"Since the lease of the jeepney in question was made without such approval, the only conclusion that can be drawn is that Marcelino Ignacio still continues to be its operator in contemplation of law, and as such is responsible for the consequences incident to its operation, one of them being the collision under consideration."

JOSE S. BALAJADIA

CRIMINAL LAW AND PROCEDURE—

I. SERIOUS PHYSICAL INJURIES.

Under the Revised Penal Code the acts which may give rise to the crime of serious physical injuries are wounding, beating up or assaulting another [1] and administering injurious substances.[2]

In *People v. Hernandez*,[3] the Supreme Court had occasion to pass on the question of whether the loss of the power to hear with one ear is a serious physical injury. Accused was charged with physical injuries inflicted upon the person of one Amado Palor which required medical treatment and incapacitated him for a period of 25 days. According to the information, the offended party "also lost the power to hear with his right ear," as a consequence of said injuries. The lower court was of the opinion and so held that the crime charged was less serious physical injuries. From this decision, the Solicitor-General appealed, contending that the crime described was serious physical injuries.

The Supreme Court held that the loss of one ear did not imply total loss of the power to hear. Nevertheless, the Supreme Court upheld the Solicitor-General's contention that the crime committed was the offense of serious physical injuries but predicated its conclusion, not on the ground of loss of the power to hear but on the loss of the use of a non-principal part of the body.[4]

II. IGNORANCE AND LACK OF INSTRUCTION.

In *People v. Cocoy, et. al.*,[5] two brothers, Motin and Apolonio Cocoy, were charged with robbery with triple murder. Upon arraingnment the two pleaded guilty. Because of the seriousness of the offense charged and because the pair were illiterate non-Christians, the trial court ordered Motin Cocoy to take the witness stand. From Motin's testimony, the trial judge was convinced that the two did not understand the meaning and effect of their plea. They were, however, found guilty and sentenced to suffer the death penalty. The issue before the court on review was whether the penalty should be reduced, in view of the ignorance and lack of instruction of the defendants. In reducing the penalty to life imprisonment, the court held:

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[1] Article 263.
[2] Article 264.
[3] G.R. No. L-4213, prom. November 28, 1953.
[4] Art. 263, par. 3, R. P. C.
[5] G.R. No. L-6019, prom. December 15, 1953.

> "The crime committed by appellants which is the complex crime of robbery with homicide, not robbery with triple murder, was truly hideous and shocking, not only because of the massacre of three innocent persons but because the killing of two of the three victims was clearly unnecessary. * * * And the gouging of the eyes of the little boy as confessed by Apolonio is a manifestation of wanton cruelty and brutality. Ordinarily, this horrifying crime deserves the death penalty imposed by the trial court because of the presence of some aggravating circumstances..., but some members of the Court are inclined to reduce the penalty to life imprisonment not only because of ignorance and lack of instruction of the defendants but because of their being non-Christians and their lack of association with a civilized community. They live in isolation in the mountains."

This is as it should be. Offenders who, as a result of the fact that their lives are cast with uncivilized tribes far away from the centers of civilization, appear to be so lacking in "instruction and education" should not be held to so high a degree of responsibility as is demanded of those citizens who have had the advantages of living their lives in contact with the refining influences of civilization.[6] Where the defendants fully believed that their victims were witches, the court may consider such circumstance mitigating.[7] The mitigating circumstance of lack of education and instruction is taken into account, as a general rule, in cases where it appears that, under all the circumstances which surrounded the commission of the crime, the strict degree of responsibility which the Penal Code imposes should not be exacted of the accused.[8]

Who is in a better position to determine the application of the mitigating circumstance of lack of education and instruction? *U.S. v. Estorico*[9] is authority for the rule that, generally, the trial judge, rather than the appellate tribunal, is in a better position to determine the application of that article because he has before him the accused himself, he is able to estimate his grade of intelligence, the instruction and opportunities he had had; and he can observe his appearance and demeanor and judge his tendencies and character.

III. Discharge of Surety.

Four instances are enumerated by law where sureties may be discharged from liability, upon application filed with the court and after due notice to the fiscal. These are: (a) where the sureties so request upon surrender of the defendant to the court; (b) where the defendant is re-arrested or ordered into custody on the same charge or for the same offense; (c) where the defendant is discharged by the court at any stage of the proceedings, or acquitted, or convicted and surrendered to serve sentence; and (d) where the defendant dies during the pendency of the action.[10]

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[6] *U.S. v. Maqui*, 27 Phil. 97 (1914).
[7] *U.S. v. Pado*, 19 Phil. 111 (1911).
[8] *U.S. v. Requera*, 41 Phil. 506 (1921).
[9] 35 Phil. 410 (1916); *People v. Bangug*, 52 Phil. 87 (1928).
[10] Sec. 16, Rule 110, Rules of Court.

Can the surety be excused from non-performance of its obligation under the bond due to the fact that the accused, while out on bail, was picked up by officers of the Philippine Constabulary for questioning and thereafter escaped from their custody? In *People v. Lee Diet*,[11] the court held that the sureties are not thereby discharged, in the absence of a showing that the court had been duly informed. Explaining the rule, the court said:

> "It is a well-settled doctrine that a surety is the jailer of the accused. He takes charge of, and absolutely becomes responsible for the latter's custody, and under such circumstance, it is incumbent upon him, or rather, it is his inevitable obligation, not merely a right, to keep the accused at all times under his surveillance inasmuch as the authority emanating from his character as surety is no more nor less than the government's authority to hold the said accused under preventive imprisonment. (*People v. Tuising*, 61 Phil. 404).
>
> "When the surety in this case put up the bond for the provisional liberty of the accused it became his jailer and as such was at all times charged with the duty to keep him under its surveillance. This duty continues until the bond is cancelled, or the surety is discharged.
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> "It is true that a surety may also be discharged from the non-performance of the bond when its performance is rendered impossible by the act of God, the act of the obligee, or the act of the law (*U.S. v. Sunico*, 40 Phil. 826), but even in these cases there still remains the duty of the surety to inform the court of the happening of the event so that it may take appropriate action and decree the discharge of the surety. Here no such steps were taken."

This case amplified the rule laid down in the case of *People v. de la Cruz*,[12] where the sureties were discharged from their obligation to produce the accused before the court after the latter had escaped from custody because the sureties informed the court of the prisoner's arrest and his confinement in another province. In the *Lee Diet* case no such notice was ever made to the court.

Liability of sureties on a bail bond is limited to the precise terms of their contract.[13] In an action on a bail bond for the appearance of an indicted person, it is good defense that such person was in prison for another offense.[14]

IV. DOUBLE JEOPARDY.

Petitioner in *Lim v. Oreta* [15] was charged along with 21 others, with gambling. After pleading guilty, petitioner manifested to the

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[11] G.R. No. L-5256, prom. November 27, 1953. See *Bryan v. State* (1914), 167 S.W. 484 which held that the disappearance of the accused at the time of the tornado and on his failure to return the sureties made a vigorous search for him amounted only to a showing that the principal disappeared and that the sureties had been unable to find him, not exonerating them from liability on the bond.

[12] G.R. No. L-5794, prom. July 23, 1953.

[13] *U.S. v. Bonoan*, 22 Phil. 1 (1912).

[14] *Ibid.*

[15] G.R. No. L-6247, prom. November 27, 1953.

court that he was reserving his right to present evidence to prove that the sum of ₱1,000 which was found in his pocket during the raid was not part of the proceeds of the crime.[16] Respondent judge rendered a decision sentencing the accused and set a date for the hearing of the case to determine whether the ₱1,000 should be confiscated in favor of the government or not. Petitioner paid the fine imposed upon him. When the case was called for hearing to pass upon the disposition of the money in question, petitioner pleaded double jeopardy, and filed a petition for prohibition against respondent before the Court of First Instance of Rizal. The prohibition was granted and the respondent judge was ordered to desist from further proceeding with the case and to issue an order for the refund of the money to the petitioner.

The court, in rejecting the petitioner's contention, held:

> "Apparently His Honor overlooked both the reservation made by the accused, and the directive of the Justice of Peace calling for a hearing on September 15, 1952, which was part and parcel of the sentence. • • •
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> "However, there is reason to doubt whether the decision of September 4, 1952 could legally be considered 'final', it left something to be done later, i.e., the determination of the question whether the money should be confiscated—a proper issue in the criminal proceeding. Unless and until that issue (expressly reserved for subsequent adjudication) was passed upon, the judgment could not be regarded as final."

A defendant has not been in jeopardy until the question of his guilt or innocence has been determined by a final judgment.[17] An accused is not placed in legal jeopardy until he has been placed on trial under the following conditions: (1) brought before a court of competent jurisdiction, (2) on a valid complaint or information, (3) after he has been arraigned and, (4) after he has pleaded to the information.[18] The test for determining whether or not a prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts, is to inquire whether the facts alleged in the second information, if proven, would have acquitted or convicted him. The gist of the question is whether or not the same evidence supports the two actions.[19]

The defense of double jeopardy like any other privilege may be waived.[20] Therefore, by making his reservation, the accused waived

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[16] Article 45, Revised Penal Code: "Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed."

[17] *U.S. v. Kepner*, 1 Phil. 397 (1902); *U.S. v. Hart*, 24 Phil. 578 (1913), on p. 582: "No rule is better settled than the rule that courts cannot modify, alter, or change a sentence after it has become final."

[18] *People v. Ylagan*, 58 Phil. 851 (1933).

[19] *People v. Martinez*, 55 Phil. 6 (1930).

[20] 6 *Col. L. Rev.* (1906) at 261: "It is universally held that a defendant, who procures a judgment of conviction to be set aside, may be tried anew for the same of-

the defense of double jeopardy, granting that the decision in the first case had become final.

V. SPEEDY TRIAL.

One of the rights secured to an accused by the Constitution [21] is the right to have speedy and public trial.

The question of whether there was such a delay in the prosecution of the criminal cases against the accused as to warrant his discharge was raised in *Manabat v. Provincial Warden.*[22] Petitioner was charged with two offenses in November, 1945 and was confined in jail. He broke jail on April 18, 1946 and was recaptured on October 7, 1949. The cases were postponed several times until this petition for habeas corpus was filed on February 6, 1953.

Justice Montemayor, speaking for the court, ruled:

> "Taking the case as a whole, this Court finds that delay in the trial of the two cases may in some, if not great measure, be laid at petitioner's door, namely his escape from jail and being at large for about four months and his agreement and own requests for postponements in 1951.
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> "Speedy trial is secured by the Constitution to every person accused. An accused, especially when a detention prisoner, has the right to have his case tried and decided as speedily as possible, either for or against him so that if he is acquitted he regains his liberty if detained, or if he is out on bail, he is cleared of the charges and its implications, and if convicted he may appeal the case or serve his sentence. The state is equally interested in a speedy trial of a criminal case because the thought and the certainty that a criminal will relentlessly and without delay be tried while witnesses are still available, and punished for his crime, is an effective deterrent to would-be offenders."

Philippine organic and statutory laws expressly guarantee that in all criminal prosecutions the accused shall enjoy the right to have speedy trial. The accused who is deprived of his fundamental right to have speedy trial is entitled to ask for his release, if he is restrained of his liberty, or for the final dismissal of the case pending against him.[23] Speedy trial means a trial conducted according to the law of criminal procedure and the rules and regulations, free from vexatious, capricious, and oppressive delays.[24] All these laws are designed to secure to the defendant a speedy and impartial trial in accordance with law, without advantage either to the prosecution or the defense.[25]

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fense. The reason given is that the constitutional protection against being twice put in jeopardy may be waived, and that the defendant's action operates as a waiver."

[21] Article III, Sec. 1(17), Constitution of the Philippines; Sec. 1(g), Rule III, Rules of Court.

[22] G.R. No. L-6483, prom. November 27, 1953.

[23] *Conde v. Rivera,* 45 Phil. 650 (1924).

[24] *Kalaw v. Apostol,* 64 Phil. 852 (1937).

[25] *Samilin v. CFI,* 57 Phil. 298 (1932).

VI. WITHDRAWAL OF APPEAL.

An accused appealing from a decision sentencing him to death may be allowed to withdraw his appeal like any other appellant in an ordinary criminal case before the briefs are filed. Withdrawal of the appeal, however, does not remove the case from the jurisdiction of the Supreme Court which under the law is called upon to review decisions imposing the death penalty. This automatic review cannot be waived or evaded by the accused according to the high tribunal in the case of *People v. Villanueva*.[26] The requirement that the Supreme Court pass upon all cases in which capital punishment has been imposed by the trial court is one having for its object simply and solely the protection of the accused. "It is a positive provision of law that brooks no interference and tolerates no evasions, and neither the courts nor the accused can waive it." [27]

PACITA CAÑIZARES *

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[26] G.R. No. L-2073, prom. October 19, 1953.

[27] *U.S. v. Laguna*, 17 Phil. 532 (1910).

Compare with the rule on withdrawal of appeals in civil cases: After a case has been submitted, appellants, in order to withdraw their appeals, must obtain the consent of the adverse party or parties or show that such consent is being withheld for insufficient reason, must make proper motion to the Supreme Court to that effect, and they must obtain leave of court. See *Dee v. Stanley*, 38 Phil. 208 (1918).

* The writer acknowledges the help of Miss Belinda Ty and Mr. Emmanuel Tipon, who digested the cases cited hereinabove.