CRIMINAL LAW: CRIMINAL LIABILITY AND SPECIFIC CRIMES

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Criminal law cases are the everyday grist for the judicial mill. They are generally much more numerous than civil actions and special proceedings and the year 1951 is no exception. Their number and the nature of the crimes involved may, to a certain extent, furnish an indication of the extent of criminality in a nation. If so, then the incidence of crime, especially of the more violent crimes, in the Philippines is disturbingly high. Six years after liberation, the social and moral back-wash of the war years is still felt.[1]

Doctrinal stability and continuity is perhaps more important in the criminal law than in any other branch of law, for it is the point of most frequent contact between the public force and individuals. In any case, the past year has seen no radical departure from the accepted and few significant modifications. For the most part, it has been a year of reiteration rather than critical reexamination.

I. CRIMINAL LIABILITY AND PENALTIES

Aberratio Ictus

The rule that he who commits a crime incurs criminal liability although the offense committed be different from that which he had intended to commit, that is, that a mistake in the identity of the intended victim is not an exculpatory nor a mitigating circumstance [2] was followed and applied in *People v. Nolasco.*[3] There, the accused attacked his intended victim who defended himself with a flashlight. The attacker then turned upon the latter's mother who held her grandchild in her arms. The child died from bolo wounds while the father, the intended victim, was saved by timely medical aid. In

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[1] The war furnished occasion for acts of unparalleled brutality and cruelty on the part of both the guerrillas and the Makapilis. The acts in *People v. Pena*, G. R. No. L-3569, prom. Dec. 29, 1951, for example, were in the words of an elderly Justice presumably more or less blasé from trying innumerable criminal cases "one of the most horrible and beastly exhibitions of man's inhumanity ever recorded in the annals of criminality."

[2] Art. 4, Rev. Penal Code; *People v. Gona*, 54 Phil. 605; *People v. Andaya* (C.A.), 40 O. G. No. 18 (12th Supp.), p. 141.

[3] G. R. Nos. L-3112 and L-3113, prom. May 14, 1951.

People v. Corpes,[4] the accused levelled his gun at the owner of the house which was then being robbed. The owner was a woman and could not help screaming. The accused fired at her but missed, and instead the bullet struck her child killing it instantly. His faulty aim could not affect his responsibility for the child's death.

Responsibility for Consequences of Felonious Act

Where death results as the direct and natural [5] or logical [6] consequence of the use of illegal violence, the assault being the proximate cause thereof,[7] the fact that the diseased or weakened condition of the injured person contributed to his death does not relieve the aggressor of criminal liability. Thus in *People v. Martin,*[8] where the accused strangled his wife who had been suffering from heart disease, Martin was held liable for her death. Heart failure was caused by fright or shock, which in turn had been caused by the strangling.

Effect of Conspiracy

People v. Go [9] reiterated the established rule on conspiracy: once conspiracy is shown, each of the conspirators becomes liable for the acts of others, provided such acts are the result of the common plan or community of objective. It is not indispensable that a co-conspirator should take a direct part in every act or that he should know the precise role to be played by the others. Conspiracy is a common design to commit a felony; it is not participation in all the details of execution. All who, in one way or another, cooperate in the consummation of a felony previously planned are coprincipals.[10] The conspiracy may be shown directly, as in *People v. Diwa* [11] where disgruntled tenants asked, at a meeting with the Huks, for the death of their landlord. It may also be inferred from concert of action and joint escape, as was done in *People v. Roque,*[12] *People v. Licua-*

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[4] G. R. No. L-4187, prom. Dec. 18, 1951.

[5] *U. S. v. Brobst,* 14 Phil. 310; *People v. Cagoco,* 58 Phil. 524; *People v. Quianson,* 62 Phil. 162.

[6] *People v. Dumol,* 43 O. G. p. 4682 citing *U. S. v. Sornito,* 4 Phil. 351; *U. S. v. Navarro,* 7 Phil. 713; *U. S. v. Monasterial,* 14 Phil. 391; *U. S. v. Zamora,* 32 Phil. 218; *U. S. v. Almonte,* 56 Phil. 54.

[7] *U. S. v. Luciano,* 2 Phil. 96; *U. S. v. Lugo,* 8 Phil. 80; *U. S. v. Rodriguez,* 23 Phil. 22; *People v. Reyes,* 61 Phil. 341.

[8] G R. No. L-3002, prom. May 23, 1951.

[9] G. R. No. L-1527, prom. Feb. 27, 1951; also *People v. Bersamin,* G. R. No. L-3097 prom. March 5, 1951; *People v. de la Cruz,* G. R. No. L-3012, prom. Jan 9, 1951.

[10] *People v. Valeriano,* G. R. No. L-2159, prom. Sept. 19, 1951.

[11] G. R. No. L-2552, prom. May 30, 1951.

[12] G. R. No. L-3513, prom. Sept. 29, 1951.

nan [13] and *People v. Canoy.*[14] It may even be deduced, at least partially, from the failure to take steps to prevent the crime or dissuade the doers therefrom and to denounce them to the police authorities.[15]

The Canoy case illustrates the requirement that the acts sought to be attributed to all must have been covered by the preconceived plan or at least a natural consequence of the subject of the conspiracy; [16] the actual doer must not have acted "on the impulse of the moment." [17] Two boys happened to be gathering fruit in the yard of the victim. Canoy shot at them, killing one and wounding the other. Only he was held liable for these acts despite the existence of conspiracy, since the defendants had come upon the boys casually, not expecting to find them there. On this point, it is important to distinguish between robbery in band with homicide or rape and other crimes. The above requirement holds true for the latter. In the former crime, it is not necessary to show conspiracy or that it comprehended the homicide or rape. It is sufficient that "by reason or on occasion of the robbery" the crime of homicide or rape was committed. In such case, all the members of the band who took part as principals in the commission of robbery will be liable as principals in the robbery with homicide or rape, although they took no part in the homicide or rape, unless it be shown that they endeavored to prevent the killing or the criminal assault.[18] The dictum in *People v. de la Cruz*[19]—that where there is conspiracy to commit robbery, all the conspirators are liable for any crime committed in the course of committing or attempting to commit the robbery—should be understood as applying in cases where there is no band and as subject to the requirement above discussed.

Aggravating Circumstances

The codal definition of treachery [20] is broad enough to cover any number of situations. For example, attacking with a bolo three

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[13] G. R. No. L-2960, prom. Jan. 9, 1951.

[14] G. R. No. L-4224, prom. Dec. 28, 1951.

[15] *People v. Ulip*, G. R. No. L-3455, prom. July 31, 1951. This ruling should be distinguished from the doctrine that without proof of conspiracy, mere passive presence at the scene of another's crime does not constitute complicity. *People v. Silvestre*, 56 Phil. 353; *People v. Samano*, 43 O. G., p. 2043.

[16] See *People v. Rosario*, 68 Phil. 720.

[17] *People v. de Villa*, G. R. No. L-3410, prom. March 7, 1951.

[18] *People v. de la Rosa*, G. R. No. L-3609, prom. Nov. 8, 1951. See art. 294, pars. 1 and 2 in relation to art. 296, Rev. Penal Code; *People v. Tiongco*, 37 Phil. 951; *People v. Morados*, 70 Phil. 558.

[19] *Supra*, note 9; see PADILLA, REVISED PENAL CODE, ANNOTATED, 1949 ed., p. 758.

[20] Art. 14, par. 16: There is treachery when the offender commits any of the crimes against the person employing means, methods, or forms in the execution thereof

weak and defenseless girls, two of them only five and three years old, suddenly and unexpectedly, constitutes *alevosia*.[21] Likewise, an assault with a bolo on a sleeping infant scarcely more than one year of age is treacherous.[22] The suddenness of the felonious attack, though it may be frontal, may so preclude defense on the part of the offended party as to constitute treachery.[23] In *People v. Tamiana*,[24] the accused Constabulary soldier, while being questioned by the municipal chief of police, without warning grabbed his gun from the table in front of him and shot a policeman beside him. The deceased had no opportunity to draw his own gun. The Court found treachery present. In *People v. Garciola*,[25] the accused, a barrio lieutenant, ordered the victim to open the door of the latter's house, announcing his authority as a peace officer. Thereupon the victim unlocked the door and was forthwith stabbed by the accused. Here again the suddenness of the attack prevented any effective defense. Where the victim, though he was down in a disadvantageous position when attacked, was able to put up some defense, even with only a flashlight, a finding of *alevosia* is improper.[26]

It is clear therefore that it is the lack of opportunity for defense that is the legally significant fact in treachery. Accordingly, where the victim was asleep,[27] or bound,[28] or seated on the floor with his wife's head on his lap,[29] or had his arms pinned from behind by one of the accused,[30] when he was fatally injured, treachery is present. *People v. Chan*[31] presents a novel set of facts. There the offended parties were on a banca, about 50 meters away from the shoreline, without any firearm. The accused shot at them from this distance

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which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

[21] *People v. Limsco*, G. R. No. L-3090, prom. Jan. 9, 1951.

[22] *People v. Nolasco, supra*, note 3.

[23] See *People v. Sy Pio*, G. R. Nos. L-3827 and L-3828, prom. Nov. 23, 1951; *People v. Aguilar*, G. R. Nos. L-3248 and L-3249, prom. May 16, 1951; *People v. Cael*, G. R. Nos. L-2961, L-2962, L-2963, L-2964, prom. Jan. 31, 1951; *People v. Irinco*, G. R. No. L-3479, prom. July 30, 1951; *People v. Hollero*, G. R. No. L-3384, prom. Feb. 14, 1951; *People v. Malibiran*, G. R. No. L-4192, prom. Dec. 27, 1951.

[24] G. R. No. L-3628, prom. Sept. 29, 1951.

[25] G. R. No. L-4015, prom. Oct. 30, 1951.

[26] *People v. Nolasco, supra*, note 3.

[27] *People v. Amarante*, G. R. No. L-4233, prom. Dec. 21, 1951; *People v. Buransing*, G. R. No. L-2543, prom. March 19, 1951; *People v. Antonio*, G. R. No. L-3458, prom. Oct. 29, 1951; *People v. Miranda*, G. R. No. L-3284, prom. Sept. 28, 1951.

[28] *People v. Madrid*, G. R. No. L-3032, prom. Jan. 3, 1951.

[29] *People v. Guhiting*, G. R. No. L-2843, prom. May 14, 1951.

[30] *People v. Ascares*, G. R. No. L-3527, prom. Aug. 30, 1951.

[31] G. R. No. L-4014, prom. Sept. 11, 1951.

killing one. The victims were so situated that the accused was under no risk of retaliation.

This risk of retaliation from the offended party, or more accurately, the presence or absence of such risk, furnishes a convenient distinction between *alevosia* and abuse of superior strength. In *alevosia*, there is a complete absence of risk of retaliation; once said risk is shown to have existed, no matter how negligible, there is no *alevosia*, though there may well be abuse of superior strength. So in *People v. Peregil*,[32] there was abuse of superior strength rather than *alevosia*. Here, although the assailants were six in number and armed with pistols and rifles and the victim was alone, the latter had a pistol which he conceivably could have used even if actually he was not able to do so, having been subjugated by the force employed against him. On the other hand, the use of overwhelmingly superior strength may precisely constitute *alevosia* such that the latter absorbs the former circumstance. This is illustrated in *People v. Tortuga*[33] where six men, armed with bolos and spears, hacked down a 60 year old man *after* the latter had put down his own bolo in an effort to "talk things over" with the attackers. One went behind the victim and stabbed him in the back, while another thrust a bolo into his abdomen. The aged victim ran, but stumbled and was pounced upon by the accused and finally killed. In *People v. Licuanan*,[34] the victim refused to put down his bolo. But treachery was held to exist anyway, since the overpowering superiority of the attackers, in number and in weapons—firearms—gave the victim no chance at all to repel or elude the attack.

The concept of *alevosia* is thus a very plastic one, adjusting itself to the contours of particular factual situations. It is to be expected therefore that other aggravating circumstances may, when coinciding with *alevosia*, be merely specifications of the latter and hence absorbed by it. Nocturnity, for example, is generally considered as inseparable from treachery as a means of affording complete immunity from risk to the offender.[35] Abuse of superior strength, as

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[32] G. R. No. L-3764, prom. Nov. 29, 1951.

[33] G. R. No. L-3740, prom. Nov. 26, 1951.

[34] *Supra*, note 13.

[35] *People v. Antonio, supra*, note 27, following the rule laid down in *People v. Bautista*, 45 O. G., p. 2084; *People v. Basa*, 46 O. G. Supp. No. 11, p. 75; *People v. Ballocanag*, 46 O. G. Supp. No. 11, p. 22; *People v. Alfaro*, 46 O. G., p. 4219; *People v. Danan*, 46 O. G., p. 4840; *People v. Balagtas*, 40 O. G., p. 263. To the same effect are *People v. Cael, supra*, note 17, and *People v. Camay*, G. R. No. L-3400. But see *People v. John Doe and Labiano*, G. R. No. L-2463, prom. March 31, 1950 where the Court appreciated the aggravating circumstances of nocturnity, dwelling, and treachery separately; also *People v. Magat*, G. R. Nos. L-2679 and L-2680, prom. March 15, 1951.

shown above, and disregard of the respect due to the sex and age of the offended party may also be deemed part of and absorbed by treachery.[36] Parenthetically, it may be mentioned that *People v. Limcaco* is noteworthy in that Justice Montemayor took time out to administer a veiled reprimand to the trial judge for incorporating his private opinions on capital punishment in the decision and a passage reflecting an unjudicial-like bloodthirstiness.[37] Justice Montemayor emphasized the strict, orthodox Austinian distinction between the "is" and the "ought" in law, and a closely circumscribed view of the judicial function.[38] Taking advantage of the offender's public position has been held as inherent in alevosia where the announcement of the offender's office was part of the scheme to catch the victim unaware.[39] Similarly, craft may be included in treachery. Thus in *People v. Magnaye*,[40] the accused pretended to buy some cigarettes. As the victim delivered the cigarettes, the accused grabbed his extended arm and immediately stabbed him.

The Court, in the Magnaye case, refused to consider the circumstance of dwelling. The stabbing occurred in a "combination house and store" which, to the court, was not a "dwelling" within the meaning of article 14 (3) of the Revised Penal Code. Justice Feria did not bother to explain this dictum of dubious correctness. The ruling in

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[36] *People v. Limaco, supra*, note 21. See *People v. Mangsant*, 65 Phil. 548 quoting I Viada, p. 329 "... but only to execute his evil purpose in a treacherous manner, taking advantage of the weakness of her sex and the tenderness of her age in order to perpetuate the same without risk to his person (Decision of June 25, 1878). Neither may the aggravating circumstance of abuse of superior strength be taken into account because of the fact that the defendant is a man and the deceased a woman, inasmuch as this circumstance is inherent in the crime committed and is moreover absorbed by treachery."

[37] The trial judge wrote, "But a quick death would seem to be too sweet a medicine for him. He does not deserve it. He should be put to death slowly but surely in the opinion of the court. Life imprisonment at hard labor without hope whatsoever of any pardon or reprieve is just the right punishment for him." The acts which elicited this intemperate passage were that of hacking to death three children for their refusal to sell a pig to the accused.

[38] "We have no quarrel with the trial judge or with anyone else, layman or jurist, as to the wisdom or folly of the death penalty . . . Courts are not concerned with the wisdom, efficacy, or morality of laws. That question falls exclusively within the province of the legislature which enacts them and the Chief Executive who approves or vetoes them. The only function of the judiciary is to interpret the laws, and if not in disharmony with the Constitution, to apply them. . . . while they as citizens or as judges may regard a certain law as harsh, unwise, or morally wrong, and may recommend to the authority or department concerned its amendment, modification, or repeal, still as long as said law is in force, they must apply it and give it effect as decreed by the law-making body."

[39] *People v. Garciola, supra*, note 25.

[40] G. R. No. L-3510, prom. May 30, 1951.

People v. Cael [41] is more strict. There the accused tried to enter a house for purposes of robbery. Failing in that, they called upon the inmates to come down. Upon refusal of the latter, the accused fired at the house killing one and wounding another inside the house. Under these facts the Court found the circumstance of dwelling. This case extends the doctrine in *People v. Bautista*,[42] where dwelling was considered aggravating although the offender did not enter the house but shot from *under* the house. These rulings are correct if we consider the fact that the effects of the crime are felt inside the four walls and floor of the house.[43] Of course where the felonious acts are themselves performed inside the house, there is no doubt the aggravating circumstance exists.[44]

Where dwelling was not specifically sought by the offenders in the commission of the felony, it may not be considered. In *People v. Guhiting*,[45] the offenders rushed to their sister's house in response to a shout that said sister was dead or hurt. There they found their sister slumped on the lap of her husband who was then trying to alleviate the pain in her stomach with his hands. Without further ado, they assaulted the husband and took the sister away. The Court did not find dwelling, for the offenders entered the house with the intention of succouring the sister and not to commit any felony. Furthermore, the house belonged not to the deceased, but to his wife.

Mere numerical superiority of the assailants is generally not of itself sufficient to constitute, though it may indicate the presence of, the aggravating circumstance of abuse of superior strength. There must be a showing that the offenders were actually physically stronger and abused such superiority,[46] though the employment of deadly weapons seems to be sufficient evidence of actual superiority of strength.[47] Thus, *People v. Deguia* [48] held that such superiority and abuse thereof existed where the accused, three in number and all armed with bolos and bamboo spears, set upon and killed a lone victim. Numerical superiority is of course not indispensable. The

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[41] *Supra*, note 23.

[42] 45 O. G., p. 2084, citing *U. S. v. Macarinfas*, 40 Phil. 1.

[43] Cf. dissenting opinion of Villareal, J., in *People v. Ambis*, 68 Phil. 635, 637 at 639.

[44] *People v. Limaco, supra*, note 21; *People v. Valeriano, supra*, note 10; *People v. Buransing, supra*, note 27; *People v. Corpes, supra*, note 4; *People v. Amarante, supra*, note 27.

[45] *Supra*, note 29.

[46] *People v. Diokno*, 63 Phil. 601.

[47] *U. S. v. Tandoc*, 40 Phil. 954.

[48] G. R. No. L-3731, prom. April 20, 1951.

aggravating circumstance is present where the offender raped and then killed a fourteen year old girl,[49] or dragged the offended girl to a thicket and struck her with a piece of wood from which death resulted.[50] Where there is but one doer, the sex of the offended party may be determinative of the presence or absence of this circumstance.

However, the solitary fact that the offended party is a woman is not sufficient where the aggravating circumstance of disregard of the respect due to the aggrieved party's sex is concerned. There must be a showing that the offender, apart from his having unlawfully taken the life of a woman, manifested any "special insult or disrespect" towards her.[51] A different rule seems to obtain where the circumstance of disregard of the respect due to the offended party's rank is concerned. In the Hollero case,[52] the accused, the Chief of the Secret Service Division of Bacolod City, shot and killed his superior, the Chief of Police. The Court found the circumstance of disregard of rank notwithstanding the absence of any "special insult or disrespect." The fact that the victim was the superior officer of the offender was considered enough. This case however is not without precedent.[53] The reason, if any, for this difference in doctrine is difficult to see. The latter rule is probably a survival from the Spanish period in our history when government officials, high and petty, held a peculiarly privileged position in society and in law, something anachronistic in a democratic society with its notion of public office as a public trust, the public officer as a servant of the people. The former doctrine may only be an admission that concepts of chivalry are wornout in 1951, are legally irrelevant. The correct rule on this matter is expressed in *People v. Valeriano.*[54] There the aggravating circumstance of disregard of the respect due to the offended party on account of his rank was present since the accused wanted to kill Judge Bautista specially because he was "strict" as a judge. Their purpose was to eliminate, not Basilio Bautista, but Judge Bautista of the Court of First Instance of Pam-

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[49] *People v. Dahino,* G. R. No. L-2067, prom. Feb. 26, 1951.

[50] *People v. Jamoralin,* G. R. No. L-2257, prom. Feb. 19, 1951. This and the Dahino cases find precedent in *U. S. v. Consuelo,* 13 Phil. 612 and a dictum in *U. S. v. Tandoc, supra,* at 958.

[51] *People v. Jaula,* G. R. No. L-3835, prom. Nov. 15, 1951; *People v. Metran,* G. R. No. L-4205, prom. July 27, 1951. These cases follow the doctrine laid down in *People v. Valencia,* 43 O. G. No. 9, p. 470, the latter citing *U. S. v. de Jesus* 14 Phil. 190.

[52] *Supra,* note 23.

[53] See *U. S. v. Cabiling,* 7 Phil. 469.

[54] *Supra,* note 10.

panga, so that he could not proceed with the trial, then pending, of three members of the offender's gang. Some special circumstance connected with the discharge of the offended party's official functions should be shown to exist. This seems to be the rule in Spanish law.[55]

To find the circumstance that advantage was taken by the offender of his public position, there must be abuse of such public position in the commission of the felony.[56] The public office must have made possible the crime,[57] or at least facilitated its execution.[58] The Court in *People v. Madrid*,[59] while following these rulings, included certain statements which may have the effect of extending their scope. Madrid was a special agent of the Military Police Command in Nueva Ecija, he hijacked a truckload of palay and killed the owner and two laborers. The Court said "—without considering the fact of the appellant being a law officer as an aggravating circumstance in law, we cannot—overlook this factor as additional ground for dealing with the appellant with the utmost severity.—At the very least he deliberately broke the law which it was his sworn duty to uphold and robbed peaceful citizens whom he was sworn to protect.—By this token, his crime is graver and his responsibility greater."

The circumstance of *despoblado* in order to aggravate the offender's liability must have been specially sought, either to better attain the criminal object without interference or to secure himself against detection and punishment.[60] Similarly, night-time and the old age of the offended party to be aggravating should have been particularly taken into account in the commission of the crime.[61] It is not sufficient that they are casual circumstances of the acts of execution; they should have been consciously considered.

Evident premeditation is not considered aggravating in robbery because the same is inherent in the crime, especially where it is committed by various persons, that is, by a band or by conspirators. There must have been an agreement; they have to reflect on the manner of carrying out the crime and have to act coordinately in order to succeed. But in the crime of robbery with homicide, if there is

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[55] The Court cited with approval the decisions of the Supreme Court of Spain of June 9, 1877 and January 24, 1881.

[56] Padilla, *op. cit.*, p. 145.

[57] *U. S. v. Torrida*, 23 Phil. 189.

[58] *U. S. v. Yumul*, 34 Phil. 169; *People v. Cerdena*, 51 Phil. 393.

[59] *Supra*, note 28.

[60] *People v. Deguia, supra*, note 48.

[61] *People v. Ogbac*, G. R. No. L-4059, prom. Oct. 23, 1951.

evident premeditation to kill aside from to rob, it is properly considered as an aggravating circumstance.[62]

In alleging recidivism in the information, it is not necessary that there be an express statement that the accused is a recidivist. In *People v. Ibasco*,[63] the information charging the accused with qualified theft merely stated that he "had been sentenced for the crime of theft by the Justice of the Peace of Caloocan on February 21, 1948 and to suffer a corresponding penalty." Such averment of a former conviction is understood to be by final judgment, so that failure to so expressly state does not render the information defective.

Mitigating Circumstances

People v. Tapang [64] and *People v. Roque* [65] have clarified the effect of Republic Act No. 47 on the privileged mitigating circumstance of minority. The said Act reduced the age provided in article 80 of the Revised Penal Code for the suspension of sentence on minor delinquents from eighteen to sixteen years. The question arose respecting the effect of this reduction on article 13, paragraph 2, in relation to article 68 of the same Code, providing for the lowering of the penalty where the offender is less than eighteen years of age. The Solicitor General contended that the Republic Act should be held to have amended article 13, paragraph 2, by implication. The Court, in the two above mentioned cases,[66] rejected this contention holding that the Republic Act had had no effect on the mitigating circumstance of minority. The net result then is that where the offender is under eighteen but above sixteen years, he is entitled to a penalty one degree lower than that ordinarily imposed for the crime committed, but the sentence will not be suspended. Where he is under sixteen years, he may claim both the mitigating circumstance and suspension of sentence.[67]

The precedents on lack of instruction as a mitigating circumstance display much confusion that may perhaps be attributed to inadequate inquiry into its psychological basis. Where the crime of

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[62] *People v. Valeriano, supra*, note 10, citing *U. S. v. Matinong*, 22 Phil. 439; *People v. Mantawar*, 45 O. G. Supp. No. 9, p. 437; decisions of Supreme Court of Spain of Oct. 12, 1885, Dec. 7, 1885, Sept. 1, 1877, and March 1, 1880.

[63] G. R. No. L-4009, prom. Oct. 19, 1951.

[64] G. R. No. L-3345, prom. May 18, 1951.

[65] *Supra*, note 12.

[66] Which merely followed the previous case of *People v. Garcia*, G. R. No. L-2873, prom. Feb. 28, 1950.

[67] See Padilla, *op. cit.*, p. 122 note 1.

murder or homicide is involved, the Court has generally allowed this mitigating circumstance.[68] On the other hand, it has generally been refused in treason cases.[69] Yet, in these very treason cases, the overt acts constitutive of treason consisted of murders no less brutal than those in ordinary murder cases. In the Alba case, Justice Jugo failed to perceive this inconsistency when he said, "it is not necessary to be educated to be able to realize the perversity of the acts committed by the accused in torturing and putting to death people who were fighting for the liberation of their country from the invader." For that matter, is education or instruction necessary to see the iniquity of murdering a human person, whether or not a guerrilla? Is it essential to be able to realize the evil of any crime at all, unless it be a *mala prohibita* of a neutral ethical quality proscribed only on grounds of expediency? Assuming that it is, what degree of instruction or education is required that one may see the wrongfulness of any particular felony?[70] Is there a graduated scale, conventional or absolute, of the perversity of various crimes for the perception of which a corresponding degree of education may be necessary? These and other consideration underlie this particular problem in criminal law. Until judicial clarification is had, one must perforce be satisfied with a more or less arbitrary allowance or disallowance of the mitigating circumstance in specific crimes.

The mitigating circumstance of lack of intent to commit so grave a wrong may be shown by the location of the wound inflicted by the assailant. In *People v. Irineo*,[71] the accused, instead of hitting the victim in the upper part of the body "the usual point of attack," merely directed the bolo thrust at the right leg near the ankle. This tends to show he did not intend to kill the deceased. Although that does not exonerate him from liability, he is entitled to a mitigating circumstance. This same circumstance may be disproved by evidence of the plurality of the felonious acts committed. The accused in *People v. Delgado*,[72] a treason case, had actively participated in

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[68] *People v. Limaco, supra*, note 21; *People v. Magat, supra*, note 35; *People v. Antonio, supra*, note 27.

[69] *People v. Alba*, G. R. No. L-2799, prom. April 27, 1951; *People v. Gorospe*, G. R. No. L-2317, prom. Dec. 12, 1951. *People v. Cruz*, G. R. No. L-2236, prom. May 16, 1951, is an exception justified on the ground that the accused did not appear to have actually participated in the killing of guerrilla suspects.

[70] In the Gorospe case, Justice Tuason intimated that having finished the third grade is sufficient for the purpose of negativing "lack" of instruction. The soundness of this dictum, considering the nature and extent of the moral training given in secular schools, public and private, is not quite apparent.

[71] *Supra*, note 23.

[72] G. R. No. L-2957, prom. April 27, 1951.

aiding the enemy on several occasions. The Court correctly denied him the mitigating circumstance.

People v. Deguia [73] held that an imputation of theft on the part of the offended party is sufficient provocation to warrant the finding of this mitigating circumstance. The victim had accused the offenders of stealing two jack-fruits, ownership of which the offenders claimed. The latter then proceeded to kill the victim.

Voluntary surrender is not available as a mitigating factor where it does not appear that it was the offender's own idea to send for the police to give himself up.[74] This ruling seems to be unduly harsh. Why should it make a difference who originally conceived of the surrender, so long as the offender actually gave himself up before arrest? The law only requires that the surrender be voluntary and not the result of capture or arrest. It is not necessary—it would be unrealistic to require—that it be spontaneous. Assuming that voluntary surrender, like plea of guilty, is mitigating because it indicates repentance,[75] still repentance loses none of its moral and psychological force because it was first suggested by another.

Justifying Circumstances

The prime requisite of the plea of self defense is the existence of unlawful aggression. Difficulties may arise in the determination of whence the aggression commenced. For this purpose, consideration of the physical and temperamental qualities of the accused or the offended party or both proves useful. In the Ogbac case,[76] the Court took note of the fact that the accused was "tall, well built, with broad shoulders, an experienced fighter and proficient in boxing and judo" and that he was "aggressive and defiant." This, added to the further fact that the accused had hit a nephew of the deceased for heckling at a political meeting leading to the deceased's attempt to settle the matter amicably, sufficed to convince the Court that the accused was the aggressor. Similarly, the quarrelsome disposition of the victim and his boxing ability may point to the accused as the aggressor on the "natural supposition" that the accused elected treacherously to pounce on him and afford him no opportunity to display his fighting prowess.[77]

In *People v. Pardito*,[78] the accused's father and mother were quarreling violently, the woman brandishing an iron bar while the

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[73] *Supra*, note 48.
[74] *People v. Canoy, supra*, note 14.
[75] *People v. De la Cruz*, 63 Phil. 874.
[76] *Supra*, note 61.
[77] *People v. Ascares, supra*, note 30.
[78] G. R. No. L-3234, prom. March 1, 1951.

man tried to pin her on the floor. The accused separated them, but the couple came to grips again. The accused then took the iron bar and struck the father in the neck. Instead of deciding squarely whether or not defense of relative was available under those facts, the Court went on to consider the fact that the blow administered by the accused was not the only possibly fatal blow delivered. Presumably the wife, only 37 years of age, had landed several blows on the husband before the son intervened on her behalf. There was doubt therefore as to who actually had been the efficient cause of the death.

The rule, firmly settled, that obedience to an order of a superior is not justifying where the order was not for a lawful purpose [79] was reiterated in *People v. Saladino*.[80]

Exempting Circumstance

Compulsion, in order to be exempting, must be irresistible, must supplant the free agency of the actor. The fact that two of the accused, in a drunken condition, threatened to shoot the third if the latter would not go with them and kicked his wife for suggesting that he be left behind was held insufficient to exonerate the third accused from liability.[81] In this case, the threat was of a serious nature, but considering that the two were drunk, the third could presumably have eluded them had he really desired to do so. This opportunity to escape not utilized is an effective refutation of alleged compulsion.[82] Where the threat is of a trivial harm, like that of taking the reluctant one's guitar, the defense of duress is obviously untenable.[83]

Criminal Participation

In robbery in band with homicide or rape, the Code [84] makes liable any member of the band, present at the commission of a robbery by the band, as principal of the homicide or rape committed by any other member or members, unless it is shown he attempted to prevent the same. The actual material participation of a member of the band in the homicide or rape becomes immaterial; he is a coprincipal therein so long as he was present and did not try to

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[79] *People v. Barroga*, 54 Phil 247; *People v. Moreno*, 43 O. G. 4644; *People v. Bernadez*, G. R. No. L-572, prom. June 8, 1948.

[80] G. R. No. L-3634, prom. May 30, 1951.

[81] *People v. Raganit*, G. R. No. L-2174, prom. April 18, 1951.

[82] *People v. Tan*, G. R. No. L-2096, prom. Feb. 6, 1951; also the dissent of Tuason, J., in *People v. Raganit, supra*.

[83] *People v. Corpes, supra*, note 2A 3.

[84] Art. 296, par. 2, as amended; *supra*, note 18.

prevent the killing or assault. That he only remained as a guard or lookout does not make him any the less a coauthor of the entire crime.[85]

The accomplice must have participated in the criminal design; he must have knowledge of the unlawful intention of the principal.[86] It is not however necessary to show that he knew of the specific felonious acts the principal intended to commit. It is sufficient that he knew, or should have known, that the intended acts were of a criminal quality.[87] In case of doubt as to the degree of participation, the offender will be deemed an accomplice rather than a principal.[88] Of course complicity or accessoryship is contingent upon the existence of a principal committing a crime.[89]

The accomplice must have performed acts of cooperation in the consummation of the felony. In the Raganit case, the appellant fired his carbine at one of the victims after the latter had already been shot, presumably fatally, by another of the accused.[90] In *People v. Ramirez*,[91] the accomplice tied the hands of the victim before he was hacked to death. In *People v. Polintan*,[92] the appellant's participation was limited to leading the deceased near the excavation which was to become their grave and to filling the same with earth.

In *People v. Saladino*,[93] the victim, a suspect in a robbery case, was savagely tortured by a corporal of the Constabulary in the effort to extract a confession. The victim collapsed. Fearing that he had died, the corporal ordered the appellant private to shoot the victim to show that he was killed while attempting to escape, which the private did. The private was held liable as accessory after the

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[85] *People v. Carlon*, G. R. No. L-3490, prom. May 28, 1951; *People v. Arnoco*, G. R. No. L-3782, prom. Aug. 31, 1951. In the latter case, accused asserted the novel defense that he could not have been capable of committing robbery considering that he was well-to-do, being owner of 70 hectares of farm land. The Court observed that "it is not the poor alone who succumb to the impulse to rob."

[86] Padilla, *op. cit.*, p. 202.

[87] *People v. Raganit, supra*, note 81.

[88] *Ibid.; People v. Tamayo*, 44 Phil. 38: "... as against an accomplice, the court will sometimes draw the inference of guilty participation in the criminal design from acts of concert in the consummation of the criminal act and from the form and manner in which the assistance is rendered, where it would not draw the same inference for the purpose of holding the same accused in the character of principal. This is because, in case of doubt, the courts naturally lean to the milder form of responsibility."

[89] *People v. Pardito, supra*, note 78.

[90] See *People v. Azcona*, 59 Phil. 580.

[91] G. R. No. L-2965, prom. June 27, 1951.

[92] G. R. No. L-4038.

[93] *Supra*, note 80.

fact—there was reasonable doubt as to whether the victim was still alive when he was shot—for performing acts tending to conceal the corporal's crime by making it appear that the victim had attempted to escape.

Complex Crimes

The first kind of complex crime, as defined in Article 48 of the Revised Penal Code, requires a single act constituting two or more grave or less grave felonies. Where the acts are plural, though of the same or similar character, there is no complex crime. Thus, where three children are successively killed with a bolo, three distinct crimes of murder are committed, not the complex crime of triple murder, for which three separate penalties should be imposed.[94] Likewise, where two persons are shot and killed by separate discharges and by different bullets, two separate murders result, not the complex crime of double murder.[95] Where however, it is not clearly shown that the two victims died from different bullets it being within the realm of possibility that the two were killed by one and the same missile, the offender will be held liable for double murder, and not two separate murders.[96] This apparently on the theory that such would be more favorable to the accused considering the penalties involved.

In the celebrated Bail Cases, the collateral issue arose—can there be a complex crime of rebellion with murder or robbery or arson? Only Justice Tuason expressed a definite view on this matter, and his answer was in the negative, apparently relying on the rule in treason.[97] It seems that rebellion, like treason, is juridically defined not so much in behavioural terms as in terms of specific purposes. The Code does not specify any particular concrete act as constituting treason in the same way that it requires *asportación* in theft, or setting on fire in arson, or killing in murder. Any act which has for its purpose the giving of aid or comfort to the enemy is treason. It is submitted that an analogous reasoning is valid in the case of rebellion, rebellion and treason, in this regard, being *in pari materia*.

Computation of Penalties

People v. Pablo [98] illustrates the different effects of privileged and ordinary mitigating circumstances in the imposition of penal-

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[94] *People v. Limaco, supra,* note 21.
[95] *People v. Chan, supra,* note 31.
[96] *People v. Bersamin, supra,* note 9.
[97] *People v. Prieto,* 45 O. G., p. 3329.
[98] G. R. No. L-4178, prom. Oct. 18, 1951.

ties. The penalty provided by law for the offense committed is *prision mayor*. Minority, a privileged mitigating circumstance, reduced this by one degree—*prision correccional*, while plea of guilty, an ordinary mitigating circumstance, fixed the proper period of the reduced penalty—*prision correccional* in its minimum period. This last penalty is the maximum period under the Indeterminate Sentence Law. The minimum period must be within the range of the penalty next lower in degree, counting from the reduced penalty of *prision correccional*—not from *prision mayor* as would ordinarily be done in the absence of a privileged mitigating circumstance [99]—which is *arresto mayor*. The Court fixed the correct penalty as an indeterminate sentence of from six months of *arresto mayor* to two years and four months of *prision correccional*.

In *People v. Martin*,[100] Justice Jugo considered two mitigating circumstances, incomplete self defense and lack of instruction, without any aggravating circumstance to offset them and lowered the penalty by one degree. In so doing, he in all probability relied on article 64 no. 5 of the Code. This does not seem quite correct. In the first place, incomplete self defense is a privileged mitigating circumstance, and under article 69 will by itself reduce the penalty by one or two degrees. Secondly, the crime committed was parricide, punished by two indivisible penalties—*reclusión perpetua* to death—the graduation of which is governed by article 63. The rule in article 64 no. 5 is not applicable in parricide.[101]

Where the offender is a Mohammedan inhabitant of Mindanao, the courts are given a very broad discretion in the imposition of penalties. The ordinary rules on the computation of penalties provided in the Revised Penal Code, which variously depend on the attendant circumstances, are not applicable. This discretion is generally exercised by reducing the otherwise proper penalty by one or two degrees.[102] Thus, in the matter of penalties, as in marriage and divorce, Mohammedan Filipinos are accorded special treatment. This may perhaps be viewed as legal recognition of a strong minority culture that counts with roughly half a million adherents, the only indigenous ethnic minority that is politically significant.

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[99] See *People v. Mape*, 44 O. G., p. 1140.

[100] *Supra*, note 8.

[101] Padilla, *op. cit.*, p. 283.

[102] *People v. Disimban*, G. R. No. L-1746, prom. Jan. 31, 1951 citing *People v. Yakam Pawin*, G. R. No. L-2707, prom. Feb. 22, 1950; also *People v. Buransing*, *supra*, note 27. These cases applied Sec. 106 of the Administrative Code of Mindanao and Sulu; see Sec. 2579 of the Revised Administrative Code.

II. SPECIFIC CRIMES

Crimes against National Security

A. TREASON—In a long line of decisions the Supreme Court has made the law on treason more definite and the jurisprudence thereon more abundant. Because of the backlog of treason cases, the court has perforce devoted more attention to this specific crime than to any other. Beginning with People v. Dimzon [103] and People v. Almazan [104] up to the case of People v. Hernandez,[105] a consistent line of precedents has been laid out.

(1) Treasonous Acts—Under the Revised Penal Code, treason may be committed by levying war against the United States or the Government of the Philippines, or by adhering to their enemies, giving the latter aid and comfort.[106] Previous rulings are to the effect that the elements of adherence to the enemy and giving aid and comfort have to concur.[107] Thus, making a speech prior to a public execution of several guerrillas, warning the people not to follow the doomed men's example if they did not want death themselves is not enough to convict one of treason. Such speech merely followed the pattern of those delivered on similar occasions during the Japanese regime by the town officials who, no matter how much they might have disliked it, were compelled to feign a certain degree of collaboration with the enemy in order to retain his confidence.[108] Adherence to the enemy was not thereby disclosed.

But joining the invading forces, openly aiding them in the capture and maltreatment of various guerrillas and guerrilla suspects—all to impede the resistance movement,[109] in addition to membership in the Makapili,[110] constitute treason. Likewise, there being adhe-

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[103] G. R. No. L-1565, prom. Jan. 9, 1951.

[104] G. R. No. L-2323, prom. Jan. 9, 1951.

[105] G. R. No. L-2310, prom. Dec. 28, 1951.

[106] Upon the inauguration of the Philippine Republic, the term "United States" may be deemed repealed (Padilla, *op. cit.*, 1949 Ed., note 1, p. 389). Inasmuch, however, as the cases considered in this Survey involve acts committed before said "inauguration," the term should not be overlooked.

[107] *People v. Prieto*, 45 O. G. 3329; *People v. Labra*, G. R. No. L-886, prom. Aug. 10, 1948; *People v. Fernando*, 45 O. G. 2483; *People v. Edrenal*, G. R. No. L-766, prom. Aug. 29, 1947.

[108] *People v. Labata*, G. R. No. L-3775, prom. June 31, 1951.

[109] Giving aid and comfort has been defined as an "act which strengthens or tends to strengthen the enemies . . . in the conduct of war . . . and an act which weakens or tends to weaken the power of the country to resist or to attack the enemies . . . (Padilla, *op. cit.*, 394, citing Lord Reading in the Casement Trial).

[110] Membership in the Makapili is itself constitutive of an overt act from which the enemy derives psychological comfort in the knowledge that he has on his side nationals of the country with which he is at war. *People v. Adriano*, 44 O. G. 4300.

rence, the seizing of a guerrilla suspect, though this latter escaped,[111] raiding the house of a guerrilla mayor and there seizing camote and other foodstuff, taking the same to the municipal building, make treason.[112]

Where the defendant, being a member of the Makapili, rounded up guerrilla suspects, maltreated one of them, taking him to the quarters of the Makapilis, and together with his companions, took jewels from the suspect's house, nothing being heard of the victim up to the date of the trial, his conviction of treason is proper.[113] Membership in the *Kaigun Jutai*, a military organization founded and sponsored by the Japanese and having for its purpose the apprehension and elimination of guerrillas and their sympathizers coupled with active participation in the armed campaign for the suppression of the underground movements, is sufficient for conviction.[114]

The following acts have also been declared treasonous: continually beating a prisoner for reluctance in pointing out guerrillas, torturing him in order to extract more information on the underground, finally resulting in death;[115] personally executing three civilians and one American aviator;[116] arresting, detaining and maltreating persons for guerrilla activities;[117] acting as an agent and informer for the Japanese, accompanying Japanese troops, participating in raids, patrols, arrests and apprehensions, and engaging in looting and arson;[118] making prisoners stand on the brink of each of three graves, stabbing them one by one in the back with a bolo and thereafter filling the grave with earth;[119] joining the Japanese Imperial Army, serving as guide for the Japanese in arresting guerrillas, pointing out one as a guerrilla, resulting in the latter's execution;[120] and joining the *Yoin*, an organization formed to aid the

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[111] *People v. Delgado*, G. R. No. L-2957 prom. April 27, 1951.
[112] *People v. Castillo*, G. R. No. L-4408, prom. Oct. 30, 1951.
[113] *People v. Cruz*, G. R. No. L-2236, May 16, 1951.
[114] *People v. Matias*, G. R. No. L-1922, prom. April 27, 1951.
[115] *People v. Alba*, G. R. No. L-2799, prom. April 27, 1951.
[116] *People v. Astrologo*, G. R. No. L-2059, prom. March 30, 1951.
[117] *People v. Alba, supra; People v. Astrologo, supra; People v. Cruz, supra; People v. Bucoy*, G. R. No. L-1621, prom. March 29, 1951; *People v. Delgado*, G. R. No. L-2955, prom. Jan. 31, 1951; *People v. Hernandez*, G.R. No. L-2310, prom Dec. 28, 1951; *People v. Dimzon*, G. R. No. L-1565, prom. Jan. 9, 1951; *People v. Almazan*, G. R. No. L-2323, prom. Jan. 9, 1951; *People v. Jesus*, G.R. No. L-2313, prom. Jan. 10, 1951.
[118] *People v. Rosas*, G. R. No. L-2958, prom. March 16, 1951.
[119] *People v. Gorospe*, G. R. No. L-2317, prom. Dec. 12, 1951.
[120] *People v. Jesus, supra.*

Japanese forces in their campaign against the Filipino-American Army and the guerrillas.[121]

(2) Defenses—The most common defense set up in the above cases was mere denial. And in most of them, the Supreme Court rejected the defense. This defense addresses itself to the sound judgment of the Court in determining the credibility of witnesses. Where, therefore, twelve witnesses, three of whom were friends of the accused, testified against him,[122] or where the sincerity of the witnesses and the absence of connivance [123] are shown, it is not proper to reject or discredit their testimony.

In the case of *People v. Flavier*,[124] the lack of proof of the defendant's Philippine citizenship was insisted upon as a defense. The court however, held his citizenship sufficiently proved by the official records in the Bureau of Prisons, which were admitted in evidence without the defendant's objection, and by the testimony of witnesses who had known the defendant to have been born in the Philippines of Filipino parents.

In the *Hernandez* case,[125] an attempt was made to show that the accused was in truth a guerrilla who had been "planted" as a spy in the Constabulary organized by the Japanese Military Administration. This was likewise rejected, the Court saying that admitting *arguendo* the accused's membership in the guerrilla organizations, such could not justify the treasonous acts actually committed by him.

A more plausible plea was advanced in *People v. Jesus* [126] to the effect that the accused joined the Japanese forces because of compulsion exerted on him. However, this did not prosper, for according to the Court, "duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful or remote fear.. A person should not commit a very serious crime on account of a flimsy fear." It was shown in this case that the acts of the appellant were incompatible with duress.[127]

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[121] *People v. Martin*, G.R. No. L-2537, prom Jan. 10, 1951.

[122] *People v. Bucoy, supra.*

[123] *People v. Cruz, supra; People v. Alba, supra.*

[124] G. R. No. L-2998, prom. May 23, 1951.

[125] G. R. No. L-2310, prom. Dec. 28, 1951.

[126] G. R. No. L-2313, prom. Jan. 10, 1951.

[127] In *People v. Bagalawis*, 44 O.G. No. 8, p. 2655: "La defensa, pues de *duress*—miendo insuperable o fuerza irresistible—con que pretende exculparse el acusado, obiamente no se puede sostener. El vago temor que alega no tiene fundamento en los hechos y circunstancias del caso, y no es desde luego el temor eximente de que habla la ley;" see also *Republic v. M'Carty*, 1 Law Ed., 300, 301.

(3) Evidential requirement—The requirement of at least two witnesses to testify to the same overt act [128] must be satisfied in order to establish the giving of aid and comfort. The testimony of the witnesses need not be conjoint on each and every matter. Minor contradictions do not detract from the essential value of the testimony. In *People v. Cruz*,[129] the appellant called the attention of the Court to the fact that one witness testified that the arrest took place in the dining room and the other, in the living room, and that jewels were found, according to one, after his brother had been taken away from the house, while the other testified that the victim was still there when the jewels were seized. The Supreme Court declared that these minor discrepancies tended rather to show the sincerity of the witnesses and the absence of connivance between them. A similar ruling was announced in *People v. Alba*.[130]

The two witness rule places an obstacle in the path of the prosecution. It has been established for the protection of the accused, considering that "prosecutions for treason are generally virulent." [131] Strange to say it was sought in one case to relax the rule in an effort to improve the case for the defense. In this case [132] it was hinted that the formation and the objectives of the *Kaigun Jutai* and the appellant's membership therein could only be proved by means of the charter and by-laws of that organization and the declarations of its officers. This did not meet with the approval of the Court, as it would require the presentation in evidence of documents that in all probability were no longer available or put on the stand witnesses who would naturally be biased.

In establishing adherence to the enemy, the two-witness requirement does not apply. Several cases have reiterated the *Alarcon* ruling [133] that adherence need not be proved by two witnesses. Adherence may be implied from overt acts.[134] In *People v. Rosas* [135] the charge that the appellant was a Makapili was not proved by two witnesses. The witnesses presented did not corroborate each other on the material points of this aspect of the accusation. Nevertheless, their testimony was considered admissible and sufficient proof of adherence to the enemy. So also, despite failure to meet the two

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[128] Art. 114, Revised Penal Code; sec. 97, Rule 123, Rules of Court.

[129] G.R. No. L-2236, prom. May 16, 1951.

[130] G.R. No. L-2799, prom. April 27, 1951; see *People v. Gorospe, supra; People v. San Juan*, G. R. No. L-2997, prom. June 29, 1951.

[131] *People v. Adriano*, 44 O. G. 4300.

[132] *People v. Matias, supra.*

[133] *People v. Alarcon*, 44 O. G. 4876.

[134] *People v. San Juan, supra.*

[135] G. R. No. L-2958, prom. March 16, 1951.

witness requirement in an attempt to prove participation of the accused in the arrest of guerrilla suspects, and in the raid on a house and the taking of the owner to the Japanese garrison, the evidence on this matter was held sufficient indication of malicious adherence to the enemy.[136] The Supreme Court has even gone so far as to say that a charge, though not included in the information, may be proved to show adherence to the enemy.[137]

Crimes against the Public Order

A. DIRECT ASSAULT UPON A PERSON IN AUTHORITY—A teacher-nurse who has the duty to give health instruction to pupils, to instruct teachers on how to give first aid treatment in the school clinic and to look after the sanitary facilities of the school, is a person in authority within the meaning of Article 152 of the Revised Penal Code as amended by Commonwealth Act No. 578. A person who hits her on the face while she is engaged in her work of dispensing medical aid to school pupils in the school clinic is guilty of direct assault on a person in authority. This notwithstanding the fact that the motive of the offense is a dispute totally foreign to her educational labors.[138]

Crimes against Public Morals

A. VAGRANCY—A person charged with habitually loitering about the public waiting rooms and hallways of the City Hall without giving a good account of himself or of his presence thereat cannot be convicted of vagrancy under Section 822 of the Revised Ordinances of the City of Manila, where it appeared that, although the information followed the language of the law defining vagrancy, he was really being prosecuted, as shown by the evidence presented, for "fixing" cases of drivers caught violating traffic regulations and for failing to explain his means of livelihood.[139]

Crimes Committed by Public Officers

A. BRIBERY—Four elements have been laid down as essential in the crime of direct bribery under Article 210 of the Revised Penal Code: (1) that the accused is a public officer within the scope of Article 203 of the same Code; (2) that the accused received by

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[136] *People v. Nocon*, G.R. No. L-1241, prom. Jan. 25, 1951.

[137] *People v. Jesus, supra.*

[138] *Sarcepuedes v. People*, G.R. No. L-3857, Oct. 22, 1951. For a more comprehensive review of this case, see XXVII *Philippine Law Journal*, 122.

[139] *People v. Azanza*, G. R. No. L-2729, Feb. 1, 1951; see XXVII *Philippine Law Journal*, 120.

himself or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime or any act constituting a crime; (4) that the crime or act relates to the exercise of the functions of his public office.

The above elements were found present in the case of *Maniego v. People.*[140] There the petitioner, although originally appointed as a laborer, had been placed in charge of issuing summons and subpoenas for traffic violations and, furthermore, permitted to write motions for the dismissal of prescribed traffic cases against offenders who were without counsel. He was held to be a public officer under Article 203. This Article is comprehensive, embracing as it does, every public servant from the highest to the lowest. It was shown that the petitioner received ten pesos in consideration of his "fixing" the complainant's case, which he did later "fix." Temporarily discharging public functions is enough to make one a public officer.

Crimes against Persons

A. MURDER—The past year has seen a large number of murder cases reaching the Supreme Court. These, added to those not elevated to the Supreme Court either because of failure to appeal or because a penalty lower than death or life imprisonment was imposed, indicate the disquietingly high incidence, absolute and relative, of murder. An explanation may perhaps be sought in the social psychology of the people as affected by abnormalities of war and readjustment to peace and the prevailing economic difficulties. But that is something which cannot even be attempted in this paper. It can only be pointed out that this fact has far reaching sociological and psychological implications which unfortunately, under the present stage of our penal law, are for the most part without legal relevance.

The means of execution have varied from striking with a piece of wood [141] or bar,[142] stabbing with a *bankaro,* spear, *buyo* or bolo, or dagger [143] to shooting with guns—revolvers, carbines, submachine

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[140] G. R. No. L-2971, prom. April 20, 1951; see *People v. Palomo,* 40 O. G. 10th Supp., p. 2087.

[141] *People v. Jamoralin,* G. R. No. L-2257, prom. Feb. 19, 1951. This also was one of the means employed in *People v. Ibali,* G. R. No. L-3387, prom. May 18, 1951.

[142] *People v. Pardito,* G. R. No. L-3234, March 1, 1951.

[143] *People v. de Villa,* G. R. No. L-3410, prom. March 7, 1951; *People v. Escarro and Escarro,* G. R. No. L-3467, prom. July 26, 1951; *People v. Deguia,* G. R. No. L-3731, prom. April 20, 1951; *People v. Dahino,* G. R. No. L-2067, prom. Feb.

guns.[144] Treachery and abuse of superior strength have been the most common qualificative circumstances.[145]

B. PARRICIDE—In the case of *People v. Go*,[146] a woman entered into a "contract" with others for the killing of her husband. This was a clear case of parricide. In *People v. Pardito*,[147] the accused attacked his father who was then engaged in a scuffle with the accused's mother. The accused struck the victim on the neck with a bar. But this was not, however, shown to be the cause of the death as the mother had likewise given the victim several blows.

Crimes against Personal Liberty and Security

A. KIDNAPPING AND SERIOUS ILLEGAL DETENTION—The crime of kidnapping and serious illegal detention was committed by the appellants in *People v. Tan*,[148] who took away, for purposes of extorting ransom, a Chinese from the latter's residence in Manila, to a house in San Juan, Rizal, where he was ultimately killed.

B. KIDNAPPING WITH MURDER—The case of *Parulan, Caballero* and *Santos* [149] presents an instance of unusual brutality and criminal perversity. The accused Gloria Caballero had theretofore maintained illicit relations both with her co-accused Parulan and the victim Arthur Lee. On the night of the crime, Caballero was alighting from Lee's car after a date with Lee, when she was confronted by Paru-

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26, 1951; *People v. Nolasco*, G. R. Nos. L-3112 and 3113, prom. May 14, 1951; *People v. Guhiting, et al.* G. R. No. L-2843, prom. May 14, 1951 *People v. Ibali, supra; People v. Ogbac*, G. R. No. L-4059, prom. Oct. 23, 1951; *Pueblo contra Antonio*, G. R. No. L- 3458, prom. Oct. 29, 1951, *People v. Garciola*, G. R. No. L-4015, prom. Oct. 30, 1951.

[144] *People v. Licuanan*, G. R. No. L-2960, prom. Jan. 9, 1951; *People v. Go, et al.*, G. R. No. 2067, prom. February 26, 1951; *People v. Buransing*, G. R. No. L-2543, prom. March 19, 1951; *People v. Muñoz and Andal*, G. R. No. L-3396, prom. April 18, 1951; *People v. Quevedo*, G.R. No. L-2500, prom. April 27, 1951; People v. Aguilar, Nos. L-3248 and 3249, prom May 16, 1951; *People v. Amarante*, G.R. No. L-4233, prom. Dec. 21, 1951; *People v. Malibiran*, G. R. No. L-4224, prom. Dec. 27, 1951; *People v. Canoy and Estender*, G. R. No. L-4224, Dec. 28, 1951.

[145] *People v. Magat*, G. R. Nos. L-2679 and 2680, prom. March 15, 1951; *People v. Licuanan, supra; People v. Muñoz and Andal, supra; People v. Ogbac, supra; People v. Garciola, supra; People v. de Villa, supra; People v. Escarro and Escarro, supra; People v. Nolasco, supra; People v. Buransing, supra; Pueblo contra Antonio, supra; People v. Guhiting, supra; People v. Amarante, supra; People v. Malibiran, supra; People v. Aguilar, supra; People v. Dahino, supra; People v. Deguia, supra; People v. Go, et al., supra.* For a discussion of facts constitutive of treachery and abuse of *superior strength*, see *supra*, Criminal Liability and Penalties.

[146] *People v. Go, et al.*, G. R. No. L-1527, prom. Feb. 27, 1951.

[147] *People v. Pardito*, G. R. No. L-3234, prom. March 1, 1951.

[148] *People v. Tan, et al.*, G. R. No. L-2096, prom. Feb. 6, 1951.

[149] *People v. Parulan, Caballero and Santos*, G. R. No. L-2025, prom. April 28, 1951.

lan who had been waiting for the two. Brandishing a revolver, Parulan ordered her back into the car. His co-accused Santos took over the wheel from Lee. On Parulan's order the party proceeded to Bocaue, Bulacan. On the way, Parulan demanded ₱15,000.00 of Lee as the price for sparing the latter's and Caballero's lives. Lee protested his inability to pay such a sum. Parulan then beat up both Lee and his unfaithful woman. Upon arriving at Bocaue, Parulan ordered three men to procure a motor banca. In the meantime, he continued to beat and manhandle Lee and Caballero. The banca having been secured, Parulan, Caballero, Lee, Santos and the two of the three men boarded the same and proceeded towards Manila Bay. Parulan resumed maltreating Lee reiterating his demand for ₱15,000.00. But Lee could offer only ₱500.00. Lee was then ordered to take off his pants, shoes and shirt, and to stand up. Thereupon, Parulan fired at him, causing Lee to collapse on deck. Lee was, on order of Parulan again, thrown overboard. Three more shots were fired by Parulan, resulting in Lee's death.

Upon the above facts, the Supreme Court convicted Parulan of the complex crime of kidnapping with murder under article 267 of the Revised Penal Code as amended by Republic Act No. 18.[150] The said article in part provides that "the penalty shall be *reclusion perpetua* to death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the above circumstances were present in the commission of the offense."

The accused contended that the qualifying circumstance of treachery did not occur. On this point the Court said: "Disparar con un revolver de calibre 45 a un hombre desarmado, despues de haber sido maltratado varias veces y de haberse quitado los pantalones, los zapatos, y la camisa, es obrar sobre seguro, sin peligro para la persona del agresor de qualquier ataque que pudiera venir del ofendido."

Crimes against Property

A. (1) ROBBERY—On October 18, 1951, the Supreme Court, in the case of *People vs. Pablo,*[151] affirmed the conviction of a minor of 15 for the crime of robbery in an uninhabited house by an unarmed person.[152]

(2) ROBBERY WITH HOMICIDE—The greater number of cases on robbery had been complexed [153] with homicide. Thus, shooting

[150] See also *Parulan v. Rodas,* G. R. No. L-1536, prom. July 31, 1947.

[151] G. R. No. L-4178, prom. Oct. 18, 1951;

[152] See, *supra,* Criminal Liability and Penalties.

[153] Not in the sense of a complex crime under Art. 48, Rev. Penal Code (Padilla, *op. cit.,* p. 751).

four victims and later taking away the latters' rice and truck [154] was classified as robbery with quadruple homicide, and not, as the lower court held, four separate crimes. "The juridical concept of homicide does not limit the taking of human life to one single victim making the slaying of human beings in excess of that number punishable as separate, independent offense or offenses." So long as the killings were perpetuated by reason or on occasion of the robbery, all homicides or murders are merged in the composite, integrated whole that is robbery with homicide.

Also, where a group of six men attempted to enter a house, and upon meeting with resistance by an inmate, one of the accused fired his pistol through the door, killing said inmate, the offense of attempted robbery with homicide is committed.[155] *In People v. Disimban,*[156] the accused, having been discovered in the act of stealing some carabaos, fired at the owner's house hitting and killing a member of the household. Here, the circumstance of band was present since the offenders were five in number all armed with carbines and revolvers. Likewise, the act of armed malefactors breaking into a house, making off with ₱2,000.00 and shooting the offended parties,[157] or looting a house and killing the owner, the killing being a part and direct result of the robbery,[158] or after entering a bakery, a band of more than three armed persons commanded the inmates to lie face downwards, ransacked the place and killed a police sergeant in the attempt to escape,[159] or entering a house and by the use of guns taking money,[160] or taking money and jewels and killing an inmate [161]—all constitute the crime of robbery with homicide.

(3) ROBBERY WITH MULTIPLE RAPE AND PHYSICAL INJURIES—If on the occasion of a robbery, both rape and physical injuries are perpetrated, the offense is robbery with multiple rape and physical injuries in accordance with the case of *People v. Abalos.*[162]

B. THEFT—An interesting case of theft is presented in *Soriano v. People.*[163] There the petitioner was charged with the theft of one electric motor used for the operation of a movie house and other

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[154] *People v. Madrid,* G. R. No. L-3032, prom. Jan. 3, 1951.
[155] *People v. Osias de la Cruz,* G. R. No. L-3012, prom. Jan. 9, 1951.
[156] G. R. No. L-1746, prom. Jan. 31, 1951.
[157] *People v. Gutierrez,* G. R. No. L-3723, prom. April 27, 1951.
[158] *People v. Bersamin,* G. R. No. L-3097, prom. Mar. 5, 1951.
[159] *People v. Samson et al.,* G. R. No. L-3457, prom. Oct. 31, 1951.
[160] *People v. Corpes,* G. R. No. L-4187, prom. Dec. 18, 1951.
[161] *People v. Castañeda,* G. R. No. L-3535, prom. Dec. 28, 1951.
[162] *People v. Abalos,* G. R. No. L-3369, prom. Oct. 26, 1951
[163] G. R. No. L-3629, prom. March 19, 1951.

accessories. The petitioner offered as a defense the power of attorney granted him by the owner of the building which was rented by the owner of the stolen articles, alleging that he did not "take" the property, because, being an attorney-in-fact, he only acted for his principal. He justified the "taking" by the failure of the lessee, owner of the stolen articles, to pay back rents and by the fact that his principal authorized him to take things of value of whatsoever nature that may belong to the principal. The articles involved had been mortgaged to the accused's principal to secure the payment of rentals due. He therefore intimated that there was no intent to gain on his part. The majority opinion rejected this defense ruling that the power of attorney did not authorize the petitioner to take away the projector and generator, hiding them in his house and denying to the owner and the police authorities that he had possession of said articles. The contract of mortgage was no defense either since it had not been legally foreclosed. With regard to the element of taking or asportation, the Court entertained no doubt that it was present, notwithstanding that the petitioner had been entrusted with the keys of the building where the things taken were kept. And as to the element of intent to gain, that was inferred from his act of carrying away and concealing from the owner and the police authorities the articles in question. The dissenting opinion, however, points out that the intent to gain cannot be inferred from the bare acts of the petitioner in view of the peculiar circumstances of the case which supply a plausible explanation for said acts. It intimated that had it been shown that the petitioner sold or tried to dispose of the articles, intent to gain might have been sufficiently established.

C. ESTAFA—In *People v. Abeto*,[164] the appellant published an advertisement in the newspapers inviting bids and reservations for a quantity of sugar supposed to have been imported by him. The complainant inquired from the appellant about the truth of the advertisement, and was assured that the shipment would arrive in a month. He thereupon made a deposit of ₱800.00 with the appellant, on the latter's demand, for three hundred sacks of sugar. The shipment having failed to arrive, a demand for the return of the deposit was made. The appellant gave a check for the amount of the deposit. This check was dishonored by the drawee bank. He then delivered to the complainant a promissory note for ₱750.00 and ₱50.00 in cash. Upon the foregoing facts, it was held that the amount deposited with the appellant was an "advance payment." "The word 'deposit' is subordinate to the *purpose* of making an ad-

[164] G. R. No. L-3935, prom. Dec. 21, 1951.

vance payment which is the real nature of the transaction. It is clear that an advance payment is subject to the disposal of the vendor. The transaction is rather of the character of a token, pledge, or earnest money, contemplated in Article 1454 of the old Civil Code, which only gives rise to civil liability." In the absence of any findings that the appellant had misrepresented the existence of his business of importing refined sugar or that his failure to deliver the sugar he reserved for the complaining witness was due to the appellant's unlawful act or omission, no estafa is committed. Deceit has not been proven. It will be noted that the factual distinction between a deposit and an advance payment may be illusory. No reliable criterion is furnished. Further, though the issuance of a worthless check may not necessarily mean estafa, is it not a sufficient proof of the element of deceit?

A more satisfactory ruling was made in *People v. Merilo*.[165] In that case, the complaining witness was hired as a photographer in the appellant's studio at an agreed daily wage of ₱8.00. After working for one month, the complainant was paid only ₱24.00 and several small amounts later. The wages unpaid were acknowledged by appellant as an indebtedness in a document signed by him. He was prosecuted under Commonwealth Act No. 303, Section 1 of which provides that every employer shall pay the wages of his employees at least once every two weeks unless it is impossible to do so by reason of force majeure or unless he has been previously exempted by the Secretary of Labor. Section 4 of the same Act further provides that failure to pay as required by Section 1, shall be *prima facie* considered a fraud committed by such employer and is punishable as estafa. The appellant claimed that deceit was not proven and attacked the constitutionality of the statute on the ground that it presumes the guilt of the accused and provides for imprisonment for failure to pay a debt.

The court ruled that the state has the right to specify what acts are criminal and to determine, subject to certain limitations, what proof shall constitute *prima facie* evidence of guilt. It is not unreasonable to declare that the failure to pay the wages of one's employees is *prima facie* considered a fraud committed by the employer by means of false pretenses. The law under which he is penalized "refers only to employers who, being able to make payment, shall abstain or refuse to do so, without justification and to the prejudice of the employee. An employer so circumstanced is not unlike a person who defrauds another by refusing to pay his just debts."

[165] G. R. No. L-3489, prom. June 28, 1951.