CRIMINAL PROCEDURE: 1952

NORMA D. FOZ *
VICENTE OCAMPO **

Procedural law, not unlike substantive law forms an important and necessary phase of every jurisprudence. It has been considered an essential part of due process [1] and has sometimes been identified with due process itself.[2] The courts, conscious of this fact, have during the recent year passed upon numerous cases involving procedure. Criminal procedure has had its share of the court's attention. But while decisions are numerous, there has been no great changes in the doctrines as then existing. A review of these decisions will indicate a tendency to adhere to the existing principles of procedure rather than a departure from them.

INFORMATION:

An information, to be sufficient, must state: (1) the name of the defendant, (2) the designation of the offense by statute, (3) the acts or omission complained of as constituting the offense, (4) the name of the offended party, (5) the approximate time of the commission of the offense and (6) the place where the offense was committed.[3]

Designation of the Offense by Statute—The purpose of this requirement is to secure a clear specification of the offense charged so that the accused be fully apprised of the charges against him and thus avoid any and all possible surprises which may be detrimental to their rights and interests.[4] But where the facts pleaded are clearly constitutive of a specific offense, a strict compliance with the above-mentioned requisite is not necessary.[5] Thus, in the recent case of *People v. Arnault*,[6] Jean Arnault was charged with tax evasion in connection with his participation in the now-famous Tambobong-

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* LL.B. (U.P., 1953); member, Student Editorial Board, 1952-53.
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[1] *Banco Español vs. Palanca*, 37 Phil. 927; *Fabie vs. Ng Boo Soo*, 47 O. G. 2287; *Ang Tibay vs. Court*, 40 O. G. 7 S, p. 29.

[2] *Banco Español vs. Palanca*, see note 1, *supra*.

[3] Rule 106, Sec. 5, par. 1, Rules of Court.

[4] *People vs. Narvaes*, 59 Phil. 738.

[5] *U. S. vs. Li-Dao*, 2 Phil. 458; *U. S. vs. Peralta*, 8 Phil. 200; *U. S. vs. Supila*, 13 Phil. 671; *U. S. vs. Treyes*, 14 Phil. 270; *U. S. vs. Jeffrey*, 15 Phil. 391; *U. S. vs. Lim San*, 17 Phil. 273; *Davis vs. Director of Prisons*, 17 Phil. 168; *U. S. vs. Vega*, 31 Phil. 450; *U. S. vs. Cabe*, 36 Phil. 728; *U. S. vs. Ondaro*, 39 Phil. 70; *U. S. vs. Burns*, 41 Phil. 418.

[6] G. R. L-4288, prom. Nov. 20, 1952.

Buenavista transaction. He attacked the sufficiency of the information, alleging, among other things, that it designated a wrong provision of law. In upholding the judgment of conviction, the Court stated that the information was sufficient if it apprised the defendant of the nature of the offense charged, as it was in the herein case.[7] The real nature of the crime charged is not determined by the title of the information or the specification of the provision of law alleged to have been violated, but by the facts alleged in the information.[8]

Approximate Time of the Commission of the Offense.—In the above-cited case,[9] the sufficiency of the information was also assailed on its failure to designate the date and year when the income sought to be taxed was earned. The court ruled out such objection as being too technical, stating that an information which apprises the accused of the facts and acts constituting the offense charged is complete and not defective. The allegation in the information that Arnault received a net profit of ₱1,480,000 on or before May 29, 1950 was sufficient designation of the time when the evasion was committed, notwithstanding the failure to state when such net profit or income was earned.

Waiver of the Right to Object to the Insufficiency of the Information—In *Viernes contra Director de Prisiones,*[10] the information was assailed on the ground that it contained a conclusion of law—"that the accused not being one of those exempted by law, illegally possessed firearms." Justice Tuason, in concurring with the judgment convicting the accused remarked, "The information alleged a mere conclusion of law and was demurrable, but otherwise, it stated a sufficient cause of action. The defects were of form and not of substance. Having pleaded guilty, instead of moving for a specification of the facts constituting the offense, defendant waived the defects and is now precluded from attacking the information."

JURISDICTION:

Over The Subject Matter.—Jurisdiction over the subject matter is conferred only by the sovereign authority which organizes the courts.[11] Any decision rendered beyond the jurisdiction conferred upon a court is null and void and of no effect.[12] Thus in the case

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[7] *People vs. Arnault*, see note 6, *supra*.
[8] *People vs. Oliviera*, 67 Phil. 427.
[9] *People vs. Arnault*, see note 6, *supra*.
[10] G. R. L-5575, May 13, 1952.
[11] *U. S. vs. de la Santa*, 9 Phil. 22, 26-27; *U. S. vs. Hayme*, 24 Phil. 90; *U. S. vs. Castañares*, 18 Phil. 210; *U. S. vs. Asuncion*, 22 Phil. 358; *U. S. vs. Gariboso*, 25 Phil. 171; *U. S. vs. Narvas*, 14 Phil. 410.
[12] *U. S. vs. Jimenez*, 41 Phil. 1; *U. S. vs. Montañez*, 41 Phil. 91.

of *People vs. Romualdo,*[13] where the Justice of the Peace Court convicted the accused of an offense punishable under the Revised Motor Vehicle Law with imprisonment ranging from 15 days to 6 years [14] which is clearly beyond its jurisdiction,[15] the Supreme Court held that the judgment was a nullity and at most the proceedings had in the Justice of the Peace court could only be considered a preliminary investigation, thus giving no rise to double jeopardy.

Time Which Determines Jurisdiction.—The jurisdiction of a Court to try a criminal action is to be determined by the law in force at the time of instituting the action.[16] Following the same rule, it was stated in *People v. Romualdo* [17] that the fact, that the Motor Vehicle Law was amended, making the infractions committed by Romualdo punishable under the Revised Penal Code by a penalty cognizable by the Justice of the Peace court [18] does not change the conclusion. Once the jurisdiction attaches to the person and subject matter of the litigation, the subsequent happening of events although of such a character as would have prevented jurisdiction from attaching in the first instance will not operate to oust jurisdiction already attached.

Appellate Jurisdiction of the Court of Appeals.—The Judiciary Act of 1948 gives the Court of Appeals exclusive appellate jurisdiction over all cases not coming within the jurisdiction of the Supreme Court.[19] Appeals on mixed questions of law or fact are brought to

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[13] G. R. L-3686, prom. Jan. 31, 1952.

[14] Sec. 67(d) Revised Motor Vehicle Law.—If, as the result of negligence, or reckless, or unreasonably fast driving, any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver or operator at fault shall, upon conviction, be punished by imprisonment for not less than 15 days nor more than 6 years in the discretion of the court."

[15] Sec. 87, R. A. 296. Original jurisdiction to try criminal cases.—The justice of the peace and the judges of the municipal court of chartered cities shall have original jurisdiction over: * * *

(b) All offenses in which the penalty provided by law is imprisonment for not more than 6 months or a fine of not more than ₱200 or both such fine and imprisonment.

[16] *People vs. Pegarum,* 58 Phil. 175.

[17] See note 13, *supra.*

[18] Art. 265, Revised Penal Code. Less serious physical injuries.—Any person who shall inflict on another physical injuries not described in the preceding article but which shall incapacitate the offended party for labor for 10 days or more, or shall require medical attendance for the same period shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor* (1 month and 1 day to 6 months).

[19] Sec. 29, R. A. 296. Jurisdiction of the Court of Appeals.—The Court of Appeals shall have exclusive appellate jurisdiction over all cases, actions and proceedings not enumerated in Sec. 17 of this Act, properly brought to it from the CFI. The decision of the Court of Appeals in such cases shall be final. * * *"

the Court of Appeals.[20] In the case of *People v. Isaac*,[21] the Supreme Court certified the case back to the Court of Appeals. The counsel de oficio of the accused brought the case on appeal to the Supreme Court raising only questions of law. But inasmuch as the client insists on a review of questions of fact, the appeal must of necessity be taken to the Court of Appeals. The appeal taken by the counsel de oficio does not bind his client, who objects thereto, but must be treated, at most, as a general notice of appeal; the presumption being that he would raise both questions of law and fact. This decision does not depart from the ruling rendered in an earlier case.[22]

Findings of Fact by the Court of Appeals—A long line of decisions has upheld the finality of the findings of fact by the Court of Appeals.[23] This was again followed in the case of *Camus v. Court of Appeals and People*,[24] where the court refused to review the facts leading to the conviction for estafa. Nonetheless, the petition was given due course to determine the validity of the petitioner's contention that his liability was purely civil in nature.

PROSECUTION OF CIVIL ACTIONS:

Unless the offended party has waived the civil action or has expressly reserved the right to institute it separately and subject to the provision entrusting criminal actions to the direction and control of the fiscal,[25] he may intervene personally, or by attorney, in the prosecution of the offense.[26] Thus, where the offended party has filed a separate civil action for damages, or reserves the right to institute an independent civil action or has already instituted one, his right to intervene in a criminal action is lost.[27] This rule was

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[20] Sec. 17, R. A. 296. Jurisdiction of the Supreme Court.—The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari, or writ of error as the law or rules of court may provide, final judgment and decrees of inferior courts as herein provided in * * *

(6) All other cases in which only errors or questions of law are involved. *Portea vs. Pabellion et al.*, 47 O. G. No. 2655.

[21] G. R. L-6119-R, prom. October 29, 1952.

[22] *People vs. Fresco*, 63 Phil. 528.

[23] *Alas vs. People*, G. R. L-49212, prom. July 31, 1947; *Cristobal vs. People*, 47 O. G. No. 2, 711; *Diaz vs. People*, 68 Phil. 717.

[24] G. R. L-4560, prom. Sept. 30, 1952.

[25] Rule 106, Sec. 4. All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of the fiscal.

[26] Rule 106, Sec. 15.

[27] *People vs. Velez*, 44 O. G. No. 6, p. 1811-1812. "It appearing from the record that there was a pending civil action arising out of the same alleged libelous document * * * the offended party has no right to intervene in the prosecution of this case, and consequently, cannot appeal from an order of the court dismissing the information."

given application in the recent case of *People vs. Capistrano* [28] where an appeal made by the offended party who had filed a separate action for damages, from an order sustaining a motion to dismiss the information was given no effect.

However, in spite of the intervention of the offended party, the criminal prosecution shall be under the direction and control of the fiscal.[29] Likewise in the same case of Capistrano [30] the court held that where the fiscal does not appeal from an order of dismissal which does not affect the substantial rights of the offended party, the latter cannot appeal.

PRELIMINARY INVESTIGATION:

This phase of criminal procedure consists of two stages—(1) the preliminary examination of the complainant and the witnesses prior to the arrest of the accused and (2) preliminary investigation proper where the accused is informed of the information and evidence against him and allowed to present evidence in his favor so as to determine whether he should be held for trial or not.[31]

First Stage of Preliminary Investigation.—This stage is availed of to determine a reasonable ground for the issuance of a warrant of arrest.[32] The failure to conduct this phase of preliminary investigation is not a ground for a motion to quash nor does it go to the jurisdiction of the courts, but merely the regularity of its proceedings.[33] In *People v. Olandag*,[34] an appeal was made from an order dismissing the information due to the absence of preliminary examination. The court in sustaining the appeal held that the first phase of preliminary investigation is not a part of due process citing *Bustos v. Lucero* [35] to that effect. The Justice of the Peace is not prohibited from reaching the conclusion that probable cause exists, solely from the statement of the prosecuting attorney alone or some other person whose statement is entitled to credit.

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[28] G. R. L-4448, prom. Feb. 27, 1952.

[29] Rule 106, Sec. 4, see note 25, *supra*; *U. S. vs. Despabiladeras and Laxamana*, 32 Phil. 442, 443; *U. S. vs. Gallegos*, 37 Phil. 289, 292-293; *People vs. Dizon*, 44 Phil. 267-270.

[30] *People vs. Capistrano*, see note 28, *supra*.

[31] Rule 108, Secs. 1 and 11.

[32] *Hashim vs. Boncan*, 40 O. G. 13 S, p. 13; *U. S. vs. Grant and Kennedy*, 18 Phil. 122; *U. S. vs. Marfori*, 35 Phil. 666; *People vs. Magpale*, 70 Phil. 176; *Marcos vs. Cruz*, 68 Phil. 96; *People vs. Solon*, 47 Phil. 443.

[33] *People vs. Oliviera*, 67 Phil. 427.

[34] G. R. L-4797, prom. Nov. 26, 1952.

[35] 46 O. G. Sup. to No. 1, 445.

Waiver of the Right to Preliminary Investigation.—In the same case of *People v. Olandag* [36] the court stated that the objection to the absence of a previous hearing having been raised for the first time almost two years after the filing of the complaint in the Justice of the Peace court, the defendant is deemed to have waived his right to a preliminary investigation which may even be conducted in his absence.

WARRANT OF ARREST:

People v. Olandag [37] also is authority for the view that the subsequent issuance of a warrant of arrest duly served on the accused has cured the previous failure to issue said warrant. As a matter of fact, the failure to issue a warrant at the filing was obviously because the defendant was under custody.

FORMER CONVICTION, ACQUITTAL OR JEOPARDY:

Double Jeopardy.—A defendant who has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information and after he has pleaded to the charge, cannot again be prosecuted for the offense charged, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[38] For an accused to be legally held in jeopardy under the present rule,[39] the following elements must, therefore, concur, to wit: (a) a valid complaint or information; (b) filed in a competent court; (c) there must be an arraignment; (d) and entry of plea; (e) a dismissal or termination of the proceedings without the consent of the accused.

Valid Complaint or Information.—For the plea of jeopardy to prosper, the first requisite is that the previous conviction or acquittal must be based upon a valid complaint or information. A complaint or information to be valid, however, must be subscribed by the offended party, peace officer, or other employee of the government or governmental institution in charge of the enforcement or

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[36] See note 34, *supra*.

[37] See note 34, *supra*.

[38] Rule 113, Sec. 9, Rules of Court.

[39] Under the old rule, a defendant in the Philippines was deemed in legal jeopardy when placed upon trial under the following conditions: (a) upon a good indictment; (b) before a competent court; (c) after the defendant has been arraigned; (d) after he has pleaded to the indictment; (e) after the investigation of the charges has actually commenced by the calling of a witness. (ALBERT, GUIDE FOR THE STUDY OF THE LAW OF CRIMINAL PROCEDURE, 175).

execution of the law violated,[40] or the fiscal.[41] Particularly in offenses of seduction, abduction, rape or acts of lasciviousness, it is a jurisdictional requirement that the complaint must be filed by the offended party, her parents or guardian.[42]

Thus a complaint for rape signed and sworn to by the Chief of Police and not by the offended party is not a valid complaint in accordance with law,[43] and the judgment rendered by the court, based on such complaint, is void for lack of jurisdiction; therefore, jeopardy will never lie. Again, a conviction for seduction upon an information filed by the fiscal and not upon complaint of the offended party,[44] which was thereafter dismissed on appeal by the Supreme Court, was considered not a bar to a subsequent prosecution for the same offense.

In *People v. Patoltol*,[45] where a complaint for robbery in band with rape not signed by the offended party but by the chief of police, was dismissed by the court with respect to the crime of rape after the said offended party had testified, but the crime of robbery was ordered to continue "without prejudice to the right of the offended party to present in due form the corresponding complaint," the Supreme Court opined that no appeal having been interposed by either parties to the dismissal of the case with respect to the crime of rape, no question or point of law concerning jeopardy was involved. On this point the court further stated:

> "x x x Such question may arise only if the offended parties exercise their right reserved by the lower court in its resolution above quoted by filing the corresponding complaint with the Justice of the Peace Court. Then and only then may this Court or the Court of Appeals, as the case may be, pass upon that question."

Competent Court.—A court must have jurisdiction over the subject matter, over the person of the accused and over the territory in order that it may take cognizance of a case. Consequently, a judgment of conviction or acquittal by a court having no jurisdiction is an absolute nullity, and a subsequent indictment in a proper court will not expose the accused to jeopardy. This is the ruling in *People v. Romualdo*.[46]

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[40] Rule 106, Sec. 2, Rules of Court.
[41] Rule 106, Sec. 3, Rules of Court.
[42] Art. 344, Revised Penal Code.
[43] *People vs. Trinidad*, 58 Phil. 163.
[44] *U. S. vs. Jayme*, 24 Phil. 90.
[45] G. R. L-2569, prom. March 25, 1952.
[46] G. R. L-3686, prom. Jan. 21, 1952.

Termination of Proceedings.—An order of dismissal in the lower court does not ipso jure terminate a case. Only in such cases where the action is dismissed without the express consent of the accused can the defense avail itself of the right of double or second jeopardy. Thus, in *People v. Pinuela* [47] an information was filed with the Court of First Instance charging the accused with murder. After the prosecution had rested its case, the defense moved for the dismissal of the case on the ground that the evidence did not show that the crime was committed within the jurisdiction of the court. The trial court upheld the motion and dismissed the case, whereupon the prosecution appealed. The defendant, invoking the doctrine of double jeopardy, opposed the appeal.

The High Tribunal, finding that the lower court had jurisdiction, reversed the order of dismissal, ordering the trial court to continue with the trial thereof. The dismissal of a case on motion of the defense counsel, on the ground that the court had no jurisdiction, did not terminate the proceedings; and an appeal therefrom would not place the accused in double jeopardy.

Plea of Double Jeopardy Will Not Lie.—To determine whether a second or double jeopardy exists, the question is whether or not the same evidence supports the two actions.[48] If answered in the affirmative, the trial and conviction in the former action would constitute double jeopardy in the latter. Stated differently, in order that a former conviction may be a bar to another prosecution, it is important to determine if the accused is newly prosecuted either for the same offense, or for any offense which necessarily includes or is necessarily included in the offense charged.[49]

It was held that a person in possession of a shot gun and a revolver at the same time and in the same place constituted one act of possession; and conviction for the possession of any of the firearms was a bar to the prosecution for the possession of the other.[50] Further, a conviction for illegal possession of opium was a bar to a subsequent prosecution for illegal possession of opium pipe found together with the opium.[51]

Nonetheless, in a recent decision, it was held that the defense of double jeopardy would not lie in a prosecution for illegal possession of firearm which had been used as the instrument of the crime in a previous conviction for homicide.[52]

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[47] G. R. L-3617, prom. March 28, 1952.
[48] *People vs. Martinez*, 55 Phil. 6; *People vs. Alvarez*, 45 Phil. 472.
[49] *People vs. Alger*, G. R. L-4690, prom. Nov. 13, 1952.
[50] *U. S. vs. Gustilo*, 19 Phil. 208.
[51] *U. S. vs. Poh Chi*, 20 Phil. 140.
[52] *People vs. Alger*, see note 49, *supra*.

The apparent inconsistency between this latter doctrine and those enunciated in the *Gustilo* [53] and *Poh Chi* [54] cases has been resolved by the Court in *People v. Alger* [55] when it stated:

> "We have taken notice of the fact that the trial court was persuaded to sustain the plea of double jeopardy in view of the ruling laid down in the two cases previously decided by this court.[56] But the ruling enunciated in said case is not on all four with the present case because there the accused committed the acts charged with one criminal intent. In the case at bar, the defendant committed two different acts with two separate criminal intents, to wit, the desire to take unlawfully the life of a person, and the unlawful violation of the law which prohibits the possession of a firearms without the required permit. Under the circumstances of this case, the plea of double jeopardy is of no avail."

In the Alger case, the defendant was previously convicted of a crime of homicide and subsequently for illegal possession of a .30 caliber rifle which was the same weapon used for the perpetration of the homicide. The plea of double jeopardy was not sustained on the strength of the opinion that the two crimes were distinct from each other.

This doctrine finds re-affirmation in *People v. Garcia.*[57]

Similarly, the Supreme Court lately ruled that a charge for a crime of illegal fishing with explosives did not bar a subsequent prosecution for illegal possession of explosives.[58]

In *People v. Tinamisan,* the accused after being charged and convicted with the crime of illegal fishing with explosives, were subsequently prosecuted for illegal possession of explosives in the same court. On the question of double jeopardy as raised by the accused, the Supreme Court ruled that the defense set forth could not prosper. The Court opined that the use of explosives in fishing, except when permitted under special circumstances by the Secretary of Agriculture is prohibited and penalized under Act No. 4003 as amended by Act No. 471; while the possession of dynamite or explosives without license from the Chief of the Constabulary is prohibited and penalized by Act No. 2225 as amended by Act No. 3023. Consequently, one offense is distinct from the other.

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[53] See note 50, *supra.*
[54] See note 51, *supra.*
[55] See note 49, *supra.*
[56] See note 50 and 51, *supra.*
[57] G. R. L-4835, prom. Oct. 29, 1952.
[58] *People vs. Tinamisan,* G. R. L-4081, prom. Jan. 29, 1952.

Supervening Facts Change the Character of the Offense.—In the case of *People v. Tarok*,[59] if after trial and conviction for an attempted or frustrated offense, there should supervene a consummated offense, conviction or acquittal of the lesser offense, would be a bar to a subsequent prosecution for the consummated offense.[60] This principle was overruled and the dissenting opinion of Justice Moran in the Tarok case became controling in a later decision.[61]

People v. Petilla [62] is a re-affirmation of the doctrine announced in the case of *Melo v. People*. It is, therefore, decided that an act which supervenes after the filing of the original information converts the crime into a more serious one, and the plea of double jeopardy will never lie.[63]

In *People v. Petilla*, it appeared that the accused was charged with slight physical injuries. Upon petition of both parties, the case was heard by the Justice of the Peace jointly with another for frustrated homicide filed against the same accused. During the hearing, the Justice of the Peace found that the injuries suffered by the offended party would require more than 30 days to heal and so believing the case was beyond his jurisdictions forwarded the same, together with the frustrated homicide to the Court of First Instance for further proceedings. Thereupon the fiscal amended the information charging serious physical injuries. Accused after waiving his right to a preliminary investigation, moved to quash the information alleging that if the case be continued, he would be in jeopardy. The motion was granted, and the fiscal instead of appealing, asked for the return of the case to the Justice of the Peace Court for trial on the merits under the original information. However, while the original information for slight physical injuries was pending in the inferior court, the fiscal asked for the provisional dismissal of the same and filed a new information in the Court of First Instance for

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[59] 40 O. G. 3488.

[60] Justice Moran dissenting from the majority opinion in *People vs. Tarok*, 40 O. G. 3488, in part stated: "I see no reason why this doctrine cannot be made controlling upon the instant case. Here, as in the Diaz case, the parricide charged against the accused and the serious physical injuries of which he was previously convicted, although identical in some elements, were distinct offenses, both in law and in fact. The supervening death of the offended party was the principal element of the parricide and was no part of the offense of serious physical injuries. Here as in the Diaz case, at the time of the trial for physical injuries, the death of the victim had not as yet ensued, and not until did it ensue was parricide committed. Then and not before, was it possible to place the accused in jeopardy for that offense."

[61] *Melo vs. People*, G. R. L-3580. L-3580, prom. March 22, 1950.

[62] G. R. L-5070, prom. Dec. 1952.

[63] See note 61, *supra*.

serious physical injuries. On a sustained motion to quash on the ground of *res judicata,* the Solicitor General appealed.

On the question of jeopardy, the court found that the lower court committed a mistake when it quashed the case on the ground that the filing of the amended information charging the accused with serious physical injuries constituted double jeopardy which barred the government from prosecuting it. The charge contained in the original information was for slight physical injuries because at that time the fiscal believed that the wound suffered by the offended party would require medical attendance only for a period of 8 days; but when the preliminary investigation was conducted the Justice of the Peace found that the wound would not heal until after a period of 30 days, and so he forwarded the case to the CFI for further action. This supervening event can still be the subject of amendment or of a new charge without necessarily placing the accused in double jeopardy.

The Court, in justifying its stand, further relied on *People v. Manolong* [64] which held:

> "x x x In the present case there is no question that the offense of serious physical injuries charged in the last information necessarily included the lesser offense charged in the first complaint and of which the accused was convicted in the Justice of the Peace Court, and there should likewise be no question that, were we to follow the doctrine laid down by this court in *People vs. Tarok,*[65] and reiterated in *People vs. Villasis,*[66] we would have no alternative but to dismiss the present appeal. However this Court in its recent decision in the case of *Melo vs. People,*[67] has already repealed the doctrine laid down in the Tarok case as contrary to the real meaning of double jeopardy as intended by the constitution, the Rules of Court, and 'obnoxious to the administration of justice,' and has reverted to the rule that 'where after the first prosecution a new fact supervenes for which the defendant is responsible which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense,' the accused cannot be said to be in second jeopardy if indicted for the new offense."

Although the plea of double jeopardy did not lie, the appeal, nevertheless, was dismissed due to the failure of the fiscal to appeal from the order of the lower court sustaining the motion to quash the amended information. While the order was erroneous, the failure of the fiscal to appeal rendered said order final and executory;

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[64] G. R. L-2288.
[65] 40 O. G. 3488.
[66] G. R. L-1218.
[67] G. R. L-3580.

and whether rightly or wrongly, said order stands and cannot be set aside or rendered ineffective.

PLEAS:

Plea of Guilty.—Upon arraignment, the defendant shall plead to the complaint or information either by a plea of guilty or not guilty, submitted in open court and entered of record.[68] In pleading guilty, it is not necessary that such a plea be made under oath,[69] but it is essential that the accused admits his guilt freely, voluntarily, and with a full knowledge of the consequences and the meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint, as well as an admission of all the facts alleged in the information.[70] A plea of guilty to an information is a clear, definite and unconditional admission by the accused of all the facts therein alleged including such circumstances like conspiracy, nocturnity, or sudden and treacherous attack upon the victim.[71] The case of *People v. Egido* [72] stands for this doctrine.

Here, the defendant Egido was charged in the CFI of Negros Occidental with the crime of robbery, with the aggravating circumstance of night time. Upon a plea of guilty, the CFI convicted the defendant as charged, but the defendant appealed. Upon these facts, the Supreme Court ruled that when the defendant pleaded guilty to the information which specifically alleged that he took advantage of the darkness of the night and that the commission of the crime was aggravated by the said circumstance, the trial court committed no error in appreciating said circumstance, because by pleading guilty, the appellant admitted all the material facts alleged in the information.

Right To Withdraw Plea.—The court may in its discretion at any time before sentence permit a plea of guilty to be withdrawn.[73] It is a general rule that withdrawal should not be denied in any case where it is in the least evident that the ends of justice will be subserved by permitting withdrawal. Leave should be given to withdraw a plea of guilty, entered by mistake, or under a misconception of the nature of the charge; through a misunderstanding of the effect of the plea, through fear, fraud, or official misrepresentations; or if the plea was made involuntarily for any reason.[74]

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[68] Rule 114, Sec. 1, Rules of Court.
[69] *People vs. Quinta*, 51 Phil. 820.
[70] *U. S. vs. Burlado*, 42 Phil. 72; *People vs. Abuyen*, 52 Phil. 722.
[71] *Macali vs. Revilla*, 48 Phil. 751; *U. S. vs. Agcaoili*, 31 Phil. 91.
[72] G. R. L-4217, prom. Jan. 31, 1952.
[73] Rule 114, Sec. 6, Rules of Court.
[74] ALBERT, GUIDE FOR THE STUDY OF THE LAW OF CRIMINAL PROCEDURE, 190.

Nonetheless, a plea of guilty entered by a defendant understandingly and without fear or persuasion may not be withdrawn. A defendant who receives a punishment greater than he expected has no sufficient cause to withdraw his plea,[75] especially when such a plea was entered by the accused with a clear understanding of its significance and consequences [76] and with the aid of an able lawyer.[77]

Such was the observation in *People v. Co Hap and Tan Lam*, wherein the Supreme Court, after reiterating that it is within the discretion of the court to permit or not to permit the withdrawal of a plea of guilty, announced that the plea of guilty was not made under a misapprehension considering the fact that the accused were assisted by able counsel when they came to court and entered their plea.

In *People v. Co Hap and Tan Lam*,[78] the accused were charged in the CFI with a violation of Executive Order No. 331, Series of 1950, in connection with Rep. Act No. 509, for selling evaporated milk to the public at a price higher than the maximum fixed in said executive order, and on a plea of guilty freely and spontaneously made, they were convicted. But before the sentence was promulgated, both accused, having made to understand that the Court was not disposed to impose a light penalty, moved for permission to withdraw their plea of guilty. The motion having been denied and the sentence promulgated, the accused appealed, on the ground that the lower court had abused its discretion in not allowing them to withdraw their plea of guilty.

The Court held that the appeal was unmeritorious, for the Rules of Court [79] have left it to the discretion of the court to permit or not the withdrawal of a plea of guilt. The plea of guilt was not made under a misapprehension, considering that the accused were assisted by able counsel when they came to court and entered their plea.

The court, further quoted this pertinent announcement from *People v. Pangilinan* [80]:

> "x x x Every accused must realize that he cannot attach a string to his plea of guilt. Truth is immanent and immutable; it is absolute and unconditional; it cannot be affected or converted into an untruth by any extraneous influence. Therefore, appellant's position—that he is guilty

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[75] *Grant vs. Kennedy*, 18 Phil. 122.
[76] Ubaldo case, 55 Phil. 94.
[77] *People vs. Co Hap and Tan Lam*, G. R. L-4271, prom. March 31, 1952.
[78] See note 77, *supra*.
[79] Rule 114, Sec. 6, Rules of Court.
[80] 74 Phil. 451, 454.

if the penalty for the crime is recommended by the fiscal but not guilty if it is that actually imposed by the court—is untenable.

NEW TRIAL:

Newly Discovered Evidence.—A motion for new trial may be granted by the court at any time before the final entry of judgment of conviction on the ground that new and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted would probably change the judgment.[81] Accordingly, the evidence upon which the motion for new trial is based must be material and not merely cumulative or corroborative.[82] It, therefore, rests upon the sound discretion of the court whether to grant or to deny a motion for new trial.[83]

In the light of the foregoing, the Supreme Court in *People v. Hernandez* [84] denied the motion for new trial because the affidavit attached to the motion did not state such details as to give the court reasonable assurance that the evidence presented was true. Furthermore, *People v. Santos* [85] in effect held that cumulative or corroborative evidence presented at the new trial would never change the probative value of an affidavit given slight weight by the court.

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[81] Rule 117, Sec. 2, Rules of Court.
[82] *Tan vs. People*, G. R. L-4269, prom. April 27, 1951.
[83] *U. S. vs. Vizquera*, 4 Phil. 380 (See also *Tan vs. People*, note 82, *supra*).
[84] G. R. L-3391, prom. May 23, 1952.
[85] G. R. L-4189, prom. May 21, 1952.