

## CRIMINAL LAW—1958

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### INTRODUCTION

Perhaps in no other field of legal discourse has the Supreme Court remained steadfast in its previous rulings as in Criminal Law. This year (1958) for instance, the Court made no remarkable judicial pronouncement that can be considered jurisprudential. Many of its decisions are merely reiterations of former doctrines. Sad to say, the Court has been bound deeply by the doctrine of *stare decisis* that it finds difficulty getting out of it. Even in the presence of fundamental difference in the factual situations of two cases, the Court has chosen to follow its former rulings.

Except for one doctrine laid down by the case of *People v. Silvela*,<sup>1</sup> this survey shall contain a litany of previous rulings and doctrines made sacrosanct by frequent reference and use.

### FELONIES

*Motive.*—Acts and omissions punishable by law are felonies.<sup>2</sup> From this definition, it appears that motive is never an important element of a crime.<sup>3</sup> It becomes essential only in those cases where there is doubt as to whether the defendant is or is not the person who committed the act.<sup>4</sup> But when there is no doubt that the defendant was the one who caused the death of the deceased, it is no longer important to know the exact reason for the deed. The Supreme Court in two recent cases reiterated this ruling.<sup>5</sup> In *People v. Gregorio Ramirez et al.*<sup>6</sup> the defendant who was charged with murder, pleaded self-defense and contended that he has no motive to kill the deceased, they being very close intimates. The Court in overruling this contention held "that there being an admission by appellant that he was the one who stabbed the deceased, there was no need for the prosecution to inquire into his motive."<sup>7</sup>

However, in the case of *People v. Trinidad*,<sup>8</sup> the Court took into consideration the motive of the defendant when it convicted him of the crime charged. It was found out that the deceased had repeatedly urged his sister-in-law to break off her illicit relationship with the defendant who was a married man. The latter knew of this and even had a heated argument with the defendant which ended in the latter's warning "Ikoy, there will be a day for you!"

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<sup>1</sup> G.R. No. L-10610, May 26, 1958. See also *People v. Colman, et al.*, G.R. Nos. L-6652-54, February 28, 1958 and *People v. Escares*, G.R. No. L-11559, January 29, 1958.

<sup>2</sup> REVISED PENAL CODE, Art. 13, par. 1.

<sup>3</sup> PADILLA, REVISED PENAL CODE ANNOTATED, 30 (1957).

<sup>4</sup> *People v. Ramponit*, 62 Phil. 284; 286 (1955).

<sup>5</sup> *People v. Bugagao*, G.R. No. L-11828, April 16, 1958; *People v. Gregorio Ramirez*, G.R. No. L-10951, October 23, 1958.

<sup>6</sup> *Supra*, See note 5

<sup>7</sup> It cited the cases of: *U.S. v. McMann*, 4 Phil. 561, 563 (1905); *People v. Bagsac*, 61 Phil. 148; *People v. Tagasa*, 68 Phil. (1947)

<sup>8</sup> G.R. No. L-10618, March 28, 1958.

*Duty of the Court in Cases of Excessive Penalties:*

It is the duty of the court to impose the penalty prescribed by law. It cannot suspend the execution of the sentence on the ground that a strict enforcement of the provisions of the Revised Penal Code would result in the imposition of a clearly excessive penalty but in such a case, the court, considering the degree of malice of the offender and the injury caused by the offense, shall submit to the chief executive through the Department of Justice, such statement as may be deemed proper.<sup>9</sup> As interpreted by the Court in the case of *People v. Salazar*<sup>10</sup> article 5 refers only to penalties provided by the Penal Code and not to acts penalized by special laws. In this case the defendant was convicted of illegal possession of firearms and was sentenced to 5 years of imprisonment. It was contended by the defendant that the trial court erred in not recommending executive clemency inasmuch as the weapon had been forfeited already to the Government and there was no showing that he was a hardened criminal. The Court affirmed the decision of the trial judge holding that article 5 does not apply to acts provided by special laws, like illegal possession of firearms.<sup>11</sup>

In the case of *People v. Crisostomo*,<sup>12</sup> the Supreme Court considering the fact that the information involved 18 violations of the gambling law, made recommendations to the Legislature through the Secretary of Justice as to the necessity of making an exception in the case of violation of the gambling law.<sup>13</sup> It said, and we quote:

At the same time, we realize the conflict or discrepancy between Article 9 and 26 of the Revised Penal Code. It would greatly be desirable if the Legislature resolved this conflict by suitable legislation or amendment of the Revised Penal Code. . . . Or if the Legislature is not favorably inclined towards the amendment suggested, the Department of Justice might brief and circularize prosecuting attorneys to be more alert in the prosecution of violations of the gambling law, so that the corresponding complaint or information could be filed within the present prescriptive period of two months.

## JUSTIFYING CIRCUMSTANCES

*Self-defense.*—For a person to claim the right of self-defense, the following circumstances must concur: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; (c) lack of sufficient provocation on the part of the person defending himself.<sup>14</sup>

In the case of *People v. Aleta*,<sup>15</sup> the plea of self-defense was denied as the proven fact showed that the defendant was the unlawful aggressor and there was absolutely no provocation on the part of the deceased. The Court in another case denied the claim that the defendant acted in self-defense in view of the fact that it was the defendant who pursued the deceased and when the latter stumbled the defendant struck him with the knife causing a mortal wound which resulted in the death of the deceased.<sup>16</sup>

In another case, *People v. Cirilo Monroy et al.*,<sup>17</sup> the Court held that the words "if you do not agree, beware," without further proof that he was bent upon translating his vague threats into immediate action, cannot be considered

<sup>9</sup> REVISED PENAL CODE, Art. 5, par. 2.

<sup>10</sup> G.R. No. L-7480, January 21, 1958.

<sup>11</sup> See secs. 878 and 2692 of the Revised Administrative Code, as amended by C.A. No. 58 (Oct. 17, 1936) and R.A. No. 4 (July 19, 1946) for the law governing illegal possession of firearms.

<sup>12</sup> *Infra*, See note 79.

<sup>13</sup> REVISED PENAL CODE, Art. 195.

<sup>14</sup> REVISED PENAL CODE, Art. 11, par. 1.

<sup>15</sup> G.R. No. L-8684, April 30, 1958.

<sup>16</sup> *People v. Bugagao*, *supra*.

<sup>17</sup> G.R. No. L-11177, October 30, 1958.

as sufficient provocation or threat immediately preceding the act. "Sufficient" provocation or threat has been held to be one which is adequate to excite a person to commit the wrong charged, and which must, accordingly, be proportionate to its gravity.<sup>18</sup>

*Obedience to an Order Issued by a Superior for some Lawful Purpose—*

Under the Revised Penal Code a person who acts in obedience to an order issued by a superior for some lawful purpose does not incur any criminal liability.<sup>19</sup> For "lawful purpose" to exist, both the person who gives the order and the person who executes it must be acting within the limits of the law.<sup>20</sup> In *People v. Lucero*,<sup>21</sup> the defendant was commissioned by an officer of the 20th BCT as confidential agent to make surveillance and effect the killing or capture of a top Huk leader. He was caught in possession of a revolver and was therefore prosecuted for illegal possession of firearms. In acquitting him, the Court through Justice Labrador said:

"The designation and appointment of the defendant as informer by the battalion commander was therefore within the latter's lawful authority . . . the right of the military commander entrusted with the duty of effecting the arrest or capture of a Huk commander should necessarily include besides the appointment of the civilian informer the power to provide the latter with such weapons as are necessary to protect the informer and help him carry out the mission entrusted to him."

EXEMPTING CIRCUMSTANCE

*Under Compulsion of an Irresistible Force*

Any person who acts under the compulsion of an irresistible force is exempt from criminal liability.<sup>22</sup> However, in order that this defense can be availed of, it should be based on real, imminent fear for one's life or limb.<sup>23</sup> It should not be inspired only by speculative, fanciful or remote fear.<sup>24</sup> In *People v. Semanada*,<sup>25</sup> the Court found out that there is no evidence on record showing the presence of a real, imminent fear. Thus it convicted the accused of the crime of robbery with homicide.

CIRCUMSTANCES WHICH MITIGATE LIABILITY

*Plea of Guilty.*—Confession of guilt constitutes a cause for mitigation of the penalty because it is an act of repentance and respect for the law; it indicates a moral disposition in the accused favorable to his reform.<sup>26</sup> But it is necessary that it must be made prior to the presentation of evidence for the prosecution. Hence this benefit is not deserved by the accused who submits to the law only after the presentation of some evidence for the prosecution, believing that in the end the trial will result in his conviction.<sup>27</sup> Thus, in the case of *People v. Lambino*,<sup>28</sup> the Court refused to consider the plea of guilty as a mitigating circumstance for it was entered after the prosecution had presented part of the evidence.

<sup>18</sup> I PADILLA, REVISED PENAL CODE ANNOTATED, 143 (1957).

<sup>19</sup> REVISED PENAL CODE, Article 11, par. 6.

<sup>20</sup> *People v. Wilson, et al.*, 52 Phil. 919.

<sup>21</sup> G.R. No. L-10845, April 28, 1958.

<sup>22</sup> REVISED PENAL CODE, Art. 12, par. 5.

<sup>23</sup> *U.S. v. Ellicanal*, 35 Phil. 209.

<sup>24</sup> *People v. Quillooy*, G.R. No. L-2813, January 10, 1951.

<sup>25</sup> G.R. No. L-11361, May 26, 1958.

<sup>26</sup> *People v. De la Cruz*, 68 Phil. 874.

<sup>27</sup> *People v. Heronimo*, 64 Phil. 403.

<sup>28</sup> G.R. No. L-10875, April 28, 1958.

In *People v. Rapirap*<sup>29</sup> the defendant was convicted by the Municipal court of less serious physical injuries. She appealed to the Court of First Instance and upon request was permitted to change her plea of not guilty to that of guilty. The Court ruled that as the plea of guilty was only taken when the case was on appeal with the CFI, it was rightly not considered as a mitigating circumstance.

Said the Court in *People v. Santos*.<sup>30</sup>

"Considering however, that the appellant offered to plead guilty if charged only of that offense, the mitigating circumstance of plea of guilty should be appreciated in his favor and there being no aggravating circumstance to offset this mitigating circumstance, that penalty shall be imposed in its minimum period."<sup>31</sup>

**Voluntary Surrender.**—It is a rule established in this jurisdiction that a surrender to be considered mitigating must be made voluntarily and for the crime for which one is being prosecuted.<sup>32</sup> In the case of *People v. Semanada*,<sup>33</sup> the Court held that the voluntary surrender of Semanada was not by reason of the crime but was motivated by his desire to change his way of life from that of a Huk to a peaceful citizen. Hence, his surrender can not be taken as mitigating.<sup>34</sup>

**Vindication of a Grave Offense.**—The insult must be of some serious weight so as to fall under the provision of the Penal Code. It need not be immediate (the vindication). It is enough that it be proximate because paragraph 5 may allow some lapse of time from the insult to its vindication.<sup>35</sup> The Court in the case of *People v. Guzman et al.*<sup>36</sup> appreciated the mitigating circumstance of vindication of a grave offense when it found the defendants guilty of murder. In this case, it was held that although the alleged act of forcing his daughter Maria to marry Vicente Rabang after the former eloped with the latter may not be considered as grave to the average person, it was evidently a serious matter to the defendant who considered himself dishonored. The planning of these killings, said the court, immediately surged from his resentment of the offense allegedly done to his daughter.

#### CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY

**Nocturnity.**—If nighttime was especially sought to facilitate the commission of the offense, then it shall be considered as an aggravating circumstance.<sup>36</sup> If at the time of the commission, there was also treachery, then except in special cases, these two circumstances always go together and are absorbed in the same offense and therefore will be considered as one circumstance only, to qualify the killing as murder.<sup>37</sup>

The Court in *People v. Gardon*<sup>38</sup> rejected the contention that nocturnity cannot be considered as aggravating for the reason that it does not appear clear from the testimony that appellants expressly sought the darkness of the night to insure the commission of the crime, it appearing that they waited until

<sup>29</sup> G.R. No. L-11000, January 21, 1958.

<sup>30</sup> G.R. No. L-11818, September 17, 1958.

<sup>31</sup> *People v. Timbol*, G.R. Nos. L-4747-78, August 4, 1944.

<sup>32</sup> *Supra*, See note 25.

<sup>33</sup> *People v. Sakam*, 61 Phil., 27, 83-84 (1934).

<sup>34</sup> I PADILLA, REVISED PENAL CODE ANNOTATED, 201 (1957).

<sup>35</sup> G.R. No. J-7580, August 30, 1958.

<sup>36</sup> *People v. Anulno*, 68 Phil. 615.

<sup>37</sup> *People v. Magallang*, 82 Phil. 271.

<sup>38</sup> G.R. No. L-11994, August 25, 1958.

after nightfall before entering the store of the Chinaman. Nighttime was also taken into consideration as aggravating circumstances in *People v. Ortiz*<sup>39</sup> and *People v. Cruz*.<sup>40</sup>

**Band.**—The Revised Penal Code provides<sup>41</sup> that “whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.” And when more than three armed persons form a band of robbers for the purpose of committing robbery in the highway, or kidnapping persons for the purpose of extortion or to obtain ransom, they are deemed highway robbers or brigands.<sup>42</sup> The Court is strict in interpreting this provision. There must always be *more than three*.

In *People v. Francisco “alias” Frankie, et al.*<sup>43</sup> the Court held that there is no band because only three of the culprits were armed, the arms being one pistol, one hunting knife and one crowbar.

**Evident Premeditation.**—In order to take evident premeditation into account there must be a sufficient lapse of time between the determination and the execution, to allow him to reflect upon the consequence of his act.<sup>44</sup> Thus in the case of *People v. Colman et al.*<sup>45</sup> the Supreme Court disregarded the presence of the aggravating circumstance of evident premeditation, it appearing that it was at about 7:00 o'clock of January 7, 1952 when indication appeared that something was brewing in the minds of the defendants toward the commission of the crimes therein prosecuted which were perpetrated at 10 o'clock on the night of the same day. No sufficient time elapsed to give the offenders “an opportunity for reflection that the conscience might have conquered the determination of the will.”

In the case of *People v. Hufana*,<sup>46</sup> the defendant Sabino Flores was found guilty of murder for the killing of each of the two brothers, Alisangco, attended by the qualifying circumstance of treachery and not evident premeditation, since there was no sufficient proof of the latter in the sense that at the time Flores ordered the arrest of the two victims he had already decided to have them killed. It is possible that he merely wanted to threaten them with death and place them under the extreme pressure so that they would send and deliver Norberta Alisangco to him. But when the two brothers ignored the death threat, it was then that he decided to have them liquidated.

In three recent cases<sup>47</sup> however, the Court appreciated the aggravating circumstance of evident premeditation.

**Craft.**—Craft as an aggravating circumstance involves intellectual trickery or cunning on the part of the accused.<sup>48</sup> In the case of *People v. Alcaraz*<sup>49</sup> the Court ruled that there was the presence of the aggravating circumstance of craft, it appearing that the victims were lured by the defendants to the place of the crime to facilitate its commission.

**Treachery.**—There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to him-

<sup>39</sup> G.R. No. L-12287, May 29, 1958.

<sup>40</sup> G.R. No. L-8776, May 19, 1958.

<sup>41</sup> REVISED PENAL CODE, Art. 14, par. 6.

<sup>42</sup> REVISED PENAL CODE, Art. 306.

<sup>43</sup> G.R. No. L-103897, October 16, 1958.

<sup>44</sup> *People v. Lozada*, 70 Phil., 525.

<sup>45</sup> G.R. Nos. L-6653-54, February 28, 1958.

<sup>46</sup> G.R. Nos. L-11487-88, March 31, 1958.

<sup>47</sup> *People v. Guzman*, G.R. No. L-7530, August 30, 1958; *People v. Francisco*, *Supra*; *People v. Cruz*, *Supra*. See note 40.

<sup>48</sup> PADILLA, REVISED PENAL CODE ANNOTATED, 263 (1957).

<sup>49</sup> G.R. No. L-9064, April 30, 1958.

self arising from the defense which the offended party might make.<sup>50</sup> Thus, where the attack was sudden, unexpected and while the victims were resting in bed in the seclusion of their abode, there was treachery.<sup>51</sup> There was also treachery when the attack was not only sudden and unexpected but was also from behind with a deadly weapon.<sup>52</sup>

There is no treachery however when the attack is frontal. In two cases<sup>53</sup> the Court held that the fight being face to face, treachery could not possibly arise. In the case of *People v. Aleta*<sup>54</sup> the defendants were charged with murder but the court ruled that the crime was only homicide because while treachery preceded the attack upon the deceased, his injuries were sustained in the course of the struggle between him and the defendant during which the latter sustained also some wounds. It also appeared that the attack was frontal and the defendant made his presence known to the deceased by asking him if he were still mad at him.

#### ALTERNATIVE CIRCUMSTANCES

**Lack of Instruction.**—The degree of instruction and education is an alternative circumstance. Lack of instruction is generally mitigating, except in crimes against property and chastity.<sup>55</sup> In one case<sup>56</sup> the Court held that there is evidence to show that Semanada has intelligence worthy of a lawyer considering his ability to distinguish between implication and innuendos. Moreover, lack of instruction is not mitigating in cases of robbery.<sup>57</sup>

#### PERSONS CRIMINALLY LIABLE FOR FELONIES

**Principals.**—The Revised Penal Code considers those who take a direct part in the execution of the act as principals. The expression those who "take a direct part in the commission of the deed" means those who participating in the criminal resolution, proceed together to perpetrate the crime and personally take part in the same end.<sup>58</sup> There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.<sup>59</sup> Mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy.<sup>60</sup> Thus in the case of *People v. Francisco*<sup>61</sup> the Court acquitted the accused Robeles, holding that he was not a member of the conspiracy. He just gave his licensed pistol to Dagundong and the others accused not knowing what will happen to it.

Conspiracy may be inferred from the acts of the accused themselves when such act point to a joint purpose and design.<sup>62</sup> The simultaneous aggression, concerted action and retreat obviously showed the defendant's common purpose to despoil their victim, which renders both criminally responsible for each other's acts, including the homicidal attack.<sup>63</sup> Unlike in evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his

<sup>50</sup> REVISED PENAL CODE, Art. 14, par. 16.

<sup>51</sup> *People v. Colman*, *Supra*.

<sup>52</sup> *People v. Bugagao, et al.*, *supra*.

<sup>53</sup> *People v. Francisco*, G.R. No. L-10397, October 16, 1958; *People v. Aleta*, *Infra*.

<sup>54</sup> *Supra*, see note 53.

<sup>55</sup> I PADILLA, REVISED PENAL CODE, (1957)

<sup>56</sup> *People v. Semanada*, G.R. No. L-11861, May 26, 1958.

<sup>57</sup> *U.S. v. Pascual*, 9 Phil., 491 (1908); *People v. Melendres*, 59 Phil., 154 (1922).

<sup>58</sup> *People v. Tamayo, et al.*, 44 Phil. 38.

<sup>59</sup> *People v. Alfiler, et al.*, G.R. No. L-19445, August 29, 1958.

<sup>60</sup> 15 C.J.S., 1062.

<sup>61</sup> G.R. No. L-10397, October 16, 1958.

<sup>62</sup> *People v. Cirilo Monroy, et al.*, *Supra*.

<sup>63</sup> *People v. Moises, et al.*, G.R. No. L-10876, September 23, 1958.

intended act, conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it.<sup>64</sup>

In *People v. Garduque*,<sup>65</sup> the Court held:

"It is not necessary that every plotter shall have participated in every detail of the execution of the offense. It is sufficient that their minds meet understandingly so as to bring about an intelligent and deliberate agreement to commit the offense charged."

In this case, Fernandico Grande, a merchant had his store and residence in barrio Culaw, Claveria, Cagayan. His household consisted of his wife, three children, all below 11 and three maidservants. On February 8, 1953, at about 10:00 p.m., several men armed with revolvers, bolos and Batangas knives entered the house, threatened Fernandico with death if he made a sound—looted the house and store and took turns in raping the maids. Cited the Court in convicting the accused of robbery in band with multiple rape:

"No agreement (formal) among conspirators is necessary, not even previous acquaintance among themselves. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and the others, another part of the same so as to complete it with a view to the attainment of the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy."<sup>66</sup>

Conspiracy may be shown even if one of the co-accused is not present at the killing.<sup>67</sup>

#### APPLICATION OF PENALTIES

**Complex Crime.**—In the case of *People v. Santos*<sup>68</sup> the Supreme Court reiterated its ruling in the cases of *People v. Hernandez*<sup>69</sup> *People v. Geronimo*<sup>70</sup> and *People v. Romagosa*.<sup>71</sup> In this case, appellant Jaime Santos was accused of the complex crime of rebellion with murders, robberies and kidnappings. Upon a plea of guilty to the information, the lower court found him guilty as charged. He appealed contending that there is no such complex crime and that he should have been convicted only of the crime of simple rebellion. In upholding this contention, the Court held:

"Rebellion cannot be complexed with other common crimes like murder, robberies and kidnappings because the latter are either absorbed by the former if committed in pursuance of the aims, purposes and objectives of the rebels and in furtherance of their intention 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."

**Indeterminate Sentence Law.**—Section 2 of the Indeterminate Sentence Law provides that "this Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment." There is confusion as to whether the exception refers to a case where the penalty imposed by the court for the offense is death or life imprisonment, or to an offense where the penalty provided for by law is death or life imprisonment.

In the case of *People v. Colman*,<sup>72</sup> Rogelio Colman was convicted of murder but being a minor 17 years of age, he was sentenced to the penalty of 12 years

<sup>64</sup> *People v. Cirilo Monroy, et al.*, *Supra*.

<sup>65</sup> G.R. No. L-10283, July 31, 1958.

<sup>66</sup> *People v. Colman*, *supra*.

<sup>67</sup> *People v. Cruz*, *supra*. See note 40.

<sup>68</sup> G.R. No. L-11813, September 17, 1958.

<sup>69</sup> 52 O.G. No. 11, 5506.

<sup>70</sup> 53 O.G. No. 1, 68.

<sup>71</sup> G.R. No. L-8476, February 28, 1958.

<sup>72</sup> *Supra*, see note 51.

and one day of reclusion temporal.<sup>73</sup> The Supreme Court ruled that the Indeterminate Sentence Law is not applicable to him because the law cannot be applied to persons convicted of offenses *punished* with death like the crime of murder.

*Successive Service of Sentences.*—In the case of *People v. Escares*<sup>74</sup> the Supreme Court interpreted the application of the three-fold rule.<sup>75</sup>

In this case, the defendant Escares pleaded guilty to the seven separate informations for robbery. The trial court found him guilty and sentenced him for robbery. The trial court found him guilty and sentenced him to 12 years, 6 months and 1 day in all cases. The Court computed the penalty according to the three-fold rule. Justice Angelo Bautista speaking for the Court stated that the trial court erred in so doing, for the three-fold rule can only be taken into account not in the *imposition* of the penalty but in connection with the *service* thereof.

It must be understood that the penalty imposed in each of the seven cases is *prison correccional* in its maximum period to *prison mayor* in its medium period. In view of the plea of guilty the penalty should be 4 years, 2 months and 1 day to 6 years, 1 month and 1 day. Applying the Indeterminate Sentence Law the appellant should be sentenced for each crime an indeterminate penalty, the minimum not less than 4 months and 1 day of *arresto mayor* nor more than 4 years and 2 months of *prison correccional* and the maximum shall not be less than 4 years 2 months and 1 day of *prison correccional* nor more than 6 years, 2 months and 1 day of *prison mayor*.

#### EXTINCTION OF CRIMINAL LIABILITY

*Prescription of Crimes.*—The Revised Penal Code<sup>76</sup> defines light felonies as "those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding P200 or both is provided." But under another provision,<sup>77</sup> "a fine whether imposed as a single or as an alternative penalty shall be considered as . . . *correctional* penalty, if it does not exceed P6,000 but is not less than P200; and a light penalty, if it be less than P200." Considering that under the third paragraph of Article 90 of the Penal Code, offenses punished with *correctional* penalty prescribe in ten years while *light* offenses prescribe in two months, which of the two articles, article 9 and 26 should prevail? This question was already answered in previous cases<sup>78</sup> and the Court in *People v. Crisostomo*<sup>79</sup> reiterated the same ruling.

The defendants, in this case, were charged for maintaining and operating slot machines (jackpot).<sup>80</sup> The lower court dismissed the complaint on the ground of prescription, the offense being punishable by *arresto menor* or fine not exceeding P200 which prescribes in two months. The State appealed contending that the offense prescribes in 10 years since under article 26, a fine of not less than P200 is *correctional* and therefore prescribes in 10 years. The

<sup>73</sup> REVISED PENAL CODE, Art. 68.

<sup>74</sup> G.R. No. L-11559, January 29, 1958.

<sup>75</sup> REVISED PENAL CODE, Art. 70, par. 4. It provides: "Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe penalties imposed upon him. No other penalty to which he may be liable shall be inflicted, after the sum total of those imposed equals the same maximum period."

<sup>76</sup> Article 9.

<sup>77</sup> REVISED PENAL CODE, Article 26.

<sup>78</sup> It cited the cases of *People v. Yu Hai*, G.R. No. L-9595, August 15, 1956; *People v. Aquino*, G.R. No. L-9857, August 21, 1956.

<sup>79</sup> G.R. Nos. L-10249-60, January 14, 1958.

<sup>80</sup> REVISED PENAL CODE, Article 195 (a)1.



Court affirmed the decision of the lower court holding that an offense punishable by *arresto menor* or a fine not exceeding ₱200 is only a light offense under article 9 and therefore prescribes in two months as provided by article 90.

In *People v. Ramirez*,<sup>81</sup> however, the Court did not apply article 26 because the fine imposed there was neither single or alternative.

#### CRIMES COMMITTED BY PUBLIC OFFICERS

*Malversation.*—In the case of *People v. Angco*<sup>82</sup> the accused Angco was a travelling sales agent of the Philippine Charity Sweepstakes from April 26, 1950 to July 25, 1951. His services were secured by a bond and was authorized to sell sweepstake tickets with the obligation of turning over the proceeds to the treasurer of the PCS every 15 days until the whole value of the same is fully paid. The full payment is to be made in all cases not later than one week before the draw. He accounted for and turned over only ₱1,417.00 leaving a balance of ₱3,960.95 unaccounted for. The Court convicted him of malversation under Article 217 par. 2 of the Penal Code.<sup>83</sup>

#### CRIMES AGAINST PERSONS

*Murder.*—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 lower court to the effect that the accused committed murder qualified by treachery. These cases are: *People v. Hufana*,<sup>84</sup> *People v. Colman*,<sup>85</sup> *People v. Bugagao et al.*,<sup>86</sup> *People v. Gregorio Ramirez et al.*<sup>87</sup> and *People v. Cirilo Monroy*.<sup>88</sup>

#### CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

*Threats.*—The essence of the crime of threats is intimidation.<sup>89</sup> The threat may refer to the infliction upon the person, honor, or property of a person of a wrong amounting to a crime in which case it is penalized under the article on grave threats.<sup>90</sup> Otherwise it amounts to a light threat.<sup>91</sup> If allegations in information are descriptive merely of a light offense and there is no allegation as to whether the threat constitutes a crime or not, the offense falls under article 285 paragraph 2 as light threat and not under article 282 paragraph 2 as a grave threat.<sup>92</sup> In the above-mentioned case, Ramirez was charged with having orally threatened to inflict some bodily harm upon six persons without having persisted in the idea signified in his threats. The crime was alleged to have been committed on July 28, 1955 and information was filed on September 27, 1955 or after 61 days. The information did not allege that act constitutes a crime nor did it state that act did not constitute a crime. The defendant filed a motion to quash since the 2-month period mentioned in article 90 has already lapsed, which is the prescriptive period for light offense.

<sup>81</sup> G.R. No. L-10085, May 23, 1958.

<sup>82</sup> G.R. No. L-9950, February 28, 1958.

<sup>83</sup> It provides: "Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of misappropriation shall suffer the following penalties."

<sup>84</sup> G.R. Nos. L-11487-88, March 31, 1958.

<sup>85</sup> G.R. Nos. L-6653-54, February 28, 1958.

<sup>86</sup> G.R. No. L-11328, April 16, 1958.

<sup>87</sup> G.R. No. L-10951, October 28, 1958.

<sup>88</sup> G.R. No. L-11177, October 30, 1958.

<sup>89</sup> II PADILLA, REVISED PENAL CODE ANNOTATED, 437 (1957).

<sup>90</sup> REVISED PENAL CODE, Article 282.

<sup>91</sup> REVISED PENAL CODE, Article 283.

<sup>92</sup> *People v. Ramirez*, G.R. No. L-10085, May 23, 1958.

On the other hand, plaintiff contends that the offense did not yet prescribe because the act constitutes a grave offense under article 285 par. 2 and therefore prescribes in 5 years following article 90. The court held that the act constitutes merely a *light* offense and therefore has prescribed. It held that article 26 speaks of fines which is imposed as a single or alternative penalty. Therefore, article 282 par. 2 does not come under definition of article 26 of *correctional* penalty because the penalty here is neither single or alternative.

#### CRIMES AGAINST PROPERTY

*Robbery with Homicide.*—This is not a complex crime under article 48.<sup>93</sup> It is one indivisible felony punishable by one distinct penalty—*reclusion perpetua to death*.<sup>94</sup> The killing may occur before or during the robbery, but it must be by reason or on the occasion thereof. In the case of *People v. Moises Fernando et al.*,<sup>95</sup> the Court convicted the defendants of the crime of robbery with homicide against the person of Dr. Pablo Gutierrez. It appeared in this case that Dr. Gutierrez while inside the Astor Theater was robbed and assaulted by the defendants who had in their possession several revolvers. Finding that there was conspiracy, both were adjudged to be principally guilty of the crime. The same ruling obtains in *People v. Gardon*,<sup>96</sup> *People v. Francisco*,<sup>97</sup> and *People v. Cruz*.<sup>98</sup>

*Robbery with Rape.*—This is an indivisible complex crime penalized with a single penalty.<sup>99</sup> The rape must accompany the robbery. In the case of *People v. Aquipo*,<sup>100</sup> the defendant, a municipal policeman, went to the house of Froilan Yepes requesting for food but as the food was not enough, Aquipo asked Froilan to accompany him to the house of Froilan's sister, Olympia Yebes vda. de Nazaret. With the aid of 2 other men who are still unidentified, he robbed Olympia of jewelry worth ₱325, a check in the amount of ₱835 and ₱60.00. One of the two nieces of Olympia was raped by Aquipo. The court convicted the accused of robbery with rape with the following aggravating circumstances: nocturnity, taking advantage of public position as a policeman, dwelling of the offended party and aid of armed men as persons who insured impunity.

In case rape and robbery are both present in homicide, the crime is robbery with homicide, with rape taken as an aggravating circumstance. This was the ruling in *People v. Bacsa*<sup>101</sup> and *People v. Garduque*.<sup>102</sup>

#### CRIMES AGAINST HONOR

*Prosecution for Libel.*—In ordinary criminal action, the complaint by the offended is not indispensable and the information by the prosecuting officer is enough to confer jurisdiction upon the court to try the defendant charged with the crime. An exception to this rule is the last paragraph of article 360 which provides: "No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de officio* shall be brought except at the instance of and upon complaint expressly filed by the offended party."

Thus, the complaint of the offended party is not necessary in cases of an oral defamation imputing the commission of a crime that may be prosecuted

<sup>93</sup> II PADILLA, REVISED PENAL CODE ANNOTATED, 476 (1957).

<sup>94</sup> REVISED PENAL CODE, Article 294, par. 1.

<sup>95</sup> G.R. No. L-10876, September 23, 1958.

<sup>96</sup> G.R. No. L-11004, August 26, 1958.

<sup>97</sup> *Supra*, see note 61.

<sup>98</sup> *Supra*, see note 40.

<sup>99</sup> *People v. Guzman*, 40 O.G. (Sup. 7) 179.

<sup>100</sup> G.R. No. L-12128034, July 31, 1958.

<sup>101</sup> G.R. No. L-11485, July 11, 1958.

<sup>102</sup> G.R. No. L-10138, July 31, 1958.

*de officio*, and also as interpreted by the Supreme Court, when a libel imputes a defect, or vice, real or imaginary which does not constitute a crime but brings disrespect, scorn, ridicule or tends to cause dishonor, discredit or contempt.<sup>103</sup>

The case of *People v. Silva*<sup>104</sup> laid down a doctrine which clarified previous decisions where it was held that it must be read by a third person other than the libelled individual in order to constitute publication. In this case, the Court held that the mere sending of an unsealed letter is already publication. Here, Silvela sent two unsealed letters to one Rosalia Palanar—where he called her, among other, “pompon, naga-business, naga-prostitute, prostitute.” Silvela never met Rosalia, he having taken the side merely of his brother-in-law who was threatened by Rosalia with a libel suit. As to whether this constitutes already libel, the court held that it did. While publication within the rules relating to *civil liability* implies communication of the libel or slander complained of to a person other than the victim, its meaning is considerably broader in *criminal prosecutions*. Here imputation of the defamation to anyone at all—even to the person defamed constitutes such a publication, if effected by enclosing libelous matter in an unsealed envelope and mailing or delivering it to the person denounced therein.

#### QUASI-OFFENSES

*Criminal Negligence.*—In the case of *People v. Agito*,<sup>105</sup> the accused was charged with triple homicide and serious physical injuries through reckless imprudence before the CFI. Upon plea of guilty, accused was convicted of the crime defined under article 365 par. 5, subsection 2 of the Penal Code. The trial court did not consider the plea of guilty as a mitigating circumstance. The Court held that the trial court did not err in not considering the mitigating circumstance of plea of guilty for the same is contrary to paragraph 5, article 365, which provides: “in the imposition of these penalties, the courts shall exercise sound discretion, without regard to the rules prescribed in article 62.”<sup>106</sup>

<sup>103</sup> *People v. Flores*, G.R. No. L-11922, April 28, 1958.

<sup>104</sup> G.R. No. L-10610, May 26, 1958.

<sup>105</sup> G.R. No. L-12120, April 28, 1958.

and when the penalty is single and indivisible.

<sup>106</sup> Other cases where mitigating circumstances are not taken into consideration in determining the proper penalty: special laws; imposition of additional penalty in habitual delinquency and when the penalty is single and indivisible.