SURVEY OF 1955 CASES IN CRIMINAL PROCEDURE

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An examination of the decisions on criminal procedure rendered by our Supreme Court last year shows that few notable doctrinal changes were introduced and that a general tendency to adhere to the existing procedural principles prevailed. By and large, they reiterated and amplified certain well entrenched doctrines and principles. In a few instances, they served to explain the law, shed light on rules which were not altogether clear, and to do away with previous uncertainty. This review aims, therefore, to show the effect of these rulings on the law on criminal procedure.

JURISDICTION AND VENUE.

Concurrent Jurisdiction of Municipal and Justice of the Peace Courts with Courts of First Instance.—In the cases provided for in Section 87(c) of the Judiciary Act of 1948,[1] the jurisdiction given to the Justice of the Peace and Municipal Courts is not exclusive but concurrent with the Courts of First Instance when the penalty to be imposed is more than six months imprisonment or a fine of more than two-hundred pesos.

In *Quizon v. Justice of the Peace*,[2] the principal question submitted to the Supreme Court for determination was whether the Justice of the Peace Court had concurrent jurisdiction with the CFI when the crime charged was damage to property through reckless imprudence and the amount of damage was ₱125.[3] The Court ruled that the Justice of the Peace Court was without jurisdiction because damage to property through reckless imprudence cannot be considered as a variant of malicious mischief, as the latter offense has exclusive reference to the intentional and deliberate crimes described in Articles 327 to 331 of the Revised Penal Code and to no other of-

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[1] ". . . . (c) all criminal cases arising under the law relating to: (1) gambling and management or operation of lotteries; (2) assaults where the intent to kill is not charged or evident upon the trial; (3) larcency, embezzlement and estafa where the amount of money or property stolen, embezzled or otherwise involved, do. . not exceed the sum or value of two hundred pesos; (4) sale of intoxicating liquors; (5) falsely impersonating an officer; (6) malicious mischief; (7) trespass on government or private property; and (8) threatening to take human life."

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

[3] "Under Art. 365 of the Revised Penal Code, in damage to property through negligence offender shall be punished by a fine ranging from an amount equal to the value of the damage to three times such value."

fense, and it is not included among the crimes enumerated in Section 87(c).

Generally, where several courts have concurrent jurisdiction of the same offense the court first acquiring jurisdiction of the prosecution retains it to the exclusion of the others.[4] This principle, however, does not apply where the Justice of the Peace Court acquires jurisdiction for the purpose of preliminary investigation and not for trial on the merits.[5] For, if by holding a preliminary investigation, the Justice of the Peace Court is deemed also to have acquired exclusive jurisdiction to try the case on the merits, the CFI would in effect be deprived of its concurrent jurisdiction on the merits in practically all cases of this kind.[6]

Place of trial.—Under Section 14(a), Rule 106 of the Rules of Court, all criminal prosecutions shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place. In the case of *People v. Dipay*,[7] the Supreme Court declared that venue was improperly laid because while the information alleged that the illegal purchase was made in the city of Zamboanga and the trial was held in that city, the evidence disclosed that the purchase was made in Sitangkay in the province of Sulu.

PROSECUTION OF OFFENSES.

Who May File Complaint in Private Crimes.— The offenses of seduction, abduction, rape or acts of laciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian.[8] Although these persons are mentioned disjunctively, the above provision of the Revised Penal Code must be construed as meaning that the right to institute criminal proceedings is exclusively and successively reposed in these persons in the order in which they are named, so that no one of them has authority to proceed if there is any other person previously mentioned therein with legal capacity to appear and institute the action.[9] If she be a minor, however, at the time of the filing of the complaint, the other persons named in the law may file the same.[10] The case of

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[4] 22 C.J.S. 186.

[5] People v. Padios, et al., G.R. No. L-6963, May 13, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 677-79 (1955).

[6] Nenaria, et al. v. Veluz, G.R. No. L-4683, May 29, 1952.

[7] G.R. No. L- 8380, Nov. 29, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1006 (1955).

[8] Art. 344, Rev. Penal Code.

[9] United States v. de la Santa, 9 Phil. 22 (1907).

[10] Tolentino v. de la Costa, 66 Phil. 97 (1938); People v. Varela, 64 Phil. 1066 (1937); People v. Imas, 64 Phil. 419 (1937).

Benga-Oras v. Evangelista [11] comes within the doctrine of the *Tolentino* case [11a] because here the offended party was still a minor when the complaint for forcible abduction was filed. Her father was therefore within his right to file the complaint.

Again, under Article 360 of the Revised Penal Code, no criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* shall be brought except at the instance of and upon complaint expressly filed by the offended party. This is the only exception provided for by law in which the complaint of the offended party is required to vest jurisdiction upon the court to take cognizance of the crime of libel [12] and try the defendant charged with it. A libel, therefore, attributing or ascribing a defect or vice, real or imaginary, which does not constitute a crime but brings or tends to bring the offended party into disrepute, scorn or ridicule or tends to cause him dishonor, discredit or contempt is not included in the exception. Hence, in *People v. Santos and Guballa,*[13] the two informations filed by the Assistant Provincial Fiscal charging the defendants with libel, which consists of an imputation of a vice or defect, real or imaginary, or any act, omission, status or circumstances tending to cause the dishonor, discredit or contempt of a natural person, were considered sufficient to confer jurisdiction upon the court to try the defendants charged with the crime.

Alleging Negative Averments.—In a prosecution for violation of a statute which contains an excepting clause, the information as a general rule need not allege that the accused falls within the exception, it being a matter of defense which the accused must prove. This rule was reaffirmed in *People v. Cadabis,*[14] where it was held that in an information for violation of the Election Law [15] which prohibits the carrying of deadly weapons in the polling place, it was not incumbent on the prosecution to deny that the accused was authorized to supervise the elections and carried a firearm on the occasion of a tumultous affray or disorder, for that was something for the latter to assert and establish in his defense.

Exclusive Power of the City Attorney of Bacolod City to Commence Criminal Cases.—Under the Charter of the City of Manila,

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[11] G.R. No. L-8558, Sept. 28, 1955.

[11a] See note 10 *supra.*

[12] Art. 353 of the Rev. Penal Code reads: "A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridicial person or to blacken the memory of one who is dead."

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

[14] G.R. No. L-7713, Oct. 31, 1955.

[15] § 53, Rev. Election Code.

criminal complaints may be filed only with the City Fiscal who is thereby given, by implication, the exclusive authority to institute criminal cases in the different courts of said city.[16] In *Montelibano, et al. v. Ferrer et al.*,[17] the question was whether the city attorney of Bacolod City had been given the same power by Section 22 of Commonwealth Act No. 326. The Supreme Court sustained the contention of the petitioners holding that there is no reason why Section 22 of Commonwealth Act No. 326 (Charter of the City of Bacolod) should be interpreted differently from Section 38 of Republic Act No. 409 (Charter of the City of Manila), which are substantially identical. Consequently, the Municipal Court of Bacolod may not entertain a criminal complaint filed by a person directly with it without the intervention of and against the opposition of the city attorney, since under the city's charter, patterned after the charter of the City of Manila, together with the latter's settled judicial interpretation, only the city attorney is authorized to do so.

Direction and Control of Criminal Prosecution.—In the case of *People v. Liggayu, et al.*[18] defendant was accused of homicide through reckless imprudence. The provincial fiscal filed a motion to dismiss the case based on insufficiency of evidence. From the trial court's order of dismissal, the offended party appealed alleging that he was not notified of the motion for dismissal. In dismissing the appeal and in holding that the notification of the fiscal's motion to dismiss the case to the offended party would serve no purpose and would be mere idle ceremony, for the fiscal is granted by law [19] direct control in the prosecution, the Supreme Court said:

> "The right to appeal from an order of dismissal granted by the court on motion of the fiscal may not be challenged under the theory that the right of an offended party to intervene is subject to the fiscal's right of control. To permit an offended party to appeal from an order dismissing a criminal case upon petition of the fiscal would be tantamount to giving said party as much right to the direction and control of a criminal proceeding as that of the fiscal."

PROSECUTION OF CIVIL ACTION.

Effect of Extinction of Penal Action.—Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact

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[16] § 38, Rep. Act No. 409; Sayo v. Chief of Police, 45 O.G. 4875 (1948).

[17] G.R. No. L-7899, June 23, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 672-73 (1955).

[18] G.R. No. L-8224, Oct. 31, 1955.

[19] Rule 106, § 4, Rules of Court.

from which the civil might arise did not exist.[20] This rule was given application in *De Guzman v. Alvia, et al.*[21] where the Supreme Court held that where the final judgment in a criminal case for estafa did not declare that the fact from which civil liability might arise did not exist, but on the contrary found that the accused had received the jewelry, intimating that her responsibility was civil rather than criminal, the civil action was not extinguished.

PRELIMINARY INVESTIGATION.

Notice to the Accused.—The cases of *Rodriguez v. Arellano, et al.*[22] and *People v. Napagao, et al.*[23] laid down the rule that the legal duty of the provincial fiscal conducting a preliminary investigation under Republic Act No. 732 [24] to notify the accused arises only after the latter expressly requests that said preliminary investigation be made in his presence, otherwise the clause "if the latter so requested" appearing in the second sentence of the law would be meaningless. By way of differentiating the preliminary investigations provided in the Rules of Court and in Republic Act No. 732, Justice Labrador stated in this wise:

> "It will be noted that the preliminary investigation provided in the Rules of Court consists of the preliminary examination (Section 1, Rule 108) and the preliminary investigation proper (Section 11, Rule 108). In the first stage which is preparatory to the issuance of the warrant of arrest, the accused is not present, but in the preliminary investigation proper, the second stage which takes place after the accused has been arrested, the accused has the right to be notified not only of the substance of the information but also of the substance of the testimony and evidence presented against him. The import of the respondent's contention that the accused must be notified of the investigation to be conducted by the provincial fiscal, is that under Republic Act No. 732 the accused shall be given notice of the proceedings in the same manner as under Section 11, Rule 108. Were we to accept his contention there would be no practical dif-

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[20] Rule 107, § 1(d).

[21] G.R. No. L-6207, Feb. 21, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 479-80 (1955).

[22] G.R. No. L-8332, April 30, 1955.

[23] G.R. No. L-7612, Oct. 29, 1955.

[24] "§ 2. *Authority of fiscal to conduct investigation in criminal matter* . . . A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against him in proper form and certified under oath by the said provincial fiscal that he conducted a proper preliminary investigation."

ference between the investigation conducted by the provincial fiscal under Republic Act No. 732 and that conducted by a Justice of the Peace under Section 11, Rule 108, because in both cases the accused will have to be notified of the proceedings. This would render impossible the speedy investigation contemplated in the original law, Act No. 612."

RIGHTS OF THE ACCUSED.

The Right to Counsel May Be Waived.—Important as the right to counsel is, it is nevertheless personal and may be waived, as may be so done with most fundamental rights.[25] Waiver of the right, however, in order to be effective, must be "intelligent and competent." In *People v. Ben*[26] the Supreme Court agreed with the trial court that there was a valid waiver of the right to counsel. Here, the record showed that when the accused was called for arraignment, he was informed by the court of his right to have counsel and asked if he desired the aid of one. He replied that he did not. He also answered in the affirmative when asked if he was agreeable to have the information read to him even without the assistance of counsel. And before pronouncing the sentence, the court took pains to ascertain whether he was aware of the consequences of the plea he had entered. Notwithstanding this precaution and warning, the defendant waived his right to have the aid of counsel and entered a plea of guilty to the information. Waiver was thus evident.

Right to a Speedy Trial.—The Constitution,[27] as well as the Rules of Court,[28] secures to the accused the right to a speedy trial. Consistent with this policy, the Rules put it beyond doubt that the granting of continuance is discretionary with the court.[29] As a general rule such discretion will not be disturbed or interferred with on appeal unless a grave abuse thereof is shown.[30] This principle was upheld in *People v. Abaño, et al.*,[31] where the Court held that the respondent Judge did not commit an abuse of discretion in denying the prosecution's fourth motion for postponement and was justified in dismissing the case upon motion of the defense.

But in *People v. Jaramilla*,[32] the act of the trial judge in dismissing the case was held to be an abuse of discretion considering that the fiscal had a very reasonable excuse for not appearing, and

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[25] NAVARRO, E. R., CRIMINAL PROCEDURE 199 (1952).
[26] G.R. No. L-8320, Dec. 20, 1955.
[27] Art. III, § 1(17).
[28] Rule III, § 1(g), Rules of Court.
[29] Rule 115, § 2, Rules of Court.
[30] People v. Silverio, 45 O.G. 5420 (1048).
[31] G.R. No. L-7862, May 17, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 671-72 (1955).

that the two previous motions for postponement by the defendant had easily been granted.

The right to a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances.[33] Hence, in *People v. Goode*,[34] the Supreme Court declared that the delay in the prosecution of the case was excused on the ground that it was due not to the fault of the prosecution but to the fact that appellant could not be apprehended during the Japanese occupation in view of the uncertainty of the situation.

MOTION TO QUASH.

Duplicity of Offenses.—A motion to quash may be filed on the ground that more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses.[35] In *People v. Goode*,[36] the appellant claimed that the lower court erred in not entertaining his motion to dismiss based on the ground that the information charged more than one offense. The Supreme Court, in holding that appellant's contention was untenable, said:

> "It appears, however, that the accused was charged not only with the killing of the deceased but with having done it on the occasion when the latter was in the exercise of his functions as barrio lieutenant. Such being the case, the acts charged come under one of the exceptions of Article 48 of the Revised Penal Code, which allows the inclusion in the information of more than one offense when the same are the result of one single act."

Double Jeopardy.—A defendant who has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after he has pleaded to the charge, cannot again be prosecuted for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[37]

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[33] G.R. No. L-8030, Nov. 18, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1007 (1955).

[33] Mercado v. Santos, 66 Phil. 215 (1938).

[34] G.R. No. L-6358, May 25, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 687-89 (1955).

[35] Rule 113, § 2(e), Rules of Court.

[36] See note 34 *supra*.

[37] Rule 113, § 9, Rules of Court.

The case of *People v. Ang Chio Kio* [38] is authority for the rule that the prosecution cannot appeal a judgment on the ground that the penalty imposed by the trial court was lesser than that imposed by law. In conformity with this ruling, the Supreme Court, in the recent case of *People v. Pomeroy, et. al.*,[39] dismissed the Government's appeal, which was based on the ground that a more severe penalty should have been meted out on Luis Taruc, erstwhile Huk supremo. Such an appeal, according to the court, would place the defendant in double jeopardy.[40]

In *People v. Pinlac*,[41] on the other hand, the prosecution invoked the principle that a verdict of acquittal procured by the accused by fraud and collusion was a nullity and did not put him in jeopardy; and consequently it was not a bar to a second trial for the same offense.[42] The High Tribunal considered this principle inapplicable in this case because the alleged intimidation and the so-called acts of terrorism were not sufficiently established.

For a plea of jeopardy to prosper, there must be an information sufficient in form and substance to sustain a conviction. In *People v. Hernandez, et al.*,[43] the Supreme Court, in allowing the prosecution's appeal after the lower court had sustained the motion to quash on the ground of double jeopardy, declared that the first information was insufficient to charge and convict defendants with any criminal offense, in view of their relationship with the principal accused.[44] As explained by Justice J. B. L. Reyes:

> ". . . accused having successfully contended that the information was insufficient to sustain a conviction, they cannot now turn around and claim that such information was after all sufficient and did place them in danger of jeopardy of being convicted thereunder. If as they formerly contend, no conviction could be had in the previous case they are in estoppel to contend now that the information in the second case places them in jeopardy for the second time.

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[38] G.R. No. L-6688, July 29, 1954.

[39] G.R. No. L-8229, Nov. 28, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1007 (1955).

[40] Rule 118, § 2, Rules of Court.

[41] G.R. No. L-7876, Sept. 30, 1955.

[42] 22 C.J.S. § 245.

[43] G.R. No. L-7390, April 30, 1955.

[44] Those charged as accessories after the fact claimed that being brothers and sisters of the principal defendant, who was accused of qualified theft, they were exempt of criminal liability for the acts charged against them in the information relying on Art. 20 of the Revised Penal Code.

[45] People v. Jaramilla, G.R. No. L-8030, Nov. 18, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1007 (1955).

> "A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed would result in brazen deception. (People v. Acierto, G. R. No. L-2708 and 3855-60, January 30, 1958)."

Neither does jeopardy attach where it does not appear that the defendant had pleaded before the case was dismissed. Thus, where the case, originating in the Justice of the Peace Court and brought on appeal after the conviction of the accused of less serious physical injuries to the CFI, was dismissed before the accused had pleaded to the information, the reopening of the case could not place him in doubble jeopardy.[45]

In order that a former conviction or acquittal may be a bar to another prosecution, it is also important to determine if the accused is newly prosecuted either for the same offense, or for any offense which necessarily includes or is necessarily included in the offense charged.[46] In *Atanacio v. People*,[47] the accused was previously acquitted of the crime of illegal possession of firearms but subsequently convicted of robbery in band. The plea of double jeopardy was not sustained on the strength of the opinion that the two crimes were distinct from each other.

Similarly, the Supreme Court held in *People v. Kho, et al.*[48] that a charge for violation of Section 174 (unlawful possession or removal of articles subject to specific tax without payment of tax) of the National Internal Revenue Code did not bar a subsequent prosecution for violation of Section 170 (unlawful practices relative to the payment of specific taxes) of the same law.

PLEAS.

Upon arraignment, the defendant shall plead to the complaint or information either by a plea of guilty or not guilty, submitted in open court and entered of record.[49] To be effective, the plea of guilty must be entered by the defendant with a full knowledge of the consequences and meaning of his act. A defendant who receives a penalty greater than that he expected has no sufficient cause to question his plea, especially when such a plea was entered by the accused with a clear understanding of its significance and consequences,[50] and with the aid of an able lawyer.[51] Such was the observation in *People v. Nazario*,[52] wherein the Supreme Court announced that the

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[45] People v. Alger, G.R. No. L-4690, Nov. 13, 1952.
[47] G.R. No. L-5737, Oct. 24, 1955.
[48] G.R. No. L-7529, Oct. 31, 1955.
[49] Rule 114, § 1, Rules of Court.
[50] People v. Ubaldo, 55 Phil. 94 (1930).
[51] People v. Co Hap, et al., G.R. No. L-4271, March 31, 1952.
[52] G.R. No. L-7628, Sept. 29, 1955.

plea of guilty was not made under misapprehension, notwithstanding the fact that the accused was deaf and dumb, considering that he was ably assisted by an able and competent counsel when he came to court and entered his plea.

Substitution of Plea.—Under Section 6 of Rule 114, the accused may withdraw his plea of not guilty in order to substitute therefor a plea of guilty of a lesser offense which is necessarily included in the charge in the discretion of the court. If the defendant manifests to the court his intention to withdraw his former plea, the most proper course for the fiscal and the court to follow is to have the information then and there amended by the fiscal by making the suppressions or changes on the original information and then read to the accused, or to have an amended information filed, and then to have said amended information read to the accused for his plea thereon.[53] In *People v. Calma*,[54] however, the Supreme Court regarded the failure to amend and read the information to the accused after a change of plea as a mere technical irregularity, which should not be permitted to prejudice the accused.

Effect of Plea of Guilty.—A plea of guilty to an information is a clear and unconditional admission by the accused of all the material facts therein alleged.[55] Thus, in an information charging the defendant with parricide, his plea of guilty is "an admission not only of his guilt but also the material allegation in the information that he is the legitimate son of the deceased." [56]

Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.[57] The case of *People v. Go Pin* [58] affirms this rule. In this case, the trial court, instead of sentencing the accused immediately after he had pleaded guilty, proceeded to view the alleged indecent films for the purpose of ascertaining the degree of culpability of the defendant and to determine what penalty should be imposed. On appeal, the Supreme Court held that Section 5 of Rule 114 vests the trial court with discretionary power and refused

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[53] Rule 106, § 13 and Rule 112, § 1, Rules of Court.

[54] G.R. No. L-7565, June 16, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 670-71 (1955).

[55] Macali v. Revilla, 48 Phil. 751 (1926).

[56] People v. Gaite, G.R. No. L-7929, Nov. 29, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1008-9 (1955).

[57] Rule 114, § 5, Rules of Court.

[58] G.R. No. L-7491, Aug. 8, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1009 (1955).

to eliminate the prison sentence from the penalty imposed as it was within the range provided by law.

Likewise, the fact that a promise was made by the fiscal to recommend a specific penalty such as fine or one of leniency upon a plea of guilty does not render the sentence void if the court ignores such recommendation and metes out to the accused a penalty which is provided by law.[59]

NEW TRIAL.

In a case where the death sentence is imposed, may the trial court, as in ordinary criminal cases, entertain and grant a motion for new trial? This novel question was presented to the Supreme Court in the celebrated case of *People v. Bocar*.[60] Resolving the question in the affirmative, the High Tribunal correctly pointed out the reasons why a motion for new trial must be addressed to and decided by the trial court. To quote Justice Montemayor:

> "It might be argued . . . that a defendant sentenced to death is not being deprived of the right to move for new trial, only that said motion for new trial must be addressed to the Supreme Court and resolved by it instead of being addressed to and decided by the trial court. That is partly correct, for should such motion for new trial before this Tribunal be denied, for the defendant-movant, that is the end of the trial. He cannot and may not pursue his remedy to a higher court because there is none. The Supreme Court is the highest Tribunal of the land, where all roads of relief and legal remedies lead to and end. In other words, he has only one chance for the granting of new trial. On the other hand, a defendant in an ordinary criminal case sentenced to, say, *reclusion temporal* or *arresto mayor*, may petition the trial court for a new trial. If it is denied there, he appeals his case to the proper appellate court and there renews his petition for new trial. In other words, he has two chances and opportunities to be granted a new trial, while one sentenced to death, fighting for his life has only one chance and one opportunity. That would be unreasonable and illogical. Since as we have already stated the purpose of an automatic review of a death sentence is to favor the accused involved, it stands to reason that he should be given if possible more rights, remedies and opportunities to have any errors committed against him by the trial court corrected; at least the same rights, opportunities and privileges accorded to defendant sentenced to a lesser penalty.
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> "Besides, even if a motion for new trial in a death sentence is granted by the Supreme Court itself, for lack of facilities and of material time, the new trial is almost invariably ordered to be conducted by the trial court itself and thereafter the case decided anew by the same trial court, proof, positive that a trial court is regarded by this Tribunal as possessed with sufficient wisdom and integrity to modify a death sentence, even to acquit the defendant should the evidence at the new trial so justify."

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[59] People v. Ben, G.R. No. L-8320, Dec. 20, 1955.

[60] G.R. No. L-9050, July 30, 1955. See *Recent Documents*, 30 PHIL. L.J. 457-69 (1955).

APPEAL.

Effect of Service of Sentence During Period of Appeal on the Civil Liability of the Accused. In the case of *People v. Rodriguez*,[61] defendant was charged with the crime of abduction with consent. On March 24, 1952, he entered a plea of guilty. On the same day the sentence was read and accused commenced to serve it. Three days thereafter, the offended party moved that the defendant be ordered to indemnify her, which motion was granted by the trial court. However, in a motion for reconsideration, the court set aside its previous order relying on the defendant's contention that having commenced the service of sentence imposed upon him, the judgment became final and that on that date the court lost jurisdiction to enter an order granting indemnity to the offended party. In rejecting the defendant's contention, the Supreme Court held that before the expiration of the fifteen day period provided for appeal, the trial court can order the defendant to indemnify the offended party even if the former has commenced the service of his sentence, as the court does not lose jurisdiction over the civil phase of the case by such service.

Transmission of Records In Case of Death Penalty. The case of *People v. Bocar* [62] is also authority for the rule that the twenty-day period mentioned in Section 9 of Rule 118 may be shortened or extended. The Supreme Court reached the conclusion that the period of twenty-days was intended for a case wherein the accused says or does nothing within the period of fifteen days within which the case remains within the jurisdiction of the trial court, as for instance, he does not file a motion for new trial, he does not appeal or does not waive his right to appeal.

It was also in this *Bocar* case where the Supreme Court maintained the view that certiorari and prohibition with preliminary injunction may lie against an order granting a motion for new trial in a criminal case, since appeal in due time may not be practical and satisfactory, as the trial court in deciding the case anew may acquit the defendant, thus barring the prosecution from bringing up the legality of the order before the appellate court.

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[61] G.R. No. L-6582, July 29, 1955.
[62] See note 60 *supra*.

PHILIPPINE LAW JOURNAL

Published by the College of Law, University of the Philippines
Diliman, Quezon City

VOLUME 31 | APRIL, 1956 | NUMBER 2

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