CRIMINAL LAW

VICENTE V. MENDOZA*

If 1955 was a year of Constitutional Law because of *Ocampo, et al. v. Secretary of Justice*,[1] 1956 was a year of Criminal Law because of *People v. Hernandez*[2] and *People v. Geronimo*,[3] which finally settled the hitherto open question of whether there is in law a complex crime of rebellion with murder, robbery, and arson. The past year saw marked activity in research and study in this branch of Criminal Law not only on the part of the judiciary but on the part of the executive and legislative departments of the government, the bar and law schools and even the man-in-the-street as well. For not infrequently during that period, the fight was carried to the press and the forum of public opinion. It was to the lasting credit of the Supreme Court that it cited no one for contempt; it displayed a high degree of judicial statesmanship.

Against the dire warnings of the executive department that its peace and order efforts would suffer a set back, a determined Court announced:

> "...our history of three centuries of uninterrupted rebellions against sovereign Spain, until she was finally driven from our shores, suffices to explain why the penalty against rebellion, which stood at reclusion temporal maximum to death in the Spanish Penal Code of 1870, was reduced to only prision mayor in our Revised Penal Code of 1932."[4]

In the interest of readability, we have decided to review these and other cases decided in 1956 as annotations to the pertinent provisions of the Revised Penal Code.

GENERAL PROVISIONS AND PENALTIES

Art. 3. *Definition.*—**Acts and omissions punishable by law are felonies (delitos).**

Felonies are commited not only by means of deceit (dolo) but also by means of fault (culpa).

There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

Estafa.—In the case of *People v. Alverio*,[5] the appellant, who had received a firearm to be sold on commission, failed to deliver

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* Chairman, Student Editorial Board, 1956-57.

1 G.R. No. L-7910, Jan. 18, 1955.

2 G.R. No. L-6025-26, July 18, 1956.

3 G.R. No. L-8936, Oct, 23, 1956.

4 *Ibid.*

5 G.R. No. L-9371, Oct. 18, 1956.

₱100 of the proceeds of the sale because he delivered it to a person whom he believed to be a creditor of the complainant. The Supreme Court held that there was no abuse of confidence induced by a criminal intent amounting to a criminal act, the accussed having made the payment in good faith.

Illegal possession of firearms.—Is conviction for theft of a firearm a bar to another prosecution for illegal possession of firearm? In *People v. Remerata,*[6] the Court answered the question in the negative, holding that while in stealing a firearm the accused must necessarily come into possession thereof, the crime of illegal possession of firearms is not committed by mere transient possession of the weapon. It requires something more: there must be not only intention to own but also intent to use,[7] which is not necessarily the case in every theft of firearms. Besides, according to the Court, an information charging theft will not sustain a conviction for illegal possession of firearms, for it does not ordinarily allege that the accused had no previous authority or license to keep the weapon, this circumstance being immaterial to the theft.

The defendant in *People v. Melgar*[8] claimed that his possession as a pledgee of a firearm was temporary, incidental, casual and harmless, and so under the above doctrine he was not guilty of illegal possession of firearms. The Court held otherwise, because said possession was indefinite, to last as long as the loan was not paid.

The Court ruled in *People v. Cava*[9] that the offense being a *malum prohibitum,* punishable under special law, good faith and absence of criminal intent are not valid defenses.

Art. 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.*— * * *

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

Petitions for mercy must be addressed to the President of the Philippines, not to the courts whose duty is to enforce the law

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[6] G.R. No. L-6971, Feb. 17, 1956.
[7] People v. Estoista, 49 O.G. No. 8, 3330 (1949).
[8] G.R. No. L-9123, Nov. 7, 1956.
[9] G.R. No. L-9416, Aug. 31, 1956.

as justice demands.[10] There was a recommendation for executive clemency in *People v. Melgar*[11] and *People v. De la Cruz, et al.*,[12] in the first case because the appellant, who was convicted of illegal possession of firearms, did not try to hide the weapon from the authorities but instead voluntarily admitted possession of it; and in the second because appellant Enrique Miguel, though he knew before boarding the jeep that they were going to kill the two victims and offered no objection to the plan, took no part in the shooting of the victims. Unable to impose the death penalty because of the lack of the necessary number of votes, the Court said in the case of *People v. Rayos and Pascual*[13] (for robbery with homicide): "But we feel that they are not deserving of any Executive clemency, especially Lopez Rayos, the leader of the two."

Art. 6. *Consummated, frustrated, and attempted felonies.*—* * *

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

There is no "spontaneous desistance" from the commission of a crime where as in *People v. Molijon et al.*[14] appellants did not carry out their original intent of robbing their victims but instead ran away after killing a family because appellants were seized with a terrible fright. They were guilty of attempted robbery with multiple murder.

Art. 8. *Conspiracy and proposal to commit felony.*—* * *

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. * * *

Responsibility of co-conspirators.—The rule that in conspiracy the act of one is the act of all was invoked by the Court in affirming the decision of the lower court in *People v. Dacio*.[15] In that case, appellant pleaded guilty to the charge of robbery but not to that of robbery with homicide and so the judge ordered that a plea of "not guilty" to the charge of robbery with homicide be entered for him. Appellant was convicted of robbery with homicide and on appeal his counsel argued that before making his plea, the appellant should have been warned by the presiding judge of the effect of his plea of guilty; that his counsel in the CFI should

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10 People v. Molijon, *et al.*, G.R. No. L-7031, May 19, 1956.
11 G.R. No. L-9123, Nov. 7, 1956.
12 G.R. No. L-10583, Dec. 28, 1956.
13 G.R. No. L-8762, Dec. 8, 1956.
14 G.R. No. L-7031, May 14, 1956.
15 G.R. No. L-7457, April 25, 1956.

have advised him to take the witness stand to show that he had no part in the crime of homicide, although he was to admit participation in the crime of robbery. In disposing of this claim, the Court held:

> "As defendant appears to have appeared with counsel at the time of the trial, there was no duty on the part of the judge to warn the defendant appellant of the seriousness of the charge or advise him to take the witness stand and explain why he should not be responsible for the homicide. If counsel for the accused in the trial court did not advise his client to try to explain his supposed participation in the homicide, it must have been because he was aware of the principle that all persons who enter into a conspiracy to commit the crime of robbery are responsible for the complex crime of robbery with homicide, even those who did not actually participate in the killing unless it appears that they endeavored to prevent the homicide. (People v. Morados, 70 Phil. 558). There is no indication that appellant here had even endeavored to prevent the homicide...."

This responsibility of the co-conspirators exists regardless of the character of their individual participation.[16]

But where the accused was merely ordered by their chief of police to board the jeep, not knowing nor even suspecting that his companions were out on a mission of murder, without taking part therein, he is innocent.[17]

Circumstances showing conspiracy. —In *People v. Datu Dima Binasing, et al.*,[18] resenting a statement imputed to Ceferino Pacheco to the effect that the appellant was Datu of Cotabato, but not in Malagaquit, Sinarimbo Binasing went to the office of Pacheco to demand an explanation. Sinarimbo brought with him his brother, Datu Dima Binasing, and their followers — Aroyod Sali, Panayaman Umal, Kamantis Daorgen, and Badteken Kabong. Dima forcibly raised Pacheco's right hand and bade him to deny, under oath, the said statement, but Pacheco refused to do so. For thus refusing, Dima gave him a fist blow after which Umal dealt the fatal blow.

On appeal, the prosecution prayed that the conviction of murder of Umal be affirmed and that Datu Dima Binasing and Badtaken Kabong be convicted, respectively, only of slight physical injuries and maltreatment, this on the theory that there was no conspiracy among the appellants. The Court differed with the prosecution and held:

> "...each and everyone of the defendants had, at the time of the occurrence, a single objective and that their acts, on said occasion, tended immediately and directly to the accomplishment thereof, namely, to secure

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[16] People v. Mangulaban, *et al.*, G.R. No. L-8919, Sept. 28, 1956; People v. Gutierrez, *et al.*, G.R. No. I-7101, June 30, 1956.
[17] People v. De la Cruz, *et al.*, *supra* note 12.
[18] G.R. No. L-4837, April 28, 1956.

a confirmation or denial of Pacheco's alleged statement relative to Sinarimbo's lack of authority to act as a Datu in Malagaquit, and to chastise Pacheco if he made such statement or failed to deny it. The fact that it was not Sultan Sinarimbo, but Datu Dima Binasing who began to use force against Pacheco, in demand of confirmation or denial of said statement, which was regarded derogatory to Sinarimbo, then present; that, as Pacheco fell upon his chair, stunned, if not unconscious, upon receipt of the first blow given by Dima Binasing, appellant Badteken Kabong threw Pacheco to the floor and pressed his neck against it; that, almost simultaneously, the other appellants and companions of Sinarimbo rained blows upon Pacheco; that Sinarimbo then folded his arms across his breast—thus sanctioning, with his authority, and encouraging the acts of his followers — whereupon the latter dragged Pacheco outside the house; and that Umal then struck him on the occipital region with the piece of wood....—these acts put together show beyond doubt that appellants were united in their purpose and in carrying the same into effect. ...conspiracy has been established by the prosecution."

There was conspiracy to commit robbery with homicide in *People v. Mangulaban, et al.*[19] where the appellant and the rest of the malefactors came together to the house of the offended parties to commit the crime and together went away from the scene of the crime after its perpetration. In *People v. Sawit,*[20] three armed men went to a house where a birthday party was going on, ordered the persons in the party to come down, searched them for arms, and later shot the deceased Mariano Garcia. According to the Court, the following proved conspiracy: (1) the appellant Sawit was always the one who searched for weapons and asked questions. The other two merely cooperated with him; (2) the simultaneous firing of the shots evidently all fired at the deceased alone and not at the other members of the party showed a previous concert to kill the deceased; (3) the assailants ran away after the deceased had fallen dead — a fact showing common purpose, that of killing the deceased. All were held guilty of murder. The accused in *People v. Gutierrez et al.,*[21] another murder case, acted in concert to accomplish a common purpose when pursuant to orders from Mayor Gutierrez, accused surrounded Ex-Mayor Samaco, bitter political foe of Gutierrez, and almost at the same time fired at him.

Art. 11. *Justifying circumstances.*—**The following do not incur any criminal liability:**

1. Any one who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

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[19] G.R. No. L-8919, Sept. 28, 1956.
[20] G.R. No. L-8871, Dec. 18, 1956.
[21] G.R. No. L-7101, June 30, 1956.

Third. Lack of sufficient provocation on the part of the person defending himself. * * *

The claim of self-defense of the appellants in *People v. Balines, et al.*,[22] *People vs. Gutierrez, et al.*,[23] and *People v. Javier*[24] was brushed aside by the Court. In the *Balines* case, at about 11:00 o'clock in the evening, Cayetano Banaay and Teodorico Bergonio were waylaid by a group composed of Numeriano Balines, Jose Balines, Vicente Armazan, Ramon Burce and Calixto Llamazon. Numeriano Balines admitted having killed the deceased but in self-defense. According to him, he was attacked by two men, armed with pieces of wood, who suddenly came out of the bushes. One of them struck him but he dodged and was not hit. Before they could strike him again, he managed to turn back and escape. While running he stumbled; he then picked up a stone and hit Banaay. Banaay went down and dropped the stick whereupon Numeriano picked it up, and as he saw Banaay stand up, he hit him on the right ear, left forearm and head. He clubbed the man three times. Why appellant's version was not worthy of credence was explained by the Court thus: "If it is true that two men, who from all appearances were out to kill him, suddenly emerged from the bushes and attacked him and he was alone and unarmed, it is highly improbable that he not only was not hit but that he should be able to turn back, escape unscathed, and later kill one of them with his own weapon."

The claim of self-defense is incredible where as in the *Gutierrez* case, the deceased was unarmed at the time he was shot by the appellants.

It is possible that a woman is stronger than a man so that the former cannot claim defense of honor in killing the latter, where as in *Javier* case, the man is 83 years old and the accused 35.

Art. 14. *Aggravating circumstances.* — **The following are aggravating circumstances:**

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3. That the act be committed with insult or disregard of the respect due the offended party on account of his rank, age or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

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14. That craft, fraud, or disguise be employed.

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20. That the crime be committed with the aid of persons under fifteen years of age or by means of motor vehicles, airships, or by other similar means.

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[22] G.R. No. L-9045, Sept. 28, 1956.
[23] *Supra* note 21.
[24] G.R. No. L-7841, Dec. 14, 1956.

Dwelling. — The aggravating circumstance of dwelling was appreciated in *People v. Viernes*,[25] although the murder was committed not in the victim's house but in that of his bride.

Disguise. — The aggravating circumstance of disguise cannot be considered where it is shown that the deceased knew who her aggressors were even though the latter covered their faces with handkerchiefs.[26]

Use of motor vehicles. — In the case of *People v. De la Cruz, et al.*,[27] the Court said: "It is true that the two victims were not forcibly carried in the jeepney to be killed at a spot outside the *poblacion* and that said two victims voluntarily rode in said motor vehicles, one of them even driving it. But the effect is the same; Talavera and Rumbaua, in all innocence and ingenuousnes, wholly ignoring the fate that awaited them, were lured and taken to the scene of the killing by means of a motor vehicle."

Art. 15. *Their concept.* —**Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.** * * *

In murder, ignorance or illiteracy is not a mitigating circumstance.[28]

Art. 17. *Principals.*—**The following are considered principals:** * * *

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Those who act as guards or lookouts while others kill and rob the inmates of a house contribute to the success of the enterprise.[29] In *People v. Quitain*,[30] appellant Anchita, either to help Quitain or out of lewd designs, inserted his fingers in the private parts of the complainant and stretched it wide open, thereby enabling Quitain to accomplish total penetration. He was a co-principal in the crime of forcible abduction with rape. In *People v. De la Cruz*,[31] appellant Enrique Miguel was held liable as a principal by indispensable cooperation even though he did not take part in the murder of two special policemen because he was a co-conspirator. Were it not for

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25 G.R. No. L-9326, June 28, 1956.
26 People v. Sonsona, G.R. No. L-8966, May 25, 1956.
27 *Supra* note 12.
28 People v. Ripas, G.R. No. L-6246, March 26, 1956.
29 People v. Cabuena, et al., G. R. No. L-6202, April 28, 1956.
30 G.R. No. L-8227, May 25, 1956.
31 *Supra* note 12.

the conspiracy, appellant Miguel might have been held liable only as an accomplice.[32]

Art. 18. *Accomplices.*—Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts."

In *People v. Largo, et al.*,[33] the records showed that accused Crispin Verzo asked Amadeo Salazar for a man who could do a secret job for him; that Salazar presented appellant Gavino Largo, who had escaped from the Naga City jail; that as per order of Verzo, Largo took a box to the Philippine Air Lines office in Daet and presented it to the freightman telling him that it contained outboard motor parts consigned to Williams Equipment, Ltd. in Manila; that after the airbill had been prepared, Largo asked that he be allowed to take the box personally to the airport under the pretext that the contents were delicate. On the way to the airport, Largo replaced the box with another which Salazar gave him transferring to this other box the tag on the one brought by him. This was found by the Court to be a time bomb which killed the thirteen passengers of the PAL plane among whom was Fructuazo Suzara, with whose wife Crispin Verzo had illicit relations. The Court held Verzo guilty of murder as principal and Salazar and Largo as accomplices, because, as the Court stated, although Salazar and Largo cooperated in the execution of the criminal act with knowledge that something illicit or forbidden was being done they did not know that the act would, or was intended to, cause the destruction of the plane and its passengers.

Art. 19. *Accessories.*—Accessories are those who, have knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners: * * *

2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery; * * *

Speaking of the liability of one of the accused in a case,[34] the Supreme Court said, "He did not take part in the killing, neither did he profit by it, nor try to conceal the same from the authorities. It is true that he helped his companions in removing the two dead bodies from the jeepney and throwing them into the ditch, but there was no attempt to bury or hid said bodies, not even cover them with

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[32] "An accomplice does not participate in an agreement to commit a felony, otherwise he becomes a principal because of conspiracy (Art. 8)." 1 PADILLA, CRIMINAL LAW 311 (1955).

[33] G.R. No. L-4913, Aug. 27, 1956.

[34] People v. De la Cruz, *et al.*, *supra* note 12.

grass or bushes. In fact, the evident design and plan of the culprits...was not to hide the bodies, but to just leave them on the roadside so as to make it appear that those two policemen were killed by Huks...."

Art. 48. *Penalty for complex crimes.*—**When a single act constitutes two or more grave or less grave felonies, or when an offense is necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)**

Under Article 48, there are two kinds of complex crimes: one, where a single act constitutes two or more grave or less grave felonies, and another, where an offense is a necessary means for committing the other.

Single act constitutes two or more grave or less grave felonies.— The case of *People v. Largo, et a.*,[35] illustrates the first class of complex crime. In that case, the shipping of the time bomb aboard the ill-fated PAL plane resulted in the mid-air explosion of the plane and in the death of its thirteen passengers. The accused were convicted of the complex crime of destruction of property *and* multiple murder.

One offense is a necessary means for committing the other. — Is there a complex crime of rebellion with murder, arson and robbery? *People v. Hernandez, et al.*,[36] held that under an information which charges that the petitioner committed rebellion and that "as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, have then and there committed acts of murder, pillage, looting, plunder, arson and planned destruction of private and public property to create and spread chaos, disorder, terror, and fear so as to facilitate the accomplishment of the aforesaid purpose,..." the murders, arsons, robberies described therein are mere ingredients of rebellion and so cannot be complexed with rebellion.

Article 134 reads:

> "The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval, or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

Pursuant to Article 135, "any person, merely participating or executing the commands of others in a rebellion shall suffer the

[35] *Supra* note 33.
[36] *Supra* note 2.

penalty of *prision mayor* in its minimum period." The penalty is increased to *prision mayor* and a fine not to exceed ₱20,000 for "any person who promotes, maintains or heads a rebellion or insurrection or who, while holding any public office or employment, takes part therein" by:

1. "engaging in war against the forces of the government."
2. "destroying property," or
3. "committing serious violence,"
4. "exacting contributions or,"
5. "diverting public funds from the lawful purpose for which they have been appropriated."

According to the majority—

> "Whether performed singly or collectively, these five (5) classes of acts constitute only *one offense*, and no more, and together, subject to only *one penalty* — prision mayor and a fine not to exceed ₱20,000. Thus for instance, a public officer who assists the rebels by turning over to them, for use in financing the uprising, the public funds entrusted to his custody, could neither be prosecuted for malversation of such funds, apart from rebellion, nor accused and convicted of the complex crime of rebellion with malversation of public funds. The reason is that such malversation is inherent in the crime of rebellion committed by him. In fact, he would not be guilty of rebellion had he not so misappropriated said funds. In the imposition, upon said public officer, of the penalty for rebellion *it would even be improper to consider the aggravating circumstance of advantage taken by the offender of his public position*, this being an essential element of the crime he had perpetrated. Now, then, if the office held by said offender and the nature of the funds malversed by him cannot aggravate the *penalty* for his offense, it is clear that neither may it worsen the very *crime* committed by the culprit by giving rise, either to an independent *crime* or to a *complex* crime. Needless to say, a mere participant in the rebellion, who is not a public officer, should not be placed at a more disadvantageous position than the promoters, maintainer or leaders of the movement, or the public officers who join the same insofar as the application of Article 48 is concerned."

Explaining further, Justice Concepcion said that "engaging in war against the forces of government" and "committing serious violence" are expressions which imply everything that war connotes, namely, resort to arms, acquisition of property, collection of taxes, etc. Since these acts constitute one single crime, he concluded that Article 48 did not apply.

In support of the theory that a rebel who kills in furtherance of rebellion is guilty of the complex crime of rebellion with murder, the prosecution called attention to Article 244 of the old Penal Code which read:

> "Los delitos particulares cometidos en una rebelion o sedicion, o con motivo de ellas, seran castigados respectivamente segun las dispociones de este Codigo.
>
> "Cuando no puedan descubrirse sus autores, seran penados como tales los jefes principales de la rebelion o sedicion."

It was argued that the suppression in the present Penal Code of Article 244 of the old one indicated an intention to revive the possibility of the crime of rebellion being complexed with the individual felonies committed in the course of rebellion, because said Article 244 prohibited such complexing. In disposing of this contention, the Court said that Article 244 of the old Penal Code was not included in the Revised Penal Code so that "if the applicability of Article 48 to rebellion was determined by the existence of said Article 244, then the elimination of the latter would be indicative of the contrary."

Article 71 of the Spanish Penal Code (the counterpart of Article 48 of the Rev. Penal Code) reads:

> "Las dispociones del articulo anterior no son applicables en el caso de que un solo hecho constituya dos o mas delitos o cuando el uno de ellos sea medio necesario para cometer el otro.
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> "En estos casos solo se impondra la pena correspondiente al delito mas grave en su grado maximo, hasta el limite que represente la suma de las que pudieran imponarse, penando separadamente los delitos.
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> "Cuando la penal asi computada exceda de este limite, se sancionaran los delitos por separado."

The second and third paragraphs of the above provision, which provide that the penalty shall not exceed the sum of the penalties imposable if the acts charged were dealt with separately, embody the so-called *pro reo* rule. Does this rule obtain in our jurisdiction notwithstanding the silence of Article 48 of our Code? An affirmative answer was given in the *Hernandez* case thus:

> "The absence of said limitation in our Penal Code does not, to our mind, affect substantially the spirit of said Article 48. Indeed, if one act constitute two or more offenses, there can be no reason to inflict a punishment graver than that prescribed for each one of said offenses put together. In directing that the penalty for the graver offense be, in such case, imposed in its maximum period, Article 48 could have had no other purpose than to prescribe a penalty *lower* than the aggregate of the penalties for each offense, if imposed separately. The reason for this benevolent spirit of Article 48 is readily discernible. When two or more crimes are the result of a single act, the offender is deemed less perverse than when he commits said crimes thru separate and distinct acts. Instead of sentencing him for each crime independently from the other, he must suffer the maximum of the penalty for the more serious one, on the assumption that it is less grave than the sum total of the separate penalties for each offense."

For the same reason, in the case of the second class of complex crime, *i.e.*, one crime is a necessary means to commit the other,

since "one offense is a necessary means for the commission of the other, *the evil intent is one*, which, at least, quantitatively, is lesser than when the two offenses are unrelated to each other, because, in such event, he is *twice* guilty of having harbored criminal designs and of carrying the same into execution."

The discussion on the *pro reo* rule was not immaterial to the *Hernandez* case, because, as Justice Concepcion pointed out, if rebellion and murder were separately punished, the following penalties would be imposed on the movant: (1) for rebellion, a fine not exceeding ₱20,000 and *prision mayor*, in the corresponding period, depending upon the modifying circumstances, but never exceeding 12 years of *prision mayor*; and (2) for murder, *reclusion temporal* in its maximum period to death, depending. In short, in the absence of aggravating circumstances, the extreme penalty could not be imposed upon him. Besides, under Article 48, said penalty would have to be meted out to him in its maximum period even in the absence of a single aggravating circumstance. Thus, said provision, if construed in conformity with the theory of the prosecution, would be unfavorable to the movant.

Dissenting, Justice Montemayor argued that the murders, robberies and arsons are not necessary or indispensable in the commission of rebellion and so are not ingredients or elements of the latter. When a crime is a necessary means to commit another, he said, there is a complex crime; but when it is indispensable, there is only one crime. From this premise, he concluded that one can commit rebellion by rising publicly and taking arms against the government without firing a single shot. He also disputed the claim of the majority that the *pro reo* principle applies in the Philippines calling attention to the fact while the Penal Code of Spain was amended so as to embody that rule, Article 48 of our Code remained unchanged.

The ruling in the *Hernandez* case was invoked by the Court in the later case of *People v. Geronimo*[37] where it was said that the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in Article 134 of the Code, *and* the overt acts of violence described in Article 135. According to Justice J. B. L. Reyes that both purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to Article 134. Hence, any or all of the acts described in Article 135, when committed as a means to, or in furtherance of, subversive ends described in Article 134, become ab-

[37] *Supra* note 3.

sorbed in rebellion and cannot be regarded as distinct crimes in themselves, that under Article 48 would constitute a complex one.

> "The prosecution insists that the 'more serious' crime of murder can not be justifiably regarded as absorbed by the lesser crime of rebellion. In the first place, it is not demonstrated that the killing of an individual is intrinsically less serious or less dangerous to society than the violent subversion of established government, which imperils the lives of many citizens, at least during the period of the struggle for superiority between rebels and loyalists. If, on the other hand, murder is punished by *reclusion perpetua* to death, and rebellion only by *prision mayor*, this leniency is due to the political purpose that impels every rebellious act."

While, the majority in the *Hernandez* case skirted the procedural question of separate prosecution for rebellion and murders, robberies, etc., the justices in the *Geronimo* case squarely faced it and said that if the killing, robbing, etc. were done for private purposes or profit, without any political motivation, the crime would be separately punishable and would not be absorbed by rebellion.

Justice Reyes also discussed the implication of the supression in our Code of Article 244 of the old Penal Code. He said that in deleting said provision which established a command responsibility, the legislature plainly revealed a policy of rejecting any such responsibility. It was the intent that the rebel leaders (and so the mere followers also) should be held accountable *solely for the rebellion* and not for the individual crimes (delitos particulares) committed during the same for private ends, unless their actual participation therein was duly established.

In *People v. Quitain*[38] forcible abduction was the means employed to commit rape.

Art. 61. *Rules for graduating penalties.*—* * *

5. When the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalities upon those guilty as principals, of the frustrated felony, or of attempt to commit the same and upon accomplices and accessories. (As amended by Commonwealth Act No. 217)

Under Article 309, if the value of the property in attempted theft is more than ₱200 but does not exceed ₱2,000, the penalty of *prision correcional* in its minimum and medium periods shall be imposed. If this penalty is reduced by two degrees, the penalty to be imposed will be destierro in its maximum period to *arresto mayor* its minimum period.[39]

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[38] *Supra* note 30.
[39] People v. Ocampo, G.R. No. L-10015, Dec. 18, 1956.

Art. 62. *Effect of * * * habitual delinquency.* — **For purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa, or falsification, he is found guilty of any of said crimes a third time or oftener. (As amended by Republic Act No. 18.)**

In determining the number of convictions for the additional penalty of habitual delinquency, the rule is that the last conviction must precede the offense for which the accused is tried. That is, when a habitual criminal has committed several crimes without being first convicted of any of them before a committing the others he cannot be sentenced for each of said crimes to the gradually increasing penalty, and for the purposes of said law, said crimes must be considered as one, applying the additional penalty to one of them and ignoring the last.[40]

In *People v. Manalo*[41] the information charging theft recited that the accused was a "habitual delinquent, having been previously convicted eleven (11) times of the crime of theft by virtue of final judgment rendered by competent courts, to wit:

"Date of Commission	*Date of Conviction*	*Crime*	*Date of release*
6-14-47	9- 5-47	theft	
6-16-47	9- 5-47	theft	
1-13-50	3-28-50	theft	5-23-52
1-17-50	2-28-50	theft	5-23-52
1-17-50	2-28-50	theft	5-23-52
1-17-50	2-28-50	theft	
1-21-50	5- 8-50	theft	5-23-52
2- 9-50		theft	5-23-52
9-11-52	1-19-53	theft	5-23-52
			3-19-53
	2-17-52	theft	1-16-53"

Applying the above rule, the Court held:

> "...the first two convictions on September 5, 1957, should be considered as one because the second offense was committed two days after the commission of the first and before the date of conviction for the first crime. The third, fourth, fifth, sixth, seventh, and eighth convictions... should also, for the same reason, be considered as equivalent to one... The eleventh conviction should not be counted as the date of commission of said offense is not stated in the information and it has been held that averment of the commission of the previous crime is essential and habitual delinquency cannot be taken into account for insufficiency of allegation on this point.... All in all (including the ninth conviction)

[40] People v. Santiago, 55 Phil. 266 (1930); People v. Bernal, 63 Phil. 750 (1936); People v. Caw Liong and Yu Siong, 57 Phil. 750 (1933); People v. Albuquerque, 69 Phil. 608 (1940).

[41] G.R. No. L-8586, May 25, 1956.

there are three convictions properly to be considered in the imposition of the additional penalty.... recidivism should not be taken into account... the same being inherent in habitual delinquency...."

INDETERMINATE SENTENCE LAW

Sec. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the code for the offense; * * *

The determination of the minimum term of the indeterminate sentence within the range provided by law is left entirely to the discretion of the trial court, and this discretion will not be interferred with except in case of abuse.[42]

Article 299 says that if the robbers do not carry arms and the value of the property taken does not exceed ₱250, the culprits shall suffer a penalty of *prision mayor* in its minimum period. If an aggravating circumstance is compensated by a mitigating circumstance, the penalty should be imposed in its medium period. The range of *prision mayor* minimum is 6 years and 1 day to 8 years. Dividing 24 months (2 years, the range of *prision mayor* minimum) by 3, we have 8 months. Hence, the different periods of *prision mayor* minimum are:

Minimum—6 years and 1 day to 6 years and 8 months.

Medium—6 years, 8 months and 1 day to 7 years and 4 months.

Maximum—7 years, 4 months, and 1 day to 8 years.

Going down by one degree for purposes of the Indeterminate Sentence Law, we take *prision mayor* as the basis and we have *prision correcional;* then fixing the proper period, we have *prision correcional* minimum with a range of from 6 months and 1 day to 2 years and 4 months. This is why the accused in *People v. de Lara*[43] got a prison term the minimum of which was not less than 6 months and 1 day nor more than 6 years of *prision correcional* and the maximum not less than 6 years, 8 months and 1 day nor more than 7 years and 4 months of *prision mayor.*

Under Section 2, habitual delinquents and those who escape from confinement are not entitled to the benefits of the Indeterminate Sentence Law.[44]

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[42] People v. De Joja, *et al.*, G.R. No. L-6587, Jan. 27, 1956.

[43] G.R. No. L-8942, Feb. 29, 1956.

[44] People v. Largo, *et al.*, *supra* note 33; People v. Manabat, G. R. No. L-8904, Dec. 28, 1956.

Art. 90. *Prescription of Crimes.*— * * *

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months. * * *

Article 9 provides:

> "*Grave felonies, less grave felonies, and light felonies.*—* * * Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above mentioned article.
>
> Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos or both, is provided."

Article 26 on the other hand states:

> "*Fine. When afflictive, correctional, or light.* — A fine whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos."

If a crime, like gambling under Article 195, paragraph (a), is punished by "*arresto menor* or a fine fine not exceeding ₱200," is the crime a light offense or one punishable by a correctional penalty for purposes of Article 90?

In *People v. Hai*[45] and *People v. Aquino, et al.*,[46] the Solicitor General argued that as the crime charged might be punished by a maximum fine of ₱200, which under Article 26 is a correctional penatly, the time for prescription thereof was ten years, under Article 90. In holding that the offense is a light one, Justice J. B. L. Reyes wrote in the *Hai* case:

> "Under Article 90, *supra*, 'light offenses prescribe in two months.' The definition of 'light offenses' is in turn to be found in Article 9, which classifies felonies into grave, less grave, and light, and defines 'light felonies' as 'those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos or both is provided.' The offense charged is punishable by *arresto menor* or a fine not exceeding 200 pesos (Art. 195). Hence, it is a 'light offense' under Article 9 and prescribes in two months under Article 90.
>
> "...while Article 90 provides that light offenses prescribe in two months, it does not define what is meant by 'light offenses,' leaving it to Article 9 to fix its meaning. Article 26, on the other hand, has nothing to do with the definition of offenses, but merely classifies fine, when im-

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[45] G.R. No. L-9598, Aug. 15, 1956.
[46] G.R. No. L-9357, Aug. 21, 1956.

posed as a principal penalty, whether singly or in the alternative, into the categories of afflictive, correctional and light penalties. As the question at issue is the prescripion of a penalty, Article 9 should prevail over Article 26."[47]

Article 319 punishes any mortagor who sells without the consent of the mortgagee any personal property mortgaged under the Chattel Mortgage Law with *arresto mayor* or a fine amounting to twice the value of the property. Hence, if the value of the property is ₱262.50, the fine that may be imposed is ₱525. In the case of *People v. Salazar*,[48] the lower court held that the offense described by the above facts prescribe in five years since the offense is punishable with *arresto mayor*. Reminded that the penalty could be a fine of ₱525, which is a correctional penalty, it refused to change its order pointing out that, just the same, the subsidiary imprisonment for such fine could not exceed six months.[49]

The Supreme Court held otherwise since the accused could have been ordered to pay a fine of ₱525, which is a correctional penalty. It held that the rule on prescription as to fines did not refer to subsidiary imprisonment. It took into account the nature of the penalty: afflictive, correctional, and light. *Arresto mayor* was one exception. Subsidiary imprisonment is not *arresto mayor*, and there is no reason to classify it as such. Besides, to adopt the lower court's viewpoint would mean, as Justice Bengzon pointed out, that the heaviest fine, even exceeding ₱6,000, is never "afflictive," because the

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[47] He further explained—"In the second place, Article 90 could not have intended that light offenses as defined by Article 9 would have two prescriptive periods—two months if they are penalized by *arresto menor* and/or a fine of less than ₱200, and ten years if penalized by a maximum fine of ₱200. Under the theory of the Solicitor General, the difference of only one peso in the impossable fine would mean the difference of nine years and ten months in the prescriptive period of the offense. And what is worse, the proper prescriptive period could not be ascertained until and unless the Court decided which of the alternative penalties should be imposed; which he Court could not properly do if the offense had prescribed, for then it could no longer be prosecuted. These absurd results the law makers could not have wittingly intended, especially since more serious offenses as those punishable by *arresto mayor* (a correctional penalty) prescribe, also under Article 90, in five years, while other 'less grave' offenses like libel, and oral defamation and slander, prescribe in even shorter periods of time, two years and six months respectively....

"It should also be noted that under Article 9, a light felony is one punishable by *arresto menor* or a fine not exceeding 200 pesos *or both*. Now, if we are to follow the argument of the Solicitor General that Article 26 should prevail over Article 9 if the offense is punishable by a maximum fine of ₱200, we would again have he absurd situation that an offense penalized by arresto menor *or* a fine exceeding ₱200 in the *alternative*, would be less grave felony, while the serious one, which the law penalizes with both imprisonment of arresto menor and a fine not exceeding ₱200, remains only a 'light offense.'"

[48] G.R. No. L-8570, March 23, 1956.

[49] Art. 39. Subsidiary penalty.—If the convict has no property with which to meet the... (fine) he shall be subject to a subsidiary personal liability at the rate of one day for each 2 pesos and 50 centavos, subject to the following rules:...

"2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months,..."

subsidiary imprisonment could not go beyond six months. That would be rewriting and amending Article 26.

The running of the prescriptive period provided for in Article 90 is interrupted by the filing of a complaint or information.[50]

Art. 102. *Subsidiary civil liability of innkeepers, tavern-keepers, and proprietors of establishments.* — **In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been commited by them or their employees * * *.**

Art. 103. *Subsidiary civil liability of other persons.* — **The subsidiary liability established in the next preceding article shall also apply to employers * * * persons and corporations engaged in any kind of industry for felonies committed by their * * *workmen, apprentices, or employees in the discharge of their duties.**

Does a parole granted a person convicted of homicide, on condition that he pays one-fifth of his monthly salary to the heirs of the deceased, which condition he complies with, bar or suspend the right of the said heirs to an action to enforce the subsidiary liability against the employer of the convict? The Court held in *Buyayao et al. v. Itogon Mining Co.*[51] that it does not. This is because the Parole Act (No. 4103) contains no provision modifying the liability of the party subsidiarily liable for the crime committed by the paroled convict, or suspending such liability upon the grant of parole. A modification of such liability or the conditions for the enforcement thereof, without opportunity on the part of the offended party or his heirs to be heard, would be a deprivation of property without due process of law. The proceedings leading to the parole are entirely administrative and *ex parte*. They refer only to the service of the sentence. Neither the provisions of the law, nor the proceedings under it, nor the purpose and intent thereof purport to affect in any wise the rights of the offended party.

SPECIFIC CRIMES

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

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

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50 People v. Yanga, G.R. No. L-7617, Nov. 28, 1956.
51 G.R. No. L-8277, April 28, 1956.

Appellant in *People v. Lardizabal*[52] was guilty of treason. That he adhered to the enemy was proven by the fact that he was a spy and a member of the Ganap party and that he helped the Japanese in the arrest and torture of guerrilla suspects; that he gave aid and comfort to the enemy was proven by the two witnesses who testified that appellant pointed deceased Feliciano Cornejo to the Japanese on suspicion that he was supplying food to guerrillas.

Art. 148. *Direct assaults.*—**Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority * * *.**

In *Justo v. Court of Appeals,*[53] appellant argued that when the complainant, a district supervisor of the Bureau of Public Schools, accepted his challenge to fight outside the room of another supervisor where they had a verbal clash and followed him out, complainant disrobed himself of the mantle of authority and waived the privilege of protection as a person in authority. The Court did not agree with him, and held that the character of a person in authority is not assumed or laid off at will, but attaches to a public official until he ceases to be in office. Assuming that the complainant was not actually performing the duties of his office when assaulted, this fact did not bar the existence of the crime of assault on a person in authority so long as the impelling motive of the attack was the performance of official duty. This is apparent from the phrase "while engaged in the performance of official duties or *on occasion of such performance,*" the words "on occasion" signifying "because" or "by reason" of the past performance of official duty, even if at the very time of the assault no official duty was being discharged.[54]

No other construction, according to the Court, is compatible with the purpose of the law that public officials and their agents should be able to discharge their official duties without being haunted by the fear of being assaulted by reason thereof.

Appellant also argued that there was no unlawful aggression on his part because there was a mutual agreement to fight. The

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[52] G.R. No. L-8944, May 11, 1956.
[53] G.R. No. L-8611, June 28, 1956.
[54] Citing People v. Garcia, 20 Phil. 358 (1911); Sentencia of Tribunal Supremo of Spain, 24 No. 1874; 26 Dec. 1877; 13 June 1882 and 31 Dec. 1896.

Court dismissed this contention because the offended party was merely on his way out to fight the accused when the latter violently laid hands upon him. The acceptance of the challenge, the Court said, did not place on the complainant the burden of preparing to meet an assault at any time even before reaching the appointed place for the agreed encounter, and so the aggression was illegal. Appellant's position would be plausible if he complainant was the one who hurled the challenge to fight.

Art. 177. *Usurpation authority or official functions.* — **Any person who shall knowingly and falsely represent himself to be an officer, agent, or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of prision correccional in its minimum and medium periods. (As amended by Republic Act No. 379)**

It is not right to say that Article 177 applies only to private individuals, so that a councilor who, in the absence of the mayor acts as mayor, refusing to allow the vice-mayor to take over cannot be prosecuted under this provision. There is no reason for restricting the application of Article 177 to private individuals for that Article speaks of "any person," public official including. Nor are Articles 238-241 of the Code the applicable provisions for they merely punish interference by officers of *one of the three departments of government* (legislative, executive and judicial) with the functions of officials of *another department.* Said articles do no cover usurpation of one officer or employee of a given department of the powers of another officer *in the same* department, like the exercise by a bureau employee of the powers of his director. Thus *People v. Hilvano*[55] held.

Art. 195. *What acts are punishable in gambling.*— **(a) The penalty of arresto menor or a fine not exceeding two hundred pesos, and, in case of recidivism, the penalty of arresto mayor or a fine ranging from two hundred to six thousand pesos, shall be imposed upon:**

1. Any person other than those referred to in subsections (b) and (c) who, in any manner, shall directly or indirectly take part in any game of monte, jueteng, or any other form of lottery, policy, banking or percentage game, dog races or any other game or scheme the result of which depends wholly or chiefly upon chance or hazard; or wherein wagers consisting of money articles of value, or representative of value are made; or in the exploitation or use of any other

[55] G.R. No. L-8583, July 31, 1956.

mechanical invention or contrivance to determine by chance the loser or winner of money or any object or representative of value.

2. Any person who shall knowingly permit any form of gambling referred to in the preceding subdivision to be carried on in any inhabited or uninhabited place or any building, vessel, or other means of transportation owned or controlled by him. If the place where gambling is carried on has the reputation of a gambling place or that prohibited gambling is frequently carried on therein, the culprit shall be punished by the penalty provided for in this article in its maximum period.

(b) The penalty of prision correccional in its maximum degree shall imposed upon the maintainer, conductor, or banker in a game of jueteng or any similar game.

(c) The penalty of prision correccional in its medium degree shall be imposed upon any person who shall, knowingly and without lawful purpose, have in his possession any lottery list, paper, or other matter containing letters, figures, signs, or symbols which pertain to or are in any manner used in the game of jueteng or any similar game which has taken place or about to take place. (As amended by Commonwealth Act 235.)

If the appellant pleads guilty to an information which charges that "the said accused, being then a jueteng collector... did then and there wilfully, unlawfully and feloniously have in his possession and custody the following: cash money in the amount of ₱7.90, one (1)... pencil and two (2) pieces of jueting lists, which have been used or intended to be used in a game of chance and hazard commonly known as 'Jueteng' in which money and other things of value are played for," is he guilty under paragraph (a) or paragraph (c) of the Article 195? *People v. Siguenza*[56] held that the appellant comes under paragraph (c) of the above article because the information charges him with unlawful possession of *jueteng* lists used or intended to be used in a game of chance commonly known as *jueteng*. The allegation that he is a *jueteng* collector is made only for the purpose of showing that he had possession of the articles mentioned "knowingly and without lawful purpose" and should not be construed in the sense that he took part in the game of jueteng other than as maintainer, conductor or banker under paragraph (b) or illegal possessor of any lottery list under paragraph (c).

Art. 248. *Murder.*— Any person who, not falling within the provisions of article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances.

[56] G.R. No. L-8531, Feb. 29, 1956.

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

5. With evident premeditation;

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

Par. 1.—Reviews of cases on Criminal Law year after year reveal that the majority of cases deal with the crime of murder qualified by treachery. The year under review is no exception. In the following cases, the killings were qualified by treachery:

People v. Jumadatal,[57] where appellant suddenly and without the slightest provocation attacked Moro Hadjirol.

People v. Batalla,[58] where appellant went up the house of spouses Mariano and Filomena Batalla at about 2 o'clock one morning, inserted his right hand thru a hole in the wall and shot to death Filomena whom he suspected of witchery which caused the swelling of the head of appellant's son. There was treachery because the attack was so sudden as in the *Jumadatal* case. And so was the attack on-mayor Samaco in *People v. Gutierrez, et al.*[59] In that case, Mayor Gutierrez and his men surrounded Samaco, Gutierrez' bitter political enemy, asked him who was making trouble in the market to which Samaco replied nobody. Whereupon Gutierrez told Samaco that he had better go home. Not wanting to court trouble, Samaco boarded his jeep but no sooner had he seated himself than a shot rang out from the place where Gutierrez was. Then Gutierrez' men joined in the shooting. In *People v. Manabat,*[60] appellant "suddenly gave the order to shoot her (deceased) and his men shot her and she fell down dead." The crime was murder qualified by treachery.

People v. Tebbag, et al.,[61] where the appellants waited by a betel nut tree, and on seeing a flashlight beam coming from the direction of a house, one of them fired at the bearer of the light. The deceased fell; the second approached and hacked him while the third stabbed him in the abdomen. The quartet then fled.

People v. Balines,[62] where the five appellants lay in wait behind tall grasses one night and pounced upon their unsuspecting victims who were then passing by. Nighttime and abuse of superior strength was not taken into account for the purpose of increasing the penalty

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[57] G.R. No. L-8055, May 25, 1956.
[58] G.R. No. L-8323, June 16, 1956.
[59] *Supra* note 21.
[60] G.R. No. L-8904, Dec. 28, 1956.
[61] G.R. No. L-7011, May 16, 1956.
[62] G.R. No. L-9045, Sept. 28, 1956.

because they were absorbed in treachery. The *Tebbag* case also held that treachery includes nighttime. But in *People v. Vega*,[63] where appellant, together with thirty companions most of whom were armed, came up the house of the spouses Florentino Completo and Ruperta Garcia one evening and demanded food of them and when they did not get any, took Florentino and tied his hands behind him, and killed him, the Court, for unexplained reasons, did not consider nocturnity and abuse of superior strength as absorbed in treachery. Instead, it took them into account in imposing the death penalty. There was thus a departure from the rule in the *Tebbag* and *Balines* cases.

We submit that the *Tebbag* and *Balines* decisions embody the better rule.

It is good to note that in the later case of *People v. Ruzol, et al.*,[64] the Supreme Court modified the ruling of the lower court and held once again that nighttime and abuse of superior strength are included in treachery. Dwelling is not absorbed in treachery though. This too was what the Court did in *People v. De la Cruz, et al.*[65]

People v. Viernes,[66] where the deceased Gavino was shot from under the house of his bride on the night of their wedding by the appellant, the forlorn lover of Gavino's wife.

People v. Javier,[67] whese a woman shot her paramour on the back. In *People v. De la Cruz, et al.*,[68] appellants posted themselves in the jeep right behind their unsuspecting victims and upon reaching a place, appellant Pedro ordered deceased Talavera to stop the jeep and switch off the lights. Talavera did that but asked why. Pedro's answer was a signal to co-appellant Galasinao so that almost at the same time, Pedro and Galasinao fired at Rumbaua and Talavera, respectively.

People v. Sawit,[69] where three armed men broke up a birthday party, searched the people for firearms, and then two of them shot deceased.

But there was no treachery in *People v. Peje*,[70] although the appellant shot the deceased while the latter was lying on the ground wounded, because the firing immediately followed the assault upon the deceased. The firing being a mere continuation of the assault

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[63] G.R. No. L-8626, Oct. 28, 1956.
[64] G.R. No. L-8699, Dec. 26, 1956.
[65] *Supra* note 12.
[66] G.R. No. L-9326, June 18, 1956.
[67] G.R. No. L-7841, Dec. 14, 1956.
[68] *Supra* note 12.
[69] *Supra* note 20.
[70] G.R. No. L-8245, July 19, 1956.

with no appreciable time intervening between the delivery of the blows and the firing, there was no treachery.

Par. 5.—There was evident premeditation in:

People v. Tia Fong,[71] where appellant killed Lian Kaw because the latter's father would not sell Tia Fong bread to sell in his store. The appellant was convicted on the basis of his silent participation in the reenactment of the crime by his co-accused. In all the most important incidents and details of the commission of the crime, accused took part, although silently. On appeal, he alleged that he did so only because he had been maltreated by the PC. The Court did not find any evidence to support this and held that the implication of guilt in the case was not derived from mere silence; it was inferred from appellant's silent acquiescence in taking part in the reenactment of the crime. More than mere silence appellant committed positive acts without protest when he was free to refuse.

People v. Umali, et al.,[72] where appellant invited his uncle Ramos, whom he suspected of having illicit relations with his wife, to a place nearby. When they reached a place 30 meters away from the house, appellant Lontok struck Ramos on the forehead three times making him whirl around and when Ramos tried to defend himself by pulling his bolo, Lontok embraced him and Umali hit him with the butt of his gun.

People v. Baguiton, et al.,[73] where in accordance with the Kalinga custom of avenging the death of a relative, appellant, whose son was accidentally killed by another, killed the latter's mother.

Par. 6.—People v. Ripas, et al.,[74] is a most gruesome story. The appellants, HUK members, recaptured Apio for failing to pay them ₱100 which the latter had promised as a ransom. Ripas, the leader and uncle of the deceased's, wife slashed Apio in the stomach. Thereafter, all his five co-appellants inflicted a bolo blow on the victim. Esto then cut Apio's tongue, saying that it was that member that had given information to the Army soldiers. Orbista cut Apio's ears while Basilio cut the victim's lips. Apio was in agony, but since he still moved, Ripas, Orbista, Esto and Agudas picked stones and pounded Apio's head with them.

Art. 267. ***Kidnaping and serious illegal detention.*— Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion temporal to death.**

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[71] G.R. No. L-7615, March 15, 1956.
[72] G.R. No. L-8399, May 11, 1956.
[73] G.R. No. L-7884, May 23, 1956.
[74] G.R. No. L-6246, March 26, 1956.

1. If the kidnapping or detention shall have lasted more than five days.

* * *

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense. (As amended by Republic Acts Nos. 18 and 1048.)

The abusive civilian guards of post liberation days continue to pay the price of past misdeeds and terrorism. In *People v. Ponce, et al.*,[75] the Supreme Court sentenced to life imprisonment the appellant Domingo San Pedro who called the deceased Antero Carpio, who was then shoveling gravel atop a truck, took him to their barracks, afterwards chained him and brought him somewhere from which he was never more to be heard.

One may ask, however, whether San Pedro, a civilian guard—and therefore a public officer—was not guilty of *arbitrary detention* under Article 124 instead of *kidnapping*. Apparently, the Court divided the act into two phases: the taking of the victim to the civilian guard barracks and his subsequent banishment to an unknown place from where he was never heard. It seems that, to the Court, the taking of the victim in the second phase was kidnapping, since Article 124 speaks of *detention*.

In *People v. Villanueva, et al.*,[76] appellants were likewise found guilty of kidnapping. Acting on a tip given by Rupiso, a PC patrol stealthily surrounded a hut and saw Serafin Timbang cooking breakfast in an outhouse of the hut. Sensing the presence of the raiding party, Serafin grabbed his carbine but the soldiers jumped on him and placed him under arrest. The inmates of the hut were ordered to file out. There were six of them, including Bayani Dragon, who identified himself as a kidnap victim and pointed to his companions in the hut, including Serafin, as his guards. The guards admitted their guilt. Found were four automatic rifles which the inmates admitted to be theirs. During the trial, Serafin claimed that far from being the kidnapper of Bayani, he was himself a kidnap-victim and alleged the use of violence in obtaining his confession. To the Supreme Court there could be no more fantastic claim. According to

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[75] G.R. No. L-8297, Oct. 23, 1956.
[76] G.R. Nos. L-7472—7477, Jan. 31, 1956.

their evidence, there were no guards in the hut to prevent their escape. There were five rifles with ammunition which the appellants could have used to force their way out of the hut. During the raid, the PC patrol was able to surround the hut without meeting any guard. On the contrary, when approached by the raiders, instead of welcoming them as their rescuers, Serafin grabbed his carbine to fight them off. And when the raiders made themselves known to the inmates, only Bayani identified himself as the kidnap-victim and appellants, when pointed to by Bayani as his captors, admitted their guilt.

Art. 287. *Light coercions.*—**Any person who, means of violence, shall seize any thing belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of arresto mayor in its minimum period and a fine equivalent to the value of the thing, but in no case less than 75 pesos.**

Any other coercion or unjust vexations shall be punished by arresto menor or a fine ranging from 5 to 200 pesos, or both.

In *People v. Reyes, et al.*,[77] the information charged that the ac cuse "wilfully... did take... possession of a passenger jeep belonging to Agustin Blasco without the knowledge and consent of the latter, for the purpose of answering for the debt of the said owner." On motion of defendants, the lower court dismissed the information on the ground that it did not allege the use of violence. *Held*, "although the offense charged was coercion under Article 287, it does not necessarily follow that the applicable provision is the first paragraph, since the second paragraph also speaks of 'coercion.' Another view of the case is that the offense falling under the second paragraph cannot include violence as an elment, otherwise it would come under the first paragraph. The information though wrongly calling the offense coercion, alleges facts sufficiently constituting unjust vexation, now mixed with coercion and also penalized under the second paragraph."

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

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

2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by robbery, or any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted. * * * (As amended by Republic Act No. 18.)

[77] G.R. No. L-7712, March 23, 1956.

Par. 1.—Last year, the Court, thru its new member, Mr. Justice Alfonso Felix, stressed not once but thrice or, perhaps, more times that the crime dealt with in Article 294 is not a complex crime[78] as it has loosely been termed but the "single, special and indivisible crime of robbery with homicide."[79] There was thus a striving toward greater accuracy in the use of language which augurs well for the healthy growth of the law. The general concept of this crime does not limit the taking of human life to one single victim making the slaying of human beings in excess of that number punishable as separate individual offense or offenses. All the homecides are merged in the composite, integrated whole that is robbery with homicide so long as the killings were perpetrated by reason or on the occasion of the robbery.[80]

The circumstances which attend the commission of the crime should not be used to qualify the killing as murder but considered rather as generic aggravating circumstance.[81] Suppose during a robbery, one of the culprits on the spur of the moment fires his gun upwards, and in so doing accidently hits a person, is the culprit guilty of robbery with homicide? In *People v. Mangulaban, et al.*,[82] it was said:

> "It may be argued that the killing of Vicente Pacson undertaken by one of the two unidentified persons who fired at the ceiling, was an unpremeditated act that surged on the spur of the moment and possibly without any idea that Vicente Pascon was hiding therein, and that the English version of Article 294, No. 1 of the Revised Penal Code, which defined the special, single and indivisible crime of robbery with homicide only punishes any person guilty of robbery with the use of violence against or intimidation of any persons with the penalty of *reclusion perpetua when by reason or on occasion of the robbery the CRIME of homicide shall have been committed;* but this English version of the Code is a poor translation of the prevailing Spanish text of said paragraph, which reads as follows: '1.o—Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio.' We see, therefore, that in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (citing decisions of the Spanish Supreme Court). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident...provided that the homicide be produced by reason or on occasion of the robbery inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or

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[78] See Art. 48 for definition of complex crime.
[79] People v. Sarabi, *et al.*, G.R. No. L-8054, Sept. 21, 1956; People v. Mangulaban, *et al.*, G.R. No. 8919, Sept. 28, 1956; People v. Labita, *et al.*, G.R. No. 8481, Sept. 15, 1956.
[80] *Supra* note 29.
[81] People v. Rayos and Pascual, *supra* note 13.
[82] G.R. No. L-8919, Sept. 28, 1956.

persons intervening in the commission of the crime, that has to be taken into consideration."

In *People v. Aranua, et al.*,[83] the robbers fired at a house, when one of its occupants shouted "thief" and thus killed one and wounded two of the occupants. They then robbed the inmates of the house of valuables. In another case,[84] deceased was awakened by the presence of two men whose faces were covered with handkerchiefs who warned her not to shout and when she asked one of them "Can you afford to do me any harm, I being your own kin?" the two choked her to death. They then robbed her of her money. The appellant in *People v. Casunuran*[85] was sent to the electric chair for his part in the infamous Biñan incident in which a Manila Railroad payroll car was held up and some of its guards killed while others were injured by a band. The crime in *People v. Sarabi*[86] was robbery with double homicide and physical injuries because the record showed that a band attacked the house of Moro Hadji causing the death of Moros Sali and Juaraiya and the wounding of Mora Dayang-Dayang and afterwards ran away with the money of their victims.

One evening, Teodulo Torino heard their dog barking and upon opening the window, saw their carabao loose. While he was trying to retrieve the animal, several shots were heard, followed by a cry of pain from Teodulo. Shortly, three men went up the house, and at gun point one of them ordered Teodulo's wife to give their money, which she did. For doing this appellants in *People v. Fabillar, et al.*,[87] were sentenced to reclusion perpetua.

"The wicked flee even when no man pursueth; but the righteous are bold as a lion," said the Court in sustaining the conviction of appellant in *People v. Kamad*.[88] The prosecution witnesses testified that they saw appellant standing on the trail where the dead body of deceased lay and upon seeing them, appellant turned around and ran away.

Appellant in *People v. Labita*[89] was a policeman; he was arrested on the basis of a report that his wife threatened to denounce him to the authorities as the author of a crime of robbery with homicide should he abandon her for another woman. The ballistic test showed that three of the fired bullets came from the revolver of the appellant. Convicted, he appealed to the Supreme Court which acquitted

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[83] G.R. No. L-5510, April 28, 1956.
[84] People v. Sonsona, G.R. No. L-8966, May 25, 1956.
[85] G.R. No. L-7654, Aug. 16, 1956.
[86] G.R. No. L-8054, Sept. 21, 1956.
[87] G.R. No. L-7012, Nov. 12, 1956.
[88] G.R. No. L-6584, Nov. 29, 1956.
[89] G.R. No. L-8481, Sept. 15, 1956.

him on the ground that there was no evidence that appellant had taken from the deceased any money, because it was not proven that the deceased had any money in the first place. Was he guilty of murder? Neither, because while four bullets were found, the deceased Alejandro Manlawe sustained only three gun shot wounds and since there was no autopsy performed on the cadaver, there was no way of knowing if any one of the three slugs which were different from those remaining in Manlawe's body had hit the latter. Even if it was shown that the bullets were fired from the revolver of the appellant, the Court said, it was not shown that those bullets were the ones which killed the deceased. In all the cases reviewed here only in this case was the defense of alibi sustained. Here the police blotter of Dipolog, Zamboanga del Norte showed that Labita was assigned as guard between 12 o'clock midnight and 7 o'clock a.m. of April 4, 1952 while the crime for which he was convicted must have been committed between that time. The contents of the blotter was corroborated by two policemen.

Art. 295. *Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley.*—**If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by band, or by attacking a moving train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyance, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties. (As amended by Republic Acts Nos. 12 and 373).**

Art. 296. *Definition of a band and penalty incurred by the members thereof.*— **When more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band. * * * (As amended by Republic Act No. 12.)**

It is to be noted that after its amendment by Republic Act No. 12 the title of the Article 295 now says "uninhabited place *and* by a band," while the body of the Article reads "uninhabited place *or* by a band." The Court noted this discrepany last year.[90]

Article 295 is limited in its operation to robbery with physical injuries as specified in paragraphs 3, 4 and 5 of Article 294, thus excluding the crime of robbery with rape that is covered by paragraph 2. Hence, where a band that robbed a family committed rape on the same occasion, the offense cannot be considered robbery *in band* with triple rapes, in order that it may be prosecuted under Article 295. But the circumstance of band, defined in Article 14,

[90] People v. Leyesa, *et al.*, G.R. No. L-7842, Aug. 30, 1956.

No. 6 can be appreciated as a generic aggravating circumstance. Thus ruled the Court in *People v. Leyesa, et al.*,[91] However, in *People v. Collado*,[92] where appellant together with others, not only took money and goods but also ravished mother and daughter and inflicted physical injuries upon the father, the Court held appellant guilty of robbery in band with rape and less serious physical injuries. The *Collado* case seems to be contrary to the holding in the above *Leyesa* case. Neither may it be said that the *Collado* case is different and was properly prosecuted under Article 295, because the physical injuries in that case were *less serious physical injuries* whereas the physical injuries referred to in Article 295 in relation to Article 294 are *serious physical injuries* as defined in Article 263.

Appellants in *People v. Blanco, et al.*,[93] held up a party composed of Maxima Gulayan, Josefina Dolera and Ponciano Parilla at 11 o'clock one night, relieved the party of their valuables and conducted them to a hill where appellant Blanco, pistol in hand, had forcible sexual intercourse with Maxima Gulayan and Josefina Dolera. They were convicted of robbery with rape aggravated by nocturnity and ignominy and sentenced to life imprisonment.

Art. 299. *Robbery in an inhabited house or public building or edifice devoted to worship.*—**Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal, if the value of the property taken shall exceed 250 pesos, and if—**

(a) The malefactors shall enter the house or building in which the robbery is committed, by any of the following means.

*** * ***

2. By breaking any wall, roof, or floor or breaking any door or window; * * *

Appellant in *People v. De Lara*,[94] pleaded guilty to an information which charged robbery with force upon things committed "by cutting the iron chain which was padlocked and fastening the door of the bodega, an inhabited house, which the accused forcibly opened and entered and once inside, did then and there take, steal and carry away therefrom, without the knowledge and consent of the owner... the following personal property, to wit: twelve (12) sacks of palay at ₱9.50... ₱11.400; ten (10) empty sacks at ₱0.50 each... ₱5.00." *Held*: "A plea of guilty imports unqualified admission of the facts alleged in the information. And it appears that in the information

[91] G.R. No. L-7842, Aug. 30, 1956.

[92] G.R. No. L-8483, March 23, 1956. See People vs. Cabuena, G.R. No. L-6202, April 28, 1956, where the Court likewise held appellant guilty of robbery in band with homicide. This holding is not supported by Article 295.

[93] G.R. No. L-8057, Nov. 28, 1956.

[94] *Supra* note 43.

that bodega where the robbery was committed was expressly described as 'an inhabited house.' The fact that from affidavits of the complaining witnesses, counsel could glean that the bodega was uninhabited or that it was not a dependency of a dwelling house does not detract from appellant's admission in his plea of guilty. Those affidavits were put in evidence to qualify the plea, and we cannot assume that, had that been done, the prosecution could not have countered with proof that, as it had alleged, the bodega was in fact inhabited."

Art. 303. *Robbery of cereals, fruits or firewood in an uninhabited place or private building.*—**In the cases enumerated in articles 299 and 302, when the robbery consists in the taking of cereals, fruits, or firewood, the culprit shall suffer the penalty next lower in degree than that prescribed in said articles.**

In the *Lara* case, supra, the high court held the trial court in error for applying Article 303 considering that the appellant, in addition to the palay, also took "10 empty sacks valued at ₱0.50" as the information alleged.

Art. 315. *Swindling (estafa).*—**Any person who shall defraud another by any of the means mentioned shall be punished by.** * * *

1. With unfaithfulness or abuse of confidence, namely:
* * *

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods or other property;

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud.

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transaction, or by means of other similar deceits. * * *

Par. 1.—A sales agent who misappropriates the proceeds of the goods he was commissioned to sell is guilty of estafa, under paragraph 1(b) and not of qualified theft. There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his

principal. In the former case, payment by third person to the teller is payment to the bank itself; the teller is a mere custodian of the funds received and has no independent right or title to retain the same as against the bank. An agent, on the other hand, can assert even as against his principal, an independent right to retain the money received in consequence of the agency as when the principal fails to reimburse him for advances he has made and indemnify him for damages suffered without his fault.[95]

There is no abuse of confidence induced by a criminal intent where the appellant, who had received a firearm to be sold, failed to deliver ₱100 of the proceeds of the sale because he delivered it to a person whom he believed to be a creditor of the complainant.[96]

Par. 2.—In *People v. Francisco*[97] appellant Francisco signed the name "M. de Guman" on sales invoice (Exhibit B) on the blank for the signature of the purchaser, on a trucking receipt (Exhibit C), and on gate pass (Exhibit D) and by means of these, was able to get 100 sacks of rice from the NARIC. The appellant was guilty of estafa. There was deceit because besides being an invoice of the sale of 100 sacks of rice, Exhibit B was also a receipt therefor. The buyer's name was Mario de Guzman. It contained above the signed name of M. de Guzman a statement that the signer had "received the above articles in good condition." When, therefore, appellant signed M. Guzman's name in the receipt, he represented himself to be Mario de Guzman. Equally untenable was the claim that there was no damage to the NARIC because the rice was fully paid for. As the real buyer, M. de Guzman, was not the one who received the 100 sacks of rice paid for, the NARIC was still liable to deliver the said 100 sacks of rice to M. de Guzman. This constituted the element of *damage.*

Art. 342. *Forcible abduction.*— **The abduction of any woman against her will and with lewd designs shall be punished by reclusion temporal.** * * *

When the taking is motivated by lewd designs, forcible abduction is the offense. When it is not so motivated, such taking constitutes kidnapping under Article 267. One is against chastity, the other against personal liberty.[98]

Art. 360. *Persons responsible.*—* * * **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.**

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[95] G.R. No. L-9752, July 31, 1956.
[96] *Supra* note 5.
[97] G.R. No. L-7562, Jan. 20, 1956.
[98] People v. Quitain, *supra* note 30.

Where the appellant uttered the expression "Putang ina mo, walang hiya ka, matanda ka" against a 74-year-old woman[99] or the words "You look like a crocodile; you are a monkey; you are a devil; you are an animal; your mouth is like the volcano Hibok-hibok emitting fire,"[100] the criminal action for slander may be brought by the provincial fiscal.

[99] People v. Añel, G.R. No. L-8393, April 27, 1956.
[100] Corostiza v. People, G.R. No. L-9091, Aug. 28, 1956.