Code, are considered part of the legal system in this jurisdiction.

In Criminal Law, the Supreme Court has not been wanting in significant issues to resolve in the past few years. The bulk of the cases however, have been disposed of in a manner consistent with the doctrine of *stare decisis*. Hence, many rulings are mere reiterations of well-entrenched rules that have evolved from the past. There are also cases where the Supreme Court, while reaffirming established rules, points out exceptions thereto in ambiguous areas arising therefrom.

It is this article's task, therefore, to tell you about the more important rulings of the Supreme Court where, while reiterating old doctrines, apply them to relatively new or unique situations. More

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[1] CIVIL CODE, art. 8. "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

importantly, it will briefly discuss particular cases where the Supreme Court had the occasion to tackle novel issues. In between, adjudicated issues will be extrapolated on and interesting queries will be raised to be pondered and debated on.

I. CRIMES *MALA PROHIBITA* AND *MALA IN SE*

In the area of general principles of criminal law, the issue of *crimes mala prohibita* vis-a-vis crimes *mala in se*, in the context of the Firearms Law (PD 1866)[2], pose an interesting discussion. Until the case of *People v. Barros*,[3] promulgated on June 27, 1995, the Supreme Court had consistently held that there can be no complexing of a crime *malum prohibitum* and a crime *malum in se*. This is grounded on both the essential difference respecting the requisite elements between these two kinds of crimes and the statutory difference respecting the form of penalties provided therefor. The ruling of the Court in the said *Barros* case however, gives the impression that the Court is going towards the direction of abandoning any subsisting distinctions between crimes *mala prohibita* and crimes *mala in se*. In this case, the Supreme Court held that the accused, who was charged in two separate informations for murder and qualified illegal possession of firearms, respectively, may be convicted only of the latter crime and not of both crimes. In reaching this conclusion, the Court ruled that "although two crimes have been committed, they are not altogether separate or disconnected from each other both in law and in fact"[4] and "the situation thus borders closer to the concept of complex crime proper."[5] While the Court acknowledged that "former doctrines were to the effect that there can be no complex crime where one of the component offenses is punished by special law,"[6] it considered this rule as modified by its ruling in *People v. Simon*,[7] promulgated on July 29, 1994. In this case, the Court ruled that "the rules for the application of penalties and the correlative effects thereof under the Revised Penal

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[2] PRES. DECREE No. 1866 (1983).

[3] G.R. Nos. 101107-08, June 27, 1995, 245 S.C.R.A. 312 (1995).

[4] *Id.*, at 327.

[5] *Id.*

[6] *Id.*

[7] G.R. No. 93028, July 29, 234 S.C.R.A. 555 (1994).

Code as well as other statutory enactments founded upon and applicable to such provisions of the Code, have suppletory effect to the penalties under x x x Presidential Decree Nos. 1612[8] and 1866"[9] because the statutory intent is "to give the related provisions on penalties for felonies under the Code, the corresponding application to said special laws in the absence of any express or implied proscription in these special laws."[10] The Court held that to hold otherwise, would be to "sanction an indefensible judicial truncation of an integrated system of penalties under the Code and its allied legislation, which could never have been the intendment of Congress."[11] The Supreme Court, in the *Barros* case, thus juxtaposed the Simon ruling on the prohibition against complexing a crime *malum prohibitum* with a crime *malum in se* and concluded that the prohibition no longer applies because on the strength of the Simon ruling, crimes *mala prohibita* ; at least those with penalties that bear the nomenclature and description of those in the Revised Penal Code, may now be treated as crimes *mala in se* and may therefore be complexed with felonies under the Revised Penal Code.

The full import of the ruling of the Supreme Court in the Barros case is yet to be thoroughly comprehended.[12] For one, there is doubt if the distinctions between crimes *mala in se* and crimes *mala prohibita* can be eroded simply by saying that they are now the same because the penalties provided therefor are of the same nature. Certainly, there is more to the distinctions between them than the form of their penalties. The legislature enacted a penal code because no malefactor can be penalized unless his acts are made crimes by

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[8] Anti-Fencing Law of 1979, 75 O.G. 3273 No.15 (April 9, 1979).

[9] *Supra* note 7, at 576.

[10] *Id.*

[11] *Id.*

[12] [*Editor's note: In the recent case of People vs Quijada (G.R. Nos. 115008-09, July 24, 1996, 259 S.C.R.A. 191), the Supreme Court re-examined the existing conflicting doctrines applicable to prosecutions for murder or homicide and for aggravated illegal possession of firearm in instances where an unlicensed firearm is used in the killing of a person, and consequently abandoned the ruling in People vs Barros. The author, in his concurring opinion in the Quijada case, stated that "There is no time more appropriate to reexamine the Barros ruling than now, for to persist in it would result in an absurd situation that cannot be justified even under the hallowed principle of* stare decisis."]

statute. In the exercise of its legislative power, it is guided by the general condition of penal liability under the legal maxim, "*actus non facit reum, nisi mens sit rea*" which, freely translated, means that an act is not criminal unless the mind is criminal. On the basis of this doctrine of *mens rea*, our Revised Penal Code was enacted to largely penalize unlawful acts accompanied by evil intent which are denominated *en masse* as crimes *mala in se*. It is not always, however, that the evil to society anent a criminal act depends upon the state of mind of the offender. In the exercise of the police power of the State, the legislature may also forbid the doing of a particular act and legislate the commission of such act to be a crime regardless of the intent of the doer. These enactments are commonly known as special penal laws which criminalize even acts which are not usually unlawful but are nonetheless forbidden. In such crimes, the intention of the person who commits the special crime is entirely immaterial because in these cases, the act complained of is itself that which produces the pernicious effect which the statute seeks to avoid. Applying these basic doctrines in criminal law, which remain good law until now, then neither the doctrine of absorption nor the doctrine of complex crimes may be utilized to justfy conviction of the accused in *People v. Barros*, only for qualified illegal possession of firearm and not for both murder and qualified illegal possession of firearm.

For absorption to take place, there must be two materially distinct and separate offenses involved. However, the offense defined in PD 1866 is plainly and simply Illegal Possession of Unlicensed Firearm. *The circumstance of homicide or murder only operates to upgrade the penalty for the offense of illegal possession of unlicensed firearm* and does not, as it has been intended to, sire and penalize a second offense or the so-called capital offense of the aggravated form of illegal possession of unlicensed firearm. The offense of illegal possession, as such, in turn, cannot validly absorb murder or homicide because the latter is not an element of the former. Neither is the doctrine of complex crime applicable because notwithstanding the ruling in the *Simon* case, it still cannot be said that there is no longer an obstacle in complexing murder with qualified illegal possession because the very essence and nature of each of these crimes remain unchanged and unaffected. The accused in such cases committed an

act with two separate criminal intents, to wit, the desire to take unlawfully the life of a person and the sheer violation of the law which prohibits the possession of a firearm without the required permit. There is in this case a plurality of crimes where the accused performed one act which resulted in two different crimes penalized under two separate laws which have distinct purposes independent of each other.

Another important consideration is that with the enactment of Republic Act No. 7659,[13] imposing the death penalty, the soundness of the *Barros* ruling leaves much to be desired. RA 7659 enumerated particular crimes under the Revised Penal Code and specific offenses under special laws that shall henceforth contain provisions imposing the death penalty under certain circumstances. One of the crimes enumerated thereunder is murder which may now be punished by death. The death penalty may also be meted out in certain special offenses, among others, in the case of drug-related crimes and in the case of carnapping.

Significantly, Illegal Possession of Firearms under PD 1866 is not included in the enumeration of special offenses where the death penalty has been revived. In *People v. Laurente, et. al.*, promulgated on March 29, 1996, the Supreme Court has ruled that the reimposition of the death penalty by RA 7659 did not, *ipso jure*, lift the suspension of the death penalty as far as certain special offenses are concerned. Where RA 7659 failed to specifically impose the death penalty or restore it for certain special offenses, Congress is deemed not to have considered that particular special offense a "heinous crime"; or even if it did, it found no "compelling reason" to reimpose the death penalty therefor. On the strength of the *Laurente* ruling, we must take it that illegal possession of firearms, even when used in killing, shall not be punished by death.

The foregoing makes for a tremendous import. On the one hand, were we to insist that murder may be complexed with or

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[13] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code as amended, Other Special Laws, and for other Purposes, 90 O.G. 311 No. 3 (January 17, 1994).

absorbed by illegal possession of unlicensed firearm where said firearm is used in the commission of murder or homicide, a person convicted of said offense may only be punished with a penalty no longer higher than *reclusion perpetua* , since RA 7659 did not revive the death penalty provision of PD 1866. On the other hand, a person who has used an unlicensed firearm in committing murder may be punished with death if there were sufficient aggravating circumstances attendant in the killing. No deep analysis is needed to realize that an anomalous and absurd situation is brought about where the use of an unlicensed firearm in killing is rewarded by a lesser penalty. The message is no less ridiculous--if a criminal is to kill, he should do it with an unlicensed firearm so that he would be prosecuted under PD 1866 where the death penalty is proscribed.

II. CONSPIRACY

With the enactment of RA 8049,[14] the Anti-Hazing Law (1995), discussion of the concept of conspiracy, still within the area of general principles of criminal law, is timely. In the celebrated hazing case involving Lenny Villa and the *Aquila Legis* Fraternity, Judge Adoracion Angeles found all those accused, even those who allegedly did not inflict injuries but were merely present during the initiation rites, guilty of the crimes they were charged with because the act of one is the act of all under the conspiracy doctrine. One of the criticisms hurled against that decision stemmed from what some of those accused perceived as a misapplication of the conspiracy doctrine. Contrary to the holding of Judge Angeles, the accused asseverated that mere presence during the commission of the crime does not make them co-conspirators. They pointed out that consistent have been the rulings of the Supreme Court that there must be a logical relation between their crimes and the crimes charged against them. In the case of *People v. Cabrera, et. al.*,[15] promulgated on September 11, 1995, the Court reiterated the doctrine that the mere companionship does

[14] Rep. Act No. 8049 (1995), An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities, and Organizations and Providing Penalties Therefor.

[15] G.R. No. 93898, September 11, 1995, 248 S.C.R.A. 157 (1995).

not establish conspiracy[16], but it found the accused therein guilty as co-conspirator because there was clear and adequate proof that he directly participated in the killing. In *People v. Gregorio*,[17] promulgated on March 29, 1996, the Court had another occasion to find the accused therein guilty by conspiracy although there was no proof of previous agreement to kill, because their simultaneous acts betrayed a spontaneous scheme to act in unison and to cooperate with each other towards the accomplishment of a common felonious objective. Interfaced with this well-established concept of conspiracy now is Republic Act 8049[18] which provides in Section 4 thereof that "the presence of any person during the hazing is *prima facie* evidence of participation therein as a principal unless he prevented the commission of the acts punishable herein." Explicit and undeniable is the intent of the legislature to make hazing a crime a class on its own insofar as the appreciation of conspiracy is concerned. The interesting thing to note here, however, is this: how then shall the hazing cases which were instituted prior to the enactment of RA 8049 be dealt with insofar as the finding of who may be considered co-conspirators, is concerned?

III. ATTENDANT CIRCUMSTANCES IN THE COMMISSION OF A CRIME

Insanity

The law presumes every man to be sane. A person accused of a crime who pleads the exempting circumstance of insanity has the burden of proving it. The Supreme Court has reiterated in the case of *People v. So*,[19] promulgated on August 28, 1995, that in order for insanity to be considered as an exempting circumstance, there must be a complete depreciation of intelligence in the commission of the act or that the accused acted without the least discernment at the very moment that the act was committed or immediately before. The Court applied this rule in the said case where it found that an accused

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[16] *Id.*, at 163.

[17] G.R. Nos. 109614-15, March 29, 1996, 255 S.C.R.A. 380 (1996).

[18] An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities, and Organizations and Providing Penalties Therefor.

[19] G.R. No. 104664, August 28, 1995, 247 S.C.R.A. 709 (1995).

proved to have been institutionalized six (6) years before the commission of the crime and who may act crazy, cannot invoke insanity where the nature and contents of his testimony do not betray an aberrant mind. The claim of the accused that he was unaware or unconscious for one brief moment coinciding with the killing was considered by the Court to have been feigned amnesia. As ever, the Court recognized the need to vigilantly guard against sane murderers who seek to escape punishment through a general plea of insanity.

Treachery

The common notion of treachery is the attack from behind or the stab or shot at the back of the victim. A frontal attack however, may be equally treacherous, as held by the Supreme Court in the case of *People v. Ronquillo*[20] promulgated on August 31, 1995. In that case, the victim sustained stab wounds on the left side of his body, but the frontal attack was sudden, unexpected and without warning, and the victim was unarmed. Corollarily, it is thus the established doctrine that where the victim was aware of the danger on his life, as when a heated argument preceded the attack or the victim stood face to face with his assailants, treachery will not lie because then the attack cannot be said to be unexpected and without any warning. Consequently, in the case of *People v. Lopez*,[21] promulgated on October 30, 1995, the Supreme Court ruled out the appreciation of treachery when the victim was first boxed by one of the accused without any provocation and the former was further warned by his friends that the reinforced group of the accused had returned. The victim, despite the odds, approached the well-armed accused and demanded an explanation for the assault against him. The victim could not, in this case, have missed the fact that several of the accused were already around ready and raring for a deadly fight. He chose to be courageous, instead of being cautious, and he courted obvious danger, and so when actual danger came, it cannot be said to be sudden, unexpected and unforeseen. This situation however, must be distinguished from that in the case of *People v. San Gabriel*,[22] promulgated on February 1,

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[20] G.R. No. 96125, August 31, 1995, 247 S.C.R.A. 793 (1995).
[21] G.R. No. 112448, Ocotber 30, 1995, 249 S.C.R.A. 610 (1995).
[22] G.R. No. 107735, February 1, 1996, 253 S.C.R.A. 84, 1996)

1996, where, although a fistfight preceded the attack, treachery was still applied. In this case, the victim could not, after his adversaries had already been pacified and had left, have expected them to come back after a brief moment, and this time, armed with bladed weapons. The second attack was so sudden and simultaneous that the victim, unarmed as he was, did not have any chance to defend himself.

Abuse of Strength

This is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming that the situation of superiority of strength notoriously advantageous to the aggressor was taken advantaged of by him in the commission of the crime. Certainly, three aggressors to one victim is abuse of superior strength. But what about three drunk, intoxicated aggressors against one victim? May abuse of superior strength still be properly appreciated in such a situation? In the case of *People v. Acuna,*[23] promulgated on October 2, 1995, the Supreme Court answered this query in the affirmative. It maintained that the collective strength of the three assailants, even if they were all drunk, was still obviously disproportionate to that of the victim.

Disregard of Respect on Account of Rank, Age or Sex

Well-settled is the rule that the aggravating circumstance that the crime was committed with insult or in disregard of the respect due to the offended party on account of his rank, age or sex, may be appreciated only in crimes against persons or in crimes against honor when, in the commission of the same, there is some insult or disrespect shown to rank, age or sex. Thus, in the case of *People v. Cabilles,*[24] promulgated on September 14, 1995, the Supreme Court categorically ruled that it is not proper to consider this aggravating circumstance in crimes against property, such as robbery with homicide.

Flight

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[23] G.R. No. 94702, October 2, 1995, 248 S.C.R.A. 669 (1995).
[24] G.R. No. 113785, September 14, 1995, 248 S.C.R.A. 207 (1995).

It is an unquestioned jurisprudential rule that flight is an indicium of guilt on the part of the accused. An interesting question is whether the non-flight or the return to the situs of the crime is, conversely, an indicium of innocence. The Supreme Court, in the case of *People v. Lamsing*,[25] promulgated on September 21, 1995, held that were non-flight to be considered an indication of innocence, all that a criminal must do to profess his innocence would be to remain at or near the place of the crime and declare, when arrested, that he is innocent, otherwise, he would have fled. In the same vein, the Supreme Court held, in the case *of People v. Castaneda*,[26] promulgated on January 24, 1996, that the act of returning to the situs of the crime does not indicate innocence. It is no longer strange, the Court said, for smart criminals to return to the scene of the crime to stunt suspicion. The fact that this form of reverse psychology does not happen as often as flight, does not mean that it can never take place. Needless to say therefore, the aforegoing query has been answered by the Supreme Court in the negative. In other words, non-flight and/or return to the situs of the crime, notwithstanding the fact that flight is considered an indicium of guilt, cannot be taken that the accused, conversely, is innocent.

IV. CRIMES PROPER

1) Revised Penal Code

Rape

Though there is nothing much that is new insofar as crimes under the Revised Penal Code are concerned, suffice it to say that the Supreme Court has reason to be alarmed with the deluge of rape cases in its dockets. One significant note on rape cases concerns the element of intimidation or violence or the lack thereof. For instance, there is total lack of violence or intimidation in the rape of a woman asleep although such may fall under paragraph 2 of Article 335 of the Revised Penal Code, pertaining to the rape of a woman who is unconscious.

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[25] G.R. No. 105316, September 21, 1995, 248 S.C.R.A. 471 (1995).
[26] G.R. No. 114972, January 24, 1996, 252 S.C.R.A. 247 (1996).

Thus, in the case of *People v. Conde*,[27] promulgated on January 31, 1996, rape is considered to have been consummated when the private complainant was awakened when something hard- apparently, the penis of the accused - had penetrated her private organ. The entry or penetration, was thus accomplished while she was asleep. According to the Court, while asleep, the woman may be considered unconscious, for sleep is the "natural xxx regular suspension of consciousness during which the powers of the body are restored or a natural or artificially induced state of suspension of sensory and motor activity."[28]

In *People v. Bantisil*,[29] promulgated on October 18, 1995, the Supreme Court held that intimidation may be of the moral kind such as the fear caused by threatening a woman. The Court held, "she is cowed into submission, rendering resistance useless"[30] and so "it is unreasonable to expect her to resist with all her might and strength."[31] In that case, the private complainant was only seventeen (17) years old and her fear for her life, the Court said, inevitably prevented her from putting up any meaningful resistance. Her failure to shout for help or to fight back cannot be equated as voluntary submission to the offender's criminal intent. The Court explained that for rape to exist, it is not necessary that the force or intimidation employed on the victim is irresistible, as long as the same is sufficient to bring the desired result. This particularly applies to a young woman who is not expected to decisively act with courage and intelligence as a mature and experienced woman would normally do under the circumstances.

Kidnapping

Another case worth mentioning is *People v. Villanueva*,[32] promulgated on February 1, 1996. This concerns the kidnapping of a child where the Supreme Court acquitted the accused after it found

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[27] G.R. No. 112034, January 31, 1996, 252 S.C.R.A. 681 (1996).
[28] *Id.*
[29] G.R. No. 116062, October 18, 1995, 249 S.C.R.A. 367 (1995).
[30] *Id.*, at 377.
[31] *Id.*
[32] G.R. No. 116311, February 1, 1996, 253 S.C.R.A. 155 (1996).

that the latter was allowed by the mother of the child to take the child with her. The Court stated that "the essence of the offense is the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it," but when the person allegedly kidnapped is a child, it is not lack of liberty on the part of the child kidnapped that must be looked into but the lack of consent on the part of the child's parent or guardian. Thus, "as the person supposedly detained was an eight-month old infant, the question is whether there is evidence to show that in the taking of the child, the intention of the accused was to take the custody of the child from the mother." The Court found no evidence on record to that effect. On the contrary, it found that the accused was permitted by the mother to carry the child. The Court ruled that the circumstance that the accused was gone for a time longer than that considered by the mother of the child to be bearable or acceptable, does not make the accused liable for kidnapping.

Bigamy

Worth reiterating at this juncture is a 1994 case concerning bigamy promulgated in June of that year. In the case of *Sermonia v. CA*[33], the Supreme Court ruled that the principle of constructive notice should not be applied to the crime of bigamy. Hence, the prescriptive period for the prosecution of the crime does not begin to run from the registration of the second marriage with the Office of the Civil Registrar which generally constitutes notice to the whole world, but from the time the second marriage was actually discovered by the complainant. The reason is that a bigamous marriage is generally entered into by the offender in secrecy and usually in a place where the offender is not known to be already married. Considering such concealment of the bigamous marriage by the offender, if the prescriptive period for the offense of bigamy were to be counted from the date of registration thereof, the prosecution of the violators of said offense would almost be impossible.

[33] G.R. No. 109454, June 14, 1994, 233 S.C.R.A. 155 (1994).

Arson

Another relevant 1994 case is *People v. Cedeno*.[34] In that case, the Supreme Court had another occasion to summarize the rules on arson as follows: If the death results by reason or on occasion of the arson, the crime is simply arson. If the objective of the offender were to kill and the arson is resorted to as the means to accomplish the crime, the offender can be charged with murder only. But if the objective were to kill and in fact the accused in the case at bar had already done so, and arson is resorted to as a means to cover up the killing, the offender may be convicted of two separate crimes of homicide or murder and arson.

2) Special Offenses

Illegal Recruitment

The most recent important case in illegal recruitment is *People v. Goce, et.al.*,[35] promulgated on August 29, 1995, where the Supreme Court interpreted the meaning of the word "referral" in the context of relevant Labor Code provisions on recruitment and placement of workers. The accused in this case vehemently maintained that all she did was to introduce the complainants to the Goce spouses. According to the accused, she just, out of the goodness of her heart, complied with the request. Such an act, the accused argued, does not fall within the meaning of "referral" under the Labor Code to hold her liable for illegal recruitment. The Court found however, that the accused did more than make introductions. It was from her that the complainants learned about the fees that they had to pay as well as the papers that they had to submit. Moreover, since the accused was an employee of the Goce spouses, the Court found that it was logical for the accused to introduce the complainants to the said spouses. As such, the Court said that the accused was actually making referrals to the agency of which she was a part. She was, therefore, considered to have been engaging in recruitment activity. The Court explained that there is illegal recruitment when one gives the impression of having the

[34] G.R. No. 93485, June 27, 1994, 233 S.C.R.A. 356 (1994).
[35] G.R. No. 113161, August 29, 1995, 247 S.C.R.A. 780 (1995).

ability to send a worker abroad. It is undisputed that the appellant gave complainants the distinct impression that she had the power or ability to send people abroad for work such that the latter were convinced to give her the money she demanded in order to be so employed.

Highway Robbery

Another special offense that has been recently tackled by the Supreme Court is that of highway robbery or a violation of PD 532. In the case of *People v. Laurente, et. al.*, promulgated on March 29, 1996, the Court emphasized that for robbery to be considered a violation of Presidential Decree 532, it is not enough that it was perpetrated on a Philippine highway. There is violation of PD 532 when the robbery is committed (1) on a Philippine highway (2) by persons who are considered outlaws or members of proscribed lawless elements and (3) against any person, indiscriminately, and not against a predetermined, particular, specific, or preconceived victim. Thus, if the robbery were perpetrated not against all prospective victims anywhere on the highway and whosoever they may potentially be, but against a specific, predetermined person, or if the robbery were committed inside a vehicle which, in the natural course of things, was casually operating on a highway, there was, maybe, a violation of the provisions on robbery under the Revised Penal Code but not under PD 532.

Smuggling

Another significant case respecting special offenses is that involving smuggling. In the case of *Rodriguez v. Court of Appeals and the People*,[36] promulgated on September 18, 1995, the Supreme Court ruled that after importation, the act of facilitating the transportation, concealment or sale of the unlawfully imported article must be with the knowledge that the article was smuggled. However, if upon trial, the accused is found to have been in possession of such article, this shall be sufficient to authorize conviction unless the defendant explains his possession to the satisfaction of the court. In that case,

[36] G.R. No. 115218, September 18, 1995, 248 S.C.R.A. 288 (1995).

the trial court found that while the accused were not shown to have actually participated in the release of the smuggled cargo, they were actually found to have been in possession of the textile after its release. The Supreme Court affirmed their conviction for smuggling because they were not able to rebut the presumption arising from such possession. The Court explained that to rebut this presumption, it is not enough for petitioners to claim good faith and lack of knowledge of the unlawful source of the textile but that evidence should be presented to support their claim and satisfy the court of their non-complicity.

V. PENALTIES

A brief discussion respecting penalties is now in order. As mentioned earlier in the discussion on *crimes mala in se* and *mala prohibita* the case of *People v. Simon*,[37] promulgated on July 29, 1994, has made it legally possible for an accused charged with a special offense under a special criminal law, to be meted out an indeterminate sentence whose minimum is as low as that within the range of the penalty next lower to that prescribed by special penal law for the offense. This is true at least for as long as the special offense committed is punishable under scheme of penalties which have the same nomenclature, scope and description as those pertaining to crimes punishable under the Revised Penal Code. Precisely, this principle was applied in the Simon case, resulting in the meting out of an indeterminate sentence with respect to a person accused of a drug-related crime. Even one justice[38] of the high court who dissented to the majority opinion in the said case, applied this principle in the case of *People v. Ganguso*,[39] promulgated on November 23, 1995.

In the recent case of *People v. Lian*, promulgated on March 29, 1996, the same principle was applied with respect to illegal possession of firearms. In the light of the *Simon* ruling, the Supreme Court in the *Lian* case ruled that since illegal possession of firearms or violation of PD 1866 is also punished under a scheme of penalties

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[37] G.R. No. 93028, July 29, 1994, 234 S.C.R.A. 555 (1994).

[38] Hon. Hilario Davide, Jr., Associate Justice, Supreme Court

[39] G.R. No. 115430, November 23, 1995, 250 S.C.R.A. 268 (1995).

similar to those in the Revised Penal Code in their nomenclature, scope and description, appropriate provisions of the RPC as well as allied laws like the Indeterminate Sentence Law may also be applied to PD 1866 offenses. Thus, the Court ratiocinated that while the imposable penalty in simple illegal possession of firearms is *reclusion temporal* in its maximum period to *reclusion perpetua*, it is legally permissible to mete out an indeterminate sentence computed in this wise: first, *reclusion perpetua* should be taken to have a duration of forty (40) years, following the amendment provided in RA 7659. While *reclusion perpetua* has now a duration of 40 years, it is nevertheless an indivisible penalty as held by the Supreme Court in *People v. Lucas*,[40] promulgated on January 9, 1995. Taken from this perspective, the PD 1866 penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* may thus be considered a complex and divisible penalty consisting of three periods for purposes of applying the Indeterminate Sentence Law. In other words, from the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* may be derived the following periods: seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months as the minimum period; eighteen (18) years, eight (8) months and one (1) day to twenty (20) years as the medium period; and *reclusion perpetua* as the maximum period. The Court eventually held that this, in turn, ultimately translates to an indeterminate sentence of ten (10) years and one (1) day of *prision mayor* as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

The last point to be discussed on penalties is a recent case concerning the subsidiary liability of the employer. In the case of *Yonaha v. CA*,[41] promulgated on March 29, 1996, the accused pleaded guilty to the crime of reckless imprudence resulting in homicide. A writ of execution issued against the convicted felon was returned unsatisfied. Eventually, despite lack of notice of hearing and notice to the petitioner in that case, respondents therein were able to obtain a writ of subsidiary execution. Petitioner elevated the case to the Court of Appeals which, however, dismissed the petition for lack of merit. Petitioner thus went to the Supreme Court which ruled that while it

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[40] G.R. Nos. 108172-73, January 9, 1995, 240 S.C.R.A. 66 (1995).

[41] G.R. No. 112346, March 29, 1996, 255 S.C.R.A. 397 (1996).

has in the past, sanctioned enforcement of subsidiary liability in the same criminal proceedings in which the employee is adjudged guilty on the thesis that it really is a part of, and merely an incident in the execution process of the judgment in the criminal case, execution against the employer must not issue as a matter of course, and that it behooves the court, as a measure of due process to the employer, to determine and resolve *a priori*, in a hearing set for the purpose, the legal applicability and propriety of the employer's liability. The requirement is mandatory even when it appears *prima facie* that execution against the convicted employee cannot be satisfied. The court must convince itself that the convicted employee is in truth in the employ of the employer; that the latter is engaged in an industry of some kind; that the employee has committed the crime to which civil liability attaches while in the performance of his duties as such; and that execution against the employee is unsuccessful by reason of insolvency.

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