CRIMINAL PROCEDURE—1958

NICODEMO T. FERRER *

As we review the year 1958 in the field of Criminal Procedure, we at once become aware of old, familiar principles applied to old, familiar sets of facts. We also notice, in at least two or three instances, established rules applied, extended, nay stretched, to new, unfamiliar situations. To the former, we concede their time-tested wisdom; but to the latter, we let Time test their wisdom, as this is neither the time nor the place for us to use the critical eye of an analyst. For the moment, therefore, we view the Supreme Court decisions with the passive eye of a camera and leave to men of the stature of Mr. Justice Alfonso Felix to do the "making of a perfect bull's eye" on debatable rulings of the Court.[1] The fire of youth tempts us to put in our two cents' worth, but for the moment we douse it with the cold water of discretion, fully aware that not even a judge of the lower court can escape the stinging ire of our Supreme Court when the former fails to keep in line with the well accepted axiom of our judicial system, namely, that after all arguments are exhausted, our Supreme Court says the last word.[1a] And while we hold observations of our own, which may not be entirely in harmony with the rulings of our Tribunal in the field of Criminal Procedure, we are equally aware of the fact that unless the Court reverses itself, its rulings, in the language of our Civil Code "form a part of the legal system of the Philippines." Our regard for the position which our Court occupies in our judicial hierarchy constrains us, therefore, to accept its decisions at face value, though not necessarily with full value.

PROSECUTION OF OFFENSES

A. *Complaint.*

The Rules of Court provide that "all criminal actions must be commenced either by complaint or information. . .,"[2] and that a "complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated."[3] Under the Revised Penal Code no criminal action for defamation which cannot be prosecuted *de oficio* shall be brought except at the instance of and upon complaint expressly filed by the offended party.[4] Thus, the Supreme Court agreed with the contention of the prosecution, in the case of *People v. Flores*,[5] that a complaint by the offended party is not indispensable to the prosecution for the crime of oral defamation, when the defamatory words uttered by the accused constitute an imputaion, either of a crime that may be prosecuted *de oficio* (such as that of stealing) or of a vice or defect, not constituting a crime (such as that of being an oppressor, a land grabber or a cheater), tending to cast dishonor upon the offended party.[6]

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* B.S. (Marquette University); Recent Documents Editor, Student Editorial Board, *Philippine Law Journal*, 1958-1959.

[1] Dissenting opinion of Justice Felix in People v. Segovia, G.R. No. L-11748, May 28, 1958.

[1a] People v. Santos, G.R. No. L-11813, September 17, 1958. See note 41, *infra*.

[2] Sec. 1, Rule 106.

[3] Sec. 2, Rule 106

[4] Article 360, last par., REVISED PENAL CODE.

[5] G.R. No. L-11022, April 28, 1958.

[6] But the Supreme Court dismissed the appeal brought by the prosecution on the ground that the accused was subjected to double jeopardy. See note 87, *infra*.

B. *Direction and Control of Criminal Prosecution.*

Direction and control of criminal prosecutions are vested in the fiscal.— The Rules of Court provide that all criminal actions, whether commenced by complaint or by information, shall be prosecuted under the direction and control of the fiscal.[7]

Pursuant to the above rule, the private prosecutor need not be notified by the fiscal of the latter's motion to dismiss. This was the ruling in the case of *Pangan, et al. v. Hon. Pasicolan, et al.*[8] where the fiscal, after finding, upon reinvestigation, that the evidence was insufficient to hold two of the three defendants criminally liable for forcible abduction, moved for dismissal of the complaint as to the two. The lower court sustained said motion, but, on motion for reconsideration filed by the private prosecutor, set aside said order on the ground that the private prosecutor was not notified of the motion of dismissal, citing the case of *U.S. v. Barredo*,[9] wherein the Supreme Court made the following comment, to wit:

> "But if he (the Judge) is not satisfied with the reason assigned by the fiscal, or if it appears to him from the record of the proceedings in the court of the Justice of the Peace, or as a result of information furnished by the private prosecutor, or otherwise, that the case should not be dismissed, he may deny the motion."

The Supreme Court, on certiorari, set aside the lower court's order, explaining its view in the *Barredo* case thus:

> "While the court may find it necessary to hear the views of a private prosecutor before acting on a motion for dismissal filed by the fiscal, it does not follow that it can set aside its order dismissing the case even if the same has already become final. The comment made by the Court in the Barredo case is merely persuasive in character, which it may follow in the exercise of its discretion, but there is no law which requires notice to a private prosecutor, because under our rules all criminal actions are prosecuted 'under the direction and control of the fiscal.' "

Mandamus will not lie to compel fiscal to prosecute.—Although the law makes it the duty of the prosecuting officers "to file the charges against whomsoever the evidence may show to be responsible for an offense,[10] this does not mean that prosecuting officers shall have no discretion in the matter, for where the law demands that all persons who appear responsible for an offense shall be charged in the information, it also implies that those against whom no sufficient evidence of guilt exists are not to be included in the charge; and the determination of whether or not there is, as against any person, sufficient evidence of guilt to warrant his prosecution necessarily involves the exercise of discretion.[11]

The Supreme Court found two occasions to apply the above rule. In *Vda. de Bagatua, et al., v. Revilla*[12] the Court denied petition for mandamus filed by complainants to compel the City Attorney and the Assistant City Attorney of Quezon City to file information against Burgos Panilinan for *estafa* for inducing the complainants to sign papers supposedly necessary for the subdivision of their lot, but one of which turned out to be a deed of sale. The Assistant City Attorney, acting for the City Attorney, had previously conducted a preliminary investigation which lasted for several days, during which occasions

[7] Sec. 4, Rule 106.
[8] G.R. No. L-12517, May 19, 1958. See note 122, *infra*.
[9] 32 Phil. 444, 449-451 (1915).
[10] Sec. 1, Rule 106.
[11] Gino v. Figueroa, G.R. No. L-6480, May 17, 1954; 50 O.G. 4828 (1954).
[12] G.R. No. L-12247, August 26, 1958.

both parties were duly represented by counsel, received testimonial as well as documentary evidence, and, after the parties had filed their respective memoranda, recommended dismissal of the complaint for lack of merit. Accordingly, the complaint was dismissed. The Court admitted that "the power of the City Attorney or prosecuting fiscal in connection with the filing and prosecution of criminal charges in court is not altogether absolute; but the remedy is not that of mandamus but the filing with the proper authorities or court of criminal or administrative charges, if the alleged offended parties believe that the former maliciously refrained from instituting actions for the punishment of violators of the law."[13]

The other case, *Maddela v. Aquino*,[14] was decided three days later. In that case the Court held that the accused, Maddela, then governor of Nueva Vizcaya, charged with murder, could not compel by mandamus the prosecuting officers to prosecute three others against whom the prosecutors did not find sufficient evidence to justify their inclusion in the information.

Fiscal not liable for damages for refusing to file information after finding no prima facie case.—In *Zulueta v. Nicolas*,[15] where the defendant fiscal conducted an investigation of a complaint for libel filed by the plaintiff against the provincial governor of Rizal and the staff members of the Philippines Free Press, and "rendered an opinion" that there was no *prima facie* case, plaintiff instituted civil action against the defendant provincial fiscal to recover moral and pecuniary damages based on article 27 of the new Civil Code.[16] The Supreme Court, in dismissing the appeal, held that refusal of the fiscal to prosecute when after an investigation he finds no sufficient evidence to establish a *prima facie* case is not a refusal, without just cause, to perform an official duty. "The fiscal has for sure the legal duty to prosecute crimes where there is enough evidence to justify such action. But it is equally his duty not to prosecute when after an investigation he has become convinced that the evidence available is not enough to establish a *prima facie* case exists."

Fiscal must conduct an investigation before he can move to dismiss.—Thus, in the case of *Assistant Provincial Fiscal of Bataan v. Hon. Dollete*,[17] the prosecuting official was only *partly* justified in filing his motion to dismiss when the offended parties in the complaint charging "offending the Religious Feeling" and the private prosecutor refused to give their testimony at the hearing called by him. The Court said "in part justified" because what the petitioner should have done was to advise respondent Judge of the attitude and conduct of the offended parties and to request that they be ordered to submit to an investigation by him.

C. *Sufficiency of the Complaint or Information.*

Designation of the offense; when not necessary.—The Rules of Court require that a complaint or information should, whenever possible, state the designation given by the statute to the offense in addition to the statement of the acts or omissions constitutive of the offense, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it.[18] However, where the facts pleaded clearly describe a specific

[13] Article 208, REVISED PENAL CODE.
[14] G.R. No. L-10867, August 29, 1958.
[15] G.R. No. L-8252, January 31, 1958.
[16] Article 27, CIVIL CODE, provides: "Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter."
[17] G.R. No. L-12196, May 28, 1958.
[18] Sec. 7, Rule 106.

offense, noncompliance with the above requirement of the Rules is merely a defect of form which does not prejudice the substantial rights of the defendent, since "the real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but by the facts recited in the complaint or information."[19] The designation of the crime by its technical name in the caption of the complaint or information is merely the fiscal's conclusion of law and in no way necessary for the protection of the substantive right of the accused nor for the effective preparation of his defense.[20]

Hence, in *People v. Agito*,[21] although the information charging the accused with triple homicide and serious physical injuries through reckless imprudence, failed to designate the specific provision of the law which had been violated, or did not actually allege that the accused had committed a violation of the Motor Vehicle Law, the Supreme Court, nevertheless, affirmed the decision of the lower court applying the Revised Penal Code[22] on violation of the Automobile Law.[23] The information was held sufficient because it clearly described the facts that one cannot be mistaken that they constitute a violation of that law for actually it alleged that because of the reckless or unreasonably fast driving of appellant an accident occurred resulting in the death of the victims therein mentioned.

Similarly, in *People v. Lingad*,[24] although the information gave the designation of the crime as "slight physical injuries through reckless imprudence," the body thereof did not specify the kind of negligence or imprudence that qualified the crime charged, for it merely alleged that it was committed "in a careless, reckless, negligent and imprudent manner, x x x causing by such carelessness, recklessness, imprudence and lack of precaution," the collision which resulted in the injury. The Supreme Court, relying more on the vague allegation of imprudent act in the body than on the designation of the offense in the caption of the information, argued that the act may have been committed either through reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution; and that even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only through simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime of theft. From all this, the Court concluded that, even applying the doctrine laid down in *People v. Macario Ande*,[25] the Court of First Instance should not have dismissed the case on the defendant's motion to quash on the ground that the crime of slight physical injuries when committed through reckless imprudence is not punishable by law.

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[19] 2 MORAN, COMMENTS ON THE RULES OF COURT 597-598 (1957), citing the following cases: People v. Macadaeg, G.R. No. L-4816, May 28, 1952; People v. Oliveria, 67 Phil. 427 (1939); United States v. Burns, 41 Phil. 418 (1921); United States v. Ondaro, 39 Phil. 70 (1918); United States v. Cabe, 36 Phil. 728 (1917); United States v. Vega, 31 Phil. 450 (1915); Davis v. Director of Prisons, 17 Phil. 168 (1910); United States v. Tryes, 14 Phil. 270 (1909); United States v. Supila, 13 Phil. 671 (1909); United States v. Peralta, 8 Phil. 200 (1907); United States v. Li-Dao, 2 Phil. 458 (1903).

[20] People v. Cosare, G.R. No. L-64444, August 25, 1958.

[21] G.R. No. L-12120, April 28, 1958

[22] Article 365, par. 6, sec. 2, which provides: "When, by imprudence or negligence and *with violation of the Automobile Law*, the death of a person shall be caused, in which case the defendant shall be punished by *prision correccional* in its medium and maximum periods."

[23] Act No. 3992 (Motor Vehicle Law), sec. 67(d), as amended by Rep. Act No. 587, sec. 16(d).

[24] G.R. No. L-10952, May 30, 1958.

[25] 51 O.G. No. 10, 5222 (1955).

Again, in *People v. Ramirez*,[26] where the information alleged that the threat was oral and made in the heat of anger and that the accused did not by his posterior acts show that he persisted in his threat, the Supreme Court held that the information charged light threat [27] which prescribes in two months [28] and not grave threat [29] which prescribes in five years;[30] because, although the information did not allege that the threatened bodily harm is one not constituting a crime, neither did it allege that it is one amounting to a crime.

The Rules do not require the information to mention the particular penal provision penalizing the offense. In fact, there is no such law; so that where the informations, in *People v. Gatchalian*,[31] under which the accused was charged only mentioned section 3 of Republic Act No. 602 as the one violated and this section does not contain a penal clause, the Supreme Court held that this does not make the informations defective.

Cause of the accusation.—Under the Rules of Court, an information or complaint is sufficient if the acts or omissions complained of as constituting the offense are alleged in such forms as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.[32]

In *People v. Nieto*,[33] where the accused, charged with homicide, was between the ages of 9 and 15, the Supreme Court, on appeal by the prosecution,[34] observed that the requirement that it must be alleged in the information that she acted with discernment should be deemed amply met with the allegation in the information that she, the accused Gloria Nieto, "with the intent to kill, did then and there willfully, criminally and feloniously push one Lolita Padilla, a child eight and a half (8½) years of age, into a deep place of the Pecaranda River and as a consequence thereof Lolita Padilla got drowned and died right then and there." The allegation in the information was sufficient as it clearly conveyed the idea that she knew what would be the consequence of her unlawful act of pushing her victim into deep water and that she knew it to be wrong.

The same rule was applied in the case of *Vargas, et al. v. Tuason, et al.*,[35] where the respondent City Attorney Luis Uvero filed with the Municipal Court of the City of Naga two informations for gambling against defendants-petitioners, the pertinent question presented, in petition for certiorari with injunction to secure annulment of respondent Judge's order denying petitioners' motion to quash, was the sufficiency of the information charging illegal operation of slot machines in view of the Charter of the City of Naga which merely grants the Municipal Board authority to regulate, but not prohibit, the operation and maintenance of slot machines and to fix the amount of the license fees thereof. The Supreme Court held that the information filed against the petitioners aver facts which constitute an offense under article 195 of the Revised Penal Code.[36]

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[26] G.R. No. L-10085, May 23, 1958.
[27] Article 285, par. 2, REVISED PENAL CODE.
[28] Article 90, par. 6, REVISED PENAL CODE.
[29] Article 282, par. 2, REVISED PENAL CODE.
[30] Article 90, par. 8, REVISED PENAL CODE.
[31] G.R. Nos. L-12011-12014, September 30, 1958.
[32] Sec. 8, Rule 106.
[33] G.R. No. L-11965, April 30, 1958.
[34] Dismissed on ground of double jeopardy. See note 88, *infra*.
[35] G.R. No. L-11050, April 30, 1958
[36] Article 195, REVISED PENAL CODE provides penalty on: "x x x 1. Any person x x x who, in any manner, shall directly or indirectly take part in any game x x x or any other game or scheme the result of which depends wholly or chiefly upon chance or hazard; or wherein wagers consisting of money, articles of value, or representative of value are made; or in the exploitation or use of any other mechanical invention or contrivance to determine by chance the loser or winner of money or any object or representative of value."

Alleging Negative Averments.—The general rule is that in a prosecution for violation of a statute which contains an excepting clause, the information need not deny that the accused falls within the exception, it being a matter of defense which the accused must prove. But if the exception is "so incorporated with the language defining the offense that the ingredients of the offense cannot be accurately and clearly described if the exception is omitted, the rules of good pleading require that an indictment founded upon the statute must allege enough to show that the accused is not within the exception. . . ." [37]

Apparently having this test in mind, the Supreme Court decided the case of *People v. Capistrano.*[38] In that case the defendant was accused of violating Central Bank Circular No. 60, section 1 which provides:

> "Sec. 1. The import and export of Philippine coins and notes including but not limited to drafts checks, money orders and/or other bills of exchange in Philippine pesos drawn on banks operating in the Philippines, or any order for payment in Philippine pesos, is prohibited *without the necessary license issued by the Central Bank*, except in the following cases:
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> "(b) Outgoing Philippine residents and transient visitors leaving the Philippines may take with them Philippine coins and notes in an amount not exceeding P100, provided the coins do not exceed P6." (Italics supplied.)

The Supreme Court, examining the information, held that the charge therein was insufficient to constitute an offense for which the accused may be convicted and rendered amenable to the penalty prescribed by law, because it failed to allege that the accused had taken or was about to take out of the Philippines coins and notes in excess of the excepted amounts without the necessary license issued by the Central Bank.

The case of *People v. Villamejor,*[39] involved the same facts, so the Court, applying the rule laid down in the case of *Capistrano,* declared the information insufficient.

D. *Duplicity of Offenses.*

Under the Rules of Court, no complaint or information shall charge more than one offense, except in those cases in which existing laws prescribe a single punishment for various offenses.[40]

An information charging more than one offense is subject to a motion to quash on ground of duplicity.—In *People v. Santos,*[41] where accused-appellant, Jaime Santos, was charged in an information of the crime of rebellion complexed with multiple murders, robberies, arson and physical injuries, and he objected thereto by filing a motion to quash said information on the ground that it accused him of a multiplicity of offenses, namely, simple rebellion and other common crimes, the lower court overruled said motion to quash. The Supreme Court, through Mr. Justice Felix, admonished the trial judge for not following the clear principle laid down by the Supreme Court [42] that the crime of rebellion cannot be complexed with other common crimes, because the latter are either absorbed by the crime of rebellion if committed in pursuance of the aims, purposes and objectives of the rebels and in furtherance of their intention

[37] United States v. Chan Toco, 12 Phil. 262 (1908), quoting from United States v. Cook, 84 U.S. 168, 178.
[38] G.R. No. L-12724, January 31, 1958.
[39] G.R. No. L-18468, June 27, 1958.
[40] Sec. 12, Rule 106.
[41] G.R. No. L-11818, September 17, 1958.
[42] People v. Geronimo, G.R. No. L-8986, Oct. 23, 1956; People v. Hernandez, G.R. Nos. L-6025-26, July 18, 1956

to overthrow the duly constituted government by force, or are independent common crimes which had no connection with the rebellion and must be separately prosecuted in the proper court within the territorial jurisdiction of which the same had been committed.

Effect of failure to object.—In *People v. Guzman, et al.*[43] although the information charged the defendants with the commission of several crimes of murder and frustrated murder, as they failed to object to the multiplicity of the charges made in said information, they could be found guilty thereof and sentenced accordingly for as many crimes the information charged them, so long as they have been duly established and proved by the evidence on record.

JURISDICTION AND VENUE

A. *Jurisdiction.*

Jurisdiction is the authority or the power by which judicial officers take cognizance of, hear, and decide or determine causes.[44] By Constitutional mandate, Congress has the power "to define, prescribe, and apportion the jurisdiction of the various courts;" and pursuant to this authority, Congress has passed the Judiciary Act of 1948.[45]

Grants of jurisdiction cannot be merely implied.—Thus, the Supreme Court held in the case of *Dimagiba v. Geraldez*[46] that the Revised Charter of the City of Manila[47] which defines the jurisdiction of the Municipal Court of the City[48] and which specifically grants that court concurrent jurisdiction with the courts of first instance over certain specific criminal cases should not be taken to have thereby impliedly granted the Court of First Instance the converse concurrent jurisdiction over the same criminal cases. It is unreasonable to assume that the Legislature intended to grant to a court of general jurisdiction concurrent jurisdiction over minor offenses such as *estafa* involving such amounts as may be less than ₱200.00.

Rules of Court should not be so construed as to affect the jurisdiction of the courts.—In *Escudero v. Hon. Lucero*,[49] where the accused appealed to the Court of First Instance from the decision of the Municipal Court of Manila convicting him of the crimes of *estafa* but the trial on appeal could not be had because the accused was unwilling to appear before the court; and, where, considering these circumstances, the lower court declared the appeal abandoned, the Supreme Court, on certiorari, held that section 9, Rule 119, and section 12, Rule 118, do not control the authority of the Court to dismiss the appeal or declare it abandoned, regardless of the will of the accused, since the aforementioned rules merely regulate the right of the accused to withdraw his appeal. Appeal from the decision of the Justice of the Peace or Municipal Courts does not necessarily place such decision beyond the reach or jurisdiction of the Court of First Instance or of the inferior courts. And to hold that the Rules of Court, in the cited rules and sections, had this effect would violate the constitutional mandate vesting the "power to define, prescribe and apportion the jurisdiction of the various courts" in "the Congress," for the pertinent power of the Supreme Court is limited to the promulgation of "rules concerning pleading, practice and procedure in all courts," and, consequently, to the determination of the

[43] G.R. No. L-7580, August 30, 1958.
[44] 1 BOUVIER'S LAW DICTIONARY 1760 (8th ed., 3rd rev. 1914).
[45] Rep. Act No. 296, as amended.
[46] G.R. No. L-11895, January 31, 1958.
[47] Rep. Act No. 409, as amended.
[48] Sec. 41, Article IX—The Municipal Court.
[49] G.R. No. L-11629, May 14, 1958.

means, ways, or manner in which said jurisdiction, as fixed by the Constiution and acts of Congress, shall be exercised.

Specific provision of Judiciary Act of 1948 applied.—Justices of the peace and judges of municipal courts of chartered cities are given original jurisdiction over all offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment.[50] In the case of *People v. Bueno*,[51] where the accused, Victoriano Bueno, was charged before the Justice of the Peace Court of Umingan, Pangasinan, with the crime of arson through reckless imprudence resulting in damage to property worth ₱500.00, the Supreme Court held that since the maximum penalty imposable is a fine of ₱1,500, the case was beyond the jurisdiction of the Justice of the Peace Court, and, as a consequence, neither was the Court of First Instance, in the exercise of its appellate jurisdiction, competent to hear and decide the case on its merits, particularly over defendant's objection.

B. *Venue.*

While jurisdiction refers to the power or authority of a court, venue deals with the question of locality, as the latter refers merely to the place of suit.[52] Pursuant to its constitutional power "to promulgate rules concerning pleading, practice, and procedure in all courts." [53] the Supreme Court, in the Rules of Court, has provided for the place where action is to be instituted,[54] prescribing, *inter alia*, that criminal prosecutions shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.

The Supreme Court applied this rule in the case of *People v. Angco*,[55] where the defendant, a travelling sales agent, was accused of malversation and in the information it was alleged that he had his "headquarters at Tuguegarao, Cagayan," that he was a "Travelling Sales Agent of the Philippine Charity Sweepstakes Office in said City," (Manila) . . . "charged with selling sweepstakes tickets entrusted to him for sale in his district, with the obligation of turning over the proceeds of the sale of said tickets to the Treasurer of the Philippine Charity Sweepstakes office in Manila," x x x, and that he "willfully, unlawfully, feloniously and fraudulently, with grave abuse of confidence," misappropriated, embezzled, misapplied and converted the amount of ₱3,960.95, the unaccounted and unpaid balance of the proceeds of the sale of the tickets to his own personal use and benefit, to the damage and prejudice of the Philippine Charity Sweepstakes Office. The Court held that these allegations were sufficient to confer jurisdiction upon the Court of First Instance of Manila to the exclusion of the concurrent jurisdiction of the Court of First Instance of Cagayan.

PROSECUTION OF CIVIL ACTION

Before the last war, under the Rules of Court, the impression prevailed that actions for damages caused through reckless negligence were based on the criminal responsibility for negligence, and therefore depended on the outcome of the criminal case. The Rules provide that criminal and civil actions arising

[50] Sec. 87(b), Rep. Act No. 296, as amended.
[51] G.R. No. L-10849, April 30, 1958.
[52] NAVARRO, CRIMINAL PROCEDURE 58 (1952).
[53] PHIL. CONST. Art. III, Sec. 13.
[54] Sec. 14, Rule 106.
[55] G.R. No. L-9550, February 28, 1958.

from the same offense may be instituted separately, but after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action, and, if the civil action already instituted, the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered. However, during the Japanese occupation there had been promulgated two decisions in the Supreme Court based on quasi-delict or *culpa aquiliana*, which is different and independent from civil liability arising out of criminal negligence governed by the Revised Penal Code.[56] Such view was subsequently incorporated in the Civil Code in articles 2176 and 2177. Several decisions have recognized this difference between the two proceedings of civil action for *culpa aquiliana* and civil action arising from a crime, and overruled lower court resolutions linking or subordinating one to the other.[57]

Recognizing this distinction, the Court held in the case of *Calo v. Peggy*,[58] where judgment of acquittal in a criminal prosecution for serious physical injuries through reckless imprudence was vague as to whether or not it was based on existence of reasonable doubt, that civil action for damages based on physical injuries arising from the same occasion may still be entertained.[59]

Referring to the case of *Calo*, the Supreme Court, in *Chan v. Hon. Yatco*,[60] held that, where the driver of passenger-bus of the Philippine Rabbit Co. was prosecuted in the Court of First Instance of Pangasinan for multiple homicide, serious physical injuries and damages to properties through reckless imprudence, and pending such criminal prosecution, the plaintiff filed in the Court of First Instance of Rizal a civil case to recover from the Philippine Rabbit Co. the value of damages occasioned by the same imprudent act of accused employee of the defendant, the respondent trial judge erred in suspending the hearing of the present civil case until the criminal case in the Court of First Instance of Pangasinan is definitely decided.

Suspension of the civil action under the Rules refers to commencement of criminal action in court, not to mere filing of complaint with fiscal.—Hence, in *Coquia, et al. v. Cheong, et al.*,[61] where the plaintiffs in a civil case to recover damages for food poisoning of their minor children by eating ice cream bought from the defendants subsequently lodged a complaint with the City Fiscal of Manila against the defendants, for a violation of the Foods and Drugs Act, and then, invoking section 1(c) of Rule 107, petitioned the court to suspend proceedings in the civil case until final judgment in the criminal case shall have been rendered, the Supreme Court upheld the ruling of the lower court denying the said petition of the plaintiffs.

Interruption contemplated in section 1(a) of Rule 107 accrues only to the benefit of offended party.—In *Paulan, et al. v. Sarabia, et al.*,[62] it was held that, in the civil action brought by heirs of deceased passenger of defendant's vehicle to recover damages, the defendant, in bringing a third-party complaint against the operator and driver of the other vehicle, cannot validly allege that the criminal action brought against the drivers of the two trucks had the effect of interrupting the running of the prescriptive period of four years.

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[56] Barredo v. Garcia, 73 Phil. 607 (1942); Sudario v. Acro Taxicab, G.R. No. L-48977, February 23, 1944.
[57] Calo, *et al.* v. Peggy, G.R. No. L-10756, March 29, 1958; Dionisio v. Alvendia, G.R. No. L-10567, November 26, 1958; Dyogi v .Yatco, G.R. No. L-9623, January 22, 1957; Diana v. Batangas Transportation, 48 O.G. 2238; Tan v. Standard Vacuum Oil Co., 45 O.G. 2744.
[58] *Supra.*
[59] Articles 29 and 33, CIVIL CODE.
[60] G.R. No. L-11163, April 30, 1958.
[61] G.R. No. L-12288, May 30, 1958.
[62] G.R. No. L-10542, July 31, 1958.

PRELIMINARY INVESTIGATION

Preliminary investigation may be waived by accused either expressly or impliedly.—Hence, in the case of *People v. Lambino*,[63] the accused, in a criminal prosecution for malversation of public funds, was held to have impliedly waived preliminary investigation. In that case, the accused filed his petition for preliminary investigation after he had entered his plea of not guilty and, before the commencement of the trial, the accused reiterated his petition for a preliminary investigation, which was overruled, but took no steps to bring the matter to higher courts and stop the trial of the case and, instead, allowed the prosecution to present the first witness who was able to testify and show the commission of the crime charged in the information.

BAIL

Definition of bail.—Bail is "the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance."[64]

Court may not reduce bail granted before conviction for capital offense except upon notice to fiscal at least three days before hearing of motion.—The Rules of Court provide that a person in custody for the commission of a capital offense shall not be admitted to bail if the evidence of his guilt is strong.[65] As a corollary to this rule, it is established that when a person is accused of a capital offense, admission to bail before conviction thereof is a matter of descretion on the part of the court. And this judicial discretion, "by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing," and "a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal."[66] As the "burden of showing that evidence of guilt is strong is on the prosecution."[67] "the court must require that reasonable notice of the hearing of the application for bail be given to the fiscal." This procedure was applied by the Supreme Court in the case of *People v. Raba*,[68] which involved, not the question of admission to bail itself, but the reduction of the amount of bail already fixed by the court. In that case, the accused, charged with murder before the Court of First Instance of Antique, and allowed bail fixed by the court at ₱30,000 as recommended by the provincial fiscal, filed, after arraignment wherein the accused pleaded not guilty, urgent motion praying that the bail be reduced to ₱14,000 in order to enable him to go on bail. The Supreme Court, setting aside the lower court's order granting the motion, held that the court may not reduce the bail except upon notice to the fiscal at least three (3) days before hearing of motion[69] to give the fiscal a chance to be heard regarding the nature of the evidence he had in his possession.

Forfeiture of bail; partial remission.—Where the period given to the bonsmen to produce the accused had elapsed and the accused had not been brought before the court, the sureties cannot be completely discharged, although the ac-

[63] G.R. No. L-10876, April 28, 1958.
[64] RULES OF COURT, Rule 110, Sec. 1.
[65] Rule 110, Sec. 6.
[66] Ocampo v. Bernabe, 77 Phil. 55, 56 (1946); Marcos v. Judge of Ilocos Norte, 67 Phil. 82 (1939).
[67] Rule 110, Sec. 7.
[68] G.R. No. L-10724, April 21, 1958.
[69] Sec. 4, Rule 26.

cused may later on be captured and surrendered.[70] The reduction of the liability of the surety thereunder lies within the discretion of the court.[71]

Hence, in two occasions the Supreme Court reduced, but did not completely remit, the liability of sureties. The Court was more liberal in this respect when the bondsmen were not compensated sureties or sureties for profit, as in *People v. Tolentino, et al.*,[72] where the sureties had put up the bail bond of the accused only upon considerations of friendship and generosity; than when the bondsman was compensated, as in the case of *People v. Vergel, et al.*,[73] where the Court of Appeals relieved the surety of 50% of its liability.

MOTION TO QUASH

Concept; effect.—Motion to quash an information or complaint addressed by the accused to the court is based on the theory that, for any of the reasons enumerated in the Rules of Court,[74] the State has no reason to put him on his defense.[75] Stated differently, the fundamental rule in considering a motion to quash on the ground that the averments of the information or complaint are not sufficient to constitute the offense charged is whether the facts alleged, if hypothetically admitted, would meet the essential elements of the offense.[76]

So, when the accused in the case of *People v. Segovia*,[77] after the prosecution had presented its evidence, moved to quash on the ground that the prosecution failed to prove all the elements of the crime charged, he hypothetically admitted that he willfully damaged the property of the complaining witness when he allegedly shot to death a pig owned by the latter with the felonious intent of causing an injury because of resentment and anger; that is, with the intent to cause injury, due to an evil motive. These are precisely the elements consisting the crime of malicious mischief;[78] therefore, the Court of First Instance erred in sustaining the motion to quash.

So, also, in the case of *People v. Silvela*,[79] the Supreme Court held that the defendant's motion to quash must be deemed to have admitted the allegations of the complaint, one of which stated that the accused willfully, maliciously called the complainant, or imputed to her, the words, "pompom," "naga-business," "naga-prostitute," and "prostitute." Hence, having found the letters to contain libelous matter which in the eyes of the law had been published, the Court reversed the appealed decision and remanded the record to the lower court for further proceedings.

Similarly, in *People v. Lim Hoa*,[80] the defendant was accused of unfair competition in violation of article 189 of the Revised Penal Code, the information charging that he had "willfully, unlawfully and feloniously" engaged in unfair competition "for the purpose of deceiving or defrauding" the complainant "of its legitimate trade and/or of the public, in general, and sell his goods x x x by then and there giving it the general appearance of a produce named Oak Barrel Brand Food Seasoning being sold and distributed" by said com-

[70] People v. Calabon, 53 Phil. 945 (1928); People v. Alamada, G.R. No. L-2155, May 28, 1951.
[71] People v. Tan, G.R. No. L-6239, April 30, 1957; People v. Daisin, G.R. No. L-6718, April 29, 1957; People v. Calderon, G.R. No. L-9497, July 31, 1956; People v. Puyal, G.R. No. L-8091, February 17, 1956.
[72] G.R. No. L-11036, May 28, 1958.
[73] G.R. No. L-10617, August 29, 1958.
[74] Sec. 2, Rule 113.
[75] NAVARRO, CRIMINAL PROCEDURE 235 (1952).
[76] 2 MORAN, COMMENTS ON THE RULES OF COURT 872 (1957).
[77] G.R. No. L-1174, May 28, 1958.
[78] Article 327, REVISED PENAL CODE.
[79] G.R. No. L-10610, May 26, 1958.
[80] G.R. No. L-10612, May 30, 1958.

plainant, and that the similarities specified in the information "would be likely to induce the public to believe" that defendant's product made in the Philippines is that of an Oak Barrel Brand Food Seasoning made in the United States, x x x." On the defendant's motion to quash, the lower court dismissed the case on the ground that the accused acted in good faith and that the public could not be misled into confusing or mistaking one product for the other. The Supreme Court held that the lower court erred in basing its order on a premise exactly opposite that of the allegations in information, because a motion to quash assumes the facts alleged in the information to be true, and by it the accused did not contest the allegation of false representation, nor that the said false representation is a crime punishable under paragraph 2 of article 189.[81]

B. *Time to Move to Quash.*

Under the Rules of Court, the defendant may either move to quash without peading, or plead without moving to quash, or move to quash and plead at the same time *immediately upon being arraigned.*[82]

In *People v. Ching Lak*,[83] the accused, duly assisted by his attorney, was arraigned, and entered the plea of not guilty to the information charging him of willfully and unlawfully failing and refusing to pay war profits taxes due from him. Thereafter he filed a motion to quash the information on the ground that the criminal action or liability charged therein had been extinguished by prescription. Lower court was correct in sustaining the motion.

DOUBLE JEOPARDY

Former conviction or acquittal or former jeopardy.—Under the Rules former jeopardy is present in any of the following cases: (1) former conviction; (2) previous acquittal; (3) "the case against him dismissed or otherwise terminated without the express consent of the defendant;" provided that, in any of the cases, the following conditions are present: (1) "by a court of competent jurisdiction," (2) "upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction," and (3) "after the defendant had pleaded to the charge." The presence of these circumstances is a "bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." [84]

When appeal by the prosecutor constitutes double jeopardy.—When all of the above requisites are present, appeal by the Government places the accused in double jeopardy.

The more reason should the Government not be allowed to appeal when, in addition to the above requisites, the accused has already commenced serving sentence and paid the fine. This was what happened in *People v. Revil*,[85] where the accused was charged with, tried and convicted of a violation of Circular No. 20 of the Central Bank in connection with section 34 of Republic Act No. 265, for failure to sell to authorized agents of the Central Bank United States dollars, checks, money orders and bills. After entry of the order that an equi-

[81] Article 189, par. 2, provides: "Any person who shall affix, apply, annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, and shall sell such goods or services."
[82] Sec. 1, Rule 113.
[83] G.R. No. L-10609, May 23, 1958.
[84] Sec. 9, Rule 113.
[85] G.R. No. L-11061, December 29, 1958.

alent amount of Philippine currency be exchanged for them, and after the defendant had commenced serving sentence and paid the fine, the government appealed asking for an order of forfeiture in favor of the State of said dollars, checks, money orders and bills. The Supreme Court held that to uphold the appeal and to order the forfeiture asked for would place the defendant in double jeopardy, for such forfeiture would increase the penalty already imposed upon him.

Appeal by the prosecution from dismissal of the case otherwise than on the merits on motion of accused after having pleaded to valid information.—A good deal of confusion has been created as to the state of the law on this matter as a result of the questionable doctrine laid down by the Supreme Court in the case of *People v. Salico* [86] that after the accused has pleaded to a valid information before a competent court, any dismissal otherwise than upon the merits of the case, issued on motion or at the instigation of the accused, is no bar to another prosecution for the same offense. The subsequent cases of *People v. Ferrer* [87] and *People v. Bangalao* [88] and the 1958 cases of *People v. Cabarles*,[89] *People v. Flores*,[90] and *People v. Nieto*,[91] applied contrary ruling, but the Supreme Court did not expressly abandon the *Salico* doctrine.

In the case of *Cabarles*, Calixto Cabarles was prosecuted in the justice of the peace court of Leon, Iloilo, for violation of a municipal ordinance. After the prosecution had presented its evidence and rested its case, counsel for defendant verbally moved to "quash the information for insufficiency of evidence," which motion was granted by the justice of the peace, saying, "The amended information is hereby dismissed," basing the dismissal on the finding that the facts alleged in the information and proved by the prosecution, to wit, the refusal and failure of the accused to pay the impounding fee, are not punished by the ordinance in question. This was tantamount to saying that the accused did not commit any violation of said municipal ordinance and therefore, should be discharged. The Supreme Court upheld the holding of the Court of First Instance of Iloilo that appeal by the prosecution placed the defendant in double jeopardy.

Appeal by the prosecution was denied on the same ground of double jeopardy in the case of *Flores* where the defendant was acquitted by the Court of First Instance of Leyte from the charge of grave oral defamation, after the prosecution introduced its evidence, on the ground that it had not been established that the action was instituted upon complaint filed by the offended party, erroneously believing that such complaint was necessary; and in the case of *Nieto* where the defendant was acquitted by the Court of First Instance of Nueva Ecija from the charge of homicide, after she had already pleaded guilty, on the ground that the information failed to allege that she was a minor over nine and under fifteen years old and that she acted without discernment.

However, any doubt that may have existed as to the state of the law in this situation is erased by the definite pronouncement of the Court in the case of *People v. Pinuila*.[92] In that case the accused, charge with murder, filed a motion for dismissal on the ground that the jurisdiction of the Court of First Instance of Negros Occidental had not been established, after the Government presented its evidence and after it had rested its case. The court dismissed the case. Upon appeal by the Government, the Supreme Court, fol-

[86] 47 O.G. 1765 (1951).
[87] G.R. No. L-9072, October 23, 1956
[88] G.R. No. L-5610, February 17, 1954.
[89] G.R. No. L-10702, January 29, 1958.
[90] G.R. No. L-11022, April 28, 1958.
[91] *Supra*, note 38
[92] G.R. No. L-11374, May 30, 1958

lowing the doctrine of *People v. Salico*, resolved to remand the case for further proceedings, holding that the jurisdiction of the trial court had been proven, and that the appeal did not involve double jeopardy. The Court of First Instance of Negros Occidental thereafter convicted the defendant who now appealed to the Supreme Court on the ground that his guilt had not been proven beyond reasonable doubt. Both the majority and the dissenting opinions agree that under the present state of law on the matter appeal by the prosecution in this case would constitute double jeopardy. However, the majority, through Mr. Justice Montemajor, refused to apply the new doctrine overruling the doctrine laid down in the case of *Salico* for two reasons, to wit: (1) that the previous ruling of the Court applying the *Salico* doctrine had long become final and conclusive and had become *the law of the case*;[93] and (2) that, as the defense of double jeopardy may be waived, the defendant's failure to urge it on appeal may be regarded as a waiver of said defense. Chief Justice Paras, dissenting, argued that the new doctrine should have been applied for the following reasons: (1) that the "law of the case" rule is subject to exceptions;[94] (2) that, although the resolution in the first appeal for further proceedings had become final, the accused had not as yet been finally convicted and, as a matter of fact, the Court was still called upon to decide his present appeal from all angles; and (3) that, this being a criminal case, the subsequent ruling establishing the new doctrine should be applied in favor of the accused, it being immaterial whether the appellant had not raised the issue of double jeopardy in his brief, because in criminal cases, regardless of the assignment of error, the Court has ample power to consider and correct palpable errors.

When appeal by Government not double jeopardy.—In *People v. Segovia*,[95] where the accused appealed from the judgment of the Municipal Court of Legaspi convicting him of malicious mischief, and reiterated his motion to quash the information before arraignment in the Court of First Instance, on the ground that it did not allege the necessary elements to constitute the crime charged in the information, the Government may appeal from the judgment of the Court of First Instance sustaining the defendant's motion and dismissing the case. The Supreme Court held that the accused was not thereby placed in double jeopardy, advancing the following argument, through Mr. Justice Felix Bautista Angelo:

> "This claim (of double jeopardy) ignores the fact that he appealed from the judgment of conviction by the Municipal Court of Legaspi. The rule is that when an appeal has been perfected, the judgment of the justice of the peace or municipal court is vacated and the case is tried *de novo* in the court of first instance *as if it were originally instituted therein*.[96] No new information need be filed in the latter court in order that it may acquire jurisdiction to try the case.[97] If the case, on appeal by the accused, is as originally instituted, and the motion was filed *before arraignment* or plea, it is obvious that the dismissal of the case was no bar to appeal because it does not place the accused in jeopardy under Section 9, Rule 113, of the Rules of Court. The claim is therefore without merit."[98]

Impliedly applying the doctrine established in the *Segovia* case, the Supreme Court, in the case of *People v. Lingad*,[99] where substantially the same facts

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[93] 21 C.J.S. 330; 5 C.J.S. 1267, 1276-77; 1286-87, 1274.
[94] 5 C.J.S. 1277-78.
[95] G.R. No. L-1174, May 28, 1958.
[96] RULES OF COURT, Rule 119, Sec. 8.
[97] People v. Cu Hiok, 62 Phil. 501 (1935); Crisostomo v. Director of Prisons, 41 Phil. 868 (1921).
[98] For the dissenting opinion of Justice Felix, with which Chief Justice Paras concurred, see 33 PHIL. L. J. 738-739 (1958).
[99] *Supra*, note 24.

were involved, allowed the Government to appeal and, in fact, decided the case against the defendant.

PLEAS

Plea of guilty admits facts alleged and takes the place of trial.—A plea of guilty does not merely join the issues of the complaint or information, but amounts to an admission of guilt and of the material facts alleged in the complaint or information, and in this sense takes the place of the trial itself. Such plea removes the necessity of presenting further evidence and for all intents and purposes the case is deemed tried on its merits and submitted for decision. It leaves the court with no alternative but to impose the penalty prescribed by law. Thus, in *People v. Rapirap*,[100] where the accused pleaded guilty after appeal from the Municipal Court of the City of Naga to the Court of First Instance of Camarines Sur, the Supreme Court held that, as her plea of guilty took the place of trial, she could no longer withdraw her appeal.

Similarly, in *People v. Nieto*,[101] the plea of guilty by the accused, who was over nine and under fifteen years old, to an information charging homicide, was an unqualified admission of all its material averments; thus, under the allegation that she "willfully, criminally and feloniously" committed the offense charged, she could be taken to have known what would be the consequences of her unlawful act, and, that she acted with discernment, need not be specifically alleged therein.

Withdrawal of plea of guilty.—The withdrawal of a plea of guilty in order to interpose a motion to quash or substitute therefor a plea of not guilty, at any time before judgment,[102] is not a matter of strict right to the accused but of sound discretion to the trial court.[103]

Applying this principle, the Supreme Court sustained the order of the lower court denying accused's petition to withdraw his plea of guilty and to substitute it with that of not guilty, in the case of *People v. Lambino*,[104] In that case, the accused, assisted by counsel, entered his plea of guilty after a witness for the prosecution had testified so convincingly that the appellant had committed the crime charged in the information; and, subsequently, obviously after learning the penalty imposed, he sought to withdraw his plea of guilty to substitute therefor a plea of not guilty. The Court held that accused should not be allowed to gamble with his plea of guilty by withdrawing it after he learned the penalty imposed upon him.

Appellate court will not interfere with lower court's discretion in absence of abuse thereof.—In *People v. Pasa*[105] the Court affirmed the decision of the Court of First Instance of Camarines Sur denying the petition of the accused, in a prosecution for robbery, for permission to withdraw his plea of guilty and substitute therefor a plea of not guilty, considering the fact of inconsistencies in the defendant's allegations.

TRIAL

Discharge of one of several defendants to be witness for the prosecution.—When proper.—In *People v. Bacsa*,[106] where the accused imputed irregularity

[100] G.R. No. L-11000, January 21, 1958.
[101] *Supra*, note 88.
[102] Sec. 6, Rule 114.
[103] People v. Ubaldo, 55 Phil. 95 (1930); People v. Quinta, 51 Phil. 820 (1928); United States v. Grant, 18 Phil. 122 (1922); United States v. Sanchez, 13 Phil. 336 (1909); United States v. Molo, 5 Phil. 412 (1905); United States v. Patala, 2 Phil. 752 (1901).
[104] G.R. No. L-10875, April 28, 1958.
[105] G.R. No. L-11516, April 18, 1958.
[106] G.R. No. L-11485, July 11, 1958.

to the trial judge in permitting the release of *two* defendants, because Rule 115, section 9, according to him contemplates the discharge of *only one*, the Supreme Court held that it did not think so and that it all depends upon the need of the fiscal and the discretion of the trial judge; and, anyway, any error of the trial judge in this matter cannot have the effect of invalidating the testimony of the discharged co-defendants.[107] The alleged confession by the discharged defendant before a barrio lieutenant to a previous attempt against the virtue of a married woman does not disqualify him from the benefit of exclusion because the disqualification speaks of "conviction."[108] Once the discharge is ordered, any future development showing that one or all of the five conditions have not actually been fulfilled may not affect the legal consequences of such discharge.[109] Thus, in this case, it was declared immaterial the fact that one of the dismissed co-defendants was confined at the Philippine Training School at Welfareville for the offense of robbery, it not appearing that at the time of release the judge knew about this confinement. Anyway, even though this was erroneous, it did not affect the testimony of the liberated co-defendant nor his competency to testify.[110]

In the case of *People v. Cruz, et al.*,[111] the Supreme Court held that Saldivia, one of the four accused in a prosecution for the crime of robbery with homicide, was properly excluded from the information to insure the success of the prosecution, considering the circumstances that he appeared to be the least guilty of the four, was a mere youth of eighteen, a nephew of the mastermind in the commission of the offense and, hence, was closely attached to his uncle and impressed by the glamour surrounding said uncle as a killer, blindly following him and doing his bidding even if he did not expect any reward.

JUDGMENT OR SENTENCE

Judgment in case of variance between allegation and proof;[112] *Willful offense includes offense committed through imprudence.*—An information charging the defendant of a willful act of *estafa* through falsification necessarily includes the offense committed through imprudence. Thus, in *Samson v. Court of Appeals, et al.*[113] the Supreme Court held that, although a criminal negligent act is not a simple modality of a willful crime but a distinct crime in itself, designated as a quasi-offense in the Revised Penal Code, it may however be said that a conviction for the former can be had under an information exclusively charging the commission of a willful offense, upon the theory that the greater includes the lesser offense. In that case the accused was charged with willful falsification, but from the evidence submitted by the parties, the Court of Appeals found that in effecting the falsification which made possible the cashing of the checks in question, accused did not act with criminal intent but merely failed to take proper and adequate means to assure himself of the identity of the real claimants as an ordinary prudent man would do. Moreover, section 5, Rule 116, of the Rules of Court does not require that *all* the essential elements of the offense charged in the information be proved, it being sufficient that some of said essential elements or ingredients thereof be established to constitute the

[107] People v. Badilla, 48 Phil. 718 (1926); People v. Marcellana, 44 Phil. 591 (1923).
[108] Sec. 9(e), Rule 116.
[109] People v. Mendiola, 46 O.G. 3629 (1951).
[110] United States v. Alabot, 38 Phil. 698 (1918); United States v. Abansado, 37 Phil. 658 (1918).
[111] G.R. No. L-8776, May 19, 1958.
[112] Sec. 4, Rule 116.
[113] G.R. Nos. L-10364 and L-10376, March 31, 1958.

crime proved.[114] This conclusion is strengthened by the provisions of section 9, Rule 113, under which the accused could no longer be prosecuted for *estafa* through falsification of commercial documents by reckless negligence were the Court to acquit him in the present case.

Likewise, in *People v. Manangco*,[115] where the accused, for failure to pay wages of several laborers, was charged in the Court of First Instance of Manila, with violation of Commonwealth Act No. 303 in relation to article 315 of the Revised Penal Code, and after due proceedings and hearing, the court found him guilty thereof and accordingly sentenced; the Supreme Court held that, although the aforementioned act is considered repealed by the Minimum Wage Law [116] insofar as the issues involved were concerned, there was no obstacle in declaring the defendant-appellant guilty of a violation of the latter law, as the evidence appearing on record showed his guilt of a violation thereof.

Robbery with homicide not included in murder.—In *People v. Andam* [117] the trial court erred in finding the accused guilty of robbery with homicide when the information only charged him with murder without any allegation regarding robbery; accused should have been convicted of murder qualified with treachery.

NEW TRIAL

Newly discovered evidence; must not only be corroborate. In *Samson v. Court of Appeals, et al.*,[118] where the alleged newly discovered evidence consisting of an affidavit of another would, if admitted, only be corroborative in nature and would not have the effect of altering the result of the case, the motion for new trial for the purpose of introducing the same was denied.

Same; affidavit of convict prisoner looked at with askance.—Unless there be special circumstances which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on the affidavit of retraction of a co-accused now serving life sentence in Bilibid Prison would not be justified. Statements of this kind would, presumably, not be hard to get from criminals, who, like the affiants are already in prison for life and have therefore little or nothing at all to lose by making a retraction that would save someone from the same fate. This was the holding in the case of *People v. Farol, et al.*,[119] the Supreme Court cautioning appellate courts to be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in court of justice and under conditions calculated to discourage and forestall falsehood, these conditions being that such testimony "is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of a solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove,

[114] People v. Rivera, 54 Phil. 578 (1930); People v. Crisostomo, 46 Phil. 775 (1923); United States v. Solis, 7 Phil. 195 (1906); United States v. Brueda, 4 Phil. 229 (1905); United States v. De la Cruz, 4 Phil. 480 (1905); United States v. Mangubat, 3 Phil. 1 (1903).
[115] G.R. No. L-11326, April 30, 1958.
[116] Rep. Act No. 602, Approved June 9, 1938.
[117] G.R. No. L-11383, April 30, 1958.
[118] *Supra*, note 113.
[119] G.R. Nos. L-9423-24, May 30, 1958.

so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the entonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness." [120]

The same rule was applied in the case of *People v. Aguipo*.[121]

APPEAL

Appeal must be taken within fifteen days from rendition of judgment or order.—In *Pangan, et al., v. Hon. Pasicolan*,[122] where two of the three accused in a prosecution for forcible abduction were ordered dismissed on motion of the fiscal for insufficiency of evidence, and the complainant filed a motion for reconsideration five months thereafter, and the order of the court reconsidering it, after nine months; the Supreme Court held that the lower court acted without jurisdiction in issuing the order in question. The order of dismissal having become final, the trial court erred in ordering the accused-petitioners to file new bail bonds for their provisional liberty.

Withdrawal of appeal[123] *must be before the trial of the case on appeal, not during or after it.*—Under this rule, since a plea of guilty takes the place of trial itself, the accused is precluded from withdrawing his appeal thereafter.[124] Also, the withdrawal of an appeal rests within the sound discretion of the court. So, in *People v. Rapirap*,[125] the Supreme Court upheld the trial court in denying the defendant's petition to withdraw her appeal. In that case the accused was charged with and after due trial, was convicted by the Municipal Court of the City of Naga, of the crime of less serious physical injuries and sentenced to pay a fine of ₱25.00. She appealed therefrom to the Court of First Instance of Camarines Sur wherein she was allowed to change her former plea of not guilty to that of guilty. Her petition to the court to impose the penalty of ₱20.00 in consideration of her plea of guilty having been denied, she asked permission to withdraw her appeal, which was also denied. Thereafter, she was sentenced to suffer the penalty of eleven days *arresto menor;* to pay the damages in the amount of ₱2,000.00 to the offended party, with subsidiary imprisonment in case of insolvency, and to pay costs of the procedings. Invoking section 12, Rule 118, she appealed. The Supreme Court held that, in imposing a higher penalty and not allowing the withdrawal of the appeal by the accused, the court did not abuse its discretion, as the move to withdraw the appeal was made only at a time when the court appeared disposed to impose a higher penalty, when it denied the recommendation of one of her attorneys to impose a ₱20.00 fine. "No one should be allowed to trifle with the solemn judicial procedure [126] as by permitting parties to a case to take appeals and withdraw them at pleasure, after they become certain that the forthcoming judgment would work adversely to them. Parties and attorneys should realize that the ethics of the market place are not those of courts of justice."

Effect of withdrawal of appeal.—In *People v. Ortiz and Lopez* [127] two of the accused, Lopez and Ortiz, were found guilty of robbery with rape by the Court of First Instance of Isabela, but the court erroneously sentenced them

[120] United States v. Dacir, 26 Phil. 507 (1913).
[121] G.R. Nos. L-12123-24, July 31, 1958.
[122] *Supra*, note 8.
[123] Sec. 12, Rule 118.
[124] People v. Sabilul, 49 O.G. 2743; People v. Buco, G.R. No. L-2658, February 28, 1950; People v. Ng Peck, 46 O.G. Supp. 1, 860.
[125] *Supra*, note 100.
[126] People v. Pangilinan, 74 Phil. 451 (1943).
[127] G.R. No. L-12287, May 29, 1958.

to a lighter penalty [128] than the law requires. Both appealed to the Court of Appeals, but pending appeal therein, Ortiz moved for the withdrawal of his appeal and his motion was granted, thereby leaving Lopez as the lone appellant. The Supreme Court rectified the error committed by the lower court as to Lopez, but not as to Ortiz, for, "by the withdrawal of his appeal in the Court of Appeals, we are now in no position to correct, there was evidently a miscarriage of justice, since as between the two acused, Ortiz, is, clearly the more guilty."

Appeal; expediente.[129]—In *People v. Bugagao* [130] the accused was duly tried for murder but found guilty of homicide by the Court of First Instance of Camarines Sur. He took his appeal to the Court of Appeals; but being of the opinion that murder had actually been committed and that the proper penalty is life imprisonment, said Court forwarded the *expediente* to the Supreme Court, in accordance with section 9, Rule 118, of the Rules of Court. This was proper.

Same; same; although accused did not appeal from said decision.—In *People v. Samañada* [131] the Supreme Court took cognizance of the appeal from the decision of the lower court, convicting the accused of the crime of robbery with homicide and sentencing him to die in the electric chair "for review and judgment as law and justice shall dictate;" although the accused did not appeal from said decision.

Same; same; withdrawal by accused does not affect jurisdiction of Supreme Court.—An accused appealing from a decision sentencing him to death may be allowed to withdraw his appeal like any other appellant in an ordinary criminal case before the briefs are filed, but his withdrawal of the appeal does not remove the case from the jurisdiction of the Supreme Court which under the law is authorized and called upon to review the decision though unappealed. Consequently, the withdrawal of the appeal, in the case of *People v. Villanueva*,[132] could not serve to render the decision of the People's Court final. The judgment of conviction entered in the trial court is not final, and cannot be executed and is wholly without force or effect until the case has been passed upon by the Supreme Court *en consulta*. This automatic review by the Supreme Court of decisions imposing the death penalty is something which neither the court nor the accused could waive or evade.[133]

DEPORTATION PROCEEDINGS

When rules in Criminal Procedure not followed.—Proceedings for the deportation of aliens are not criminal proceedings, and neither do they follow the rules established in criminal proceedings. This is so because deportation proceedings are summary in nature and the proceedings prescribed in criminal cases for the protection of an accused are not present or followed in deportation proceedings.[134] Furthermore, the presence in the Philippines of an overstaying alien is a matter of privilege, and he is not entitled to the same rights and privileges as resident aliens have.[135]

Hence, in the deportation case of *Tiu Chun Hai, et al. v. The Commission of Immigration, et al.*,[136] the Supreme Court held that the lower court erred in

[128] Accused were sentenced to indeterminate sentence of not less than 10 years, 2 months and 21 days of *prision mayor* nor more than 18 years, 8 months and 1 day of *reclusion temporal*, with the accessories of the law.
[129] Sec. 9, Rule 118.
[130] G.R. No. L-11828, April 16, 1958.
[131] G.R. No. L-1136, May 26, 1958.
[132] G.R. No. L-9529, August 30, 1958.
[133] United States v. Laguna, 17 Phil. 582 (1910).
[134] Lao Teng Bun v. Fabre, 81 Phil. 682, 691 (1948).
[135] Ong Se Lun v. Board of Immigration Commissioners, G.R. No. L-6017, September 16, 1954.
[136] G.R. No. L-10009, December 22, 1958.

ruling that the arrest of the petitioners was unlawful from the very beginning. In that case, the lower court granted writ of habeas corpus on the ground that the arrest of the petitioners was unlawful from the very beginning because there was no warant for their arrest at the time of their apprehension and detention; that even if a warrant for their arrest existed at the time of their apprehension, their detention without the filing of the proper action before the judicial authorities is illegal and a warrant of arrest issued by a court is necessary to justify the continuance of their detention. Apparently, the lower court erroneously thought that sections 6 and 7 of Rule 109 of the Rules of Court are applicable.

In *Sy Chuan v. Hon. Galang, et als.*,[137] the Board of Special Inquiry, Bureau of Immigration could reopen the investigation it had been conducting concerning the proposed deportation of Sy Chuan and seven other Chinese nationals, although the witness seemed to be unreliable. The Court said that the Board, being an administrative body engaged in proceedings administrative in nature, do not need to be conducted strictly in accordance with court processes, for such body has "broad authority and discretion," which should not be interfered with in the absence of abuse of power,[138] and constitute a committee of inquiry actively to seek after truth and evidence as distinguished from a court ordinarily to adjudge only from the proofs submitted to it wherein or whereto the line of truth extends.

Rule in Criminal Procedure followed.—In another deportation case, *Republic of the Philippines v. Court of Appeals, et al.*,[139] the Supreme Court, following the well-established procedural rule[140] that the Deportation Board may so use the machinery of the criminal law as to adopt the law relating to bail, declared that once the court has exercised its discretionary power to forfeit a bail,[141] the same cannot be set aside by a subsequent order of the President revoking his previous deportation order and allowing the alien to reside in the Philippines, nor may it be reversed on this ground by the Chairman of the Deportation Board. A contrary view, the Court said, would encourage aliens and their sureties to take lightly, if not flout, their undertakings.

[137] G.R. No. L-9793, December 29, 1958.
[138] Lao Teng Bun v. Fabre, *supra*, note 134.
[139] G.R. No. L-9928, January 31, 1958.
[140] United States v. Go-Siaco, 12 Phil. 490 (1909).
[141] Sec. 15, Rule 110.