SURVEY OF 1955 CASES IN CRIMINAL LAW

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The emphasis which the study of case law deserves finds no better justification than in the field of substantive criminal law. Many of the criminal cases which are elevated to our court of last resort are often decided, not so much on the specific legal provision or provisions applicable, but more so on the basis of the factual issues presented and consequently resolved in accordance with the penal law. Following last year's pattern,[1] therefore, this survey will again try to set forth briefly the various factual situations that obtained in the cases passed upon by our Supreme Court, together with the respective interpretations and application of the pertinent penal provisions.[2]

Of the seventy cases herein surveyed, most of them were affirmations or modifications of the convictions handed down by the lower courts.[3] While this may seem a commendable result in the in-

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* Chairman, Student Editorial Board, *Philippine Law Journal*, 1955-56.

[1] See Balmaceda, S. B., *Survey of Criminal Law: 1954*, 30 PHIL. L.J. 1-34 (1955).

[2] Cases involving problems in constitutional law, civil law, and criminal procedure are incorporated in this survey in so far as they affect our penal jurisprudence. A few cases involving crimes under special laws are also taken into account.

[3] Two were *per curiam* decisions: People v. Ubiña, et al., G.R. No. L-6969, Aug. 31, 1955; People v. Galit, et al., G.R. No.L-6758, Sept. 30, 1955, 51 O.G. 5176 (1955).

All the members of our Supreme Court had a hand in writing down for the tribunal the other decisions rendered last year (1955):

Chief Justice Ricardo Parás: Quisumbing v. Lopez, et. al., G.R. No. L-6465, Jan. 31 (51 O.G. 1362);

Justice Guillermo F. Pablo: El Pueblo de Filipinas contra Cawol y otros. G.R. No. L-7250, Jan. 31; El Pueblo de Filipinas contra Logroño y otros, G.R. Nos. L-5714-15, Feb. 28;

Justice Cesar Bengzon: People v. Undali Omar, G.R. No. L-7137, April 30; People v. Gamlot, G.R. No. L-6909, May 26; People v. Santos, G.R. No. L-7315, July 27; People v. Ballugan, G.R. No. L-8267, July 30; People v. Nazario, G.R. No. L-7628, Sept. 29; Dizon v. People, G.R. No. L-8002, Nov. 23;

Justice Sabino Padilla: People v. Aclon, et al., G.R No. L-5507, Feb. 28; People v. Recote, G.R. Nos. L-5801-02, March 28; People v. Camilo Umali, G.R. No. L-7197, July 27; People v. Soriano and Garcia, G.R. Nos. L-6244-45, Aug. 30 (51 O.G. 4513); People v. Notarte, G.R. No. L-6371 (51 O.G. 5157); People v. Sales, G.R. No. L-7187, Oct. 26; People v. Santos and Guballa, G.R. Nos. L-7316-17, Dec. 19;

Justice Marceliano R. Montemayor: People v. Fundador, et al., G.R. No. L-6689, May 21; People v. G. Pin, G.R. No. L-7491, Aug. 8 (51 O.G. 4003); People v. Monadi, et al., G.R. Nos. L-3770-71, Sept. 27; People v. Bensal, et al., G.R. No. L-8265, Oct. 31; People v. Bolando, G.R. No. L-5096, Nov. 18;

Justice Alex. Reyes: People v. Tabalba, G.R. No. L-4643, April 30; People v. Isaac, G.R. No. L-7561, April 30 (51 O.G. 2411); People v. Basarain, G.R. No. L-

terest of society and public order, yet we can not brush aside what the Supreme Court has aptly observed in one case. We quote:

> "In our task of passing appeals in criminal cases, we note that not infrequently, out of several offenders, especially in serious crimes, only some, or even one is arrested, tried, and convicted, while the rest remain at large and oftentimes are forgotten, the authorities apparently contenting themselves with the solution of the crime and the conviction of the culprits. In the present case, only the appellant has been apprehended and made to expiate the dastardly crime. His four or five companions are still free. What efforts if any the police and the constabulary have taken to apprehend them is not known . . . ."[4]

GENERAL PROVISIONS, LIABILITIES AND PENALTIES

I. MALICE OR DELIBERATE CRIMINAL INTENT.

The case of *People v. Beronilla, et al.*[5] joins the long line of cases which uphold the maxim *actus non facit reum, nisi mens sit rea*—

6690, May 24; People v. Moros Masdal Hairal and Salim Tajiril, G.R. No. L-7010, May 31; People v. Barba, G.R. No. L-7136, Sept. 30; Atanacio v. People, G.R. No. L-7537, Oct. 24; People v. Jumauan, G.R. No. L-5746, Nov. 29;

Justice Fernando Jugo: People v. Villanueva, G.R. No. L-6973, Jan. 12; People v. Tiu Ua, G.R. No. L-6793, March 31 (51 O.G. 1863);

Justice Felix Bautista Angelo: People v. Francisco, et al., G.R. No. L-6270, Feb. 28; People v. Ananias, G.R. No. L-5591, March 28; People v. Hernandez, G.R. No. L-7616, May 10; People v. Tulale, G.R. No. L-7233, May 18; People v. Goode, G.R. No. L-6358, May 25; People v. Bruno Unay, G.R. No. L-5590, June 23; People v. Caubat, et al., G.R. No. L-7285, June 28; People v. Pingkian, et al., G.R. No. L-7564, June 28; People v. Fortin, G.R. No. L-7392, Aug. 11; People v. Datu Abdula Mamadra, et al., G.R. No. L-6580, Aug. 20; People v. Ching Suy Siong and David Mata, G.R. Nos. L-6796-97, Sept. 23;

Justice Alejo Labrador: People v. Velayo, G.R. No. L-7257, Feb. 8; People v. Lamban, G.R. No. L-5931, Feb. 25; People v. Ching Suy Siong, et al., G.R. No. L-6174, Feb. 28; People v. Del Rosario, G.R. No. L-7264, May 21 (51 O.G. 2868); People v. Calma, G.R. No. L-7565, June 16; People v. Lawas, et al., G.R. Nos. L-7618-20, June 30; People v. Jarra, G.R. No. L-7168, July 19; People v. Leon and Valentin Gallano, G.R. No. L-6642, Nov. 18; People v. Lingad, et al., G.R. No. L-6989, Nov 29; People v. Zeta, G.R. No. L-7140, Dec. 22;

Justice Roberto Concepción: People v. Tagacaolo, et al., G.R. No. L-6891, April 20; People v. Tumamao, G.R. No. L-8335, April 20; People v. Saturnino, G.R. No. L-6972, April 29; People v. Acaja, G.R. No. L-7235, April 29; People v. Robles, et al., G.R. No. L-8021, April 30; People v. Cuevas, G.R. Nos. L-5844-45, May 30; People v. Segismundo, G.R. No. L-6773, June 30; People v. Macion, et al., G.R. No. L-7027, Aug. 30; People v. Tumandao, G.R. No. L-7977, Sept. 27; People v. De la Peña, et al., G.R. No. L-8474, Sept. 30 (51 O.G. 5195); Nagrampa v. Mulvaney, McMillan & Co., Inc., G.R. No. L-8326, Oct. 24; and

Justice Jose B. L. Reyes: People v. Beronilla, et al., G.R. No. L-4445, Feb. 28 (51 O.G. 1317); People v. Po Giok To, G.R. No. L-7236, April 30; People v. De Luna, G.R. No. L-6974, May 18; People v. Ganzon, Jr., G.R. No. L-6872, May 21; Quizon v. Hon. Justice of the Peace of Bacolor, Pampanga, G.R. No. L-6641, July 28; People v. Custodio, et al., G.R. No. L-7442, Oct. 24.

[4] People v. Bensal, et al., G.R. No. L-8265, Oct. 31, 1955.

that unless one acts with fault (*culpa*) or his act is punished by a special law which does not require *dolo* or criminal intent, he commits no crime if he acts without a criminal mind.[6] While criminal intent may be inferred from the wrongful act pursuant to the presumption that an unlawful act was done with unlawful intent,[7] yet circumstances may be shown as to negative this presumption of malice.

In the *Beronilla* case, defendant, as military mayor of La Paz, Abra, received instructions from Lt. Col. Arnold, regimental commander of the Abra guerillas, to form a jury of twelve "bolomen" to try persons listed as committing treasonous acts, one of whom was Borjal, the puppet mayor of La Paz. Found guilty of treason, Borjal was executed. After liberation, defendants were tried for and found guilty of murder by the lower court.

The Supreme Court, however, found the following circumstances which negatived the existence of "mens rea" on the part of appellants: That pursuant to Lt. Col. Arnold's instructions, they arrested Borjal who was subjected to a nineteen-day trial with the benefit of counsel; that the trial was held fairly and impartially, and on occasions where doubt arose as to the legality of the trial, the same was suspended until Arnold authorized its resumption and sent his personal observer whose suggestions on procedure were followed; that the records of the trial and the verdict were submitted to the headquarters for review; that Borjal was not executed until said records were returned with the statement of Arnold that "whatever disposition you may make of the case is hereby approved," which reply was on its face an assent to the findings and sentence of the jury; that on the day of Borjal's execution, Beronilla reported the matter to Arnold; that while the higher command of the guerilla forces made known to Arnold by radiogram its doubt as to the legality of the conviction of Borjal, there was no satisfactory proof that the defendants received that message or that Arnold did ever transmit it to them.

Since the accused "acted upon orders of superior officers that they, as military subordinates, could not question, and obeyed in good faith, without being aware of their illegality, without any fault or negligence on their part," the Court held that criminal intent was not established.[8]

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[6] G.R. No. L-4445, Feb. 28, 1955, 51 O.G. 1317 (1955). See Notes, *Recent Decisions*, 30 PHIL. L.J. 493-95 (1955).

[7] *E.g.*, People v. Pacana, 47 Phil. 48 (1925); United States v. Pascual, 26 Phil. 234 (1913); United States v. Catolico, 18 Phil. 505 (1911).

[8] Rule 123, § 69(b), Rules of Court. United States v. Tria, 17 Phil. 303 (1910).

II. Prohibition Against Infliction of Cruel and Unusual Punishment.

For selling a can of powdered milk for a price forty-centavos above that fixed by the Price Control Law,[9] the defendant in *People v. Tiu Ua*[10] was sentenced to pay a fine of ₱5,000 with subsidiary imprisonment in case of insolvency.

Under the Constitution, the infliction of cruel and unusual punishment is prohibited.[11] Tiu Ua claimed that his penalty was "wholly disproportionate to the offense and therefore unconstitutional as cruel and unusual and shocking to the conscience."

The Court did not agree with him. Earlier cases had already ruled that the penalty provided by the Price Control Law is not unusual and cruel.[12] Said the Court:

> ". . . it should be considered that Congress thought it necessary to repress profiteering with a heavy fine so that dealers would not take advantage of a critical condition of the country to make unusual profits. It is true that in specific individual cases the profit made is small, but when it is remembered that these individual transactions are numerous and make a great total and affect the poor people in general, it can easily be seen that the raise in the price above that authorized by law, causes a great hardship to the country. The courts cannot interfere with the discretion of the legislative body in enforcing a public policy unless there has been a clear violation of the Constitution."

III. Frustrated and Attempted Felonies.

A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which,

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[9] Citing People v. Pacana, *supra* note 6; United States v. Catolico, *supra* note 6; and decisions of the Supreme Court of Spain dated March 25, 1929, Feb. 21, 1921, Jan. 7, 1901, March 23, 1900, and July 3, 1886.

The appellants, furthermore, were entitled to the benefits of the amnesty granted by the late Pres. Manuel Roxas (Exec. Proc. No. 8, 42 O.G. 2072 [1946]). This point will be dealt with under the topic "Amnesty," *infra*.

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

[10] G.R. No. L-6793, March 31, 1955, 51 O.G. 1863 (1955). See Notes, *Recent Decisions*, 30 Phil. L.J. 498-99 (1955).

[11] Art. III, § 1 (19).

[12] Ayuda v. People and Court of Appeals, G.R. Nos. L-6149-50, April 12, 1954; People v. Chu Chi, G.R. No. L-5876, April 27, 1953. In the case of People v. De la Cruz, G.R. No. L-5790, April 17, 1953, 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."

Besides, courts are not concerned with the wisdom, efficacy, or morality of laws, as their only function is to interpret the laws, and if not in disharmony with the Constitution, to apply them. See People v. Limcaco, G.R. No. L-3090, Jan. 9, 1951.

nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.[13] The situation is common where the intended victim is assaulted and wounded with the attendance of any of those circumstances which would qualify the crime to that of murder,[14] but the offended party nevertheless survives on account of the timely intervention of proper medical treatment, in which case the culprit is held liable for the crime of frustrated murder.

Thus, in *People v. Cuevas*,[15] it was shown that the accused had waited for the car of his intended victims to cruise along, and as the latter so appeared, he fired at the car resulting in the death of one of the passengers, while Abarquez' right foot was hit through and through. The lower court convicted Cuevas of attempted murder, merely because the injury suffered by Abarquez was not mortal. On appeal, the Supreme Court found the lower court's conclusion unwarranted, since it was proved that appellant had performed all the acts of execution to kill, and yet did not produce the desired result. Accordingly, the crime he committed was, as to Abarquez, frustrated, and not attempted murder.

Similarly, the accused in *People v. Santos* [16] fired his grease-gun at his victims who were unsuspectingly walking along the North Bay Boulevard. One died; two suffered gunshot wounds in their torsos and arms. As to the latter, Santos was guilty of frustrated murder. In *People v. Basarain*,[17] accused fired indiscriminately at the crowd then gathered in a church. One of the victims, however, did not succumb to the bullet wounds in her thighs. As to her, Basarain's conviction for frustrated murder was proper.

On the other hand, where the offender merely commences the commission of the felony directly by overt acts, but does not perform all the acts of execution which should produce the crime by reason of some cause or accident other than his own spontaneous desistance, the offense constitutes only an attempt.[18] The concept of attempted rape, illustrated in many cases earlier decided by the Supreme

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[13] Art. 6, par. 2, Rev. Penal Code.

[14] Art. 248, Rev. Penal Code.

[15] G.R. Nos. L-5844-45, May 30, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 866 (1955).

[16] G.R. No. L-7315, July 27, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 857-59 (1955).

[17] G.R. No. L-6690, May 24, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 689-90 (1955).

[18] Art. 6, par. 3, Rev. Penal Code.

Court,[19] found fresh illustration in the case of *People v. Ching Suy Siong, et al.*[20]

Melchorita, the complainant, was sleeping one night in the employment agency, when Mata, one of the employees, approached her, then knelt beside her, and without uttering a word, lifted the hem of her skirt. Melchorita, pushing Mata aside, shouted "Release me!" many times, but defendant continued to embrace her and later succeeded in hugging and kissing her. She thereupon screamed and stood up.

These facts were considered sufficient to support Mata's conviction for attempted rape. The Court took occasion to condemn Mata's odious attempt in this wise:

> "We do not consider the act of . . . Mata as an innocent joke; any attempt on the honor of a woman, however humble or lowly she may be, cannot be taken as a joke . . . . The act of appellant Mata . . . was the more condemnable in view of the fact that the complainant was a newcomer in Manila, evidently not used to liberties that men take with women of low moral standards, who had to come to Manila patiently bearing the indignities heaped upon her just so she will be able to find a decent means of livelihood . . . . the act . . . was an attempt to have intercourse with the complainant, by the use of force against her will. At least it was an unchaste abuse punishable with the same penalty as that of attempted rape." [21]

IV. Revised Penal Code Supplementary to Special Laws.

The provision of the Revised Penal Code which states that offenses punishable under special laws are not subject to its provisions and yet, likewise declares that it shall be supplementary to such laws

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[19] Rape is punished under Art. 335, Rev. Penal Code. *E.g.*, People v. Tayaba, 62 Phil. 559 (1935); People v. Rabadan and Olaybar, 53 Phil. 694 (1929); and United States v. Garcia, 9 Phil. 434 (1907).

There is an attempted rape where the accused has commenced the execution of the offense by overt acts (such as pressing and hugging and kissing the woman, raising her dress, touching her genital organ, throwing her to the floor under circumstances showing a purpose to ravish her forcibly, etc.), but does not accomplish his purpose by reason of some cause or accident other than his voluntary desistance (such as the woman's tenacious and stubborn resistance, or the timely arrival of persons attracted by the woman's screams).

[20] G.R. No. L-6174, Feb. 28, 1955.

[21] Had Mata been tried for and convicted of acts of lasciviousness (Art. 336, Rev. Penal Code) in the lower court, it seems that the Supreme Court was also ready to find him guilty as such: The offense of acts of lasciviousness is punished by *prisión correccional*. Consummated rape (Art. 335, *id.*) is punished by *reclusión temporal*, and attempted rape (following the rule under Art. 51, *id.*) is punished by *prisión correccional* (two degrees lower than that prescribed for consummated rape), which is similar to the penalty imposable for acts of lasciviousness.

unless the latter should especially provide the contrary,[22] being ambiguous on its face, has recurrently resulted in the problem of whether or not the Code could be applied to cases tried and punished under special penal laws. Two cases decided last year involved this question.

Found guilty of double homicide through reckless imprudence under the Revised Motor Vehicle Law,[23] defendant in *Dizon v. People*[24] was sentenced to a prison term and made to indemnify the heirs of the deceased and to pay the Goverment a certain sum as reparation for the damage caused to the latter's motorcycle, with subsidiary imprisonment in case of insolvency.

On appeal, the defendant claimed that since only imprisonment was provided by the Revised Motor Vehicle Law, the civil indemnity and the subsidiary imprisonment[25] ought not to have been imposed on him. The Supreme Court held that the claim was untenable, because pursuant to Article 10 of the Code, the codal provisions as to civil indemnity and subsidiary imprisonment are applicable to reckless driving offenses as supplementary provisions.[26]

Defendant in *People v. Po Giok To*[27] was accused of the crime of falsification of a public document (residence certificate) by a private individual pursuant to the provisions of the Revised Penal Code.[28] Upon appeal by the Solicitor General to the Supreme Court to reverse the order of the lower court sustaining appellee's motion to quash, appellee contended, among other things, that there being a special law with respect to residence certificates expressly punishing their falsification,[29] this statute, and not the Revised Penal Code, should apply; and since said special law punishes the falsification of a residence certificate only when it is done "for the purpose of using the same in the payment of revenue or in securing any exemption or

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[22] Art. 10.

[23] Act No. 3992, § 67(d). See note 340 *infra*.

[24] G.R. No. L-8002, Nov. 23, 1955. Note, however, that the case under review occurred before the passage of Rep. Act No. 587 (effective Jan. 1, 1951), which has now amended § 67(d) of the Revised Motor Vehicle Law as to make the provisions of the Revised Penal Code solely applicable to cases of homicide or serious physical injury resulting from reckless driving.

[25] Arts. 100 and 39 of the Rev. Penal Code, respectively.

[26] See Copiaco v. Luzon Brokerage, 66 Phil. 84 (1938); People v. Moreno, 60 Phil. 178 (1934).

[27] G.R. No. L-7236, April 30, 1955.

[28] Art. 171(4) in connection with Art. 172(1). The information filed against Po Giok To recited that he, a Chinese citizen, born in Amoy, China, unlawfully secured from the treasurer's office of Cebu City a residence certificate by supplying data to the effect that he was one Antonio Perez, a Filipino citizen from Jaro, Leyte.

[29] Com. Act No. 465, Jan. 1, 1940.

privilege conferred by law," [30] which element was not alleged in the charge brought against him, the dismissal ordered by the court *a quo* was therefore not improper.

Finding this contention without merit, the Supreme Court held that while it is true that Commonwealth Act No. 465 punishes the falsification of residence certificates for the cases mentioned by appellee, still the general provisions of the Revised Penal Code are applicable to other acts of falsification not covered by said statute, since under Article 10 of the Code, the Revised Penal Code has supplementary application to all special laws unless the latter should specially provide the contrary. The crime of which appellee was accused not being one of those which are exclusively covered by Commonwealth Act No. 465, and considering that the special law itself makes no provision that it exclusively applies to all forms or kinds of falsifications of residence certificates, the application of the Revised Penal Code could not therefore be considered unjustified.

V. ENTRAPMENT NOT A DEFENSE.

Entrapment, whereby an officer or other person acting in good faith for the purpose of discovering or exposing a crime furnishes the facilities or opportunity for the commission thereof by one who had the requisite criminal intent, is not prohibited as contrary to public policy, and as such, is not a valid defense to defeat subsequent criminal prosecution.[31] Thus, where price control agents go to the defendant's store and buy over-priced articles with marked bills, there is entrapment.[32] Where, however, as in the case of *People v. Tiu Ua*,[33] the accused had already sold the can of powdered milk at a price above the ceiling price when the price control agents went to his store only for the purpose of verifying the illegal act of the accused, which retail price the accused did not deny having charged upon being so questioned, the agents did not really employ entrapment. Since, however, Tiu Ua insisted that there was entrapment, the Court reiterated the well-settled rule that even if there was entrapment, it could not be taken as a valid defense.

VI. CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY.

A. Mitigating Circumstances.

1. *Minority.*

Where the offender is under eighteen years of age, he is entitled to a special or privileged mitigating circumstance which cannot be

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[30] *Id.*, § 11.

[31] People v. Hilario, 49 O.G. 2242 (1953); People v. Lua Chu, 56 Phil. 44 (1931).

[32] People v. Hilario, *supra* note 31.

[33] See note 10 *supra*.

offset by any aggravating circumstance, and his penalty is thereby reduced by one or two degrees.[34] Where no sufficient evidence is presented to support a claim of minority, discretion is given to the trial court to determine the age of the accused, and where doubt arises as to whether he was above or below eighteen when he committed the crime, the doubt should be resolved in his favor, thus giving him the benefit of this circumstance.[35]

There is, however, the equally sound rule that where the claim of minority is not sufficiently supported by the evidence or that it is an obvious fabrication, the trial court's finding that the accused is not a minor, judging from his physical appearance and other attendant circumstances, should not be disturbed in the absence of abuse of discretion.[36] Thus, in *People v. Ganzon, Jr.*,[37] appellant claimed that he was sixteen and therefore entitled to the privileged mitigating circumstance of minority. The Supreme Court, however, refused to reverse the lower court's conclusion that, from the latter's observation of appellant's features and behavior, he must be eighteen years or above. Besides, he himself admitted that he was eighteen in his extra-judicial confession. His mother's uncorroborated testimony that he was sixteen, though natural of her to so declare, did not satisfy the requisite proof.

2. *No Intention to Commit so Grave a Wrong as that Committed.*

Defendant in *People v. Tumamao* [38] was found guilty of murder for having treacherously stabbed the deceased at the back with a sharp pointed local bolo called *immoco*. The lower court's estimation in his favor of the mitigating circumstance of lack of intention to commit so grave a wrong as that committed [39] was considered improper by the Supreme Court, because "not a single fact has been pointed out in support of this conclusion, which is refuted by the treacherous manner in which appellant acted, by the deadly weapon used by him, by the vital part of the body in which the injury was inflicted and by the serious nature thereof . . ." [40]

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[34] Art. 13, par. 2, in connection with Art. 68, Rev. Penal Code.

[35] United States v. Agadas, et al., 36 Phil. 246 (1917); United States v. Barbicho, 13 Phil. 616 (1909); United States v. Roxas, 5 Phil. 375 (1905).

[36] People v. Talok, et al., 64 Phil. 696 (1937); United States v. Polintan, 8 Phil. 309 (1907).

[37] G.R. No. L-6872, May 21, 1955.

[38] G.R. No. L-8335, April 20, 1955.

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

[40] *E.g.*, People v. Maula, G.R. No. L-7191, Oct. 18, 1954; People v. Banlos, G.R. No. L-3412, Dec. 29, 1950; People v. Datu Baguinda, 44 O.G. 2287 (1948); People v. Flores, 50 Phil. 548 (1927); United States v. Mendac, 31 Phil. 240 (1915).

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.[41] This circumstance was present in the homicide case of *People v. Jarra*.[42] There, defendant was not in good terms with Majid, his son-in-law. While Jarra, with a rifle in his hands, was guarding their market stall, Majid arrived and boasted that he would blow out appellant's intestines. Majid carried his firearm on his shoulder, with the butt behind and the barrel in front. Upon hearing Majid's curses, and in an attempt to ward off his unexpected attack, Jarra fired two fatal shots at him. The position of the firearm on Majid's shoulder, while not a justification of Jarra's firing at him, was considered by the Court "to be sufficient to provoke appellant in view of the strained relations between the deceased and appellant's family. If it was not a provocation, it was at least a threat, which in itself constitutes a mitigating circumstance."

4. *Voluntary Surrender.*

This circumstance,[43] by its very terms, requires voluntary giving up of one's self to the authorities.[44] Consequently, if the readiness to surrender does not appear to be the offender's own idea,[45] or where there has already been actual arrest,[46] this circumstance is no longer available in mitigation.

In *People v. Saturnino*,[47] not only was there insufficient evidence to support the finding of this circumstance, but the records also showed that while the arrest warrant was issued on May 20, 1952 (two days after the murder), Saturnino was not apprehended until the 3rd of June. "Evidently, the officers of the law had to look for him in order to detain him."

However, the accused in the case of *People v. Moros Maedal Hairal and Salim Tajiril*,[48] were given the benefit of this cir-

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[41] Art. 13, par. 4, Rev. Penal Code. *E.g.*, People v. Didulo, G.R. No. L-6082, Aug. 31, 1954; United States v. Cortes, 36 Phil. 837 (1917); United States v. Carrero, 9 Phil. 544 (1908).

[42] G.R. No. L-7168, July 19, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 859, 861 (1955).

[43] Art. 13, par. 7, Rev. Penal Code.

[44] People v. Salcam, 61 Phil. 27 (1934).

[45] People v. Ramos, G.R. No. L-5843, May 17, 1954; People v. Canoy, G.R. No. L-4224, Dec. 28, 1951.

[46] People v. Adlawan, 46 O.G. 4299 (1950).

[47] G.R. No. L-6972, April 29, 1955.

[48] G.R. No. L-7010, May 31, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 867 (1955).

cumstance, it appearing that after they had slain the peddlers they went to Zamboanga City to report to the authorities.

5. *Plea of Guilty.*

The culprit's voluntary plea of guilty before the court prior to the presentation of the evidence for the prosecution justifies a certain amount of leniency, and his criminal responsibility is thereby mitigated.[49] This circumstance was credited in favor of the accused in the robbery case of *People v. Camilo Umali*,[50] and in the homicide case of *People v. Calma*.[51]

But where the offer to plead guilty was not only qualified, [52] but also that the crime committed was graver than that which the accused offered to admit, this mitigating circumstance could not be availed of. This rule was reiterated in *People v. Saturnino*.[53]

B. Aggravating Circumstances.[54]

1. *Taking Advantage of Public Position.*

In order that this circumstance be considered present,[55] it is necessary to show not only that the accused is a public official or officer but that in realizing his criminal purpose, he had to take advantage of the prestige, influence or ascendancy of his office.[56] The lower court in *People v. Sales* [57] declared that appellant, as a non-commissioned officer of the Constabulary, took advantage of his public position in murdering Tan, with whom the accused, thirty minutes earlier, had a heated altercation. The Supreme Court, however, did not agree with such a finding. "At most," said the Court, "his public position enabled him to take a Garand rifle from the armory of the provincial jail; but he could have taken a Garand rifle from other sources to shoot the deceased."

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[49] Art. 13, par. 7, Rev. Penal Code. People v. De la Cruz, 63 Phil. 874 (1936); People v. De Jesus, 63 Phil. 760 (1936).

[50] G.R. No. L-7197, July 27, 1955.

[51] G.R. No. L-7565, June 16, 1955. Defendant's plea of guilt in the case of People v. Narario, G.R. No. L-7628, Sept. 29, 1955, was also mitigating.

[52] People v. Noble, 43 O.G. 2010 (1947).

[53] See note 47 *supra*.

[54] Qualifying aggravating circumstances will be treated in the discussion of the specific crimes whose nature they serve to designate.

[55] Art. 14, par. 1, Rev. Penal Code.

[56] People v. Cerdena, 51 Phil. 393 (1928); United States v. Rodriguez, 19 Phil. 150 (1911). Where proof of abuse of office is absent or lacking, this circumstance can not properly be taken. People v. Galapon, G.R. No. L-6657, July 26, 1954; People v. Veloso, 48 Phil. 169 (1925); United States v. Estabaya, 36 Phil. 64 (1917).

[57] G.R. No. L-7187, Oct. 26, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1004 (1955).

2. *Disregard of Offended Party's Age or Sex.*

The circumstance of disregard of age aggravated the homicide committed in *People v. Calma*,[58] it appearing that the defendant's victim, his father-in-law, was fifty-six years of age.[59]

Disregard of sex is aggravating[60] only if in committing the crime, the offender intended to insult the sex of his victim.[61] Accused in *People v. Basarain*[62] opened fire at a group of persons assembled at the entrance of a church. Of the victims, Milagros was killed and Teodosia was wounded. The mere fact, however, that two of Basarain's victims were women was held insufficient to warrant a finding of disregard of sex, "it being obvious that the shooting was indiscriminate and apparently not intended for any particular person or persons . . ."

3. *Dwelling.*

Inasmuch as the home is said to be a sacred place,[63] dwelling is aggravating.[64] In three cases decided last year, this circumstance was present because the crimes were committed in the houses of the offended parties.[65]

4. *Place Dedicated to Religious Worship.*

Criminal liability is aggravated where the commission of the crime is perpetrated in a place devoted to public worship.[66] Where, therefore, the accused, upon reaching the main entrance of the Mt. Carmel Catholic church of Jolo, Sulu, drew his pistol and commenced firing at a group of persons congregated at the main entrance, and

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[58] See note 51 *supra*.

[59] Note, however, that in this case the Supreme Court did not explain whether or not the finding of disregard of age against the accused was based solely on the fact that the victim was 56 years old. In previously reported cases, the offended parties were described as not only weak but also sexagenarians or octogenarians. *E.g.*, People v. Gummuac, G.R. No. L-5197, Aug. 28, 1953; People v. Orbillo, G.R. No. L-2444, April 29, 1950; United States v. Esmedia, 17 Phil. 260 (1910).

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

[61] People v. Metran, G.R. No. L-4205, July 27, 1951; People v. Mangsant, 65 Phil. 548 (1938); United States v. De Jesus, 14 Phil. 190 (1909).

[62] See note 17 *supra*.

[63] Justice Villa-Real, dissenting in People v. Datu Ambis, 68 Phil. 635, 637 (1939).

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

[65] People v. Bensal, G.R. No. L-8265, Oct. 31, 1955 (robbery in band with rape); People v. Calma, *supra* note 51 (homicide); and People v. Tagacolo, et al., G.R. No. L-6871, April 20, 1955 (robbery with quadruple homicide).

[66] Art. 14, par. 5, Rev. Penal Code. But in People v. Jaurigue, 76 Phil. 174 (1946), this circumstance was not taken against the accused for although the killing took place in a chapel, there was no evidence to show that she had murder in her heart when she entered the chapel that night.

following the crowd which rushed into the church in panic, continued to empty his gun there, the finding of this circumstance against the accused in *People v. Basarain* [67] was not difficult to arrive at.

5. *Nocturnity.*

If the culprit purposely sought the night, or took advantage of the darkness for the successful consummation of his criminal plan, then nocturnity is present as an aggravating circumstance.[68] This was considered in *People v. Tagacaolo,*[69] it appearing that the crime of robbery with quadruple homicide was committed during the night while the victims were sound asleep.

On the other hand, where the offender did not seek the night, or did not take advantage of it to commit the felony with impunity, nocturnity could not be taken into consideration, as it would only be deemed accidental.[70] The Supreme Court, for instance, did not find nocturnity as an aggravating circumstance in *People v. Bolando.*[71] Accused, in the course of a heated exchange of words with the deceased chief of the barrio police, unsheathed his bolo and repeatedly stabbed the latter. Although the homicide was committed at night after a dance, his liability was not aggravated since it was not proved that Bolando sought the nighttime to commit the crime and the stabbing resulted merely in an altercation that took place at night.

In *People v. Cuevas,*[72] the defendant left the drinking joint that evening after he had come to blows with a group of men. Half an hour later, the group also left on board a car. As they cruised along the dark road, a hail of bullets met them, resulting in the death of one of the passengers and in the infliction of serious injuries upon another. In convicting Cuevas of murder and frustrated murder (qualified by treachery), the Supreme Court, however, refused to consider nocturnity against Cuevas, for the reason that "apart from

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[67] See note 17 *supra.* This circumstance was, however, offset by Basarain's voluntary plea of guilty.

[68] Art. 14, par. 6, Rev. Penal Code. *E.g.,* People v. Cuaresma, et al., G.R. Nos. L-5841-42, Jan. 29, 1954; People v. San Luis, G.R. No. L-2363, May 29, 1950; People v. Aquino, 68 Phil. 615 (1939).

[69] G.R. No. L-6871, April 20, 1955. See Notes, *Recent Decisions,* 30 PHIL. L.J. 859-61 (1955).

[70] United States v. Albao, 29 Phil. 86 (1914); United States v. Sellano, 10 Phil. 498 (1908).

[71] G.R. No. L-5096, Nov. 18, 1955. See Notes, *Recent Decisions,* 30 PHIL. L.J. 999 (1955).

[72] G.R. Nos. L-5844-45, May 30, 1955. See Notes, *Recent Decisions,* 30 PHIL. L.J. 865, 866 (1955).

being included in treachery,[73] it was not sought purposely, the aggression having been provoked evidently by the preceding fist fight." [74]

6. *Evident Premeditation.*

To warrant a finding of this aggravating circumstance,[75] the commission of the crime must be preceded by cool thought and reflection upon the resolution to carry out the felonious intent during the space of time sufficient to arrive at a calm judgment.[76] Thus, in the crime of murder committed in *People v. Barba*,[77] this generic aggravating circumstance [78] was taken into account, it having been shown that the night preceding the fatal day, the accused, who was a policeman, was bested by the deceased and the latter's brothers in a fist fight. The intervening time gave Barba the occasion to prepare his plan to shoot the deceased and to dispassionately consider and accept the consequences.

Evident premeditation, however, can not be inferred simply from the fact that there was preexisting enmity between the deceased and the defendant.[79] Therefore, where, as in the case of *People v. Bolando*,[80] all that the records showed was that for some time previous to the stabbing, the Bolando family and the deceased had nurtured serious differences, and nothing more, premeditation, much less evident premeditation, could not be properly considered.

Then, again, where the defendant's order to his men to open fire was given in the sudden desire to forestall any frantic and un-

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[73] Nocturnity held to have been absorbed in the qualifying circumstance of *alevosia*. *E.g.*, People v. Bautista, 45 O.G. 2084 (1949); People v. Medted, 68 Phil. 485 (1939); People v. Bumanglag, 50 Phil. 10 (1927). But see United States v. Berdejo and Andales, 21 Phil. 23 (1911), where nocturnity was considered apart from treachery.

[74] The *Cuevas* case seems to follow the rule laid down in People v. Matbagon, 60 Phil. 887 (1934), where nocturnity was not taken although the killing was committed at night, it appearing there that the slaying was only a sequel to the fight between the deceased and the defendant at the cockpit half an hour before. After the tussle at the cockpit, defendant waited for his victim near a *colo* tree and then stabbed him.

[75] Art. 14, par. 13, Rev. Penal Code.

[76] People v. Durante, 53 Phil. 363 (1929); People v. Bangug, 52 Phil. 87 (1928); United States v. Cornejo, 28 Phil. 457 (1914).

[77] G.R. No. L-7136, Sept. 30, 1955.

[78] *Premeditacion conocida* is qualifying in murder (Art. 248 [5]), but when it concurs with other qualifying circumstances, or when it is proved at the trial but not specifically alleged in the information as a qualifying circumstance, it is only generic aggravating. People v. Masin, 64 Phil. 757 (1937); People v. Paman, 58 Phil. 517 (1933).

[79] People v. Bordador, 63 Phil. 305 (1936).

[80] See note 71 *supra*.

expected attack by their Maranao prisoners who by then had created a commotion and showed an attitude of hostility and resistance, evident premeditation, being thus absent, could not be ascribed against the accused as to make them liable for multiple murder, instead of just multiple homicide. This was so held in *People v. Lawas, et al.*[81]

The case of *People v. Custodio, et al.*[82] is authority for the rule that a finding of evident premeditation can not be based merely on the conspiracy of the appellants, where the conspiracy is merely inferred from the appellants' acts in committing the crime. The accused in this case were convicted of murder qualified by treachery. The lower court, however, likewise found against them the generic aggravating circumstance of evident premeditation. But the Supreme Court declared:

> "Under normal conditions, where the act of conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted. In the case before us, however, no such evidence exists; the conspiracy is merely inferred from the acts of the accused in the perpetration of the crime. There is no proof how and when the plan to kill . . . was hatched, or what time elapsed before it was carried out; we are, therefore, unable to determine if the appellants enjoyed 'sufficient time between its inception and its fulfillment dispassionately to consider and accept the consequences.'" [83]

In other words, there was no showing of the opportunity for reflection and of the persistence of the criminal intent which characterize the aggravating circumstance of evident premeditation.[84]

7. Abuse of Superior Strength.

The case of *People v. Lawas, et al.*[85] illustrates how the crime of robbery can be committed with the aggravating circumstance of abuse of superior strength.[86] Defendant Lawas and his men were organized as home guards whose duty was to preserve peace and order in one of the towns of Lanao in 1942. Apprised of a report that in one of the barrios under their supervision several Christians

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[81] G.R. Nos. L-7619-20, June 30, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 867-68 (1955).

[82] G.R. No. L-7442, Oct. 24, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1001-04 (1955).

[83] People v. Bangug, 52 Phil. 87, 91 (1928).

[84] *E.g.*, People v. Mendoza, G.R. Nos. L-4146-47, March 28, 1952; People v. Iturriaga, 47 O.G. Supp. to 12, 166 (1951); People v. Lasado, 70 Phil. 525 (1940).

[85] G.R. No. L-7618, June 30, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 867-68 (1955).

[86] Art. 14, par. 15, Rev. Penal Code.

were massacred by Maranao Moros, they proceeded there to check up the report. Finding the report to be true, appellants not only rounded up some seventy Maranaos for detention but also robbed them, through force and intimidation, of the latters' carabaos, horses, and personal belongings. The Supreme Court agreed with the lower court's estimation of abuse of superior strength, it having been established that all the home guards were armed with rifles and bolos at the time of the robbery which they consciously used to facilitate their crime.

The disproportionate excess of the aggressors' strength over that of the deceased in *People v. Ubiña, et al.*[87] was sufficiently clear to establish this aggravating circumstance. The prosecution was able to prove that there were no less than eight assailants, all of whom were deployed around the victim's house, five of whom were armed with three carbines, one pistol, and one revolver, which certainly were far deadlier than the sole pistol of the deceased, who by the way, was attacked by surprise.

The Court refused to hold that there was abuse of superior strength in the multiple homicide case of *People v. Lawas, et al.*[88] While it was true that when Lawas ordered his men to open fire at their detainees who by then showed signs of hostility and imminent resistance, the accused home guards thereupon carried out said order, slaying about fifteen male Moros, yet, the prosecution was unable to substantiate its claim that the home guards expressly took advantage of their arms to commit the offense. Consequently, the killing could only be classified as multiple homicide.

8. *Treachery.*

The circumstance of treachery [89] is only generic aggravating if it is proved but not alleged in the information, or when it concurs with other qualifying circumstances.[90] In the case of *People v. Ubiña, et al.*,[91] the accused were convicted of murder qualified by the circumstance of evident premeditation. Appreciated also in this case was the treacherous manner by which the assailants killed their

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[87] G.R. N. L-6969, Aug. 31, 1955.

[88] See note 81 *supra.*

[89] Art. 14, pra. 16, Rev. Penal Code provides: ". . . . 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."

[90] See 2 AQUINO AND GRIÑO, NOTES ON THE PHIL. REV. PENAL CODE 713 (rev. ed. 1951), and cases cited therein.

[91] See note 87 *supra.*

victims. On the fatal night, the defendants, fully armed, deployed around the house of their victim and when the latter, unaware of defendants' presence, showed up at the yard, the defendants opened fire, killing three. The darkness, their lying in wait for their victims, and the suddenness of their shooting shielded the culprits from risk and insured the success of their crime.

The case of *People v. Tagacaolo*,[92] where the appellants were made to pay for the crime of robbery with quadruple homicide, reiterated the well-settled rule that the killing of a person who is asleep is aggravated by *alevosía*.[93] There, two of the victims, whose necks were cut and whose bodies were stabbed several times, were found in a recumbent position, indicating that they were assaulted while asleep.

The element of treachery is wanting, however, where the accused forewarns the deceased of his attack, thereby giving the other a chance to prepare for his defense. The case of *People v. Ballugan* [94] illustrates this situation. Pulpog, the deceased, fought with one Balitog (a friend of the accused), wounding the latter. Balitog cried for help, and so the accused came to his rescue, at the same time warning Pulpog by shouting, "Wait for me and we will fight!" Accused then rushed forward and hacked Pulpog to death. The Court held that Ballugan's aggression was not treacherous, because the deceased had been warned in advance and, being himself armed with a spear, was therefore able to prepare and offer resistance.

Treachery was not also considered in *People v. Lawas, et al.*[95] Although the order to fire at the Moro detainees was given in a sudden desire to thwart their aggressive attitude, the Court refused to hold that treachery was present, since the victims were face to face with the accused when the latter started to discharge their rifles.[96] Besides, the accused home guards did not consciously adopt a mode

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[92] G.R. No. L-6871, April 20, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 859-61 (1955).

[93] *E.g.*, People v. Amarante, G.R. No. L-4233, Dec. 21, 1951; People v. Buransing, G.R. No. L-2543, March 19, 1951; People v. Piring, 63 Phil. 546 (1936); People v. Salcam, 61 Phil. 27 (1934); People v. Reyes, 52 Phil. 538 (1928); United States v. Villorente, 30 Phil. 59 (1915).

[94] G.R. No. L-8267, July 30, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 868 (1955).

[95] See note 81 *supra*.

[96] See also the case of People v. Bolando, *supra* note 71, where the killing was held by the Supreme Court to be homicide only, since the attack was frontal. To the same effect, see People v. Lara, 54 Phil. 96 (1929), where the shooting was not considered treacherous as the accused and the victim were facing each other.

But treachery may also be present even though the aggression is frontal. See People v. Noble, 43 O.G. 2010 (1947).

of attack intended to facilitate the perpetration of the homicide without risk to themselves. The shooting was made on an impulse right after their leader had given them the order to fire.[97]

9. *Cruelty.*

The aggravating circumstance of *enseñamiento* [98] exists when it is shown that the accused, with deliberate intent, caused his victim to suffer more that what was necessary to commit the crime. The number of the victim's wounds, therefore, is not always a safe index in the estimation of this circumstance. It must be shown that the culprit purposely and inhumanly augmented the victim's sufferings.[99] Thus, no cruelty was found in the murder case of *People v. Jumauan,*[100] for, "although the deceased received thirteen wounds in all, there (was) no showing that appellant deliberately and inhumanly increased the suffering of the deceased."

C. Alternative Circumstance of Degree of Instruction.

Degree of instruction is one of the three alternative circumstances which may either be aggravating or mitigating according to the nature and effect of the crime and other conditions attending its commission.[101] Lack of instruction has been held mitigating where the accused were non-Christians wanting in association with the civilized community.[102] In *People v. Ganilot,*[103] the murderer who hailed from a far-flung *sitio* in the sub-province of Benguet, Mountain Province, was found ignorant. As the appellant in *People v. Tagacaolo* [104] is an illiterate member of a non-Christian tribe in one of the barrios of Davao Province, his criminal liability was mitigated. And in the murder case of *El Pueblo de Filipinas contra*

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[97] *Alevosia* could not be estimated if the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or difficult for the victim to defend himself or to retaliate. People v. Tumaob, 46 O.G. Nov. supp. 190 (1950); United States v. Namit, 38 Phil. 926 (1918).

[98] Art. 14, par. 21, Rev. Penal Code provides: "That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission."

[99] People v. Aguinaldo, 55 Phil. 610 (1931); United States v. Siblag, 37 Phil. 703 (1918); United States v. Palermo, 31 Phil. 425 (1915); United States v. Cervo, 9 Phil. 158 (1907).

[100] G.R. No. L-5746, Nov. 29, 1955. See Notes, *Recent Decisions,* 30 PHIL. L.J. 999 (1955).

[101] Art. 15, Rev. Penal Code.

[102] People v. Cocoy, G.R. No. L-4919, June 21, 1953; People v. Dayug and Bannaisan, 49 Phil. 423 (1926).

[103] G.R. No. L-6909, May 26, 1955.

[104] See note 69 *supra.*

Cawol y otros,[105] the Court held that the extenuating circumstance of ignorance could be applied to the accused who were Igorots, in view of its extention, by the Administrative Code of Mindanao and Sulu,[106] to Moros who enjoy a better civilization than the former.

VII. CONSPIRACY; PROOF AND EFFECTS.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[107] While conspiracy of itself is not, as a general rule, a crime in this jurisdiction, for conspiracy to commit a crime is punishable only in cases in which the law especially provides a penalty therefor,[108] yet, proof or lack of proof as to is existence in cases where several persons are charged of a crime is important in determining the liability of each one.[109]

Conspiracies need not be established by direct evidence of the acts charged, but may and generally must be proved by a number of indefinite acts, conditions, and circumstances which vary according to the purposes to be accomplished, since the very existence of a conspiracy is generally a matter of inference deduced from certain acts of the defendants, done in pursuance of an apparently criminal or unlawful purpose in common between them.[110] And once conspiracy is clearly shown, be it express or implied, the liability of the accused as co-principals is collective, regardless of the extent of their respective participations in the execution of the crime. The act of one is succinctly denominated as the act of all.[111]

The foregoing rules were again applied in a number of cases decided by the Supreme Court last year.

The lower court in *People v. De Luna, et al.*[112] correctly held that no direct evidence was necessary to show that the appellants com-

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[106] G.R. No. L-7250, Jan. 31, 1955.

[106] Approved, Feb. 8, 1918. See Rev. Adm. Code, § 2579.

[107] This definition is found in Art. 8, second par. of the Rev. Penal Code.

[108] Art. 8, first par., Rev. Penal Code. See People v. Asaad, 55 Phil. 597 (1931).

[109] People v. Ancheta, 66 Phil. 638 (1938).

[110] *E.g.*, People v. Mahlon, G.R. No. L-5198, April 17, 1953; People v. Agualona, G.R. No. L-3959, Nov. 29, 1952; People v. Remalante, G.R. No. L-3513, Sept. 26, 1952; People v. Sasota, G.R. No. L-3544, April 18, 1952; People v. Canoy, G.R. No. L-4224, Dec. 28, 1951; People v. Galang and De Guzman, 73 Phil. 184 (1941); People v. Cu Unjieng, 61 Phil. 236 (1935); People v. Ampan, 60 Phil. 348 (1934).

[111] *E.g.*, People v. Mendoza, 45 O.G. 2184 (1949); People v. Masin, 64 Phil. 757 (1937); People v. Caringan, 61 Phil. 416 (1935); People v. Chan Liu Wat, 50 Phil. 182 (1927); People v. Cabrera, 43 Phil. 82 (1922); United States v. Ipil, 27 Phil. 530 (1914).

[112] G.R. No. L-6974, May 18, 1955.

mitted the crime of murder in pursuance of their common criminal purpose. Although only three of the six appellants actually took part in manhandling and stabbing the deceased, the other three who remained at the gate of their victim's house were by their conduct held as co-principals. For despite the shouts of the female occupants, these three neither attempted to succor them, nor did they leave so as not to get themselves involved. Instead, they remained armed and they guarded the gate until the tragedy was over.[113]

Appellant in *People v. Santos*[114] claimed that he be held liable merely as an accessory. The facts of the case, however, showed conspiracy. Appellant Regino Santos and his brother, Sofronio (who died during the trial), were riding in a jeep driven by the former; upon approaching the victims who were then walking along the North Bay Boulevard, Sofronio mowed them down with his grease-gun, killing one and wounding two others. Regino, upon seeing the victims fall, shouted: *"Putang ina ninyo, patay na kayong lahat."* According to the Supreme Court, this "vindictive utterance clearly indicates . . . his knowledge of the murderous expedition, and his connivance, remembering especially that he must have seen his brother in the jeep carrying the deadly weapon."

Even if only one of the four defendants actually fired the shot that killed the deceased in *People v. Monadi, et al.*,[115] the other three should be held as co-principals, and not merely as accomplices, it appearing that all of them were at or near the scene of the crime, and all of them were seen running just behind the house of their victim, that they were all recognized as they scampered from the direction of their victim's house toward the main road, and that they were all armed with revolvers. All these clearly indicated conspiracy.

Jamang was ambushed along a trail by the gunfire of his eight assailants in *People v. Undali Omar*.[116] Undali and three others, all armed, approached the fallen Jamang, and fired at him and slashed his neck with their *barongs* and *kris*. The other four stood as guards. The shooting of their victim's corpse was only a circumstance to show that they all conspired to liquidate the unsuspecting wayfarer. Their simultaneous, joint and concerted acts evinced unity of criminal pur-

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[113] For a similar situation, see the case of United States v. Reogilon and Dingle, 22 Phil. 127 (1912). Also People v. Ulip, G.R. No. L-3455, July 31, 1951; People v. Manabat, 46 O.G. 2105 (1951); United States v. Bundal, 3 Phil. 89 (1903).

[114] G.R. No. L-7315, July 27, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 857-79 (1955).

[115] G.R. Nos. L-3770-71, Sept. 27, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 995-96 (1955).

[116] G.R. No. L-7137, April 30, 1955.

pose,[117] which made them all responsible for Jamang's death, it being immaterial who had discharged the fatal bullet.[118]

In *People v. Acaja*,[119] it was likewise not shown who fired the mortal shot at deceased Quirante. But it was indubitably proved that appellant was with the group of Huks who riddled the deceased as the latter was walking towards his house and that his assasination was in pursuance of the Huks' previous agreement to liquidate Quirante. There being conspiracy, appellant was liable for the acts performed by each one of his co-conspirators, even supposing that he did not actually fire at the deceased.[120]

In *People v. Moros Maṣdal Hairal and Salim Tajiril*,[121] Masdal murdered Jaila, and his companion Salim, killed Maadil on the same occasion and place. While this was the situation, both the accused nevertheless had to answer for both killings, since it was "obvious that they were acting in concert as if by agreement." Earlier, both had refused to pay their debts to the deceased peddlers; both appeared at the scene of the shooting at the same time; both were armed to the teeth; both used their submachine-gun and garand rifle at almost the same instant; and they were actuated apparently by the same motive—that of doing away with their creditors. These facts were taken as proof of conspiracy which made the two defendants responsible for the slaying of each of the deceased.

In *People v. Lingad, et al.*,[122] the evidence was not conclusive that Lingad, one of the four appellants, was the very one who shot Vicente Go, the owner of the store which they then robbed. But in as much as the appellants had conspired to rob, Lingad was nevertheless guilty as co-principal in the crime of robbery with homicide, whether or not he was the one who fired the shot that killed Vicente. Furthermore, all of them were held guilty of the said crime, irrespective of the fact that two of them had limited themselves to the actual act of robbery, and even if the third actually stayed inside the taxicab without having actually participated in the act of robbery or in the act of homicide. For the rule is that—

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[117] People v. Delgado, 43 O.G. 1209 (1947); People v. Carbonel, 48 Phil. 868 (1926); United States v. Zalsos and Ragmac, 40 Phil. 96 (1919).

[118] People v. Canoy, G.R. Nos. L-4653-54, Jan. 30, 1953; People v. Cusi and Wagan, 65 Phil. 614 (1938); People v. Cabrera, *supra* note 111.

[119] G.R. No. L-7235, April 29, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 857-58 (1955).

[120] The Supreme Court cited People v. Enriquez, 58 Phil. 536 (1933).

[121] G.R. No. L-7010, May 31, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 867 (1955).

[122] G.R. No. L-6989, Nov. 29, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1000 (1955).

> "Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide." [123]

On the other hand, the rule is equally settled that if no express or implied conspiracy is shown, the liability of the culprits will be individual, separate or several and not collective.[124] Thus, in *People v. Lawas, et al.*[125] it was held that as the forcible taking of the animals and personal belongings was not done in pursuance of any conspiracy, only those of the accused who took away something were liable for the crime of robbery and each one had to respond for his own individual act. In the other case of *People v. Lawas, et al.*,[126] the Court held that the massacre of the women and children by the home guards under the immediate command of Lawas and Osorio should be attributed only to those who actually killed them, since this murder or massacre was not proved to be the subject of a previous design or conspiracy. Besides, the women and children were not arrested by the accused; they merely accompanied their husbands and relatives who were rounded up and brought under investigation. Hence, there was no previous concert or unity of purpose and the act of the others could not also be deemed the act of Lawas and Osorio.

VIII. PRINCIPALS AND ACCOMPLICES.

The Revised Penal Code enumerates three kinds of principals.[127] To be a principal by inducement, one's inducement must be made

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[123] People v. De la Cruz, et al., G.R. No. L-4532, May 26, 1952. See also People v. Bautista, 49 Phil. 389 (1926); United States v. Macalalad, 9 Phil. 1 (1907). The Court likewise cited 6 VIADA, CODIGO PENAL COMENTADO 126-29.

The rule laid down in the earlier case of People v. Basisten, 47 Phil. 493 (1925) —to the effect that where only one of the defendants committed the homicide at the time of the commission of the robbery, said homicide not being the subject of the conspiracy, nor the others having had any intervention therein, only the one who actually committed it may be held responsible for the complex crime of robbery with homicide, the others being responsible only for the robbery in band—was overruled in this instant case of People v. Lingad, et al., *supra* note 122.

[124] People v. Ibañez, 44 O.G. 30 (1948); People v. Caballero, 53 Phil. 585 (1929); United States v. Abiog, 37 Phil. 137 (1917); United States v. Infante and Barretto, 27 Phil. 530 (1914).

[125] G.R. No. L-7618, June 30, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 865, 867-68 (1955).

[126] G.R. Nos. L-7619-20, June 30, 1955. See Notes, *Recent Decisions*, *supra* note 125.

[127] Under Art. 17, Rev. Penal Code, the following are considered principals: (1) Those who take a direct part in the execution of the act; (2) Those who directly

directly with the intent of procuring the commission of the crime and that it must be the determining cause of the crime.[128] The case of *People v. Po Giok To* [129] furnishes an illustration of inducement. The accused, who is a Chinese citizen, secured a residence certificate by supplying false information as to his citizenship and place of birth. In considering him a principal by inducement, the Supreme Court said that while it was the employee of the treasurer's office of Cebu City who wrote the allegedly false facts on defendant's residence certificate, "it was, however, the defendant who induced him to do so by supplying him with those facts. Consequently, the employee was defendant's mere innocent agent in the performance of the crime charged, while defendant was a principal by inducement."

In *People v. Lawas, et al.*,[130] the Supreme Court held that although Lawas and Osorio were the leaders of the home guards who murdered the women and children, they could not be held liable therefore by inducement. It was true that Lawas gave the order to fire, but his order to fire was directed only to those Maranao Moros on the ground and nothing else. His order could not have been meant to include the massacre of the defenseless women and children who were then confined in the second story of the house nearby. Lawas never intended that. The massacre followed so suddenly after he had given his order to shoot the Moros downstairs. And the killing stopped only when he was able to countermand his order. Therefore, neither he nor Osorio could be held guilty as a co-principal by inducement. For the rule is that in order to make the inducer responsible for the crime, the inducement has to be material and should precede the commission of the act, and that it was the determining cause thereof.[131]

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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.

[128] United States v. Inandan, 24 Phil. 203 (1913).

[129] G.R. No. L-7236, April 30, 1955. The main issue in this appeal, however, was whether or not the information filed in the lower court alleged sufficient facts to constitute the crime of falsification of public document by a private individual. The matter of "inducement" was touched upon by the Supreme Court because the accused claimed, *inter alia*, that it was not he, but the employee who prepared and issued to him the residence certificate that should be held liable for the alleged crime.

[130] See note 126 *supra*.

[131] The Court cited the case of United States v. Inandan, *supra* note 128, at 218: "A chance word spoken without reflection, a wrong appreciation of a situation, . . . a thoughtless act, may give birth to a thought of, or even a resolution to, crime in the mind of one for some independent reason predisposed thereto without the one who spoke the word . . . having any expectation that his suggestion would be followed or any real intention that it produces a result. In such a case, while the expression was imprudent and the results of it grave in the extreme, he would not be guilty of the crime committed."

In *People v. Ching Suy Siong, et al.*,[132] Mata was convicted of the crime of attempted rape. On appeal, one of the questions raised was whether Ching Suy Siong (alias Sionga), Mata's employer, could also be convicted of the said crime since he was present when Mata attempted to ravish the complainant. The Court held that a judgment convicting Sionga of said offense would be improper, since he neither showed encouragement nor disapproval of Mata's acts. "Without proof that he encouraged, directly or indirectly, the act, Sionga can not be held co-responsible for the acts of David Mata. Only . . . Mata, therefore, can be held responsible."

In three cases decided last year, the Supreme Court had occasion to distinguish the principals [133] from the accomplices [134] who took part in the commission of the crimes.

The facts in *People v. Francisco, et al.*, [135] were as follows: Francisco, mayor of Cordon, Isabela, accompanied by his four co-accused, after being unable to leave Corpuz to the custody of the Constabulary, proceeded to a barrio where he delivered said Corpuz to a group of men, his cohorts, and indicated to the latter that he was leaving Corpuz's fate in their hands. Corpuz has disappeared since then. The Supreme Court held that only Francisco could be held responsible for the crime of kidnapping as principal because he was "the only one who had the criminal intent to kidnap the victim . . ." His companions were only liable as accomplices, "for the reason that they helped Francisco in bringing Corpuz from the municipal building to the PC detachment . . . and ultimately to barrio Raniag. These acts undoubtedly constitute participation by 'simultaneous or previous acts' and hence under Article 18 of the Revised Penal Code, they are liable as accomplices."

In *People v. Ubiña, et al.*,[136] only five of the eight defendants conspired to liquidate Carag, their political archenemy. The three others—Pagulayan, Escote, and Binayug—whom the conspirators met on their way to kill Carag, were only apprised of what was to be done and were asked to go with the five, which they did. There was no showing that these three were armed or that they nourished hatred against the intended victim. Nor was it proved that they encouraged the original conspirators. There was no direct parti-

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[132] G.R. No. L-6174, Feb. 28, 1955.

[133] See note 127 *supra*.

[134] Accomplices under Art. 18, Rev. Penal Code are "those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts."

[135] G.R. No. L-6270, Feb. 28, 1955.

[136] See note 87 *supra*.

cipation on their part in the assasination of Carag, as all they did was to stay around the premises while the original conspirators opened fire. Their presence was not shown to be necessary or essential to the slaying. Under these circumstances, they could not be held as principals under any of the three concepts enumerated in Article 17 of the Revised Penal Code.[137] Besides, the rule is settled that when doubt exists as to whether persons acted as principals or accomplices, the doubt must be resolved in their favor, and they should consequently be held responsible only as accomplices.[138]

The Supreme Court in the case of *People v. Lingad, et al.*[139] held that Mamucod, the taxi driver, was only guilty as an accomplice in the commission of the crime of robbery with homicide for which his other co-appellants were found responsible as principals. The conspiracy to make a hold-up was decided upon only among the other defendants. Mamucod's taxi was only found and used by them. Of course, he was informed that his co-accused were to stage a robbery. The taxi driven by him was necessary to the commission of the crime because it was through its use that the robbers were able to find a store that could be the object of their conspiracy. However, since Mamucod ". . . did not take part in the original conspiracy to commit the crime of robbery, but only furnished the means through which the robbery could be perpetrated, with knowledge of the said criminal design, he is not guilty as principal, . . . but is an accomplice therein." [140]

IX. Imposition of Death Penalty.

The concurrence of eight Justices of the Supreme Court is required in the imposition of the death penalty.[141] In two *per curiam* decisions handed down last year, the capital punishment of death was imposed. Accused in *People v. Galit* [142] refused to plead guilty to the charge of murder. After trial, the lower court convicted him as charged and sentenced him to death. When his case was elevated to the Supreme Court,[143] the latter tribunal found no cause to reverse the judgment of the court *a quo*.

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[137] See note 127 *supra*. The Court cited the decisions of the Supreme Court of Spain dated Dec. 7, 1885; Jan. 27, 1887; June 20, 1892; and Dec. 6, 1902. Also 2 Viada, *op. cit. supra* note 123, at 369-70; 383-84; 428-29; 455-56.

[138] People v. Bantagan, 54 Phil. 384 (1930); People v. Tamayo, 44 Phil. 38 (1922).

[139] See note 122 *supra*.

[140] Citing People v. Ubi, et al., G.R. No. L-6969, Aug. 31, 1955.

[141] Rep. Act No. 296, § 9 (June 17, 1948), amending Art. 47, par. 2 of the Rev. Penal Code.

[142] G.R. No. L-6758, Sept. 30, 1955, 51 O.G. 5176 (1955).

[143] Pursuant to Rule 118, § 9 of the Rules of Court.

In *People v. Ubiña, et al.*,[144] accused Tomas Ubiña, together with his four original co-conspirators and three others (held liable only as accomplices), conceived and realized his evil design to murder his political adversary. When the case was elevated, the Supreme Court chose to impose the capital punishment on him alone since he was the only one who conceived the plan and utilized his influence to carry out the killing. The circumstances of the treacherous assault showed, according to the Court:

> ". . . marked determination, cruelty and depravity. Assuming . . . that he had reasons for resenting the treatment that he received at the hands of the deceased . . ., there certainly was no justification for him to enlist so many people, armed with so many arms, to carry out his revenge, or to wreak vengeance on innocent victims like Dionisia . . . and her father . . . . he gave vent to his anger unnecessarily murdering two other innocent and defenseless victims. For him, justice can not be tempered with mercy; the law must be applied in its full force and to its full extent."

The penalty of death was not, however, meted to his four co-conspirators in view of the personal influence that Tomas Ubiña had over them, and by reason of their relations or the favors that the former had extended to them. They appeared to have depended for their livelihood upon Tomas, and this dependence must have influenced them into helping their benefactor. Their acts were, therefore, in the Court's own words, "not entirely the voluntary results of inner depravity."

In two other cases decided last year, the imposition of the supreme penalty, although warranted by the facts and circumstances of the case, was not ordered on account of the insufficiency of the requisite number of Justices concurring.[145]

X. Complex Crimes.

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.[146] The case of *People v. Goode* [147] illustrates the first type of complex crime. The deceased was a bar-

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[144] See note 87 *supra*.

[145] People v. Goode, G.R. No. L-6358, May 25, 1955 (complex crime of murder with assalut upon an agent of authority). See Notes, *Recent Decisions*, 30 Phil. L.J. 687-89 (1955).

Death was not likewise imposed for lack of votes in People v. Tagacaolo, *supra* note 69, "although a member of the Court believes that, in view of the conditions under which the offense was perpetrated, appellant should never be pardoned . . ." The crime committed in this case was robbery with quadruple homicide.

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

[147] See note 145 *supra*.

rio lieutenant. He went to the house of the accused to pacify an ensuing quarrel and to advise the mother of the accused not to maintain their house as a gambling den any further. Resenting this intrusion, the accused cursed and boxed the deceased and after the latter had refused to accept Goode's challenge to fight, Goode whipped out his pistol and shot him. Prosecuted for the complex crime of murder [148] with assault upon an agent of authority,[149] he was convicted accordingly.

An interesting case of multiple homicide is *People v. Lawas, et al.*[150] Briefly, the facts were: The accused home guards, after rounding up around seventy Maranao Moros suspected of having massacred several Christians, brought their male detainees to the ground for questioning while the women and children were kept at the second floor of a nearby house. When the Moros on the ground heard that they were going to be hand-tied, they angrily protested and showed signs of hostility and resistance. Interpreting this commotion as a determination of the Moros to resist and even to fight for their rifles, Lawas gave his men the order to fire at the Moros on the ground. About fifteen of these Moros were slain. Some of Lawas' men, however, did not stop at shooting the male detainees; further, they routed the women and children upstairs, killing twenty-five women and ten children.

The Supreme Court held that the slaying of the male detainees was only homicide, there being no qualifying circumstance to warrant a finding of murder. The massacre of the helpless women and children, however, was held to be murder, qualified by abuse of superior strength.

But apart the foregoing pronouncements, however, the Supreme Court came to the conclusion that Lawas and his men ought to be held, in the last analysis, for the single complex crime of multiple homicide. Its reasons were: (1) the information was for multiple murder and no inference could be made therefrom that the accused were being charged of as many offenses as there were victims; (2) that the killing was a result of a single impulse following Lawas' order to fire; [151] (3) that there was no intent on the part of the ap-

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[148] Art. 248, Rev. Penal Code.

[149] Art. 148, Rev. Penal Code. A barrio lieutenant is an agent of authority. United States v. Fortaleza, 12 Phil. 472 (1909).

[150] See note 126 *supra*.

[151] Therefore, said the Court, "if the act or acts complained of resulted from a single criminal impulse it consitutes a single offense." Citing People v. Guillen, 47 O.G. 3433 (1951); People v. Acosta, 60 Phil. 158 (1934); People v. De Leon, 49 Phil. 237 (1926).

It may be noted, however, that while the Supreme Court was satisfied in saying

pellants to fire at each and every one of the victims as separately and distinctly from the other; and (4) that there was no evidence as to the number of persons killed by each and every one of the appellants, so that even if the Court was to hold each appellant liable for each and every death caused by him, it was impossible to do so as there was no way of ascertaining the individual deaths caused by each and every one.

The question in *People v. Basarain* [152] was whether the accused, for treacherously firing his pistol at a church crowd which resulted in the death of two and the serious physical injury of another, should be punished for double murder or two separate murders in addition to frustrated murder. The Supreme Court chose to hold him liable for the latter crime, and not the complex crime of double murder with frustrated murder. Milagros received three bullet wounds; Teodosia, two; and Bonifacio, one. Not only were the bodies of Milagros and Bonifacio found in different places, but there was also no proof that they were so close to each other or so situated that they were hit by one and the same bullet. Besides, it was shown that as to Teodosia, she was hit while hiding behind a baptismal font after Milagros had fallen.

There was ample proof that the accused in *People v. Ching Suy Siong, et al.*[153] illegally detained and committed acts of lasciviousness on the person of one Celia, a girl recruited by defendant's employment agency. The lower court, however, convicted Ching of the complex crime of serious illegal detention with acts of lasciviousness. The Supreme Court held that such a finding was unwarranted, for in this particular case the illegal detention was not necessary for the perpetration of the other felony. Accordingly, appellant was held liable for two separate crimes.

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that as the crimes resulted from "a single criminal impulse" they constituted a single offense, yet, Art. 48 of the Rev. Penal Code expressly provides that there is a complex crime "when a single act" constitutes two or more grave or less grave felonies. Certainly, there is a considerable difference between "a single criminal impulse" and "a single act." Note also that there was no "single act" in the case under review. On the contrary, there were plural acts. Although there was but one order to fire, yet Lawas' men on the ground each carried a rifle which each discharged, let alone the fact that the other home guards who routed the women and children upstairs used their guns and bolos. It can not be supposed either, that all the accused slew their victims (50 men, women, and children in all) simultaneously.

[152] See note 17 *supra*.

[153] G.R. Nos. L-6796-97, Sept. 23, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 997-98 (1955).

XI. Application of Penalties Which Contain Three Periods.

A person guilty of treason is punished by *reclusión temporal* to death and a fine not excedding ₱20,000.[154] Since this is a complex penalty composed of three distinct penalties, each one shall form a period; the lightest (*reclusión temporal*) of them shall be the minimum, the next (*reclusión perpetua*) the medium, the medium, and the most severe (death) the maximum period.[155] The lower court in the case of *People v. Velayo* [156] convicted the appellant of treason and sentenced him to 20 years of *reclusión temporal* and a fine of ₱10,000. The commission of the treason, however, was not attended by any mitigating or aggravating circumstance. The correct penalty was therefore *reclusión perpetua*, because it is a rule that when there are neither aggravating nor mitigating circumstances, the penalty prescribed by law in its medium period shall be imposed.[157]

The rule which provides that when only a mitigating circumstance is present in the commission of the criminal act, the penalty prescribed by law in its minimum period shall be imposed,[157a] was applied in *People v. Camilo Umali*.[158] There, defendant was charged with robbery under Article 294(5) of the Revised Penal Code,[159] to which he pleaded guilty.[160] His claim, on appeal, that his penalty should be reduced by two degrees following the rule in *People v. Jaurigue*,[161] was turned down by the Supreme Court as groundless, "because there . . . 'at least three mitigating circumstances of a qualified character' were 'considered in her favor;' whereas here only one mitigating circumstance . . . may be taken into account." Hence, his case fell under the above-stated rule.

In the robbery case of *People v. Nazario*,[162] defendant was sentenced to imprisonment for 6 months and 1 day of *prisión correccional* to 6 years and 1 day of *prisión mayor*. His appeal to the Supreme Court proved useful, since the penalty imposed by the lower

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[154] Art. 114, par. 1, Rev. Penal Code.

[155] See Art. 77, par. 1, Rev. Penal Code.

[156] G.R. No. L-7257, Feb. 8, 1955.

[157] Art. 64(1), Rev. Penal Code.

[157a] Art. 64(2), *id.*

[158] See note 50 *supra*.

[159] Art. 294 provides: "Any person guilty of robbery with the use of violence against, or intimidation of any person shall suffer: . . . 5. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its medium period in other cases."

[160] Plea of guilty is mitigating under Art. 13(7), Rev. Penal Code.

[161] 76 Phil. 174 (1946).

[162] G.R. No. L-7628, Sept. 29, 1955.

court was excessive. Although two mitigating circumstances were present—that of plea of guilty [163] and that of appellant's being deaf and dumb [164]—the lower court failed to apply Article 64(5) which provides that when there are two or more mitigating circumstances and no aggravating circumstances are present, the penalty next lower to that prescribed by law, in the period deemed applicable according to the number and nature of such circumstances, shall be imposed.

As appellant Nazario did not carry arms and as the value of the sewing machine which he robbed from an inhabited house in San Miguel, Manila, did not exceed ₱250, the penalty fixed by the Code is *prisión mayor* in its minimum period.[165] In view of the two mitigating circumstances, and following Article 64(5), the penalty next lower is *prisión correccional* in its maximum period (4 years, 2 months and 1 day to 6 years). Therefore, applying the Indeterminate Sentence Law, the penalty which the Supreme Court imposed was 4 months and 1 day of *arresto mayor* to 4 years, 2 months and 1 day of *prisión correccional*.

XII. INDETERMINATE SENTENCE LAW.

The application of this law [166] is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court.[167] And where the maximum limit of the penalty imposed does not exceed one year, the person convicted is, by express provision of the statute, not entitled to the benefits bestowed by it.[168]

Thus, defendant's claim on appeal in the case of *People v. Hernandez* [169] that the trial court, in sentencing him for homicide through reckless imprudence,[170] erred in that it failed to appreciate in his favor the benefits of the Indeterminate Sentence Law, was of no merit, since the lower court, after considering the nature and circumstances of the case and after making use of its discretion without reference to the technical subdivision of the period within the range of the penalty provided for by law, chose to impose the straight penalty of one year imprisonment, which penalty, by the way, was

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[163] See note 160 *supra*.
[164] Art. 13(8), Rev. Penal Code.
[165] See the penultimate paragraph of Art. 299, Rev. Penal Code.
[166] Act No. 4103, as amended.
[167] People v. Dimalanta, G.R. No. L-5196, Nov. 13, 1952.
[168] Act No. 4103, § 2.
[169] G.R. No. L-7616, May 10, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 692-93 (1955).
[170] Art. 365, par. 6(2), Rev. Penal Code.

within the range provided for by paragraph 6 of Article 365 of the Revised Penal Code.

Likewise, defendant in the parricide through reckless imprudence [171] case of *People v. Recote* [172] was not given the benefits of the Indeterminate Sentence Law, since the penalty imposed upon him was only one year of *prisión correccional.*

XIII. SUSPENSION OF SENTENCE OF MINOR DELINQUENTS.

When Gregorio Larita, together with his co-accused in *People v. Caubat, et al.*,[173] committed the crime of robbery in band with rape and physical injuries, he was still a minor under sixteen years of age. The lower court was therefore in error in pronouncing its judgment of conviction as to him, for the law requires as to said minor the suspension of proceedings and his commitment to the custody or care of a public or private, benevolent or charitable institution established for the care and correction of delinquent children, or to the custody of any other responsible person.[174]

XIV. AMNESTY.

The President has the power to grant amnesty with the concurrence of Congress.[175] Amnesty so granted extinguishes the penalty and all its effects.[176]

The case of *People v. Beronilla, et al.*[177] reiterated the rule, consistent with the presidential directive to the Amnesty Commission,[178] to the effect that where any reasonable doubt exists as to whether a given case falls within the amnesty proclamation re guerilla forces

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[171] Art. 246, in connection with Art. 365, par. 1, Rev. Penal Code.

[172] G.R. Nos. L-5801-02, March 28, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 496-98 (1955).

[173] G.R. No. L-7285, June 28, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 690-92 (1955).

[174] See Art. 80, Rev. Penal Code, as amended. Where the accused, however, at the time of the trial, is no longer a minor under 16 years of age, he can no longer invoke Art. 80 in his favor. See People v. Capistrano, G.R. No. L-4546, Oct. 22, 1952. To the same effect, see the earlier cases of People v. Estefa, G.R. No. L-1753, April 12, 1950, and People v. Celespara, 46 O.G. 2052 (1950).

In this *Caubat* case, there was no proof that at the time of the trial Gregorio Larita was already of age.

[175] PHIL. CONST. Art. VII, § 10, cl. (6).

[176] Art. 89(3), Rev. Penal Code.

[177] See note 5 *supra.*

[178] Adm. Order No. 11, Oct. 2, 1946 (42 O.G. 2360 [1946]). See also People v. Gajo, 46 O.G. 6093 (1950).

during the Japanese occupation,[179] said doubt should be resolved in favor of the accused.

In this case under review, the facts of which have been noted earlier in this survey, the lower court denied the defendants of the benefits granted by the amnesty on the ground that the killing of the puppet mayor took place after the actual liberation of the area from enemy control. The Military Amnesty Commission fixed July 1, 1945 as the liberation of the town of La Paz, Abra. The lower court which tried and convicted defendants of murder relied on an order of the then Department of the Interior[180] which fixed the liberation of Abra Province on April 4, 1945, fifteen days before the Japanese collaborator was executed. The Supreme Court observed that these two dates are not really contradictory, and if they were, appellants should be given the benefit of the doubt. Accordingly, the amnesty benefits ought to have been applied by the court below in favor of the appellants.

The lower court's judgment of conviction also intimated that as the killing of the puppet mayor stemmed from defendant's purely personal motives, they could not thus invoke the amnesty proclamation.[181] But the Supreme Court held that the concurrence of personal hatred and collaboration with the enemy as motives for the liquidation did not operate to exclude the case from the benefits of the amnesty claimed by the accused, since then it may not be held that the manslaughter arose from purely personal motives.

XV. Prescription of Crimes and Computation Thereof.

Article 90 of the Revised Penal Code provides that crimes shall prescribe in so many months or years, and Article 91 states that the period of prescription of crimes shall commence to run from the day on which the offense is discovered by the offended party, the authorities or their agents. It is to be noted, however, that no provision of the Code defines the length of a month. Likewise, it is to be observed that while Article 91 purports to prescribe the manner of computing the period of prescription of felonies, it does not, in the words of the Court, "explicitly define how the period is to be computed."

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[179] Exec. Proc. No. 8, Sept. 7, 1946 (42 O.G. 2072-73 [1946]). This amnesty was granted to all persons who, during the period from Dec. 8, 1941 to the date when each particular area of the Philippines was actually liberated from enemy control and occupation, committed acts penalized by the Rev. Penal Code in furtherance of the resistance to the enemy against persons aiding the war efforts of the enemy.

[180] Dep't Order No. 25, Aug. 12, 1948.

[181] Amnesty Proc. No. 8 provides, among others: "This amnesty shall not apply to crimes against chastity or to acts committed from purely personal motives."

Therefore, two pertinent questions arise under this situation: (1) whether or not the prescriptive period should commence from the very day on which the crime was committed (or discovered); and (2) whether the term "month" in the Revised Penal Code means thirty days or the civil calendar month.

These questions were answered in the case of *People v. Del Rosario*.[182] There, accused was charged with slight physical injuries committed on May 28, 1953. The information was filed on July 27, 1953. The crime charged, being a light felony, prescribed in two months.[183] If prescription were to be counted from the day the crime was committed (May 28), then the information was filed one day late, since July 27 was already the sixty-first day, this, on the presupposition that the two-month prescriptive period meant that each month contained thirty days.

The Supreme Court, applying the rule that the first day be excluded and the last day included,[184] held that the period should commence on the day following, and not on the very day of its commission or discovery. The Court likewise held that the term "month" found in Article 90 should be taken to mean the regular thirty-day month and not the solar or civil month, in accordance with the Civil Code [185] which is suppletory to special laws (like the Revised Penal Code) in cases where the provisions of the latter are deficient.[186]

In the instant case, therefore, the offense charged prescribed in sixty days, said period to be counted from May 29, the day following the commission of the crime, and as the information was filed on July 27, the offense had not yet prescribed because July 27 was still the sixtieth day from May 29.

XVI. Employer's Subsidiary Civil Liability.

The rule that, pursuant to Articles 102 and 103 of the Revised Penal Code,[187] the employer becomes *ipso facto* subsidiarily liable upon his employee's conviction and upon proof of the latter's insolvency, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary

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[182] G.R. No. L-7234, May 21, 1955. See Notes, *Recent Decisions*, 30 Phil. L.J. 694-95 (1955).

[183] Art. 90, par. 6, Rev. Penal Code.

[184] See Civil Code, Art. 13, par. 3; Rev. Adm. Code, § 13, par. 1; and Rules of Court, Rule 28, § 1. Also Surbano v. Gloria. 51 Phil. 415 (1928).

[185] Art. 13, par. 1. See also the Spanish Civil Code, Art. 7.

[186] Art. 18.

[187] On the subsidiary civil liability of innkeepers, tavern keepers, and proprietors (Art. 102), and of other persons (Art. 103). See the case of Mariano v. Barredo, 45 O.G. 4922 (1949).

liability for such criminal act or negligence, was reiterated in last year's case of *Nagrampa v. Mulvaney, McMillan & Co., Inc.*,[188] there being no proof that the decision rendered against the employee was tainted with fraud, collusion or clear mistake of law or fact, or that jurisdiction was lacking.

PARTICULAR FELONIES

I. CRIME AGAINST NATIONAL SECURITY.

A. Treason.

This crime is committed by any person who, owing allegiance to the Republic of the Philippines, levies war against it or adheres to its enemies, giving them aid or comfort.[189] And conviction of treason lies when at least two witnesses testify to the same overt act or when the accused confesses in open court.[190]

To the already abundant stock of Philippine treason cases,[191] *People v. Velayo* [192] was added as of last year. In this case, the accused not only aided the Japanese soldiers in arresting many guerillas but also joined the enemy soldiers in torturing said guerillas to death, and finally throwing the latter's corpses into two ditches.

II. CRIME AGAINST THE FUNDAMENTAL LAWS OF THE STATE.

A. Procurement of Search Warrant Without Just Cause.

The case of *People v. De la Peña, et al.*[193] decided last year is authority for the rule that the criminal responsibility of a public officer or employee who maliciously procures a search warrant [194] may be proved not only by acts and circumstances preceding or contemporaneous with the commission of the offense charged, but also by those which are posterior to the issuance of the allegedly illegal process.

Respondents De la Peña and Ramos, who were Military Intelligence Service agents of the Armed Forces, were accused of securing

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[188] G.R. No. L-8326, Oct. 24, 1955.

[189] Art. 114, par. 1, Rev. Penal Code.

[190] Art. 114, par. 2, *id.*

[191] For a comprehensive documentation of treason cases, see Navarro, E. R., *The Law of Treason in the Philippines*, 30 PHIL. L.J. 719-50 (1955).

[192] See note 156 *supra*.

[193] G.R. No. L-8474, Sept. 30, 1955, 51 O.G. 5195 (1955).

[194] Art. 129 of the Rev. Penal Code, implementing the constitutional guarantee against unreasonable searches and seizures (Art. III, § 1, cl. [3]), punishes any public officer or employee who procures a search warrant without just cause, or exceeds his authority or uses unnecessary severity in executing a lawfully procured search warrant.

a search warrant without just cause on the ground that their application for the process and the depositions attached thereto were false. During their trial, however, the lower court, agreeing with defendant's claim that the illegality of the procurement of the search warrant could only be established by acts prior to or simultaneous with the commission of the felony charged, prohibited the prosecution from asking the complaining witness to testify, among other things, to the series of investigations to which the latter was subjected after his house and person had been searched, to the threat made by the defendants that the complainant's son and nephew would be arrested, and to the demand for money by the accused upon the complainant as a price for the latter's release.

In ordering the lower court to accept such evidence offered by the prosecution, the Supreme Court said:

> "It is clear to our mind that said attempt to extort money, even if effected after the issuance of the search warrant, but prior to the release of the complainant, is relevant to the question whether or not said (*sic*) was illegally procured, owing to the obvious tendency of the afore-mentioned circumstance, if proven, to establish that the accused was prompted by the desire to get money from said complainant . . . . It is, likewise, apparent that evidence of the *intent* of the party who obtained said warrant or warrants is not only relevant, but very material, where the accused are charged with having 'willfully, unlawfully and feloniously procured' said process, 'pursuant to a common *intent*' as alleged in the information filed . . ."[195]

In an attempt to strenghthen their view, defendants invoked the case of *People v. Sy Juco*[196] which held that the offense in question is committed by a public officer who procures the warrant without just cause, and that such just cause consists of such facts and circumstances antecedent to the issuance of the warrant and not to facts subsequent. The Supreme Court, however, observed that that case is misleading, because there, the issue was the invalidity of a search warrant based upon affidavits showing, on the face thereof, that the statements contained therein were hearsay. The *Sy Juco* case could not be invoked in the instant case since here, the issue

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[195] The Supreme Court took occision in this case to reemphasize the rule laid down in Prats & Co. v. Phoenix Insurance Co., 52 Phil. 807, 816-17 (1928), to the effect that the practice of excluding evidence on doubtful objections to its material or technical objections to the form of the questions should be avoided, and that a liberal reception by the lower court of evidence offered therein would enable appellate courts, in cases elevated to the latter, to have all the necessary records to make a correct judgment.

[196] 64 Phil. 667 (1938).

was the liability of De la Peña and Ramos for procuring the warrant and the competency of the evidence to establish their guilt.

III. Crime Against Public Order.

A. Assault Upon an Agent of Authority.

In the case of *People v. Goode*,[197] discussed earlier in this survey under the subject of complex crimes, the accused, who was a municipal councilor, treacherously killed a barrio lieutenant on the occasion of the latter's performance of his official duties. In his appeal from the judgment of the lower court finding him guilty of the complex crime of murder with assault upon an agent of authority,[198] Goode claimed that the offense of assault ought not to be considered against him for the reason that he was also a public officer—a municipal councilor. The Supreme Court held that such a defense is unavailable in the crime of direct assault, since this offense can be committed not only by a private individual but also by a public officer or employee.

IV. Crime Against Public Interest.

A. Falsification of a Public Document by a Private Individual.

The information filed by the fiscal against defendant in *People v. Po Giok To* [199] recited that the accused, a Chinese citizen, born in Amoy, China, unlawfully secured from the treasurer's office of Cebu City a residence certificate by supplying information to the effect that he was Antonio Perez, a Filipino citizen from Jaro, Leyte. The main issue here was whether or not said information, filed under paragraph 1 of Article 172, in connection with paragraph 4 of Article 171 of the Revised Penal Code,[200] alleged sufficient facts to constitute the crime charged. Defendant claimed, among others, that as the information neither stated that there was a legal obligation on defendant's part to disclose the truth nor that the said accused

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[197] See note 145 *supra*.

[198] Arts. 48 (complex crime); 148 (direct assaults); and 248 (murder), Rev. Penal Code.

[199] See note 129 *supra*.

[200] Art. 171 provides in part: "The penalty of *prisión mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts: . . . 4. Making untruthful statements in a narration of facts; . . . ."

Art. 172 provides in part: "The penalty of *prisión correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon: 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document . . . ."

had a wrongful intent to injure a third person, the charge was insufficient.

The Supreme Court, however, thought otherwise. In the first place, the Residence Tax Act [201] provides that the residence certificate for persons shall contain such data as the applicant's name, place and date of birth, citizenship, residence and length thereof, civil status, and occupation or calling,[202] all of which facts are required to appear therein for the purpose of establishing the true and correct identity of the person to whom the certificate is issued. And the applicant is required to sign the document and affix his right hand thumb mark thereon. These requirements, said the Court, imply that it was the applicant's legal duty to state to the officer issuing the certificate the true facts to be set forth therein.[203] And since this duty, according to the Court, is inherent in the instant transaction, the same need not be stated in the information filed against Po Giok To.

Nor was there any need for an allegation of wrongful intent on the part of the accused to injure a third person since this element, although necessary in the crime of falsification of a private document by a private person under paragraph 2 of Article 172,[204] is not required in the falsification of a public document. The latter crime, with which defendant was charged, simply requires the commission of the felony, whereas the crime of falsification of a private document by a private person requires "to the damage of a third party, or with the intent to cause such damage . . . ," [205] aside the commission of the falsification.

The reason why the idea of gain or the intent to prejudice a third person need not be present in the falsification of public or official documents, whether by public officials or by private persons, in contradistinction to the falsification of private documents, is that

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[201] Com. Act. No. 465, Jan. 1, 1940.

[202] *Id.*, § 3.

[203] In the crime of falsification of a public document by making untruthful statements in a narration of facts (Art. 171, par. 4, Rev. Penal Code). a legal duty to tell the truth must exist, otherwise prosecution will not lie. United States v. Lopez, 15 Phil. 515 (1910). *Cf.* People v. Quasha, G.R. No. L-6055, June 12, 1953.

[204] Art. 172, par. 2 provides: "Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article." See note 200 *supra*.

[205] *Ibid.* *E.g.*, United States v. Infante and Barretto, 36 Phil. 149 (1917); United States v. Tan Chian, 17 Phil. 209 (1910); and United States v. Paraiso, 1 Phil. 127 (1902).

the principal thing punished is the violation of the public faith and the destruction of the truth as therein proclaimed.[206]

Therefore, although the information filed against Po Giok To neither alleged that he had a legal duty to disclose the truth nor that there was a wrongful intent on his part to injure a third person, it was nevertheless sufficient, and its dismissal for insufficiency by the lower court was a reversible error.

V. Crime Against Public Morals.

A. Obscene Pictures and Exhibitions.

The test adopted by the Court of Appeals in determining the criminal responsibility of publishers, exhibitors and purveyors of pictures of naked women under Article 201 of the Revised Penal Code is whether or not said pictures are naturally calculated to excite impure imaginations and whether the other incidents and qualities, however attractive, was merely accessory to this, as the primary or main purpose of the representation, since, according to this Court, "mere nudity in painting and sculpture is not an obscenity." [207]

In last year's case of *People v. Go Pin*,[208] the Supreme Court, rather than follow and apply the aforementioned approach, held that while pictures and paintings, and sculptures of women in the nude may be exhibited with impunity in art galleries or exhibitions for the view and appreciation of persons interested in art, the rule is different where said pictures are commercialized, where gain or profit is obviously the main, if not the exclusive consideration of the exhibition.

In this case, Go Pin exhibited at a commercial recreational center a large number of 1-reel 16 mm. films about 100 feet in length each, which the lower court, after viewing them, found to be "slightly indecent, obscene, immoral." In affirming the judgment of conviction, the Supreme Court said that consequently the viewers were not

> ". . . exactly artists and persons interested in art and who generally go to art exhibits and galleries to satisfy and improve their artistic tastes, but rather people desirous of satisfying their morbid curiosity and taste,

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[206] People v. Pacana, 47 Phil. 48 (1924), citing a decision of the Supreme Court of Spain dated Dec. 23, 1885; United States v. Buenaventura, 1 Phil. 428 (1902). See 2 Francisco, Rev. Penal Code 301 (2d ed.); Guevarra, Commentaries on the Rev. Penal Code 172 (4th ed.).

[207] People v. Manalili, C.A.-G.R. No. 8631-R., Feb. 28, 1953; People v. Serrano, C.A.-G.R. No. L-5566-R., Nov. 24, 1950, citing 33 Am. Jur. 23.

[208] G.R. No. L-7491, Aug. 8, 1955, 51 O.G. 4003 (1955).

> and lust, and for love for excitement, including the youth who because of their immaturity are not in a position to resist and shield themselves from the ill and perverting effects of these pictures."

VI. CRIMES AGAINST PERSONS.

As in past years, cases of murder were the most numerous. Treachery was by far the most common circumstance which qualified the killings involved. Different weapons of varying degrees of deadliness were used. Thus, in cases of consummated and frustrated murder, rifles,[209] carbines,[210] revolvers,[211] pistols,[212] grease-gun,[213] Thompson submachine-gun,[214] shotgun,[215] other unspecified firearms,[216] bolos,[217] barongs and kris,[218] knife,[219] bayonet,[220] spears,[221] wooden club,[222] and fists [223] were employed by the aggressors. And in the cases of homicide, the assailants were armed with rifles,[224] pistol,[225] other firearms,[226] bolos,[227] and knife.[228] The murder cases which follow will be discussed in the light of the qualifying circum-

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[209] See People v. Sales, *supra* note 57; People v. Barba, *supra* note 77; People v. Undali Omar, *supra* note 116; People v. Acaja, *supra* note 119; People v. Moros Masdal Hairal and Salim Tajiril, *supra* note 121; People v. Lamban, *infra* note 246.

[210] See People v. Ubiña, et al., *supra* note 87; People v. Bruno Unay, *infra* note 273.

[211] See People v. Monadi, et al., *supra* note 115; People v. Macion, et al., *infra* note 245.

[212] See People v. Basarain, *supra* note 17; People v. Ubiña, et al., *supra* note 87; People v. Goode, *supra* note 145; People v. Fortin, *infra* note 251.

[213] See People v. Santos, *supra* note 114.

[214] See People v. Moros Masdal and Salim Tajiril, *supra* note 121.

[215] See People v. Notarte, *infra* note 247.

[216] See People v. Cuevas, *supra* note 72; People v. Custodio, et al., *supra* note 82; People v. Gamlot, *supra* note 103; People v. Lawas, et al., *supra* note 126; People v .Segismundo, *infra* note 233; People v. Leon and Valentin Gallano, *infra* note 256.

[217] See People v. Tumamao, *supra* note 38; People v. Jumauan, *supra* note 100; People v. Lawas, et al., *supra* note 126; People v. Aclon, *infra* note 237; El Pueblo de Filipinas contra logroño y otros, *infra* note 259.

[218] See People v. Undali Omar, *supra* note 116.

[219] See People v. Robles and Lagsub, *infra* note 267.

[220] See People v. De Luna, et al., *supra* note 112.

[221] See El Pueblo de Filipinas contra Cawol y otros, *supra* note 105; People v. Aclon, *infra* note 237.

[222] See People v. Saturnino, *supra* note 47.

[223] See People v. De Luna, et al., *supra* note 112; People v. Alfredo and Acceles Fundador, *infra* note 258; People v. Robles and Lagsub, *infra* note 267.

[224] See People v. Jarra, *supra* note 42; People v. Lawas, et al., *supra* note 126.

[225] See People v. Calma, *supra* note 51.

[226] See People v. Lawas, et al., *supra* note 126.

[227] See People v. Bolando, *supra* note 71; People v. Ballugan, *supra* note 94; People v. Tabalba, *infra* note 287.

[228] See People v. Ananias, *infra* note 284.

stances which attended the killings. Whatever generic aggravating circumstances concurred in the perpetration of the crimes in these cases have already been dealt with earlier in this survey.

A. Murder.

1. *Treachery in Murder.*[229]

Where the accused fatally assaults his victim while the latter has his back turned to him, and such attack is characterized by suddenness or surprise showing consummation of the crime without any risk to himself, the circumstance of treachery qualifies the crime as murder.[230] In *People v. Tumamao,* [231] the following facts indicated treachery: In a party held in a house near that of deceased Talamayan's, a fist fight took place. Since Talamayan had three daughters attending the said party, he went to fetch them. When he and his daughters reached the stairs on their way down, accused pushed one of the girls and with an *immoco,* a sharp local bolo, stabbed Talamayan at the back causing his death ten days later.

Similarly, the Supreme Court found treachery present in *People v. Jumauan* [232] on the basis of these facts: Parreño, owner of a passenger truck, went to the house of Jumauan demanding that the latter return the bundle of rattan which he stole in his (Parreño's) truck. Since Jumauan insolently refused, Parreño started to leave. But as soon as he had crossed the door and stepped into the balcony, Jumauan, who had followed him unnoticed, snatched a bolo from the rafter of the house and hacked Parreño's nape and inflicted twelve other wounds. The first blow was not only mortal, but was delivered quite unexpectedly while the victim had his back toward his assassin.

There was murder in *People v. Segismundo,*[233] it appearing clearly that on the fatal day, while Alagar was walking along the street unaware of defendant's presence, the latter approached him from behind and shot him at the back, and that as Alagar tried to rise by pushing his torso upward, Segismundo, who meanwhile had placed himself in front of his victim, shot the latter once more.

Accused in *People v. Saturnino,*[234] for stealthily approaching Valdez from behind while the latter was standing sidewise at the

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[229] Art. 248(1), Rev. Penal Code.

[230] *E.g.,* People v. Ramos, G.R. No. L-5843, May 16, 1954; People v. Cabeda, G.R. No. L-4411, Feb. 8, 1952; People v. Honrada, 62 Phil. 112 (1935); People v. Cagoco, 58 Phil. 524 (1933); People v. Carangdang, 54 Phil. 503 (1930).

[231] See note 38 *supra.*

[232] See note 100 *supra.*

[233] G.R. No. L-6773, June 30, 1955. See Notes, *Recent Decisions,* 30 PHIL. L.J. 865, 867 (1955).

[234] See note 47 *supra.*

entrance of a parked autobus and conversing with the seated passengers, and then instantly hitting Valdez' head with a wooden club which he had wrapped in a newspaper, causing the victim's death a few minutes later, was held liable for murder.

It was sufficiently established in the case of *People v. De Luna, et al.*[235] that while Calubid was dining with his family, the appellants suddenly broke into the house and manhandled him until he fell from his seat to the floor. De Luna lost no time in stabbing Calubid's back with a bayonet.

The rule is well-settled that *alevosía* is present where the killing is committed in the dead of the night while the victim is at home sound asleep.[236] Thus, in *People v. Aclon, et al.*,[237] since the multiple and fatal stabbing was perpetrated while the deceased was asleep in a shack, the crime committed was murder. The situation in the case of *People v. Gamlot*[238] was essentially this: Gamlot wanted Teresa as a mate, but as her husband Rufo stood in the way, he had to be eliminated. Hence, at about midnight, Gamlot came, and from a distance of about two meters, shot the sleeping Rufo three times.

An attack characterized by surprise and effected by ambush or lying in wait for the victim in order to assult him more successfully and without running any risk from a defense by the offended party includes the qualifying circumstance of treachery.[239] Evidence was held sufficient to support the presence of this circumstance in *People v. Cuevas*.[240] There, deceased and his friends were in a store drinking beer and coke. In came Cuevas and engaged one of those drinking into a conversation which culminated in an exchange of fist blows. Cuevas left; thirty minutes later, the group also boarded their car. As they cruised along a road, a hail of shots met them, killing Masagpag and wounding Abarquez. That it was Cuevas who ambushed them was proved beyond doubt.

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[235] See note 112 *supra*. For four more cases where the victims were treacherously assaulted from behind, see the cases of People v. Custodio, et al., *infra* note 242; People v. Monadi, et al., *infra* note 244; People v. Lamban, *infra* note 246; and People v. Notarte, *infra* note 247.

[236] *E.g.*, People v. Antonio, G.R. No. L-3458, Oct. 28, 1951; People v. Oanis and Galanta, 74 Phil. 257 (1943); People v. Nicolas, 72 Phil. 104 (1941); People v. Piring, 63 Phil. 546 (1936); People v. Reyes, 52 Phil. 538 (1928); People v. Pacis, 48 Phil. 190 (1925).

[237] G.R. No. L-5507, Feb. 28, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 500, 501 (1955).

[238] See note 103 *supra*.

[239] *E.g.*, People v. Enriquez, 58 Phil. 536 (1933); United States v. Pala, 19 Phil. 190 (1911).

[240] See note 72 *supra*.

In the same manner, where, as in the case of *People v. Undaki Omar*,[241] the victim was ambushed by gunfire while he was unsuspectingly walking along a trail towards an artesian well, the crime committed was murder.

The element of *alevosía* was present in *People v. Custodio, et al.*[242] with respect to the defendants charged with murder committed as follows: Bolancio was awakened by the bleating of a goat in the corral near his home. With a flashlight, he went down the rear stairway. It was here that his back was hit by a bullet fired from below the house. As he staggered on, appellants, who had strategically posted themselves in the premises, fired more shots at him just to make sure they did not fail to kill him.

The prosecution was able to prove that in *People v. Acaja*[243] the accused, together with six other Huk confederates, on a mission to dispatch Quirante, waited for him in his house and surroundings. As Quirante was approaching his house, accused riddled him with bullets.

Because of a long standing grudge between the deceased Aguam and the four appellants starting way back their guerilla days, the accused in *People v. Monadi, et al.*,[244] all armed with revolvers, deployed around the house of Aguam's relatives, and when Aguam was wiping his shoes at the front of the stairs preparatory to entering the said house, the appellants shot him at the back.

Giron, a political adversary of the defendants in *People v. Macion, et al.*,[245] was busy at dawn in the ground floor of his house getting *palay* to feed his ducklings when the accused, who had been waiting for him to show up, shot him and as he was sprawled on the ground, face upwards, the appellants stepped forward and hammered his face with the butt of a revolver.

Treachery was clearly shown in connection with the killing of Sabusap in the case of *People v. Lamban*[246] which was accomplished by the defendant by posting himself by the window of a house, and as Sabusap was on his way to the seashore, Lamban shot him at the back.

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[241] See note 116 *supra*.
[242] See note 82 *supra*.
[243] See note 119 *supra*.
[244] See note 115 *supra*.
[245] G.R. No. L-7027, Aug. 30, 1955.
[246] G.R. No. L-5931, Feb. 25, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 500, 501 (1955).

The Supreme Court held defendant guilty of murder in *People v. Notarte*,[247] there being no doubt that while Giray was contentedly sitting on a hammock in his house after taking his supper, Notarte, who had been in the yard of the deceased, fired at him with a home-made shotgun called *bardog*. Giray's right arm and back were hit.

Settled also is the rule that when an assault is suddenly made with a deadly weapon upon an unsuspecting victim under conditions showing consummation of the crime without any risk to the assassin, the circumstance of treachery is evident.[248] Accordingly, where the accused in *People v. Basarain*,[249] upon reaching the main entrance of a church, commenced firing at the persons assembled there and continued emptying his pistol even as the crowd stampeded into the church, killing two and wounding another, the aggression was treacherous.

Appellant in *People v. Barba*[250] had a tussle with the Ilisan brothers (one of whom was the deceased Porfirio) the night before the fatal day, in which occasion Barba's face received a fist blow from one of the Ilisans. The next day, while Porfirio and his wife were harvesting mongo on their farm, Barba, accompanied by another policeman, came, and as he said "Pardong, stand up, we are going to shoot you," he trained his gun at Porfirio. The latter's wife pleaded, but in vain, for right away Barba shot deceased twice, the second bullet hitting Porfirio who, with hands upraised, was then supplicating: "Do not kill me; investigate first what was my fault."

The crime in *People v. Fortin*[251] was likewise murder. There, Fortin whipped out his .45 caliber pistol, and poking it at Juana who was beside him, threatened to kill her if she would persist in refusing "to be used" by Fortin's fellow soldier. But without waiting for an answer, he instantly squeezed the trigger, killing her on the spot.

The deceased barrio lieutenant in *People v. Goode*,[252] for allegedly intruding into defendant's gambling house, was first boxed on the jaw by Goode causing him to fall prostrate. Goode then lifted him by his neck and challenged him to a fight, which the barrio lieutenant

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[247] G.R. No. L-6371, Sept. 28, 1955, 51 O.G. 5157 (1955).

[248] *E.g.*, People v. Canoy, et al., G.R. No. L-6037, Sept. 30, 1954; People v. Felipe, G.R. No. L-5619, Feb. 25, 1952; People v. Acopio, 58 Phil. 582 (1933); People v. Pengson, 44 Phil. 224 (1922).

[249] See note 17 *supra*.

[250] See note 77 *supra*.

[251] G. R. No. L-7392, Aug. 11, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 996-97 (1955).

[252] See note 145 *supra*.

refused to accept. Without giving any warning at all, Goode immediately drew his pistol and fired at the victim's head.[253]

The murder and frustrated murders in *People v. Santos* [254] were committed as follows: Regino (appellant), conspiring with his brother who was armed, drove the jeep which carried them along the North Bay Boulevard where at that time the intended victims were taking a walk. The assailants, upon approaching their unwary victimes, riddled the latter with their grease-gun. One was killed and two others were seriously injured. As the victims fell, accused cursed them and then sped away.

Appellants in *People v. Moros Masdal Hairal and Salim Tajiril* [255] conspired to get rid of their creditors Jaila and Maadil. Before sunset, Masdal and Salim went to the house where earlier their creditors had repaired for the night. As they were inquiring about their creditors, Jaila peeped out of the door, only to meet Maadil's deadly Thompson submachine-gun. At about the same time, Salim went to the back porch and from there shot Maadil with his garand rifle. Since the victims were unarmed and with no means of defense or escape, trapped as they were inside the house, the killing was evidently treacherous.

The Supreme Court held that the qualifying circumstance of *alevosia* was present in the case of *People v. Leon and Valentin Gallano*.[256] Metran and his family had gone to bed one night when the two brothers entered their house greeting them with "good evening." The spouses answered their greeting, but without speaking further, Valentin fired his gun at Metran. The gun did not explode. Metran crawled, trying to escape away to the adjoining bedroom, but Leon grabbed the reloaded gun from Valentin and fired at Metran. This time, the bullet found its mark near Metran's left ear.

Treachery is evident where the manslaughter is committed while the victim is bound, since the idea of resistance or defense is clearly excluded.[257] This rule was reiterated in *People v. Alfredo and Acceles Fundador*,[258] it appearing that while Campaner was tied by his

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[253] Accused was held guilty of the complex crime of murder with assault upon an agent of authority. See note 147 *supra*, and the discussion under the subject of "complex crimes."

[254] See note 114 *supra*.

[255] See note 121 *supra*.

[256] G.R. No. L-6642, Nov. 18, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 998-99 (1955).

[257] *E.g.*, People v. Flores. G.R. No. L-6175, May 21, 1954; People v. Hernandez, G.R. No. L-3391, May 23, 1952; People v. Madrid, G.R. No. L-3032, Jan. 3, 1951; United States v. Valdez, 40 Phil. 876 (1920).

[258] G.R. No. L-6689, May 21, 1955.

two hands, the accused father and son maltreated him causing serious physical injuries and finally death. The accused later had him buried near a bamboo clump .

In the case of *El Pueblo de Filipinas contra Logroño y otros*,[259] the finding of treachery was proper since the deceased was running when one of the aggressors overtook him, and as the victim fell on the ground helpless and wounded, he was pounced upon and finally slain.

2. *Taking Advantage of Superior Strength in Murder.*[260]

In *People v. Lawas, et al.*,[261] the element of abuse of superior strength was present with respect to the home guards who shot and hacked to death the twenty-five women and ten children, it appearing that their victims did not have any means or opportunity to defend themselves and did not even show any sign of hostility to their killers.[262] This qualifying circumstance was likewise established in the case of *El Pueblo de Filipinas contra Cawol y otros.*[263] where it appeared that Cawol and eighteen others chased and cornered the wounded Wanason under the latter's house and there speared him, causing about fifteen mortal wounds.

3. *Evident Premeditation in Murder.*[264]

This qualifying circumstance is present when the crime has been reflectively considered by the culprit, when he has prepared the means appropriate to execute it in advance, and has had the time necessary for coldly taking account of its ulterior consequences.[265] What is required is that such an appreciable length of time has elapsed as to expect an aroused conscience to otherwise relent and desist from the accomplishment of the intended crime, and that nevertheless, the culprit proceeds in the perpetration of the felony.[266]

The killing in *People v. Robles and Lagsub* [267] was held to be evidently premeditated. The deceased Sison, who was a member of

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[259] G.R. Nos. L-5714-15, Feb. 28, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 500, 501 (1955).

[260] See Art. 248(1), Rev. Penal Code.

[261] See note 126 *supra.*

[262] Although the Supreme Court held that the massacre of the women and children by appellants was murder qualified by abuse of superior strength, it, however, finally held them liable only for the complex crime of multiple homicide. See discussion under the topic of "complex crimes," *supra.*

[263] See note 105 *supra.*

[264] See Art. 248(5), Rev. Penal Code.

[265] People v. Marasigan, 70 Phil. 583 (1940); People v. Diokno, 63 Phil. 601 (1936). See also note 76 *supra.*

[266] People v. Fuentesuela, 73 Phil. 533 (1942).

[267] G.R. No. L-8021, April 30, 1955.

a committee in charge of the allocation of certain parcels of land in the locality, was suspected by Robles of having discriminated against him (Robles) and his followers. Sison once prevented Robles and his men from gathering coconuts from certain lands already allocated to other persons. This misunderstanding became so critical that one councilor had to intervene. Robles, one of the accused, was ruthless and violent in temperament. On the eve before the fatal day, he openly branded the Sison brothers as traitors and declared that he had been waiting for an occasion to waylay them. In the very morning of the mauling and stabbing, Robles and Lagsub, on board a passenger jeep on their way to intercept Sison, asked one of the passengers if the latter was a good friend of the Sisons, and when the latter answered affirmatively, he was warned to shut his mouth. These facts made the finding of evident premeditation inevitable.

Defendant in *People v. Sales* [268] deeply resented the way Tan, guard of a judge, doubted his statement that he was a member of the Constabulary. With ruffled feelings, he returned to the provincial jail where the local PC was stationed, put on his olive drab uniform, took a garand rifle from the armory, and returned after thirty minutes to the place where he had left Tan. From a distance of less than a meter, he rapidly fired eight shots at Tan, killing the latter almost instantaneously. The Court held that the accused had sufficient time to form a determination to do away with Tan, and that this determination was a result of reflection and calculation.

The facts of the cold-blooded assassination in the case of *People v. Ubiña, et al.* [269] were that on account of a long-standing political rivalry and a personal affront committed by the deceased municipal mayor against accused Tomas Ubiña, the latter decided to take revenge, so that five days later, at about three o'clock, defendant called his henchmen (his co-accused) to a conference in which they resolved and planned the liquidation of Carag. The slaying finally took place in the early evening of that same day. The Court held that evident premeditation qualified the killing as murder.[270]

It was not Carag alone who was slain, however. His two hosts were also fatally hit by the shots of the accused. Thus, the question

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[268] See note 57 *supra*.

[269] See note 87 *supra*.

[270] It has been held that if a crime was planned at 3 P.M. and carried out at 7 P.M., or planned at 4 P.M. and executed at 7:30 P.M., the circumstance of evident premeditation was present because sufficient time had intervened between the conception of the criminal idea and the resolution to carry it out and the fulfillment thereof. See People v. Mostoles, et al., G.R. No. L-2880, March 31, 1950; People v. Lazada, 70 Phil. 525 (1940).

raised was whether or not evident premeditation could also be held to qualify these two other killings as murder. In holding that there was also evident premeditation as to their death, the Supreme Court said that while it is true that when the person killed is different from the one intended to be killed this qualifying circumstance is considered not present,[271] it is however considered attendant where the conspirators are shown to be determined to kill not only the intended victim but also any one who may help him put up resistance.[272] In the instant case, although Ubiña and his four co-conspirators only decided to kill Carag, yet the circumstances showed that they were ready to kill any one who might help the victim or offer resistance against them. The five were not only fully armed, but Ubiña also shouted to the fallen Carag that he (accused) was not afraid even if Carag called all his policemen to the rescue.

To the same effect was the case of *People v. Bruno Unay*.[273] While the deceased Quilicol, together with Caadan and two others, was working on the land of Caadan, the latter saw Bruno Unay train his carbine at them. As Caadan began to flee, he heard the carbine explode. Quilicol was fatally hit. The shooting was the result of a dispute between Caadan and Bruno Unay over a piece of land then being worked on by the former together with his companions. Ten days before the tragic event, defendant went to the house of Caadan and warned him that he (Unay) would shoot him and his men if they worked on the land. "It may be," said the Court, "that defendant himself to make good his threat aimed his gun at Caadan, but unfortunately the one hit was Quilicol. This circumstance however, can not alter the nature of his liability."

B. Frustrated Murder.

In the *Santos*,[274] *Cuevas*,[275] and *Basarain*[276] cases, the defendants were also held responsible for the crime of frustrated murder, aside the consummated murder, it clearly appearing that the accused had performed treacherously all the acts of execution necessary to kill, and yet did not produce their victims' death on account of proper and timely medical treatment.

C. Homicide.

This crime is committed by any person who, not being guilty of parricide,[277] shall kill another without the attendance of any of

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[271] People v. Guillen, 47 O.G. 3433 (1951).

[272] People v. Timbol, et al., G.R. No. L-47471-73, Aug. 4, 1944.

[273] G.R. No. L-5590, June 23, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 685-87 (1955).

[274] See note 114 *supra*.

[275] See note 72 *supra*.

[276] See note 17 *supra*.

the circumstances which qualify killing to murder.[278] Last year, the Supreme Court held in seven cases that the accused were responsible only for the crime of homicide, and not for murder as held by the lower courts.

In the case of *People v. Lawas, et al.*,[279] the facts of which have already been discussed elsewhere in this survey, the shooting of the Maranao Moros who were being interrogated on the ground by the accused, although somewhat sudden, nevertheless did not constitute multiple murder, but only multiple homicide, since none of the circumstances which qualify killing to murder was established. There was no evident premeditation since Lawas' order to fire was given in the instant desire to forestall any frantic and unexpected retaliation by the Maranaos who by then had shown an attitude of hostility and resistance. Neither was treachery present since, according to the Court, the Moros were face to face.[280] Abuse of superior strength was not shown either, because the accused home guards did not expressly take advantage of their firearms to commit the crime.

The crime committed in the case of *People v. Ballugan*,[281] likewise discussed elsewhere in this survey, was only homicide because when Ballugan rushed forward to avenge the defeat of his friend Balitog, he warned Pulpog (deceased in this case) by shouting, "Wait for me and we will fight!" The Court held that the assault lacked the characteristic suddenness common in the crime of murder, since Pulpog had been forewarned and therefore had a chance to prepare for the attack.

While it is true that as a rule the qualifying circumstance of treachery is present where the accused suddenly and without warning attacks and kills the offended party,[282] yet it is equally settled that an act can not be qualified as treacherous when the facts and circumstances that preceded and concurred in its execution are not clearly supported by the evidence adduced.[283] *Alevosía* was thus not

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[277] Art. 246, Rev. Penal Code.

[278] Art. 249, *id.*

[279] See note 126 *supra*.

[280] No treachery if infliction of mortal wound is frontal. People v. Catacutan, 64 Phil. 107 (1937); People v. Lara, 54 Phil. 96 (1929). This rule, however, does not preclude the possibility of finding the existence of *alevosía*, in spite of the frontal manner of the aggression. See, for instance, People v. Noble, 43 O.G. 2010 (1947).

[281] See note 94 *supra*.

[282] *E.g.*, People v. Fuentesuela, 73 Phil. 553 (1942); People v. Medted, 68 Phil. 485 (1939).

[283] *E.g.*, People v. Cuaresma, et al., G.R. Nos. L-5841-42, Jan. 29, 1954; People v. Bordador, 63 Phil. 305 (1936); People v. Ramiscal, 49 Phil. 103 (1926).

clearly established in the case of *People v. Ananias*.[284] There, Gabriel (deceased) and Ananias had a fist fight. When taken to the office of the chief of police for questioning, both however declared that they had considered their differences forgotten. So the chief of police started drawing up their "peace agreement," while Gabriel and Ananias sat in front of the chief's desk after having shaken each other's hand. All of a sudden, Amiano (a policeman who was with them in the room) saw Ananias whip out a knife from the right pocket of his pants and with his right hand suddenly stab the left breast of Gabriel. The chief looked up at this juncture and saw the struggle ensue. Ananias then ran away carrying his knife. Gabriel made an *ante mortem* declaration in Visayan—*"Waray ako sabot"*—which was taken down by the chief of police in the English words: ". . . in the municipal building he was stabbed suddenly without knowing it."

In refusing to agree with the lower court that the crime was murder, the Supreme Court held that the crime ought only to be considered homicide, for the reason that treachery was not clearly proved. Said the Court:

> ". . . . The action in the course of which the injury was inflicted was so swift and sudden that one cannot say with precision when the wound was inflicted, whether immediately after defendant had drawn the knife . . . or while the two were wrestling for the possession of the knife . . . On the other hand, while the *ante mortem* declaration speaks of a sudden attack, the translation of these words from the Visayan 'waray ako sabot' is disputed in the sense that they do not mean necessarily treachery but rather 'outmaneuvered or outsmarted.'"

The following were the facts in *People v. Bolando*:[285] A dance was held one night in the house of defendant's father without the requisite official permission. The deceased, who was the chief of the barrio police force, asked the accused why there was no permit. A heated exchange of words followed, whereupon appellant unsheathed his bolo and stabbed the deceased repeatedly. The Supreme Court again refused to consider the crime as murder. There was "absolutely no evidence as to the presence of permeditation, much less evident premeditation." All that the record could show was that for some previous time, the Bolandos and the deceased had serious differences.[286] "And as to treachery, it is clear that, although the

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[284] G.R. No. L-5591, March 28, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 491-93 (1955).

[285] See note 71 *supra*.

[286] Evident premeditation can not be inferred simply from the fact that there was enmity between the person killed and his slayer. People v. Fuentesuela, *supra* note 282; People v. Bordador, *supra* note 283.

assault was with a deadly weapon, still it was a frontal attack and made after a heated discussion."

The case of *People v. Tabalba*[287] was this: Waminal and Cruz went to the shore and were met by Tabalba who said, "Now, so you are here, you thieves." (Waminal and Cruz were being suspected by appellant of stealing his coconuts). Cruz fled and on looking back, he saw the defendant stand above Waminal and slash his neck with a bolo. Under these facts, the Supreme Court held that treachery was not established, and the crime was therefore homicide. "What actually appears is that the mortal blow was preceded by a struggle as stated by appellant to the Constabulary officer and as indicated by the fact that bruises were found on the body and arms of the deceased."

Since no qualifying circumstance was proved to sustain the charge of murder in *People v. Jarra,*[288] the accused was only held liable for homicide.[289]

VII. Crimes Against Personal Liberty.

A. Kidnapping with Murder.

Defendants in *People v. Francisco, et al.*[290] were held guilty of the complex crime of kidnapping with murder, it appearing that Francisco delivered Corpuz, whose hands were tied at his back, to his cohorts and indicated to them that he was leaving Corpuz' fate in their hands. Corpuz has never been heard of since then.

For previous failure of the deceased barrio lieutenant in *People v. Tulale*[291] to give supplies to the accused, who was allegedly a Huk, and for causing the Constabulary one time to hunt the accused, the latter, together with four of his henchmen, herded Genova from his house to the bank of a river where he was shot thrice. Tulale was held guilty of kidnapping with murder.[292]

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[287] G.R. No. L-4643, April 30, 1955. See Notes, *Recent Decisions,* 30 Phil. L.J. 861-62 (1955).

[288] See note 42 *supra.* The facts of this case have been discussed earlier under the subject re mitigating circumstance of sufficient provocation or threat, *supra.*

[289] Another case of homicide was People v. Calma, *supra* note 51, wherein the accused with a .45 cal. pistol, shot his father-in-law thrice in the latter's house.

[290] See note 135 *supra.*

[291] G.R. No. L-7233, May 18, 1955.

[292] Compare the holding of this case with that of People v. Camo, G.R. No. L-4741, May 7, 1952, where the Court held that the crime was simple murder, because the purpose of taking the deceased from his home was for the sole object of killing him. In People v. Remalante, G.R. No. L-3512, Sept. 26, 1952, the Supreme Court held that the crime committed was only murder, since the interval of time between the taking and the killing was so short as to negative the idea of kidnapping.

The Supreme Court acquitted the appellants in the case of *People v. Soriano and Garcia* [293] of the charge of kidnapping two persons. Appellants were agents of the Constabulary employed to help ferret out the rampant criminality and subversive activities in Isabela Province. The witnesses for the prosecution made so many contradictions in their testimonies that the Court, with marked impatience, concluded that they "must not have told the truth." [294]

B. Serious Illegal Detention.

A private individual who detains or in any other manner deprives a woman of her liberty commits the crime of serious illegal detention.[295] This crime implies restraint or confinement of the offended party as an essential element.[296]

Defendants in *People v. Ching Suy Siong and Mata* [297] were accused, among others, of this crime. Ching Suy Siong (alias Sionga) was the manager of an employment agency, while Mata was his employee. Luz and Celia were recruited by Sionga's agency upon promise of work with pay. The two girls stayed in the agency for ten days and during that time they were kept under guard by the men of the agency. They were not allowed to look out of the window or go out and were under the constant watch of Sionga and Mata even when they had to answer the call of nature. The Court held that these facts were sufficient to establish the crime imputed to the appellants.

In *People v. Ching Suy Siong, et al.*,[298] however, with the same appellants as in the preceding case, the Court acquitted the defendants of the charge of serious illegal detention. There was, in the first place, no conspiracy to illegally detain Melchorita, a recruit of the agency who brought the charge in this case. There was no showing that the doors of the agency were locked. Nor was it proved that she could not have left if she wanted to. On the contrary, she went to the agency voluntarily as there was an offer for work, which she however rejected. Said the Court:

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[293] G.R. Nos. L-6244-45, Aug. 30, 1955, 51 O.G. 4513 (1955).

[294] The witnesses for the prosecution were, according to the Court, "interested in removing from their midst the appellants who because of their activities in behalf of the Army were causing the 'Santiago Defenders' worry lest their nefarious deeds be discovered and the responsible persons brought to the bar of justice."

[295] See Art. 267, Rev. Penal Code, as amended by Rep. Act No. 1084 (June 15, 1954).

[296] United States v. Cabanag, 8 Phil. 64 (1907).

[297] See note 153 *supra*.

[298] See note 132 *supra*.

"The supposed acts of appellants prohibiting her to peep or go out were not to compel her to stay within and keep her there against her will but that she may not be seen by the police.[299] There was absent the element of detention, or locking up . . . There was no illegal deprivation of liberty at all."

VIII. Crimes Against Property.

A. Robbery.

This crime is committed by any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against, or intimidation of any person, or using force upon things.[300] The cases of robbery decided by the Supreme Court last year presented no significant issue. All of them were consummated robberies. Simple robbery is illustrated in the cases of *People v. Lawas et al.*[301] and *Atanacio v. People.*[302]

There were several cases of robbery with homicide.[303] This offense is not a complex crime as contemplated in Article 48 of the Revised Penal Code, 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 on the occasion of the robbery.[304] The homicide here is taken as a mere incident of the robbery, the latter offense being the main object of the culprit.[305]

Accused in *People v. Tagacaolo* [306] was convicted of robbery with quadruple homicide because on the occasion of robbing ₱150 in cash and articles valued at ₱500, he killed four of the inmates by cutting their necks and stabbing them.

For robbing Vicente Go's store of ₱110 in cash and for shooting Go, appellants in *People v. Lingad, et al.*[307] were likewise held responsible for the crime of robbery with homicide. The accused in *People v. Datu Abdula Mamadra* [308] was also found guilty of this crime because on the occasion of looting the houses of the Ortuostes, he shot to death one of the offended parties. A case of sheer brutality

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[299] Her case was then pending investigation by the Placement Bureau because she did not have the requisite permission of her father to be recruited.

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

[301] See note 125 *supra*. The facts of this case have been discussed earlier in this survey under the topics of "conspiracy," *supra*.

[302] G.R. No. L-7537, Oct. 24, 1955.

[303] See Art. 294, par. 1, Rev. Penal Code.

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

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

[306] See note 92 *supra*.

[307] See note 122 *supra*.

[308] G.R. No. L-6580, Aug. 20, 1955.

was *People v. Ganzon, Jr.*[209] In robbing a taxi driver of ₱3.45, Ganzon gave the deceased several blows on the head with an iron pipe and repeatedly slashed the latter's throat with a knife. The Court, citing an earlier case,[210] held that the defendant's unexplained possession of the driver's note book and money justified by itself the lower court's finding that the gory killing was connected with robbery.

There were two cases involving the crime of robbery in band with rape.[211] In *People v. Bensal, et al.*,[212] defendant and five others (the latter still at large and unidentified), armed with rifles, pistols, and a bolo, ransacked the house of their victims for money and valuables, and on the occasion thereof raped the two girl inmates.

The six culprits in *People v. Caubat, et al.*[213] not only took from the offended parties ₱40 in coins, but also maltreated the occupants of the house and ravished one of the girls despite her resistance.

B. Other Crimes Against Property.

1. *Qualified Theft.*

When a person, with intent to gain but without violence against or intimidation of persons or force upon things, takes a motor vehicle of another without the latter's consent, he commits the crime of qualified theft.[214]

The question in the case of *People v. Isaac*[215] was whether the accused committed estafa[216] or qualified theft. There, Isaac was substituted for the regular driver of an *auto-calesa* ("jeepney") owned by one Velasquez. On January 19, 1950, he was entrusted with said vehicle for a "pasada" (i.e., for transporting passengers for compensation) with the understanding that he was to return the vehicle on the evening of the same day together with the stipulated "boundary" (i.e., a fixed portion of the day's earnings which Isaac was to turn over to Velasquez). Instead of returning the vehicle, however, it was found in a machine shop. Isaac admitted that he took the vehicle to steal it.

It is to be noted that previous cases have held that where the hirer of a truck or a "jeepney" sells it to another without the owner's

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[209] See note 37 *supra*.
[210] People v. Kagui Malasugui, 63 Phil. 221 (1936).
[211] See Arts. 294(2) and 295, Rev. Penal Code.
[212] See note 4 *supra*.
[213] See note 173 *supra*.
[214] See Arts. 308 and 310, Rev. Penal Code.
[215] G.R. No. L-7561, April 30, 1955, 51 O.G. 2411 (1955).
[216] See Art. 315, par. 1(b), Rev. Penal Code.

consent, he commits the crime of estafa and not qualified theft, because with the delivery of the vehicle to the driver (accused) under the contract of hire, both the physical and juridical possession of the motor vehicle is deemed transferred.[317] Thus, counsel for the accused claimed that Isaac may have committed estafa, but not qualified theft, on the theory that the possession of the vehicle was obtained with the consent of the owner and illegal taking was therefore absent.

In holding that Isaac was guilty of qualified theft, the Supreme Court, citing an earlier case,[318] held that the delivery of the "jeepney" here did not have the effect of transferring the juridical possession thereof, or title thereto, to the accused, such that his act of disposing of it with intent to gain and without Velasquez' consent constituted the crime of qualified theft. In the Court's own words:

> ". . . . appellant . . . only substituted for the regular driver of a vehicle devoted to the transportation of passangers for a fare or compensation and therefore operated as a public utility; and while his arrangement with the owner was to turn in, not all the fare collected, but only a fixed sum known in the trade as 'boundary,' still he can not be legally considered a hirer or lessee, since it is ordained in section 26 of the Rules and Regulations of the Public Service Commission that 'no motor vehicle operator shall enter into any kind of contract with any person if by the terms thereof it allows the use and operation of all or any of his equipment under a fixed rental basis.' . . . In the eye of the law then, appellant was not a lessee but only an employee or agent of the owner, . . . In other words, while he had physical or material possession of the *jeepney*, the juridicial possession thereof remained in the owner. Under those circumstances his disposing of the *jeepney* with intent of gain and without the consent of the owner makes him guilty of theft."[319]

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[317] See People v. Bonifacio, (C.A.) 48 O.G. 5301 (1952); People v. Dugan, (C.A.) 46 O.G. 3180 (1950), citing United States v. Ador Dionisio, 35 Phil. 141 (1916) and United States v. Abad, 23 Phil. 504 (1912); and People v. Noveno, 46 O.G. 1637 (1950).

[318] People v. De Vera, 43 Phil. 1000 (1922). Here, the Court held that the crime committed by the appellant by appropriating the gold bar of the Igorots which had been delivered to her for examination and by converting to her own use, without the consent of the owner, the bank notes which had been handed to her to be changed for silver coins, was theft.

[319] Under this explanation of the Supreme Court, a number of questions need asking. Has this *Isaac* case overruled those cases (*supra* note 317) which held that such a transaction in question could furnish a situation for the commission of the crime of estafa? Can not an affirmative answer to this question be inferred from the apparent failure of the Supreme Court, deliberate or otherwise, to cite or reconsider said cases instead of the *De Vera* case, when it seems obvious that the facts of the previous cases are more analogous to this *Isaac* case than those of the *De Vera* case? On the other hand, if the Court really intended to depart from the rule laid down by the said previous cases, why did it refrain from directly saying so? Would have the Supreme Court held differently in this *Isaac* case if the accused were the jeepney's regular driver and not just a substitute as in this case? It is unfortunate that the rationale of this case was not adequately explained, giving

The Court, furthermore, did not fail to overlook the fact that Isaac himself admitted that he took the *auto-calesa* to steal it. Since he, said the Supreme Court, according to his own confession, took the vehicle from its owner already with the intention of appropiating it, he should also be deemed guilty of theft.[320]

2. *Arson.*

For unlawfully and deliberately burning the house of the Siocon family in Dipolog, Zamboanga, the appellants in *People v. Pingkian, et al.*[321] were held liable for the crime of arson.[322]

IX. Crimes Against Chastity.

A. Rape.

Since experience has shown that false charges of rape [323] have been frequently preferred by women actuated by some sinister or ulterior motive, the rule is that conviction for such crime can not lie unless supported by clear and convincing proof of guilt.[324] Thus, in *People v. Fortin,*[325] the accused who was charged with the crime of rape with murder was convicted only of the latter crime because no one actually testified that appellant was seen in the course of the sexual act with the deceased Juana, much less that force or intimidation was employed in committing the alleged act. The intimation by Ferrer, the lone witness for the prosecution,[326] that he saw Fortin buttoning his pants while coming from a secluded place with Juana was, in the words of the Court, "at most an indication that a sexual act was had with her consent."

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as it does the impression that while before the question involved had already been settled (i.e., the crime is estafa, and not qualified theft), now we have to start again with a confused case law on the matter.

[320] Citing People v. Trinidad, 50 Phil. 65 (1927).

[321] G.R. No. L-7564, June 28, 1955. See Notes, *Recent Decisions*, 30 Phil. L.J. 684-85 (1955).

[322] See Art. 320 *et seq.*, Rev. Penal Code.

[323] Rape is committed by having carnal knowledge of a woman by using force or intimidation, or by depriving her of reason or she is otherwise unconscious, or when the woman is under twelve. See Art. 335, Rev. Penal Code.

[324] *E.g.*, People v. Delfinado, 61 Phil. 694 (1935); United States v. Ramos, 35 Phil. 671 (1916); United States v. Bay, 27 Phil. 495 (1914); United States v. Tacubanza, 18 Phil. 436 (1911).

[325] See note 251 *supra.*

[326] Consider also that as a general rule, a judgment of conviction for rape can not be based on the lone, uncorroborated testimony of the complainant, unless her testimony be clear, positive and convincing, or supported by other undisputed facts and strong circumstantial evidence of record. See 2 Aquino and Griño, Notes on the Phil. Rev. Penal Code 963 *et seq.* (rev. ed. 1951), and cases cited therein. In the instant *Fortin* case, the witness was not only alone; he was not even the complainant.

Similarly, in the case of *People v. Ching Suy Siong, et al.*,[327] the crime of rape imputed upon the defendant Siong (alias Sionga) was not established. Melchorita, the complainant in this case, stayed for a few days in Sionga's employment agency until she left said agency on August 30, 1952 to work as a maid for a Chinaman. During her stay in the agency, Sionga proposed marriage to her, which was not however accepted. On September 9, 1952, she saw the picture of Sionga with another girl published in one of the daily newspapers. She then went back to the agency to ask Sionga to get for her her clothes from the Chinaman under whom she worked. When Sionga refused, she threatened revenge. Thus, on September 9, 1952, she reported to the police that Sionga had raped her on August 29, 1952.

Although the Supreme Court desired "to deal strictly with managers or employees or employment agencies who take advantage of innocent girls coming to the city in quest of work and make them victims of their immoral proclivities," yet it had to acquit Sionga of the charge of rape, for the following reasons: (1) Sionga's alleged use of force to obtain sexual intercourse was described by Melchorita in general terms and those who witnessed the alleged incident were not introduced to corroborate her testimony; (2) Sionga's previous proposal to marry and to give her a life of ease tended to show that Sionga was not disposed to, and did not, take advantage of his physical strength and his position in the agency to impose his will upon her; (3) she did not even relate this incident to her friend in the agency, one Mrs. Moreno; and (4) she allowed ten days to lapse before complaining, and only after she had seen the picture of Sionga with another girl—her consequent complaint being evidently incited by her jealousy—all these, aside the fact that when Sionga refused to fetch her clothes, she threatened to make revenge.

In this case, however, Sionga's employee and co-accused, David Mata, was held guilty of the crime of attempted rape. On the evening of August 28, 1952, when Melchorita slept at the agency, Mata approached her and knelt beside her. Without uttering a word, he lifted the hem of her skirt. Melchorita pushed him aside, shouting "Release me!" many times. Mata, however, continued his attempt and later on succeeded in hugging and kissing her, her resistance notwithstanding. Complainant screamed aloud and stood up. After this Mata went back to his bed. The Supreme Court held that these facts were sufficient to uphold Mata's conviction for the crime of attempted rape.[327a]

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[327] See note 132 *supra*.

[327a] As if to indicate that Mata could have also been charged with and convicted of the crime of acts of lasciviousness, the Court said: "At least it was an unchaste

B. Acts of Lasciviousness.

In the case of *People v. Ching Suy Siong and Mata*,[328] involving the same defendants as in the case previously noted, Sionga alone was found guilty of having committed acts of lasciviousness [329] on the person of one Celia, another recruit of his agency. The prosecution was able to prove that Sionga abused Celia by pushing her in a room, closing the door and after putting his arms around her waist, he kissed her. Sionga was prevented from doing more because she ran away and hide herself in the toilet.

X. CRIMES AGAINST HONOR.

A. Libel.

Two cases involving libel were decided by the Supreme Court last year.

Petitioner in the case of *Quisumbing v. Lopez, et al.*[330] brought an action for damages against the publisher, editor and manager of a morning daily on the basis of a publication of a news item entitled "NBI Men Raid 8 City Usurers." There was no question that the news item was a fair, true and impartial report of an official investigation, and was therefore privileged.[331] The important question was whether the headline, branding the petitioner a usurer even before being criminally charged with usury, was libelous, because malicious, apart from the main body of the news.

The Supreme Court held that the published matter—both the text of the news and its headline—ought to be construed as a whole,[332] to determine if libel existed. The text of the news was a fair and true report of an official proceeding and hence privileged. The headline complained of was also considered a fair description of the news story. Nothing in the headline or in the context of the story suggested the idea that the petitioner was already charged with or convicted of usury. Accordingly, the publisher, editor and manager were absolved.

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abuse punishable with the same penalty as that of attempted rape." See note 21 *supra*.

Compare this conviction of Mata for attempted rape with Sionga's conviction for acts of lasciviousness in the other case decided last year, *infra* note 328.

[328] See note 153 *supra*.

[329] Art. 336 of the Rev. Penal Code provides: "Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional*."

[330] G.R. No. L-6465, Jan. 31, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 488-90 (1955).

[331] See Art. 354(2), Rev. Penal Code.

[332] *E.g.*, United States v. Sotto, 38 Phil. 666 (1918); United States v. O'Connell, 37 Phil. 767 (1918); Jimenez v. Reyes, 27 Phil. 52 (1914).

A libel is a public and malicious imputation (1) of a crime which can be prosecuted *de oficio*; or (2) of a crime which can not be prosecuted *de oficio*; or (3) and act, omission, condition, status, or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[333] It is settled that where the libel is of the first type, the complaint of the offended party is not necessary as long as the prosecuting officer files the proper information therefor. The rule is also clear that if the libel is of the second category, the written complaint of the aggrieved party is indispensable to initiate the criminal action for defamation.[334]

This question may then be asked: Can a libel (of the third kind) attributing a defect or vice, real or imaginary, which does not constitute a crime but brings into disrepute, scorn or ridicule, or tends to cause dishonor, discredit or contempt, be prosecuted *de oficio*?

Last year's case of *People v. Santos and Guballa* [335] is authority for the rule that in this kind of libel, the private complaint of the offended party is not indispensable—and this case, it is submitted, overrules the earlier cases [336] which held that even when the defamation was an imputation of a dishonest or dishonorable act which was not a crime, a written complaint of the aggrieved party was absolutely necessary to commence the criminal prosecution for libel.

In the instant case, the assistant provincial fiscal of Nueva Ecija filed two informations for libel against defendants. The allegedly libelous article, written by Santos and published in Guballa's magazine, dealt on the love life of the offended party, the latter having been called an ingrate and compared to "a snake that bites the hand that feeds it." The other article referred to the offended party's daughter, portraying her as a desperate and frustrated woman who, after exerting prodigious efforts to win her man, even to the extent of spending for the latter's education, lost him to another girl.

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[333] See Art. 353, in relation to Art. 360, par. 4 of the Rev. Penal Code.

[334] Art. 360, par. 4, Rev. Penal Code.

[335] G.R. Nos. L-7316-17, Dec. 19, 1955.

[336] See People v. Del Rosario, G.R. No. L-2254, April 20, 1950; People v. Jose, 43 O.G. 135 (1947); People v. De Martinez, 76 Phil. 599 (1946); United States v. De la Cruz, 17 Phil. 139 (1910). These cases hold that there are two defamations which need the express complaint of the offended party to confer jurisdiction to the court; namely, an imputation of a crime which can not be prosecuted *de oficio*, and an imputation of a dishonest or dishonorable act which is not a criminal offense. This latter kind of libel, under the doctrine of this instant *Santos and Guballa* case, may now be prosecuted by the filing of an information without the need of a private complaint.

According to the Court, these imputations were of the third type of libel, and as such, the private complaints of the offended parties were not necessary to confer jurisdiction to the court below. The Supreme Court emphasized that under the fourth paragraph of Article 360 of the Revised Penal Code, only those libels imputing crimes which can not be prosecuted *de oficio* (crimes against chastity) need be initiated by private complaints, and that said provision of law "can not be extended beyond" its "import and terms . . ."

QUASI OFFENSES

I. HOMICIDE THROUGH RECKLESS IMPRUDENCE.

Two cases involving this quasi offense went up for decision to the Supreme Court: *People v. Hernandez* [337] and *Dizon v. People*.[338] In the first case, the accused was punished in accordance with the Revised Penal Code,[339] whereas in the *Dizon* case, the defendant was held liable under the Revised Motor Vehicle Law.[340]

II. PARRICIDE THROUGH RECKLESS IMPRUDENCE.

Where a person, by reckless imprudence and without intention, kills his lawfully wedded wife, he commits the quasi offense of par-

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[337] See note 169 *supra*.

[338] G.R. No. L-8002, Nov. 23, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1001 (1955).

[339] Particularly Art. 365, par. 6(2), which reads: "The provisions contained in this article shall not be applicable: . . . 2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by *prisión correccional* in its medium and maximum periods."

[340] Act No. 3992, § 67(d), prior to its amendment by Rep. Act No. 587, provided: "If, as the result of negligence or reckless or unreasonably fast driving, any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver or operator at fault shall, upon conviction, be punished by imprisonment for not less than fifteen days nor more than six years in the discretion of the court."

It will be seen that this above-quoted provision of the Revised Motor Vehicle Law was in *pari materia* with that of the Revised Penal Code (*supra* note 339). This explains why the two cases under review, though both involving homicide through reckless imprudence, were decided under two different laws.

With the passage of Rep. Act No. 587 (effective Jan. 1, 1951), however, § 67(d) of the Revised Motor Vehicle Law now reads:

"If, as the result of negligence or reckless or unreasonably fast driving any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver at fault, shall, upon conviction, be punished under the provisions of the Penal Code."

ricide through reckless imprudence.[341] Accused in *People v. Recote* [342] was found by the lower court guilty of the crime of parricide for having shot his wife at her throat. On appeal, however, the Supreme Court held him responsible only for parricide through reckless imprudence for the following reasons: (1) the accused, previous to the tragedy, had drunk *tuba* more than he could take; (2) while under such condition, he came across a .45 caliber pistol which he cocked; (3) that when his two sons tried to take the pistol from defendant, his pistol fired suddenly, hitting his wife who was at that moment coming from the kitchen; and (4) that no motive was shown why the defendant should kill his wife. The Court consequently reduced his penalty to a straight one year prison term.

III. Damage To Property Through Reckless Imprudence Different From Malicious Mischief.

In *Quizon v. The Hon. Justice of the Peace of Bacolor, Pampanga, et al.*,[343] a case principally involving a problem of jurisdiction in criminal procedure, the Supreme Court stressed the distinction that exists between "damage to property through reckless imprudence" under Article 365 of the Revised Penal Code and "malicious mischief" described in Articles 327 to 331 of the same Code. The essence of malicious mischief under Article 327 [344] requires that

> ". . . the offender should have not only the general intention to carry out the felonious act (a feature common to all willfull crimes) but that he should act under the impulse of a *specific desire to inflict injury* to another; 'que en el hecho concurra ánimo específico de dañar' . . ." [345]

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[341] See Arts. 246 and 365, first par., Rev. Penal Code. The penalty provided is *arresto mayor* in its maximum period (4 months and 1 day to 6 months) to *prisión correccional* in its minimum period (6 months and 1 day to 2 years and 4 months), which is to be imposed by the court in the exercise of its discretion without regard to the rules prescribed in Art. 64.

[342] See note 172 *supra*.

[343] G.R. No. L-6641, July 28, 1955.

[344] "Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter, shall be guilty of malicious mischief." The preceding chapter referred to here deals with arson and other crimes involving destruction.

[345] Citing 2 Calon. C., Derecho Penal 869-71 (6th. ed.), and decisions of the Supreme Court of Spain dated Feb. 12, 1921 and Dec. 21, 1909.

"Therefore," said the Supreme Court, "malicious mischief can not be committed through negligence, since *culpa* (negligence) and *malice* (or deliberateness) are essentially incompatible" Citing decisions of the Supreme Court of Spain dated Oct. 5, 1942; Nov. 13, 1934; and Oct. 7, 1931.

Note that the necessity of special malice for the crime of malicious mischief is contained in Art. 327 (*supra* note 344) which speaks of the adverb "deliberately."

The Court explained further:

> "The proposition (inferred from Art. 3 of the Revised Penal Code) that 'reckless imprudence is not a crime in itself but simply a way of committing it merely determines a lower degree of criminality' is too broad to deserve unqualified assent. There are crimes that by their structure can not be committed through imprudence: murder, treason, robbery, malicious mischief, etc. In truth, criminal negligence in our Revised Penal Code is treated as a mere *quasi offense*, and dealt with separately from wilfull offenses. It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of foresight, the *imprudencia punible*. Much of the confusion has arisen from the common use of such descriptive phrases as 'homicide through reckless imprudence,' and the like; when the strict technical offense is, more accurately, 'reckless imprudence resulting in homicide;' or 'simple imprudence causing damages to property.'"

CRIMES UNDER SPECIAL LAWS

The .45 caliber pistol with which defendant in *People v. Recote* [346] recklessly shot his wife was unlicensed. Held liable for illegal possession of a firearm under the Revised Administrative Code,[347] he was sentenced to a prison term of three to five years, and to pay a fine of ₱1,000, with subsidiary imprisonment not to exceed one-third of the principal penalty in case of insolvency.

Defendant in *People v. Villanueva* [348] was a municipal vice-mayor. His town received funds from the National Government for the repair of roads and bridges. The municipal council appropriated this amount for the maintenance of various streets and roads of the locality. Villanueva was employed by the mayor as foreman-timekeeper of the laborers who worked on said streets, and having worked for eight days, he received ₱20 as compensation.

Accused of violating Sections 2176 and 2761 of the Revised Administrative Code,[349] the lower court found him guilty as charged. On appeal, the Supreme Court acquitted him on the ground that Section 2176 not only expressly exempts a vice-mayor, when not acting as or performing the duties of the mayor, from the prohibition against a municipal officer's holding a pecuniary interest in any municipal contract, work, or business, but also permits said vice-mayor to be employed with compensation in national or provincial public works within the province in which he resides. Since Villa-

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[346] See note 172 *supra*.

[347] § 2692, as amended by Com. Act No. 56 and Rep. Act No. 4.

[348] G.R. No. L-6973, Jan. 12, 1955.

[349] § 2176: "Inhibition against holding of pecuniary interest of municipal officials; exceptions." § 2761: "Holding of prohibited interest by public officer."

nueva was not acting as mayor when he rendered the services in question, he fell within the exempting clause of the law. Besides, "appellant was not engaged in any contract or contract work for the municipality as he was not the contractor but only a person who rendered services in his personal capacity."

Convicted under a plea of guilty for violating Republic Act No. 954,[350] appellant in *People v. Tumandao* [351] assailed the propriety of the ₱200 fine, with the accessory penalties provided by law, and the corresponding subsidiary imprisonment in case of insolvency, as well as the costs, imposed upon him by a branch of the CFI of Manila. Republic Act No. 954, for a violation of its provisions, imposes a fine of not more than ₱2,000, or imprisonment not exceeding six months, or both, in the court's discretion. Tumandao's only claim was that his sentence far exceeded that imposed in similar cases by other branches of the CFI of Manila. The Supreme Court brushed this aside as unmeritorious, since the lower court's discretion in this case was exercised in accordance with law.

The facts in *People v. Zeta* [352] were as follows: Pursuant to Section 11 of Commonwealth Act No. 675 which allowed a person who helped war veterans secure their disability compensation and other backpay privileges to charge a fee of 5% of the total benefits thus received, defendant Zeta succeeded in securing for veteran Albiza said benefits with a 5% fee. In 1951, Zeta received his fee of ₱300.

On June 14, 1947, however, Repubblic Act No. 145 was passed which, among others, limits the fee to ₱20 in any one claim. Violation of this provision is punished with a fine not exceeding ₱1,000, or two years imprisonment, or both, in the court's discretion.

It is interesting to note that while the contract between Zeta and Albiza was validly entered under the then Commonwealth Act No. 675 and that the services had been rendered before Republic Act No. 145 became effective, the collection of the service fee was made after the latter act had gone into force, and said fee was more than what the latter Act allows. The lower court held Zeta liable under the penal provisions of Republic Act No. 145.

On appeal, the Supreme Court acquitted the defendant, holding that nothing in said Act showed that Congress intended it to have a retroactive effect as to prejudice contracts entered into under the sanction of the previous law. Nor was there any showing which

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[350] This law penalizes unlawful offering, arranging, and taking of bets for race horses.

[351] G.R. No. L-7977, Sept. 27, 1955.

[352] G.R. No. L-7140, Dec. 22, 1955.

could overthrow the presumption that laws operate prospectively. Besides, Republic Act No. 145 should not be interpreted in a manner that would render its application violative of the non-impairment of obligations of contracts clause of the Constitution. Furthermore:

> "To apply the new law to the case of the defendant-appellant such as to deprive him of the agreed fee would be arbitrary and unreasonable as destructive of the inviolability of contracts, and therefore invalid as lacking in due process; to penalize him for collecting such fee is repugnant to our sense of justice. Such could not have been the legislative intent in the enactment of Republic Act 145." [sss]

[sss] Defendant also claimed that Rep. Act No. 145 was an *ex post facto* law, but the Supreme Court said that this claim was "not fully justified because although the services were rendered before the Act took effect, collection for said services did not take place until after the law became effective." The Court, however, did not explain itself further.