SURVEY OF CRMINAL LAW CASES

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Felonies

Motive—The Revised Penal Code defines felonies as those acts nad omissions punishable by law.[1] From this definition, it is clear that motive is never an essential element of a crime.[2] If the crime is proven beyond reasonable doubt and the culprit is identified, conviction necessarily follows even when the reason for its commission is unknown.[3]

The case of *People v. Sespeñe* et al.[4] re-affirms the above principles. In that case, the defendants, five of them, acting ogether, inflicted twelve wounds upon the person of the deceased. The aggression started just as the deceased was about to go up his house. The gruesome killing was committed in the presence of his wife and sister. The record shows that the deceased and his wife owned a store. Prior to the fatal day, the defendants wanted to make purchases, on credit, from the store. This request was refused because they have an outstanding and overdue account with the store. The trial court observed that though "the motive for the murder is trifling and frivolous," there may still be an unknown and "more potent cause that impelled the accused to conspire and plan for the death of Fernando (the deceased)." The Supreme Court affirmed the conviction because: "Whatever be the cause of the killing, it is not absolutely necessary to find a motive therefore. The question of motive is of course very important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt as in the case at bar, . . . it is not so important to know exact reason for the deed."[5]

Duty of the courts in cases of excessive penalties—There are no common law crimes in the Philippines. This stems from the principle that courts of justice in our system of government cannot legislate. They only apply the law in justiciable cases. In criminal cases, they are bound to impose whatever penalty is prescribed by law so long as it is not cruel and inhuman. This they must do regardless of the apparent harshness of the penalty as applied to a particular case. In such a case, the most that a court can do is to recommend executive clemency.

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* Chairman, Student Editorial Board, *Philippine Law Journal*, 1957-1958.
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[1] Revised Penal Code, Art. 3, par. 1.
[2] I PADILLA, REVISED PENAL CODE ANNOTATED, 30 (7th ed. 1957).
[3] United States v. Carlos, 15 Phil. 47, 51 (1910).
[4] G. R. No. L-9346, Oct. 30, 1957.
[5] United States v. McMann, 4 Phil. 561, 563 (1905).

The degree of malice and the injury caused are the factors that should be considered in determining the excessiveness of a penalty as applied to a single case.[6] Thus, in the case of *People v. Lubo* et al.,[7] the appellant was convicted for illegal possession of firearm. For the commission of that crime, he was sentenced to suffer an indeterminate penalty of not less than five years nor more than seven years. The record shows that the appellant possessed the firearm by virtue of a license issued by the municipal mayor. This license was, of course, invalid because the mayor has no authority to license firearms. He used the firearm as guard of a fishpond. While acting as such, he fired at a person within the vicinity of the fishpond. Immediately after the incident, he surrendered himself and the firearm to the authorities. In view of these circumstances, showing the good faith of the appellant, the Court recommended that the penalty be reduced to one year.[8]

Revised Penal Code shall be suppletory to special laws—The rule is that the Revised Penal Code does not apply to offenses punished by special laws. It shall only be supplementary to such laws. The case of *People v. Sanchez*[9] adds another instance where the Code may be given suppletory effect to a special law. The accused was convicted under a regulation issued by the Central Bank pursuant to Section 34 of Republic Act No. 265. The offense he committed consisted of his failure to declare $400.00 in his possession when he arrived in the Philippines. For such an offense he was sentenced to pay a fine of ₱50.00 and to suffer an imprisonment for five days. The trial court ordered that the $400.00 be exchanged at the Central Bank and delivered to the accused. The accused immediately paid the fine and served his sentence. The Government appealed the decision. It is contended for the Government that the court should have ordered the forfeiture of the $400.00 instead of returning it to the accused. This is so, because the $400.00 may be considered as proceeds of or an instrument in committing the offense. Without said money, so the argument runs, there would have been no violation of the law. Forfeiture is therefore proper under Article 45 of the Revised Penal Code. The Supreme Court agreed with these contentions but refused to modify the order of the trial court since it has become final by service of sentence.

Justifying And Exempting Circumstances

Self-defense — "The right of self-defense," according to one court, "is not derived from any statutory enactment but is a God-given right which man had when he was yet a savage and which he did not surrender when he came into society."[10] For this reason, no law may be passed to abridge or withdraw such right. The law merely prescribes rules of caution and prudence which one must

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[6] I PADILLA, *op. cit. supra*, at 67.

[7] G. R. No. L-8293, April 24, 1957.

[8] The Court relied principally on the cases of People v. Estoista, 49 Off. Gaz. 8, 3330 (1953) and People v. Melgar, 52 Off. Gaz. 17, 7238 (1956).

[9] G. R. No. L-9768, June 21, 1957.

[10] Morgan v. Commonwealth, 15 S. W. 2d 273, 275 (1929).

observe when he exercises the right.[11] But these rules must be strictly observed to be entitled to this right. Thus, under our penal laws, for a person to exercise the right of self-defense, he must do so under the concurrence of the following circumstances: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[12] All these, he must prove by clear and convincing evidence.[13]

In the case of *People v. Cabrera*, the plea of self-defense was denied. The denial was based on the fact that the accused was the aggressor himself. The facts of the case show that the accused and the deceased had a heated discussion over the nature of wounds inflicted upon a patient. The discussion ended with the deceased attempting to box the accused but for the timely intervention of cooler heads. Several hours after this incident, the deceased and two other persons were seated on a bench and engaged in conversation. While thus engaged in conversation, one of them saw the accused coming from behind the deceased in the act of stabbing the latter. The deceased tried to defend himself as best as he could but in vain. At that time, he was unarmed. At the trial, defendant tried to prove that the deceased started the aggression. The Court fully agreed with the trial court that it is unbelievable that the unarmed deceased, for all his reputed strength, courage and knowledge in the art of self-defense, would rush head-long into and clash head on with the accused who was wielding a knife. In the ordinary course of events, an unarmed man will not attack initially another who is armed.

There is one silent convincing piece of evidence against the claim of self-defense which lawyers most often overlook—the relative positions and directions of the wounds of the deceased. The plea of self-defense is often denied because it runs counter to the nature and character of the wounds inflicted as testified to by the medical officer who conducted the autopsy.

The case of *People v. Rufin* et al.[15] is an instance where the claim of self-defense was belied by the nature and position of the wounds inflicted. The defendant was found guilty of the murder of one Ibesate. It appears that the deceased sustained a total of 34 wounds. The accused claimed he acted in self-defense. According to him, he came upon Ibesate, a policeman, demanding money at the point of a gun from another person. The intended victim, however, was able to escape. At this juncture, Ibesate turned upon accused and started firing his gun at him. The accused dropped to the ground and at the same time drew his bolo. When Ibesate kept on coming towards him, he boloed him to death. The Court found the accused as the aggressor as shown by the following facts: "(H)e

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[11] I FRANCISCO, THE REVISED PENAL CODE, 195 (2d ed. 1954).

[12] People v. Balasag, 60 Phil. 266 (1934).

[13] *See*, e.g., People v. Berio, 59 Phil. 133 (1933); People v. Ansoyon 75 Phil. 772 (1946) and People v. Bauden, 77 Phil. 105 (1946).

[14] People v. Soliman et al., G. R. No. L-9723, June 28, 1957 and People v. de los Santos, G. R. No. L-9241, June 29, 1957.

[15] G. R. No. L-9845, May 23, 1957.

(Ibesate) had five (5) wounds in each upper extremity, thus showing that he had used both arms to ward off appellant's blows with his bolo, and that he (Ibesate) was, therefore, in the defensive. Furthermore, Ibesate had fourteen (14) wounds in the head, which was mutilated almost beyond recognition, thereby attesting to the fact that the author of said injuries had acted with fury and hatred which can hardly be reconciled with appellant's theory of self-defense, and which dovetail with the warning given by appellant in September, 1953, when he was badly beaten by Ibesate in the presence of other persons. Appellant's pretense is, moreover, refuted by the injuries sustained by Ibesate on the back and by the *horizontal* position of his wounds on the knees, at the middle of the left leg and on the head..., all of which indicate that they must have been inflicted when Ibesate had no reason whatsoever to attack appellant...."

In another case,[16] the Court arrived at the same conclusion reasoning from the position of the wounds. The version of the defendant is that he outdrew the deceased in a face-to-face gun duel. The medical officer who performed the autopsy testified that the bullets entered almost at the back of the deceased. The trajections of all the wounds were downward. Under these facts, the conclusion is inescapable that the deceased was seated and his back was turned towards the accused.

Defense of relative—In the case of *Peaple v. Moro Pisingan*,[17] the accused admitted having killed the deceased. He claimed, however, that he did so to defend the honor of his sister. The incident occurred while defendant and his family were on their way home from their prayers at the mosque. On the road, the deceased suddenly grabbed defendant's sister and started embracing her. In so doing, he tore the dress of the girl. The sister managed to free herself. Having done so, she ran to the nearby bushes. The deceased followed her but before he could catch up with her, the accused hacked him in the neck, downing him. The accused then finished him with two more blows with his bladed weapon.

The Court refused to acquit the defendant. Though it be conceded, the Court observed, that the deceased committed an act of unlawful aggression upon defendant's sister, still no reasonable necessity arose of causing his death, because the sister was already free from his clutches. Besides, after the deceased had fallen, there was no reason for the accused to inflict two additional mortal wounds.

Circumstances Which Mitigate Criminal Liability

No intention to commit so grave a wrong as that committed—The generally accepted rule is that a person incurs criminal liability for a felony though the wrongful act be different from that he intended to commit.[18] To temper the apparrent harshness of this rule, the Penal Code gives him the benefit of a mitigating circum-

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[16] People v. Serna, G. R. No. L-7845, Feb. 27, 1957.
[17] G. R. No. L-8226, Oct. 31, 1957.
[18] Revised Penal Code, Art. 4, par. 1.

stance. This beneficient provision of the Code was appreciated in favor of one of the accused in the case of *People v. Togonon* et al.[19] In that case, the defendants were accused of rebellion. One of the defendants, Coronacion Chiva, claimed, and was believed by the trial court, that she was kidnapped by the Huks. The evidence, however, showed that she subsequently identified herself with the Huk movement by occupying various positions in its organization. Thus, she was officer of the Section Organization Committee. In that capacity she collected supplies from the barrio people for the support of the Huks. Later, she became chairman of the Huk medical corps. As such, she took care of the wounded Huk soldiers. She was also treasurer of the organization. As an officer, she carried a revolver though she did not participate in the raids conducted by the Huks. She also became the common law wife of one of her co-defendants.

Since there is no dispute as to the circumstances under which she became identified with Huks and that she never participated in the raids conducted by them, the Supreme Court ruled that she is entilted to a mitigation of her criminal liability in that she "had no intention to commit so grave a wrong as that committed."

Provocation on the part of the offended party—In the above case of *People v. Moro Pisingan,* the Court denied the plea of defense of the honor of a relative because there was no reasonable necessity for causing the death of the offended party. The Court arrived at this conclusion from the fact that the sister was already free from the clutches of the deceased when defendant hacked him to death. The Court, however, ruled that the attempt on the honor of the sister was a sufficient provocation for the accused to act. Therefore, this circumstance extenuated his criminal liability.

Passion or obfuscation—To be entitled to this mitigating circumstance, one must have committed the crime within a reasonable time after the occurrence of the act giving rise to passion or obfuscation. The lapse of several hours sufficient to give the accused a chance to cool off would bar his claim "of having acted upon an impulse so powerful as naturally to have produced passion or abfuscation."[20] In the case of *People v. Llagas* et al.,[21] the lurid butchery of an entire family and their maid occurred at about 10:00 o'clock in the evening. One of the culprits claimed that he acted under obfuscation. This, he defended, arose from the fact that one of the deceased refused to give him loose change for his 20-peso bill in the afternoon of the same day that the crime was committed. The Court denied the plea. The basis of the denial was the fact that the refusal to change the 20-peso bill "was so far removed in point of time from the criminal act that he may be considered to have had time enough to recover his normal equanimity."

Voluntary confession of guilt—The doctrine in our jurisdiction is that the mitigating circumstance of voluntary confession of guilt can be availed of by the defendant only if made in open court and at

[19] G. R. No. L-8926, June 29, 1957.
[20] People v. Aguinaldo et al., 49 Off. Gaz. 1, 131 (1953).
[21] G. R. No. L-5015-17, May 31, 1957.

the first opportunity.[22] It is too late for the defendant to plead guilty and claim this as a mitigating circumstance after the prosecution had presented its evidence.[23] Furthermore, the plea should be unconditional. It is not available to a defendant who offers to plead guilty to a lessor offense.[24] The case is different, however, if the accused pleads guilty to an amended information charging a lesser offense. In this latter case, the accused is entitled to a reduction of penalty in view of his plea of guilty.[25] This doctrine is explained in the case of *People v. Intal.*[26] In that case, the defendant was charged for the commission of a double murder. The prosecution presented its evidence. After the prosecution rested its case, the defense started calling its witnesses. After presenting three witnesses, the accused manifested to the Court his willingness to plead guilty to the lesser crime of double homicide. The prosecution offered no objection. In fact, the fiscal moved, and was allowed, to amend the information so as to change the crime from double murder to double homicide. Araigned on the new information, the accused voluntarily pleaded guilty.

The Court agreed with the defendant that his voluntary plea of guilty should be considered as an extenuating circumstance. The Court ruled inapplicable to the present case the doctrine of *People v. Noble.* In the case of *Noble,* the Court reasoned, the accused merely made an offer to plead guilty to a lesser offense. In the present case, on the other hand, the accused actually entered a plea of guilty to an information charging a lesser offense.

A mere change of the plea of not guilty to that of guilty does not entitle the accused to a mitigation of the imposable penalty. This is illustrated in the case of *People v. Camo* et al.[27] In that case, the defendants pleaded not guilty to an information charging them with murder. The prosecution then presented its oral and documentary evidence. With the consent of the court, the accused withdrew their former plea of not guilty and pleaded guilty to the charges. On appeal, they contended that their plea of guilty should be considered as a mitigating circumstance. The Court, reiterating, prior rulings,[28] rejected the contention. "For a voluntary confession to mitigate the penalty," the Court ruled, "it is necessary that it be made before the submission of any evidence by the prosecution; otherwise, no mitigation may be claimed."

Circumstances Which Aggravate Criminal Liability

Advantage be taken of public position—In the case of *People v. Dizon* et al.[29] defendant, Dizon, was a municipal mayor. The victim, it

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[22] People v. de la Peña, 66 Phil. 451 (1938).
[23] People v. Co Chang, 60 Phil. 293 (1934).
[24] People v. Noble, 77 Phil. 93 (1946).
[25] People v. Calma, G. R. No. L-7565, June 26, 1955.
[26] G. R. No. L-10585, April 29, 1957.
[27] G. R. No. L-8745, Jan. 11, 1957.
[28] The Court cited the following cases: People v. Sy Chay, 37 Off. Gaz. 3206; People v. Hermino, 36 Of. Gaz. 2216; People v. Bawasanta, 36 Of. Gaz. 2237; People v. Javier y Rivero, 36 Of. Gaz. 2701; People v. Salapare, 69 Phil. 162; People v. Peña, 66 Phil. 451.
[29] G. R. No. L-8336, July 30, 1957.

appears, was the star witness of Dizon's opponent in an electoral protest. This, Dizon resented. He therefore thought of killing said witness. In carrying into execution his plan, Dizon was assisted by his co-defendants who were members of the municipal police force. Under the pretense of arresting him, defendants shot the deceased without mercy. The Court held that as to defendant Dizon, the commission of the crime was attended by the aggravating circumstance of having taken advantage of official position.

Crime committed in the dwelling of the offended party—The crime is aggravated by dwelling where the defendants gained entrance by asking water to drink. Once inside, they robbed the owners of their money and valuables. Not satisfied with their loot, the accused took turns in having carnal knowledge with the mistress of their money and valuables. Not satisfied with their loot, the accused took turns in having carnal knowedge with the mistress of the house.[30]

The crime is also committed in the dwelling of the offended party where the accused fired at the deceased from the outside of his house.[31] This is consistent with a prior ruling that though the aggressor did not go up into nor enter the interior of the house of the deceased yet the fact that he entered the ground of the same and went under the house in order to inflict on the offended party the very severe wound resulting in death, it is obvious that there was present in the commission of the crime the aggravating circumstance that the same was committed in the dwelling of the offended party.[32] The same is true where the victims were dragged from their house and killed in the open fields.[33]

Our Supreme Court, however, expressed doubt as to the applicability of the aggravating circumstance of dweling in a case[34] where the evidence showed that the deceased was attacked *"just as he was about to step on the first rung of the ladder"* of his house. Dwelling was not, thereforse, considered against the accused. It must be remembered that in 1923, the same Court ruled that the foot of the staircase of a house is considered an integral part thereof for the purposes of aggravating the crime as being committed in the dwelling of the offended.[35]

Nighttime—Night time is an aggravating circumstance in a case where the crime of robbery with homicide is committed at about 7:00 o'clock in the evening.[36] Where the commission of the crime is also attended by treachery, the circumstance of nighttime is absorbed in the circumstance of treachery.[37] Aggravating cir-

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[30] People v. Macaram, G. R. L-8438, Aug. 30, 1957.
[31] People v. Umpad, G. R. No. L-9351, May 31, 1957.
[32] United States v. Moro Macarinfas, 40 Phil. 1 (1919).
[33] People v. Mendova *et al.*, G. R. No. L-7030, Jan. 31, 1957.
[34] People v. Sespeñe, G. R. No. L-9346, Oct. 30, 1957.
[35] People v. Alcala, 46 Phil. 740, 744 (1922). In this case, the Court cited a decision of the Supreme Court of Spain on Jan. 8, 1884.
[36] People v. Arpon *et al.*, G. R. No. L-9044, Jan. 29, 1957 and People v. Cayeta *et al.*, G. R. No. L-5929, July 31, 1957.
[37] People v. Umpad, *supra*, note 31.

cumstances such as superior strength, aid of armed men, as well as night time are included in treachery.[38]

Uninhabited place—To be considered as an aggravating circumstance, the defendants must purposely choose the uninhabited place as an aid either to an easy and uninterrupted accomplishment of their criminal designs or to a surer concealment of the offense.[39] In the case of *People v. Mendova* et al,[40] the owner of the house robbed went to a neighboring town leaving his two young daughters behind. The nearest neighboring house was 400 meters distant and hidden by coconut groves. Under these circumstances, defendants forcibly ransacked his house. Having taken all that they wanted, defendants brought the girls to a rice field which is more than a kilometer away. There, the girls were boloed to death. The Court ruled that the felony was aggravated by *despoblado.*

Aid of armed men—The defendants in the *Dizon* case were armed with revolvers, a Thompson and a machine gun when they murdered the deceased. This circumstance conclusively shows that the crime was "committed with the aid of armed men."[41] In another case,[42] five men acting under a prearranged plan, surruounded the unarmed deceased and stabbed him to death. The crime was aggravated by the fact that it was committed with the aid of armed men.

Evident premeditation—The law requires the premeditation to be evident in order to be considered an aggravating circumstance. This fact must therefore be shown by direct evidence. It is not sufficient that it be suspected. The evidence must show that the accused meditated and reflected on his purpose to commit the crime.[43] In that case of *People v. Mendova* et al., the defendants were tried for the crime of robbery with double murder. The crime was committed while the owners of the house were in another town. The only inmates left were the two daughters. After robbing the house, defendants dragged the girls to a rice field. At that place, the girls were mercilessly boloed to death. The trial court ruled that evident premeditation qualified the offense because " the crime was carefully planned, the offenders having previously prepared the means they considered adequate."

The Supreme Court disagreed with this conclusion. It pointed out that "it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious acts evincing determination to commit the crime. It is not 'premeditation' merely; it is 'evident' premeditation."

It is further required that for "evident premeditation" to exist, "there must have been a period of time sufficient in a judicial sense to afford full opportunity for meditation and reflection, and sufficient to allow the conscience of the actor to overcome the resolu-

[38] People v. Sespeñe, *supra,* note 33.
[39] People v. Luneta *et al.,* 79 Phil. 815 (1948).
[40] G. R. No. L-7030, Jan. 31, 1957.
[41] People v. Dizon *et al., supra,* note 29.
[42] People v. Sespeñe *et al., supra,* note 34.
[43] People v. Uturriaga, 47 Of. Gaz. 12 Supp. 166 (1951).

tion of his will if he desires to hearken to its warnings."[44] In the case of *People v. Upao Moro*,[45] no such period was shown by the evidence. Prior to the commission of the crime, the defendant drove a jeep that narrowly missed the deceased who was innocently looking at some posters. Though he was at fault, the defendant blamed the deceased for being on the way of the jeep. This irked the deceased. A free-for-all would have immediately ensued among the respective followers of the protoganists but for the timely intervention of a peace officer. A few days after this incident, defendant publicly avowed that he would come to town to kill the deceased. True to his warning, defendant in the company of an armed group, shot to death his enemy.

From these circumstances, conspiracy, according to the Court, can be reasonably inferred. But this fact alone does not justify a finding that the crime was committed with evident premeditation. "While conspiracy is merely inferred from the acts of the accursed in the perpetration of the crime, and there is no direct proof of how the crime hatched, or of the time that elapsed before it was carried out, it cannot be concluded that the accused had 'sufficient time between its inception and its fulfillment dispassionately to consider and accept the consequences'... It is the rule that mere threats to kill, without evidence of sufficient time for meditation and reflection, do not justify the finding of evident premeditation..." In the above case of *People v. Mendova* et al., the Court also observed that no sufficient period of time have elapsed between the outward act of evincing intent and the actual commission of the offense. Therefore, where the fight between the accused and the deceased was unexpected, evident premeditation is out of qustion.[46]

Disguise—In the case of *People v. Cayeta* et al,[47] the defendants had their faces covered with handkerchieves. They were identified, however, by their voices, bearing and general appearance. Besides, the woman they ravished testified that during the sexual act, the handkerchieves covering their faces slipped. The act of covering their faces constituted disguise.

Advantage be taken of superior strength or means employed to weaken the defense—The rule is that mere superiority of numbers is not sufficient to show that the accused took advantage of their superior strength. This fact must be considered in the light of other attending circumstances.[48] In the case of *People v. Mendova et al.*,[49] there were three defendants. All were armed with bolos. After robbing their victim's house, they dragged two little girls in the open fields. They killed both of them. At the time of the commission of the crime, the girls were aged fourteen and seven. These facts show that the defendants abused their superior strength—two little girls against three armed men.

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[44] United States v. Gil, 13 Phil. 530, 547 (1907).
[45] G. R. No. L-6771, May 28, 1957.
[46] People v. Vente, *et al.*, G. R. No. L-8344, Feb. 28, 1957.
[47] G. R. No. L-5929, July 21, 1957.
[48] United States v. Develа *et al.*, 3 Phil. 625 (1904).
[49] *Supra*, note 33.

In *People v. Siaotong et al.*,[50] one of the accused accosted the deceased and asked him why he informed the former's father that he was going to beat him. While they were thus talking, the other three defendants surrounded the deceased. As pre-arranged, one of the accused threw sand into the face of the deceased. Before the deceased could wipe his face, the accused started stabbing him. They continued doing so even after the deceased had fallen. The Court ruled that "the crime committed is murder qualified by treachery, the defendants having killed the deceased, taking advantage of their superiority in number and employing means to weaken his defense by throwing sand into his face."

Treachevy—There is treachery where the accused shot the deceased while his back was turned towards him. This is especially true where the deceased was unaware that an aggression was about to be committed upon his person.[51] There is also treachery where the murderers tied both hands of their victim at his back. Two of the killers held the deceased on his shoulders, while the third took a pick and with it hit him on the head.[52]

Treachery was ruled out in the case of *People v. Vente* et al.[53] Appellant, it appears, was urinating just under a bridge. Before he could finish answering "the minor call of nature," he heard a stone rolling on the bridge. Appellant decided to investigate who threw the stone. Upon doing so, he encountered the deceased and his companion. A fight immediately ensued resulting in the mortal wounding of the deceased. There can be no treachery in this case, the Supreme Court ruled, because the fight was unexpected and not premeditated. Neither can it be presumed previous intent on the part of the appellant to assault the deceased from the mere fact that the latter alienated the love of the former's girl friend.

Treachery includes some of the separately enumerated aggravating circumstances. Thus, it includes the aggravating circumstances of superior strength[54] and aid of armed men [55] as well as night time.[56] The aggravating circumstance of having employed means to weaken the defense is also absorbed in treachery.[57] The above enumerated circumstances cannot be appreciated separately when they concur with treachery. They will be considerd as one aggravating or qualifying circumstance, as the case may be, with treachery.[58]

Ignominy—The case of *People v. Macaram* et al[59] reiterates an earlier doctrine that raping the wife in the presence of her husband constitutes ignominy.[60] In that case, defendants tied the husband to a post of the house. In his very presence, one of the

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[50] G. R. No. L-9242, March 29, 1957.
[51] People v. Quidlat, G. R. No. L-11318, Dec. 28, 1957.
[52] People v. Cabrito, G. R. No. L-10404, July 25, 1957.
[53] G. R. No. L-8344, Feb. 28, 1957.
[54] People v. Mendova *et al., supra,* note 33.
[55] People v. Dizon *et al., supra,* note 29.
[56] People v. Umpad, *supra,* note 31.
[57] People v. Siaotong *et al., supra* note, 50.
[58] People v. Sespeñe *et al., supra,* note 34.
[59] G. R. No. L-8438, Aug. 30, 1957.
[60] United States v. Iglesia *et al.,* 21 Phil. 55 (1911).

defendants had carnal knowledge with the wife, while the others held her by the legs and arms. This was repeated until all the defendants had satisfied their lustful desires.

Trespass to dwelling—In the case of *People v. Arpon* et al.,[61] defendant accompanied by two persons, forced open the kitchen door then closed from the inside by a broken table. Once inside, defendant killed the master of the house. Immediately thereafter, defendant and his companions looted the house. This all happened at around 7:00 o'clock in the evening. The Supreme Court ruled that the defendant is guilty of the crime of robbery with homicide with the aggravating circumstances of *trespass to dwelling* and nighttime.

The writer has searched in vain for a specific provision in the Revised Penal Code to the effect that trespass to dwelling is an aggravating circumstance. What is provided for in Article 14, paragraph 18 is unlawful entry. "There is an unlawful entry," the Code provides, "when an entrance is effected by a way not intended for the purpose." From this definition, it is clear that the Supreme Court did not have this provision in mind when it appreciated in the present case the aggravating circumstance of trespass to dwelling. There is no question that the defendants entered through the door of the house, though they forced their way in. It is also significant to note that the aggravating circumstance of unlawful entry is one of the ways of committing robbery thru force upon things.[62] Robbery is also committed by breaking a door.[63] From whatever angle the facts of the present case is viewed, the fact that defendants forced open a door then closed from the inside by a broken table should only be taken as qualifying the looting of the house to robbery.

Perhaps, what the Supreme Court really meant by *trespass to dwelling* is the aggravating circumstance of dwelling. This is based upon the consideration that the looting in this case was qualified into robbery with homicide by the circumstance that violence against person was employed by the culprits. They shot to death the owner of the house. Dwelling is not an essential element of the crime of robbery with homicide. Such being the case, the fact that the defendants killed a man in his own home without any provocation on his part should aggravate their criminal liability.

Alternative Circumstances

Relationship—In the above case of *People v. Mendoza* et al., the defendants were found guilty of the crime of robbery with double murder. One of the accused was the maternal uncle of the unfortunate girls. In other words, he is the brother-in-law of their father. In this case, the Court held that the relationship aggravated the criminal liability of the brother-in-law.

Degree of instruction—The defendant who invokes this alternative circumstance as a mitigating circumstance must prove his

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[61] G. R. No. L-9044, Jan. 29, 1957.
[62] Revised Penal Code, Art. 299, par. 2(a), subsec. 1.
[63] *Ibid*, subsec. 2.

degree of instruction. Lack of instruction cannot be taken into account where the record affords no basis on which to judge the degree of education of the defendant. [64] In a case,[65] the record shows that the defendant is a city resident. He knows how to sign his name. These facts, the Court held, negative his right to the mitigating circumstance of lack of sufficient instruction.

The mitigating circumstance of lack of education does not apply to crimes of theft or robbery.[66] Therefore, the conviction of the defendants of the crime of robbery with double murder bars their claim to this mitigating circumstance.[67]

Persons Criminally Liable For Felonies

Principals—The expression "those who take a direct part in the commission of the deed," seems to imply the necessity of ascertaining and finding the specific criminal acts of the accused. No difficulty is encountered if there is only one defendant. The problem comes in where there are two or more defendants. In murder, for instance, it would be difficult if not impossible, to ascertain the specific acts of aggression committed by each of them. To remedy this difficulty, we have the doctrine of conspiracy. Once conspiracy is proven, it is immaterial who inflicted the fatal injury. Each is liable for the act of his companion.[68]

Conspiracy presupposes unity of purpose and action.[69] From its very nature, therefore, conspiracy is seldom proven by direct evidence. In most cases, it is inferred and proven by the acts of the accused themselves. In the case of *People v. Upao Moro*,[70] the deceased and his companions were looking at some posters. A jeep driven by defendant nearly bumped the deceased. Defendant got mad at the bystanders and this irked the deceased since the former was at fault. A fight would have ensued but for the intervention of a policeman. A few days after this incident, defendant made a threat to come to town and kill the deceased. On the fateful day, defendant was seen among an armed group that proceeded to the house of the deceased. Upon reaching th house, somebody from the group fired at the deceased.

On appeal, defendant contended that there was no proof that it was he who fired the fatal shot. In rejecting this argument, the Court pointed out that conspiracy may be inferred from the acts of the accused themselves when said acts point to a joint purpose and design, like their simultaneous firing at the same victim and their common escape thereafter. And where conspiracy exists, all the conspirators are jointly liable for the result of their concerted action, it being immaterial who discharged the fatal bullet. In the present case, conspiracy was proven.

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[64] People v. Llagas, G. R. Nos. L-5015-17, May 31, 1957.
[65] People v. Cabrito, *supra*, note 45.
[66] United States v. Pascual, 9 Phil. 491 (1908); People v. Melendres, 59 Phil. 154 (1933) and People v. de la Cruz *et al.*, 77 Phil. 444 (1946).
[67] People v. Mendova *et al.*, *supra*, note 33.
[68] People v. Robenta *et al.*, G. R. No. L-9491, Sept. 18, 1957.
[69] People v. Ibañez, 77 Phil. 664 (1946).
[70] G. R. No. L-6771, May 28, 1957.

The finding that conspiracy existed in the commission of the crime is supported by the following facts: The fact that the defendants harbored grudges against the offended party; that they entered his house together and that they simultaneously hacked to death his defenseless daughters.[71] Defendant is also guilty as a principal because, aside from actually taking part in the killing, he would appear to be in conspiracy and acting in concert with his co-accused for the accomplishment of a common purpose, for together they stoned the house of the deceased, together they attacked him, and later in the evening he threatened the decased's brother when the latter made inquiries as to the fatal incident.[72]

Classification of Penalties

Fines—(See discussion on prescription)

Application of Penalties

Complex crimes—In the case of *People v. Togonon* et al.,[73] the Supreme Court reiterated its rulings in the cases of *People v. Hernandez* et al.[74] and *People v. Geronimo* et al.[75] In that case, the defendants were accused of "the crime of rebellion with multiple murder, arson, kidnapping, rape, robbery and physical injuries." After due trial, the judge found as a fact that Togonon, one of the defendants, joined the Huks and participated in their activities. As such member, Togonon beheaded the Dolinog brothers for having denounced the Huks to the Philippine Constabulary. Being of the opinion that the crime of rebellion cannot be complexed with murder, the trial court convicted Togonon of two separate offenses, namely, simple rebellion and double murder.

The Supreme Court modified the decision of the lower court. It affirmed only the conviction of Togonon for rebellion. His conviction for double murder was annulled and set aside. The Court also rejected the recommendation of the Solicitor General that Togonon be convicted of the complex crime of rebellion with robbery and double murder. "While there appears to be clear proof that it was this accused who beheaded the Dolinog brothers," the Court reasoned out, "there is no denying the fact that the act was perpetrated in furtherance of the rebellion..." Having been committde in furthrance of the rebellion, the crimes of murder and robbery become absorbed in the crime of rebellion. As such, they cannot be regarded and penalized as distinct crimes in themselves. The disseting justices in the cases of *Hernandez* and *Geronimo* also dissented in the present case.

The case of *People v. Villaroya* et al.[76] presents the problem whether or not murder may be complexed with arson. One of the defendants, according to an agreed plan, shot one Felix Refugio in his house. The others went up the house and one of them

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[71] People v. Mendova *et al., supra,* note 33.
[72] People v. Slaboro *et al.,* G. R. No. L-11087, May 29, 1957.
[73] G. R. No. L-8926, June 29, 1957.
[74] G. R. No. L-6025, July 18, 1956.
[75] G. R. No. L-8936, Oct. 23, 1956.

stabbed the wife twice on the chest with a hunting knife. Felix, who was still alive, was brought downstairs. The defendants then proceeded to burn the house together with the wounded wife. The post-mortem examinaiton showed that the wife died of universal burn with secondary shock.

The Supreme Court modified the finding of the lower court that the defendants are guilty of the complex crime of murder with arson of the wife. They were held responsible only for simple murder. The Court relied principally upon the medical report to the effect that the wife died of "universal burn with secondary shock." The Court accepted this as the cause of death because of the absence of proof showing that the wife died of the stab wounds inflicted upon her. Arson was, therefore, the means employed to kill her. Under Article 248, arson qualifies the killing to murder. As a qualifying circumstance in the present case, arson can not be taken into account at the same time to form the complex crime of murder with arson.

In this connection, it should be remembered that where the defendant sets fire to the house after killing his victim, the Supreme Court held him guilty of two distinct crimes of homicide and arson. This is so, because the homicide was not a necessary means to commit arson, or vice versa.[77]

In the case of *People v. De Leon*,[78] defendant entered a yard of a house where he found two fighting cocks belonging to different persons. He stole these cocks. The Court found him guilty of only one crime. "The act of taking the roosters," the Court ruled, "in the same place and on the same occasion cannot give rise to two crimes having an independent existence of their own, because there are not two distinct appropriations nor two intentions that characterize two separate crimes." The same doctrine was invoked by the defendants in the recent case of *People v. Enguero* et al.[79] In that case, defendants looted a store. After taking away cash, jewelry and personal effects, they proceeded to a nearby house where they took cash and personal belongings. Not contented with their loot, they proceeded to a third house which they also robbed. The trial court convicted them of three separate crimes of robbery in band. On appeal, they argued that they are guilty of only one crime. The Court held inapplicable the *De Leon* doctrine to the present case. The ruling was based upon the difference in the factual situation in the two cases. In the present case, after robbing the store, they went to another house where they committed the second and after committing it they proceeded to another where they committed the third. Obviously, the two cases involved two different sets of circumstances.

Penalty to impose upon accessories in a consummated felony— In the case of *People v. Llagas* et al., the principals were found guilty of robbery with multiple homicide. Appellants, Pedro and Pascual Bucol, were found guilty as accessories after the fact. No

[77] People v. Bersabal, 48 Phil. 439 (1925).
[78] 49 Phil. 437 (1926).
[79] G. R. Nos. L-8922-24.

circumstance was proved to extenuate or aggravate their liability. The lower court sentenced the two to suffer an indeterminate penalty of from 4 years, 2 months and 1 day of *prision correccional,* as minimum, to 10 years and 1 day of *prision mayor,* as maximum. The Supreme Court held the latter penalty erroneous. The penalty provided by law to be imposed upon accessories to the commission of a consummated felony is two degrees lower than that prescribed for the consummated felony. In the present case, that penalty is *prision mayor.* Since no mitigating or aggravating circumstance was proven, the imposable penalty is the medium period of *prision mayor.* The maximum of the penalty imposed by the trial court therefore exceeds by one day that prescribed by law.

Application of penalties which contain three periods—In that case of *People v. Moro Pisingan,* the lower court sentenced the defendant to life imprisonment for the crime of murder. In that case, the defendant killed the deceased immediately after the latter attempted on the honor of the former's sister. The Supreme Court found two mitigating circumstances in his favor. No aggravating circumstance attended the commisison of the crime. Such being the case, the penalty should be the one next lower to that attached to murder. Murder is punishable by a penalty of *reclusion temporal* in its maximum period to death.[80] The imposable penalty in the present case is therefore *prision mayor* in its maximum period to *reclusion temporal* in its medium period. The trial court erred in imposing life imprisonment and the sentence was accordingly modified.

The Indeterminate Sentence Law—In the application of the provisions of the Indeterminate Sentence Law, the determination of the minimum term has caused a lot of confusion. The law provides that "the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense." What is the penalty "prescribed by the Code"? Is it the penalty provided by the Code without regard to the circumstances of each individual case? Or, is it the penalty that should be imposed in view of the circumstances that attended the commission of the crime? Thus, in a complex crime, the Code provides that the penalty should be imposed in its maximum period. The Supreme Court in the case of *People v. Gonzalez*[81] has come out with a definite interpretation. In that case, the Court ruled that the penalty next lower in degree should be determined before imposing it in its proper period. In other words, the degree must first be determined before applying the proper period.[82]

The Court reiterated the above interpretation in the case of *People v. Intal.*[83] Defendant, in this case, was charged of double murder. Before the defense could complete its evidence, defendant moved that he be allowed to plead guilty to the lower offense of doubel homicide. The court allowed the defendant to plead guilty to an amended information charging the crime of double homicide.

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[80] Revised Penal Code, Art. 248.
[81] People v. Gonzalez, 73 Phil. 549 (1942).
[82] *See.* People v. Roque *et al.,* G. R. No. L-9388, June 29, 1957.
[83] G. R. No. L-10585, April 29, 1957.

He was also allowed to prove the mitigating circumstance of physical infirmity. The trial court sentenced the defendant to suffer the indeterminate penalty of from 10 years and 1 day of *prision mayor,* as minimum, to 17 years, 4 months and 1 day of *reclusion temporal,* as maximum.

On appeal, the prison term was modified. The Court found two mitigating circumstances in favor of the defendant: voluntary plea of guilty and physical infirmity. The penalty for homicide is *reclusion temporal.* There being two mitigating circumstances with no aggravating circumstance to offset them, the penalty imposable should be one degree lower than that prescribed by law, or *prision mayor.* This whole penalty should be the starting point for determining the penalty next lower which shall be the range of the minimum term, or *prision correccional.* The next step is to determine the maximum term, considering the attending circumstances of the case. Defendant is charged of the complex crime of homicide. So, the range of the maximum term is *prision mayor* maximum. In view of the above considerations, the Court sentenced the defendant to suffer the indeterinate penalty of from 4 years, 9 months and 11 days of *prision correccional,* as minimum, to 10 years, 8 months and 1 day of *prision mayor,* as maximum.

In the case of *People v. Cruz,*[84] the defendant was charged with the crime of estafa. According to the information, she misappropriated the sum of ₱380.00. Before the prosecution could complete its evidence, defendant changed her plea of not guilty to that of guilty. Having pleaded guilty, the trial court sentenced her to 5 months of *arresto mayor.* On appeal, counsel *de oficio* moved for the affirmation of the sentence. The Solicitor General disagreed, arguing that the sentence imposed is not in accordance with the Indeterminate Sentence Law.

The Supreme Court agreed with the Solicitor General. The penalty prescribed for the offense charged in the information is *aresto mayor* in its maximum period to *prision correccional* in its minimum period.[85] The penalty ranges from 4 months and 1 day to 2 years and 4 months. Each period has, therefore, a duration of 8 months. As the offense was committed without any aggravating or mitigating circumstance, the appellant should have been given a penalty of from 1 year and 1 day to 1 year and 8 months of *prision correccional,* as maximum and from 1 months and 1 day to 4 months of *arresto mayor* as minimum. The judgment was modified to the effect that the defendant was given a prison term of from 3 months of *arresto mayor* to 1 year and 1 day of *prision correccional.*

Successive service of sentences—The Supreme Court interpreted the application of the three-fold rule in the case of *People v. Escares.*[86] Six separate informations for robbery were filed against defendant. Upon arraignment, he pleaded not guilty in each of the six cases. When these cases were called for trial, the accused asked permission

[84] G. R. No. L-7928, Nov. 29, 1957.
[85] Revised Penal Code, Art. 315, par. 1(3).
[86] G. R. Nos. L-11128-33, Dec. 23, 1957.

to withdraw his former plea of not guilty. The motion was allowed and the defendant pleaded accordingly. The trial court, therefore, sentenced the accused to suffer the penalty of 12 years, 6 months and 1 day in all the six cases. The court computed this penalty by using the three-fold rule provided for in paragraph 4 of Article 70 of the Revised Penal Code. In this respect, the trial court erred. According to the Supreme Court, Article 70 can only be taken into account, *not in the imposition of the penalty, but in connection with the service of the sentence imposed.* (Emphasis supplied.)

It should be noted that the imposable penalty in each of the six cases where appellant pleaded guilty in accordance with paragraph 5, Article 294 of the Revised Penal Code is *prision correccional* in its maximum period to *prision mayor* in its medium period. This penalty should be imposed in its minimum period in view of the plea of guilty not offset by any aggravating circumstance, or from 4 years, 2 months and 1 day to 6 years. Applying the Indeterminate Sentence Law, the appellant should be sentenced for *each crime* with an indeterminate penalty the minimum of which shall not be less than 4 months and 1 day of *arresto mayor* nor more than 4 years, 2 months and 1 day nor more than 6 years of *prision correccional.* Defendant was, therefore, sentenced to suffer in each of the six cases an indeterminate penalty of not less than 4 months and 1 day of *arresto mayor* and not more than 4 years, 2 months and 1 day of *prision correccional.*

Extinction of Criminal Liability

Prescription of crimes—The prescriptive period for the prosecution of a crime depends upon the severity of the penalty provided by law for the commission of the offense. There are instances where the law provides an alternative penalty. The usual provision is imprisonment or a fine, or both. In cases where the alternative penalties are of different severity, the question arises as to which of the two penalties should be used as a basis for computing the prescriptive period. Our Supreme Court resolved this problem in the case of *People v. Basalo.*[87] Defendant was charged with having sold the palay he had mortgaged without the written consent of the mortgagee. For the commission of this offense, Article 319 imposes an imprisonment of *arresto mayor* or a fine amounting to twice the value of the property. The mortgage in the present case was executed on July 14, 1947 to secure a loan that had a maturity of ten months. The information was filed only on June 5, 1953. The defense raised the question of prescription since the prosecution of crimes punishable by *arresto mayor* prescribes in five years. One of the arguments of the prosecution against the defense of prescription is that the alternative penalty of a fine should be made the basis for determining the period of prescription. In that case, the crime prescribes in 10 years. The trial court resolved this contention by holding that the fine should be reduced into a prison term. Since under Article 39, No. 2, the prison term cannot exceed 6 months, the period of prescription of a fine is still five years. The case was therefore dismissed.

[87] G. R. No. L-9892, April 15, 1957.

The Supreme Court reversed the order of the trial court. The Court admitted that the offense under Article 319 in so far as it is penalized with *arresto mayor* prescribes in five years. "At the same time," Justice Montemayor observes, "the fine equivalent to double the amount of the property involved, may also be imposed as a penalty, and *when said imposable penalty is either correctional or afflictive, it should be made the basis for determining the period of prescription.*" (Italics supplied.) To determine whether a fine is an afflictive or a correctional or a light penalty, such fine should not be reduced or converted into a prison term. The proper procedure is to determine the severity of the fine under Article 26 of the Revised Penal Code. The value of the property mortgaged in this case is ₱320.00. Double that amount would be ₱640.00. Under Article 26: "A fine, whether imposed as a single or as an alternative penalty, shall be considered . . . a correctional penalty, if it does not exceed 6,000.00 pesos but is not less than 200 pesos;. . ." Since under Article 90, paragraph 3, crimes punishable by a correctional penalty prescribe in ten years, the information in this case was filed within the prescriptive period.

To arrive at the correct prescriptive period in the above case, the Court considered the fine under the provisions of Article 26. In the case of *People v. Canson,*[88] the Court applied Article 9 which defines the different degrees of felonies. It is interesting to note that under Article 26, a fine is "a light penalty, if it be less than 200 pesos;" whereas Article 9 defines a light felony as "those infractions of law for the commission of which the penalty of . . . a fine not exceeding 200 pesos . . . is provided." There is a *real* conflict between these two articles. In the earlier cases of *People v. Aquino,* et al.[89] and *People v. Yu Hai,*[90] this conflict was noted by Supreme Court. In those cases, the Court ruled that Article 9 should prevail. Under this ruling, the crime of gambling, which is punishable by a penalty of *arresto menor* or a fine not exceeding two hundred pesos, prescribes in two months. The Court reiterated these holdings in the present case of *Canson.*

Crimes Against National Security

Adherence in treason—In the case of *People v. Yanson,*[91] defendant was formerly a guerrilla prisoner. To test his loyalty to the resistance movement, the unit commander sent him away to secure foodstuffs for his unit. Taking advantage of this opportunity, defendant went directly to the head of the Kempei Tai in Bacolod and reported the activities of the guerrillas. Unknown to the defendant, however, was the fact that his movements were being watched by a planted guerrilla operative. This operative testified in court that after defendant had divulged vital information to the enemy, he became the head of the "special service department," a sort of intelligence section of the Japanese Kempei Tai. This section gathered information relative to persons connected with the resistance movement. A former Japanese prisoner testified that

[89] G. R. Nos. L-9347-50, Aug. 31, 1956.
[90] G. R. No. L-9598, Aug. 15, 1956.
[91] G. R. No. L-9535, March 29, 1957.

from his own observation and what the defendant himself told the witness, he, the defendant, acted not only as interpreter of the Kempei Tai head but at times as investigator of persons brought to the Japanese Garrison. As an investigator, defendant advised suspected persons to tell the truth that they were members of the guerrilla and if said persons could not answer him the way he expected, he took part in the punishment administered by the Japanese. Two other witnesses testified to the same effect, having received the same treatment from the defendant when they were apprehended by the Japanese. On appeal, the Supreme Court observed "that each of said witnesses testified to different acts committed against different persons and at different times but they were of the same nature and were committed in the same place." Bearing in mind the settled interpretation of the two-witness rule that "every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of the witnesses,"[92] the facts testified to cannot be used as proof of the aid and comfort given the enemy. "They, however, constitute strong evidence of his adherence to the enemy which is not governed by the two-witness rule."

Aid and comfort in treason—Defendant, in the case of *People v. Pardales*,[93] was the detachment commander of the constabulary unit stationed at Ubay, Bohol. On the evening of August 24, 1944, he led a patrol that arrested three residents of the town, namely: Zosimo Buecillo, Juanito Racaza and Filemon Icong. The arrest of Zosimo Buecillo was witnessed by his wife and his father. Juanito Racaza was arrested in the presence of his wife and another person who was staying with the couple at the time of the arrest. All these witnesses testified in court. The wife of Filemon Icong, aside from testifying to the arrest of her husband, stated in open court that she saw defendant killing her husband with a sword and that the other prisoners were beheaded by the Japanese soldiers. This witness was corroborated by the mayor of the town, who actually saw the butchery. In affirming his conviction, the Court said that "the evidence clearly shows that appellant, being a Filipino, not only joined the Japanese-sponsored constabulary but that as detachment commander of its unit in Ubay, Bohol, he took an active part in helping the enemy in its campaign against the guerrillas by actually leading their patrol which resulted in the capture of the three victims and their subsequent liquidation by their captors. These acts show not only adherence to the enemy but aid and comfort to him which constitutes the crime of treason."

Guiding a Japanese raiding party to the place where the guerrilla headquarters was located is an act of aid and comfort to the enemy.[94] The evidence in this case shows that defendant acted not merely as an interpreter of the Japanese but actually participated in the raid. At the time of the raid, he was wearing the uniform of a Japanese soldier and carried a revolver.

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[92] People v. Adriano, 78 Phil. 561.
[93] G. R. No. L-5611, May 21, 1957.
[94] People v. Yamson, *supra*, note 82.

Crimes Against the Fundamental Laws of the State

Delay in the delivery of detained persons to the proper judicial authorities—The Rules of Court authorizes peace officers to arrest persons without a warrant of arrest under certain circumstances.[95] For instance, a peace officer may detain a person who has committed a crime in the presence of such peace officer. But the peace officer must deliver the detained person to the proper judicial authority within six, nine or eighteen hours, depending upon the gravity of the felony committed. His failure to do so would subject him to criminal prosecution. The commission of this crime, however, does not affect the rights of the person detained. If he is presently detained under a valid court order, he cannot ask for his release simply because at some previous time he was detained beyond the period prescribed by law.[96] The Supreme Court re-affirmed this doctrine in the recent case of *People v. Mabong*.[97] On May 20, 1955 defendant went berserk. He was in the act of stabbing one of his victims when he was seen by a policeman. This policeman immediately arrested him and brought him to the chief of police. On May 23, 1955, the chief of police filed two complaints before the justice of the peace court. Defendant pleaded guilty to the charges, so the cases were forwarded to the Court of First Instance. In due time, the fiscal filed the corresponding informations. Upon arraignment, defendant moved to quash the information and filed a petition for *habeas corpus* on the ground that upon the expiration of eighteen hours, his detention became illegal, the subsequent filing of the complaints not having the effect of validating his detention. His motions being denied, he appealed to the Supreme Court.

The Court denied the relief sought by the defendant. It is true, the Court said, that the accused was detained in the municipal jail for more than three days before charges were preferred against him. Furthermore, since his detention no wararnt of arrest has been issued by the court as a result of said charges. However, the absence of such warrant can have no legal consequences it appearing that when the charges were filed he was already under the custody of the local authorities. Justice Bautista Angelo then said:

> **"The law indeed provides that a public officer or employee who shall detain any person for some legal ground and shall fail to deliver him to the proper judicial authorities within the period of eighteen (18) hours if the crime for which he is detained and for which he has been properly indicted, becomes invalid or nugatory. While a public officer who thus detains a person beyond the legal period may be held criminally liable, the proceeding taken against him for the act he has committed remains unaffected for the two acts are distinct and separte. As a matter of fact, such an act on the part of the public officer is not considered as one of the grounds on whihc one can predicate a motion to quash the complaint or information under Rule 113, section 2, of the Rules of Court.**

Crimes Against Public Order

Crimes committed as a means to or in furtherance of rebellion

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[95] Rules of Court, Rule 109, section 6.
[96] Gunabe et al., v. Director of Prisons, 77 Phil. 993 (1947).
[97] G. R. Nos. L-9805-06, March 29, 1957.

—The doctrine in the *Hernandez*[98] and *Geronimo*[99] cases is that the commission of any or all of the acts described in Article 135 when committed as a *means* to or in *furtherance* of the subversive ends described in Article 134 become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves. In line with these decisions, the Supreme Court acquitted the defendant in that case of *People v. Togonon* et al.[100] of his conviction for murder. In that case, the information charged the defendants with the crime of rebellion complexed with murder, rape and robbery. At the trial, it was established that defendant Togonon beheaded the Dolinog brothers. These brothers, it appears, denounced the Huks to the local constabulary with the result that the Huks were ambushed by the constabulary. In retaliation, they were both liquidated. The trial court convicted Togonon of the separate crimes of rebellion and murder. The conviction for murder, the Court held, cannot be affirmed. This is so, because there is no denying the fact that the act was perpetrated in *furtherance* of the rebellion.

In the case of *People v. Yuzon,*[101] defendant was charged before the Tarlac Court of First Instance with the crime of rebellion with murder, robbery, arson and kidnapping. Upon proper motion, he was allowed to plead guilty to the lesser crime of simple rebellion and was accordingly sentenced. Subsequently, he was charged before the Court of First Intsance of Pampanga with the complex crime of kidnapping with murder. The information recited that defendant and his co-accused, "being known members of the Huk organization", are charged with killing "one Francisco Pineda as a suspected government spy." Defendant pleaded double jeopardy and the trial court sustained him. On appeal by the Government, the Supreme Court held premature the dismissal of the information because there was no evidence before the trial court showing that the killing charged in the present information was done in furtherance of the rebellion movement. The Court said that the term "known members of the Huk organization" may be deemed descriptive of the appellee and his companions who are still at large; and although the term used in the information "as a suspected government spy" may reveal by inference the motive of the crime, still as there is no evidence to show that the murder committed in this case was in furtherance of the rebellion movement, it can not be considered absorbed in the crime of rebellion.

Justice J. B. L. Reyes dissented. "Descriptive or not," he observed, "those words plainly charge an act of rebellion, since it is a matter of public knowledge, of which we can take judicial notice, that the Huk organization has rebelled and still is against the government; and it is not denied that the killing of government spies (actual or suspected) is an act in furtherance of the objective to overthrow the government. Hence it is clear, right now, that the crime charged in the Court of First Instance of Pampanga was an act included in the charge of rebellion in the Court of Tarlac

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[98] *Supra,* note 74.
[99] *Supra,* note 75.
[100] *Supra,* note 73.
[101] G. R. Nos. 9462-63, July 11, 1957.

to which appellant (sic) has pleaded guilty and for which he has already been sentenced." Chief Justice Paras and Justices Concepcion and Alex. Reyes concurred in the dissenting opinion.

Crimes Against Public Interest

Falsification by public officer or employee—One of the essential elements of this crime is that the change in the public document must be such as to affect the integrity of the same or change the effects which it would otherwise produce.[102] In the case of *People v. Uy*,[103] defendant was a field agent of the National Bureau of Investigation. As such agent, he was required to fill up a Personal Information Sheet. The information alleges that in filling up the Personal Information Sheet, defendant *falsely* stated that he was a first-grade civil service eligible; that he attended the first year-law course in the Far Eastern University; that he was a naturalized citizen and that he made the statements solely to convince the authorities that "he was fit and qualified to continue in the employment" and to mislead the authorities into retaining him as field agent. Upon proper motion, the trial court dismissed the information on the ground that the position of a National Bureau of Investigation agent was confidential in nature, not requiring citizenship nor civil service qualifications, therefore the untruthful statements did not violate the integrity of the document. The Supreme Court reversed the order of the lower court, holding that it was an error to hold that the falsities were immaterial or did not violate the integrity of the document. Precisely because the position was confidential in nature, the authorities had a leeway in the matter of appointing or retaining field agents of the N.B.I. The prosecution should have been given a chance to prove that in the National Bureau of Investigation there is the practice or a regulation making civil service eligibility or citizenship a matter of importance in the selection of field agents. Furthermore, as the law expressly gives preference to law graduates it is not illogical to believe that law students may likewise enjoy preference; hence defendant's false statement about having attended first-year law, far from being entirely innocent, materially affected the instrument.

The information properly alleged all the facts essential to constitute the crime penalized under Article 171, paragraph 4 in that defendant has made untruthful statements in a narration of facts. In answer to the contention that the Personal Information Sheet is not a public document, the Court said that it can not be seriously contended that a document required by a Bureau to be filled by its officers for purposes of its record and information is not an official document.

Using fictitious names—Commonwealth Act No. 142, section 1 prohibits the use of any name different from the one with which a person was christened or by which he has been known since his childhood; or such substitute name as may have been authorized by a competent court, except as a pseudonym for literary purposes.

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[102] People v. Pacana, 47 Phil. 48 (1927).
[103] G. R. No. L-9460, April 23, 1957.

In *People v. Uy Jui Pio*,[104] defendant was convicted for using publicly a name different from the one with which he was christened. His conviction was based solely on the admissions made by him at the hearing. Those admissions were to the effect that he had been known since childhood "by the name of Uy Jui at Juanito Uy"; that he was also known in school "as Uy Jui Pio at Juanito Uy"; that the records of the Bureau of Immigration from the year 1946 would conflict with each other in that one forbids what the other Uy"; that "since 1936 until the passage of Commonwealth Act No. 142," he had been using that name; and that in the marriage contract he signed the name "Juanito Uy" to conform to the name already typewritten thereon by someone else.

The Supreme Court acquitted the defendant. In construing section 1 of Commonwealth Act No. 142, the Court said that "in forbidding the use of a name different from that by which one has been known since childhood, this section (1), by necessary implication, allows the use of the latter." Defendant, therefore, had the right to use the name "Juanito Uy" because he has since childhood been known by that name. The prosecution, however, argued that the name "Juanito Uy" is an alias and defendant can not use it without proper judicial authorization as provided for in section 2 of the same law. The Court dismissed this contention as without merit. "Section 2 necessarily refers to a name whose use is not already authorized by section 1 for, otherwise, the two sections would ocnflict with each other in that one forbids what the other allows. A statute should be so construed as to prevent a conflict between different parts of it."

Crimes Against Public Morals

Immoral and obscene exhibitions—The case of *People v. Padan* et al.[105] presents a clear case of a violation of our laws against indecency and obscenity. Jose Fajardo issued admission tickets at ₱3.00 each for a pleasure show. The place designated for the exhibition of the show is a small shed designed for playing ping-pong. On the specified date, instead of a ping-pong table, a bed was placed at the center of the room. It was then intended to be the scene of what was said to be an exhibition of human "fighting fish," the actual act of coitus or copulation. Once the spectators were crowded inside the room, Fajardo asked them to select among two girls present who was to be one of the principal actors. By popular acclamation, defendant Marina Padan was chosen. Fajardo then designated defendant Cosme Espinosa to be Marina's partner. Thereafter, Cosme and Marina proceeded to disrobe while standing around the bed. When completely naked, they turned around to exhibit their bodies to the spectators. Then they indulged in lascivious acts, consisting of petting, kissing, and touching the private parts of each other. When sufficiently arouse, they lay in the bed and proceeded to consummate the act of coitus in three different positions. The witnesses for the prosecution when asked about their reaction to what they saw, frankly admitted that they were excited beyond description.

[104] G. R. No. L-11489, Dec. 23, 1957.
[105] G. R. No. L-7295, June 28, 1957.

The indignation of an outraged Court was expressed by Justice Montemayor in the following terms: "As far as we know, this is the first time that the courts in this jurisdiction, at least this Tribunal, have been called upon to take cognizance of an offense against morals and decency of this kind. We have had occasion to consider offenses like the exhibition of still or moving pictures of women in the nude, which we have condemned for obscenity as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models or in tableaux vivants. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. One can see nothing in it but clear and unmitigated obscenity, indecency, and an offense to public morals, inspiring and causing as it does, nothing but lust and lewdness, and exerting a corrupting influence specially on the youth of the land."

Crimes Against Persons

Murder qualified by treachery—The circumstance of treachery qualifies a killing to murder. Treachery is manifested in various set of circumstances. It exists whenever a crime against person is committed in such a way that its execution does not expose the accused to any risk arising from the defense which the offended party might make. Thus, there is treachery where the defendant started the aggression while the back of the deceased was turned towards him.[106] The same is true even in a case where the deceased was warned of the impending attack if he did not have sufficient time to prepare for his defense.[107] In another case,[108] the victim was seated. The assailant stood at the side—almost at the back—of the victim when he shot the latter without any warning. These facts show the killing was committed with treachery.

Suddenness of attack may also show treachery.[109] In the case of *People v. Pasederio* et al.,[110] the deceased was combing his hair when the defendants suddenly burst into the room. Without much ado, they started stabbing their victim. The Court held that the killing was qualified by treachery. In *People v. Dizon* et al.,[111] the deceased hid himself in a dark room. Two of the defendants sought him out by holding a kerosene lamp near the door. Cornered, the deceased started shouting for help. The killers then fired successive shots into the room. Treachery qualified the crime to murder.

In the case of *People v. Siaotong* et al.,[112] the four defendants surrounded the deceased. One of them took sand from his pocket

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[106] People v. Cabrera, G. R. No. L-6173, March 18, 1957.
[107] People v. Quidlat, G. R. No. L-11318, Dec. 28, 1957.
[108] People v. Serna, G. R. No. L-7845,. Feb 27, 1957.
[109] People v. Sespeñe *et al.*, G. R. No. L-9346, Oct. 30, 1957; People v. Rufin *et al.*, G. R. No. L-9845, May 23, 1957 and People v. Salboro *et al.*, G. R. No. L-11087, May 29, 1957.
[110] G. R. No. L-9427, July 31, 1957.
[111] G. R. No. L-8336, July 30, 1957.
[112] G. R. No. L-9242, March 29, 1957.

and threw it into the face of their intended victim. This was immediately followed by a concerted aggression upon the person of the helpless fellow. The crime committed, the Court held, is murder qualified by treachery, the defendants having killed the deceased. taking advantage of their superiority in number and employing means to weaken his defense by throwing sand into his face.

Treachery was also found to have attended the killing in the case of *People v. Robenta* et al.[113] In that case, defendants made the deceased lie down face to the ground. While in that position one of the defendants hit him on the back with the side of a bolo. The deceased turned over, but as he did so, the other defendants hacked him with their bolos. Deceased tried his best to flee but only to be shot at the back. In another case,[114] the hands of the deceased were tied at his back. He was then made to stand in a ditch. One of the culprits held him on the shoulders while the other took a pick and with it hit the deceased on the head. The crime was qualified by treachery.

Killing by means of fire—In that case of *People v. Villaroya* et al.,[115] the wife was stabbed twice at the chest with a hunting knife. The defendants then proceeded to set fire to the house. The doctor who performed the autopsy stated that the wife died of "universal burn with secondary shock." No evidence was introduced to show that the stab wounds inflicted upon her was the cause of her death. In the absence of such proof, the Court ruled that the arson was the means of killing. As such, it qualifies the killing to murder and therefore can not be taken to form the complex crime of murder with arson.

Crimes Against Personal Liberty And Security

Kidnapping—A 12-year-old girl was on her way to a store when defendant suddenly grabbed her and dragged her into a taxicab. She was then delivered to the custody of a fat man who was keeping watch over three other girls. This man allowed no talking among his prisoners. The kidnapped girl managed, however, to escape when she was allowed to go outside to answer a call of nature. During the trial, it was established that defendant was a recruiter of servant maids. In affirming her conviction for kidnapping, the Court observed that the fact that she was engaged in the recruitment of maids for domestic service heightens the probability that in her desire for gain she scrupled not to take the little girl away from her folks,—even thru force and intimidation—to deliver her into servitude in some far-away municipality where she could never be found or from where she could never return to her family.[116]

Grave coercion—A person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, is guilty of the crime of grave coercion.[117] De-

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[113] G. R. No. L-9491, Sept. 18, 1957.
[114] People v. Cabrito, G. R. No. L-10404, July 25, 1957.
[115] *Supra*, note 74.
[116] People v. Tungala, G. R. No. L-7443, Sept. 27, 1957.
[117] Revised Penal Code, Art. 286.

fendant, in the case of *Omli v. People*,[118] is a municipal mayor. In that capacity, he investigated the theft of two logs. In the course of his investigation, he found out that the two logs were taken by one Bragas who thought the logs were cut from his forest concession. Thinking that the logs were his, Bragas sold them to Cortez. Disobeying the orders of the mayor, Cortez hauled the logs to his place. Subsequently, he ordered his men to saw the logs. When defendant mayor learned of this, he immediately proceeded to the place and warned the sawers of Cortez not to saw the logs or else they would all be arrested.

The Supreme Court acquitted the defendant of the charge of grave coercion. "We are not prepared to say," the Court said, "that the sawing of the logs under the circumstances was something not prohibited by law and which Omli had prevented from being done." Since the logs were the subject matter of an investigation, the same could not be sawed and the boards disposed of by Cortez until the investigation had been completed and responsibilities fixed.

Crimes Against Property

Robbery with homicide—No new doctrine was announced this year under this topic nor an old ruling explained and amplified. The reported cases are mere affirmations of the findings of the trial court to the effect that the accused committed the crime of robbery with homicide. These cases are: *People v. Mendova* et al.;[119] *People v. Llagas* et al.;[120] *People v. Incierto*[121] and *People v. Abrina* et al.[122]

Robbery with rape—Defendants, in the case of *People v. Jiandal Macaram* et al.,[123] stressed the improbability of crime of rape because of the supposed absence of any cries on the part of the abused victim. The evidence for the prosecution shows that the robbery took place just past midnight. The offended parties were threatened with a knife. The husband was tied to a post after which the defendants took turns in abusing his wife. In rejecting the contention of the defendants, the Supreme Court observed that no evidence was introduced to show that there was any house nearby from which any help could be obtained by cries. "Besides, the offended victim of the rape must have been trembling with fear when an opened knife was pointed at her back, and from that time on she was entirely helpless and could not think of anything to defend her honor. There were three robbers who had come in and as her husband was tied to a post she was entirely hopeless. It is, therefore, natural that she could do nothing but tremble in fear, and could not think of crying at all."[124]

Attempted robbery committed under certain circumstances—The Revised Penal Code attaches a different penalty to a case where

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[118] G. R. No. L-9596, April 26, 1957.
[119] G. R. No. L-7030, Jan. 31, 1957.
[120] G. R. Nos. L-5015-17, May 31, 1957.
[121] G. R. No. L-9246, June 29, 1957.
[122] G. R. No. L-7840, Dec. 24, 1957.
[123] G. R. No. L-8438, Aug. 30, 1957.
[124] *See* also, People v. Cayeta *et al.*, G. R. No. L-5929, July 31, 1957.

the robbery is merely attempted or frustrated but on the occasion of which homicide is committed. This is specially provided for in Article 297. The deceased, in the case of *People v. Casalme* et al.,[125] was an herb or quack doctor who helped friends and neighbors who came to him for treatment. On the fatal evening, the deceased readily opened his doors to the defendants who pretended that one of their companions needed treatment. Hardly had he opened the door when one of the defendants fired a garand rifle at the unsuspecting victim. Realizing that the visitors came not for any medical treatment but for an evil purpose, the wife immediately grabbed a bolo and proceeded to hack the nearest person. The son also came to the assistance of his mother. Because of the resistance of their intended victims, defendants hurriedly left the place but not until after trying in vain to force open an *aparador*. In the commotion and struggle, mother and son received slight physical injuries. After due trial, the lower court found defendants guilty of three separate crimes, namely: attempted robbery with homicide for the killing of the husband, attempted robbery with physical injuries for the wounding of the wife and the same crime for the wounding of the son. Accordingly, three separate penalties were imposed. The Supreme Court held this erroneous. Reiterating an earlier ruling,[126] the Court held that the defendants are guilty of only one crime, namely, attempted robbery with homicide and slight physical injuries as defined and punished under Article 297.

Estafa by misappropriating goods or money in trust—In *People v. Po Kee Kan*,[127] the complainant consigned several cases of soap to the defendant to be sold on commission basis. The different shipments were all evidenced by invoices. Each invoice contains a provision to the effect that the consignor and consignee have agreed that the merchandise "are received on consignment with the obligation on the part fo the consignee to either return the said merchandise or deliver the proceeds of sale to the consignor in the City of Manila, Philippines, within (30) days from date of this consignment." In spite of repeated demands, defendant failed to turn over the proceeds of the sale of the consigned goods. One of the defenses set up by defendant is that he is not bound by the terms of the invoices for he has not signed the same to indicate his conformity therewith. As such, he is merely a purchaser and his liability is civil. The fact that he received the originals of the invoices together with the goods therein described and never protested against the tenor thereof, the Court pointed out, indicates that said invoices reflect the true agreement between the parties. He did not even assail the accuracy of said documents when demands were made upon him to turn over the proceeds of the sale. Instead, he admitted to the manager of the complainant that he spent the proceeds of the sale and his inability to pay it. This is an implied admission of his status as complainant's commission agent and of the fiduciary capacity in which he held the proceeds of the sale of the goods. Otherwise, it would have been unnecessary for him to explain what he had done with the aforementioned sale price. In short, defendant

[125] G. R. No. L-11057, June 29, 1957.
[126] People v. de la Cruz, G. R. No. L-4532, May 26, 1952.
[127] G. R. No. L-10017, April 17, 1957.

is not merely civilly liable but also criminally liable for the amount misappropriated.

In another case,[128] defendant, as director, was sent by his company to purchase carabaos in a nearby province. Part of the purchase money was delivered to him. He did not buy the carabaos. Upon demand, he also failed to account for the amount he received. Instead, he proposed to pay it within a period of three years. The company rejected this proposed compromise. The Court ruled that the defendant is guilty of the crime of estafa, having misappropriated the money entrusted to him.

The information in the *Tubb v. People*[129] case charged that the defendant received the sum of ₱6,000.00 from the complainant for the purpose of buying rattan and other forest products. It was agreed between the parties that the forest products so bought shall be resold in Manila and the net profits be equally divided between them. The defendant assumed the obligation to return the amount if he will not be able to make the investment. But far from complying with his obligation, the information further alleged, defendant "absconded with the said amount of ₱6,000.00 and never appeared again, thereby wilfully, unlawfully and feloniously with intent to defraud, misappropriating, misapplying and converting the said amount to his own personal use." The trial court convicted the defendant of estafa by misappropriating the money entrusted to him as defined by paragraph 1(b) of Article 315. The Court of Appeals modified this ruling and held defendant guilty of swindling by means of false pretenses under paragraph 2(a) of Article 315. In this respect, the Court of Appeals committed an eror, the Supreme Court ruled. This is so, because the accused is charged with the misappropriation of funds held by him in trust and with the obligation to return the same. The offense defined in paragraph 2(a) is entirely different and distinct from that described in paragraph 1(b). Moreover, some of the essential elements of the offense defined in said paragraph 2(a) are not alleged in the information in the present case. For instance, there is no averment therein of any "false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud," which distinguishes said offense from that referred to in paragraph 1(b), the main characteristic of which is "unfaithfulness or abuse of confidence." This is the crime charged in the information. To convict defendant of estafa under paragraph 2(a) by virtue of said information would be violating his constitutional right to be informed of the nature and cause of the accusation against him.

Arson—In prosecutions for arson, proof of the crime charged is complete where the evidence establishes (1) the corpus delicti, that is, a fire because of criminal agency; and (2) the identity of the defendant as the one responsible for the fire. This doctrine was laid down in the case of *People v. Hidalgo* et al.[130] In that case, defendants were tried principally upon the testimony of a *participes*

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[128] People v. de Guzman, G. R. No. L-9629, March 29, 1957.

[129] G. R. No. L-9811, April 22, 1957.

[130] G. R. No. L-6273, Dec. 27, 1957 citing—CURTIS, THE LAW OF ARSON, p. 526, sec. 486.

criminis who was discharged from the information as witness for the prosecution. This witness testified in open court that defendant Hidalgo proposed to him and one James Uy that they burn his house. For the job of setting the building on fire, Hidalgo agreed to pay them ₱16,000.00, of which ₱15,000.00 was to be paid by checks and the balance of ₱1,000.00 in cash. Two checks were issued for the purpose. Subsequently, these checks were confiscated from James Uy who was apprehended in a massage clinic by a policeman. Upon assurance of Hidalgo that other checks would be issued, the arsonists proceeded to burn the building. They succeeded in starting a fire but due to timely intervention of fire-fighting units, the fire was put out before it could do considerable damage. After trial, James Uy and another defendant were acquitted. Hidalgo and his wife were, however, convicted. On appeal, these defendants contended that if the trial court did not give credence to the testimony of the witness for the prosecution as regards the guilt of James Uy and his companion, it should likewise be held unworthy of credence as regards them.

The Supreme Court met this argument by saying that: "Courts are not required to accept or reject the whole of the testimony of a particular witness." It pointed out that James Uy and his companion were acquitted because the testimony of the state witness as regards their participation was not corroborated. They were therefore acquitted on the insufficiency of the evidence presented. As regards the guilt of the appellants, the evidence of the state witness was corroborated by other facts. The issuance of the checks, for example, was proven by the checks themselves. Furthermore, defendants had heavily insured their building for ₱175,000.00 prior to the fire when the insurable value thereof was only about ₱78,000.00 or ₱79,000.00. Six of the policies were taken out just about a month before the fire. All these facts are unrefuted.

Crimes Against Chastity

Bigamy—In the case of *People v. Aragon*,[131] the Supreme Court re-affirmed the doctrine first announced in the case of *People v. Mendoza*.[132] In the *Aragon* case, defendant contracted his first marriage in 1925. While this marriage was subsisting, he contracted another marriage in 1934. In 1939, his first wife died. Defendant continued living with his supposed second wife. However, the two did not live a happy marital life, for in 1953, defendant contracted his third marriage. While recognizing the weight and intrinsic soundness of the dissenting opinion of Justice Alex. Reyes in the *Mendoza* case, the Supreme Court acquitted the defendant. Defendant did not commit any crime when he contracted the 1953 marriage because his marriage in 1934 was a complete nullity. No judicial declaration of nullity is necessary. This being the case, he had capacity to contract another marriage soon after the first marriage was dissolved by the death of his wife. "Our Revised Penal Code is of recent enactment," the Court pointed out, "and had the rule enunciated in Spain and in America requiring judicial declaration

[131] G. R. No. L-10016, Feb. 28, 1957.
[132] G. R. No. L-5877, Sept. 28, 1954.

of nullity of *ab initio* void marriages been within the contemplation of the legislature, an express provision to that effect would or should have been inserted in the law."

Prosecution of the crime of concubinage—Defendant was granted a new trial in the case of *People v. Camara*[133] on the basis of an affidavit executed by the complaining wife. Defendant was tried and convicted for the crime of concubinage. His principal defense is that his wife consented to his marital infidelity. While his appeal was pending consideration, defendant presented an affidavit of the wife wherein she categorically stated that she consented to the adulterous act of her husband "believing that in the end he will get tired of his paramour and settle down with me in our home and enjoy the blessing of love and affection for the rest of our lives." "Considering that the act charged is one that mostly concerns the private life of appellant and his wife as to which the law allows consent or pardon as a defense to bring about their reconciliation," Justice Bautista Angelo reasoned out, new trial is proper "to restore peace and harmony to the broken relation."

Prosecution of the crime of rape—Private crimes may be prosecuted only upon complaint of the offended party or her parents, grandparents, or guardian. This requirement is mandatory and jurisdictional. Non-compliance with this requirement renders void all proceedings taken.[134] In *People v. Santos* et al.,[135] the complainant executed and signed a document called "Salaysay" in which she related in detail the commission of the crime of rape against her. It is now contended for the prosecution that the "Salaysay" was a substantial compliance with the requirement that a prosecution for rape must be commenced by a complaint of the offended party. The Supreme Court ruled that the "Salaysay" is not the complaint required in paragraph 3 of Article 344. "The complaint contemplated by the law and the rules," the Court emphasized, "is necessarily that one filed in court. The 'Salaysay' was filed with the Fiscal and not with the court; it did not start the criminal proceedings." As an alternative ground for sustaining the conviction of the defendant, the prosecution insisted that the information is equivalent to the complaint required by law since it is jointly signed by the complainant and the fiscal. The Court rejected this contention "because said information lacks the oath of the complainant; the *jurat* contained therein is the subscribed and sworn certification of the fiscal that he had conducted the preliminary investigation in which obviously the offended party had taken no participation whatsoever; in very unequivocal terms, the information commences with the statement that 'the undersigned fiscal accuses Engracio Santos of the crime of rape,' the offended party not having been mentioned at all as one of the accusers."

Crimes Against Honor

Privileged communication—Our Revised Penal Code establishes a presumption that every defamatory imputation is malicious. Privi-

[133] G. R. No. L-11085, Feb. 27, 1957.
[134] II PADILLA, REVISED PENAL CODE ANNOTATED, 701 (1955).
[135] G. R. No. L-8520, June 29, 1957.

leged communications are the only exceptions to this general rule.[136] The fact that a communication is privileged does not mean, however, that it is not actionable. The privileged character simply does away with the presumption of malice.[137] This means that plaintiff has to show malice on the part of the defendant. As such, the fact that the matter charged as libelous is privileged is a matter of defense. Defendant can not, therefore, ask for the dismissal of the complaint on the ground that the matter charged as libelous is privileged. The prosecution should be given a chance to prove that the defendant has acted with "malicious intent."[138]

Prosecution of libel—Before Article 360 was amended,[139] it provided that a criminal action for libel may be prosecuted in "the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed." This provision was construed and applied in the case of *People v. Pascual* et al.[140] Defendant Locsin wrote an article in the Philippines Free Press severely criticizing Senator Zulueta for allowing the Government to construct several roads across his private subdivision. In connection with this article, Senator Zulueta filed a libel complaint with the provincial Fiscal of Rizal. After a preliminary investigation, the fiscal dropped the complaint. Subsequently, Senator Zulueta filed another complaint with the provincial Fiscal of Iloilo. By virtue of this new complaint, defendants were arraigned before the Court of First Instance of Iloilo. The trial court dismissed the case on the ground that the proper procedure is to refile the case with the provincial Fiscal of Rizal or file a mandamus case against him that he may file the corresponding information.

The Supreme Court ruled that the trial court erred in dismissing the information. The Court reasoned out that the complaint filed with the provincial Fiscal of Rizal was dropped by him. "No information was filed with the Court of First Instance of Rizal. Hence, the same acquired no jurisdiction over the case and did not divest other courts of the authority (venue) to receive and hear a charge for the same offense." Under the new amendment, the same ruling may still be applicable.

In criminal actions for libel, the fiscal has control over the prosecution of the case. In that capacity, he may ask for the dismissal of the case for insufficiency of evidence and that the matter in question is privileged. In that event, the complainant can not appeal from the order of the trial court dismissing the information.[141] His remedy lies in the Civil Code which allows civil actions for damages in cases of defamation to be prosecuted separately from the criminal proceeding.[142]

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136 Revised Penal Code, Art. 354.
137 Lu Chu Sing v. Lu Tiong Gui, 76 Phil. 669 (1946).
138 People v. Pascual *et al.*, G. R. No. L-9490, Nov. 29, 1957.
139 By Rep. Act No. 1289 (June 15, 1955).
140 *Supra*, note 138.
141 People v. Liggayu *et al.*, G. R. No. 8224, Oct. 31, 1955.
142 People v. Flores *et al.*, G. R. No. L-7528, Dec. 18, 1955.