SCOPE OF CRIMINAL LIABILITY

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Introduction.—The Revised Penal Code after defining felonies (**delitos**) in article 3 clarifies the scope of criminal liability in article 4 which reads:

> ART. 4. *Criminal liability.* — Criminal liability shall be incurred:
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> 1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.
>
> 2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

In the old Code the concept of felonies and misdemeanors (**faltas**) and the scope of criminal liability were found in article 1. Paragraph 1 of article 4 corresponds to the third paragraph of article 1 of the old Code. The second paragraph of article 4 regarding the impossible crime is a new provision.

If the accused accomplished the felony which he had intended to commit, as where he intended to kill X and actually killed the latter, there is no question that he is criminally liable. The resulting wrongful act was that which he intended. But where the accused intended only to inflict injuries on X but the injuries caused the death of the latter, or where he intended to kill X but the fatal blow was inflicted on Y, a doubt may exist as to the criminal liability of the accused. That doubt is dissipated by article 4 which plainly provides that the accused is criminally liable for the resulting wrongful act.

The first paragraph of article 4 synchronizes with the disputable presumption established in section 69 (c), Rule 123, Rules of Court, "that a person intends the ordinary consequences of his voluntary act." For example, where the defendant, who was suffering from gonorrhea, raped a 14-year old girl, and three months later the girl died due to peritonitis caused by the gonorrhea infection, the defendant was convicted not only of rape but of the complex crime of rape with homicide.[1] Or where the accused struck twice with his fist a pregnant woman and in consequence she had a hemorrhage, abortion and premature delivery and she and her twin babies died, the accused was held liable for the complex crime of homicide with abortion.[2] Or where the victim's wound was infected with tetanus

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1 People v. Acosta y Rivera, 60 Phil. 158

2 People v. Genoves, 61 Phil. 382.

and the tetanus infection contributed to his death, the accused is liable for homicide.[3]

Where the accomplices had conspired with the principal to commit forcible abduction, they were held liable as accomplices in homicide, the offense actually committed by the principal.[3a]

By reason of article 4 the accused may be held liable for the damage caused to a third person by his criminal act. This is in consonance with the rule in article 107 that the indemnification for consequential damages includes those suffered by a third person by reason of the crime.[4]

All punishable acts are presumed to have been performed voluntarily in the absence of contrary evidence. With respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof.[5] The gravity of the injury is measured not by the means employed but by the result produced.[6]

The first paragraph of article 4 is frequently applied in homicide cases, where the defendant intends merely to inflict physical injuries but the victim's death ensues due to (a) the very injuries caused, (b) the weak or diseased physical condition of the victim, (c) his temperament or the complications brought about by the injuries, or (d) lack of medical care or improper medical treatment. It is also article 4 that applies to mistake as to victim or **aberratio ictus.**

The essential requisites for the application of article 4 are that (a) the intended act be felonious, (b) the resulting act is likewise a felony, and (c) the unintended or graver wrong was primarily caused by the actor's wrongful acts. In many cases, lack of intent to commit so grave wrong is mitigating. If the defendant's act was lawful and he was not negligent, and the victim's injuries were due to his own fault or were not the direct result of defendant's acts, the defendant is not liable.[7] If the defendant performing a lawful act was negligent, he would be liable for the resulting felony committed through **culpa.**[8] By reason of article 4 a person may be convicted of homicide although he had no intent to kill.[9]

In cases falling under the first part of article 4, it would not be tenable to hold that simply because the defendant had no intent to kill, his crime should be categorized as homicide through reckless imprudence. As the defendant acted with malice, his crime would be committed by means of **dolo** and not by **culpa.** A deliberate in-

3 People v. Cornel, 78 Phil. 458; People v. Red, 8 ACR 725.

3a U. S. v. Honorio de Jesus, 2 Phil. 514, 526.

4 People v. Despavellador, CA 53 OG 7297.

5 People v. Buyco, 80 Phil. 58; Art 1, Old Penal Code.

6 U. S. v. Capaducia, 4 Phil. 865; U. S. v. Numeriano Ramos, 23 Phil. 300; People v. Almonte, 50 Phil. 61; People v. Quianzon, 62 Phil. 162, 168 citing Spanish case of April 3, 1870.

7 U. S. v. Andres Villanueva, 31 Phil. 412; People v. Bindoy, 50 Phil. 15.

8 U. S. v. Feliciano Divino, 12 Phil. 175.

9 Pico v. U. S., 57 L. ed. 812, 40 Phil. 1117, 15 Phil. 549.

tent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. **Dolo** and **culpa** are incompatible.[10] The acts constitutive of reckless imprudence "must be lawful in themselves."[11]

Rationale of article 4. — The reason for the rule of the first paragraph of article 4 is stated in **People v. Quianzon,**[12] as follows:

"One who inflicts injury on another is deemed guilty of homicide if the injury contributes mediately or immediately to the death of such other. The fact that other causes contribute to the death does not relieve the actor of responsibility." He would still be liable "even if the deceased might have rcovered if he had taken proper care of himself, or submitted to surgical opration, or that unskilled or improper treatment aggravated the wound and contributed to the death, on that death was immediately caused by a surgical operation rendered necessary by the condition of the wound. The principle on which this rule is founded is one of the universal application. It lies at the foundation of criminal jurisprudence. It is that every person is held to contemplate and be responsible for the natural consequences of his own acts. If a person inflicts a wound with a deadly weapon in a manner as to put life in jeopardy, and death follows as a consequence of this felonious and wicked act, it does not alfer its nature or diminish its criminality to prove that other causes cooperated in producing the fatal result. Neglect of the wound or its unskillful and improper treatment, which are themselves consequences of the criminal act, must in law be deemed to have been among those which were in contemplation of the guilty party and for which he must be responsible." "The rule has its foundation on a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties attendant upon the treatment of bodily ailments and injuries, it would be easy in many cases of homicide to raise a doubt as to the immediate cause of death, and thereby open a wide door by which persons guilty of the highest crime might escape conviction and punishment."[13]

In the **Quianzon** case, **supra,** it appears that Andres Aribuabo, a sexagenarian, on the occasion of a **novena** for the suffrage of the soul of a decedent, asked food from Juan Quianzon, also a sexagenarian who had the victuals under his care. It was the second or third time that Aribuabo had approached Quianzon for the same purpose, and the latter becoming annoyed, took hold of a firebrand and applied it to the neck of the man who was pestering him. He also wounded Aribuabo with a bamboo spit. Aribuabo ran to the place where the people were gathered, exclaiming that he was

10 People v. Guillen, 85 Phil. 307; People v. Sara, 55 Phil. 539; People v. Nanquil, 43 Phil. 232; People v. Castillo and Tanalega, 76 Phil. 72; Quizon v. Justice of the Peace of Bacolor, L-6041, July 28, 1955; People v. Oanis and Galanta, 74 Phil. 257.

11 People v. Rabao, 67 Phil. 255.

12 62 Phil. 102, citing 13 RCL 748, 751.

13 Same holding in People v. Guzon, CA 51 OG 4132; People v. Grande, CA 40 OG 2892; People v. Almonte, 50 Phil. 54.

wounded and was dying. Raising his shirt, he showed to those present a wound in his abdomen below the navel. He died as a result of his wound on the tenth day after the incident. Quianzon was charged with homicide. It was contended that he was only liable for serious physical injuries because death would not have resulted had not the victim removed twice the drainage which the doctor had placed to control the infection in the wound. **Held:** Quianzon was guilty of homicide. The possibility that the victim might have survived had he not removed the drainage does not mean that that act of the patient was the real cause of his death. Even without said act the fatal consequence could have followed, and the fact that the patient had so acted in a paroxysm of pain does not alter the juridical consequences of the punishable act of the accused. Furthermore, it does not appear that the patient in removing the drainage had acted voluntarily and with the knowledge that he was performing an act prejudicial to his health, inasmuch as self-preservation is the strongest instinct in living beings. It must be assumed, therefore, that he unconsciously did so due to his pathological condition and his state of nervousness and restlessness on account of the horrible pain caused by the wound, aggravated by the contact of the drainage tube with the inflamed peritoneum. If to this is added the fact that the victim was mentally deranged, it becomes more evident that the accused is wrong in imputing the natural consequences of his criminal act to an act of his victim. Lack of instruction and lack of intent to commit so grave a wrong were mitigating.

Same rule in Spanish jurisprudence. — In a decision of the Spanish Supreme Court dated April 3, 1879, cited in the **Quianzon** and **Almonte** cases, **supra,** it was held: "Inasmuch as a man is responsible for the consequences of his act — and in this case the physical condition and temperament of the offended party nowise lessen the evil, the seriousness whereof is to be judged, not by the violence of the means employed, but by the result actually produced; and as the wound which the appellant inflicted upon the deceased was the cause which determined his death, without his being able to counteract its effects, it is evident that the act in question should be qualified as homicide."

Nervousness or temperament of the victim. — Similar to the **Quianzon** case, **supra,** is the case of **People v. Purificacion Almonte,**[14] which applies the rule that the temperament or physical condition of the victim does not alter the criminal liability of the defendant for the resulting felony. It was held in the **Almonte** case that —

When a person dies in consequence of an internal hemorrhage brought on by moving about against the doctor's orders, not because of carelessness or a desire to increase the criminal liability of his nervous condition due to the wound inflicted by said assailant, the crime is homicide and not merely slight physical injuries, simply because the doctor was of the opinion that the wound might have

14 56 Phil. 54.

healed in seven days. The accused is then liable for all acts contrary to law and their nautral and logical consequences.

It appears in the Almonte case that Purificacion Almonte lived maritally with the Chinaman Felix Te Sue, a married man. Because one Miguela Daway, with whom he had also lived maritally, threatened to bring suit against him unless he rejoined her, the Chinaman and Purificacion voluntarily agreed to separate. On October 1, 1930 Purificacion visited her former paramour and found him with Miguela. When he saw Purificacion, he told her to go away at once because her new paramour might get jealous and do her harm. Purificacion insisted upon remaining and on being pushed by the Chinaman and Miguela and feeling that she was unjustly treated, she stabbed the Chinaman in the abdomen with a small penknife. Horrified at her deed, she fled to the street, leaving the blade sticking in her victim's abdomen. She took the first bus that chanced to pass and went home. The Chinaman was hospitalized. The wound was not serious but due to the victim's nervous condition and the fact that he repeatedly sat in bed, got up and paced the room, contrary to the doctor's orders, a hemorrhage ensued and this caused his death. Purificacion was convicted of homicide with the mitigating circumstance of lack of intent to commit so grave a wrong and obfuscation arising from the fact that she was pushed out of the room. Three justices dissented. They opined that Purificacion was guilty only of slight physical injuries and that the victim's death was due to his own carelessness.

Cases where death was due to the injuries inflicted. — Anyone inflicting injuries is responsible for all the consequences of his criminal act such as death that supervenes in consequence of the injuries.[15] As stated in another case, persons who are responsible for an act constituting a crime are also liable for all the consequences arising therefrom and inherent therein, other than those due to incidents entirely foreign to the act committed, or which originate through the fault or carelessness of the injured person.[16]

Where a person voluntarily and with intent to injure another commits an act which is notoriously unlawful, he shall be held responsible for the consequences of his criminal action, even though when such wrongful act constitutes homicide, he had no intent to kill the deceased.[17] The physical condition, state of health and temperament of the injured person constitute no reason for reducing the responsibility of the aggresor. The gravity of the injury is measured not by the means employed but by result produced.[18]

The fact that the defendant intended to maltreat the victim only or inflict physical injuries does not exempt him from liability

15 People v. Rellin, 77 Phil. 1038.

16 U. S. v. Monasterial, 14 Phil. 391; U. S. v. Dacquel, 36 Phil. 781.

17 U. S. v. Montes, 6 Phil. 443.

18 U. S. v. Capaducia, 4 Phil. 365; U. S. v. Numeriano Ramos, 23 Phil. 300; People v. Buyco, 80 Phil. 58; People v. Almonte, 56 Phil. 54, 61; People v. Quianzon, 62 Phil. 102, 168 citing a Spanish decision dated April 3, 1879.

for the resulting homicide or murder.[19] The accused person guilty of maltreatment of another person who died later is responsible for his death resulting from the violent acts of the accused, where it has not been shown that the death was due to natural causes.[20]

Homicide is committed when death ensues as a result of a wound inflicted by another, whether the death be the precise and necessary consequence of the injuries or the result of complications from such wounds, such a rare fever not imputable to the victim. The aggressor is responsible for all the natural consequences of the aggression when these consequences do not owe their origin to the malicious acts or omissions of the victim.[21]

Lack of medical care or improper medical treatment. — Our courts have adopted the following rule in American jurisprudence: "He who inflicts injuries is not relieved of responsibility if the wound inflicted is dangerous, that is, calculated to destroy or endanger life, even though the immediate cause of death was erroneous or unskillful medical or surgical treatment." [22]

In other words, "the neglect of the wound or its unskillful and improper treatment, which are of themselves consequences of the criminal act which might naturally follow in any case must in law be deemed to have been among those consequences which were in contemplation of the guilty party and for which he is to be held responsible."[23]

Or, as stated in another case: "An individual who unlawfully inflicts wound upon another person, which result in the death of the latter, is guilty of the crime of homicide, and the fact that the injured person did not receive proper medical attendance does not affect the criminal responsibility." Lack of medical care cannot be attributed to the wounded man. The person who inflicted the wound is responsible for the result thereof.[24]

A person injured in an assault is not obliged to submit to a surgical operation to relieve the person who assaulted him from the

19 U. S. v. Candelaria, 2 Phil. 104; People v. Cagoco, 58 Phil. 524; People v. Enriquez, 58 Phil. 586; People v. Alburquerque, 40 Phil. 150; People v. Baccay and Zipagan, 58 Phil. 780; People v. Rabao, 67 Phil. 255; People v. Lumasag, 50 Phil. 19; Pico v. U. S., 228 U. S. 225, 40 Phil. 1117, 15 Phil. 549; U. S. v. Carrero, 9 Phil. 544; People v. Baguinda, CA 44 OG 2287; People v. Luces, CA GR No. 13011-R, July 15, 1955.

20 U. S. v. Gabriel Diaz, 15 Phil. 123, 22 U. S. 442; U. S. v. Sornito, 4 Phil. 375; U. S. v. Jacinto Martinez, 2 Phil 199; U. S. v. Trono, 3 Phil. 218, 11 Phil. 726.

21 U. S. v. Antonio Navarro, 7 Phil. 713, 725 citing Spanish decisions dated May 8, 1890 and May 30, 1892.

22 People v. Moldes, 61 Phil. 1, citing 29 C.J. 1081; 40 CJS 835; People v. Armada, CA 45 OG 3941; People v. Allona, CA 46 OG 5007. In the Moldes case, the accused wounded the deceased in the left arm. He contended that the wound would not have been fatal had the deceased secured proper medical treatment. This contention was not sustained. In an outlying barrio where the assault took place, proper modern surgical service was not available. The accused was convicted of homicide.

23 26 Am Jur. 193 cited in People v. Moralles, CA 50 OG 170.

24 U. S. v. Escalona, 12 Phil. 54; U. S. v. Bertucio, 1 Phil. 47; U. S. v. Mallari, 29 Phil. 14; People v. Borbano, 76 Phil. 702; People v. Cornel, 78 Phil. 458. In the Escalona case, the accused admitted having inflicted the wound on one Bernardo Pisiong who died 60 days after he was wounded. The wound was on the wrist. A sanitary inspector testified that if the wounded man had been properly treated by a surgeon, he would not have died. The wound could have healed in 60 days. The accused was convicted of homicide. Even if the injured person would not have died had there been proper medical attendance, the crime would still be homicide.

natural and ordinary results of his crime. The assailant must abide by the consequences resulting from his voluntary act without any aid from the injured party.[25]

"The fact that a person unlawfully wounded is unable to secure medical attendance because he is unable to pay for such service, for which reason the wounds require a long time to heal, does not in any way modify the responsibility of the aggressor, provided that the injured person does nothing to retard the healing."[26] This ruling was amplified in a later case, where it was held that the perpetrator's responsibility cannot be lessened on account of the victim's bad state of health or weakened constitution caused, for example, by his habit of drinking tuba which affected his constitution and retarded the healing of his wounds.[27]

Cases where the victim had a weakened physical condition or was suffering from some disease. — Following article 4, it was held that: "One who commits an act in violation of the penal law is responsible for all the consequences which may result therefrom, whether foreseen or intended or not. Where a trivial assault results in death on account of the abnormal pathological condition of the victim, the act nevertheless constitutes the crime of homicide."[28] Even though a blow with a fist or a kick does not cause any external wound, it may easily produce inflammation of the spleen and peritonitis and cause death, and even though the victim may have been previously affected by some internal malady, yet if a blow with the fist or foot accelerated death, he who caused such acceleration is responsible for the death as the result of an injury wilfully inflicted.[29]

In U.S. v. **Brobst**,[30] it was ruled: "One is not relieved from criminal responsibility for the natural consequences of one's illegal acts merely because one does not intend to produce such consequences. Where death results as the direct consequence of the use of illegal violence, the mere fact that the diseased or weakened condition of the injured person contributed to his death does not relieve the illegal aggressor of criminal responsibility." But in such cases lack of intent to commit the graver wrong is mitigating.

In the **Brobst** case, James Brobst and one Mann were engaged in work on a mine. Mann discharged a laborer named Simeon Saldivar, warning him not to come back to the premises of the mine. Mann told Brobst not to employ Saldivar again because he was a thief and a disturbing element. But Saldivar returned to the premises. Brobst ordered him to leave. Saldivar merely grinned at Brobst, whereupon the latter became enraged, took three steps to-

25 U. S. v. Filomeno Marasigan, 27 Phil. 504.
26 U. S. v. Baoit, 15 Phil. 388.
27 U. S. v. Bayutas, 31 Phil. 584.
28 U. S. v. Luciano 2 Phil. 96, where the accused struck the victim with a bolo cane causing slight bruises. After walking a short distance the victim collapsed and died a few hours later. He was sickly and had fever and a hypertropied spleen. Death was due to hemorrhage resulting from the rupture of the spleen.
29 U. S. v. Rosalino Rodrigues, 28 Phil. 22.
30 14 Phil. 310.

ward Saldivar, and struck him a powerful blow with his closed fist on the left side, just over the lower ribs, at the point where Saldivar's bolo lay against the belt from which it was suspended. On being struck, Saldivar threw up his hands, staggered, and without saying a word, went 200 yards away. He died as he reached the door of his sister's house. It was contended that death might not have ensued from the mere force of the blow but from a physical defect.

Held: Brobst was liable for Saldivar's death. His act was not reckless imprudence since he intended to inflict harm on the victim. Two justices, dissenting, opined that Brobst should be acquitted because there was no conclusive proof that his act was the cause of Saldivar's death and moreover he acted in defense of his property.

A person, who cruelly maltreats one who is sick, is liable for homicide should the latter die as a result of such maltreatment. The circumstance that he did not intend to cause so serious an evil as the death of a person does not exempt him from liability, inasmuch as he wilfully executed acts which are notoriously wrongful.[31]

"In a case of homicide resulting from blows received by the victim, the allegation that the deceased, prior to the attack, was suffering from some affection of the heart, even if established, would only tend to show a peculiarly sensitive and critical condition of health in which the blows received were the more likely to prove fatal, but would not change the efficient cause of death."[32] The fact that the deceased had a delicate constitution and suffered from incipient tuberculosis does not affect the criminal liability of the defendant who gave him a severe blow, from the effects of which the victim died. For, even if the victim's weakened condition rendered the blow more fatal, the efficient cause of the death remains the same.[33]

In **U.S. v. Lugo,**[34] it was held that where a person previously ill is wounded in a manner that might have proved fatal, his death within a reasonable time thereafter will, in the absence of cogent evidence to the contrary, be considered the result of the wounds than of the disease. In the **Lugo** case, the defendant assaulted a sexagenarian woman, far gone in consumption, while she was asleep

31 U. S. v. Samoa, 15 Phil. 227. In the **Samoa** case, supra, the defendant struck Braulio Magbag with a stick on different parts of the body and kicked him in the abdomen and testicles. Magbag fell to the ground urinating. His wife embraced him and conducted him to a short distance, where after an hour he died. He was suffering from hypertrophy of the heart. Defendant was convicted of homicide although the doctor testified that Magbag died of heart disease due to mitral insufficiency. Same holding in U. S. v. Toribio Gonzalez, 4 Phil. 487, that the fact that the person beaten was sick and the beating hastened his death did not justify the acquittal of the defendant from a charge of homicide.

In People v. Sia Bonkis, 60 Phil. 1, the defendant horsewhipped his servant girl, aged 11 years, who had maltreated his children by pinching one on the nose and pricking the other in the cheeck with a phonograph needle. Defendant hanged her from a pulley fastened to the ceiling of his room by means of a rope tied to her wrists, which were crossed at her back. She died later. It was contended that her death was due to her ill health. She was suffering from nephritis and bronchopneumonia. This contention was not sustained. Defendant was convicted of homicide. Justice Abad Santos opined that the crime was homicide through reckless imprudence.

32 U. S. v. Fenix, 11 Phil. 05.

33 People v. Ilustre, 54 Phil. 504.

34 8 Phil. 80.

in her house. She sustained seven wounds. She died one month after the assault. The defendants were convicted of murder.

Where due to a fist blow inflicted by the accused upon the complainant, the latter's natural teeth were broken and had to be extracted, the accused is still liable for serious physical injuries, although the complainant was suffering from **pyorrhea alveolaris.** The accused is liable for all the direct consequences of his malicious acts.[35]

Even supposing that the blows inflicted by the accused upon the victim caused the latter's death because he was not in good health, such circumstance does not exempt the accused from liability.[36] Even if the deceased had been shown to be suffering from a diseased heart, as long as the defendant's assault was the proximate cause of the victim's death, the accused would be responsible.[37]

Where the victim in robbery was wounded and the wounds necessitated an operation, but after the operation he contracted mucous colitis, which hastened his death, the offense is robbery with homicide.[38]

Where the victim of an assault died fifteen days after being wounded and in consequence of a complication of diarrhea, the crime is nevertheless homicide, unless the evidence disclosed that sickness was due to extraneous causes. It is assumed that the wounds weakened the victim's physical condition and that the diarrhea was a complication of the wounds and hastened his death.[39]

Although the victim, a 13-year old child, was suffering from epilepsy, yet it having been proven that the accused had struck him several blows which caused internal hemorrhages and that neither before nor after said maltreatment did the victim have any access of epilepsy, the defendant is responsible for the victim's death.[40]

Where victim was threatened with bodily harm. — Article 4 is illustrated in the rule formulated by a British court that "if a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result."[41] Thus, if a person against whom a criminal assault is directed reasonably believes himself to be in danger of death or great bodily harm and in order to escape jumps into the water, impelled by the instinct of self-preservation, the assailant is responsible for the homicide in case death results by drowning.[42]

35 People v. Francisco, CA-GR No. 20811-R, July 16, 1958, Daily Mirror Case Index compiled by Federico Moreno.

36 People v. Caboniada, 52 Phil. 385.

37 People v. Gregorio Reyes, 61 Phil. 341; People v. Aniceto Martin, L-8002, May 23, 1952 where the accused husband strangled his wife who was suffering from a heart disease.

38 People v. Piamonte, L-5775, Jan. 28, 1954.

39 U. S. v. Vicente Regis, 2 Phil. 113.

40 People v. Turno, 47 Phil. 490.

41 Reg. v. Hamday, 61 L.T. Rep. NS 701.

42 U. S. Valdez, y Quirl, 41 Phil. 497; People v. Buhay and Basco, 79 Phil. 371.

In the Valdez case, the defendant was in charge of the crew of small boat which was to raise the anchor of a steamer. The work of raising the anchor proceeded slowly. Defendant scolded the men. One of them, Venancio Gargantiel, remonstrated with the defendant, who took the remonstrance as a display of insubordination. Rising in rage, the defendant moved towards Venancio with a big knife in hand, threatening to stab him. When the defendant was within a few feet from Venancio, the latter, thinking that his life was in great peril, jumped into the water and disappeared beneath the surface to be seen no more. For three days, Venancio's friends kept vigil and watched for the appearance of his body. It never came to the surface. **Held:** Defendant was guilty of homicide. Lack of intent to commit so grave a wrong was mitigating. Justice Araulo dissented. He said there was no proof that Venancio really died.

In a decision of the Spanish Supreme Court of July 13, 1882, it appears that upon a certain occasion an individual, after having inflicted sundry injuries upon another with a cutting weapon, pointed a shotgun at the injured person and to escape the discharge the latter had to jump into a river where he perished by drowning. The autopsy revealed that only one of the wounds caused by a cut would have resulted in the death of the injured person, supposing that he had received no succour, and that by throwing himself into the river he in fact died of asphyxia from submersion. **Held:** Even though the death of the injured person should not be considered as the exclusive and necessary effect of the very grave wound which almostly completely severed his axillary artery, occasioning a hemorrhage impossible to stanch under the circumstances in which that person was placed, nevertheless, as the persistence of the aggression of the accused compelled his adversary, in order to escape the attack, to leap into the river, and as the aggressor by said attack manifested a determined resolution to cause the death of the deceased by depriving him of all possible help and putting him in a very serious situation, he is guilty of homicide.

Sufficiency of circumstantial evidence to prove defendant as responsible for the homicide. — Tied up with the question of the responsibility of a defendant for the homicide, though he had no intent to kill, is the quantum of circumstantial evidence necessary to hold him guilty. Wills, on Circumstantial Evidence, says:

"In the proof of criminal homicide the true cause of death must be clearly established; and the possibility of accounting for the event by self-inflicted violence, accident or natural cause, excluded; and only when it has been proven that no other hypothesis will explain all the conditions of the case can it be safely and justly concluded that it has been caused by intentional injury. But, in accordance with the principles which govern the proof of every other element of the **corpus delicti**, it is not necessary that the cause of

death should be verified by direct and positive evidence; it is sufficient if it be proven by circumstantial evidence which produces a moral conviction in the minds of the jury, equivalent to that which is the result of positive and direct evidence."[43]

When a person is wounded, even if he were sick and he died within a reasonable period thereafter, his death, in the absence of contrary proof, raises the presumption that it was caused by the wounds. When physical injuries are inflicted on a person in normal health and death ensues within a reasonable time, such fatal denouement, in the absence of contrary proof, shall be presumed to be the natural consequence of the injuries.[44] "He who is the cause of the cause, is the cause of the evil caused"[45] **(Lo que es causa de la causa, es causa de mal causado).**

Cases where article 4 was not applied because death was not mainly due to the injuries inflicted. — Another line of cases illustrates the rule that the defendant cannot be held liable for homicide if death cannot be directly attributed to the injuries inflicted, if some other circumstance, for which the accused is blameless, was the proximate cause of the victim's death. Thus, in **U.S. v. Embate,**[46] it was held that in order to justify a conviction for homicide, it must appear that the acts committed by the accused were the cause of the victim's death. In that case it appears that a child had been seriously ill with fever for three weeks. Defendant told him to lie on the mat and not on the damp floor. As the child did not obey, the defendant struck him upon the thighs with a slipper, pushed and dragged him toward the mat, throwing him heavily on the flor. The child died two days later. All the witnesses attributed the death to the illness from which the child was suffering. The doctor said that the child had a serious affection of the heart and would have died two days later. However, he said that the maltreatment inflicted by the accused might have contributed to the death of the child. The Court, through Chief Justice Arellano, disregarded this statement and held that the true cause of the child's death was not proved The accused was convicted of **lesiones leves** only,

In **People v. Palalon,**[47] the defendant was a foreman on the plantation in charge of a group of small children, among whom was the deceased Roman Megio, gathering and piling sugarcane. Roman, a 10-year old boy, was sitting down resting and did not display the activity expected by the accused and was reprimanded by the latter, and ordered to work. The boy answered in an insolent manner. Defendant lost his temper and struck the boy on the mouth with the back of his hand. The boy continued working until 2 p.m. of the following day, when he was taken sick with fever and was after some delay carried home by his father. Two and half days later he died. A physician testified that he examined the boy on the day

43 U. S. v. Brobst, 14 Phil. 310, 337. Cited in dissent.
44 U. S. v. Lugo, 8 Phil. 80: People v. Baguinda, CA 44 OG 2287.
45 People v. Luces, CA-GR No. 13011, July 15, 1955.
46 8 Phil. 640.
47 49 Phil. 177.

following the commission of the offense and found ecchymosis on the body from which he concluded that hard blows had been inflicted on the deceased and that as a result thereof, there was a congestion of the right lung which was alleged to be the principal cause of death. No autopsy of the body was made. **Held:** The physician's testimony was not conclusive. Defendant was acquitted of homicide on the ground of reasonable doubt. He might be convicted of **lesiones leves**, but he had already served preventive imprisonment for a period exceeding the penalty for **lesiones leves**. No further punishment was imposed.

In **People v. Dominguez,**[48] the defendant, a policeman, allegedly gave a detention prisoner several blows with a stick used by policemen. The blows were given on various parts of the body but principally on the head, causing intercranial hemorrhage which resulted in his death. **Held:** There was no conclusive medical testimony as to the cause of the death of the deceased. Defendant was acquitted on the ground of reasonable doubt.

When the accused is charged with homicide and the evidence shows that the deceased died of nephritis, two months after he was wounded by the accused, which disease was not the direct and immediate result of the wounds inflicted upon him by the defendant; and it appearing that the wounds healed after 30 days. **Held:** That the accused should be convicted not of homicide but for the lesser offense of serious physical injuries.[49]

Spanish cases. — Viada cites similar Spanish cases. In a case decided by the Spanish Supreme Court on April 2, 1903 it was held that, while a person is liable for all justiciable acts contrary to law and for all the consequences thereof, having inflicted physical injuries from whose direct or immediate consequences death results, either incidentally or accidentally, the offender must answer for the ultimate result of his act, i.e., for the resulting death, yet this principle is not applicable where it clearly appears that the injury would not have caused death, in the ordinary course of events, but would have healed in so many days and where it is shown beyond all doubt that the death was due to the malicious or careless acts of the injured person or a third person. One is accountable only for his own acts and their natural or logical consequences, and not for those which bear no relation to the initial cause and are due to the carelessness, fault, or lack of skill of another, whether it be the injured man himself or a third person, such as the mistakes committed by the doctor in the surgical operation and treatment of the victim's wound.

In a case decided on June 15, 1874, it was held that if the immediate cause of the death was traumatic erysipelas complicated with meningoencephalitis arising from the erysipelas itself, and the remote and original cause of the latter was the wound inflicted by the defendant in the victim's parietal bone, the accused would be guilty only of physical injuries and not homicide.

48 61 Phil. 617.
49 People v. Panes, CA 34 OG 1506.

In another case decided on December 17, 1878, it was held that when a less serious physical injury in the victim's head gives rise to traumatic erysipelas, which in turn produces cerebral meningitis from which the person injured dies in eleven days, and the doctors declare that the erysipelas may have been due to the patient's carelessness in constantly exposing himself to a draft, contrary to the doctor's orders, the accused is liable only for physical injuries and not for homicide.[50]

Accidental killing may or may not be justified. — The cases on accidental killing, which is not justified, also fall under the first paragraph of article 4. But there may be accidental killings wherein the killer is exempt from criminal liability under article 12(4). It seems that if the accidental killing occurred in the course of the performance of a lawful act and the actor was not negligent, he would not be criminally liable; whereas, if the accidental killing was perpetrated while the actor was committing a felonious act, he would still be criminally liable. The case would fall under the category of **aberratio ictus.**

In **People v. Bindoy,**[51] the defendant, who was acting in self-defense, accidentally killed a bystander. He was held exempt from criminal liability. He acted without criminal intent. "The incident was simply one of these things unfortunate happenings" which may occur in the life of anyone anytime.[51a] In **People v. Florencio Arroyo,**[52] the accused, while defending himself against the unlawful aggression of his father-in-law and brother-in-law, wounded his wife, who had sandwiched her body between the accused and his aggressors. The aggression stopped when the wife was wounded. The accused, on seeing that his wife was wounded, left the scene of the encounter and surrendered to the authorities. It was held that he was not criminally liable for the wounding of his wife. The **Bindoy** and **Arroyo** cases should be distinguished from **People v. Nocum,**[53] where it appears that the defendant, to stop a fistic encounter between two persons, fired his pistol twice into the air. As the bout continued, he fired another shot at the ground but the bullet ricocheted and hit an innocent bystander who died soon thereafter. The defendant was found guilty of homicide through reckless imprudence known as involuntary manslaughter in American law.

But where the accused, in trying to defend himself against the assault of an aggressor, did not aim his revolver at the aggressor but fired it indiscriminately at the risk of the lives and limbs of innocent persons when he knew were in the place of the occurrence and, in consequence, he accidentally wounded his sister-in-law and brother-in-law, his act of self-defense was not exercised with due care. He was convicted of light physical injuries.[54] Following the

50 Dissent, People v. Almonte, 56 Phil. 54, 64, 66.
51 56 Phil. 15.
51a People v. Simeon Trinidad, CA 49 OG 4887.
52 CA 47 OG 5151; CF. People v. Mendoza, CA 34 OG 2007.
53 77 Phil. 1018. See dissent, Abad Santos, J., People v. Sia Bonkia, 60 Phil. 1112.
54 People v. Galagac, CA 54 OG 1027.

Nocum case, it may be argued in this case that he acted only with reckless imprudence.

Where in an affray between several men, one of the combatants, in attempting to wound his adversary, accidentally wounded a girl who was behind the latter, he is not exempt from liability but is guilty of homicide because he is responsible for all the consequences of his acts.[55] The case is different from the **Bindoy** case because the accused acted with malice.

Where in the course of the killing in the cockpit of two intended victims, a bystander was killed and four others were wounded, it was held that, since there was reasonable doubt as to who killed and wounded the said bystanders, the persons responsible for the killing of the two intended victims cannot be held criminally liable for the killing and wounding of the bystanders.[56]

Mistake as to victim is not a defense. — Under article 4, mistake as to victim or **aberratio ictus** is not a justifying exempting nor mitigating circumstance. It is mistake of fact without **dolo** or **culpa** that is excusable. So the fact that A murdered B, believing him to be C, is no defense. That he made a mistake in killing one man instead of another, when it is proved that he acted maliciously, cannot relieve him from criminal responsibility.[57] Or the fact that the wrongful act was committed upon a person other than the one against whom it was directed does not excuse the offender from criminal liability for the resulting felony.[58] In the **Maisa** *case*, **supra**, while Anastacio Maisa and Jose Machon were fighting, Isaac Monrayo tried to separate them and he gave Maisa a push which caused the latter to fall to the ground. On getting up, Maisa struck Monrayo in the face, hitting him in the right eye, which became completely disabled. Maisa alleged that the blow was aimed at Machon and not at Monrayo. This defense was not sustained. Maisa was convicted of physical injuries.

The same rule was followed in **U.S. v. Zamora,**[59] where it was held that one who performs a criminal act should be held liable for the act and for all its consequences, although the victim was not the person whom the felon intended to injure. In that case the accused intended to injure his sweetheart but in his anger at not finding her he killed one Custodio Pisan. He was convicted of homicide although the victim of his homicidal intent was a different person.

In **U.S. v. Diana,**[60] the rule was formulated in this wise: "The nature and circumstances which determine the definition of a crime

55 People v. Vagallon, 47 Phil. 882; People v. Dumol, 8 ACR 666; People v. Mendoza, Apilo and Nicolas, CA 45 OG 2184.

56 People v. Guzman, Buentipo, and Asistento, L-7580, Aug. 30, 1958.

57 U. S. v. Mendieta, 34 Phil. 242; People v. Gona, 54 Phil. 605; People v. Leovigildo David, 60 Phil. 98; People v. Pacalang, CA 46 OG 3755; People v. Mendoza, Apilo and Nicolas, 45 OG 2184; People v. Nolasco, L-3112. May 14, 1951; People v. Andaya, CA 40 OG 12th Supp. 169; People v. Morallos, CA 50 OG 179; People v. Santos, CA 38 OG 2511; People v. Dumon, 74 Phil. 257; People v. Cadaona, CA-GR No. 112-R, Feb. 15, 1947.

58 U. S. v. Maisa, 8 Phil. 507.

59 32 Phil. 218.

60. 32 Phil. 344 cited in People v. Buyco, 80 Phil. 50, 68.

according to the consequences thereof are not altered because its perpetrator may have intended to assault one person, but inflicted the mortal wound upon another. The crime is the same, whoever may be the victim deprived of life by the criminal assault of another."

In the **Diana** case, there was a quarrel between Dionisio Legara and Cayetano Gomez. While Legara and Gomez were grappling, Leon Diana, the uncle of Gomez, intervened and delivered blow which hit his nephew Gomez in the forehead. Gomez left the place bleeding and he died later. Diana claimed that he intended to hit Legara but hit instead his nephew. He was nevertheless held guilty of homicide with the mitigating circumstances of lack of instruction and obfuscation but not lack of intent to commit so grave a wrong because the records revealed that he might have really intended to kill his nephew. The peculiarity of the case is that the Attorney-General asked for its dismissal because there was doubt as to whether Diana committed the homicide, since there were two wounds found on the body of the deceased and Diana inflicted only one wound. However, the Supreme Court disregarded the prosecution's plea for the dismissal of the case.

The most sensational case on mistake as to victim is **People v. Guillen,**[61] where the accused threw a grenade at President Roxas but killed one Varela and wounded others. His crime was the complex one of murder with assault and multiple attempted murder. The **Guillen** case cites a Spanish case where A, intending to kill B, a storeowner, fired at B from the street, but the shot killed not only B but also C who was also in the store. It was contended that the killing was homicide as to B and homicide through reckless imprudence as to C. **Held:** The killing was double murder treated a complex crime, there being only one shot.

Another remarkable case on mistake as to victim is **People v. Oanis and Galanta,**[62] where two peace officers were ordered to arrest one Balagtas, a notorious criminal and as escaped convict, and, if overpowered, to get him dead or alive. Proceeding to the suspected house, the residence of a **bailarina** named Irene, the two peace officers entered a room and on seeing a man sleeping with his back towards the door, fired at him without first making an inquiry as to his identity and thinking that he was Balagtas. The victim turned out to be Serapio Tecson, an innocent man, who was Irene's paramour. The peace officers were convicted of murder.

Impossible crime. — The second paragraph of article 4 deals with the impossible crime. It follows the positivist theory. The purpose of the provision is to express criminal tendencies. The penalty for the impossible crime fixed in article 59 is **arresto mayor**

61 85 Phil. 307. Analogous situation in People v. Balatol, 84 Phil. 289.
62 74 Phil. 257 CF. People v. Mamoslaya Bulalakao, 50 OG 1104; Victoria Calderon v. People, L-6189, Nov 19, 1934

or a fine ranging from ₱200 to ₱500, depending on the "social danger and degree of criminality shown by the offender." Examples of the impossible crime are trying to kill a person already dead, robbing an empty safe, trying to shoot a person with an empty revolver.[61]

It should be noted that not all impossible crimes are punished. Only impossible crimes which would be offenses against persons or property (Title 8 and 10 of Book II, such as homicide, theft, estafa or robbery) are punished. Rape of a dead woman may not be a punishable impossible crime because rape is not a crime against persons.

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[61] People v. Balmores, 85 Phil. 493; People v. Omar, L-7137, April 30, 1955; People v. Casale, CA-GR No. 12455-R, May 17, 1955.