

CRIMINAL LAW—1952

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If the very existence of criminal law is a sad commentary on human nature, the many instances of criminality which called for decision by the Supreme Court during the past year are great cause for lament. Criminal cases continue, more than any other, to occupy the attention not only of trial but also of appellate courts. They clog the dockets and weigh down the already ponderous machinery of justice. Decisions after decisions add to the great bulk of our penal jurisprudence, providing fertile ground for legal research and scholarship but little consolation for society.

The tragedy is not that criminal law has failed to grow, for it has; but that criminal law has not become less necessary.

The high incidence of criminality is nevertheless not too much of a surprise. The decisions handed down by the Supreme Court during the part terms concern violations occurring during the lean years of Japanese occupation and the early part of the post-liberation period. Morality was then at an unprecedented ebb.¹

Among the cases digested, acts of physical violence predominate.² There are a number of late treason cases.³ But the rulings

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¹ In the words of Justice Pablo, in *People v. Decena*, G. R. No. L-3713, Feb. 9, 1952:

"Durante el régimen japonés, por cualquiera cosa se mataba; la vida del hombre tenía menos importancia que la de una gallina. En público los japoneses y los espías torturaban a presuntos guerrilleros, les colgaban de algún árbol, o les decapitaban con la mayor sangre fría. El que mataba a un japonés era considerado héroe en los sectores filipinos y el que mataba a un guerrillero era alabado por los japoneses. Matar era la cosa más ordinaria. Después de la liberación sucedía otro tanto; se creía que se podía privar a uno de la vida como podía un soldado matar a un enemigo en tiempo de guerra; no se caía en la cuenta que la guerra había terminado. Los espeluznantes recuerdos de los tres años de bárbara sujeción nipona predisponían a los hombres a una acción extremada por el motivo más baladí, sin sospechar que el reinado de la ley había vuelto ya."

² Of 81 criminal law cases digested, covering the period from January to December, 1952, 40 involve parricide, murder, homicide, physical injuries, and attempts or frustrations thereof.

³ *People v. Cabellon* G. R. No. L-2125, January 12, 1952; *People v. Bautro*, G. R. No. L-4260, Jan. 21, 1952; *People v. Atilares*, G. R. No. L-2290, Jan. 14, 1952; *People*

do not all concern litigations involving wartime occurrences. Already the problems of the post-war era receive their share of attention.⁴

As in 1951, not too many new doctrines have emerged. Reiteration has been the rule and reexamination only a rare exception. In a few instances, judicial opinions have served to banish previous uncertainty. In others, further vacillations have contributed to the confusion.⁵ In the main, the Supreme Court has limited itself to the confirmation of well-settled holdings. Of necessity, therefore, this survey of criminal law decisions becomes in large part a compilation of fresh illustrations of old rules.

I. CRIMINAL LIABILITY AND PENALTIES

Intent and Motive

*Actus non facit reum nisi mens sit rea.*⁶ In general the *mens rea* is as vitally necessary for true crime as understanding is necessary for goodness. To inflict substantial punishment upon one who is morally innocent, who caused injury through reasonable mistake or pure accident, would so outrage the feelings of the community as to nullify its own enforcement.⁷ The act does not make the person a criminal unless his mind be criminal.

v. Calvento, G. R. No. L-4571, Jan. 30, 1952; *People v. Cataluña*, G. R. No. L-4071; March 12, 1952; *People v. Golez*, G. R. No. L-4271, March 31, 1952; *People v. Predilla*, G. R. No. L-4407, March 31, 1952; *People v. Lagmay*, G. R. No. L-2270, April 18, 1952; *People v. Erra*, G. R. No. L-3918, April 28, 1952; *People v. Luna*, G. R. No. L-4354, April 28, 1952; *People v. De los Reyes*, G. R. No. L-4356, May 19, 1952; *People v. Germiniano*, G. R. No. L-4449, May 26, 1952; *People v. Magbanua*, G. R. No. L-2058, July 31, 1952; *People v. Gutierrez*, G. R. No. L-4041, Aug. 30, 1952; *People v. Capistrano*, G. R. No. L-4549, Oct. 22, 1952; *People v. Alvar*, G. R. No. L-4585, Oct. 24, 1952; *People v. Dubouzet*, G. R. No. L-4739, Oct. 29, 1952; *People v. Ortega*, G. R. No. L-5194, Nov. 20, 1952; *People v. Zaide*, G. R. No. L-5362, Dec. 12, 1952.

⁴ For instance:

People v. Obena, et al., G. R. No. L-4218, May 19, 1952; *People v. Abris*, G. R. No. L-4219, May 19, 1952; *People v. Camo*, G. R. No. L-4741, May 7, 1952. The foregoing cases deal with the application of amnesty to Hukbalahaps.

⁵ Notably, on the question of whether or not lack of instruction is mitigating in treason. See: *People v. Bautro*, *supra*, note 3; *People v. Lagmay*, *supra*, note 3; *People v. Predilla*, *supra*, note 3.

⁶ Article 3, Revised Penal Code, requires deliberate intent for *delitos dolosos*.

⁷ SAYRE, PUBLIC WELFARE OFFENSES, 33 Col. L. Review, pp. 55-56, 67 (1933). But from the same source: "We are witnessing today a steadily growing stream of offenses punishable without any criminal intent whatsoever. Convictions may be had for the sales of adulterated or impure food, violations of the liquor laws, infractions of anti-narcotic acts, and many other offenses based upon conduct alone without regard to the mind or intent of the actor. * * * All criminal law is a compromise between two fundamentally conflicting interests,—that of the public which demands restraint of all who injure or menace the social well-being and that of the individual which de-

Motive should be distinguished from criminal intent. Motive is the purpose which leads a person to the doing of an act.⁸ Intent denotes the state of mind with which the act is done.⁹ When the crime is clearly proven to have been committed by a person charged therewith, the question of motive may be of little or no importance, but criminal intent is always essential to the commission of the crime.¹⁰

mands maximum liberty and freedom from interference. The history of criminal law shows a constant swinging of the pendulum so as to favor now the one, now the other, of these opposing interests. During the nineteenth century it was the individual interest which held the stage; the criminal law machinery was overburdened with innumerable checks to prevent possible injustice to individual defendants. The scales were weighted in his favor, and, as we have found to our sorrow, the public welfare often suffered. In the twentieth century came reaction. We are thinking today more of the protection of social and public interests; and coincident with the swinging of the pendulum in the field of legal administration in this direction modern criminologists are teaching that the objective underlying correctional treatment should change from the barren aim of punishing human beings to the fruitful one of protecting social interests. As a direct result of this new emphasis upon public and social, as contrasted with individual, interests, courts have naturally tended to concentrate more upon the injurious conduct of the defendant than upon the problem of individual guilt. In the case of true crimes, however, although the emphasis may shift, courts can never abandon insistence upon the evil intent as a prerequisite to criminality, partly because individual interests can never be lost sight of and partly because the real menace to social interests is the intentional, not the innocent, doer of harm. But the new emphasis being laid upon the protection of social interests fostered the growth of a specialized type of regulatory offense, involving a social injury so direct and wide-spread and a penalty so light that in such exceptional cases courts could safely override the interests of innocent individual defendants and punish without proof of any guilty intent."

Thus, intent is immaterial in statutory crimes. If it were not, the statute as a deterrent influence would be substantially worthless. It would be impossible of execution.—*U.S. v. Go Chico*, 14 Phil. 126; *U.S. v. Ah Chong*, 14 Phil. 488; *U.S. v. Siy Cong Bieng*, 30 Phil. 577; *People v. Concepcion*, 44 Phil. 126; *People v. Bayona*, 61 Phil. 181; *People v. Conosa*, 45 O. G. 3953.

Of course, deliberate intent is essentially inconsistent with the idea of criminal negligence under Article 365 of the Revised Penal Code.—*People v. Nanguil*, 43 Phil. 232; *People v. Bindoy*, 56 Phil. 16; *People v. Gons*, 54 Phil. 605; *People v. Oanis*, Vol. I O. G. (Rep.) No. 6, p. 668; *People v. Lopez*, 44 O. G. No. 2, p. 584; also Article 3, Revised Penal Code.

⁸ *U.S. v. Carlos*, 15 Phil. 47; *U.S. v. Esmund*, 27 Phil. 554; III MORAN, COMMENTS ON RULES OF COURT, p. 634.

⁹ *People v. Pacana*, 47 Phil. 48; *U.S. v. San Juan*, 25 Phil. 513; *U.S. v. Pascual*, 26 Phil. 234; *U.S. v. Elviña*, 24 Phil. 230; *U.S. v. Acebedo*, 18 Phil. 438; *U.S. v. Catolico*, 17 Phil. 505; *U.S. v. Morales*, 15 Phil. 236; *U.S. v. Ballesteros*, 25 Phil. 635; *U.S. v. Tria*, 17 Phil. 303; *People v. Sia Teb Ban*, 54 Phil. 52; *People v. Bandian*, 63 Phil. 530; *Nassiff v. People*, 40 O. G. 2280. Also *Shotwell v. Nicollet Natl. Bank*, 45 NW 842, 844, 43 Minn. 389.

¹⁰ *U.S. v. Ricafort*, 1 Phil. 173; *U.S. v. McMann*, 4 Phil. 561; *U.S. v. Balmori & Apostol*, 18 Phil. 578; *U.S. v. Valdez*, 30 Phil. 293; *People v. Taneo*, 58 Phil. 255;

Proof of motive may be most pertinent, however. The other evidence may be so weak that, without a disclosed motive, the guilt of the accused would be clouded by a reasonable doubt.¹¹

At times, therefore, an inquiry into the incentive for wrongdoing becomes essential. An attempt is then made to gauge the sufficiency of motive. Utmost care should be observed in pursuing such inquiry. Motive is inherently subjective; its sufficiency depends on the temperament and character of the actor and on various circumstances.¹² The judge should be fully aware that the extent of inducement which would lead *him* to crime may be far in excess of what would have sufficed for the accused. The Supreme Court has repeatedly so cautioned during the past year.¹³

Conspiracy

If two or more persons participate in the commission of an offense, the extent of their liability may depend on proof of conspiracy.¹⁴ If an express conspiracy can be shown, they may be regarded as principals irrespective of their actual participation in every detail of execution of the crime.¹⁵

Direct proof is not essential to show conspiracy. The existence of a community of design may be inferred from facts and circumstances which, taken together, would indicate that they are but

People v. Dalmani & Marudi, 63 Phil. 188; *People v. Ragsac*, 61 Phil. 146. Also *People v. Molineux*, 61 N. E. 286, 296, 168 N. Y. 264, 62 L.R.A. 193.

¹¹ *U.S. v. Balmori & Apostol*, *supra*, note 10; *U.S. v. Ricafort*, *supra*, note 10; *U.S. v. Valdez*, *supra*, note 10; *State v. Rathbun*, 74 Conn. 524, 51 Ad. 548, cited in III MORAN, COMMENTS ON RULES OF COURT, p. 635.

¹² Tuason, J., in *People v. Valeriano et al.*, G. R. No. L-4306, April 25, 1952: "With reference to Valeriano's motives, what the witnesses said regarding the quarrel between this defendant and the deceased sound too trifle to drive an ordinary man to take human life. But as the learned trial judge said, 'Our criminal jurisprudence is replete with examples of cases wherein for a much lesser cause life had been taken.'"

To which Justice Pablo adds, in *People v. Decena*, *supra*, note 1:

"Un abogado y otra persona en las mismas condiciones pueden creer que la simple negativa de dar cocos a los acusados no seria motivo suficiente para cometer un asesinato; pero otras personas en diferentes circunstancias matan por el motivo más insignificante."

¹³ *Ibid.*

¹⁴ Article 8, Revised Penal Code.

¹⁵ *U.S. v. Infante and Barretto*, 36 Phil. 149; *People v. Carbonel*, 48 Phil. 868; *People v. Dayug and Bannaisan*, 49 Phil. 423; *People v. Chan Lin Wat*, 50 Phil. 182; *People v. Caringan*, 61 Phil. 416; *People v. Cu Unjieng*, 61 Phil. 236; *People v. Daos*, 60 Phil. 143; *People v. Masin*, 64 Phil. 757; *People v. Go*, G. R. No. L-1527, Feb. 27, 1951; *People v. Bersamin*, G. R. No. L-3097, March 5, 1951; *People v. Valeriano*, G. R. No. L-2159, September 19, 1951; *People v. De la Cruz*, G. R. No. L-3013, Jan. 9, 1951.

parts of the whole scheme.¹⁶ Thus, in *People v. Mendoza*,¹⁷ the court encountered no difficulty in ascertaining the collective liability of the defendants, it appearing that they acted by previous agreement not only immediately preceding the attack but even from a neighboring house where they gathered before sallying forth to carry out their evil plan. In *People v. Camo*,¹⁸ where a man was killed while seated at supper by a bullet which came from outside the house, three witnesses claimed to have seen the defendant and two others in the victim's front yard shortly before and after the shooting. The natural inference in the absence of a plausible explanation was that they were privy to a conspiracy to do away with the deceased.

Concert of action is further illustrated in *People v. Sasota*,¹⁹ where the accused confederated from the time they lured the victim from his home and tied his hands, until they reached a lake where they placed him in a banca and took turns maltreating him. In *People v. Aagsalona*,²⁰ conspiracy was inferred from the circumstances surrounding the waylaying of the victim, viewed in connection with previous threats made by two of the defendants and the long-standing animosity between the accused and the deceased.

*People v. Bernal*²¹ reiterates the rule that in order to infer conspiracy, it is not enough that the person supposedly engaged or connected with the same be present when the crime was committed, even though he might have been interested in its commission.²² The prosecution sought to establish the complicity of the defendant in the murder of one Pilonas. It appeared, however, that the accused merely accompanied a military police patrol as guide, on the occasion of the apprehension and killing of the victim by order of the sergeant in command of the patrol. The mere fact that the accused had two previous altercations with the deceased and that his report of the incidents had been the cause for the dispatch of the patrol, does not suffice to establish his liability as a co-conspirator. The

¹⁶ *People v. Mandagay and Taguiawan*, 46 Phil. 838; *People v. Manalo*, 52 Phil. 848; *People v. Diokno and Diokno*, 63 Phil. 601; *People v. Bordador and Bordador*, 63 Phil. 305; *People v. Kalalo*, 59 Phil. 715; *People v. Enriquez*, 58 Phil. 536; *People v. San Luis*, G. R. No. L-2365, May 29, 1950; *People v. Macul*, G. R. No. L-2823, May 19, 1950; also *People v. Remalante*, G. R. No. L-3513, Sept. 26, 1952, Commented on in *Philippine Law Journal*, Vol 27, No. 6, p. 916.

¹⁷ G. R. Nos. L-4146 and 4147, March 28, 1952.

¹⁸ G. R. No. L-4740, Feb. 14, 1952.

¹⁹ G. R. No. L-3544, April 18, 1952.

²⁰ G. R. No. L-3959, Nov. 29, 1952.

²¹ G. R. No. L-4409, July 14, 1952.

²² *People v. Samano et al.*, 43 O. G. No. 6, p. 2043; *People v. Capute Manzo* (CA) 44 O. G., p. 2295.

actuations of the accused indicate that he was quite content to leave the case with the authorities. To fix collective liability, it is essential to establish a logical relation between the commission of the crime and the supposed conspirators and a closer and more intimate connection between and among the latter, such as by their conduct or overt acts committed in pursuance of the common criminal design.

Upon proof of conspiracy, the act of one becomes the act of all. Each of the conspirators becomes liable for the acts of the others, if such acts are the result of the common plan or community of objectives.²³ Where, as a result of the conspiracy, three persons were killed, each of the conspirators must respond as co-principal for every one of the three killings, and be sentenced accordingly.²⁴

If there is no express nor implied concert, nor unity of purpose, the liability of the participants will be individual and not collective.²⁵

Justifying Circumstances

1.—*Self-Defense.*

Once the defendant in a criminal case has admitted that he killed a human being, the burden is on him to establish the presence of any circumstance which may relieve him from responsibility. Self-defense²⁶ is an affirmative allegation which the defendant must prove with certainty. Where the accused fails to establish the presence of the essential requisities for a valid plea with clear and convincing evidence, conviction will lie.²⁷

With few exceptions, cases involving self-defense turn on factual issues: The conduct of the accused following the incident is generally a fair index to the trustworthiness of his allegations of self-defense. Thus, in *People v. Minda*,²⁸ the claim of self-defense was deemed unworthy of credence because the defendant failed to produce as evidence the dagger which the deceased allegedly wielded at the moment of aggression, considered in the light of the improbability of de-

²³ *Supra*, note 15; also *People v. Aagsalona*, *supra*, note 20; *People v. Francisco*, G. R. No. L-4196, Nov. 29, 1952.

²⁴ *People v. Masani*, G. R. No. L-3973, Sept. 18, 1952.

²⁵ *U.S. v. Magcomot*, 13 Phil. 386; *U.S. v. Macuti*, 26 Phil. 170; *U. S. v. Locson*, 20 Phil. 516; *U.S. v. Abiog and Abiog*, 37 Phil. 137; *People v. Tamayo*, 44 Phil 38; *People v. Caballero*, 53 Phil. 585; *People v. Ortiz and Zausa*, 55 Phil. 993; *U.S. v. Tumayao*, 56 Phil. 587; *People v. Ibañez*, 44 O. G. 30.

²⁶ Article 11 (1), Revised Penal Code.

²⁷ *People v. Tolentino*, 54 Phil. 77; *People v. Apolinar*, 58 Phil. 586; *People v. Gimena*, 59 Phil. 509; *People v. Berio*, 59 Phil. 533; *People v. Jorge*, 40 O.G. (148) No. 23, p. 22; *People v. Ansayon*, 42 O.G. 1238; *People v. Bauden*, 43 O.G. No. 6, p. 2020; *People v. Bakil*, 44 O. G. No. 1, p. 102.

²⁸ G. R. No. L-4212, March 27, 1952.

fendant's testimony relative to the encounter, his menacing attitude after the occurrence, and his failure to voluntarily surrender to the authorities.

2.—*Obedience to the Order of a Superior.*

People v. Bernal,²⁹ previously cited, reaffirms the ruling that to relieve of criminal responsibility the order of the superior must be lawful.³⁰ A command to execute a detainee is clearly unwarranted.

Mitigating Circumstances

1.—*Minority.*

Article 80³¹ of the Revised Penal Code provides for the suspension of sentence of minor delinquents. Prior to Republic Act No. 47³² offenders 18 years of age or younger were entitled to such suspension. The said Act reduced the age limit to 16. For some time, doubt prevailed respecting the effect of the amendment on the privileged mitigating circumstance of minority. In some quarters, the belief was entertained that the age limit for the mitigating circumstance had likewise been impliedly reduced from 18 to 16. This opinion has been rejected by the Supreme Court in a line of decided cases.³³ The ruling receives added support from *People v. Capistra-*

²⁹ *Supra*, note 21.

³⁰ *U.S. v. Cuison*, 20 Phil. 433; *People v. Wilson and Dolores*, 52 Phil. 919; *People v. Barruga*, 54 Phil. 247; *People v. Moreno*, 43 O.G. 4644; *People v. Margen et al.*, G. R. No. L-2681, March 30, 1950; *People v. Bernadex*, G. R. No. L-572, June 8, 1948; *People v. Saludino*, G. R. No. L-3634, May 30, 1951.

³¹ Article 80 of the Revised Penal Code as amended by Republic Act No. 47, provides in part:

"*Suspension of sentence of minor delinquents.*—Whenever a minor of either sex, under sixteen years of age at the date of the commission of a grave or less grave felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private benevolent or charitable institution, established under the law for the care, correction or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of any other responsible person in any other place subject to visitation and supervision by the Director of Public Welfare or any of his agents or representatives, if there be any, or otherwise by the superintendent of public schools or his representatives, subject to such conditions as are prescribed hereinbelow until such minor shall have reached his majority or for such less period as the court may deem proper."

³² Effective October 3, 1946.

³³ *People v. Garcia*, G. R. No. L-2873, Feb. 28, 1950; *People v. Tapang*, G. R. No. L-3345, May 18, 1951; *People v. Roque*, G. R. No. L-3513, Sept. 29, 1951.

*no*³⁴ and *People v. Fulgencio*.³⁵ 18 years remains the limitation with reference to minority as a mitigating circumstance.

The age of the offender at the time of the perpetration of the crime controls. Therefore, though the accused be over 18 years of age at the time of the trial, having been only between 9 to 15 years old when the offense was committed, he is entitled to a penalty of at least two degrees lower.³⁶

2.—*Passion or Obfuscation.*

Passion or obfuscation³⁷ may be considered to lessen the penalty when proofs disclose causes naturally tending to produce such powerful excitement as to overcome reason and self-control.³⁸ The passion should be attributable to some act of the offended party, or the circumstance will not be taken to extenuate.³⁹ Almost every crime

³⁴ *Supra*, note 3.

³⁵ G. R. No. L-5370, Nov. 10, 1952.

³⁶ *Supra*, note 34; Article 68, Revised Penal Code.

³⁷ Article 13 (6), Revised Penal Code.

³⁸ *U.S. v. Pilares*, 18 Phil. 87; *People v. Alanguilang*, 52 Phil. 663.

³⁹ *U.S. v. Esmedia*, 17 Phil. 260:

"As we have said, these two accused killed this old man, Ciriaco, while laboring under great excitement and in the heat of passion, and it might be insisted that under these circumstances they should be given the benefit of No. 7 of Article 9 of the Penal Code (i. e., No. 6 of Article 13 of the Revised Penal Code), as an extenuating circumstance. This provision should be applied to reduce the penalty in cases where the provocation which caused the heated passion was made by the injured party. In the case at bar the provocation was made by Santiago and not Ciriaco, as Ciriaco arrived after the fight had terminated and there was then no provocation running from the old man, Ciriaco, to these accused . . . In other words, before this provision can be applied as an extenuating circumstance it is necessary, as we have said, that the person injured should have executed the act producing *arrebato y obcecación*. It can not be applied when an assault is made upon a person who had taken no part in the quarrel and had not in any manner provoked the accused. (Decision of the supreme court of Spain dated Oct. 17, 1904, published in Off. Gaz. on Dec. 23 following decision of the supreme court of Spain dated Jan. 12, 1894; *White v. State*, 44 Tex. Cr. Rep., 346; *State v. Jackson*, 45 La. Ann., 1031; *State v. Vinso*, 171 Mo., 576.)"

Passion or obfuscation is not, therefore, unlike the mitigating circumstances of provocation or threat (Article 13, 4, Revised Penal Code) and immediate vindication of a grave offense (Article 13, 5, Revised Penal Code), which must be related to some doing of the offended party.

It may seem unjust that a person acting under the impulse of uncontrollable rage, when not produced by the victim, should be held accountable to the same extent as one acting with full deliberation. But in the exceptional case where cold-bloodedness is evident, some aggravating circumstance, like evident premeditation (Articles 14, 13, Article 248, 5, Revised Penal Code) may usually be proved to increase the penalty.

of violence is induced by some strong impulse. How many murderers, for instance, may be found to have killed except under overpowering excitement? The passion or obfuscation that extenuates, consequently, should be one brought about by the victim himself. Not only the condition of mind of the assailant but also the nature of the stimulus to passion and the direction from which it came, are of legal significance.

In *People v. Bernal*,⁴⁰ however, the obfuscation was not produced by the acts of the offended party. In that case, the mitigating circumstance of passion and obfuscation was accorded a military policeman who obeyed the unlawful order of his superior to kill a certain Pilonas. The court observed that the assertions and declarations of the superior had led the former to believe that Pilonas had previously killed a member of the military police—a comrade in arms—a fact which may have aroused in the subordinate a feeling of resentment and prompted him to readily and without question follow the order to kill.

It would thus appear that the statements of a fellow offender, and not any act imputable to the victim, had given rise to the obfuscation. True, the defendant is then no less blinded by passion. Almost every killer for that matter is similarly deprived of judgment. Deprivation of life generally involves obfuscation, and this is a psychological factor not overlooked in the legislative determination of the penalty to be imposed for such crimes. The fact remains that this is not the passion which should mitigate in law. In the ultimate analysis, the inquiry should not only be as to the degree of obfuscation,⁴¹ but also as to the cause thereof.

The character of *the passion itself* is likewise important. There is a requirement that the mitigating circumstance be founded only on lawful sentiments, not such as arise from vicious, unworthy, and immoral passions.⁴² An early case on the point concerns a concubine who refused to resume relations with her lover, and the lover for that reason shot her to death.⁴³ Passion or obfuscation could not thus mitigate, as being of an illegitimate nature. Subsequent cases, however, have tended to distinguish and remove instances from the operation of the rule.⁴⁴ Where an accused, in the heat of pas-

⁴⁰ *Supra*, note 21.

⁴¹ *Supra*, note 38.

⁴² *U.S. v. Hicks*, 14 Phil. 217; *People v. Silang Cruz*, 53 Phil. 635; *People v. Yuman*, 61 Phil. 786; *U.S. v. De la Cruz*, 22 Phil. 429; *U.S. v. Monteroso and Monteroso*, 33 Phil. 325; *People v. Sanica*, 46 O. G. 98.

⁴³ *U.S. v. Hicks*, *ibid.*

⁴⁴ *U.S. v. De la Cruz*, *supra*, note 42; *U.S. v. Monteroso and Monteroso*, *supra*, note 42; also *U.S. v. Tubban*, 27 Phil. 434.

sion, killed his common-law wife upon surprising her in carnal intercourse with a mutual acquaintance, his criminal responsibility was lessened.⁴⁵ There is a difference between anger engendered by the refusal of a woman to continue to live in illicit relations, which she had a perfect right to do; and the passion induced by the sudden revelation of betrayal by one beloved, even if that love should be without the sanction of law. In the latter case, passion or obfuscation extenuates.

The Supreme Court, may, therefore, have been too harsh in refusing to accord the benefit of this mitigating circumstance to the defendant in *People v. Olgado*.⁴⁶ It seems quite clear that the defendants in this prosecution for double murder and frustrated murder were provoked on account of the indecent proposals made by the victims to certain women, among them the mistress of the accused Olgado. While according the mitigating circumstance to one of the defendants who acted in vindication of his wife, the Court refused it as to Olgado, "because his relations with Rosario Rianzales were illegitimate." The mere fact, however, that the offended woman was the mistress of the accused in no wise justified the indecent and lascivious conduct of the deceased; and, under the circumstances, the indignation and resentment it aroused in the breast of the defendant was the natural, legitimate, and by no means censurable outcome of the incident.⁴⁷ Passion or obfuscation should have been appreciated in his favor.

3.—*Voluntary Surrender.*

Voluntary surrender to persons in authority or their agents⁴⁸ was taken as mitigating in *People v. Olgado*,⁴⁹ *People v. Almazan*,⁵⁰ and *People v. Villapa*.⁵¹

4.—*Performance of Righteous Actions.*—

The performance of righteous actions, no matter how meritorious they may be, is neither justifying, exempting, nor mitigating in the commission of wrongs. Thus, though the defendant may have saved the lives of a thousand and one persons, if he had caused the killing of a single human being to give aid and comfort to the enemy,

⁴⁵ *U.S. v. De la Cruz, ibid.*

⁴⁶ G. R. No. L-4406, March 31, 1952.

⁴⁷ *U.S. v. Monteroso and Monteroso, supra*, note 42, at p. 326.

⁴⁸ Article 13 (7), Revised Penal Code.

⁴⁹ *Supra*, note 46.

⁵⁰ G. R. No. L-4447, April 18, 1952.

⁵¹ G. R. No. L-4259, April 30, 1952.

he is, nonetheless, guilty of treason.⁵² This rule, now firmly settled, has been reaffirmed in *People v. Cataluña*,⁵³ *People v. Golez*,⁵⁴ *People v. Dubouzet*,⁵⁵ and *People v. Germiniano*.⁵⁶

Aggravating Circumstances

1.—*Nighttime, Uninhabited Place, or Band.*

*People v. Santos*⁵⁷ left undecided the question of whether or not nocturnity, uninhabited place, and band⁵⁸ should be regarded separately or as a single aggravating circumstance when they concur in connection with the same offense. There is an intimation, nonetheless, that the Court may adhere to Spanish precedents. The Supreme Court of Spain⁵⁹ has ruled that the circumstances may be separately considered when the case so warrants, while not entirely rejecting an earlier holding⁶⁰ that as a general rule they should be regarded as one.

2.—*Evident Premeditation.*

There is premeditation⁶¹ when the crime was planned by the guilty party, when he prepared beforehand the means which he deemed suitable for carrying it into execution, and when he had sufficient time dispassionately to consider and accept the consequences. The accused should have the benefit of an opportunity to think serenely and deliberate on the consequences of what he planned to do,

⁵² *People v. Victoria*, 44 O.G. 2230.

⁵³ *Supra*, note 3.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ G. R. No. L-4189 May 21 1952.

⁵⁸ Article 14 (6), Revised Penal Code; See also *People v. Bernardino et al.*, G. R. No. L-5038, November 25, 1952.

⁵⁹ Decision of the supreme court of Spain, dated April 27, 1897:

"Considerando que, si bien la circunstancia de la nocturnidad y la del despoblado, cuando concurren juntas en la comisión de un delito, vienen a ser como accidentes de una sola agravante, como tiene declarado este Tribunal, esto no constituye una regla tan absoluta y tan general que excluya la posibilidad de ser apreciadas separadamente cuando, como ocurre en el caso actual, sus elementos se perciben distintamente y han podido subsistir con independencia, determinando un grado mayor de perversidad; de modo que, al estimar la sentencia que constituyen dos circunstancias, no ha cometido el error de derecho que se le imputa, aparte de que, aun aceptado el criterio opuesto, no afecta en nada a la esencia del fallo dictado etc., (2 Viada 274-275)."

⁶⁰ Decision of the supreme court of Spain of April 5, 1884

⁶¹ Article 14 (13), Revised Penal Code.

an interval long enough for his conscience and better judgment to overcome his evil desire and scheme.⁶²

Where, immediately following a fight occurring in school premises, two of the co-defendants stopped at the house of a third co-defendant to enlist the latter's aid and to consolidate their forces, and thereafter proceeded to the victim's home, evident premeditation was not taken into consideration. The interval between the initial encounter and the killing was so short that there was not time or sufficient period for meditation and reflection.⁶³

3.—*Dwelling.*

In the same case of *People v. Mendoza*,⁶⁴ though the killing was done in the dwelling of the person attacked, the court refused to take account of the aggravating circumstance.⁶⁵ Attention was paid to the rather unusual circumstances of the case. The attack in the house of the victim should be associated with the precedent altercation in the school premises. In effect, the attack really began in the school grounds; and the assault in the dwelling merely constituted a continuation thereof. It may also be noted that the Supreme Court has previously ruled that the place of commission of the crime must be specifically sought for dwelling to be considered aggravating.⁶⁶

4.—*Abuse of Superior Strength and Aid of Armed Men.*

The evident disproportion between the relative strength of the aggressors and the victims may result in the aggravating circumstance of abuse of superior strength.⁶⁷ In *People v. Villapa*,⁶⁸ where several men armed with rifles and revolvers took the deceased from his house and shot him, the accused were held liable for murder, the

⁶² *U.S. v. Cornejo*, 28 Phil. 457; also *U.S. v. Gil*, 13 Phil. 531; *U.S. v. Bapatan and Kamihan*, 34 Phil. 695; *U.S. v. Cunanan*, 37 Phil. 777; *People v. Bangug*, 52 Phil. 87; *People v. Durante*, 53 Phil. 363; *People v. Leaño*, 36 O.G. 1120; *People v. Yturriaga*, G. R. No. L-2116, May 31, 1950.

⁶³ *People v. Mendoza*, G. R. No. L-4146 and 4147, March 28, 1952.

⁶⁴ *Ibid.*

⁶⁵ Article 14 (3), Revised Penal Code.

⁶⁶ *People v. Guhiting*, G. R. No. L-2843, May 14, 1951; discussed in the Annual Survey of 1951 Decisions, under CRIMINAL LAW: CRIMINAL LIABILITY AND SPECIFIC CRIMES, by Florentino P. Feliciano and Antonio M. Ceniza, PHILIPPINE LAW JOURNAL, Vol. 27, No. 2, p. 283.

⁶⁷ Article 14 (15), Revised Penal Code; *U.S. v. Devela*, 3 Phil. 625; *U.S. v. Rodríguez*, 19 Phil. 150; *People v. Diokno and Diokno*, 63 Phil. 601; *U.S. v. Dasal*, 3 Phil. 6; *U.S. v. Baul*, 39 Phil. 846; *People v. Fernando*, 43 O. G. 1717; *People v. Bernardino et al.*, *supra*, note 58.

⁶⁸ *Supra*, note 51.

killing being qualified by the attendance of superior strength and aid of armed men. In *People v. Mendoza*,⁶⁹ the three appellants were held to have taken advantage of superior strength when they simultaneously broke into the dwelling of and assaulted the offended party.

5.—*Treachery.*

The absence of an opportunity for retaliation furnishes a reliable test for the presence of *alevosia*,⁷⁰ whether taken as a qualifying or as a generic aggravating circumstance.⁷¹ The standard may rest uncertainly on individual appreciation in borderline cases. However, the final outcome of controversies with bearing on this point decided by the Supreme Court during the past year would not have been too difficult to foretell.

In *People v. Kamantigue*,⁷² the victim was killed while lying on the floor and begging not to be shot. In *People v. Hernandez*,⁷³ the deceased was bound before being stabbed and clubbed. In *People v. Camo*,⁷⁴ the offended party was unsuspectingly eating supper when shot. In *People v. Gerardo*⁷⁵ the assault came while the victim was responding to a call of nature; in *People v. Cabeda*,⁷⁶ while he had his back turned, unaware of the impending attack. In *People v. Felipe*,⁷⁷ and *People v. Almazan*,⁷⁸ though the attack was frontal, the shooting was sudden and without warning. In each case, a finding of treachery was easily arrived at.⁷⁹

Aggravating and Mitigating Circumstances in Treason

In the imposition of penalties in treason cases, the Supreme Court has not followed strictly the rules of the Revised Penal Code regarding the presence or absence of aggravating or mitigating cir-

⁶⁹ *Supra*, note 63.

⁷⁰ Article 14 (16), Revised Penal Code; see Annual Survey of 1951 Decisions, *op. cit.*, note 66, at p. 281.

⁷¹ *Ibid*; Article 248 (1), Revised Penal Code; hence, nocturnity and abuse of superior strength, being utilized for the same end of eliminating risk, are deemed to inhere in treachery.—*People v. Camo*, *supra*, note 18; *People v. Olgado*, *supra*, note 46.

⁷² G. R. No. L-4272, Feb. 25, 1952.

⁷³ G. R. No. L-3391, May 23, 1952.

⁷⁴ *Supra*, note 18.

⁷⁵ G. R. No. L-4181, May 28, 1952.

⁷⁶ G. R. No. L-4411, Feb. 8, 1952.

⁷⁷ G. R. No. L-5619, Feb. 25, 1952.

⁷⁸ G. R. No. L-4447, April 18, 1952.

⁷⁹ See also *People v. Esmir*, G. R. No. L-4608, Dec. 29, 1952. *People v. Bernardino*, *supra*, note 58.

cumstances.⁸⁰ Instead, consideration is had of the gravity or seriousness of the acts of treason established. Where the accused took part in the killing of persons apprehended by the Japanese forces through his efforts, the penalty of reclusion perpetua or even death has generally been imposed. Where the participation of the accused, however, consisted merely in accompanying Japanese patrols and helping in the arrest of guerrilla suspects, the minimum penalty of reclusion temporal has been accorded, as a rule.⁸¹

People v. Bautro,⁸² fits the pattern of usual treason cases. The accused was shown to have cooperated with the Japanese in the arrest and subsequent slaughter of about 200 barrio inhabitants. Despite the presence of a mitigating circumstance, the court refused to apply the penalty in its minimum period, observing that "this is offset by the seriousness of the acts of the accused in taking part in the massacre of a great number of victims, he himself personally killing some of them." It should be observed that the Revised Penal Code does not classify severity of the act as an aggravating circumstance, and it would ordinarily be error for the court to refuse the application of a mitigating circumstance on such ground.

On the other hand, in *People v. Ortega*,⁸³ where the defendant did not take part in the killing or torture of the persons apprehended through his efforts, the imposition of the penalty of reclusion temporal was deemed sufficient to punish his treasonable acts.

Alternative Circumstances

1.—*Lack of Instruction.*

Where one's educational attainment is made use of to effect an evil end, the alternative circumstance of lack of instruction is aggravating.⁸⁴ More usually, however, lack of instruction has served to mitigate.

No other circumstance has been cause for so much judicial inconsistency.⁸⁵ Crimes against property have been extenuated by lack

⁸⁰ Which is not the same as asserting that the usual aggravating and mitigating circumstances have entirely been disregarded in treason. Thus, treachery, aid of armed men, and cruelty have been considered aggravating in treason (*People v. Victoria*, *supra*, note 52); as well as premeditation and superior strength (*People v. Racaza*, 46 O.G. 2590). Minority has been considered as mitigating (*People v. Nuñez*, G. R. No. L-2321, Jan. 31, 1950).

⁸¹ *People v. Ortega*, *supra*, note 3; see also *People v. Paar*, G. R. No. L-2318, March 31, 1950; *People v. Barrameda*, G. R. No. L-2584, March 25, 1950.

⁸² *Supra*, note 3.

⁸³ *Ibid*; also *People v. Zaide*, *supra*, note 3.

⁸⁴ Article 15, Revised Penal Code; See CRIMINAL LAW, by Ambrosio Padilla, p. 16.

⁸⁵ Judicial clarification is needed even in connection with the application of the alternative circumstance to crimes against persons. Undoubtedly, lack of education

of education in certain instances,⁸⁶ though there are decisions holding that they should not be.⁸⁷ Lack of instruction has been considered in crimes against chastity;⁸⁸ but other rulings have differed.⁸⁹

The same fickleness has been manifested in connection with crimes against national security. Justice Paras has observed that lack of instruction cannot be considered in treason because love of country is a natural feeling of every citizen, however unlettered he may be.⁹⁰ But the circumstance has been taken into account in several treason cases.⁹¹

It was to be hoped that 1952 would bring some order out of the chaos. But judicial groping is still very much in evidence. The latest cases have been decided both one way⁹² and the other.⁹³ The fog has not been dissipated.

Each case is obviously a law unto itself. There is a discernible attempt at individualization. The details and circumstances of the felony are subjected to perusal; and if examination discloses the offense, in the light of the facts, to have been attended with such perversity that education could not have been relevant to nor altered the wrongdoer's conception of the impropriety of the act, lack of instruction will not mitigate. But the lines have not been too well drawn

may mitigate in this class of crimes. However, when confronted with particular cases, the courts have not been too consistent in allowing the circumstance. It is difficult to tell just when lack of instruction will mitigate. Then, the problem is different. What degree of instruction or education is required that one may see the wrongfulness of any particular felony?

In this connection see ANNUAL SURVEY OF 1951 DECISIONS, op. cit., note 66, at 287.

⁸⁶ *U.S. v. Maqui*, 27 Phil. 97; *U.S. v. Reguera and Asuategui*, 41 Phil. 506; *People v. Ramos*, 62 Phil. 339; *U.S. v. Antonio*, 31 Phil. 205; *People v. Yco*, 40 O.G. 12th supp. 267.

⁸⁷ *People v. De la Cruz*, 43 O.G. 3100; *People v. Melendrez*, 59 Phil. 154; *U.S. v. Pascual*, 9 Phil. 491; *U.S. v. Lumanlan*, 31 Phil. 486.

⁸⁸ *U.S. v. Luna*, 4 Phil. 269; *Gali v. Sahungan*, 2 Phil. 352; *U.S. v. Banzon*, 1 Phil. 435; *U.S. v. Estorico*, 35 Phil. 410.

⁸⁹ *U.S. v. Ramirez*, 39 Phil. 738; *U.S. v. Gamilla*, 49 Phil. 234; *Molesa v. Dir. of Prisons*, 59 Phil. 406; *U.S. v. Muera*, 39 Phil. 440; *U.S. v. Borjal*, 9 Phil. 140; *U.S. v. Manzano*, 32 Phil. 338.

⁹⁰ *People v. Lansanas*, 46 O.G. 1531; *People v. Menor*, 47 O.G. 3532; *People v. Magsino*, G. R. No. L-3550, Dec. 27, 1950; *People v. Alba*, G. R. No. L-2799, April 27, 1951; *People v. Gorospe*, G. R. No. L-2317, Dec. 12, 1951.

⁹¹ *People v. Lansanas*, 46 O.G. 1531; *People v. Basilio*, G. R. No. L-2238, May 11, 1950; *People v. Santiago*, G. R. No. L-2239, March 30, 1950; *People v. Cruz*, G. R. No. L-2236, May 16, 1951.

⁹² Not mitigating: *People v. Lagmay*, *supra*, note 3. The Supreme Court appears loath to mitigate where the accused participated in massacres.

⁹³ Mitigating: *People v. Bautro*, *supra*, note 3; *People v. Predilla*, *supra*, note 3.

and arbitrariness has been the observed result. Blind justice is at the wheel and certainty must take a back seat.

2.—*Intoxication.*

The intoxication of the offender is taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of drunkenness, provided the same is not habitual or subsequent to the plan to commit said felony, in the latter case, intoxication being considered aggravating.⁹⁴ Therefore, in *People v. Hernandez*,⁹⁵ where, after plotting the death of the offended party, the accused drank wine to embolden him in carrying out his scheme, intoxication was taken to increase the penal liability.

Application of Penalties.

Literally interpreted, Article 80⁹⁶ of the Revised Penal Code would seem to require the accused availing himself of its benefits to be 16 years of age or less "at the time of the commission of the offense." What if the accused were over 16 years old at the time of trial though below 16 at the accomplishment of the crime? Would his sentence then be suspended and the accused committed to a reformatory?

A reasonable construction of the law would more properly require the age to be ascertained as of the time of trial. Article 80 should not be availed of to suspend further proceedings, because the confinement prescribed therein is only "until such minor shall have reached his majority or for such less period as the court may deem proper." Moreover, the rationale of the law would seem to indicate as much. The provision suspends the judgment of conviction of a minor delinquent to prevent his association with matured and hardened criminals, so that the minor delinquent is sent to a benevolent or charitable institution for the purpose of correction. The delinquent who may have grown into an adult at the time of conviction does not come within the reason of the law.⁹⁷

People v. Capistrano,⁹⁸ is a ruling in point. The accused being already past the age limit at the time of trial, though below age at the time of commission, cannot invoke Article 80 in his favor. This should not, however, prevent the application of the privileged mitigating circumstance of minority.

⁹⁴ *Supra*, note 84.

⁹⁵ *Supra*, note 73.

⁹⁶ *Supra*, note 31.

⁹⁷ *Op. cit.*, note 84, at p. 327.

⁹⁸ *Supra*, note 34.

Successive service of sentences is provided for in Article 70⁹⁹ of the Revised Penal Code. It is error for the court to sentence the accused found guilty on a charge of triple murder to a single penalty of reclusion perpetua. Inasmuch as, in *People v. Olgado*,¹⁰⁰ the combined attack of the defendants resulted in the killing of three persons, they should be sentenced to suffer said penalty for each of the three victims, subject to the limitation as to the maximum period to be served, prescribed by said Article 70.

Article 64 of the Revised Penal Code provides that in the computation of penalties containing three periods, when there are two or more mitigating and no aggravating circumstances present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem proper, according to the number and nature of such circumstances. This rule is not applicable where the law prescribes a single indivisible penalty.¹⁰¹

The same is true where the penalty is composed of two indivisible penalties,¹⁰² for irrespective of the number of mitigating circumstances and the absence of aggravating circumstances, the lesser indivisible penalty will still be imposed. Since the same penalty would be arrived at even when there is no mitigating circumstance, the question may be posed as to whether or not the accused then has a right to insist that the court should note the presence of an attending mitigating circumstance. *People v. Belarmino*,¹⁰³ would seem to indicate an affirmative reply. While in such case, the mitigating circumstance may not serve to further lighten the penalty imposed, it is not entirely without purpose. Its presence may be relevant and important in case of the exercise of executive clemency in the course

⁹⁹ Which provides in part:

"Article 70. *Successive service of sentences.*—When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

"In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible; should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out . . .

"Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period.

"Such maximum period shall in no case exceed forty years . . ."

¹⁰⁰ *Supra*, note 46.

¹⁰¹ Article 63, Revised Penal Code.

¹⁰² *Ibid.*

¹⁰³ G. R. No. L-4429, April 18, 1952; see also Section 2 (a), Rule 116, Rules of Court.

of defendant's service of his prison term. The accused may be prejudiced should the mitigating circumstance be overlooked.

Complex Crime

Article 48 of the Revised Penal Code provides that complex crimes shall be punished with the penalty for the more serious crime, in its maximum period. But Article 48 is not applicable to crimes like robbery with rape, which the law defines as single indivisible felonies punishable by distinct penalties.¹⁰⁴

In *People v. De la Cruz*,¹⁰⁵ the defendants were convicted of attempted robbery committed on the occasion of double homicide and less serious physical injuries. The trial court erroneously cited Article 294, paragraph 1 in relation to Article 48, applying the penalty for homicide, the more serious crime, in its maximum period. In modifying the judgment, the appellate court indicated that attempted robbery with homicide is specifically provided for in Article 297 of the Revised Penal Code, thus excluding Article 48 from operation.

Extinction of Criminal Liability

One of the modes for the total extinction of criminal liability is by amnesty, which extinguishes the penalty and its effects.¹⁰⁶ During the past year, several attempts were made before the Supreme Court to claim the benefits of two amnesty proclamations.

In *People v. Kamantigue*,¹⁰⁷ the court refused to extend amnesty under Proclamation No. 8 to the defendant, an ex-guerrilla, it appearing that his acts had nothing to do with the furtherance of the resistance movement. The killing grew out of a quarrel in a gambling house, brought about by a remark which the victim resented.

Huk Amnesty Proclamation No. 76 was invoked in *People v. Camo*,¹⁰⁸ but without success, inasmuch as the defendant was already in jail when the Huk organization in the district came into being, such that he could not have been a member thereof; furthermore, the crime was committed for personal reasons and not in aid of the dissident cause. The proclamation, however, served to absolve from responsibility the defendants in *People v. Obena*,¹⁰⁹ and *People v. Abris*,¹¹⁰ where the execution of a government spy by order of the

¹⁰⁴ *People v. Guzman*, 40 O. G. (7S) No. 11, p. 170.

¹⁰⁵ G. R. No. L- 4532, May 26, 1952.

¹⁰⁶ Article 89 (3), Revised Penal Code.

¹⁰⁷ *Supra*, note 72.

¹⁰⁸ *Supra*, note 18.

¹⁰⁹ *Supra*, note 4.

¹¹⁰ *Ibid.*

Huk command was deemed incidental to and in furtherance of rebellion and sedition, and covered by its provisions.

II. SPECIFIC CRIMES

Crimes Against National Security

A. TREASON—

In 1952, cases on treason, arising out of the Japanese Occupation, were still being decided by the Supreme Court. Times have changed since 1945 and many things have been forgotten, but those who in their country's darkest hour forgot her, are remembered and made to pay the penalty for their indiscretion.

(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 them aid and comfort.¹¹¹ The Supreme Court has ruled to the effect that in treason cases the rules on aggravating and mitigating circumstances are not to be strictly followed in the imposition of the penalty but rather the gravity or seriousness of the acts of treason established.¹¹²

The elements of adherence to the enemies and giving them aid and comfort have to concur.¹¹³ In the case of *People v. Jose Cataluna*,¹¹⁴ the accused organized an association known as the "Invisible Youth of Gamu" whose members were ordered by him to guard the local Japanese garrison and to go on patrol with Japanese soldiers in

¹¹¹ Art. 114. *Treason*. Any person who, owing allegiance to the United States or the Government of the Philippine Islands, not being a foreigner, levies war upon them or adheres to their enemies, giving them aid and comfort in the Philippine Islands or elsewhere, shall be punished by *reclusion temporal* to death and shall pay a fine not to exceed ₱20,000.

No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on confession of the accused in open court.

Upon the inauguration of the Philippine Republic, the term "United States" may be deemed repealed (Padilla op. cit. 1951 Ed. Note I, p. 459). Inasmuch however as the cases considered here are concerned with acts committed before the inauguration of the Republic, the term should not be overlooked.

¹¹² Where the accused has taken part in the killing and torture of persons apprehended by the Japanese soldiers through him, we impose the penalty of *reclusion perpetua* or death. Where, the participation of the accused consisted merely in accompanying Japanese patrols and helping in the arrest of guerrilla suspects, we generally impose the minimum penalty which is *reclusion temporal*, which should be imposed on the defendant here. (*People v. Ortega*, G. R. No. L-5194, Prom. Nov. 20, 1952).

¹¹³ *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.

¹¹⁴ G. R. No. L-4071 Prom. March 12, 1952.

search of guerrillas. He also assisted in the arrest of guerrillas and guerrilla sympathizers, besides commandeering food from the barrio residents for the use of Japanese forces. His conviction for treason was proper. Where the accused ordered the killing of his fellow citizens for the avowed reason that their house was a guerrilla rendezvous and a member of the household had underground connections, the crime of treason, downright and unmitigated was committed.¹¹⁵ The performance of a leading part in the rounding up and maltreatment of guerrilla suspects was considered a treasonous act by the Court.¹¹⁶ And although the accused did not participate in the maltreatment of prisoners, the fact that he accompanied Japanese soldiers, and on his information, the victims were maltreated, was enough to convict him of treason.¹¹⁷ Where the defendant at the start of the Japanese occupation donned a Japanese soldier's uniform, was armed with a rifle, and took a prominent part in the arrest of guerrillas who were tortured to death and of civilians who were never seen again, the case falls squarely within the purview of Art. 114.¹¹⁸ In another case, membership in the Makapili and service with the Kempei Tai coupled with the killing of an escaping guerrilla was enough for the defendant's conviction.¹¹⁹

In the case of *People v. Magbanua*,¹²⁰ the defendant, acting as a spy, always armed, caused the arrest of several civilians; he also obtained money from arrested persons' relatives on his promise to secure the release of such persons held by the Japanese, retreating to the hills with the Japanese when the fighting began; treason was committed.

A person who delivers a speech calling all guerrillas to come down from the hills may not be a traitor. But when he also accompanies Japanese soldiers to a cockpit, tapping the shoulders of four men who were never heard from again, leads a contingent of Japanese soldiers in a raid on a guerrilla camp, and gets evidence for the arrest and torture of guerrilla suspects, he can be convicted of treason.¹²¹

¹¹⁵ *People v. Atilares*, G.R. No. L-2290, Prom. Jan. 14, 1952.

¹¹⁶ *People v. Calvento*, G. R. No. L-4571, Prom. Jan. 30, 1952; *People v. Erra*, G. R. No. L-3918, Prom. April 28, 1952.

¹¹⁷ *People v. Cabellon*, G. R. No. L-12125, Prom. Jan. 12, 1952; *People v. Luna*, G. R. No. L-4354, Prom. April 28, 1952; *People v. Taborado*, G. R. No. L-4230, Prom. May 31, 1952.

¹¹⁸ *People v. Predilla*, G. R. No. L-4407, Prom. March 31, 1952.

¹¹⁹ *People v. Lagmay*, G. R. No. L-2270, Prom. April, 18, 1952.

¹²⁰ *People v. Magbanua*, G. R. No. L-2058, Prom. July 31, 1952.

¹²¹ *People v. Gutierrez*, G. R. No. L-4041, Prom. Aug. 30, 1952, See 27 Philippine Law Journal, 905.

The following acts have also been declared treasonous: Being armed and standing as a guard at a time when victims of Japanese ire were being tortured,¹²² membership in a Japanese sponsored organization and as such killing two ex-USAFFE guerrillas,¹²³ the arrest of persons to be turned over to the Kempei Tai for questioning,¹²⁴ serving as a guide to Japanese soldiers in search for guerrillas,¹²⁵ membership in the YOIN, an organization formed to aid the Japanese forces in their campaign against the guerrillas, standing guard in the Japanese garrison and participating in the arrest of civilians,¹²⁶ acting as investigator and guide of the Japanese,¹²⁷ ordering the looting, ransacking and burning of guerrilla suspects' houses.¹²⁸

(2) *Defenses*—The defense of denial often falls flat; since this defense addresses itself to the sound discretion of the lower Court in determining the credibility of witnesses, the Supreme Court awards wide latitude to the discretion of the trial judge who is able to see and hear the different witnesses and weigh their different testimonies. The Supreme Court in the case of *People v. Cataluna*,¹²⁹ stated "it is beyond belief that all these witnesses conspired to secure the conviction of the accused of a very serious crime, the commission of which was more or less public." Where the accused presented two witnesses present at the "tupada," where it was charged he tapped four persons for Japanese investigation, that they did not see him there, the Court held that granting both witnesses told the truth, yet because of the "commotion" caused by the approach of the Japanese patrol, it was probable that both witnesses did not see the defendant leading the patrol.¹³⁰ In the case of *People v. Alvar*,¹³¹ the accused led a patrol to arrest three guerrilla suspects and having found they had fled, ordered the burning of the suspects' houses. He alleged as a defense that this participation was involuntary and under compulsion. The Court rejected his defense, stating that according to the testimony of the two witnesses, his acts were characterized by zeal, enthusiasm, and ruthlessness. And the plea that

¹²² *People v. Morales*, G. R. No. L-4533 Prom. May 28, 1952.

¹²³ *People v. de los Reyes*, G. R. No. L-4356, Prom. May 10, 1952.

¹²⁴ *People v. Taborado*, G. R. No. L-4230, Prom. May 31, 1952.

¹²⁵ *People v. Germiniano*, G. R. No. L-4449, Prom. May 26, 1952.

¹²⁶ *People v. Capistrano*, G. R. No. L-4549, Prom. Oct. 22, 1952.

¹²⁷ *People v. Dubuozet*, G. R. No. L-4739, Prom. Oct. 29, 1952.

¹²⁸ *People v. Alvar*, G. R. L. 4585, Prom. Oct. 24, 1952.

¹²⁹ G. R. No. L-4071, Prom. March 12, 1952.

¹³⁰ *People v. Gutierrez*, G. R. No. L-4041, Prom. Aug. 30, 1952.

¹³¹ G. R. No. L-4585, Prom. Oct. 24, 1952.

the accused was in fact a guerrilla cannot exempt him from the consequences of his treasonous acts.¹³²

(3) *Evidential Requirement*—In order to establish the giving of aid and comfort, at least two witnesses must testify to the same overt act.¹³³ The defense in the case of *People v. Bautro*,¹³⁴ pointed out alleged contradictions incurred by the witnesses for the prosecution, such that some stated the massacre took place inside the building, while others testified it occurred outside. The Supreme Court ruled that there is no necessary contradiction for some of the numerous victims might have been sacrificed inside and others outside the building. Absolute accuracy cannot be expected of the witnesses on account of the fact that they must have been greatly worried due to the danger in which they found themselves, such slight contradiction rather strengthening the sincerity of their testimony, excluding any possible connivance.

In *People v. de los Reyes*,¹³⁵ the accused was a member of the Tetuan Volunteer Guards in Zamboanga. In company with other members he apprehended a group of ex-USAFFE guerrillas. Using a bolo he was responsible for the death of two of the victims and jointly with a companion killed one and wounded the other. Although each killing was not seen by two witnesses, the arrest was testified to by two survivors of the massacre. That was considered sufficient to convict him of treason, adherence being implied from overt acts. The fact of the commission of such overt acts will establish treasonous conduct.

Where the various acts of adherence have been established by the required number of witnesses who could not have been induced by any motive to testify falsely against the accused, complete corroboration on all points testified to by them is unnecessary.¹³⁶

¹³² In *People v. Cataluna*, G. R. No. L-4071, Prom. March 12, 1952, the Court said: "The performance of righteous actions, no matter how meritorious they may be, is not a justifying, exempting, or mitigating circumstance in the commission of wrongs, and although appellant has saved the lives of a thousand and one persons, if he had caused the killing of a single human being to give aid and comfort to the enemy, he is nonetheless, a traitor."

In *People v. Golez*, G. R. No. L-4618, Prom. March 28, 1952, the Supreme Court opined: "One's connection with the guerrilla movement is no legal excuse for treasonable activities," and in the case of *People v. Cabellon*, although the accused was formerly a guerrilla, yet during the latter part of the Japanese occupation, he changed his mind, abandoning the cause of his comrades and allying himself with the Japanese Army, serving them as a spy.

¹³³ Article 114, Rev. Penal Code; Sec. 97, Rule 123, Rules of Court.

¹³⁴ G. R. No. L-4260, Prom. Jan. 21, 1952.

¹³⁵ G. R. No. L-4356, Prom. May 19, 1952.

¹³⁶ *People v. Golez*, *supra*.

Counsel for the defense in the case of *People v. Zaide*,¹³⁷ insisted that the two principal witnesses for the prosecution failed to testify to the same details of the overt acts constituting treason. The conviction was upheld by the Supreme Court, said Court holding that the testimonies of the two witnesses were unanimous on one point—that the accused accompanied the Japanese and Makapilis when they apprehended the victims.

Crimes Against Public Interest

The accused in *People v. Tin Ching Ting*,¹³⁸ was prosecuted for violating Art. 165 of the Revised Penal Code,¹³⁹ he having in his possession a counterfeit Five Dollar gold coin. The lower Court having dismissed the action on the ground that such gold coin is no longer legal tender in the United States, the fiscal appealed. The Supreme Court revoked the lower Court's order, stating that Art. 165 does not require that the coin be legal tender and that the Court should not add a condition not imposed by law.

Crimes Committed by Public Officers

The case of *People v. Pecana*,¹⁴⁰ was only concerned with the amount of the fine and indemnity to be paid by the accused who as treasurer of Bay, Laguna, misappropriated the sum of ₱6,860.03. Having reimbursed ₱400, the actual indemnity should only be ₱6,460.03 and the fine should be within the range prescribed by Art. 217 of the Revised Penal Code¹⁴¹ which ranges from one-half to the total value of the funds or property embezzled.

Crimes Against Persons

A. Murder

Cases of murder were as numerous as before and a goodly portion reached the Supreme Court for final decision. It may be that the troubled conditions all over the world, economic insecurity on the part of many, or a host of other factors unknown to the perpetrator had influenced the criminal act. However, that may be, the act was done, the criminal caught, tried, and convicted.

¹³⁷ G. R. No. L-5362, Prom. Dec. 12, 1952.

¹³⁸ G. R. No. L-4620, Prom. Jan. 30, 1952.

¹³⁹ Art. 165.—Selling of false or mutilated coin, without connivance.—Any person who knowingly, although without the connivance mentioned in the preceding articles, shall possess false or mutilated coin with intent to utter the same, or shall actually utter such coin shall suffer a penalty lower by one degree than that prescribed in said articles.

¹⁴⁰ G. R. No. L-4410, Prom. Feb. 29, 1952.

¹⁴¹ Art. 217.—Malversation of public funds or property—

* * * 6th paragraph—In all cases, persons guilty of malversation shall also suffer the

The means of execution have varied from hitting with a pick,¹⁴² striking with a scythe,¹⁴³ using a spear,¹⁴⁴ shooting with a revolver, carbine, rifle,¹⁴⁵ knifing,¹⁴⁶ maltreatment,¹⁴⁷ hitting with a rifle butt,¹⁴⁸ use of a kris, a garand, a .45, a barong, a spar in a triple murder.¹⁴⁹ Treachery and abuse of superior strength have been the most common qualifying circumstances.¹⁵⁰ Two cases decided that the intention to detain a person illegally for a length of time or to obtain ransom for his release must be present in order to constitute the complex crime of kidnapping with murder. In the case of *People v. Camo*,¹⁵¹ the Court held that the crime was simple murder, for the purpose of taking the deceased from his home was for the sole object of killing him. So too, in the case of *People v. Remalante*,¹⁵² where the Court stated that the interval of time between the taking and the killing was so short as to negative the idea of kidnapping. The short detention and ill treatment are included or form part of the crime of murder.

B. Parricide

The relationship of husband and wife must be a lawful one in order that the killing be parricide. Where the deceased was the

penalty of perpetual special disqualification and a fine ranging from one-half to the total value of the funds or property embezzled.

¹⁴² *People v. Merenio*, G. R. No. L-4380, Prom. Jan. 30, 1952.

¹⁴³ *People v. Jubelag*, G. R. No. L-4202, Prom. Feb. 29, 1952.

¹⁴⁴ *People v. Cabeda*, G. R. No. L-4411, Prom. Feb. 8, 1952.

¹⁴⁵ *People v. Camo*, G. R. No. L-4740, Prom. Feb. 14, 1952; *People v. Kamanti-que*, G. R. No. L-4272, Prom. Feb. 25, 1952; *People v. Felipe*, G. R. No. L-4619, Prom. Feb. 25, 1952; *People v. Rojas*, G. R. No. L-3736, Prom. Feb. 25, 1952; *People v. Olgado*, G. R. No. L-4406, Prom. March 31, 1952; *People v. Minda*, G. R. No. L-4214, Prom. March 27, 1952; *People v. Almazan*, G. R. No. L-4447, Prom. April 18, 1952; *People v. Valeriano*, G. R. No. L-4306, Prom. April 25, 1952; *People v. Sali*, G. R. No. L-3247, Prom. April 30, 1952; *People v. Villapa*, G. R. No. L-4259, Prom. April 30, 1952; *People v. Pascua*, G. R. No. L-4890, Prom. May 8, 1952; *People v. Bernal*, G. R. No. L-4409, Prom. July 14, 1952; *People v. Agasalona*, G. R. No. L-3959, Prom. Nov. 29, 1952.

¹⁴⁶ *People v. Mendoza*, G. R. No. L-4146 & 4147, Prom. Mar. 21, 1952; *People v. Esmir*, G. R. No. L-4608, Prom. Dec. 29, 1952.

¹⁴⁷ *People v. Sasota*, G. R. No. L-3544, Prom. April 18, 1952.

¹⁴⁸ *People v. Ramos*, G. R. No. L-3989, Prom. July 30, 1952.

¹⁴⁹ *People v. Masani et al.*, G. R. No. L-3973, Prom. Sept. 18, 1952.

¹⁵⁰ *People v. Merenio*, G. R. No. L-4380, Prom. Jan. 30, 1952; *People v. Cabeda*, G. R. No. L-4411, Prom. Feb. 8, 1952; *People v. Decena*, G. R. No. L-3717, Prom. Feb. 9, 1952; *People v. Minds*, G. R. No. L-4214, Prom. March 27, 1952; *People v. Mendoza*, *supra*; *People v. Olgado*, *supra*; *People v. Almazan*, *supra*; *People v. Valeriano*; *People v. Villapa*, *supra*; *People v. Pascua*, *supra*.

¹⁵¹ *People v. Eligio Camo*, G. R. No. L-4741, Prom. May 7, 1952.

¹⁵² *People v. Remalante*, G. R. No. L-3512, Prom. Sept. 26, 1952.

common law husband of the appellant, the crime is murder, not parricide.¹⁵³ However, where the couple were in fact married, the crime is parricide as in the case of *People v. Belarmino*.¹⁵⁴ And a grandson who uses a homemade bomb to blow up his grandparents who could not give him the ₱200 he wanted in order to get married,¹⁵⁵ likewise falls under the purview of Art. 246.¹⁵⁶

Crimes Against Property

A. (1) *Robbery*

In *People v. Egidio*,¹⁵⁷ the Court declared that since the information did not have specifications sufficient to make the crime fall under any of the first four paragraphs of Art. 294, but only alleged the use of violence and intimidation against the offended party, the robbery charged must necessarily come under par. 5 of said Art.¹⁵⁸ The case of *People v. Patoltol*,¹⁵⁹ was a prosecution for robbery in band

¹⁵³ *People v. Ramos, supra*.

¹⁵⁴ G. R. No. L-4429, Prom. April 18, 1952; *People v. Villanueva*, G. R. No. L-4110, Prom. Nov. 26, 1952.

¹⁵⁵ *People v. Fulgencio*, G. R. No. L-5370, Prom. Nov. 10, 1952.

¹⁵⁶ Art. 246. Parricide.—Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide, and shall be punished by the penalty of *reclusion perpetua* to death.

¹⁵⁷ G. R. No. L-4217, Prom. Jan. 31, 1952.

¹⁵⁸ Art. 294.—Robbery with violence against or intimidation of persons—Penalties—Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 article 263 shall have been inflicted, or the person robbed shall have been held for ransom or deprived of his liberty for more than one day.

3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

4. The penalty of *prisión mayor* in its medium period to *reclusion temporal* in its minimum period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Art. 263.

5. The penalty of *prisión correccional* to *prisión mayor* in its medium period in other cases.

¹⁵⁹ G. R. No. L-2569-R. Prom. March 24, 1952. For a more comprehensive review of this case see 27 Phil. Law Journal 565.

with rape. The trial court convicted the defendant as to the crime of robbery but dismissed the case with regard to rape, the complaint not having been signed by the offended party or her parents. The action of the trial Court was upheld by the Supreme Court.

(2) *Robbery with Homicide*

When the killing of a person is perpetuated by reason or on occasion of the robbery, the crime is robbery with homicide. The Supreme Court in the case of *People v. de la Cruz*,¹⁶⁰ restated the rule that "whenever a homicide has been committed as a consequence or on occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide." Such crime is penalized under Art. 297 of the Revised Penal Code.¹⁶¹ In the case of *People v. Garcia*,¹⁶² the Court found the accused guilty of robbery with homicide, when he killed the Chinaman owner of the store, forced open the latter's trunk, and ransacked the store. In the case of *People v. Mellodollar*,¹⁶³ the accused had to kill the night watchman of the College of Agriculture, University of the Philippines, in order to commit the robbery. In *People v. Ganiban*,¹⁶⁴ the accused used a sub-machine gun on his victim when the latter resisted the forcible taking from him of three wrist watches, a pocket watch and two flashlights.

In two cases, robbery in band with homicide was committed. In *People v. Maroya*,¹⁶⁵ the accused forcibly entered the house of the victim, shot the latter's grandson, and robbed the inmates of the house. In *People v. Francisco*,¹⁶⁶ five men all armed with various weapons robbed the house and killed its owner as he tried to escape and call for help.

(3) *Robbery with Homicide and Rape*

Where the robbery was not only accompanied by the killing of

¹⁶⁰ G. R. No. L-4532, Prom. May 26, 1952, citing—(*People v. Bautista*, 49 Phil. 389, 396, citing *U.S. v. Macalalad*, 9 Phil. 1).

¹⁶¹ Art. 297.—Attempted and Frustrated Robbery committed under certain circumstances—When by reason or on occasion of an attempted or frustrated robbery a homicide is committed the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

¹⁶² G. R. No. L-4145, Prom. Jan. 25, 1952.

¹⁶³ G. R. No. L-3668, Prom. Feb. 20, 1952.

¹⁶⁴ G. R. No. L-4165, Prom. Aug. 28, 1952.

¹⁶⁵ G. R. No. L-4586, Prom. Aug. 30, 1952.

¹⁶⁶ G. R. No. L-4196, Prom. Nov. 29, 1952.

the owner of the house but by the rape of the latter's wife as well, the crime is robbery with homicide and rape.¹⁶⁷

(4) *Robbery in Band with Rape*

The cases of *People v. Santos*,¹⁶⁸ and *People v. Bernardino*,¹⁶⁹ fall under this heading. In the first case the defendants having entered the house forcibly, took possession of what they wanted, tied the owner, and raped his wife. In the latter case, the accused took advantage of the hospitality of the inmates of the house, then whipping out their guns, looted the house and took turns in having carnal intercourse with the daughter of the owner of the house.

B. *Theft*

The stealing of electric current worth ₱333 by using a jumper is penalized under Art. 308.¹⁷⁰

C. *Estafa*

In *People v. Ma Su*,¹⁷¹ the defendant was prosecuted for estafa. As manager and cashier of the Capitol Trading Co. doing business in Cotabato, he had received from the complainant the sum of ₱1,600.00 as part payment of a rice mill, which he promised to deliver within a period of one month. Failure to so deliver would make him liable for the return of said sum of money. Not having been able to do either he was accused of estafa. The Court held that in the transaction between the complainant and the accused there was no *fideicomissary*. The money given was "part payment of the price of one rice mill." The transaction was a sale with a part payment. The money from the sale of the rice mill handed over by the complainant was no longer his property but the property of the seller. It was not a deposit but a stipulated part payment. The proper action is a civil action not a criminal one, and the defendant was acquitted of the crime.

D. *Arson*

September saw two cases of arson decided. Where the defendant was seen coming from the burning building, was called, and ran away, his actions are highly suspicious. Antecedent to the burning, he had a grudge against the owner of the house because he felt insulted by the actuations of the latter. Accused, he had no defense save that of alibi, his wife corroborating his testimony. He was con-

¹⁶⁷ G. R. No. L-3240, Prom. April 21, 1952.

¹⁶⁸ G. R. No. L-4189, Prom. May 21, 1952.

¹⁶⁹ G. R. No. L-5038, Prom. Nov. 25, 1952.

¹⁷⁰ *People v. Dimalanta*, G. R. No. L-5796, Prom. Nov. 13, 1952.

¹⁷¹ G. R. No. L-3872, Prom. Jan. 24, 1952.

victed of arson.¹⁷² In the case of *People v. Yap*,¹⁷³ the defendant was acquitted because of reasonable doubt, there being inconsistency in the statements of the offended party and due to the absence of any motive on the part of the accused.

Crimes Against Chastity

In *People v. Alfaro*,¹⁷⁴ the accused took turns in having carnal intercourse with their hapless victim. They were sentenced to twin sentences of rape, the Court holding that he who aids the person who lies with the offended party is as much guilty of rape, as he who has carnal intercourse with the victim.

¹⁷² *People v. Bagonas*, G. R. No. L-4072, Prom. Sept. 22, 1952.

¹⁷³ *People v. Yap*, G. R. No. L-3712, Prom. Sept. 30, 1952.

¹⁷⁴ G. R. No. L-4231 & L-4232, Prom. May 28, 1952.

"He is guilty of rape who throws the offended party to the ground and holds her while a third person has carnal knowledge of her (Sentence of the Supreme Court of Spain, April 10, 1877). In the case of *People v. Toledo*, (G. R. No. L-1686, Prom. May 30, 1949) each accused was sentenced to six convictions of rape, because while one lay with her, the others held the offended party. In the case of *People v. Villa et al.*, (G. R. No. L-591, June 30, 1948), each accused was sentenced to four violations because the three held the offended party while one lay with her.