SURVEY OF CRIMINAL LAW: 1954

SOTERO B. BALMACEDA*

The perpetration of crimes seems to remain an unabated socio-political problem. Every year hundreds of criminal cases come up before our Supreme Court, and while they should be sufficient to show the widespread instances of criminality in our jurisdiction, they comprise only a small part of the thousands of criminal cases which are heard and tried annually before the various courts in our judicial system, not to mention those crimes which are yet unsolved.

This article, however, is limited to a survey of the penal decisions of our Supreme Court in the past year. Few reveal any marked departure from the traditional principles in the field of substantive criminal law, and this being so, where the cases under review appear to involve no problems of great significance or of appreciable novelty, the writer has assumed that they do not require extended comment in this survey, except an adequate recitation of the various sets of facts constituting said cases and a brief statement of the opinions handed down by our Supreme Court with respect to them.[1]

GENERAL PROVISIONS, APPLICATION OF THE PROVISIONS OF THE REVISED PENAL CODE, AND LIABILITIES AND PENALTIES

I. NO COMMON LAW CRIMES; IRRETROACTIVITY OF PENAL LAWS AND REGULATIONS.

The doctrines above-mentioned gained further support in *People v. Garcia*[2] and *People v. Que Po Lay*.[3] The Revised Penal Code[4] provides not only that no felony shall be punishable by any penalty not prescribed by law prior to its commission,[5] but also that penal laws shall have a retroactive effect only if they favor the person guilty of a felony who

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* Administrative Assistant, Philippine Law Journal, 1954-1955. Acknowledgement is made of the help extended by Mr. Ernesto T. Duran in helping brief some of the cases noted in this annual survey.

[1] This survey relates to cases falling in the field of substantive criminal law. Constitutional issues are incorporated in this survey in so far as they affect our penal jurisprudence. Problems in criminal procedure will be discussed in the annual survey of decisional cases in criminal procedure.

[2] G.R. No. L-5631, April 27, 1954.

[3] G.R. No. L-6791, March 3, 1954.

[4] Act No. 3815, Jan. 1, 1932, as amended.

[5] Art. 21, Rev. Penal Code.

[6] Art. 22, Rev. Penal Code.

is not a habitual criminal.[6] These rules conform with the constitutional injunction that no *ex post facto* law shall be enacted.[7]

In the *Garcia* case, accused was charged and convicted of having sold tickets for "llave" races of the Philippine Charity Sweepstakes on the theory that he violated the law which penalizes any person who, without being a duly authorized agent of the PCS, sells tickets of said corporation or, being such agent, sells tickets, fractions or coupons thereof not issued by the corporation, representing or tending to represent an interest in tickets issued by the corporation.[8] The Supreme Court acquitted the accused, because he was charged with selling tickets for "llave" races of the PCS which are different from and not tickets issued by the corporation, or tickets not issued by it representing or tending to represent an interest in tickets issued by the corporation. Said the Court: "The law relied upon does not include 'llave' tickets for sweepstakes tickets. Neither was there any other statute that prohibited and punished the act imputed to the appellant."

Appellant in the *Que Po Lay* case was convicted of violating Circular No. 20 of the Central Bank.[9] Although this circular was issued as early as 1949, it was published in the Official Gazette only in November, 1951, three months after the appellant had been convicted of violating it. On appeal, he claimed exoneration on the ground that said circular had not been published before the act or omission imputed to him, and that therefore, said circular had no force and effect, and he consequently committed no crime. He claimed that the publication of said circular, as a prerequisite to effectivity, is required by law.[10]

The Court disagreed with appellant's latter contention because said laws do not require the publication of circulars and notices therein mentioned to become effective since said laws merely enumerate and make a list of what should be published in the Official Gazette.

The Supreme Court, however, posed another question: Does Circular No. 20 have the force and effect of law such that, in order to subject a person to its penal provision, prior publication is necessary? The Court answered in the affirmative. It declared thus:

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[7] PHIL. CONST., Art. III, sec. 1, cl. 2. The rules above-mentioned reflect the maxim that "there is no crime without a penalty and that there is no penalty without a law," as well as the doctrine that "the law looks forward, not backward; the law provides for the future, the judge for the past" (*lex prospicit, non respicit; lex de futuro, judex de praeterito*). However, retroactivity of a penal statute is allowed if it favors the accused. (Art. 22, Rev. Penal Code.)

[8] Act No. 4130, as amended by Com. Act No. 301.

[9] This cicular was passed pursuant to Rep. Act No. 265, sec. 34 (popularly known as the Central Bank Act), June 15, 1948. Section 34 penalizes any violation of the Act itself or any order, instruction, rule or regulation legally issued by the Monetary Board.

[10] Act No. 2930 and Com. Act No. 638.

> "It is true that Circular No. 20...is not a statute...but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law according to settled jurisprudence[11] ...Moreover, as a rule, circulars and regulations especially like the the circular...in question which prescribes a penalty for its violation should be published before becoming effective, this on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties."

The Supreme Court seems to point out that the effectivity of laws, including circulars as this one under review, depends upon their publication. The Court seems to have relied upon the provision of the Revised Administrative Code which states that statutes passed by Congress shall, in the absence of special provision, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette,[12] and on the provision of the New Civil Code which declares that laws shall, unless otherwise provided, take effect after fifteen days following the completion of their publication in the Official Gazette.[13]

But these laws themselves carry "in the absence of special provision" and "unless otherwise provided" clauses, and it is not uncommon to see that laws passed by Congress are made to take effect upon their approval, not upon their publication. It seems that in the final analysis, laws which are duly enacted and approved are valid, regardless of omission to publish them, especially when we take into consideration the rules that ignorance of the law excuses no one from compliance therewith[14] and that everyone is conclusively presumed to know the law.[15]

At any rate, the Supreme Court ruled that "in the eyes of the law there was no such circular to be violated and consequently appellant committed no violation of the circular or committed any offense . . ." As it was faced with a circular of a penal nature, the Court chose to adhere, and rightly so, to the well settled rule that penal laws and regulations should be construed and applied strictly against the government and liberally in favor of the accused.[16]

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[11] See United States v. Tupasi Molina, 29 Phil. 119 (1914) and authorities cited therein.

[12] Sec. 11.

[13] Art. 2. The Supreme Court cited the Spanish Civil Code of 1889, Art. 1, which provides that laws shall be binding twenty days after their promulgation, and that their promulgation shall be understood as made on the day of the termination of the publication of the laws in the Gazette. Manresa, commenting on this article, is of the opinion that the world "laws" includes regulations and circulars issued in accordance with the same. I MANRESA, CODIGO CIVIL ESPAÑOL 52.

[14] Art. 2, Civil Code of the Philippines.

[15] Rule 123, sec. 68, par. (e), Rules of Court of the Philippines.

[16] United States v. Abed Santos, 36 Phil. 243 (1917).

II. Prohibition Against Infliction of Cruel and Unusual Punishment.

Under the Constitution, infliction of cruel and unusual punishment is prohibited.[17] In *Ayuda v. People and Court of Appeals*,[18] the Supreme Court was asked to determine whether the penalty imposed upon petitioner for violating Executive Order No. 337, series of 1950, issued in pursuance of the Price Control Law[19] was excessive and unusual. Ayuda, for selling two paper pads a few centavos more than the ceiling price fixed, was sentenced by the Court of Appeals to pay, in each of the two cases brought against him, a fine of more than ₱2,000, with the recommendation for executive clemency with regard to petitioner's suspension from the wholesale or retail business for five years as additional penalty imposed upon him as provided by the law.

The Court ruled that the penalty was not unusual and cruel. In the earlier case of *People v. De la Cruz*,[20] the Court declared that the ". . . damage caused to the State is not measured exclusively by the gains obtained by the accused, inasmuch as one violation would mean others, and the consequential breakdown of the beneficial system of price controls." Although the Supreme Court in the *De la Cruz* case exercised its discretion by lowering the penalty and fine imposed therein, the instant case did not, in the opinion of the Court, call for a similar exercise of discretion even if the sum was paltry, because the Court of Appeals had already applied the minimum penalty to the petitioner. All that the Supreme Court could do was to join the Court of Appeals in recommending executive clemency with regard to the suspension of petitioner from his business.[21]

III. Attempted and Frustrated Felonies.

Since different penalties are imposed for consummated, frustrated, and attempted felonies, it is imperative that the stage at which a felony is committed be determined. In the case of *People v. Sy Pio*,[22] the lower court convicted the accused of frustrated murder;[23] the Supreme Court ruled that the offense was attempted murder only.[24]

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[17] Art. III, Sec. 1, cl. 19.

[18] G.R. Nos. L-6149-50, April 12, 1954.

[19] Rep. Act No. 509, June 13, 1950.

[20] G.R. No. L-5790, April 17, 1953. It may be observed that in the *De la Cruz* case, the Supreme Court avoided to rule definitely on the constitutional issue raised by simply exercising its discretion of lowering the penalty complained of, reaching what Prof. E. M. Fernando considers an "area of compromise 'which skirts the constitutional issue, yet executes substantial justice.'" 29 Phil. L. J. 39 (1954).

[21] Judicial recommendation for executive clemency is allowed under Art. 5, Rev. Penal Code.

[22] G.R. No. L-5848, April 30, 1954.

[23] "A felony is. . . frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator." Art. 6, Rev. Penal Code.

On account of a long standing grudge between accused and several Chinese (including victims), the accused, armed with a revolver, broke into a store and shot one Sy Tan Siong Kiap, who was then in the store, asked the accused what his idea was, but the latter immediately fired at him, the bullet piercing Tan's shoulder. The victim ran to a room behind the store to hide. Accused then fled. Murder qualified by evident premeditation[25] was clearly established. But was it frustrated murder? The court held that it was not. It was attempted murder, because the accused "did not perform all the acts of execution, actual and subject, in order that the purpose and intention that he had to kill his victim might be carried out." The accused saw his victim run and hide in another room. The ability of Tan to escape "must have produced in the mind of the defendant . . . that he was not able to hit his victim at a vital part of the body . . . (he) knew that he had not actually performed all the acts of execution necessary to kill his victim."

In other words, for a crime to be frustrated the subjective phase of the acts of execution must be completed. Evidently, the element which distinguishes attempted from frustrated felony is that, in the case of an attempt, as in the instant case, the offender never passes the subjective phase of the offense. On the other hand, as was held in *United States v. Eduave*,[26] *People v. Dagman*,[27] and *People v. Borinaga*,[28] the subjective phase in frustrated crimes is completely passed; there is present a full and complete belief on the part of the assailant that he has committed all the acts of execution necessary to produce the death of the intended victim.

Appellant in *People v. Fader*[29] was convicted of the crime of attempted robbery with double homicide.[30] The robbery here was attempted because when the defendant was demanding money at gun point from the inmates, two of the children were awakened by the commotion and defendant had to turn to the children by shooting them. Accused then fled without getting the money. There was thus such intervention that the offender did not arrive at the point of performing all the acts which could have produced the crime of robbery.

There was frustrated murder in the case of *People v. Umali et al.*,[31] where the defendants, actuated by bitter political enmity, raided a town of Quezon Province, and on the occasion of said raid, hurled a hand

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[24] "There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance." *Ibid.*

[25] Art. 25, par. 5, Rev. Penal Code.

[26] 36 Phil. 209 (1917).

[27] 47 Phil. 768 (1925).

[28] 55 Phil. 433 (1930).

[29] G.R. No. L-5732, March 12, 1954.

[30] Art. 297, Rev. Penal Code.

[31] G.R. No. L-5803, Nov. 29, 1954.

grenade at a policeman causing the latter to lose the sight of one of his eyes. All the acts of execution were performed which could have produced the felony as a consequence, but which did not produce it because only one of the eyes of the policeman was hit by a shrapnel—a cause independent of the will of the raiders.

IV. Circumstances Affecting Criminal Liability.[32]

A. Justifying Circumstance.

1. *Self-defense.*

Anyone who acts in defense of his person or rights, provided there be unlawful aggression, reasonable necessity of the means employed to prevent or repel such aggression, and lack of sufficient provocation on the part of the person defending himself incurs no criminal nor civil liability.[33] Since this defense is easily fabricated and resorted to by the accused, there is the salutary rule that the burden is on him to establish that all the requisites of self-defense are present[34] and that he must rely on the strength of his own evidence, and not on the weakness of that of the prosecution.[35] In *People v. Fuentes et al.*,[36] the Court did not give credence to appellant's claim that he killed the deceased in self-defense. Appellant together with two others overtook the deceased along a road. While one of them held victim's arms, Fuentes hit the back of victim's head with a bamboo club, causing the latter to fall on the ground prostrate. Then the three took turns at hitting their unconscious victim at his back. Appellant's version that it was the deceased who assaulted him was discredited because it was hard to believe that the victim would dare attack the accused who was with two companions. Nor was it credible that although appellant's companions had grabbed the victim by his arms he was no sooner released while appellant had not yet been able to run away.[37]

B. Exempting Circumstances.

1. *Compulsion of an irresistible force and/or uncontrollable fear of an equal or greater injury.*

Irresistible force, to exempt the act from criminal liability,[38] must produce such an effect on the individual that, in spite of all resistance,

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[32] Qualifying circumstances will be treated in the discussion of the cases involving murder

[33] Art. II, par. 1, Rev. Penal Code.

[34] *E.g.*, People v. Ramos, 59 Phil. 7 (1933); People v. Pabellan, 58 Phil. 694 (1933); People v. Gutierrez, 53 Phil. 609 (1929); and People v. Beguio, 43 Phil. 683 (1922).

[35] *E.g.*, People v. Ansoyon, 42 O.G. 1238 (1946); United States v. Highfill, 4 Phil. 384 (1905).

[36] G.R. No. L-6027, May 26, 1954.

[37] For illustrative cases where claims of self-defense were rejected, see *e.g.*, People v. Ramirez, G.R. No. L-2965, June 27, 1951; People v. Apolinario, 58 Phil. 586 (1931); United States v. Singson, 41 Phil. 53 (1920).

[38] Art. 12, par. 5, Rev. Penal Code.

it reduces him to a mere instrument, and as such is compelled to act not only without will but against his will.[39] And before uncontrollable fear may be accepted as an exempting circumstance,[40] it must appear that the threat which caused the uncontrollable fear related to a crime of such gravity and so imminent that it might safely be said that the ordinary run of men would have been governed by it.[41]

In the case of *People v. Manzanida*,[42] the prosecution showed that the accused committed acts of treason[43] by accompanying Japanese soldiers in the capture of guerrillas and guerrilla suspects and in helping the enemy investigate, maltreat, and even liquidate their Filipino captives. Defendant claimed that if he had been present on the occasions adverted to, he was himself a prisoner, taken along as a servant, cook and *cargador*, under pain of death in case of disobedience or escape. The Supreme Court coldly brushed this aside because it was very unlikely that Japanese patrols needing every soldier to capture guerrillas would be taking along with them prisoners who would only be a liability instead of an asset.[44] Neither irresistible force nor uncontrollable fear was proved. Duress in treason cases is not a defense if not proved to be irresistible.[45]

C. Mitigating Circumstances.

1. *Incomplete self-defense.*

The Supreme Court found the privileged mitigating circumstance of incomplete self-defense[46] in favor of the accused in the homicide case of *People v. Maula*.[47] The case falls under the recurring situation where unlawful aggression and lack of sufficient provocation were present, but there was no reasonable necessity of the means employed to repel the aggression.[48]

In the instant case, accused was joking with another when the deceased arrived and started joking with the accused though the latter did not like to have anything to do with the deceased. Annoyed by the apparent indifference of the accused, the deceased exclaimed that the accused was no match against him (deceased). In reply, accused reminded the deceased of how the latter one time refused to accept the

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[39] United States v. Elicanal, 35 Phil. 209 (1916).
[40] Art. 12, par. 6, Rev. Penal Code.
[41] United States v. Elicanal, note 39 *supra*.
[42] Art. 114, Rev. Penal Code.
[44] People v. Muñoz, 45 O.G. 2471 (1949).
[45] People v. Bogalawis, 44 O.G. 2655 (1948).
[46] Art. 13, par. 1, Rev. Penal Code. A privileged mitigating circumstance cannot be offset by an ordinary aggravating circumstance and may lower the penalty by one or two degrees, depending upon the circumstances of the case. Art. 69, Rev. Penal Code.
[47] G.R. No. L-7191, Oct. 18, 1954.
[48] People v. Alviar, 56 Phil. 98 (1931); People v. Bergaño, 52 Phil. 313 (1928); People v. Mercado, 43 Phil. 995 (1922); United States v. Pacsa, 28 Phil. 222 (1914); United States v. Agaludud, 8 Phil. 750 (1906); United States v. De Castro, 2 Phil. 67 (1903).

challenge of the defendant's cousin. Deceased's pride having been piqued, he started raining fist blows upon accused. Accused whipped out his knife and stabbed his adversary to death. Incomplete self-defense was accepted under this set of facts. The initial provocation and aggression came from the deceased. And while the means employed by accused was unreasonable, there was lack of sufficient provocation on his part.

2. *No intent to commit so grave a wrong as that committed.*

The Court refused to grant in favor of the accused in the aforementioned case of *People v. Maula* the mitigating circumstance of having no intention to commit so grave a wrong as that committed.[49] Such a claim of non-intention was negatived by the act of the accused in stabbing his unarmed adversary twice at the latter's visceral region and by using a knife which was a deadly and unnecessary weapon.[50]

3. *Sufficient provocation or threat.*

Sufficient provocation or threat on the part of the offended party immediately preceding the act of the accused mitigates the latter's liability.[51] This circumstance was accepted in the murder case of *People v. Didulo*.[52] There the deceased and the accused had a quarrel over the sister of the latter whom the victim was dragging from the house. The deceased hit the appellant with several fist blows. Enraged, defendant ran upstairs, grabbed a pistol, and shot the deceased. The provocation was sufficient to stir the accused to commit such offense.[53]

The Supreme Court, however, refused to find this mitigating circumstance in *People v. Libria*[54] on the ground that, while it was true that the deceased, who was a bully, boxed appellant in a dance hall, the act of the accused in murdering him more than two weeks thereafter could not be mitigated by the provocation of the deceased because it was not a provocation that "immediately preceded" the act.

4. *Passion or obfuscation.*

In order that an accused may rightfully claim the mitigating circumstance "of having acted under an impulse so powerful as naturally to have produced passion and obfuscation,"[55] the passion or obfuscation must arise from causes of such nature as to overcome reason and self-

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[49] Art. 13, par. 3, Rev. Penal Code.

[50] *E.g.*, People v. Dungka, 64 Phil. 422 (1937); People v. Reyes, 61 Phil. 341 (1935); People v. Moldes, 60 Phil. 1 (1934); People v. Orongan, 58 Phil. 426 (1933); People v. Flores, 50 Phil. 548 (1927).

[51] Art. 13, par. 4, Rev. Penal Code.

[52] G.R. No. L-6082, Aug. 31, 1954.

[53] In United States v. Rodriguez, 23 Phil. 22 (1912), there was also sufficient provocation, it appearing that the deceased was assaulted because the accused saw him seized the hand of the daughter of the accused to make love to her. Also, United States v. Firmo, 36 Phil. 133 (1917) and United States v. Carrero, 9 Phil. 544 (1908).

[54] G.R. No. L-6585, July 16, 1954.

[55] Art. 13, par. 6, Rev. Penal Code.

control[56] and the act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have recovered his equanimity.[57] Nor can such circumstance be admitted if the impulse under which defendant acted was generated in a spirit of lawlessness and deliberately fomented by him.[58] Thus, in the *Libria* case the Court ruled out passion or obfuscation because the accused, in his grim desire for revenge, had more than two weeks to plan the killing of the deceased. His act was therefore not a result of natural and uncontrollable fury.

In the case of *People v. Alonzo*,[59] however, the requisites of obfuscation were present. There the accused fatally shot two suspected guerrillas, after the latter, in an encounter with the Manila police, had just killed two of defendant's fellow policemen. His excitement and fury was so powerful that he lost his reason and self-control.

5. *Plea of guilty; voluntary surrender.*

The mitigating circumstance of plea of guilty[60] was credited in favor of the accused who was convicted of robbery in *People v. Suarez*.[61]

In three cases decided last year,[62] the circumstance of voluntary surrender[63] was accepted. Where, however, the accused fled after killing his victim and that the police chief who had witnessed the flight testified that only after he (police chief) had intervened and had ordered the accused to stop and surrender did the accused give up and turn over his weapon to the police, such an attitude, according to the Court in *People v. Ramos*,[64] could not be considered voluntary surrender for it was not spontaneous so as to show intent to surrender unconditionally to the authorities.[65]

6. *Analogous mitigating circumstance.*

The Revised Penal Code considers as mitigating "any circumstance of a similar nature and analogous to those above mentioned."[66] Thus, in the *Libria* case noted earlier, the killing was not entirely without mitigation. Although there was neither sufficient provocation nor obfuscation, the Court did not find it difficult to see why the victim's boxing

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[56] United States v. Pilares, 18 Phil. 87 (1910).
[57] People v. Nario, 57 Phil. 98 (1932); People v. Alanguilang, 52 Phil. 663 (1929); People v. Laota, 46 Phil. 392 (1924); United States v. Sarikala, 73 Phil. 486 (1918).
[58] People v. Matbagon, 60 Phil. 887 (1934).
[59] G.R. No. L-4405, July 31, 1954.
[60] Art. 13, par. 7, Rev. Penal Code.
[61] G.R. No. L-6431, March 29, 1954.
[62] People v. Ripas et al., G.R. No. L-6246, May 5, 1954; People v. De Jesus, G.R. No. L-6583, Aug. 25, 1954; and People v. Didulo, G.R. No. L-6082, Aug. 13, 1954.
[63] See note 60 *supra*.
[64] G.R. No. L-5843, May 17, 1954.
[65] People v. Sakam, 61 Phil. 27 (1934).
[66] Art. 13, par. 10, Rev. Penal Code.

appellant during a dance in the presence of so many people was an insult to and which produce rancour in the mind of appellant, it appearing that appellant was an ex-military serviceman who was well-known and respected in his community. This sufficiently made out an analogous mitigating circumstance in favor of the accused.

D. Aggravating Circumstances.

1. *Taking advantage of public position.*

This circumstance[67] was found against defendants in *People v. Oliva et al.*,[68] it appearing that the policemen, in investigating a suspect, maltreated him to such an extent that death inevitably followed. This circumstance was, however, absent in the case of *People v. Galapon and Galapon*[69] because even if one of the defendants was a member of the local police force, he did not abuse his office in order to commit the crime of murder.

2. *Dwelling.*

Dwelling is aggravating[70] because it is said that the home is a sacred place.[71] In the cases of *People v. Lagoy*,[72] *People v. Aguilar*,[73] *People v. Cabang et al.*,[74] and *People v. Bagos and Bagos*,[75] the murders were committed in the houses of the victims. In the *Lagoy* case, the mother and child were slain in their house while the father, although killed outside of his dwelling, was initially attacked inside causing him to jump out of the window only to be boloed to death by the other culprits stationed downstairs for that purpose. In the *Bagos* case, the assassins went under the house of their intended victim and from there fired upward shots resulting in the killing of two children.[76]

The same circumstance was present in the commission of the crimes of homicide and frustrated homicide,[77] robbery in band,[78] robbery with homicide,[79] and robbery with rape.[80]

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[67] Art. 14, par. 1, Rev. Penal Code provides: "That advantage be taken by the offender of his public position."

[68] G.R. Nos. L-6033-35, Sept. 30, 1954.

[69] G.R. No. L-6657, July 26, 1954.

[70] Art. 14, par. 3, Rev. Penal Code.

[71] Mr. Justice Villa-Real, dissenting in People v. Datu Ambis, 68 Phil. 635, 637 (1993).

[72] G.R. No. L-5112, May 14, 1954.

[73] G.R. Nos. L-6142-44, May 26, 1954.

[74] G.R. Nos. L-7258-59, Sept. 28, 1954.

[75] G.R. Nos. L-6808-10, Oct. 29, 1954.

[76] Same holding in People v. Albar, G.R. No. L-3024, April 1, 1950.

[77] People v. Cuaresma et al., G.R. Nos. L-5841-42, Jan. 29, 1954.

[78] People v. Suarez et al., G.R. No. 6062, March 20, 1954 and People v. Opena et al., G.R. No. L-6318, May 17, 1954.

[79] People v. Piamonte et al., G.R. No. L-5775, Jan. 28, 1954; People v. Jistiado et al., G.R. No. L-5478, April 29, 1954; and People v. Valenzona et al., G.R. L-5386, May 28, 1954.

[80] People v. Opena et al., G.R. No. L-6219, May 17, 1954; People v. Cercado and Cervo, G.R. No. L-6814, May 31, 1954; People v. Buama et al., G.R. No. L-7254, July 26, 1954; People v. Galamiton, G.R. L-6302, Aug. 25, 1954; and People v. Vinarao, G.R. No. 6081, Dec. 29, 1954.

3. *Abuse of confidence.*

Where the crime is committed with abuse of confidence, the defendant's liability is aggravated.[81] In *People v. Ocampo et al.*,[82] the appellant was convicted of kidnapping with serious illegal detention of his nephew. Before the kidnapping, he personally obtained information about the victim's sweetheart from the victim himself, which information enabled the appellant to fabricate news about the girl's condition in order to make his nephew fall prey to his designs. This was a clear case of abuse of confidence. The confidence was a means of facilitating the kidnapping, the accused having taken advantage of his nephew's belief that the former would not abuse said confidence.[83]

4. *Where public authorities are engaged in the discharge of their duties.*

The above aggravating circumstance was counted against the accused in *People v. Canoy et al.*,[84] where the two victims, one of whom was then an electoral precinct watcher, were riddled with bullets while they were in the polling place.

5. *Nocturnity; in an uninhabited place; by a band.*

These circumstances are found in the following provision: "That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense."[85]

If the culprit purposely sought the night, or took advantage of the darkness for the successful consummation of his plans, then nocturnity is an aggravating circumstance.[86] Thus, the Supreme Court considered nocturnity in the following cases decided during the period under review: homicide and frustrated homicide,[87] kidnapping with serious illegal detention,[88] robbery,[89] robbery with homicide,[90] and robbery with rape.[91] But nocturnity was held absorbed by treachery in one murder case.[92]

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[81] Art. 14, par. 4, Rev. Penal Code.
[82] G.R. No. L-6113, May 26, 1954.
[83] People v. Luchico, 49 Phil. 689 (1926).
[84] G.R. No. L-6037, Sept. 30, 1954.
[85] Art. 14, par. 6, Rev. Penal Code.
[86] *E.g.*, People v. Barredo, G.R. No. L-2728, Dec. 29, 1950; People v. San Luis, G.R. No. L-2363, May 29, 1950; People v. Aquino, 68 Phil. 615 (1939); People v. Bumanlag, 56 Phil. 10 (1931).
[87] People v. Cuaresma et al., G.R. Nos. L-5841-42, Jan. 29, 1954.
[88] People v. Licop, G.R. No. L-6061, April 29, 1954.
[89] People v. Suarez, G.R. No. L-6431, March 29, 1954.
[90] People v. Piamonte et al., G.R. No. L-5775, Jan. 28, 1954; People v. Jistiado et al., G.R. No. L-5478, April 29, 1954; People v. Valenzona et al., G.R. No. L-5386, May 28, 1954; and People v. Venegas et al., G.R. No. L-4928, June 11, 1954.
[91] People v. Opena et al., G.R. Nos. L-6318-19, May 17, 1954; People v. Busma et al., G.R. No. L-7254, July 26, 1954; People v. Galamiton, G.R. No. L-6302, Aug. 25, 1954; and People v. Vineras, G.R. No. L-6081, Dec. 29, 1954.

The place is uninhabited where there are no houses at all, is at a considerable distance from the town, or where the houses are scattered at a great distance from each other.[93] And where the isolation of the place be deliberately taken advantage of to commit the crime, said crime is attended by the aggravating circumstance of uninhabited place. Thus, in the case of *People v. Valenzona et al.*,[94] where it was proved that the defendants sought the uninhabited seashore as the place for slaying their victim, the Court considered this aggravating.

The crimes committed in the cases of *People v. Cercado and Cervo*,[95] *People v. Venegas et al.*,[96] *People v. Buama et al.*,[97] and *People v. Viñeras*[98] were attended by the aggravating circumstance of band, because in each of these cases, it was shown that the offenses were committed by more than three armed malefactors.[99]

6. *Aid of armed persons.*

This aggravating circumstance was counted against the accused who, together with other women, kidnapped and illegally detained her victim at gun point.[100]

7. *Evident premeditation.*

There is premeditation 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 time dispassionately to consider and accept the consequences.[101] The essence of premeditation is that the commission of the crime must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[102] Thus, the Court last year found that the murder of an election precinct watcher and his brother was a result of evident premeditation.[103] The crime of murder committed in *People v. Bagos and Bagos*[104] was attended by premeditation as shown by the fact that the offense was the means to avenge the death of the defendants' kin supposedly caused by their intended victim during the period of enemy occupation and that the commission of the crime was well-planned as the culprits strategically deployed themselves around and under the house of their intended victim. The separate crimes imputed to the defendants in *People v. Umali et al.*,[105]

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[93] People v. Legoy et al., G.R. No. L-5112, May 14, 1954.
[94] United States v. Salgado, 11 Phil. 56 (1908).
[95] G.R. No. L-5386, May 28, 1954.
[96] G.R. No. L-6814, May 31, 1954.
[97] G.R. No. L-4928, June 11, 1954.
[98] G.R. No. L-6081, Dec. 29, 1954.
[99] Art. 14, par. 6, Rev. Penal Code.
[100] People v. Licop, G.R. No. L-6061, April 29, 1954.
[101] United States v. Cornejo, 28 Phil. 457 (1914).
[102] People v. Durante, 35 Phil. 363 (1929).
[103] People v. Canoy et al., G.R. No. L-6037, Sept. 30, 1954.
[104] G.R. Nos. L-6808-10, Oct. 29, 1954.
[105] G.R. No. L-5803, Nov. 29, 1954.

were aggravated by premeditation since the cause of the raid of the town with the aid of dissidents was prolonged and bitter political rivalry. It was shown that the plans concerning the execution of the raid had been carefully mapped out long before the defendants stormed the town.

8. *Disguise.*

Disguise is characterized by the intellectual rather than by the physical means to which the criminal resorts to carry out his design and to avoid being recognized.[106] The two robbers in the case of *People v. Galamiton*[107] wore handkerchiefs on the lower portion of their faces and pulled down the brims of their hats to achieve disguise. Similarly, the robbers in *People v. Buama et al.*,[108] covered their faces with handkerchiefs and used helmets.

9. *Treachery.*

The circumstance of treachery may be ordinary or qualifying. The discussion of *alevosia* which qualifies killing to murder[109] will be dealt with under the topic of murder.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[110] Illustrations of treachery were abundant in the cases decided by our Supreme Court last year. In *People v. Venegas et al.*,[111] the two victims, after having been robbed, were taken to a place fifteen meters away from the house, bound, and then riddled with bullets. In *People v. Alonzo*,[112] the accused was found guilty of homicide with the aggravating circumstance of treachery because he fired at a suspected guerrilla whose arms were both raised and who was then begging the accused to spare his life. The murder in the case of *People v. Libria*[113] was aggravated by treachery, it appearing that the accused hid behind a banana grove waiting for his intended victim, and when the latter, who had just awakened, was going downstairs, accused without warning fired at him.

10. *Use of motor vehicle.*

This circumstance[114] was present in the cases of *People v. Licop*[115] and *People v. Ocampo et al.*,[116] where it was shown that a jeep and a car

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[106] United States v. Rodriguez, 19 Phil. 150 (1911).
[107] G.R. No. L-6302, Aug. 25, 1954.
[108] G.R. No. L-7254, July 26, 1954.
[109] Art. 248, par. 1, Rev. Penal Code.
[110] Art. 14, No. 16, par. 2, Rev. Penal Code.
[111] G.R. No. L-4928, June 11, 1954.
[112] G.R. No. L-4405, July 31, 1954.
[113] G.R. No. L-6585, July 16, 1954.
[114] Art. 14, par. 20, Rev. Penal Code.
[115] G.R. No. L-6061, April 29, 1954.
[116] G.R. No. L-6113, May 26, 1954.

were used, respectively, in the commission of the crime of kidnapping with serious illegal detention.

E. Alternative Circumstance of Degree of Instruction.

Degree of instruction is one of the three alternative circumstances provided in the Revised Penal Code which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission.[117] Lack of instruction was taken in favor of the accused in *People v. Maurillo*.[118] Accused was a poor man and his low intelligence was manifested when he boloed to death a man whom he believed to be an "aswang."

The question of whether mere inability to sign one's name is sufficient proof of lack of instruction was answered in *People v. Ripas et al.*[119] It appeared that the accused merely attested to the promulgation of his conviction by thumbmarking the decision of the lower court. The Supreme Court considered this proof inadequate, and even misleading, and declared that "not illiteracy alone but also lack of sufficient intelligence are necessary to invoke the benefit of this circumstance." The Court observed that a person who can sign his name may yet be an ignoramus and of such low intelligence that he does not realize the full consequences of his criminal act and as such may still be entitled to this mitigating alternative circumstance. On the other hand, another unable to write because of lack of educational facilities or opportunities, may yet be exceptionally intelligent to realize the full significance of his acts.

V. Facts Showing Participation as Principals in the Commission of Felonies.

Under the Revised Penal Code, the following are considered principals: (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and (3) those who cooperate in the commission of the offense by another act without which it would not have been accomplished.[120] In the case of *People v. Ocampo et al.*,[121] and *People v. Cabang et al.*,[122] decided last year by the Supreme Court, the appellant therein claimed non-participation.

In the *Ocampo* case, although the appellant virtually admitted the kidnapping and detention of his nephew, he nonetheless advanced the defense that he himself was a victim of said criminal act. Such a claim limped in the face of convincing proofs to the contrary: that he was the one who rented the apartment where the victim was illegally

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117 Art. 15, Rev. Penal Code.

118 G.R. No. L-6480, April 12, 1954. So was lack of instruction recognized in the case of People v. Licop, see note 115 *supra*.

119 G.R. No. L-6246, May 26, 1954.

120 Art. 17, Rev. Penal Code.

121 G.R. No. L-6113, May 26, 1954.

122 G.R. Nos. L-7258-59, Sept. 28, 1954.

detained; that he was the one who met the victim at the drug store and "persuaded" him to go to the kidnappers' car when he well knew that his nephew's car was just a few meters away; that before going to the victim's family to inform the latter of the kidnapping and the ransom demanded, the accused made a superficial wound on his forehead and blotched it with mercury chrome to simulate struggle; that he refused to reveal the place where the victim was held captive; and that a week before the kidnapping, accused succeeded in learning from the victim the personal circumstances of the latter's fiancee and used said information to lure his nephew to the trap set by him and his co-accused.

Similarly, the appellant in the *Cabang* case was held responsible as a principal, together with his two sons, for the two murders committed. It is true that only his sons did the actual killing, but it was proved that they were accompanied by him; that appellant carried the scythe and upon reaching the house of the first victim, he delivered the scythe to one of his sons and bade him to enter and kill said victim; that he waited downstairs with his other sons, holding stones in their hands; that before leaving the first house, he inquired if their victim was already dead; that again they proceeded to the store of their next victim, where the latter was hacked to death within the view of appellant and his other sons who stood at the threshold of the store watching the assault; and that the appellant later entered the store to ascertain whether their second victim had already expired. His liability as principal was beyond doubt.

VI. Subsidiary Imprisonment.

If the convict has no property with which to meet the pecuniary liabilities imposed upon him, he shall be subject to a subsidiary personal liability at the rate of one day for each two pesos and fifty centavos according to certain rules.[123] This provision was assailed by appellant in *People v. Rodriguez*,[124] who was convicted of damage to property through reckless imprudence and who was sentenced to suffer subsidiary imprisonment in case of insolvency, on the ground that this amounted to imprisonment for debt which the Constitution prohibits. Reaffirming earlier holdings, the Court held that the claim was unmeritorious because the fine or indemnity is not a debt of a contractual nature.[125]

VII. Imposition of Death Penalty.

The requirement under the Revised Penal Code [126] that all the members of the Supreme Court concur as to the propriety of imposing the death penalty was modified by the Judiciary Act of 1948 which provides

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[123] Art. 39, Rev. Penal Code.

[124] G.R. No. L-6300, April 20, 1954. See PHIL. CONST., Art. III, sec. 1, cl. 12.

[125] United States v. Cara, 41 Phil. 828 (1917); United States v. Heery, 25 Phil. 600 (1913).

that the death penalty is imposable only when eight justices agree thereto.[127] Although it was the Court itself that once declared that in these days of rampant criminality, our courts do not shirk their disagreeable duty to impose the extreme penalty in cases where the law so requires,[128] there seemed to be a retreat from this pronouncement and a corresponding growth of leniency or mercy towards the accused as shown by a number of cases decided last year where, although the imposition of the death penalty was warranted, yet the same was not ordered on account of the insufficiency of the number of votes of the justices.[129]

VIII. Complex Crime.

There is a complex crime when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other.[130] The question whether or not there is such a complex crime of rebellion with multiple murder, frustrated murder, arson and robbery still remains an open question in our jurisdiction. It is unfortunate that such an important legal issue was evaded by our Supreme Court in the case of *People v. Umali et al.*,[131] just because the counsel for the appellants did not raise that issue.[132] Justice Montemayor, speaking for the Court, said that the consideration of such controversial question had to be deferred to another case or occasion more opportune, when it will be more directly and squarely raised and where both parties will be given more opportunity to discuss and argue the question more exhaustively. In the instant case, the Supreme Court modified the decision of the lower court by convicting the appellants of the separate crimes of sedition, multiple murder, frustrated murder, physical injuries, and arson.[133]

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[126] Art. 47, par. 2, Rev. Penal Code.

[127] Sec. 9, Rep. Act. No. 296, June 17, 1948.

[128] People v. Carillo, G.R. No. L-2043, Feb. 28, 1950.

[129] People v. Piamonte et al., G.R. No. L-5775, Jan. 28, 1954 (robbery with homicide); People v. Jistiado et al., G.R. No. L-5478, April 29, 1954 (robbery with double homicide); People v. Licop, G.R. No. L-6061, April 29, 1954 (kidnapping with serious illegal detention); People v. Sabijon and Padernos, G.R. No. L-6509, April 29, 1954 (murder); People v. Legoy et al., G.R. No. L-5112, May 14, 1954 (triple murder); People v. Francisco, G.R. No. L-5900, May 14, 1954 (complex crime of murder and physical injuries); People v. Ocampo et al., G.R. No. L-6113, May 26, 1954 (kidnapping with serious illegal detention); People v. Venegas et al., G.R. No. L-4928, June 11, 1954 (robbery with homicide); People v. Cabang et al., G.R. Nos. L-7258-59, Sept. 28, 1954 (murder); People v. Canoy et al., G.R. No. L-6037, Sept. 30, 1954 (murder); and People v. Bgaos and Bagos, G.R. Nos. L-6808-10, Oct. 29, 1954 (murder).

[130] Art. 48, Rev. Penal Code.

[131] G.R. No. L-5803, Nov. 29, 1954.

[132] Counsel for the appellant contended that the existence or non-existence of such a complex crime was of no moment to their cause on the ground that appellants denied participation in any manner in the crime (s) charged.

[133] These separate crimes will presently be treated in the discussion of particular felonies.

IX. The Forty-Year Limit of Multiple Sentences.

Under the Revised Penal Code, 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 same maximum period, and such maximum period shall in no case exceed forty years.[134] The purpose of this three-fold rule and forty-year limit is to avoid the absurdity of a man being sentenced to suffer a prison term much longer than his natural life expectancy. Thus, the appellants in *People v. Lagoy et al.*,[135] who were convicted of three separate murders, were sentenced to *reclusión perpetua* for each of the three crimes, to be served continuously and successively, but the total period shall not exceed forty years. Similarly, in *People v. Umali et al.*,[136] the sum total of the penalties imposed upon the accused for the separate crimes of sedition, multiple murder, frustrated murder, physical injuries, and arson cannot exceed forty years.

X. Effect of Acquittal on Right of Municipal Policemen to Reinstatement and Unpaid Salary During Period of Suspension.

In *People v. Bautista et al.*,[137] three were accused of the crime of rape. One of them married the offended party later.[138] Acquittal of the other two, who were local policemen, soon followed, but the trial judge ordered that the policemen should not be reinstated nor entitled to any salary. This order was held incorrect by the Supreme Court, because the provision of the Revised Administrative Code[139] upon which the lower court based its order had already been modified by a subsequent amendatory act[140] which entitles the accused to payment of the entire salary they failed to receive during their suspension. As to reinstatement, the Court was of the opinion that the new law contemplates their automatic reinstatement also, because they were suspended only "pending the final decision of the case by the court."

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[134] Art. 70, pars. 4 & 5, Rev. Penal Code.
[135] G.R. No. L-5112, May 14, 1954.
[136] G.R. No. L-5803, Nov. 29, 1954.
[137] G.R. No. L-7079, Oct. 26, 1954.
[138] Under Art. 89, par. 7, Rev. Penal Code, criminal liability for rape (Art. 344) is totally extinguished by marriage with the offended woman.
[139] Sec. 2272, Rev. Adm. Code provides: "When a...member of the municipal police is accused in court of any felony...the mayor shall immediately suspend the accused from office pending final decision of the case by the courts, and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during the suspension if the court should so provide in the sentence."
[140] Sec. 4, Rep. Act No. 557 provides: "When a member of the...municipal police is accused in court of any felony...the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court, and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension."

XI. Civil Liberty Under the Revised Penal Code; Restitution and Reparation Construed.

The civil liability under the Revised Penal Code includes; (1) restitution; (2) reparation of damage caused; and (3) indemnification for consequential damages.[141] Restitution is made by returning the thing itself whenever possible, with allowance for any deterioration or diminution of value as determined by the court.[142] These rules were applied by the Supreme Court in the case of *People v. Mostaseca and Dumagat*.[143]

Appellants were found guilty of coercion and aside from their prison sentence, the Court of Appeals ordered appellant Dumagat to return the articles in question to the complainant or to indemnify the latter in the sum of ₱632.00. The sheriff thus levied upon the properties of Dumagat, despite the fact that the latter had already delivered to the former two bales of tobacco. Accused sought to set aside the order of execution on the ground that tobacco is a fungible thing and that, under the Civil Code,[144] the obligation of one who receives money or fungible things is to pay the creditor an equal amount of the thing owed of the same kind and quality. The motion was denied, and defendant appealed.

The Supreme Court dismissed the appeal and pointed out that the civil liability of the appellant was governed not by the Civil Code but by the Revised Penal Code. The sentence below was for the return of the very thing taken, "restitution," and if this cannot be done, for the payment of money in lieu thereof, "reparation,"[145] representing the market value of the two bales of tobacco at the time of the taking.

The Court held that reparation is not made by the delivery of a similar thing of the same amount, kind or species, and quality, as the appellant claimed, because the value of the thing taken may have decreased. Reparation should therefore consist of the price of the thing taken, as fixed by the court. The purpose of the law, according to the Court, is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. So if the crime consists in taking away of his property, the first remedy granted is that of restitution of the thing taken away; if restitution cannot be made, the law allows the offended party the next best thing, reparation.[146]

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[141] Art. 104, Rev. Penal Code.

[142] Art. 105, par. 1, Rev. Penal Code.

[143] G.R. No. L-5684, Jan. 22, 1954.

[144] Art. 1953.

[145] Art. 106, Rev. Penal Code provides: "*Reparation — How made.* — The court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly."

[146] "En las causas por robo, hurto, etc., en que no hayan sido recuperados durante el proceso los objetos de dichos delitos, debe condenarse a los reos a su restitucion, o, en su defecto, a la indemnizacion correspondiente en la cantidad en que hayan sido valorados o tasados por los peritos;...." VIADA 6.

XII. Constitutionality of Article 217, Last Par., Revised Penal Code Upheld.

The aforecited provision which states that "the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses" was assailed as unconstitutional by appellant in *People v. Livara*[147] who was accused of the crime of malversation of public funds[148] on the ground that under said provision, the accused is not presumed innocent until the contrary is proved.[149] The Supreme Court considered this claim unmeritorious, and reaffirmed its decision in an earlier case,[150] where it held that "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence."

XIII. Fine as Penalty in Reckless Imprudence Cases.

Fine is a penalty which is common to afflictive, correctional, and light penalties.[151] And in quasi offenses through reckless imprudence,[152] which have resulted only in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.[153] Defendant in *People v. Rodrigues*[154] who was found guilty of damaging a taxi through reckless imprudence was made to pay a fine of ₱1,090 and to indemnify the offended party. On appeal, the defense counsel asked for a reduction of the fine on the theory that the Revised Penal Code itself requires that the the wealth or means of the culprit be taken into consideration in the imposition of fines.[155] But the Court said that the fine imposed below was the

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147 G.R. No. L-6201, April 20, 1954.

148 Art. 217, Rev. Penal Code.

149 Phil. Const., Art. III, sec. 1, cl. 16 provides: "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, . . ."

150 People v. Mingoa, G.R. No. L-53371, March 26, 1953.

151 Art. 25, Rev. Penal Code.

152 Under the penultimate paragraph of Art. 365, Rev. Penal Code, "Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding person, time and place."

153 Art. 365, par. 2, Rev. Penal Code.

154 G.R. No. L-6300, April 20, 1954.

155 Art. 66, Rev. Penal Code, provides: "*Imposition of fines.* — In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit."

minimum imposable under the third paragraph of Article 365. Furthermore, even when the fine is reduced by one or more degrees, the minimum is never changed.[156]

PARTICULAR FELONIES

I. Crimes Against National Security.

A. Treason.

The crime of treason is committed by any person who, owing allegiance to the Republic of the Philippines, levies war against it or adheres to its enemies.[157] And conviction of treason lies when at least two witnesses testify to the same overt act or when the accused confesses in open court.[158]

Two cases of treason[159] were decided by our Supreme Court last year, adding to the already abundant stock of Philippine treason cases. The convictions of the accused in both cases in the lower court were affirmed by the highest tribunal. The following facts established the guilt of the accused in *People v. Romales*:[160] that the accused served as a spy and investigator for the enemy; that he maltreated and tortured guerrillas and suspected guerrillas; that he looted the houses of the prisoners; and that he extorted huge sums of money. Similarly, in the case of *People v. Manzanida*,[161] the accused, according to several witnesses and by his own admission, served the Japanese as spy, informant, and guide; that he helped the Japanese in investigating and maltreating their captives; that he decapitated a lieutenant of the resistance movement; that he was always armed with a revolver and dressed in a khaki uniform; and that some suspects were released through his intercession showing that he wielded influence.

II. Crimes Against Public Order.

A. Sedition.

On account of bitter political rivalry, it was shown that defendants in *People v. Umali et al.*[162] had instigated a band of Hukbalahaps to liquidate Punzalan who won in the election for mayor of Tiaong, Quezon Province. Around fifty Huks, headed by the defendants, and armed with garands, carbines, bottles filled with gasoline, entered the town and burned

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[156] Art. 75, Rev. Penal Code.
[157] Art. 114, par. 1, Rev. Penal Code.
[158] Art. 114, par. 2, *Ibid.*
[159] People v. Romales, G.R. No. L-6083, Jan. 12, 1954 and People v. Manzanida, G.R. No. L-5706, Jan. 29, 1954. In another case decided last year, People v. Sotero Alonzo, G.R. No. L-4405, July 31, 1954. accused was convicted of treason by the lower court, but the Supreme Court found him guilty only of double homicide. This case will be treated more under the topic "Crimes Against Persons."
[160] G.R. No. L-6083, Jan. 12, 1954.
[161] G.R. No. L-5706, Jan. 29, 1954.
[162] G.R. No. L-5803, Nov. 29, 1954.

three buildings, robbed several houses, killed three persons, and wounded several others.

The lower court convicted them of the complex crime of rebellion with multiple murder, frustrated murder, arson and robbery. On appeal, the Supreme Court, without deciding whether there is such a complex crime,[163] chose to hold appellants responsible for separate crimes. The Court, however, was of the opinion that the first crime was not rebellion,[164] but sedition.[165] The Court explained thus:

> "The purpose of the raid and the act of the raiders . . . was not exactly against the Government and for the purpose of doing the things defined in Article 134 of the Revised Penal Code under rebellion. The raiders did not even attack the Presidencia . . . Rather, the object was to attain by means of force, intimidation, etc. one object, to wit, to inflict an act of hate or revenge upon the person or property of a public official, namely, Punzalan who was then Mayor of Tiaong. Under Article 139 of the same Code this was sufficient to constitute sedition." [166]

III. Crimes Committed by Public Officers.

A. Malversation of Public Funds.

Accused in *People v. Livara*,[167] who was disbursing officer of the Philippine Constabulary detachment in Romblon, was charged and convicted of appropriating more than ₱9,000 of government money for his

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[163] See notes 130-133 *supra*.

[164] Art. 134, Rev. Penal Code, provides: "*Rebellion or insurrection — How committed.* — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippines Islands or any part thereof ,of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

[165] Art. 139, Rev. Penal Code, provides: "*Sedition — How committed.* — The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:

"1. To prevent the promulgation or execution of any law or the holding of any popular election;

"2. To prevent the National Government, or any provincial or municipal government, or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;

"3. To inflict any act of hate or revenge upon the person or property of any public officer or employee;

"4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and

"5. To despoil, for any political or social end, any person, municipality or province, or the National Government or the Government of the United States, of all its property or any part thereof." (As amended by Com. Act No. 202).

[166] Sedition is the raising of commotion or disturbances in the state, it is a revolt against legitimate authority. The ultimate object of sedition is a violation of the public peace or at least such a course of measures as evidently engenders it, does not aim at direct and open violence against the laws, or the subversion of the constitution. People v. Perez, 45 Phil. 599 (1923).

[167] G.R. No. L-6201, April 20, 1954.

own use.[168] His defense was that the portfolio which contained said sum was lost when he was riding in a jeepney in Manila on his way to one of the city piers. This, to the mind of the Court, was a poor ruse of his defalcation, because a portfolio with such a considerable sum in it could not have been forgotten by a reasonable man, especially by a disbursing officer of the Armed Forces. Besides, it was shown that the accused, when investigated, admitted the shortage of funds under his custody, and even made efforts to pay it by using a false check. And under the Revised Penal Code, such shortage constituted prima facie evidence that the accused made personal use of the money, he being unable to give a satisfactory explanation.[169]

In the case of *People v. Aquino*,[170] appellant was charged with malversing a little more than ₱20,000 of public funds,[171] about ₱12,000 of which belonged to the NARIC. While he admitted his liability, he claimed that he should answer only for the sum of ₱8,000[172] since the ₱12,000 NARIC money was not public funds. In affirming the decision of the lower court, the Supreme Court held that even supposing that funds belonging to the NARIC are not public funds, "they become impressed with that character when they are entrusted to a public officer for his official custody."[173]

IV. Crimes Against Persons.

A. Murder

Cases of murder[174] comprised roughly about one-third of the penal decisions handed down last year by the Supreme Court. Treachery, as

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[168] Art. 217, Rev. Penal Code, provides: "Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer: ...3. The penalty of *prisión mayor* in its medium and maximum periods, if the amount involved is more than 6,000 pesos but is less than 12,000 pesos."

[169] Art. 217, par. 3, Rev. Penal Code.

[170] Art. 217, par. 4, Rev. Penal Code, provides: "The penalty of *reclusión temporal* in its minimum and medium periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusión temporal* in its medium and maximum periods.

[171] See note 170 *supra*.

[172] His penalty would thus be lower under Art. 217, par. 3.

[173] People v. De la Serna, 40 O.G. Supp. 12, 159.

[174] Art. 248, Rev. Penal Code, provides: "Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusión temporal* in it maximum period to death, if committed with any of the following attendant circumstances:

"1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

"2. In consideration of a price, reward, or promise.

"3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

"4. On occasion of any of the calamities enumerated in the preceding para-

usual, was by far the most common circumstance which qualified the killings involved in these cases.

1. *Treachery in murder.*

In *People v. Aviso and Soriano,*[175] deceased De Castro invited his four fellow "tough guys" to spend their evening in a barrio of the town of Lipa, Batangas. Castro was seated in front, while accused were seated behind; on the way, they stopped the jeep to fetch some water. Without warning, Soriano hit De Castro from the back, dragged him out of the jeepney, mauled him, and then, assisted by Aviso, stabbed deceased several times.

Defendant in *People v. Maurillo*[176] overheard his father asking the deceased to treat his (defendant's) wife. Having entertained for a long time the conviction that deceased was an "aswang" and should therefore be done away with, defendant, without warning, instantly attacked deceased causing the latter to suffer eight bolo wounds.

The prosecution was able to prove in the case of *People v. Escares and Macalalad*[177] that the victim was invited to walk with defendants along a trail surrounded by lush foliage and there suddenly shot and stabbed by the accused.

So too, in *People v. Sabijon and Padernos,*[178] defendants broke into the house of a certain Macaria and without giving the woman a chance to run or scream, shot her to death.

Defendant in *People v. Unciano*[179] had an axe to grind against the deceased. A year before the murder, the deceased kicked the left side of defendant's abdomen. So when deceased happened to attend a coronation ball, he was held by the arms by defendant's companions and accused stabbed him.

Defendants in *People v. Lagoy et al.*[180] were convicted of triple murder because it was proved that they entered the house of their victims without warning them and hacked the mother and her child to death. The father, who jumped out of the window, was boloed downstairs by the other assassins who waited below for that purpose.

In *People v. Ramos,*[181] accused stabbed several times the deceased while the latter was sitting inside a barber shop, his back facing the street, thus unaware of defendant's aggression.

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graph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.

"5. With evident premeditation.

"6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

[175] G.R. Nos. L-4412-13, Feb. 17, 1954.

[176] G.R. No. L-6480, April 12, 1954.

[177] G.R. No. L-5562, April 29, 1954.

[178] G.R. No. L-6509, April 29, 1954.

[179] G.R. No. L-6643, April 29, 1954.

[180] G.R. No. L-5112, May 14, 1954.

[181] G.R. No. L-5843, May 16, 1954.

It was shown in *People v. Flores*[182] that the deceased, who was tied and on a squatting position, was, upon Flores' order, boloed until his hand was almost severed from his body.

One of the three appellants in *People v. Fuentes et al.*[183] held deceased by his arms and other struck the back of victim's head with a bamboo club. When the victim fell on the ground prostrate, the three assailants took turns at beating their victim further until the latter died.

In *People v. Aguilar*,[184] the accused resented deeply his being slapped and castigated by the spouses for whom he worked as a houseboy. At dawn, the accused crept into the room where the spouses were asleep and killed them with his knife.

Defendants in *People v. Ripas et al.*[185] were Hukbalahaps who took their victim to a forest. In the presence of the victim's grieving wife who begged of them to spare her husband's life or to take her life instead, the group ignored her pleas, and instantly mutilated and stoned their victim whose only fault was his failure to contribute one hundred pesos to promote outlawry and his seeking the protection of the Constabulary.

The following facts were proved in *People v. Sanchez*:[186] that the accused, who was a barrio lieutenant, suspected the deceased of having converted for his personal use the money contributed by the barrio folks for school purposes. While deceased was taking supper in his boarding house, his back towards the kitchen door, the accused suddenly entered and stabbed the deceased in his abdomen with a sharp-pointed knife called "immoco."

The victim in *People v. Polutan and Dapogo*[187] was invited by defendants to a drinking spree and then urged to sleep in the house of Polutan. At about midnight, the defendants woke up and bound their sleeping victim and hanged him from the truss of the ceiling. Then, in that position, the deceased was stabbed twice below his armpit and once in the middle of his breast.

In *People v. Galapon and Galapon*[188] the victim was taken for a drive in a rig and without being warned of what would be done to him, he was shot twice and his dead body dumped in a thick growth of talahib grass.

In *People v. Somayo et al.*,[189] defendants approached deceased who was then standing near his fishpod. Somayo engaged the deceased in a conversation. Suddenly, the other accused shouted "sigui na!" and

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[182] G.R. No. L-6175, May 21, 1954.
[183] G.R. No. L-6027, May 26, 1954.
[184] G.R. Nos. L-6142-44, May 26, 1954.
[185] G.R. No. L-6246, May 26, 1954.
[186] G.R. No. L-5506, June 30, 1954.
[187] G.R. No. L-6195, June 30, 1954.
[188] G.R. No. L-6657, July 26, 1954.
[189] G.R. No. L-6023, July 31, 1954.

as the deceased turned towards the direction of the accused who shouted, Somayo whipped his gun out and fired at the deceased.

The victim in *People v. De Jesus*[190] was busy addressing a crowd in a political meeting when a gunfire burst was heard. Deceased was hit at the back, and as he staggered and began to reel, appellant shot him again.

The prosecution proved that the deceased in *People v. Didulo*[191] who had just left a bar in Los Baños and who was about to board a jeep was hit in the head by the pistol shot fired by the accused who had been waiting for the deceased to come out of said bar.

In *People v. Canoy et al.*,[192] the deceased, who was a watcher in an election precinct, without having been forewarned, was mowed down by gunfire by the accused.

In *People v. Balaclaot*,[193] the deceased in company with two friends passed by the house of the accused on their way to buy some "pinipig." From the window, the accused yelled: "Partner, you will not do what you have done before." This was immediately followed by a shot which hit the deceased.

Defendants in *People v. Bagos and Bagos*,[194] in order to avenge the death of a kin during the occupation period supposedly believed to have been caused by the Marasigans, plotted to kill Jose Marasigan. On that night, defendants deployed themselves around and under the house of their intended victim. Those under the house fired upward shots through the floor of the house, killing two children.

On the occasion of the raid of the town of Tiaong, Quezon Province, some of the defendants in *People v. Umali et al.*[195] hurled a hand grenade at one local policeman. Intent to kill was established. Since, however, the victim lost only the sight of one of his eyes, the Supreme Court convicted them of frustrated murder instead of serious physical injuries[196] as claimed by the culprits.

2. *Abuse of superior strength in murder.*

In the case of *People v. Calucer and Cadare*,[197] the appellants, together with two others who had died before the trial, went up to the house of their victim, and assaulted him. The deceased tried to escape but the defendants chased him. Upon overtaking him, the four of them stabbed and mauled the deceased even when the latter had fallen unconscious on the ground. Abuse of superior strength was thus present.

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190 G.R. No. L-6583, Aug. 25, 1954.
191 G.R. No. L-6082, Aug. 31, 1954.
192 G.R. No. L-6037, Sept. 30, 1954.
193 G.R. No. L-6586, Oct. 29, 1954.
194 G.R. Nos. L-6808-10, Oct. 29, 1954.
195 G.R. No. L-5803, Nov. 29, 1954.
196 Art. 263, par. 2, Rev. Penal Code.
197 G.R. No. L-6460, May 7, 1954.

Accused in *People v. Nadura*[198] intercepted a twelve-year old girl who was on her way to school, and dragged her to an isolated place where he stabbed and mangled the girl's body.

It was shown in *People v. Oliva et al.*[199] that the defendants who were members of the local police took advantage not only of their authority, but also of their strength and number, in maltreating the suspects under their custody, resulting in the death of one due to profuse internal hemorrhage.

3. *Reward in murder.*

Accused in *People v. Buluran*[200] was, according to the evidence adduced, induced by the wife of the victim to murder her husband under the wife's promise to give him the attractive sum of ₱5,000. The defendant in *People v. Mansaca et al.*[201] pleaded guilty to the crime of murder and admitted in open court that he aided his landlord, his co-defendant in this case, in killing the deceased in consideration of a price promised by the latter.

4. *Evident premeditation in murder.*

In order to punish the deceased in *People v. Sedenio and Mejenio*[202] who had for some time been maltreating his mistress (a close relative of the appellants), Sedenio caused the deceased to fall from a 24-foot coconut tree and upon hitting the ground, the other accused, who had been waiting below, hit the victim with the butt of a gun. Sedenio, who by that time had come down from the tree, stabbed the victim in his throat.

In the case of *People v. Libria*[203] it appeared that the deceased boxed the accused during a dance which was attended by many people. The accused, who was an ex-serviceman and a respected citizen of the community, resented this and he planned to vindicate his honor. Two weeks after the incident, the accused, together with another who had also been bullied by the deceased, killed the latter. The Court considered the two-week period ample time to justify a finding of evident premeditation.

There was premeditation in the two killings in the case of *People v. Cabang et al.*,[204] because it was shown that a deep-seated grudge had existed between the victims and the accused and that the systematic execution of the murders undoubtedly indicated that the defendants had carefully planned them long before the killings were actually committed.

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[198] G.R. No. L-6547, Aug. 25, 1954.
[199] G.R. Nos. L-5849-35, Sept. 30, 1954.
[200] G.R. No. L-5849, May 24, 1954.
[201] G.R. No. L-6473, May 26, 1954.
[202] G.R. No. L-6372, April 29, 1954.
[203] G.R. No. L-6585, July 16, 1954.
[204] G.R. Nos. L-7258-59, Sept. 28, 1954.

B. Complex Crime of Murder and Physical Injuries.

Due to a long standing enmity between deceased and accused, the latter, in the case of *People v. Francisco*,[205] hurled a lighted dynamite into the house of the victims one night, killing two inmates and causing physical injuries to the other occupants. As the two murders and the *lesiones* were produced by one single act, namely, the explosion caused by the throwing of the dynamite into the house, the case fell under the provision of the Revised Penal Code penalizing complex crimes.[206]

C. Homicide.

The crime of homicide is committed by any person who, not being guilty of parricide,[207] shall kill another without the attendance of any of the circumstances which qualify killing to murder.[208] The Solicitor General, in the case of *People v. Venus et al.*,[209] asked the Supreme Court to modify the lower court's conviction of the accused for homicide to that of murder on the ground that, when the victim was stabbed by Venus, he was held by the other accused thus leaving the victim without opportunity to defend himself. The Court, however, refused to disturb the appealed decision because the evidence presented to prove treachery or superior strength was not conclusive.[210]

In *People v. Alonzo*,[211] the lower court convicted accused of the crime of treason for killing a guerrilla captain and for having killed another guerrilla on the same occasion. It appeared that the accused, together with other fellow policemen, overtook a carretela occupied by armed men. The occupants of the carretela escaped, with the exception of the deceased captain. He raised his hands and shouted that he was not a guerrilla, but appellant, enraged by the death of his comrades, fired at him. Appelant then chased another guerrillla and shot the latter in his house. These facts appeared insufficient to the Court to warrant a conviction of treason,[212] and held the appellant guilty of homicide only.

V. Crimes Against Personal Liberty and Security.

A. Kidnapping With Serious Illegal Detention.

The kidnapping or detaining, or the deprivation in any other manner of a person of his liberty by any private individual is penalized

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[205] G.R. No. L-5900, May 14, 1954.
[206] Art. 48, Rev. Penal Code.
[207] Art. 246, Rev. Penal Code.
[208] Art. 249, Rev. Penal Code. Thus, the accused in the case of People v. Maula, G.R. No. L-7191, Oct. 18, 1954, was guilty of homicide for having stabbed the deceased on the occasion of an unexpected fight between them.
[209] G.R. No. L-6811, July 31, 1954.
[210] In People v. Cuaresma et al., G.R. Nos. 5841-42, Jan. 29, 1954, the Supreme Court likewise held the defendants liable only for homicide and frustrated homicide, instead of murder and frustrated homicide, proof being absent to clearly show any circumstance which could have qualified the killing to murder. See, *e.g.*, People v. Bordador, 63 Phil. 305 (1936); People v. Paman, 58 Phil. 617 (1933); and United States v. Bacong, 40 Phil. 496 (1919).
[211] G.R. No. L-4405, July 31, 1954.
[212] Art. 114, Rev. Penal Code.

with *reclusión temporal* in its maximum period to death if: (1) the kidnapping or detention shall have lasted more than five days; (2) if committed by simulating public authority; (3) if any serious physical injuries shall have been made; or (4) if the victim shall be a minor, female, or a public officer.[213] And if the purpose of the kidnapping is for extorting ransom, even if none of the circumstances referred to above are present, the penalty shall be *reclusión perpetua* to death.[214]

The kidnapping and detention committed in the manner described in the first circumstance above happened in the cases of *People v. Francisco*[215] and *People v. Gamboa and Manabat.*[216] The victims in both cases disappeared. In *People v. Licop,*[217] the victim was a girl and her kidnappers were armed women. She was blindfolded and sped away until they alighted near a shack where ten other girls whose bodies were practically exposed were held as captives. Six male guards were toying with the women's breasts. On their way to the "boss," who, it seemed, had priority over the other men in abusing their female hostages, Nelia was able to escape and report the matter to the police. In *People v. Ocampo et al.,*[218] the mastermind was an uncle of the victim. In the afternoon agreed upon to perpetrate the kidnapping, the uncle met his nephew at a drug store and engaged the latter into a conversation. A few minutes later, the other defendants approached the pair and informed the gullible victim that his fiancee had been run over by a jeep and was in a serious condition at the hospital. Falling for the ruse, the victim was sped away. The defendants demanded a ₱100,000 ransom. This same circumstsance attended the kidnapping of a 17-year old boy in the case of *People v. Magsino et al.,*[219] where the kidnappers returned the boy upon receiving ₱3,000 as ransom.

B. Trespass to Dwelling.

Petitioners, convicted of simple trespass to dwelling[220] in the case of *Gabriel and Natividad v. People and Court of Appeals,*[221] appealed to the Supreme Court claiming that no unlawful trespass can be imputed to them because their original entry was with the permission of the occupant and therefore no subsequent happening could convert the original lawful entry into an unlawful one.

The facts were as follows: The accused went to the house of the Joneses and presented themselves as Meralco inspectors to Mrs. Jones

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[213] Art. 267, pars. 1-4, Rev. Penal Code, as amended by Rep. Act No. 18
[214] Art. 267, last par., Rev. Penal Code.
[215] G.R. No. L-6658, May 31, 1954.
[216] G.R. No. L-6834, Oct. 18, 1954.
[217] G.R. No. L-6061, April 29, 1954.
[218] G.R. No. L-6113, May 26, 1954.
[219] G.R. No. L-3649, Jan. 29, 1954.
[220] Art. 280, par. 1, Rev. Penal Code, provides: "Any private person who shall enter the dwelling of another against the latter's will, shall be punished by *arresto mayor* and a fine not exceeding 1,000 pesos."
[221] G.R. No. L-6730, Oct. 15, 1954.

who made them wait at the porch. She went in to call Mr. Jones after closing the door that connected the porch from the living room. While she was in, the accused, noticing that the Jones' electric meter installed at the balcony had been tampered, entered the sala until they reached the bedroom where the spouses were, and there began searching for gadgets suspected to have been used to steal electricity. The couple filed this charge against petitioners.

Was the claim of the petitioners tenable? The Court answered that such an assumption was gratuitous and unwarranted, the lower court having found "that the entry was against the will of the spouses." That will, though implied, was manifested when Mrs. Jones made them wait at the porch, closing the door behind her when she went to call her husband. "The porch is an open part of the house, and being allowed to wait there under the circumstances mentioned can in no sense be taken as entry to a dwelling with the consent of the owner." In explaining why the cases of *United States v. Dionisio*,[222] *United States v. Flemister*,[223] and *People v. De Peralta*[224] invoked by the petitioners could not be deemed controlling in the instant case, the Court declared: "This crime is committed when a person enters another's dwelling against the will of the occupant, but not when the entrance is effected without his knowledge or opposition." As there was opposition to their entry, the defendants were accordingly liable.

VI. Crimes Against Property.

A. Robbery.

Robbery is committed by any person who, with intent to gain, shall take any personalty belonging to another, by means of violence against or intimidation of any person, or using force upon things.[225] In order that there can be robbery, there must be actual taking of personal property of another against the latter's will.[226] The cases of robbery de-

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[222] 12 Phil. 283 (1908). Defendants there entered the principal door of a house half-open. They entered without opposition by the occupant of the first floor. They went to second floor without opposition too because the inmate there made them take their seats and allowed them to stay for about two hours until trouble later happend. Held: No trespass to dwelling, as the opposition of the occupant was not prior to nor at the time of entry.

[223] 1 Phil. 354 (1902). There was also no trespass in this case. The host took defendant by the hand and asked him if he had come to dance and even invited him to be seated, but host tried to prevent defendant from entering the sala The prohibition here by the host was not to enter the house but from entering the sala in order to avoid a quarrel or a fight with one of the guests.

[224] 42 Phil. 69 (1921). The accused, as new officer of an organization, called at the door of a room which his predecessor in office was allowed to occupy as his dwelling in a house rented by the union, and accused took away a desk glass which he believed to be union property. There was no evidence that the occupant had expressed his prohibition. And the room being in the house rented by the union and the familiarity of the accused with the premises, plus the unlocked door—these facts negatived trespass.

[225] Art. 293, Rev. Penal Code.

[226] 6 Phil. 387 (1906).

cided by our Supreme Court during the period under review did not present any novel issue and they almost on all fours with the provisions of the Revised Penal Code. With the exception of *People v. Fader*,[227] all the robberies were consummated. Some of the robberies were in band.[228]

There were a number of robbery with homicide cases.[229] This offense is not a complex crime as contemplated in Article 48, because here the homicide may not be necessary to the robbery. And this crime remains fundamentally the same regardless of the number of persons killed in connection with the robbery.[230] Homicide is a mere incident of the robbery, the latter being the main object of the criminal.[231] The following were the cases of robbery with homicide: *People v. Piamonte et al.*,[232] *People v. Fader*,[233] *People v. Jistiado*,[234] *People v. Lopez*,[235] *People v. Valenzona et al.*;[236] *People v. Venegas et al.*;[237] and *People v. Samaniego et al.*[238]

Not uncommon were cases of robbery with rape.[239] Thus, in *People v. Gamaliton*,[240] accused and his companion raped two girls on the occasion of the robbery. In each of the robbery cases of *People v. Opena et al.*,[241] *People v. Cercado and Cervo*,[242] and *People v. Vineras*,[243] a woman was raped by the culprits. In the case of *People v. Buama et al.*,[244]

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[227] G.R. No. L-5732, March 12, 1954. While accused was demanding money at gun point from the occupants of the house, two of the children were awakened by the commotion. Accused turned towards them and shot them. He then fled without getting any money. The Supreme Court held the accused guilty of attempted robbery with double homicide.

[228] If the robbery with homicide, rape or physical injuries be committed by a band, the offender shall be punished by the maximum period of the proper penalties, and the penalty next higher in degree shall be imposed upon the leader of the band. (Art. 295, Rev. Penal Code, as amended by Rep. Act No. 12.)

When more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band. (Art. 296, first sentence, Rev. Penal Code.)

[229] Art. 294, Rev. Penal Code, provides: "Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer: 1. The penalty of *reclusión perpetua* to death, when by reason or an occasion of the robbery, the crime of homicide shall have been committed."

[230] People v. Mones, 58 Phil. 46, 59 (1933).

[231] United States v. Ipil, 27 Phil. 530, 535 (1914).

[232] G.R. No. L-5775, Jan. 28, 1954.

[233] See note 227 *supra*.

[234] G.R. No. L-5478, April 29, 1954. Spouses were slain on the occasion of the robbery.

[235] G.R. No. L-6588, May 26, 1954. Victim was robbed of his pistol and then shot when he tried to run after the robbers.

[236] G.R. No. L-5386, May 28, 1954. Robbery in band.

[237] G.R. No. L-4928, June 11, 1954. Robbery in band with double homicide.

[238] G.R. Nos. L-6085-86, June 11, 1954. The store owner was robbed and then hog-tied and killed.

[239] Art. 294, par. 2, Rev. Penal Code.

[240] G.R. No. L-6302, Aug. 25, 1954.

[241] G.R. Nos. L-6318-19, May 17, 1954.

[242] G.R. No. L-6081, May 31, 1954.

[243] G.R. No. L-6081, Dec. 29, 1954. The accused here ravished the woman in the presence of her children after he had robbed her of her earthly possessions.

[244] G.R. No. L-7254, July 26, 1954.

it was shown that five armed men robbed a house and Buama raped one of the occupants. Two of the accused (appellants in this case) were convicted by the lower court of robbery only, but on appeal, the Supreme Court held them guilty of the crime of robbery in band with rape, it appearing that even if they did not themselves rape the girl, they nevertheless cooperated with Buana by not preventing the latter from having carnal intercourse with her.[245]

B. Other Crimes Against Property.

The accused in *People v. Andrada*[246] was held guilty of the crime of qualified theft[247] because he stole a jeep. For burning three buildings, defendants in *People v. Umali et al.*[248] were held liable for the crime of arson.[249]

Defendants in *People v. Carulasdulasan and Becarel*[250] were accused of estafa committed as follows: that defendaants were tenants of an abaca producer; that they stripped 600 kilos of abaca planted in their landlord's plantation which defendants sold without delivering to him his half share. The trial court dismissed the information on the ground that there was not estafa since the abaca in question "was not received by the accused from anybody but had been harvested by them, as tenants, from the plantation of the complainant."[251]

The Supreme Court disagreed with the lower court. The accused were charged with having committed fraud by converting to the prejudice of their landlord money received by them in trust or under circumstances which made it their duty to deliver it to its owner. The Court said that the trial judge "obviously overlooked the fact that what the accused are charged with having misappropriated is the landlord's share of the purchase price received by them for the abaca which they

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[245] Art. 296, par. 2, Rev. Penal Code, provides: "Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the crime."

Aside the cases aforementioned, the accused were found guilty of the crime of robbery in People v. Suarez, G.R. No. L-6431, March 29, 1954; People v. Umali et al., G.R. No. L-5803, Nov. 29, 1954.

[246] G.R. No. L-6912, July 16, 1954.

[247] Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. (Art. 308, Rev. Penal Code.) Qualified theft is punished under Art. 310 of the Rev. Penal Code.

[248] G.R. No. L-5803, Nov. 29, 1954.

[249] Art. 321, par. 1, Rev. Penal Code.

[250] G.R. No. L-6408, May 24, 1954.

[251] Any person who defrauds another "by misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property" commits estafa or swindling. (Art. 315, 1[1], Rev. Penal Code.)

sold." The case of *United States v. Reyes*[252] upon which the lower court based its order of dismissal was held inapplicable to the instant case.[253]

VII. Crimes Against the Civil Status of Persons.

A. Bigamy.

An interesting legal problem concerning our law on bigamy[254] was brought before the Supreme Court in *People v. Mendoza*.[255]

Accused married for the first time in 1936. In 1941, during the subsistence of his first marriage, accused married again. In 1943, his wife by his first marriage died. In 1949, he contracted another marriage. This last marriage gave rise to his prosecution for and conviction of bigamy in the lower court.

The contention of the appellant was: since his second marriage was void, and therefore non-existent, as it was contracted while his first marriage was subsisting, his third marriage cannot be the basis of a charge for bigamy because it took place after the death of his first, and to the appellant's point of view, his only previous wife.

The Solicitor General claimed that even granting the nullity of the second marriage, accused was not exempt from criminal liability in the absence of a judicial declaration annulling the second marriage, relying on the case of *People v. Cotas* decided by the Court of Appeals.[256] In other words, the Solicitor General was of the conviction that since the second marriage was not judicially dissolved,[257] it could be deemed valid for purposes of the instant prosecution and thus warrant defendant's incurring criminal liability for entering into his 1949 wedlock.

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[252] 6 Phil. 441 (1906).

[253] The facts were similar to the case above, but the defendant there was acquitted by the Supreme Court since the unlawful disposal of the crop was a violation of their contract and not an act constituting theft. "It should be noted, however," said the Court in the *Carulasdulasan* case, "that while Reyes was acquitted...of theft, this Court did not hold that he was not guilty of estafa. On the contrary, this Court seems to have given thought to the suggestion of the Solicitor General that the crime...was not theft but estafa, for which reason this Court, in acquitting Reyes of theft, did so 'without prejudice to the institution of another action that may be proper' and remanded the case to the court below 'for proper procedure.'"

[254] Art. 394, Rev. Penal Code, provides: "*Bigamy.* — The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings."

The essential element of the crime of bigamy is that the alleged second marriage having all the essential requisites, would be valid were it not for the subsistence of the first marriage. People v. Dumpo, 62 Phil. 246 (1935).

[255] G.R. No. L-5877, Sept. 28, 1954.

[256] People v. Cotas, 40 O.G. 3154. Belief that the first marriage is null and void does not justify a second marriage nor does it exempt accused from a bigamy charge.

[257] Note that under Art. 349, the phrase is "legally dissolved." The Solicitor General seems to regard this as to mean "judicially dissolved."

The Supreme Court, however, through Chief Justice Parás, acquitted the appellant. It held that no marriage was subsisting at the time the accused contracted his 1949 marriage (*i.e.*, the alleged third marriage). Hence, there could be no bigamy. According to the majority, the *Cotas* case was not controlling here, because that case was different in the sense that there the first marriage was impeached for alleged lack of the formalities required by law which the Court of Appeals found to be not so, that is, the formalities were complied with, and so the conviction of bigamy there was upheld.

The Court observed that the law in force at the time in the 1941 marriage was contracted was the old Marriage Law.[258] This law, said the Court—

> ". . . plainly makes a subsequent marriage contracted by any person during the lifetime of his first spouse illegal and void from its performance and no judicial decree is necessary to establish its invalidity, as distinguished from mere annulable marriages There is no pretense that appellant's second marriage with Olga Lema was contracted in the belief that the first spouse, Jovita de Asis, had been absent for seven consecutive years or generally considered as dead, so as to render said marriage valid until declared null and void by a competent court."

The New Civil Code considers any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse illegal and void from its performance,[259] and that in another article,[260] bigamous marriages are void from the beginning.[261] These rules seem to bear out the opinion of the majority.[262]

The dissenting opinion of Justice Reyes agreed with the claim of the Solicitor that a previous judicial declaration on the nullity of the second marriage was necessary in order that acquittal could lie,[263] other-

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[258] Sec. 29, Act No. 3613, provides that: "Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any other person than such first spouse, shall be illegal and void from its performance, unless: (a) the first marriage was annulled or dissolved, or (b) the first spouse had been absent for seven consecutive years without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court." Note: Compare with Art. 83 of the New Civil Code.

[259] Art. 83, Civil Code of the Philippines.

[260] Art. 80, No. 4.

[261] Other than those falling under Art. 83, No. 2.

[262] The logic of the majority seems unassailable. How could a man be held liable if he marries after his previous and only legal wife had died?

[263] "...an action to annul the second marriage is a prejudicial question (Art. 100) in a prosecution for bigamy." PADILLA, REVISED PENAL CODE ANNOTATED 1076, no. 5 (1951 ed.) Article 36 of the Civil Code provides: "Pre-judicial questions, which must be decided before any prosecution may be instituted or may proceed, shall be governed by rules of court which the Supreme Court shall promulgate and shall not be in conflict with the provisions of this Code."

wise the second marriage of the accused for the purposes of the instant prosecution, would have been deemed valid and subsisting at the time of the third marriage. Justice Reyes said: "Though the logician may say that where the former marriage was void there would be nothing to dissolve, still it is not for the spouses to judge whether that marriage was void or not. The judgment is reserved to the courts."[264]

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[264] Citing 3 VIADA, CODIGO PENAL 275.