CRIMINAL PROCEDURE

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JURISDICTION

It is a fundamental principle that jurisdiction, whether general or special, is never acquired by consent or submission thereto of the parties.[1] Jurisdiction, being the power and authority of a court to hear, try and decide a case[2] is conferred by law, but in order that it may properly be involved, or called to activity, it is necessary that a petition, complaint or other appropriate pleading be filed.[3] This power is a matter of legislative enactment[4] and being of that nature, jursdiction can only be acquired in the manner prescribed thereby.[5]

The apportionment of the jurisdictions of courts in the Philippines is found in the Judiciary Act of 1948, Republic Act No. 296, as amended. This year, the court has an opportunity to interpret the provisions of the law regarding the jurisdictions of justice of the peace courts and municipal courts in criminal cases and to clarify certain doctrinal variations which the court enunciated in previous cases.[6]

In the case of *People v. Ocampo*,[7] the court categorically stated that an offense which calls for the application of a penalty of *distierro* in its maximum period to two months of *arresto mayor* comes under the jurisdiction of the municipal court under section 87 (b)[8] of the Judiciary Act of 1948 and that under section 87(c)[9] of the same

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1 Tabada v. Zandueta, 47 Phil. 859 (1925); Delizo v. Santos, 48 O.G. (Supp. to No. 1) 143 (1952).

2 Herrera v. Barreto, 25 Phil. 245 (1913); Conchada v. Director, 31 Phil. 94 (1915); United States v. Lunsiongco, 41 Phil. 94 (1920).

3 Calawag v. Pecson, 46 O.G. No. 2, 514 (1950).

4 Manila Railroad Company v. Attorney General, 20 Phil. 523 (1911); PHIL. CONST. Art. VIII, §2.

5 United States v. De la Santa, 9 Phil. 22 (1907); United States v. Narvas, 14 Phil. 410 (1909).

6 The cases referred to are: People v. Pamon, G.R. No. L-2860, May 11, 1950; People v. Colicio, G.R. No. L-2885, February 26, 1951; In these cases the Supreme Court declared for the first time that, the Court of First Instance and the Justice of the Peace Courts and Municipal Courts have concurrent jurisdiction over cases falling under section 87(c) of the Judiciary Act of 1948. But the court did not specify whether the concurrence of jurisdiction refers to attempted or frustrated or to consummated only.

7 G.R. No. L-10015, December 18, 1956; 53 O.G. No. 3, 612 (1957).

8 Section 87(b) of the Judiciary Act of 1948 provides: "Justices of the Peace and Judges of Municipal Courts of Chartered cities shall have original jurisdictions over:

(b) All offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos or both such fine and imprisonment;

9 §87(c) of the same act provides:

(c) All criminal cases arising under the laws relating to:

(1) Gambling and management or operation of lotteries;

law, the offenses mentioned in said paragraph refer to consummated acts and not to those that are merely attempted or frustrated in nature.

The accused in this case was charged with attempted theft in the Court of First Instance of Manila, for having opened the bag of the offended party containing ₱202.00 "with intent to take, steal and carry away said cash money, but the accused was not able to perform all the acts of execution which would have produced the crime of theft as a consequence by reason of causes independent of the will of the perpetrator." The crime was aggravated with recidivism. After trial the court convicted her and imposed the penalty of six months and one day of *distierro*. The accused appealed raising as the only question the jurisdiction of the court over the offense charged.[10]

In thus concluding the Supreme Court said that under Article 309 of the Revised Penal Code, if the value of the property stolen is more than ₱200 but does not exceed ₱2000, the penalty of *prision correccional* in its minimum and medium periods shall be imposed. If this is reduced by two degrees, the penalty to be imposed will be *distierro* in its maximum period to *arresto mayor* in its minimum period,[11] which in so far as the imprisonment is concerned, does not exceed two months.[12] Clearly, therefore, the offense charged in the information comes under the original jurisdiction of the municipal court in view of section 87(b) of the Judiciary Act, which provides specifically that, "all offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos or both such fine and imprisonment," come under the original jurisdiction of said court.

Regarding the correct interpretation of section 87(c) of the Judiciary Act, the court laid down the principle that the offenses mentioned herein, in order to be considered as coming within the concur-

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(2) Assaults where the intent to kill is not charged or evident upon the trial;
(3) Larceny, embezzlement and estafa where the amount of the money or property stolen, embezzled or otherwise involved does not exceed the sum 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.

[10] Being an attempted offense, a penalty lower by two degrees than that prescribed by law for consummated felony should be imposed, as provided in Article 51 of the Revised Penal Code.

[11] *Diestierro* is lower than *arresto mayor* under Art. 71 of the Revised Penal Code and as decided in the cases of Uy Chin v. Dinglasan, G.R. No. L-2709, June 30, 1950, and People v. Santos, G.R. No. L-3582, Nov. 29, 1950.

[12] *See* Uy Chin v. Dinglasan, *supra;* People v. Santos, *supra.*

rent jurisdiction of the Court of First Instance and the municipal court they must be consummated and "not those that are merely attempted or frustrated." The court went further to clarify this point, saying:

> "In fact, said subsection refer to "amount of money or property stolen, embezzled or otherwise involved". A different interpretation would give rise to the incongruous situation where, while, under subsection (c), the offense does not come within the jurisdiction of the municipal court because the value of the thing stolen is more than ₱200, it at the same time comes within its jurisdiction under subsection (b) because the penalty is less than six months. This cannot be the intendment of the law. Indeed an offense which calls for the application of a penalty of *distierro* in its maximum period to two months of *arresto mayor* cannot come under the jurisdiction of the Court of First Instance."

Under section 87(c) of the Judiciary Act, one of the enumerated offenses which comes under the original jurisdiction of the justice of the peace courts and judges of municipal courts, is malicious mischief. The question that may be asked is whether or not malicious mischief covers or includes damage to property through reckless imprudence and therefore the latter offense would fall under the concurrent jurisdiction of the Court of First Instance and the Justice of the Peace Courts. This question has already been passed upon in a previous case[13] and the court declared that malicious mischief does not include the crime of damage to property through reckless imprudence and therefore, the latter offense comes exclusively within th original jurisdiction of the Court of First Instance.

This ruling was reiterated by the court in the case of *Aricheta v. Judge of the Court of First Instance of Pampanga, et al.*,[14] in which the record of the case disclosed that a car driven by Aricheta collided with a passenger truck belonging to the Philippine Rabbit Bus Lines, as a result of which the car of the latter company was damaged and several passengers suffered serious and slight physical injuries. Consequently, he was prosecuted with the crime of damage to property through reckless imprudence involving the amount of ₱1,484.40 and serious and slight physical injuries through reckless imprudence in the Justice of the Peace Court of Mabalacat, Pampanga. When the court called the case for trial, he presented a mo-

[13] The case referred to is Quizon v. The Hon. Justice of the Peace of Bacolor, G.R. No. L-6641, July 28, 1955, where the court said:

"The question, therefore, is whether the Justice of the Peace court has concurrent jurisdiction with the Court of First Instance when the crime charged is damage to property through reckless imprudence or negligence if the amount of the damage is ₱125.00. We believe that the answer should be in the negative. *To hold that the Justice of the Peace Court has jurisdiction to try cases of damage to property through reckless negligence, because it has jurisdiction over cases of malicious mischief, is to assume that the former offense is but a variant of the latter. The assumption is not legally warranted.*

[14] G.R. No. L-8619, May 31, 1956.

tion to dismiss the informations on the ground that the court has no jurisdiction over the case which is within the jurisdiction of the Court of First Instance. The motion was overruled and Aricheta filed a petition for certiorari. The Supreme Court declared that with regard to the charges of damage to property through reckless imprudence, considering the value of the damage[15] involved, they do not come within the jurisdiction of the Justice of the Peace Court for the reason that said court acquires jurisdiction to try criminal cases only when the penalty involved is imprisonment of not more than six months or a fine of not more than ₱200 under section 87(b) of the Judiciary Act, and because of the ruling that such crime is not deemed included in the crime of malicious mischief over which a justice of the peace has original jurisdiction.

With respect to the charge of serious and slight physical injuries through reckless imprudence, the situation would be different. Since in the final analysis the crime charged, had it been intentional, would only be a less grave felony,[16] for which the law imposes the penalty of *arresto mayor* in its minimum and medium periods, the justice of the peace court has original jurisdiction.

PROSECUTION OF OFFENSES

(a) *Persons authorized to file and subscribe to a complaint*:

Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.[17] Under this provision, all criminal actions may now be commenced only either by the prosecuting officer or by the offended party, a peace officer or other employee of the government or governmental institution in charge of the enforcement of the law violated. The ques-

[15] It would seem that the value of the damage caused is immaterial because even in the case of Quizon, where the damage invovlved is ₱125.00 only, the court still had no jurisdiction. The nature of the offense is controlling and not damage involved.

[16] The conclusion of the court is warranted by the following provisions of the Revised Penal Code:

The crime of serious and slight physical injuries through reckless imprudence comes under Article 365, which provides in part: "Any person who by reckless imprudence, shall commit any act which, had it been intentional.... would have constituted a less grave felony, the penalty of arresto mayor in its minimum and medium periods shall be imposed."

Under Article 9, "Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional...."

Under Article 263, par. 3 and 4, the penalty of *prision correccional* shall be imposed if the physical injuries inflicted produced deformity or incapacity for the performance of the work in which the victim was habitually engaged or when they shall have caused the illness or incapacity for labor for more than 30 days."

[17] §2, Rule 106, Rules of Court.

tion arises as to whether the phrase 'peace officer' may comprehend the Provost Marshall in the United States Army bases established in the Philippines under the Military Bases Agreement between the Philippines and the United States.

The case of *Liwanag v. Hamill, et al.*[18] is in point, the court deciding that a Provost Marshall of Clark Field, United States Army Base in the Philippines, who is in charge with the enforecement of Philippine law in the army base is authorized to file a complaint against a violator of said laws in the court therein established.

The Supreme Court declared that the Provost Marshal of Clark Field is a peace officer. Provost Marshals in army bases are police officers and they have the powers and duties of chiefs of police in municipalities. Since under the Military Bases Agreement, Philippine laws continue to be in force in said bases, and the fact that no peace officers are appointed by the Government of the Philippines in said bases, to take charge of their enforcement and the apprehension of violators threfor, the maintenance of peace and order in said bases is left to peace officers of the United States, the Chief of whom is the Provost Marshal. Consequently, it must be understood that the enforcement of Philippine laws is left to said officers and if they have the power to enforce, it would be illogical to deny them the power to prosecute violations of Philippine laws in said bases. Therefore, the court held that provost marshals in military bases established by agreement between the Republic of the Philippines and the United States have the power and authority to file complaints for violation of Philippine laws.

(b) *Amendment of informations*:

The information or complaint may be amended in substance or form, without leave of court, at any time before the defendant pleads; and thereafter, and during the trial as to all matters of form, by leave and the discretion of the court, when the same can be done without prejudice to the rights of the defendant.[19] The substantial matter in a complaint or information is the allegation of facts constituting the offense charged and the jurisdiction of the court and the other maters are merely of form.[20]

In the case of *People v. Opemia,*[21] it was held by the court that if the information alleged that the commission of the crime of theft occurred on June 18, 1952, but during the trial the evidence dis-

[18] G.R. No. L-7881, February 27, 1956; 52 O.G. No. 3, 1396 (1956).
[19] §13, Rule 106, Rules of Court.
[20] 2 MORAN, COMMENTS ON THE RULES OF COURT 641-642 (1954).
[21] G.R. No. L-7987, March 26, 1956; O.G. No. 4, 1951 (1956).

closed that the crime was in fact committed in July, 1947, the motion of the fiscal to amend the information in order to make it conform to the evidence as regards the date of the commission of the crime and objected to by the defense, is properly denied because such amendment if allowed would be prejudicial to the substantial rights of the defendant in violation of his constitutional right to be informed before the trial of the specific charge against him and deprives him of the opportunity to defend himself. The dismissal in this case amounts to an acquittal and the accused cannot again be prosecuted for the same offense.

People v. Uba, et al.,[22] is like the *Opemia* case the only difference between them being, that in the former the variance between the allegations and the proof referred to the date of the commission of the crime and a dismissal on this ground amounts to an acquittal barring another prosecution for the same offense, while in the latter case, the variance referred to the name of the offended party and although the dismissal amounts to an acquittal, such result does not bar another prosecution of the defendants.

The record of the *Uba* case shows that an informaton for serious oral slander was filed against the defendants. The real party offended was Demetria Somod-ong but the information alleged that it was Pastora Somod-ong to whom the defamatory statements were uttered. The proof, therefore, was in variance with the allegations. Therefore, the court sustained a motion to dismiss acquitting the defendants. From this ruling the prosecution appealed, contending that the information would have been amended only and not dismissed. In sustaining the lower court, the Supreme Court said:

> "While it is probably true that the fiscal or his clerk made a clerical mistake in putting in the information the name of Pastora instead of Demetria, as the offended party the mistake thus committed was a very material matter in the case, such that it necessarily affected the identification of the act charged. The act of insulting *X* is distinct from a similar act of insult against Y, even if the insult is proferred by the same person, in the same language and at the same time."[23]

However, the court allowed the filing of a new information charging the same accused with the offense of serious oral defamation against Demetria Somod-ong.

May the State amend the information by stating that the offense was committed between January 2, 1955 and March 7, 1955,

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[22] G.R. No. L-8596, May 18, 1956; 52 O.G. No. 6, 3041 (1956).

[23] *Cf.* United States v. Lahoylahoy, 38 Phil. 330 (1918). The court said in this case that to convict a person of robbing X when the person robbed is Y is violative of the principles of pleading. To the same effect is the decision in People v. Balboa, G.R. No.L-3522, September 12, 1951.

on an original information dated December 28, 1954? This question is answered by the court in the negative in the case of *Wong v. Yatco, et al.*[24] because such an amendment is not only one of form but of substance especially when in 1954 ,when the information sought to be amended was filed, the act was not yet punishable as an offense because the law upon which it was based has not yet been published. The violation can only take place in 1955 when the law was published, so that to allow the amendment by changing the date of commission from 1954 to 1955 after the accused has pleaded not guilty to the original information would be prejudicial to the rights of the accused. The court elucidated:

> "Since an amended information is supposed to retroact to the time of filing of the original information, and at the time of the filing of the original information the offense was not yet punishable, the proper course would have been not to amend the previous information but to file another one. An information filed before the effectivity of a law punishing the crime had come into effect to charge a violation after the law had come into effect. A crime charged should have been committed prior to the filing of the information; no information can be filed for a future violation."

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for their non-appearance at the trial,[25] and when the motion to quash is based on an alleged defect in the information or complaint which can be cured by amendment the court shall order the amendment to be made and shall overrule the motion.[26] These rules found application in the case of *People v. Perez*,[27] where the accused, in a charge of attempted estafa through falsification of a public document, moved to quash the information on the ground that the facts alleged in the information do not constitute the offense charged therein. The lower court concurred with this contention and dismissed the case because according to it, the information was not specific enough to describe the crime charged and that it also failed to specify the amount of damage suffered.

The Supreme Court reversed this ruling saying that, even granting that the information in question was defective, as pointed out by the accused, it appearing that the defects thereof can be cured by amendment the lower court should not have dismissed the case but should have ordered the fiscal to amend the information.

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[24] G.R. No. L-9525, August 28, 1956, 52 O.G. No. 13, 5829 (1956).
[25] §13, par. Rule 106, Rules of Court.
[26] §2, par. 2, Rule 113, Rules of Court.
[27] G.R. No. L-7448, April 11, 1956; 52 O.G. No. 4, 1911 (1956).

(c) *Who must prosecute criminal actions*:

All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal.[28] Since an offense is an outrage to the sovereignty of the State, it is but natural that the representatives of the state should be the ones to direct and control the prosecution.[29] Therefore, if the Court of First Instance dismisses the criminal action upon the petition of the fiscal on the ground of insufficiency of evidence the offended party cannot appeal[30] unless upon a question of law[31] or unless the offended party has not been afforded an opportunity to be heard, otherwise the remedy would be an action for mandamus if the fiscal appears to have committed an abuse of discretion.[32]

This doctrine was applied in the case of *People v. Natoza*,[33] wherein the accused was prosecuted for the crime of serious illegal detention but when the fiscal reinvestigated the case, there was no sufficient evidence to sustain a conviction. Thereafter, the fiscal filed before the Court of First Instance a motion for the dismissal of the case which was granted. The offended party appealed the ruling questioning the authority of the fiscal to file the motion to dismiss. The Supreme Court, in sustaining the dismissal declared that since all criminal acts shall be prosecuted under the direction and control of the fiscal, if he finds the evidence insufficient to establish a *prima facie* case, he has the power to file a motion to dismiss and if granted by the court, such action does not constitute a reversible error. The court even went further to say:

> "Even if without notification, the provincial fiscal is authorized to make investigation of the case for the purpose of satisfying himself whether the evidence of record is sufficient for the filing of the information and if after his investigation he finds that no sufficient evidence warrants the prosecution of the case, it is within his authority as prosecuting officer to file a motion to dismiss and if granted cannot be appealed by the offended party who, under the law has no right to compel the fiscal or the court through mandamus, to proceed with the case unless there is a clear abuse of discretion on their part, which the record fails to show."

(d) *Intervention of the offended party in the criminal prosecution*:

Although it is a legal fact that the fiscal controls and directs the prosecution of the case, it is nevertheless recognized that the

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[28] §4, Rule 106, Rules of Court; United States v. Despabiladeras, 32 Phil. 442 (1915); United States v. Gallegos, 37 Phil. 289 (1917); People v. Dizon, 44 Phil. 267 (1922).

[29] Suarez v. Platon, 40 O.G. (Supp. No. 6) No. 10, 235 (1944).

[30] Gonzales v. Court of First Instance of Bulacan, 63 Phil. 846 (1936); People v. Orais, 65 Phil. 744 (1938); People v. Moll, 40 O.G. (Supp. No. 2) 231 (1944); People v. Lipana, 40 O.G. 3456 (1944).

[31] People v. Florendo, 1 O.G. No. 12, 886 (1942).

[32] People v. Orais, 65 Phil. 744 (1938).

[33] G.R. No. L-8917, December 24, 1956.

injured party has the right to intervene in its prosecution, provided that he has not waived the civil action, or expressly reserved the right to institute it after the termination of the criminal case[34] or has not yet commenced an entirely independent civil case in those cases in which the law allows.[35]

In the case of *Gorospe, et al. v. Gatmaitan, et al.*[36] the right of the offended party to intervene in the prosecution of the case was denied, it having been shown that the injured parties had actually instituted the civil action even if there was no waiver or reservation made by them. This case was a prosecution for the crime of estafa through falsification of private document[37] against Ceferina Samu, Ester Campus, Carmelita de la Cruz and Francisco de la Fuente. Before the institution of the criminal case, the petitioners, who were the offended parties, filed an action against the defendants for the annulment of the same documents allegedly falsified by them and involved in the criminal prosecution with damages. The motion filed by the defendant Campus to prevent the petitioners from intervening in the criminal action was sustained. Hence the petitioners brought this petition for certiorari. The Supreme Court denied the petition on the ground that their right to intervene has already been lost by the institution of the civil action for annulment of the private document with damages. To the same effect, is the ruling of the Court in the case of *Española v. Singson, et al.*[38] where the court found out that the offended party in a charge of physical injuries and defamation had expressly reserved his right to present an independent civil action for damages arising from the offenses charged.

PROSECUTION OF CIVIL ACTION

Every person liable for a felony is also civilly liable.[39] From this provision it can be seen that the liability of a person accused of a crime is two-fold namely, criminal and civil. The civil liability that is due from the accused however, must be that which is a necessary consequence of or which arises from the criminal action[40]

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[34] *See* §15, Rule 106, Rules of Court; People v. Orais, 65 Phil. 744 (1938); People v. Florendo, *supra;* People v. Moll, *supra;* People v. Velez, 44 O.G. No. 6, 1811 (1948).

[35] *See* Arts. 29-36, new Civil Code. People v. Velez, *supra.*

[36] G.R. No. L-9609, March 9, 1956; 52 O.G. No. 5, 2526 (1956).

[37] The offense charge seems to be incorrect because there is no complex crime of estafa through falsification of private document.

[38] Art. 100, Rev. Penal Code.

[39] Art. 100, Rev. Penal Code.

[40] People v. Moll, 68 Phil. 626 (1939); Manila Railroad Co. v. Baltazar, 49 O.G. 3874 (1953); People v. Abellera, 69 Phil. 623 (1940); People v. Mañago, 69 Phil. 496 (1939). In the last three cases, the defendants were previously acquitted and after their acquittal they filed motions to demand the payment of their respective salaries due them during their suspension. The Court ruled that they cannot recover their salaries in the same criminal action. The only

and not one that is entirely foreign or separate from the cause that gave rise to the criminal prosecution.[41]

The Rules of Court[42] gives the criminal action preference in its prosecution over the civil action on the theory that the judgment which may be rendered in the criminal action may dispose of the civil action as where it declares that "the fact from which the civil might arise did not exist."[43] This is the gist of the ruling of the court in the case of *Racela v. Albornoz*,[44] which case involves a claim of ₱20000.00 against the the estate of Perpetua A. Vda. de Soriano, of which the respondent is the administrator. It appeared that the claim was based on the fact that the deceased, at the instance of the claimant was prosecuted for estafa on the ground that the deceased after allegedly selling two parcels of land to the claimant and for which claimant alleged to have paid ₱2000.00, sold them again to another. However, the deceased was acquitted, the court having found that no actual sale took place, the sale being merely a simulated one. On the basis of these facts the Supreme Court declared that the judgment in the criminal action contains an express declaration that the basis of claimant's action for ₱2000 or the sales of said parcels of land to claimant and the receipt by the dependent therefore for ₱2000 did not exist and consequently the action is barred under section 1, (d) of Rule 107, of the Rules of Court.

An example of a civil action not arising from a criminal offense and therefore may be instituted independently of the criminal action pending in court is the case of *Bisaya Land Transportation Co., Inc. v. Hon. Mejia, et al.*[45] In this case, it was proved at the trial that the passenger truck of petitioner transportation company driven by one Mongaya and the cargo truck belonging to Tan Sim and driven by one Varga, collided with each other resulting in the infliction of physical injuries and death of passengers of the passenger bus. Both drivers were prosecuted criminally but the heirs of several victims of the accident instituted a civil action for damages against the petitioner company. The latter filed a motion to suspend the civil case until final disposition of the criminal case, but this motion was denied. This is now a petition for certiorari before the Su-

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responsibility that may be imposed by the court is that which arises from the criminal act.

To this ruling, it is submitted that an exception has been created in view of the enactment of Republic Act No. 557 and the pronouncement of the court in the case of People v. Bautista, 50 O.G. 5286 (1954) which declared that under Republic Act No. 557, after acquittal of the accused, he is *ipso facto* entitled to the payment of his salaries during his suspension.

41 Art. 31, new Civil Code.

42 Rule 207, Rules of Court.

43 §7, part. (d), Rule 107, Rules of Court.

44 G.R. No. L-7801, April 13, 1956; 53 O.G. No. 4 1087 (1957).

45 G.R. No. L-8830, May 11, 1956.

preme Court, on the strength of section 1(c) of Rule 107 of the Rules of Court.[46]

The appellate court denied the petition, however, stating that section 1 (c) of Rule 107, of the Rules of Court, refers to civil actions "arising from the same offense" charged in the criminal action. In so far as the petitioner is concerned, the complaints in the civil cases are specifically based upon an alleged breach of contractual relation between the petitioner (as owner of the common carrier) and its passengers...which relation is governed by Articles 1755 and 1763 of the Civil Code and not by the Revised Penal Code and is therefore, independent of the provisions of the latter and of such criminal responsibility as may exist thereunder.[47]

In view of certain provisions[48] introduced by the new Civil Code, the right of the offended party in the institution of civil actions during the pendency or ahead of the criminal prosecution, has been liberalized and expanded. In such a case, the civil action may proceed independently and a preponderance of evidence may suffice for the proof thereof. Therefore, if the acquittal of the accused in a criminal case was predicated on the fact that his guilt has not been satisfactorily established, this declaration is equivalent to an acquittal on reasonable doubt and does not preclude the suit to enforce the civil liability for the same act or omission under Article 29 of the Civil Code. Likewise, a declaration in the decision of acquittal to the effect that "if any responsibility was incurred by the accused — that is civil in nature and not criminal" amounts to a declaration or reservation of the civil action in favor of the offended party. This is the ruling of the court in the case of *Philippine National Bank v. Catipon.*[49] To the same effect is the ruling in the case of *Reyes v. De la Rosa,*[50] where it was held that the fact that the compainant in a criminal action for defamation and physical injuries did not reserve her right to institute a separate civil action for damages does not preclude her from bringing such action because under the express provision of Article 33 of the new Civil Code, the law has reserved

[46] §1(c), Rule 107, Rules of Court, provides: "After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered."

[47] The ruling is in accordance with the decision laid down in the following previous cases: Rakes v. Atlantic Gulf and Pacific Co., 7 Phil. 359 (1906); Barredo v. Garcia, et al., 73 Phil. 607 (1942); RAMCAR v. De Leon, 44 O.G. 3795 (1948); Castro v. Acro Taxicab Co., 46 O.G. 2023 (1950); San Pedro Bus Line v. Navarro, G.R. No. L-6291, April 29, 1954; Son v. Cebu Auto Bus Co., G.R. No. L-6155, April 30, 1954; Ibañez v. North Negros Sugar Co., G.R. No. L-6790, March 28, 1955.

[48] *See* Arts. 29-35, new Civil Code; De Guzman v. Alvia, 51 O.G. No. 3, 1311 (1955); Carandang v. Santiago, 51 O.G. No. 6, 2878 (1955).

[49] G.R. No. L-6662, Jan. 31, 1956, 52 O.G. No. 7, 3589 (1956).

[50] G.R. No. L-9398, Sept. 28, 1956; 52 O.G. No. 15, 6548 (1956).

it for her. This legal provision provides an exception to the general rule that a civil action for damages based on a felony is included in the criminal action.[51]

PRELIMINARY INVESTIGATION

Preliminary investigations are governed by the Rules of Court[52] for cases begun in the Justice of the Peace Courts and Republic Act No. 732, for cases originally instituted by the fiscal to the Court of First Instance. Under the latter law, the legality of the preliminary investigation is unaffected by the lack of a previous notice to the accused. This principle was first declared in the case of *Lozada v. Hernnadez,*[53] which ruling is adhered to in the case of *Villanueva, et al. v. Judge Gonzales, et al.*[54] In this case, the accused were charged with kidnapping. The preliminary investigation with repect to Mariano Villanueva was begun in the Justice of the Peace Court, but when the case was forwarded to the Court of First Instance, the fiscal, in an amended information included, as one of the defendants, Consuelo Papa, the wife of Villanueva, and the fiscal certified accordingly, that he had conducted the preliminary investigation against Consuelo. The petitioners, defendants in the case, question now the legality of the proceeding on the argument that they were not notified during the preliminary investigation conducted by the fiscal. The court in sustaining the right of the fiscal stated that Republic Act No. 732, govern preliminary investgations conducted by the provincial fiscals in cases originally instituted by them in the Court of First Instance. It does not apply to cases begun in the Justice of the Peace Courts and thereafter, forwarded to the corresponding Court of First Instance, either after the second phase of the investigation required by the Rules of Court had been conducted before said Justice of the Peace Court or after a waiver of their right to said investigation. He may rely upon the evidence introduced in, and the facts found by the Justice of the Peace Court at the preliminary investgation therein conducted.

Regarding the effect of the absence of notification to the accused, the court said:

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[51] Bulaclac v. Hernandez, et al., 53 O.G. (C.A.) No. 5, 1490 (1957).

[52] Rule 108, Rules of Court.

[53] G.R. No. L-6177, April 29, 1953; followed in the case of Rodriguez v. Arellano, G.R. No. L-8332, April 30, 1955, the court saying that it is not the duty of the provincial fiscal conducting the preliminary investigation under Republic Act No. 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation. To the same effect is the ruling of the court in the case of People v. Napagao, G.R. No. L-7612, October 29, 1955.

[54] G.R. No. L-9037, July 31, 1956, 52 O.G. No. 12, 5497 (1956).

> "With respect to petitioner Consuelo Papa, who was not included in the complaint filed with the Justice of the Peace Court of Naic, the legality of the preliminary investigation made by the petitioner is not affected by the lack of previous notice thereof to her, for said notice is required 'only after the accused has requested to be present at the investigation', and no such request had been made by her."

WARRANT OF ARREST

If the judge is satisfied from the preliminary investigation conducted by him that the offense complained of has been committed and there is reasonable ground to believe that th edefendant has committed it, he must issue a warrant of arrest or order for his arrest.[55] Under the Constitution, no warrants shall issue but upon probable cause to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.[56] As to what constitutes a probable cause is a judicial question and must be determined by the judge issuing the warrant. An interesting question was posed in the case of *Amarga v. Abbas*,[57] as to whether or not the determination of the existence of probable cause by the judge may be dispensed with after the fiscal has already conducted a preliminary investigation under Republic Act No. 732 and certified that there was reasonable ground to believe that the crime was committed and that the accused was probably guilty thereof.

Under the facts of the case, the provincial fiscal filed an information for murder in the Court of First Instance certifying that he had already conducted a preliminary investigation and as supporting affidavit, he attached one executed by Jubair, to the effect that he was told that the deceased was shot and killed by the accused. The judge however, demanded the submission of other evidence to support a *prima facie* case before issuing a warrant of arrest. The fiscal refused and so the judge dismissed the case. This is now a petition for certiorari and mandamus, the fiscal contending that upon the filing of the information, it is the ministerial duty of the judge to issue a warrant of arrest. On the other hand the judge contended that the issuance of a warrant of arrest involves a judicial power which necessarily imposes upon him the legal duty of first satisfying himself that there is probable cause, independently of and notwithstanding the preliminary investigation made by the fiscal and to that end he may require the submission of such evidence as may be

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[55] §7, Rule 108, Rules of Court.
[56] Art. III, §1(3), PHIL. CONST.
[57] G.R. No. L-8666, March 28, 1956; 52 O.G. No. 5, 2545 (1956).

sufficient to show at least a *prima facie* case. On these conflicting arguments, the court declared:

> "The preliminary investigation conducted by the petitioner under Republic Act No. 732 which forms part of the filing in the Court of First Instance of Sulu of Criminal Case No. 1131 does not...dispense with the latters (judge) duty to exercise his judicial power of determining, before issuing the corresponding warrant of arrest, whether or not probable cause exists therefor. The constitution vests such power in the respondent judge who, however, may rely on the facts stated in the information filed after preliminary investigation by the prosecuting attorney."

However, the court intimated that while the failure or refusal of the petitioner to present further evidence may be a good ground for the judge to refuse to issue a warrant of arrest, such fact is not a legal cause for dismissal of the same, and on this ground, it exceeded its jurisdiction.

BAIL

(a) *The right to bail; courts having jurisdiction to grant bail in capital offenses*:

The Court emphasized in the case of *People v. Hernandez, et al.*,[58] "that individual freedom is too basic, too transcendental and vital in a Republican State, like ours, to be denied upon mere general principles and abstract consideration of public safety."[59]

But fundamental as it may seem, it is submitted that the right to bail should only be granted as a matter of right in favor of persons who are charged with a criminal offense or in proceedings criminal in nature. For instance in the case of *Tiu Chun Hai, et al. v. The Deportation Board*,[60] the petitioners were found overstaying in the Philippines. Subsequently, they were arrested, confined and because they were also found illegally possessing, buying and smuggling United States dollars, the special prosecutor of the Deportation

[58] G.R. No. L-6025, July 18, 1956; O.G. No. 10, 4612 (1956).

[59] This ruling is a very clear adherence to the liberal tendency of the court in granting bail to accused persons, and a reiteration of the doctrine laid down in *Montano v. Ocampo*, G.R. No. L-6352, January 29, 1953, where the court said: "...to deny bail is not enough that the evidence of guilt is strong; it must also appear that in case of conviction the defendant's criminal liability would probably call for a capital punishment... In the evaluation of the evidence the probability of flight is one other factor to be taken into account. The sole purpose of confining accused in jail before conviction, it has been observed, is to assure his presence at the trial. In other words if denial of bail is authorized in capital offenses, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury.... The possibility of escape in this case, bearing in mind the *defendant's official and social standing*, (then a senator) and his other personal circumstances, seems remote if not nil."

This criteria were used by the court in granting bail to Hernandez, a former Manila councilor, accused of rebellion.

[60] G.R. No. L-10109, May 18, 1956.

Board filed a complaint charging them for such offense and praying that their deportation be recommended. Pending the termination of the deportation proceedings they asked that they be granted bail for the provisional release but after hearing the Deportation Board denied their petition.

This denial was sustained on appeal by the Supreme Court declaring that there is nothing in our Constitution nor in section 69 of the Revised Administrative Code[61] which vests in the President of the Philippines the power of deportation of undesirable aliens, from which we can infer that the right of aliens facing charges before the deportation board to temporary liberty on bail is guaranteed. "The provision of the constitution which guarantees the right to bail to all persons before convicition...merely applies to persons accused of offenses in criminal actions."[62] Deportation proceedings are not criminal in nature or in no proper sense a trial and sentence for a crime or offense[63] but merely a procedure devised by the Chief Executive to enable him to exercise properly the power of deportation vested in him by the laws. Therefore, the right to bail in deportation proceedings is not a matter of right on the part of the petitioners, but a matter of discretion on the part of the deportation board.

The power of the Justice of the Peace Court to grant bail in capital offenses has been seriously questioned in the recent case of *Manigbas, et al. v. Judge Luna, et al.*[64] The petitioners were charged with the crime of murder in the Justice of the Peace Court. Although they were still at large, their counsel filed a petition in the same court asking the court to grant them bail for their provisional release. This petition was however, denied on the theory of the lower court that it had no jurisdiction to grant bail in cases involving capital offenses. Hence the petitioners brought this action to compel the Judge of the Justice of the Peace Court to receive evidence to determine if the same warrants the granting of bail to the accused.

The general rule is that an application for bail may be acted upon by the court which has cognizance of the case regardless of whether it involves a capital offense or not.[65] It was, however, admitted by the court that the law and the rules are not explicit enough and that Philippine jurisprudence has not so far laid down a clear-cut ruling on the question of whether or not justices of

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[61] This provisions pertains to the procedure followed by the President of the Philippines before a decree of deportation is issued.

[62] Herra v. Teehankee, 75 Phil. 634 (1946).

[63] Fong Yue Ting v. United States, 149 U.S. 698; Lao Tang Bun, et al. v. Fabie, et al., 40 O.G. No. 1, 489 (1944); Molden v. Collector, 34 Phil. 493 (1916).

[64] G.R. No. L-8455, Feb. 27, 1956; 52 O.G. No. 3, 1405 (1956).

[65] Peralta v. Ramos, 71 Phil. 271 (1940).

the peace courts can entertain bail applications while the case is under their control if they involve capital offenses.[66]

This case cleared all doubts on this controversial point and categorically affirmed the jurisdiction of the justice of the peace court to grant bail even to cases involving capital offenses, their being no limitation in the Constitution and even the Judiciary Act of 1948 as amended [67] expressly confer this power upon such courts. The Court proceeded to explain the point:

> "We refer to sections 87 and 91 of said Act relative to the power of the justices of the peace to conduct preliminary investigations and incidental powers they may exercise in relation thereto.... These provisions are broad enough to confer upon the justices of the peace the authority to grant bail to persons accused even of capital offenses for such is the only meaning that we can give to the phrase 'bind over any person charged with such offense to secure his appearance before the proper court'. This is the meaning of bail as defined in section 1 of Rule 110, of the Rules of Court."

Notwithstanding this ruling, the petition for bail was denied on the ground of prematurity of cause of action, because the right to bail only accrues when a person is arrested and deprived of his liberty, and not, as in this case, when the accused are still at large.

(b) *Forfeiture of bail bond*:

When the appearance of the defendant is required by the courts, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within

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[66] In the United States the doctrine on the matter is:
"...it may be stated as a general rule that all judicial officers having the power to hear and determine cases have the power to take bail. It is regarded as a necessary incident to the right to hear and determine the cause." 6 AM. JUR. 67.
With particular reference to Justice of the Peace Court, the general rule is:
"...where under the statutes, justices of the peace have power as examining magistrates, with power of commitment, they may in their discretion admit to bail; except where their power to take bail is limited by the Constitution, or by statute, in which case they must act within the express or implied limitations thereby laid down." 6 AM. JUR. 973-974.

[67] The pertinent provisions of the Judiciary Act of 1948, Republic Act No. 296, as amended are:
"Sec. 87. Said justices of the peace and judge of municipal courts may also conduct preliminary investigations for any offense alleged to have been committed within their respective municipalities and cities, without regard to the limits of punishment and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court."
"Sec. 91. The justice of the peace and judges of municipal courts shall have power to require of any person arrested a bond for good behavior or to keep the peace, or for the further appearance of such person before a court of competent jurisdiction. But no such bond shall be accepted unless it be executed by the person in whose behalf it is made, with sufficient surety or sureties, to be approved by said court."

which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty days, the bondsmen (a) must produce the body or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen.

Generally, courts are liberal in accepting the explanation when the body of the defendant is produced. In adhering to a policy of liberality towards bondsmen, the circumstances of each case must determine the degree in which said attitudes should be exercised. Diligence on the part of the bondsmen in the performance of their obligations must be the gauge for such liability.[68] However, it has been held that the question whether a bondman may be relieved of the effects of an order of confiscation and of his liability under the bond is addressed to the sound discretion of the court.[69]

In the case of *People v. Panis, et al.*[70] the bondsman was totally exonerated and the bond cancelled upon the following facts: The accused was prosecuted for illegal possession of firearms. He was released on bail but when ordered to appear for trial he failed, and the bond was declared forefeited and the surety was given thirty days within which to produce the accused and justify his non-appearance. Within this 30-day period the fiscal moved for the dismissal of the case on the ground that he found a belated evidence to the effect that the accused had a temporary permit to possess the firearm in question. This motion plus the explanation of the

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[68] People v. Calabon, 53 Phil. 495 (1929); People v. Reyes, 48 Phil. 139 (1925); People v. Puyal, et al., G.R. No. L-8091, Feb. 17, 1956; 52 O.G. No. 16, 6886 (1956). The attitude of liberality of the courts is explained thus:

"The liberality which we have shown in dealing with the bondsmen in criminal cases and in mitigating their liability on bonds already confiscated because of the delay in the presentation of defendant's body finds explanation in the fact that the ultimate desire of the state is not the monetary reparation of the bondsmen's default, but the enforcement of the sentence such as the imprisonment of the accused or the payment by him of the fine imposed. The interest of the state cannot be measured in terms of pesos as in private contracts and obligations. The surrender of the person of the accused so that he can serve his sentence is the ultimate goal or object. The provisions for the confiscation of the bond, upon failure within a reasonable time to produce the person of the accused for the execution of the sentence is to compel the bondsman to enhance its efforts to have the person of the accused produce.... A further reason for such liberality lies in the fact that if the courts are strict in enforcing the liability of the bondsmen, the latter would demand higher rates for furnishing bail for accused persons, making it difficult for such accused to secure their freedom suring the course of the proceeding."

[69] People v. Reyes, *supra;* People v. Alamada, G.R. No. L-3411, May 23, 1951; People v. Arlantico, G.R. No. L-3411, May 30, 1951; People v. Calabon, *supra.*

[70] G.R. No. L-9245, Oct. 11, 1956; 52 O.G. No. 15, 6503 (1956).

surety company of its efforts in securing the arrest of the accused were considered sufficient by the court.

This same gesture of liberality was adopted by the court in the case of *People v. Associated Insurance and Surety Co., Inc.*[71] where the court found out that the bondsmen acted with dispatch and surrendered the accused the following day after the declaration of forfeiture. Although there was no explanation given by the bondsmen of the cause of the failure on the part of the accused to appear at the time of the trial, this defect, according to the court was cured by the motion for reconsideration, which was filed within the 30-day period granted the bondsmen to show cause why judgment on the bond should not be rendered.

In the case of *People v. Puyal, et al.*,[72] however, partial exoneration was granted considering that the accused voluntarily surrendered himself after the lapse of ten months from the decree of confiscation and the amount of the bond confiscated is not commensurate with the penalty imposed upon the accused.

For a period of 106 days, the bondsman did nothing to produce the body of the accused or to explain wh yit was unable to produce the body of the accused before the court. Later on, before final judgment was entered on the decree of confiscation, the bondsman filed a motion to cancel the bond on the ground that the accused had been found to be dead three months after the declaration of forefeiture.[73] According to the court, the death of the accused which occurred long after the expiration of the 30-day period when the bondsman should have produced the body of the accused cannot constitute sufficient cause for a full discharge of its responsibility but only a partial exoneration, the bondsman being negligent in the performance of its duty. This is the ruling of the court in the case of *People v. Luzon Surety Co., Inc.*[74]

The bond was totally confiscated in the case of *People v. Valerio and Philippine-American General Insurance Co., Inc.*[75] because the surety was not diligent in securing the presence of the accused nor "candid in dealing with the court." Worst of all, the body was never eventually produced before the court at any time thereafter unlike the situations established in previous cases.[76]

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[71] G.R. No. L-9497, July 31, 1956.

[72] G.R. No. L-8091, Feb. 17, 1956; 52 O.G. No. 16, 6886 (1956).

[73] Death of the principal exonerates the bondsman only when it occurred during the pendency of the action. *See* §16, Rule 110, Rules of Court.

[74] G.R. No. L-6962, April 25, 1956: 53 O.G. No. 5, 1439 (1957).

[75] G.R. No. L-9251, Aug. 31, 1956.

[76] *See* People v. Almeda, G.R. No. L-2155, May 23, 1951; People v. Calabon, 53 Phil. 945 (1929); People v. Loredo, 50 Phil. 209 (1927).

(c) *Persons liable to the bondsman in case the bond is confiscated:*

In *Alto Surety and Insurance Co., Inc. v. Andan, et al.*[77] the plaintiff filed a bond for the provisional release of one Dizon who was accused of a crime. The defendants agreed to indemnify jointly and severally the plaintiff for any damage it may suffer as a consequence of having filed a bond. Subsequently, the bond was confiscated for the failure of the accused to appear at the trial. Therefore, the plaintiff filed an action to recover the amount forefeited against the defendants. At the time of filing of the action, the amount of the bond was not yet paid by the plaintiff to the court although demand for its satisfaction had already been made. The lower court dismissed the action on the ground that, since the plaintiff had not yet satisfied the obligation, it suffered no damage and consequently, it has no cause of action.

The Supreme Court reversed the decision and declared that where the condition of the bail bond was breached, the plaintiff as bondsman, became liable to make payment to the government on the bond as the court has so ordered. By the writ of execution issued by the court, the Government demanded payment thereof. As the defendants undertook to indemnify the surety "as soon as demand is received from the creditor, or as soon as it becomes liable to make payment of any sum under the terms of the bond, whether the said sum or sums or part thereof, have been actually paid or not" they in turn became liable to the plaintiff for whatever amount the plaintiff was required to pay the government.

Likewise, the court in the case of *Capital Insurance and Surety Co., Inc. v. Eberly*[78] branded as untenable the defendant's claim that he was not liable on his indemnity agreement because the plaintiff made payment to the government without his knowledge and consent. It was held that the bondsman did not have to secure his consent to make such payment because it was pursuant to an order of execution issued by a court of competent jurisdiction and in accordance with the agreement wherein the defendant undertook to indemnify the appellee for damages that it might sustain or incur in consequence of having become a surety for the release of the accused.

RIGHTS OF THE DEFENDANT

(a) *After arrest:*

After the arrest of the defendant and his delivery to the court, he shall be informed of the complaint or information filed against

[77] G.R. No. L-8961, Nov. 28, 1956; 52 O.G. No. 18 7575 (1956).
[78] G.R. No. L-8940, Nov. 28, 1956; 53 O.G. No. 1, 64 (1957).

him. He shall also be informed of the substance of the testimony and evidence presented against him and if he desires to testify or to present witnesses or evidence in his favor he may be allowed to do so. The testimony of the witnesses need not be reduced to writing but that of the defendant shall be taken in writing and subscribed by him.[79] In one case it was held that this section is an adjective law and not a substantive law or right.[80] The procedure above described is the second stage of the preliminary investigation, the purpose of which is to afford the accused an opportunity to show by his own evidence that there is no reasonable ground to believe that he is guilty of the offense charge.[81] Under the above-mentioned provision has the defendant the right to cross-examine the witness of the complainant?

This question is answered in the negative by the case of *People v. Ramilo*.[82] The facts of the case show that the defendant was prosecuted for grave oral slander in the Municipal Court of Roxas City. He waived his right to a preliminary investigation and the records of the case was forwarded to the Court of First Instance. When the trial was called, the defendant filed an urgent motion for the reinvestigation of the case on the ground that the accused was not given the opportunity to be present, heard and assisted by counsel at any time previous to the filing of the case. The motion was granted and the prosecuting officer set the date for reinvestigation but the accused refused to submit to the reinvestigation unless the previous witnesses were recalled so that he could cross-examine them. The City attorney refused to yield to the demand of the accused. Subsequently, he filed a motion to the court to give due course to the information but this motion was denied. This is an appeal by the prosecution against the denial of his motion.

Setting aside the order of the court denying the city attorney's motion to give due course to the information, the appellate court made this declaration:

> '...When the case was to be reinvestigated by the city attorney he made an illegal demand instead of submitting his evidence. Under section 11, Rule 108, of the Rules of Court, the rights of a defendant after his arrest are (1) to be informed of the complaint or information filed against him and the substance of the testimony and evidence presented against him; and (2) to be allowed, if he so desires, to satisfy or to present witnesses or evidence in his favor. As of right, therefore, in a preliminary investigation, *an accused is not entitled to cross-examine the witnesses presented against him.* Hence, the demand of the accused during the rein-

[79] §11, Rule 108, Rules of Court.
[80] Bustos v. Lucero, 46 O.G. (Supp. to No. 1) 445 (1950).
[81] 2 MORAN *op cit. supra* at 639.
[82] G.R. No. L-7380, Feb. 29, 1956; 52 O.G. No. 3, 1431 (1956).

> vestigation conducted by the city attorney that the witnesses for the prosecuion be recalled so that he could cross-examine them was not based on any provision of law and therefore the city attorney has correctly denied such demand."

(b) *During the trial:*

The accused has a right to a speedy and public trial under the Rules of Court[83] and the Constitution.[84]A speedy trial has been construed to mean a trial conducted according to fixed rules and proceedings of law, free from vexatious and oppressive delays.[85] It is however, necessarily, a relative one, consistent with reasonable delays and usually depends upon circumstances.[86]

In the case of *People v. Jabajab*,[87] the defendant was prosecuted with slight and serious physical injuries. Convicted in the municipal court, he brought the case on appeal in the Court of First Instance. This was on June, 1952. While the case was pending in said court, there were several postponements made, sometimes done by agreement of the parties, until in December, 1954 it appeared that the defendant was never arraigned. The trial was set by the court on December 9, 1954 in the Capitol building of Oroquieta instead of Ozamis City and this fact was allegedly not communicated officially to the fiscal. For this reason, he was not present at the trial; therefore, upon motion of the defendant and invoking his Constitutional right to a speedy trial, the court dismissed the case provisionally. Since the motion of the fiscal for reconsideration was denied he appealed the ruling which the Supreme Court set aside, explaining its ruling, thus:

> "It is true that a person accused has a right to a speedy trial. However, he cannot sleep on said right but must see to it that his case be tried at an early date. In the present case, there were several postponements of the hearing...but instead of objecting to the same, the defendant agreed to said postponements, and there is nothing in the record to show that it was the fiscal who asked for all the said postponements.... The defendant cannot agree to the repeated postponements of the trial of his cases and then when the Government absent or unable to go to trial on any of the dates of hearing, take advantage of said absence and ask for the dismissal of the case."

DOUBLE JEOPARDY

The protection against double jeopardy may be invoked by the accused in any of the following cases: (1) previous acquittal; or

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[83] §1(g), Rule 111, Rules of Court.
[84] §1, par. 17, Art. III, PHIL. CONST.
[85] Kalaw v. Apostol, 64 Phil. 852 (1937).
[86] Mercado v. Santos, 37 O.G. 904; Gunabe, et al. v. Director of Prisons, 44 O.G. No. 4, 1244 (1948); Talabon v. The Iloilo Provincial Warden, 44 O.G. No. 11, 4326 (1948).
[87] G.R. No. L-9238, Nov. 13, 1956; 53 O.G. No. 3, 632 (1957).

(2) conviction of the same offense; or (3) when the case against him has been dismissed or otherwise terminated without his express consent. But in all of these cases, legal jeopardy does not exist but under the following conditions: (a) upon a valid complaint or information; (b) before a competent court; (c) after he has been arraigned; and (d) after he has pleaded to the complaint or information.[88]

In pleading double jeopardy however, the court in the case of *People v. Mangampo*,[89] stated that mere mention of criminal case numbers and pointing alleged portions of both informations for which he has supposedly been tried and convicted is not sufficient specially when there is nothing in the record of the case to show that the offense for which he has formerly been charged and convicted is the same offense for which he is prosecuted for the second charge. He must both allege and prove specifically that the offense of which he has formerly been convicted or acquitted, is the same offense for which it is proposed to try him again.[90]

As a result of the failure to prove double jeopardy in the case at bar, in which the accused was charged with 36 different and distinct violations of Commonwealth Act No. 303, the appellant not having objected to the information on the ground of multiplicity of offenses charged, he is deemed to have waived said defect and may be sentenced for as many crimes as are disclosed in the information and established by the evidence.[91]

The defendant in the case of *People vs. Sales*[92] successfully pleaded double jeopardy under the following facts: Sales was prosecuted for estafa allegedly for failure to deliver the sales price of copra which he sold as agent of the NACOCO. It was explained that the failure to turn over the sales price was due to the fact that the persons to whom he was supposed to deliver the amount were not in Camarines Sur so that on his own initiative and for the benefit of the NACOCO, he invested the said amount for the purchase of copra on a speculative basis and acting in good faith. On this charge he was acquitted. Three years later he was again prosecuted for estafa in an information containing substantially the same facts as those narrated in the first information. Upon a motion to quash the court declared that since in the first charge the trial court acquitted Sales fixing his liability as civil only and

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[88] People v. Ylagan, 58 Phil. 851 (1933); Mendoza v. Almeda-Lopez, 64 Phil. 820 (1937).

[89] G.R. No. L-8818, Sept. 17, 1956; 52 O.G. No. 15, 6525 (1956).

[90] United States v. Claveria, 29 Phil. 527 (1914).

[91] People v. Policher, 60 Phil. 770 (1934); United States v. Balboa, 37 Phil. 260 (1917).

[92] G.R. No. L-8925, May 21, 1956.

not criminal, this finding is now conclusive and binding upon the parties. The government cannot now in this new information attack the decision in said case as to its findings of facts by saying that Sales never bought copra with the ₱29,745.30 but actually misappropriated said amount nor contend that he actually bought copra with those funds of the NACOCO thereby making the copra so purchased property of the NACOCO which Sales later converted to his own use. The second information, concluded the court, puts the defendant twice in jeopardy for the same offense.

In the case of *People v. Opemia*,[93] it was held that when the case was dismissed on the ground of variance between allegation and proof, the dismissal of the case really amounted to an acquittal. Although the dismissal was consented to by the defendant, he being the movant therein, in line with the previous ruling of the court [94] he cannot again be prosecuted with the same offense, without being put twice in jeopardy of punishment for the same offense.

The case of *People v. Ferrer*,[95] illustrates an acquittal of the defendant on a pure legal technicality produced by the error of the trial judge. In this case the defendant was prosecuted with the crime of acts of lasciviousness in the Justice of the Peace Court of Asia, Negros Occidental. The information alleged that the crime was committed "in the house of the offended party." After trial a motion to dismiss was filed by the accused on the ground that the jurisdiction of the court was not sufficiently established because although the evidence of the prosecution merely tended to prove the acts of lasciviousness were committed in the house of the offended party, it was not shown where the house was situated. This motion was granted. The prosecution appealed.

In examining the record of the case, the Supreme Court found out that the jurisdiction of the court was sufficiently established and that the dismissal was erroneous. But this dismissal has practically acquitted the accused in the sense that according to the appellate court, the People of the Philippines cannot appeal if the

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[93] G.R. No. L-7987, March 26, 1956; 52 O.G. No. 4, 1951 (1956).

[94] Gandicela v. Lutero, G.R. No. L-4069, May 21, 1951; People v. Bangalao, et al., G.R. No. L-6921, May 14, 1954; People v. Diaz, G.R. No. L-6518, March 30, 1954. The unbroken and consistent doctrine of the court regarding the defense of double jeopardy is that, in order that it may be invoked successfully the case must not have been terminated with the consent of the accused. However, in these cases abovementioned, the court seems to have the tendency of introducing a new modification of the settled jurisprudence on the matter when it adopted the view that even if the dismissal was made on motion of the defendant, such dismissal amounts to his acquittal and he may not again be prosecuted for the same offense. It is inconceivable to think of a situation where the consent of the accused is more expressive than that of a motion to dismiss by the accused.

[95] G.R. No. L-9072, Oct. 23, 1956.

defendant would be placed thereby in double jeopardy. Since the defendant had already been arraigned and he had entered his plea, and the trial court had begun and the prosecution had rested its case, the appeal of the Government from the order of dismissal would place the accused in double jeopardy. This ruling was reached, notwithstanding the failure on the part of the accused to file a brief raising double jeopardy because the court must give force and effect to the legal provision.

An appeal by the prosecution on the argument that the penalty imposed was too light and with a view of urging the increase of the penalty places the defendant twice in jeopardy and therefore cannot be sustained.[96]

When the defendant was prosecuted for violation of the Central Bank circular for having failed to declare United States dollars in his possession in the amount of ₱3,140 and upon pleading guilty to the charge the trial court in its judgment of conviction did not provide for the confiscation of the amount involved, a subsequent appeal initiated by the prosecution praying that the amount involved should be confiscated, constitutes double jeopardy. This is the gist of the decision of the court in the case of *People v. Paet*.[97]

Under section 9 of Rule 113 of the Rules of Court[98] the test to determine the existence of double jeopardy is that one offense shall be considered the same as the other, not only when one is identical to the other or is an attempt to commit the same or frustration thereof, but also when one necessarily includes or is included in the other. But in the case of *People v. Quedes*,[99] the so called "same-evidence test"[100] was adopted by the court in over-

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[96] People v. Arinso, G.R. No. L-6990, July 20, 1956; 52 O.G. No., 12 5483 (1956); reiterating the principle laid down in the cases of People v. Taruc, G.R. No. L-8229, Nov. 28, 1955; and People v. Ang Chio Kio, 50 O.G. 3564 (1954).

[97] G.R. No. L-9551, Nov. 26, 1956.

[98] The section provides: "When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, 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 the defendant had pleaded to the charge, the convicition or acquittal of the defendant or dismissal of the case shall be a bar to another prosecution for the offense charged, or for an 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."

[99] G.R. No. L-8809, December 29, 1956; 53 O.G. No. 4, 1056 (1957).

[100] The so-called "same-evidence test" which has been severely criticized as not an infallible one, being true only in a general sense, adopts the test that to determine the identity of offenses it is necessary to ascertain whether the evidence to support a convicition upon one indictment would have been sufficient to warrant a conviction upon the other. This was the former rule. Gavieres v. United States, 41 Phil. 961 (1921); United States v. Lim Tigdien, 30 Phil. 222 (1915); United States v. Ching Pi, 23 Phil. 578 (1912); People v. Cabrera, 43 Phil. 82 (1922); People v. Alvarez, 45 Phil. 472 (1923); People v. Martinez, 55 Phil. 6 (1930); Mendoza v Almeda-Lopez, 64 Phil. 820 (1937).

ruling the plea of double jeopardy wherein the accused was prosecuted first with the crime of robbery in band and the second information charged him as accessory after the fact with the crime of theft, the subject matter involved in the first information being the same as that involved in the second and the crime was committed on the same day. The Court explained in this wise:

> "The first information charges the defendant with taking and carrying away unlawfully by means of violence and intimidation ten sacks of copra; whereas the second information charges the defendant with taking part in the crime after the commission thereof by then and there buying the ten sacks of copra from the persons who he knew had stolen the same. The evidence necessary to support a conviction for robbery in band is different from that which is required to sustain a conviction for theft as accessory after the fact. Under the first information the defendant could not have been convicted as accessory after the fact of robbery in band, because the defendants charged with having committed it did not in fact commit the crime. Evidence to show his part in the crime after the commission thereof would have no support, because the persons who committed the crime and from whom he bought the copra knowingly that it was robbed or stolen were not brought to court charged with the crime.... Hence the defendant was not placed nor could he be deemed to have been put in danger of being convicted of the crime of robbery in band either as principal or as accessory after the fact under the first information."

Two justices vigorously dissented using the test provided for in the Rules of Court in arriving at the conclusion that the defendant had been put twice in jeopardy of the same offense.

The "same-evidence test" was also used in the case of *People v. Remerata*.[101] Defendant was convicted of stealing a rifle. Subsequently he was prosecuted for illegal possession of firearm. The court held that there was no double jeopardy for, 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 to use,[102] which is not necessarily the case in every theft of firearms. Explaining further the court declared:

> "Besides an information charging larceny will not necessarily 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 crime of theft."[103]

Since there can be theft without illegal possession of firearms and vice versa, illegal possession may exist without the element of

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[101] G.R. No. L-6971, Feb. 17, 1956; 52 O.G. No. 2, 761 (1956).
[102] People v. Estoista, 49 O.G. No. 8, 3330 (1953).
[103] *Accord*: People v. Alger, 48 O.G. No. 11, 4799 (1952).

taking, that is essential in theft; conviction of one will not be a bar to the prosecution for the other.

In the same manner, the court in the case of *People v. Yanga,*[104] held, that the evidence which would support a conviction for light threats under the first information would not sustain a conviction for grave coercion charged in the second information. The crime of light threats as charged in the first information is not an ingredient of the crime of grave coercion. Hence the defendant was not placed thereby in double jeopardy of punishment of the same offense.

When the defendants were charged with frustrated murder but later on the information was provisionally dismissed because the warrant of arrest was never served, the whereabouts of the defendants being unknown, a revival of the same charge and this time they are arrested, the contention that they are in double jeopardy is untenable because they were never placed in jeopardy in the first case for the accused were never arrested and arraigned.[105]

The information charging the offense of coercion but failed to allege the use of violence in its commission was dismissed by the trial court on the ground that it did not allege facts sufficient to constitute an offense. The prosecution appealed and argued that the coercion charged is only unjust vexation of which the use of violence is not an element and therefore the allegation is sufficient. In view of the appeal, the defendant raised the defense of double jeopardy. Under the above facts, the court in the case of *People v. Reyes, et al.*[106] rejected the contention saying:

> "Whre the complaint or information is in truth valid and sufficient but the case is dismissed upon petition of the accused on the ground that the complaint or information is invalid or insufficient, such dismissal will not bar another prosecution for the same offense and the defendant is estopped from alleging in the second prosecution that the former dismissal was wrong because the complaint or information was valid."

PLEAS

There are two kinds of pleas; guilty or not guilty.[107] When the accused has pleaded guilty to the information and the court accepts such plea, he may be sentenced accordingly and will not be

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104 G.R. No. L-7617, Nov. 1956; 52 O.G. No. 18, 7572 (1956).

105 Conjurado, et al. v. Judge Remolete, et al., G.R. No. L-8874, May 18, 1956; 52 O.G. No. 18, 7593 (1956).

106 G.R. No. L-7712, March 23, 1956; 52 O.G. No. 5, 2532 (1956).

107 §1, Rule 114, Rules of Court, provides: "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; but a failure so to enter it shall not affect the valadity of any proceeding in the cause."

heard later to question the penalty imposed as being very grave because "the essence of a plea of guilty in a criminal case is that the accused, on arraignment, admits his guilt freely, voluntarily and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime charged in the information; that when formally entered, such plea is sufficient to sustain a conviction of any offense charged in the information, *even a capital offense,* without the introduction of further evidence, the defendant having himself supplied the necessary proof; and that while it may be prudent and advisable in some cases, especially where grave crimes are charged to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime, nevertheless, it lies in the sound discretion of the court whether or not to take evidence in any case where it is satisfied that the plea of guilty has been entered by the accused with full knowledge of the meaning and consequences of his act." This is the ruling of the court in the cases of *People v. Acosta, et al.*[108] and *People v. Triompo, et al.*[109] The admission of guilt by the accused in a plea of guilty also includes the aggravating and mitigating circumstances as well as the qualifying circumstances[110] and when the information for robbery alleged that the robbery was committed in a "bodega, an inhabited house" and the accused pleaded guilty upon such information, he cannot later question the propriety of the penalty imposed which corresponds to the crime of robbery in an inhabited house by contending that the bodega is not an inhabited house and therefore he should have been meted with the penalty prescribed by law for robbery in an uninhabited house because the information filed, which he unqualifiedly admitted with the facts therein alleged, expressly described the bodega as an inhabited house.[111]

The case of *People v. Geronimo, et al.*[112] is an example of a case where the accused upon a plea of guilty on an information that charges multiple offenses without objecting to such multiplicity, can be convicted for as many offenses as are sufficiently alleged therein if it appears that the accused understood fully the meaning of the information. In this case the accused pleaded guilty to an information charging him with the crime of rebellion complexed with murder, kidnappings, arson, etc. Convicted as

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108 G.R. No. L-7449, March 23, 1956; 52 O.G. No. 4, 1930 (1956).
109 G.R. No. L-8585, Oct. 23, 1956; 52 O.G. No. 15, 6514 (1956).
110 People v. Floresca, G.R. No. L-8614, May 31, 1956.
111 People v. de Lara, G.R. No. L-8942, Feb. 29, 1956; 53 O.G. No. 1, 141 (1957).
112 G.R. No. L-8931, Oct. 23, 1956; 53 O.G. No. 1, 68 (1957).

charged, he appealed contending that he should only be convicted of simple rebellion. Six justices[113] were of the opinion that:

> "Conceding the absence of a complex crime, still by his plea of guilty, the accused has admitted all the acts described in the five separate counts of the information and that if any such counts constituted an independent crime committed within the jurisdiction of the lower court, as seems to be the case under the facts alleged in count No. 5, then the averment in the information that it was perpertated in furtherance of the rebellion, being a mere conclusion cannot be a bar to the appellant's conviction and punishment for said offense he having failed at the arraingment, to object to the information on the ground of multiplicity of crime charged."

There is a duty on the part of the judges to warn the accuse before accepting a plea of guilty of the effects thereof but if the defendant appears with his counsel at the time of the trial, there is no duty on the part of the judge to warn him before pleading guilty to the seriousness of the charge or advise him to take the witness stand and explain why he should not be responsible for the crime charged. If counsel for the accused at the trial court did not advise his client to take the witness stand to try to explain away his supposed participation; it must have been because he was aware of the principle that all persons who enter into a conspiracy are responsible for the crime committed. This is the pronouncement of the court in the case of *People v. Dacio*[114] in rejecting the argument that the judge failed in his duty to warn the accused.

But even granting that the accused pleaded guilty without the assistance of counsel, because such right to be assisted was expressly waived by him, the plea of guilty will be considered having been made voluntarily and without protest, coupled with the fact that the accused is not ignorant but an intelligent person who has sufficient schooling.[115]

JUDGMENT OR SENTENCE

The Constitution[116] and the Rules of Court[117] prescribe the form of judgment that a court of record should render. In the case of

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[113] Justices Padilla, Montemayor, Bautista Angelo, Labrador, Endencia and Felix. Chief Justice Paras and Justices Bengzon, Alex Reyes, Concepcion and Reyes, J. B. L., believe that the accused should only be sentenced for the lone crime of rebellion.

[114] G.R. No. L-7457, April 25, 1956; 52 O.G. No. 5, 2515 (1956).

[115] People v. Guinto, G.R. No. L-8903, October 23, 1956.

[116] §12, Art. VIII, PHIL. CONST. provides: "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based."

[117] §2, Rule 116, Rules of Court provides: "The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the defendant and upon which the judgment is based. If it is of conviction the judgment or sentence shall state (a) the legal qualification of

People v. Silo,[118] the accused appealed the decision of the trial court convicting him of estafa and prays that the judgment is void for failure to specify, clearly and distinctly the law upon which he was prosecuted and the specific provision of the Revised Penal Code upon which he was sentenced. In answer to this argument the court made the following pronouncement:

> "Estafa is a well-known crime not only to lawyers but also the community in general.... The penalty would also indicate the kind of estafa committed. It was not necessary, therefore, for the court to specify the particular article and paragraph of the Revised Penal Code which have been violated by the appellant. There are cases where the law or legal principle involved is not obvious or clear. It is in those cases that it would be necessary for the court to specify the particular statute or principle violated. On the other hand, where the statute or principle concerned is so clear and obvious, as in the present case, and is readily understood from the facts, the conclusion and the penalty imposed, an express specification of the statute or an exposition of the law is not necessary."

When the trial judge makes an ocular inspection on the premises alleged to have been the place where violation of the law is being committed and questions the defendant therein, this proceeding is valid and legal, as it is a method that is adopted by the judge himself, the form and manner of which he is at liberty to choose in order to enable him to exercise his judgment and discretion to pass on a motion to dismiss filed by both the defendant and the fiscal on the ground that there was substantial compliance with the law. Such was the ruling of the court in the case of *Wong v. Yatco*.[119]

The judgment is promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it. The defendant must be personally present if the conviction is for a grave or less grave offense; if for a light offense, the judgment may be pronounced in the presence of his attorney or representative.[120] In applying this rule in the case of *Dimson v. Elepaño*,[121] the court attributed as error on the part of the lower court by ruling that its judgment had already been promulgated upon receipt by the defendants' counsel of the copy of the judgment. In this case petitioner Dimson was prosecuted and convicted for light threats. Unable to notify the accused for the reading of the sen-

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the offense constituted by the acts committed by the defendant, and the aggravating and mitigating circumstances attending the commission thereof, if there is any; (b) the participation of the defendant in the commission of the offense, whether as principal, accomplices or accessory after the fact; (c) the penalty imposed upon the defendant; and (d) the civil liability or damages caused by the wrongful acts to be recovered from the defendant by the offended party, if there is any."

118 G.R. No. L-7916, May 25, 1956; 53 O.G. No. 1, 121 (1957).

119 G.R. No. L-9525, Aug. 28, 1956; 52 O.G. No. 13, 5829 (1956).

120 §6, Rule 116, Rules of Court.

121 G.R. No. L-9385, Aug. 16, 1956; 52 O.G. No. 13, 5801 (1956).

tence the trial judge ordered the bondsmen to produce the body of the accused. A copy of the judgment was also sent to the attorney of the petitioner Dimson. However, the petitioner, instead of appearing before the court filed through his lawyer an "omnibus motion" asking the dismissal of the case. The motion was denied the court holding that the judgment had already been promulgated when the copy of the decision was received by the defendant's attorneys. According to the court, this pronouncement is erroneous because under section 6 of Rule 116, judgment for light offense as the one at bar is promulgated by reading the sentence in the presence of the defendant or his attorney or representative. It is only in verdicts of acquittal that notice of the decision to the accused is deemed sufficient promulgation.

When is a judgment signed outside of the province deemed filed? This question is answered in the case of *People v. Domalaon.*[122] In this case the defendant was charged for violating Republic Act No. 145. After the case was submitted for decision but before the decision was rendered, Judge Mañalac the then trial judge went on terminal leave of absence but he was authorized by the Secretary of Justice to decide in Manila the cases he tried in Sorsogon. During his leave of absence, he reiterated his intention to retire under Republic Act No. 660, which he filed on March 4, 1954. His retirement application was approved. On June 21, 1954, Judge Tan Torres was appointed to preside over the court left by Judge Mañalac and on July 1, 1954, he accepted the appointment and assumed office on the same day.

In the meantime, under the authority granted by the Secretary of Justice Judge Mañalac drafted his decision in the case; mailed it to the Clerk of Court of Sorsogon on July 1, 1954 which decision was received by the latter on July 3, 1954 and promulgated on the same day. From this decision of conviction, the defendant appealed to the Court of Appeals, the latter holding that the decision was void because Judge Mañalac's term expired on July 1, 1954 upon the qualification of the Judge Tan Torres. This decision of the Court of Appeals was also appealed by the Solicitor General to the Supreme Court. This court upheld the Court of Appeals by reasoning in this manner:

> "According to a specific legal provision[123] the decision signed by Judge Mañalac was to be filed in the court as of the day the same was received

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122 G.R. Nos. L-9111-9113, Aug. 28, 1956; 52 O.G. No. 13, 5825 (1956).

123 §9, Rule 124, Rules of Court, which provides: "Whenever a judge of a Court of First Instance shall hold a session, special or regular, in any province, and shall thereafter leave the province without having decided a case heard at such session, it shall be lawful for him, if the case was duly agreed or an opportunity given for agreement to the parties or their counsel in the

> by the Clerk of Court, namely, as of July 3, 1954. The *receipt*, not the *sending*, constitutes the filing. Now then if in the eyes of the law the decisions were filed on July 3, they could not have been promulgated on July 1. Promulgation takes place after the clerk receives the decision and enters it in the criminal docket.[124] It must be remembered that in courts of first instance, the promulgation of judgments in criminal proceedings does not necessarily coincide with the day they were delivered by the judge to the clerk for promulgation. The accused or his attorney must be notified first and then read in the presence of the defendant and the judge of the court who rendered it."

A decision convicting an accused person can no longer be the subject of modification or appeal once it has become final and a decision in a criminal case becomes final according to section 7, Rule 116, of the Rules of Court after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied.[125]

NEW TRIAL

One of the grounds for granting a new trial in criminal cases is that new and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted, would probably change the judgment.[126] This was invoked in the case of *People v. Mangulabnan, et al.*[127] But the court denied the motion for new trial because the alleged newly discovered evidence did not comply with the following requisites: (1) That the evidence was discovered after the trial; (2) That such evidence could not have been discovered and produced at the trial even if the exercise of reasonable diligence; and (3) That it is material, not merely cumulative, corroborative or impeaching and of such a weight that it would probably change the judgment if admitted.

APPEAL IN CRIMINAL CASES

In order that a judgment may be appealed from it is necessary that it be final in the sense that it completely disposes of the cause so that no further questions affecting the merits remain for adjudication.[128] A motion to withdraw a plea of guilty in order to

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proper province, to prepare and sign his decision anywhere within the Philippines and send the same to the Clerk of Court by registered mail, to be filed in the court as of the day when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the filing of the judgment."

124 Cea v. Cinco, 50 O.G. 5254 (1954).

125 People v. Paet, G.R. No. L-9551, November 26, 1956; 53 O.G. No. 3, 668 (1957).

126 §2(b), Rule 117, Rules of Court.

127 G.R. No. L-8919, Sept. 28, 1956; 52 O.G. No. 15, 6532 (1956).

128 §1, Rule 118, Rules of Court.

substitute it with one of not guilty, and such motion was granted by the trial court, the prosecution cannot appeal such judgment because it was not final and appealable. The order appealed, far from disposing the cause on the merits, reopens the case and grants a new trial on the merits, leaves further proceedings to be done, and is therefore interlocutory and unappealable.[129]

Appeal shall be taken by filing with the court in which the judgment or order was rendered, a notice stating the appeal and by serving a copy thereof upon the adverse party or his attorney.[130] However, the court in *People v. Agasang*,[131] held that substantial compliance with the rule is sufficient.

In this case the defendant was charged and convicted with the crime of damage to property through reckless imprudence. On the day of the promulgation of the sentence, the defendant made known his intention to appeal and at the same time, in open court and in the presence of the provincial fiscal, filed a bond which was approved by the court. Is this a sufficient compliance with the rule? The court said that it is.

> "In cases like the one at bar, when an accused manifests or gives notice of his intention to appeal in open court and files a bond for his provisional release within 15 days from the promulgation of the decision against him, he may be considered as having perfected his appeal notwithstanding his failure to file a written notice of appeal and to serve a copy thereof to the adverse party as required by the Rules of Court...."

An appeal in criminal cases throws the whole case open to review, whether errors of fact are raised in the appeal or not. Especially is this true in capital offense, for the reason that they are automatically transmitted to the appellate court for review, without the need of an appeal by the accused. If the counsel of the accused expresses his conformity with the decision of the trial judge and all he asks is mercy to his client, this fact notwithstanding, does not relieve the Solicitor General from the obligation of setting forth the facts proved and upon which he bases his recommendations. This is the essence of the ruling by the court in the case of *People v. Molijon, et al.*[132]

ATTACHMENT IN CRIMINAL CASE:

As a conclusion to this survey, it may not be amiss to state that under Rule 122-A of the Rules of Court, which is Republic Act No.

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129 People v. Labay, G.R. No. L-8294, June 25, 1956; 52 O.G. No. 7, 3561 (1956).
130 §3, Rule 118, Rules of Court.
131 G.R. No. L-7155, May 14, 1956; 52 O.G. No. 6, 3023 (1956).
132 G.R. No. L-7031, May 14, 1956; 52 O.G. No. 7, 3574 (1956).

240, approved on June 12, 1948, the property of the defendant charged with malversation of public funds may be attached. The fact that the properties of the defendant were disposed of a few days prior to the filing of the complaint under a simulated contract of sale, is a clear showing that that there was an intention to defraud the government which in this case[133] is the offended party.

[133] Malong v. Ofilada, et al., G.R. No. L-7532, May 25, 1956.