SURVEY OF 1959 SUPREME COURT DECISIONS IN CRIMINAL LAW

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Criminal law is a branch of law which defines crimes, treats of their nature, and provides for their punishment.[1] It is a response to some serious harm done by those who do not or could not conform to certain accepted norms of conduct in an ordered society. Thus, criminal law represents a sustained effort to preserve important social values from serious harm, but to do so not arbitrarily but in accordance with rational methods directed toward the discovery of just ends.[2] This serious harm, which takes the form of violations of penal laws, affords the courts the opportunity to apply and interpret the laws which require penal sanctions. Consequently, to understand criminal law pinciples better requires a knowledge of the particular facts which find criminal law applications. This survey is designed for this purpose. To do this, we shall correlate codal provisions and criminal law principles enunciated in past decisions with, and sift doctrinal rules from, the facts involved in the cases decided by the Supreme Court in 1959.

CHARACTERISTICS OF PENAL LAWS

Penal laws have three essential characteristics, namely, general, territorial, and prospective. They are general because they apply to every person within the territory, regardless of nationality, sex, age, and other personal circumstances; territorial, because they can have no effect outside the state's territory; and prospective, because they are not retroactive.[3] Of course, the rule that penal laws are general, territorial and prospective is subject to certain exceptions.

The case of *People v. Salazar*[3a] illustrates the general applicability of penal laws. Accused in this case, a Moro, ran amuck (*juramentado*) after he discovered that his common-law wife had illicit relations with another man, killing a number of persons and seriously injuring two others. Found guilty by the trial court of multiple murder and frustrated and attempted murder, he contended on appeal that *juramentado*, being a cult among the Moros that forms part of their religion, should be distinguished from acts of common murderer, and hence it should be taken as a mitigating circumstance to make the crime committed as only homicide, frustrated and attempted homicide. This was rejected by the Supreme Court. It ruled that "our penal laws enumerate the circumstances which mitigate criminal liability, and the condition of running amuck is not one of them. In so far as they are applicable, they must be applied alike to all criminals be they Christians, Moros or Pagans."

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* A.B. (1957), B.S.Jur. (1959) (U.P.); Chairman, Student Editorial Board, Philippine Law Journal, 1959-60.

1 Reyes, Luis B. Criminal Law, Vol. 1, 1 (1958).

2 Hall, Jerome, Principles of Criminal Law, 1 (1947).

3 Padilla, Ambrosio, Criminal Law, Vol. 1, 3-10 (1955).

3a G.R.L-11601, June 30, 1959.

Corollary to the principle that penal laws should apply prospectively[3b] is the rule that felonies shall be punished in acocrdance with the laws in force at the time of their commission.[4] Another corollary rule is that no act constitutes a crime unless made so by law.[5] Should there be no law punishing an act at the time it is committed, there can be no crime. In point of time, therefore, it is essential to determine whether there is a law which punishes an act at the time of commission, and in this connection, the date of effectivity of a penal law or ordinance becomes an important subject of inquiry. Thus, in the case of *People v. de Dios*,[6] the acquital or conviction of the accused hinged on the determination of the date of effectivity of the penal ordinance involved. It appears that the defendant in this case was convicted of having violated an ordinance which punishes the act of selling fish and other perishable goods outside of the public market. The ordinance in question was passed by the municipal council on December 11, 1954, and was approved and signed by the mayor on December 16, 1954. The act imputed to him was committed on December 20, 1954. The ordinance, however, which provides that it shall take effect upon approval of the municipal council, was published only on December 27, 1954. The court, in acquiting the defendant and ruling that the ordinance took effect only on December 27, 1954, held that the requirement of publication under Section 2230 of the Revised Administrative Code is mandatory, dictated by the elementary rule of fair play and justice that a reasonable opportunity to be informed must be afforded to the people who are commanded to obey before they can be punished for its violation.

FELONIES

Motive: — Felonies are acts and omissions committed by means of deceit or fault and punishable by law.[7] Three essential elements of felonies are discernible from this definition, namely, (1) there must be an act or omission, (2) committed by means of deceit or fault, or stated otherwise, the act or omission must be voluntary, and (3) punishable by law. From this, it is evident that motive is not an essential element of a crime. However, motive may be indispensable in some instances, as when the identity of a person committing a crime is in dispute or his guilt or participation is not established by sufficient evidence.[8] Consequently, where the accused has been identified and shown to have committed the crime, proof of motive is immaterial;[9] and the existence of motive, *standing alone*, there being no other evidence, though an important consideration, is not proof of the commission of the crime, much less of the guilt of the accused.[10]

The Supreme Court reiterated the foregoing rules in some of the cases brought before it. In finding the accused guilty in those cases, it should be stated that there were other evidence linking accused in the commission of the crimes.

3b Exception: if favorable to accused who is not a habitual criminal or when its retroactivity to pending cases is expressly prohibited.

4 Article 366, RPC.

5 US v. Taylor, 28 Phil. 599.

6 G.R.L-11003, August 31, 1959.

7 Article 3, RPC.

8 US v. McMann, 4 Phil 561; US v. Carlos, 4 Phil. 47; People v. Javier, G.R.L-7841, December 14, 1956; People v. Bugayao, G.R.L-11328, April 16, 1958.

9 People v. Divinagracia, G.R.L-10611, March 13, 1959.

10 People v. Marcos, 70 Phil. 468.

In *People v. Conde*,[11] where the defendant was accused of murder, the circumstances which motivated the defendant to commit the crime appeared as follows: there was a pending land dispute between the accused and the family of the victims, and prior to the shooting a son of one of the family victims was instrumental in identifying the accused as the possessor of a hand grenade as a result of which he was charged of illegal possession of firearms. In *People v. Arcicte*,[12] it appears that the defendant was a PC officer accused of killing his wife. Prior to the shooting, the wife complained to the commanding officer about her husband's activities. The Supreme Court, in finding accused guilty, held that "he had motive to do away with his wife; she had, by complaining of his failure to hand over his salary, brought his extramarital escapades to the attention of his army superiors; and by collecting appellant's salary for the preceeding forthnight, she had it difficult for him, to say the least, to keep supporting his paramour."

Another case of significance is *People v. Godinez*,[13] which was a prosecution for murder. Defendant here, who was a staff member of the Spanish consulate, was accused of killing Spanish Consul Horencio Millaruelo. Defendant claimed that the shooting was accidental. There were, however, proof of motive, namely: accused was not appointed acting consul, as was usually done before, when the deceased took over the consulate; deceased was strict and exacting in his official duties which disgusted the accused; and accused was found to have misappropriated a large sum of money which was discovered by the deceased and led to a violent discussion between deceased and accused. Defendant, however, claimed that he could not be held liable because, invoking the case of *People v. Marcos*,[14] the existence of motive alone, though perhaps an important consideration, is not proof of the commission of the crime, much less of his guilt. Rejecting this allegation, the Supreme Court held: "The principle invoked is not applicable to the case at bar. It relates to cases where there is no other evidence as to the identity of the offender. Motive alone cannot serve as the link between the offense and the person suspected to have committed the offense. Hence, in the *Marcos* case, the accused were acquited because while the possible motive of appellants to desire the death of victim Nalundasan was established, the identity of the person responsible for his death was not satisfactorily proved. But here it is not disputed that the deceased died as a consequence of a bullet wound which was discharged by appellant from his .45 caliber pistol. The existence of motive on the part of appellant becomes decisive in determining the probability and credibility of his version that the shooting was purely accidental."

The rule that "where the identity of a person committing a crime is in dispute, the motive that may have impelled the commission is very relevant," is illustrated in the case of *People vi Ester del Rosario Murray*.[15] It appears in this case that defendant and her husband were married on May 6, 1946. They loved each other and lived quietly. They often went to nightclubs, and in one occasion when an unknown stranger danced with her without asking permission from her husband, Mr. Murray assaulted him. However, in May, 1949, Mr. Murray met Carolina Trinidad, a young cinema actress,

11 G.R.L-10282-83, March 30, 1959.
12 G.R.L-11814, February 28, 1959.
13 G.R.L-12268, November 28, 1959.
14 Note 10, Supra.
15 G.R.L-4467, April, 30, 1959.

20, whose screen name is Carol Varga. Since then Mr. Murray and Carol Varga went out frequently together. On August 13, 1949 at about 4:00 A.M., Mr. Murray was shot dead in the couple's bedroom. Accused of parricide, Mrs. Murray interposed the defense that the killing might have been perpetuated by unknown robbers or by his associates in the buy and sell of firearms. In rejecting this contention and holding her guilty of the crime, the court ruled: When we consider appellant's claim that the deceased had loved her, had frequently taken her for a ride in his yacht and to dancing places or night clubs, and had demonstrated his love by such act of possessiveness as assaulting another who had tried to dance with her without his permission, which must have made her so happy, the sudden change in his conduct in frequently going to night clubs without taking her along, must have at first aroused her suspicion, and then later, her jealousy, especially upon learning that a beautiful rival was behind his sudden change of attitude towards her. So when the deceased arrived at 4:00 o'clock in the morning of August 13, she must have been overcome by such an overpowering feeling of jealousy that she decided to destroy the man she loved so dearly, rather than allow another to enjoy his love and affections and thereby put an end to her misery. Revenge must have blinded her reason and goaded her to destroy the man who had once loved but had now turned cold to her.

Malum Prohibitum; Illegal Possession of Firearms: — Crimes penalized under the Revised Penal Code are *mala in se*, while those prohibited by special laws are *mala prohibita*. Illegal possession of firearms is an example of the latter. However, not all possessions of firearms without the required license are illegal. Thus, section 879 of the Revised Administrative Code exempts peace officers from the requirements relating to the issuance of license to possess firearms. The case of *People v. Maracandang*[15a] illustrates this point. Defendant in this case was prosecuted for illegal possession of firearms. Convicted in the trial court, he invoked, on appeal, as his legal excuse or authority to possess firearms the appointment issued him by the Lanao Governor as secret agent, which authorized him to carry firearm. In acquitting the defendant, the Supreme Court held: "It may be true that, as held by the trial court, the Governor has no authority to issue any fiream license or permit; but section 879 of the Revised Administrative Code provides, as shown at least by the subject matter thereof, that 'peace officers' are exempted from the requirements relating to the issuance of license to possess firearms. The appointment of the accused as a secret agent to assist in the maintenance of peace and order campaigns and detection of crimes, sufficiently put him within the category of a 'peace officer' equivalent even to a member of the municipal police expressly covered by section 879."

Duties of the courts: — (1) To apply the law as it appears in the statute books: It is a well-settled rule of law that the courts are not concerned with the wisdom, efficacy or morality of laws. As long as they remain in the statute books and as long as they provide for the imposition of penalties in certain cases, the courts should respect and apply them regardless of their opinions or the manner their judgments are executed and implemented by the executive department. By so doing, the courts will have complied with their solemn duty to administer justice.[16] Thus, it is error for the trial court to rule that, although the crime of murder was attended by the

16 People v. Limaco, G.R.L-3090, January 9, 1951.
15a G.R.L-12088, December 23, 1959.

aggravating circumstances of nocturnity and in band, in view of the *attitude of the Chief Executive on death penalty*, the accused should be sentenced to life imprisonment.[17]

(2) To recommend executive clemency if the penalty be excessive: Article 5, paragraph 2, of the Revised Penal Code, provides that "the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense." In *People v. Salazar*,[18] where the accused invoked this particular provision, it appears that the accused pleaded guilty to an information charging him of having wilfully, unlawfully, and feloneously and with grave abuse of confidence, misappropriated, misapplied, embezzled, and converted to his own use and benefit the amount of ₱13,897.77. Sentenced to a penalty of 2 years, 11 months and 11 days of *prison correctional* to 8 years, 8 months and 1 day of *prison mayor*, he appealed alleging that the trial court erred in sentencing him to said penalty without recommending executive clemency on the ground of lack of malice in the commission of the crime, in that he did not apply the missing funds for his personal use but lost the same while he was drunk. In holding his contention untenable, the court held that "in penal statute, the word 'wilfully' means with evil intent, or with legal malice, or with a bad purpose. Consequently, the appellant's plea of guilty carried with it the acknowledgment or admission that the wilful acts charged were done with malice." He cannot therefore claim that he committed the crime without malice.

Special laws: — Article 10 of the Revised Penal Code provides that "offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary." There has been no clear-cut pronouncement by courts as to what is the scope of this provision. However, in the cases decided by the Supreme Court and the Court of Appeals, the following appeared to be well-settled:

(1) In the absence of a contrary provision, the provisions of the Penal Code relating to attempted and frustrated crimes are not applicable to offenses under special laws;[19] (2) the rule on the liability of principals or accomplices in the commission of a crime is applicable to special laws;[20] (3) the enforcement of the period of prescription of crimes applies to special laws;[21] (4) the rule with respect to the liability of a minor, over 9 years old but under 15 years, is applicable to a violation of the Anti-Profiteering Law;[22] (5) the indemnity and subsidiary imprisonment in the Revised Penal Code applies to violations of the Motor Vehicle Law;[23] (6) since Rep. Act 145 (Veterans Law) does not specifically provide for subsidiary imprisonment in case of insolvency, the rule on subsidiary imprisonment under the Penal Code should be applied;[24] (7) unless so provided, no accessory penalty should be

17 People v. Olaes, G.R.L-11166, April 17, 1959.
18 People v. Salazar, G.R.L-131371, September 24, 1959.
19 US v. Basa, 8 Phil. 89.
20 US v. Ponte, 22 Phil. 379.
21 People v. Tamayo, 40 O.G. 2313.
22 People v. Navarro, 51 O.G. 4062.
23 People v. Moreno, 60 Phil. 712.
24 People v. Lardizabal, G.R.L-11540-R to 11543-R, August 22, 1955.

imposed for violations of special laws;[25] (8) plea of guilty is not mitigating circumstance in the crime of illegal possession of firearms which is punishable by special law;[26] (9) the rule that penal laws must be given retroactive effect when favorable to the accused is applicable to special laws;[27] (10) article 45 of the Revised Penal Code with respect to the confiscation of the instruments used in the commission of a crime is also applicable to special laws;[28] (11) the general provisions of the Revised Penal Code on acts of falsification apply to cases not covered by Commonwealth Act 465 which punishes falsification of residence certificates, since this law makes no provision that it exclusively applies to all falsifications of residence certificates.[29] This enumeration is not exclusive. The general rule, as has been said, is that when the ends of justice require that the Revised Penal Code be given suppletory effect, the courts should not hesitate to apply them.[30]

The Supreme Court finds occasion to reiterate some of the foregoing principles in some of the cases decided by it in 1959. In *People v. Jolliffe*,[31] it appears that defendant was charged of violating Rep. Act 265, in relation to Central Bank Circular No. 21, when, without the required license, four pieces of gold bullion and traveler's check were found in his person when he was about to board a plane for Hongkong. Convicted in the lower court, defendant appealed and contended that (1) since this is a special law which punishes only consumated exportation, he cannot be held liable for an attempted or frustrated act to export gold bullion as what he did, and that (2) the confiscation of the instruments of the crime, such as the gold bullion, applies only to violations of the Revised Penal Code and not to special laws. In rejecting appellant's contention, the court held that this special law specifically punishes attempted or frustrated exportation. It explicitly "applies to any person 'desiring to export gold' and hence, it contemplates the situation existing prior to the consumation of the exportation. Indeed, its purpose would be defeated if the penal sanction were deferred until after the article in question had left the Philippines, for jurisdiction over it, and over the guilty party, would be lost thereby." As to the second allegation, it ruled that "pursuant to Article 10 of the Revised Penal Code, the provisions of said code shall be supplementary to special laws, unless the latter should provide specifically to the contrary, and there is no such provision to the contrary in Rep. Act 265."

The case of *People v. Balagtas*[32] involves a violation of the Internal Revenue Code. Defendant, for failure to pay his income tax, was fined ₱300 with subsidiary imprisonment and ordered to indemnify the government in the sum of ₱10,431.22, representing his tax liability, also with subsidiary imprisonment. He now questions the legality of the subsidiary imprisonment for tax liability, alleging that this is not sanctioned by the law. Section 353 of the Internal Revenue Code provides: "If the person convicted for violation of any provisions of this code has no property with which to meet the *fine* imposed upon him by the court, or is unable to pay *such fine*, he shall be subject to a subsidiary personal liability at the rate of 1 day for ₱2.50, subject to the rules established in Article 39 of the Revised Penal Code." The court, upholding

25 People v. antos, 44 O.G. 1289.
26 People v. Noble, G.R.L289; People v. Ramos, 44 O.G. 3288; People v. Gonzales, O.G. 1583.
27 People v. Racel, 44 hil. 437.
28 US v. Bruhez, 28 Phil. 305.
29 People v. Po Giok, G.R.L-7236, April 30, 1955.
30 Padilla, Ambrosio, Criminal Law, Vol. 1, 101 (1955).
31 G.R.L-9553, May 13, 1959.
32 G.R.L-10210, July 29, 1959.

appellant's claim, ruled: "It is clear that subsidiary penalty provided in Section 353 refers only to non-payment of the *fine* and not of the *taxes* due. In other words, while the appealed decision is correct in substance, the imposition of subsidiary imprisonment in case of failure to pay the fine, the same is however erroneous with respect to payment of taxes due. It is well settled that if a special law does not provide for the imposition of subsidiary penalty or subsidiary imprisonment in case of insolvency in the payment of *civil liability*, such subsidiary imprisonment cannot be imposed."[33] This rule was also reiterated in the cases of *People v. Foster*,[34] which was a prosecution for a violation of Act No. 2706, as amended, requiring a prior permit from the Department of Education for the operation of schools and in *People v. Cubelo*,[35] which involved an illegal fishing by dynamite.

JUSTIFYING CIRCUMSTANCE

Self-defense:—Self-defense rests on the principle of self-preservation, which requires, in order for one to claim it, the concurrence of three requisites: unlawful aggression, reasonable necessity of the means employed to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself.[36] It is an affirmative defense which must be established by convincing evidence, and not of doubtful veracity. It is incumbent upon the accused to prove clearly and sufficiently the fact of self-defense and not to rely on the weakness of the evidence of the prosecution, otherwise his conviction is imperative.[37] In determining whether accused acted in legitimate self-defense, the following factors are considered, namely, the physical build-up of the accused and the nature, character, location, and extent of the wounds inflicted. These factors must be consistent with, and not contradictory to, the claim of self-defense. Thus, self-defense cannot be sustained where it appears that deceased was more heavily built and stronger than appellant, making it incredible to believe that the latter was able to wrest the bolo held by deceased, especially in the face of positive assertion by two witnesses that it was appellant who fired at the deceased and hacked him to death with his bolo when deceased was already lying prostrate.[38]

The foregoing principles find illustration in two cases decided by the Supreme Court in 1959. In *People v. Elumba, et al.*,[39] where the accused claimed self-defense, the following facts were established: The victim suffered a contused wound, 1.5 cm. long and extending to the bone, on the right supraorbital ridge, which was caused by a blunt instrument. No mention of this wound was ever made by the accused. All that he said was that he struck the victim twice on the face. Dr. Ibe, who performed the necropsy, testified that the two facial wounds were inflicted when the victim was lying prone on his back and when he was already in a state of shock, produced by the blow on the right eyebrow. These established facts, the court ruled, negatived the alleged self-defense. In *People v. Salatombas*,[40] the deceased was wounded on the right back hip. Rejecting the claim of self-defense, the court held: "Indeed, had Alfredo Salatombas stabbed Bartolome Barlayo in self-defense,

33 People v. Tan, 51 Phil. 71.
34 G.R.L-12822S, April, 13, 1959
35 People v. Cubelo, G.R.L-13678, November 20 1959.
36 Article 11, par. 1, RPC.
37 People v. Bauden, 77 Phil. 105; People v. Libisig, G.R.L-12122, May, 30, 1959.
38 People v. Namoc, G.R.L-11877, November 23, 1959.
39 G.R.L- 11165, November 28, 1959.
40 G.R.L-11283, May 29, 1959.

the latter's wound would not have been on the posterior part of the hip. Upon the other hand, the location of this injury confirms the testimony of prosecution witness Tabuquilde, who said that, while Maximo Rojas and Bartolome Barlayo were walking near the place where the party was held, appellant Felizardo Salatombas grabbed Bartolome by the collar and tried to hit him with a bolo, and that while Bartolome thus was held by Felizardo, appellant Alfredo Salatombas went behind him and wounded him on the buttocks."

EXEMPTING CIRCUMSTANCE

Compulsion of an Irrestible Force: — A person who acts under the compulsion of an irrestible force is exempt from criminal liability. The force is is irrestible when it reduces him to a mere instrument; the force must come from the outside and done by a third person. Short of these requirements, the accused is liable. *In People v. Rogado*[40a] which was a prosecution for murder, accused while admitting their participation in the killing of the deceased, claimed in exculpation that they acted under the pressure of an irresistible force in that they merely obeyed the order of their Huk commander, who would have killed them if they disobeyed his order. This defense, held the Supreme Court, is untenable not only because of the well-settled rule that obedience to an order of a superior will only justify an act which otherwise would be criminal when the order is for a lawful purpose, but also because the circumstances under which accused participated in the torture and liquidation of the deceased cannot in any way justify the claim that they acted under uncontrolable fear of being punished by their superior if they disobeyed their order. In the first place, accused were armed such that they could have protected themselves from any retaliation from their superiors should they disobey their orders; and in the second place, the deceased was brought to a secluded place quite far from that where their superiors were at the time and in such a predicament, they could have escaped to avoid the ire of their superiors.

MITIGATING CIRCUMSTANCES

Minority: — Minority, in order to mitigate the gravity of the offense, requires that the offender should be under eighteen years of age at the *date of the* commission of the crime.[41] Thus, where it appears that the accused testified that he was 18 years old at the time of trial, this being uncontradicted, the court held that he must have been less than 18 years when the crime was committed, which entitles him to a penalty lower by one degree.[42]

No Intention to Commit so Grave a Wrong: — Under Article 13, par. 3, of the Revised Penal Code, the accused is entitled to a mitigation of the penalty if he had no intention to commit so grave a wrong as that committed. Intention is an internal state of the mind. As such, it can be shown only by external acts or manifestations, by considering the weapon or means used, the injury inflicted, the spot where the blow was directed, and the attitude of the accused as he pursued his criminal act.[42a]

The case of *People v. Aporado*.[42b] illustrates the foregoing rule. Defendant in this case killed the deceased with a scythe by slashing the victim's neck and continuing the attack until the latter died. The attack was shown to be

40a G.R.L.-13025, December 29, 1959.
41 Article 13, par. 2, RPC.
42 People v. Aonales, G.R.L-12152, September 22, 1959.
42a People v. Flores, 50 Phil. 548; People v. Banlos, G.R.L-3413, December 29, 1950.
42b G.R.L-7839, May 29, 1959.

treacherously made. On appeal, accused claimed that he did not intend to commit so grave a wrong as that he committed. The Supreme Court held that the "instrument used, and the repeated stabbing even as the victim was running away, cannot possibly be reconciled with the alleged lack of intent to commit so grave a wrong as death."

Immediate Vindication of a Grave Offense:—Article 13, par. 5, provides that in order that this mitigating circumstance may be availed of, it is necessary that the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees. Vindication may not be immediate; it may be proximate, as when the vindication was done a few hours, or one day or two after the alleged grave offense was committed. But where several days had passed, this mitigating circumstance cannot be availed of by the accused.[43]

Passion or Obfuscation:—When the accused have acted upon an impluse so powerful as naturally to have produced passion or obfuscation, he is entitled to this mitigating circumstance.[44] It is, however, required that passion or obfuscation should arise from lawful sentiments and that no sufficient time has clapsed between the alleged insult and the commission of the felony. In *People v. Salazar*,[45] the defendant ran amuck, killing 16 persons and wounding two others, after he learned that his common-law wife had illicit relations with another man. He claimed passion and obfuscation as a mitigating circumstance. The court, in denying him this imtigation, ruled: "The mitigating circumstance of obfuscation arising from jealousy cannot be invoked in favor of the accused considering that his relationship with his common-law wife was illegitimate. In addition, many days had passed already from the discovery of the alleged infidelity of his common-law wife before he committed the crime allegedly in vindication of his honor."

The *Salazar* ruling should be distinguished from a case where the defendant killed his common-law wife on the act of sexual intercourse with another man. In this case, he is entitled to a mitigation because he acted upon an impulse produced by the sudden discovery of his common-law wife's infidelity.[46] But an accused who was blinded by passion cannot on the same breath claim the mitigating circumstance of vindication of a grave offense because these two mitigating circumstances cannot be counted separately and independently if they arose out of the one and the same fact or motive.[47]

Voluntary Surrender:—It is a rule that a surrender to be voluntary must be spontaneous showing the intent of the accused to submit himself unconditionally to the authorities.[48] A mere claim that a person voluntarily surrendered is not enough; accused must show it by sufficient evidence. Thus, where it appears that the Chief of Police had to take several persons, including the accused, to the municipal building for investigation as nobody volunteered to give information about the killing, accused's claim that he voluntarily surrendered cannot be sustained.[49] And where the accused went into hiding after the commission of the crime and surrendered only after he had conferred with

43 People v. Dagatan, G.R.L-10851, August 28, 1959.
44 Article 13, par. 6, RPC.
45 G.R.L-11601, June 30, 1959; see also People v. Mutya, G.G.L-11255-56, September 30, 1959.
46 US v. de la Cruz, 22 Phil. 429; US v. Tubban, 29 Phil. 434.
47 Note 43, Supra; People v. Yaon, 43 O.G. 4142.
48 Note 1, Supra, at 179.
49 People v. Gorospe, G.R.L-10644, February 19, 1959.

a councilor, there is no voluntary surrender.[50] Likewise, the circumstance that the accused did not resist arrest or struggle to free himself after he was taken into custody by the authorities cannot amount to voluntary surrender[50a] However, when the evidence of the defense was to the effect that the appellant surrendered to the authorities after he found out that he was wanted by the Constabulary, this being uncontradicted, the accused is entitled to this mitigating circumstance.[50b]

AGGRAVATING CIRCUMSTANCES

Dwelling:—In order that dwelling may be considered as an aggravating circumstance, it is required that the act be committed in the dwelling of the offended party, if the latter has not given provocation.[51] Three requisites are therefore necessary: there must be an act committed; the same was committed in the dwelling of the offended party; and the offended party has not given provocation.

Does the phrase, "dwelling of the offended party," mean that the offended party is the owner of the dwelling? In the case of *People v. Guhiting*,[52] the court ruled that the aggravating circumstance of dwelling cannot be taken against the accused because the house did not *belong* to the offended party, but to the sister of the accused. Does this ruling preclude a case where the offended party is the lessee of a house? We believe that it should not. The basis of dwelling as an aggravating circumstance is the greater perversity of the offender as shown by the place of the commission of the crime.[53] This greater perversity can be shown not only when the offended party *owns* the dwelling but also when the offended party, who is a lessee, enjoys the use of the dwelling, although its naked ownership belongs to another who is a lessor. It should be noted that in the *Guhiting* case, the offended party was not in any capacity enjoying the use of the house, but was there only by chance.

Dwelling, which includes dependencies, staircase, and enclosures,[54] is not aggravating when both the offended and offender are occupants of the house,[55] even though the offender is a mere servant of the former.[56] In the case of *People v. Mutya*,[56a] which was a prosecution for murder, dwelling was considered as aggravating because the house where the killing took place belonged exclusively to the victim, although it was shown that previously the accused and the victim had been living there together as husband and wife for two years, it appearing however that he and the deceased had never been married and at the time of the shooting, they had been separated.

Advantage of Public Position:—To constitute this as an aggravating circumstance, the offender must have taken advantage of his position in the commission of a crime. Thus, where it appears that the defendant, chief of police, who was drunk to the time, shot to death a political enemy of the town mayor from whom he owed his appointment as chief of police, it was held that the

50 People v. Mutya, G.R.L-12622, September 30, 1959.
50a People v. Dindina, G.R.L-12622, October 28, 1959.
50b People v. Olaes, G.R.L-11166, April 17, 1959.
51 Article 14, par. 3, RPC.
52 G.R.L-2843, May 14, 1951.
53 Reyes, op. cit., Supra, at 201.
54 US v. Tapan, 20 Phil. 211; People v. Alcala, 46 Phil. 739.
55 US v. Rodriguez, 9 Phil. 136.
56 People v. Caliso, 58 Phil. 283.
56a People v. G.R.L-11255-56, September 30, 1959.

commission of the crime was attended by the aggravating circumstance of appellant's having taken advantage of his position.[57]

Disregard of Rank:—Insult or disregard of the respect due the offended party on account of his rank aggravates the commission of a crime. This may be taken into consideration against the accused as long as it is proved in the trial, although it is not alleged in the information. The case of *People v. Godinez*[58] illustrates this rule. While this aggravating circumstance was not alleged in the information in this case, it was taken against the accused because it was not disputed that the deceased was the acting consul of the Spanish Consulate at the time of the shooting, and appellant was a mere chancellor, a subordinate of the deceased.

Evident Premeditation:—This implies deliberate planning in the execution of the unlawful act. Furthermore, there must be a period sufficient in a juridical sense to afford full opportunity for meditation and reflection and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to harken to its warning.[59] Since evident premeditation is an internal state of the mind, it can be proved by reference to his external acts. Thus, if the evidence shows that the accused meditated and reflected on his intention between the time when the crime was conceived and the time it was actually perpetuated, there is evident premeditation.[60]

In *People v. Mantala*,[61] the circumstance which the court took into consideration to show evident premeditation was the fact that the accused was heard saying "for a long time, we have been looking for this opportunity" to pick a quarrel with the deceased. And in another case,[62] where the accused killed the deceased after he clandestinely gained entrance into the deceased's house, the court said that evident premeditation is conclusive from the fact that in the afternoon of July 22, 1955, when the accused and deceased quarrelled, and the latter slapped him, the accused threatened to kill the deceased with a hunting knife. From that afternoon until the time of the killing that accured in the evening of the following day, there transpired a considerable space of time within which he could have meditated and reflected on his evil design.

Treachery:—Under Article 14, par. 16, of the Revised Penal Code, 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 himself arising from the defense which the offended party might make. Several cases decided in 1959 illustrate the application of this provision. In *People v. Salatombas*,[63] it appears that the Salatombas brothers grabbed deceased by the collar. While deceased was trying to parry the blows given by one of the appellants, Alfredo Salatombas went behind him and wounded him on the buttocks causing his death. In holding that there was treachery, the court ruled: The showing is clear with respect to teachery. For the attack was so sudden and unexpected that it did not afford the victim the least chance either to defend or escape from it. And the necessary means to insure the effective execution of the attack without risk to the assailant were employed. Upon meeting the victim, Felizardo Salatom-

57 People v. Cebuenos, G.R.L-11341, May 15, 1959.
58 G.R.L-12268, November 28, 1959.
59 People v. Yturriaga, 47 O.G. (Supp. 12) 166.
60 People v. Carillo, 77 Phil. 572.
61 G.R.L-12109, October 31, 1959.
62 People v. Mutya, G.R.L-11255-56, September 30, 1959.
63 G.R.L-11283, May 29, 1959.

bas suddenly held him by the collar in front while Alfredo Salatombas from behind gave him a trust.

Treachery was also shown in *People v. Dacanay*.[64] In this case, father and son, after having been offended and insulted by a fight during the wedding party of appellant's daughter, posted themselves by the road awaiting whosoever might return to bother them. It was then nighttime. Deceased, a policeman, and three others passed by. Policeman Abaigar who was ahead noticed two men in sitting position. Suddenly, Cayetano Dacanay rose and, believing that Cayetano was to attack him, Abaigar quickly moved to escape him, but almost simultaneously, Wenceslao Dacanay delivered a blow at Pedro Bacara who was about a meter behind Abaigar. The court held that the attack was treacherous. "In the first place the attack was not expected by the policemen, specially by the deceased. It took place at night when the offended party could not very well see what the attackers were going to do. Then, without any warning, Cayetano rose and struck at Abaigar who fortunately could dodge the blow by stepping aside, but at the same time exposing the deceased. Then almost simultaneously, Wenceslao struck at the deceased Bacarra with his bolo, slashing him in the abdomen and in the right forearm. Clearly, the attack was sudden and unexpected. Such circumstance showed treachery. In *People v. Mutya*,[65] the facts which led the court to hold that there was treachery were: Accused gained entrance into the house by forcibly opening a hole in the floor in the kitchen; he hid behind the curtain separating the dining room and sala; he suddenly emerged therefrom and, without warning, fired at Paglinawan who had just turned about after closing the door in the sala leading out of the house; and he shot Uayan who was taken unaware and whose arms were raised. And in another case,[66] where it appears that the shooting was executed suddenly and unexpectedly, without warning to the deceased, who was seated at the time, and in a closed room where only the deceased and appellant were present, thereby ensuring the accomplishment of the offense without risk to appellant, the court ruled that there was treachery.

The foregoing cases make evident four elements of treachery, namely: the crime is against persons; the attack is sudden or unexpected; this attack is carried out by some means which tend directly and specially to insure its execution; and there is no risk to appellant from the defense which the offended party might make. The clear implication of this is that the converse operation of these elements will negate the existence of treachery. Thus, in the case of *People v. Molina*,[67] where the attack was hown to have been made face to face with no clear indication of unexpected suddenness, the court held that there is no treachery.

ALTERNATIVE CIRCUMSTANCES

Concept:—Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education.[68]

Intoxication or Drunkenness:—Article 15, par. 3, provides that "the intoxication of the offender shall be taken into consideration as a mitigating

64 G.R.L-11568, March 30, 1959.
65 G.R.L-11255-56, September 30, 1959.
66 People v. Godinez, G.R.L-12268, November 28 1959.
67 G.R.L-12625, November 23, 1959.
68 Article 15, par. 1, RPC.

circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit the said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance." Under this provision, intoxication is mitigating if (1) it is not habitual, or (2) subsequently to the plan to commit the felony. It is aggravating if (1) it is habitual or (2) intentional. Intoxication is habitual if one is given to inebriety by excessive use of intoxicating liquors. The habit should be actual and confirmed, but it is not necessary that it be continuous or of daily occurrence.[69] It is subsequent if drunkenness takes place *after* the accused has planned the commission of the crime. And it is intentional if the accused takes liquor to embolden himself. Intoxication as a mitigating circumstance is based on the fact that a person who is drunk does not have the full exercise of his will power. Consequently, it cannot co-exist with, or be taken separately from, passion or obfuscation, it being a fact that a person blinded by passion or obfuscation has also no complete control of his will power.[70]

Some of the aforementioned rules were applied in the cases of *People v. Cabuenos*[71] and *People v. Dacanay*.[72] Both involved a prosecution for murder. In the former case, the intoxication was found to be accidental. In the latter case, there was no proof that the drinking was habitual or intentional. In the absence of proof, ruled the court, "we shall presume that drunkenness in this case was not habitual but accidental." Hence, in both cases, intoxication was held to be mitigating.

Degree of Instruction or Education:—As a general rule, lack of instruction or education is mitigating, except in crimes against property and chastity.[73] It has been held, for example, that lack of instruction is not mitigating in theft, robbery,[74] arson,[75] and in rape or adultery.[76] However, this latter exception is not absolute, for in proper instances, it may be taken as mitigating. Thus, in *US v. Maqui*,[77] which was a prosecution for theft of caraballa by an Igorote, lack of instruction was held to be mitigating. In treason, there is no clear-cut ruling. The Supreme Court, in *People v. Lansanas*,[78] ruled that lack of instruction is not mitigating; but in the subsequent case of *People v. Marasigan*,[79] it was considered mitigating.

The above discussion shows equivocation by the court. However, this can be explained by the nature of this alternative circumstance and by the test employed to determine it. The case of *People v. Ripas*[80] gives an illuminating statement about this alternative circumstance, which was put by the court in this wise: Not illiteracy alone but also lack of sufficient intelligence are necessary to invoke the benefit of the circumstance. A person able to sign his name but otherwise so densely ignorant and of such a low intelligence that he does not realize the full consequences of a criminal act, may still be entitled to this mitigating circumstance. On the other hand, another unable to write because of lack of educational facilities or opportunities, may yet be highly or

69 People v. Amenamen, 37 O.G. 2324.
70 People v. Baterna 40 Phil. 996.
71 G.R.L-11341, May 15, 1959.
72 G.R.L-11566, March 30, 1959.
73 Padilla, op. cit., Supra, att 280; Reyes, op. cit., Supra, at 274-4.
74 US v. Pascual, 9 Phil. 491; People v. de la Cruz, 77 Phil. 444.
75 People v. Yeo, 40 O.G. (Supp. 12) 257.
76 Malesa v. Director, 59 Phil. 406; US v. Borjal, 9 Phil. 140.
77 27 Phil. 97.
78 82 Phil. 193
80 G.R.L-6246, May 26, 1954.

exceptionally intelligent and mentally alert that he easily and even realizes the full significance of his acts, in which case he may not invoke this mitigating circumstance.

The not-illiteracy-alone-but-also-lack-of-sufficient-intelligence test finds application in some of the cases decided in 1959. In *People v. Gorospe*,[81] the accused was prosecuted for murder. He was 50 years old and unschooled who had to use his thumbmark in lieu of signature. However, he had shown sufficient intelligence. Consequently, he was denied mitigation of his guilt. In *People v. Mutya*,[82] the only pronouncement of the court was: "Lack of education and instruction cannot mitigate appellant's guilt because to kill is forebidden by natural law which every rational being is endowed to know and feel." If this statement can be justified at all, it has to find basis on the assumption that the appellant, under the surrounding circumstances, had manifested sufficient intelligence to realize the significance of his act. However, in one case,[83] the court granted the accused the mitigating circumstance of lack of instruction "because he is an illiterate, can neither read nor write, and could not even sign his name for which reason he had to use his thumbmark instead."

Belief in witchcraft or the fact that the appellants were ignorant people living in a barrio almost twenty kilometers away from civilization may indicate lack of instruction which will mitigate the guilt of the accused in the crime against person.[84] Belief in witchcraft is extenuating because the crime (against person) would probably not have been committed were the accused not so ignorant as to believe in witchcraft. But this circumstance cannot be regarded as mitigating in the crime of arson, when the accused burned the house after killing the occupants who were believed to be witches. This is the ruling in the case of *People v. Laolao*.[85]

PERSONS CRIMINALLY RESPONSIBLE

Who Are Criminally Liable: — According to the nature of the felony committed, persons who are criminally liable fall under two groups: *first*, those who are criminally liable for grave and less grave felonies, namely, principlas, accomplices, and accessories; and *second*, those who are criminally liable for light felonies, namely, principals and accomplices.[86] The classification of persons liable into principals, accomplices, and accessories is based on the nature of participation of those criminally responsible in the commission of the felony.

Principals by Direct Participation; Conspiracy: — Article 17 of the Revised Penal Code enumerates those who are considered principals, namely: those who take a direct part in the execution of the act; those who directly force or induce others to commit it; and those who cooperate in the commission of the offense by another act without which it would not have been accomplished. Embraced in the phrase "those who take a direct part in the execution of the act" are: any person who personally executes the act, as when he kills another; or two or more persons who directly take part in its execution. This latter one presupposes the existence of conspiracy.

81 G.R.L-10644, February 19, 1959.
82 G.R.L-11255-56, September 30, 1959.
83 People v. Abonales, G.R.L-12152, September 22, 1959.
84 People v. Mantala, G.R.L-12152, September 22, 1959.
85 G.R.L-12978-12980, October 31, 1959.
86 Article 17, RPC.

The Code defines conspiracy as one which "exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."[87] Conspiracy, in itself, is not punishable except when the law specially provides a penalty for it.[88] It is only when used as a means to commit a felony that it gives rise to certain legal consequences, namely, the act of one conspirator is the act of all co-conspirators, and consequently, a conspirator is equally responsible for the acts of his co-conspirators.

The existence of conspiracy may be shown by the surrounding circumstances and by the acts of the accused themselves. This is illustrated in *People v. Dacanay*.[89] It appears in this case that a fight accured during the wedding of Wenceslao Dacanay's daughter, who is also Cayetano Dacanay's sister. Aggrieved and insulted by what happened, father and son, each armed with a bolo, together went down the house and posted themselves in the street. It was nighttime then. Deceased who passed by was suddenly and unexpectedly attacked by appellants. *Held*: There is conspiracy. They both had same intent and purpose and acted together and simultaneously. We have previously held that conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interest.[90]

The case of *People v. Nuto*[91] applies the rule that there is conspiracy when the acts of the accused evince unity of action and purpose. The facts show that the accused were brothers. Laureano held the deceased as his brother Conrado appeared in the scene and wounded deceased with a bolo in several parts of the body. While deceased was trying to extricate himself from the hold of Laureano, his other brothers, Gregorio and Feliciano, likewise gave the victim several bolo slashes. As several women screamed for help, the Nuto brothers left the victim, bleeding profusely from several wounds which caused his death. These facts, ruled the court, show conspiracy.

The circumstances that the crime of robbery with rape was committed in band and the manner the crime was perpetuated, namely, the accused raped the woman in succession and ransacked the place while others guarded the house, gave the logical inference that the accused conspired to commit the crime.[92] Likewise, the fact that the band of armed men, riding in jeeps, stopped at the vicinity of the victim's house and fired simultaneously at the house, showed that they had conspired together in carrying out the plan of killing the owner of the house and the members of his family.[93] However, an extra-judicial statement of a co-defendant linking other persons in the commission of a crime is not enough to prove conspiracy. Such extra-judicial statement, if proved to be voluntary, would bind him but not his co-defendants. And even if such circumstance were to be taken into account, neither does it prove or constitute conspiracy.[94]

Principals by Inducement: — To be a principal by inducemment, two requisites must concur: the inducement must be made directly with the intention to secure the commission of the crime or that the inducement is material

87 Article 8, RPC.
88 Ibid.
89 G.R.L-11568, March 30, 1959.
90 People v. Manadi, G.R.L-8770, September 27, 1955; People v. Serrano, G.R.L-7993, April 27, 1959; People v. Alvarez, G.R.L-10650, Octtober 31, 1959.
91 G.R.L-9406, July 31, 199.
92 People v. Caisip, G.R. L-8798, July 30, 1959.
93 People v. Camerino, et al.
94 People v. Canare, G.R.L-10677, September 30, 1959.

and precedes the commission of the crime; and the inducement was the determining cause of the crime.[95] The inducement must be proved positively and convincingly. A mere admission by the person who killed the victim that he did so upon order of the appellant is not such an inducement as to make appellant liable as a co-author of the crime by inducement.[96]

Accomplices: — Accomplices are those persons who, not being principals, cooperate in the execution of the offense by previous or simultaneous acts.[97] The essential conditions necessary to be liable as an accomplice are: (1) the person charged as an accomplice must have knowledge of the criminal intent of the principal; (2) there should be a direct relation between the acts done by the principal and those charged as an accomplice; and (3) the person charged as an accomplice should cooperate with the intention of supplying material or moral aid in the execution of the crime in an *efficacious way*.[98] Moral aid may take the form of advice, encouragement or agreement while material aid is shown by external acts.[99] Mere presence does not of itself constitute a simultaneous act of cooperation sufficient to make one accomplice, unless the object of such presence was (1) to encourage the delinquent or (2) to apparently or really increase the odds against the victim.[100] Thus, where it appears that the accussed, who did not know the evil intent of his co-accused, was merely present and did not do anything while the crimes of murder and arson were being committed by his other co-accused, he cannot be held liable, not even as an accomplice.[101]

APPLICATIONS OF PENALTIES

Death not to be imposed: — Article 47 provides: "The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except in the following cases: (1) When the guilty person be more than seventy years of age. (2) When upon appeal or revision of the case by the Supreme Court, all members thereof are not unanimous in their voting as to the propriety of the imposition of the death penalty. For the imposition of said penalty or for the confirmation of a judgment of the inferior court imposing the death sentence, the Supreme Court shall render its decision *per curiam*, which shall be signed by all justices of said court, unless some member or members thereof have become disqualified from taking part in the consideration of the case, in which event the unanimous vote and signature of only the remaining justices shall be required."

The Republic Act 296, known as the Judiciary Act of 1948, amended the second paragraph of this article. Section 7 of said law requires the affirmative vote of eight justices for the imposition of the death penalty. Should eight justices fail to reach a decision, the penalty next lower in degree or life imprisonment is imposed. In some cases[102] brought before it for review of the decision rendered by the trial court imposing the death penalty, the Supreme Court for failure to reach the required number of votes, imposed life imprisonment instead.

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95 US v. Indanan, 24 Phil. 203; People v Lawas, G.R.L-7618-20, June 30, 1955.
96 People v. Tanso, G.R.L-9647, April 30, 1959.
97 Article 18, RPC; Known as quasi-collective responsibility, Reyes, op. cit., supra, at 307.
98 People v. Tamayo, 44 Phil. 38.
99 People v. Silvestre, 56 Phil. 353.
100 US v. Guevara, 2 Phil. 528.
101 People v. Laolao, G.R.L-12978-12980, October 31, 1959.
102 People v. Valladolid, G.R.L-12405, October 20, 1959; People v. Ayam, G.R.L-11122, October 27, 1959; People v. Cemerlio, et al.; People v. Serrano, G.R.L-7973, April 27, 1959.

Complex Crimes: — Article 48 provides: "Where a single act constitute two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." Two kinds of complex crimes are comprehended in this provision: (1) when a single act constitutes two or more grave or less grave felonies, known as compound crime, and (2) when an offense is a necessary means to commit the other, known as complex crime proper.

The first kind of complex crimes requires the following requisites, namely, that one single act is done by the offender; and that this act produces (a) two or more grave felonies, or (b) two or more less grave felonies, (c) or one or more grave and one or more less grave felonies.[103] The case of *People v. Cabuenos*[104] is illustrative of this kind of complex crimes. Defendant in this case fired a single shot at the direction of a house. It hit the deceased and wounded another. The court ruled that " as both crimes were committed with one single shot or act the crime committed is a complex crime within the meaning of Article 48 of the Revised Penal Code and punishable in accordance therewith or *reclusion temporal* in its maximum period."

In the second kind of complex crimes, it is required that there be two offenses committed, one of which is a *necessary* means to commit the other.[105] Consequently, should an offense be *not a necessary* means to commit the other, there is no complex crime. This implies either of two things: *first*, two separate and independent crimes are committed and hence punishable as such; or *second*, an offense is an *indispensable* means or ingredient of the other and therefore only one crime is considered committed. Thus, there is no complex crime of rebellion with murder, arson, robbery, etc. for the latter, being indispensable ingredients of the former, are absorbed in rebellion.[106] The first implication is illustrated in *People v. Koh*.[107]

In the *Koh* case, defendant was accused of having violated a Central Bank regulation. He obtained dollar allocations from the Central Bank to buy a vessel. Accused made the false representation that the vessel had been purchased from Kian Hing Shipping Co. for $1,148,000, whereas the truth was that the vessel had been bought from Concordia Steamship Co. for $266,000. The balance of $882,000 was used for "purposes other than acquisition and/or for sale in the black market." Accused moved to quash on the ground of duplicity of offenses charged, in that the information alleged that he overpriced the vessel (first offense) and that he used the balance for other purposes (second offense). Trial court dismissed the charge, sustaining accused's claim. On appeal by the fiscal, the Supreme Court ruled that there were two separate offenses and not one complex crime. "Undoubtedly there are two offenses. Indeed, the prosecution so admits; albeit both may

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103 Reyes, op. cit. supra, at 382.

104 G.R.L-11341, May 15, 1959.

105 Reyes adds another requisite, namely that both offense must be punished under the same statute, op. cit. supra, at 387.

106 People v. Hernandez, 52 O.G. 5506.

See People v. Rogado, et al., (G.R. L-13025, December 29, 1959), where it was held: it should be stated that while this court ruled in People v. Hernandez, 52 O.G. No. 11, 5506, that there is no complex crime of rebellion with murder because the latter offense is absorbed by the former, however, a distinction was made in the case of People v. Geronimo, 53 O.G. No. 1, 68, where we held that if the killing is inspired by personal motive such killing is not absorbed by the rebellion but may be the subject of separate prosecution.

107 G.R.L-12407, May 29, 1959.

be charged, so it contends, in one information, because the first was a necessary means to commit the other. In our view, this position may not be necessarily maintained. Even if the ship had not been overpriced, the dollar allocation for its purchase could have been destined to other transactions, in violation of section 7 of Circular No. 37."

EXTINCTION OF CRIMINAL LIABILITY

Computation of Prescription of Offenses: — Criminal liability is totally extinguished, among others, by the prescription of the crime.[108] Article 91 provides that "the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputed to him."

In the computation of the period of prescription, Article 13 of the Civil Code is applicable. It provides that "when the laws speak of years, months, days or nights, it shall be understood that years are three hundred sixty five days each; months, of thirty days; days, of twenty four hours: and nights from sunset to sunrise. If months are designated by their name, they shall be computed by the number of days which they respectively have. In computing a period, the first day shall be excluded, and the last day included." Rule 28 of the Rules of Court also provides that "the last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday."

Two examples may be cited to illustrate the operation of the above provisions of law. Under the Revised Penal Code, light offenses prescribe in two months. Slight physical injuries, which is a light felony, is committed on May 28, 1953. An information for the same is filed on July 27, 1953. The court held that the information is considered filed on the 60th day and not on the 61st day after the offense has been committed.[109] Another example is *People v. Fule*.[110] This was a prosecution for serious oral defamation which prescribes in six months. This crime was committed on December 20, 1956. The court held that the last day for the filling of the information is June 18, 1957.

The period of prescription is interrupted by the filling of a complaint or information with the *proper court*. It has been held that the proper court does not include the office of the fiscal. Hence a complaint filed with the fiscal does not interrupt the running of the prescriptive period.[111] Another question presented before the Supreme Court is: Is the filing of an information with the office of the clerk of court of the *second branch* of the CFI considered filed with the office of the clerk of court of the *third branch*, where the information was latter referred to, for purposes of prescription? In the case of *People v. Fule*,[112] the Supreme Court answered the question in the affirmative. In this case, defendant was accused of serious oral defamation which prescribes in 6 months. The alleged crime was committed

108 Artictle 89, par. 5. RPC.
109 People v. del Rosrio, 51 O.G. 2868.
110 G.R.L-12519.
111 People v. Tayco, 73 Phil. 509.
112 Note 110, supra.

on December 20, 1956; on June 18, 1957, the provincial fiscal filed the information with the office of the clerk of court of the *second branch* of the Laguna CFI. On June 20, 1957, said information, pursuant to Administrative Order No. 149, series of 1955, was transmitted to the *third branch* of the Laguna CFI for trial. June 18, 1957 is the last day for the filing of the information within the prescriptive period for serious oral defamation; hence if the information was considered filed on June 18, 1957, the crime has not prescribed, but if it is considered filed only on June 20, 1957 when the information was transmitted to the third branch, then the crime has already prescribed. In ruling that the information was considered filed on June 18, 1957, the Supreme Court held: By virtue of Section 57, Republic Act 296, as amended, and for the purpose of distributing among the three branches the cases arising in the different municipalities of Laguna, the Secretary of Justice issued Administrative Order No. 149. While there are three branches in Laguna, there is only one court of first instance; each branch is not a court separate and distinct. Jurisdiction is vested in the court, not in the judges. Hence, when complaint or information is filed before one branch or judge, jurisdiction does not attach to said branch or judge alone, to the exclusion of the others.

When a case, which was dismissed by the trial court on the ground that there was mistake in the designation of the offended party, is on appeal by the fiscal, the period from the filing of the information to the time the Supreme Court renders judgment on the appealed case is excluded in the computation of the prescriptive period. The case of *People v. Uba*[113] illustrates this rule. The accused here was prosecuted for serious oral defamation committed on July 25, 1952. Information was filled on August 1, 1952, but the same was dismissed by the trial court on the ground that there was mistake in the designation of the offended party. Fiscal appealed, and the Supreme Court, on May 18, 1956, ruled that the dismissal was proper but at the same time ordered the fiscal to file another information. The second information was filed on June 12, 1956, but this was dismissed by the trial court on the ground of prescription. On appeal by the fiscal, the Supreme Court held: "From July 25, 1952, when the complaint was filed in the Justice of the Peace Court, only seven days had elapsed for the purpose of computing the period of prescription. The filling of the complaint on the latter date suspended the running of the prescriptive period. Said period commenced to run again at most on May 18, 1956, the date of our decision, when the proceedings may be said to have been terminated. From that date until June 12, 1956, when the second information was filed by the fiscal, less than a month had elapsed. Adding this period to the seven days which had already run from the date of the commission of the crime until the first complaint was filed, we have only about a month, which is certainly much less than the 6 months prescriptive period provided for the crime of serious oral defamation. It is, therefore, clear that the trial court erred in dismissing the second information on the ground of prescription."

TREASON

Treason Defined: — Article 114 provides: "Any person who, owing allegiance to the Government of the Philippines, not being a foreigner, levies war against them or adheres to the enemies, giving them aid or comfort with-

113 G.R.L-13106, October 16, 1959.

in the Philippines or elsewhere, shall be punished by *reclusion temporal* to death and shall pay a fine not to exceed ₱20,000.

"No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on confession of the accused in open court.

"Likewise, an alien, residing in the Philippines who commits acts of treason defined in paragraph 1 of this article shall be punished by *prision mayor* to death and shall pay a fine not to exceed ₱20,000 (As amended by Executive Order No. 44, May 31, 1945)."

Ways of Committing Treason: — Treason which is a wartime crime may be committed in two ways, (1) by levying war against the Philippine Government or (2) by adhering to the enemies, giving them aid or comfort. Adherence to the enemy, which is an intent to betray as when a citizen intellectually or emotionally favors the enemy and harbors sympathies or convictions disloyal to his country's policy or interest,[1] is a *common element* of the two ways of committing treason. Should there be no adherence to the enemy in the levying of war, the crime committed is not treason but rebellion. To levy war means to put into open action the treasonable purpose or design by an assemblage of men.[2] To give aid or comfort means to do a material or physical act which strengthens or tends to strengthen the enemies and which weakens or tends to weaken the power of his country.[3] Giving aid or comfort may be done in three ways: (1) doing a positive act in *favor* of the enemies, as giving food supplies. The effect of this is to strengthen the enemies and to weaken the power of his country to the *extent* of the aid or comfort given in favor of the enemies. (2) Doing a positive act *against* his country, as when he kills guerillas. The effect of this is to weaken the power of his country and to strengthen the enemies to the *extent* of the act done against his country. (3) Or doing both acts in Nos. 1 & 2.

Who May Commit Treason: — Treason may be committed either by a Filipino or by an alien. A Filipino citizen can commit it *within* or *outside* the jurisdiction of the country. This is necessarily implied from the phrase "within the Philippines or elsewhere." As regards alien, he must be residing in the country and the treasonable act must be committed after May 31, 1945, when Executive Order No. 44 was issued by the President.

Proof of Trason: — Treason may be proved in two ways: by the testimony of two witnesses at least to the same overt act, or by confession of the accused in open court. The so-called two-witness rule means that every act, movement, deed, or word of the defendant charged to constitute treason must be supported by the testimony of two witnesses," or stated otherwise, "each of the witnesses must testify to the whole overt act; or if separable, there must be two witnesses to each part of the overt act."[4] The two-witness rule may not, however, be applied to prove adherence to the enemy.[5] Any proof, short of this rule, is enough. The confession referred to means judicial admission, not an extra-judicial one, although an extra-judicial admission may be admissible as a corroborative evidence.[6]

The foregoing discussion on the crime of treason serves as a background to two treason cases decided by the Supreme Court in 1959. In *People v.*

1 Reyes, Luis Criminal Law, Vol. 11,
2 Cramer v. US, 65 Supp. Ct. 918.
3 Padilla, Ambrosio, Criminal Law, Vol. 11, 6 (1955).
4 People v. Adriano, 78 Phil. 561.
5 Ibid.
6 People v. Alcarcon, 78 Phil. 732.

Gabriel[7] and in *People v. Campos*,[8] accused were shown to have adhered to the enemy, giving him aid and confort by the testimony of at least two witnesses to the same overt acts. The *Campos* case also lays down the rule that "help extended to the guerilla movement, incarceration by the Japanese on suspicion of being a guerilla, even if one is actually a member thereof, are not valid defenses to his treasonable acts." Treason having been proved, it is immaterial whether the accused had in certain occasions extended help to the guerillas or had been imprisoned by the Japanese on suspicion of being a guerilla.

DIRECT ASSAULT

There are two ways of committing direct assaults.[9] One of these is where there is an attack, force or serious intimidation or resistance to a person in authority or his agents in the performance of official duties or on the occasion thereof.[10] It is required that the person assaulting should know that the person attacked is a person in authority or his agent. Thus, where the policemen who were on night duty were not in uniform but in garments commonly used by many people, whose badge pinned on the breasts were so small to be seen in such a dark night, an assault on them does not constitute direct assault against agents of persons in authority.[11]

MALVERSATION

Malversation Defined:—Article 217 provides that "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 otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer" a penalty the severity of which depends upon the amount misappropriated or malversed.

Elements of Malversation:—Four elements are discernible from the above definition. *First*, the offender is a public officer. A public officer is "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of a public function in the Government of the Philippines, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class."[12] *Second*, he has custody or control of funds or property by reason of the duties of his office. *Third*, these funds or property are public funds or property for which he is accountable. Funds or property, even if they are originally private, acquire the character of public funds or property when they are entrusted to a public officer for his official custody.[13] And *fourth*, he (a) appropriates, or (b) takes or misappropriates, or (c) consents or through abandonment or negligence, permits any person to take, or (d) being otherwise guilty of misappropriation or malversation of, such public funds or property.

Persons Liable for Malversation:—As a general rule, only public officers may be held liable for malversation. This is evident from the definition of

7 G.R.L-13756, October 30, 1959.
8 G.R.L-2331, May 13, 1959.
9 See Artitcle 148, RPC.
10 Padilla, op. cit. supra, at 131.
11 People v. Dacanay, G.R.L-11568, March 30, 1959.
12 Article 203, RPC.
13 People v. Aquino, G.R.L-6063, April 26, 1954.

the crime of malversation. However, there is no rule which precludes the application of the general principles governing the criminal liability of persons for felonies to those who participate in the commission of malversation. For this reason, a *private* person or a public officer *not* accountable for public funds or property may be liable as a co-principal if he conspires with, or induces, or aids, by acts without which it could not have been accomplished, a public officer accountable for public funds or property in the commission of malversation.[14]

The case of *People v. Rodis*[15] strengthens the weight of the above-cited rule. It also lays down new principles. It appears in this case that defendants who were audit clerks were charged of malversation. The only participation imputed to them in the information is that of not having, in disregard of their duties as such audit clerks in connection with the auditing of a laborers' payroll, "verified the correctness of the figures and total sums in said payroll in a careless, reckless and imprudent manner by not making a mental or written addition of the total amount due to all laborers before putting their initials therein and without taking the necessary precaution to avoid damage or prejudice to the government causing as a consequence of their said carelessness, recklessness, imprudence and inexcusable lack of precaution, the chief or assistant chief, bureau auditor, to put their respective signatures on the said payroll and the said Rodis to be able to pay the padded total amount of ₱5,232.40 in said payroll to said Alfonso San Juan and the latter and his confederate John Doe to be able to misappropriate and convert to their own personal use and benefit the sum of ₱1,400 constituting the excess in said padded total amount, to the damage and prejudice of the government of the Philippines in the said amount of ₱1,400." The trial court dismissed the information on the ground that the defendants cannot be held liable for they are not public officers accountable for public funds. The issue presented before the Supreme Court, on appeal by the Fiscal, is whether the audit clerks can be held liable under the above information. *Held*:

They may be liable. In the first place, we cannot accept the view of the lower court that the audit clerks aforementioned cannot be held liable of malversation of public funds or property just because they are not public officers accountable for public funds or property and are not alleged to have conspired with those who were in that position and also because the negligence imputed to them did not, in the opinion of said court, necessarily lead to the malversation of government funds by their co-accused. Malversation of public funds is a crime that may be committed through negligence or through falsification. And while the Penal Code definition of this crime refers to the offender as a public officer accountable for public funds or property, it is settled that the crime may also be committed by one who is not in that position but who aids, induces, or conspires with another who is, or cooperates with him in its commission by acts without which it could not have been accomplished. In the case now before us, the defendant audit clerks who initialed the payrolls in question are not charged with having conspired with Rodis, San Juan and John Doe in malversing public funds, or with having induced them to do so. However, they are charged with reckless negligence in not verifying the correctness of said payrolls, thereby cooperating with their said negligence in the falsification of said public documents and the misapplication of public funds that was made possible thereby. In *Samson v. Court of Appeals*,[16] this court

14 US v. Ponte, 20 Phil. 379; US v. Daao, 37 Phil. 359; People v. Calvez, 50 O.R. 1574.
15 G.R.L-11670-11708, April 30, 1959.
16 G.R.L.-10361 March 31, 1958.

held that one who cooperates in the commission of the offense of estafa through falsification by acts of negligence without which it could not have been accomplished may be held guilty of that offense as a principal. In those two cases, the appellant Samson had, at the request of a classmate, attested verbally as well as in writing the identity of a man and a woman not personally known to him and represented to be the father and widow of a deceased veteran, and on the strength of such attestation, the said man and woman who turned out to be mere impostors, were able to secure from the Philippine Army checks intended for the veteran's father and widow and to cash them afterward for their own benefit. Prosecuted jointly with the importors for estafa through falsification of two checks, Samson was found to have acted with gross negligence in attesting to the identity of persons not known personally to him and was consequently held guilty as a principal of that crime. And even assuming that the audit clerks cannot be held liable for malversation, they may be liable for estafa through falsification of public document by reckless negligence.

PARRICIDE

Article 246 provides: "Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty ranging from *reclusion perpetua* to death." Under this article, any person who shall kill his legitimate or illegitimate father, or his legitimate or illegitimate mother, or his legitimate or illegitimate child is guilty of parricide; likewise, if he kills his legitimate ascendants, or his legitimate descendants, or his legitimate spouse, he is guilty of parricide.[17]

DEATH UNDER EXCEPTIONAL CIRCUMSTANCES

Article 247 reads: "Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury shall suffer the penalty of *destierro*.

"If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

"These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under 18 years of age, and their seducers, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse, shall not be entitled to the benefits of this article."

A question of significance is: does this article define a crime distinct and separate from homicide, parricide, murder or serious physical injuries? If so, will it be cognizable before the Justice of the Peace Court? These questions were presented for the first time before the Supreme Court in the case of *People v. Araquel*,[18] and while the majority came out with a negative answer, the well-reasoned concurring opinion of Chief Justice Paras and the analytical dissenting opinion of Justice Montemayor considerably lessened the weight of the majority holding.

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17 People v. Molina, G.R.L-12625, November 28, 1959; People v. Murray, G.R.L-4467, April 30, 1959; People v. Acierte, G.R.L-11814, February 28, 1959.

18 G.R.L-12629, December 9, 1959.

This case, in a nutshell, is: Defendant, for killing one Pagadian, was charged before the JP of homicide under exceptional circumstances defined under article 247. He pleaded guilty and was accordingly sentenced to suffer *destierro*. Subsequently, the acting Provincial Fiscal, having been informed of the case, conducted an investigation for the killing of Pagadian, and later filed an information charging the defendant of homicide under article 249. Defendant moved to quash on the ground of double jeopardy, invoking his previous conviction for homicide under exceptional circumstances. CFI sustained his plea; the fiscal appealed. Since one of the indispensable conditions for putting a person in jeopardy is that he should have been tried before a court of competent jurisdiction, the question thus is whether the JP properly acquired jurisdiction. The trial court, in upholding the plea of double jeopardy, held that the JP acquired jurisdiction on the theory that the act defined in 247 is a felony which is penalized by *destierro* and consequently falls under the inferior court, following the ruling in *Uy Chin Hua v. Dinglasan.*[19] Rejecting this theory, the Supreme Court, through Justice David, held:

There can be no question that, under the rule in *Uy Chin Hua v. Dinglasan*, offenses penalized with *destierro* fall within the JP. This rule, however, cannot be made to apply to the present case, for article 247 does *not* define a crime distinct and separate from parricide, murder, homicide or serious physical injuries. *First*, article 247 is found in Section 1, Chapter 1, Title 8 of Book 11, and Title 8 refers to crimes against persons, Chapter 1 is entitled Destruction to Life and Section 1 thereof treats of parricide, murder and homicide. *Second*, this article, far from defining a crime, merely provides or grants a privilege or benefit — amounting practically to an exemption from an adequate punishment — to a legally married person or parent who shall surprise his spouse or daughter in the act of sexual intercourse with another and shall kill any or both of them in the act or immediately thereafter, or shall inflict upon them serious physical injuries. In effect, the exceptional circumstances amount to an exempting circumstance. A contrary interpretation will make these exceptional circumstances integral elements of the offense. This would be absurd since a mitigating or exempting circumstance is not an integral element of an offense. Only acts or omissions constituting the offense should be pleaded in a complaint or information, and a circumstance which mitigates criminal liability or exempts the accused therefrom, not being an essential element of the offense charged — but a matter of defense that must be proved to the satisfaction of the court — need not be pleaded. *Third*, the counterpart of this article in the Old Penal Code was found under General Provisions (Chapter VII) of Title VIII covering crimes against persons. *Fourth*, under RA 296, the jurisdiction of the JP extends only to assaults where the intent to kill is not charged or evident at the trial. A *fortiori*, where the intent to kill is evident as in cases of homicide under exceptional circumstances provided in article 247, the case must necessarily fall beyond the inferior courts.

Chief Justice Paras concurred in the result but gave a different reason. Homicide under exceptional circumstances is punished by *destierro*. *Destierro* is a correctional penalty having a duration of from 6 months and 1 day to 6 years, and therefore falls within the jurisdiction of the CFI. To avoid absurdity, *destierro* should be considered only when it is specifically imposed, as in articles 247 and 334 and as additional penalty in article 284, and is to be disregarded in the scale provided in article 71. Justice Montemayor dissented.

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19 O.G. 12, Supp. 233.

He said that the killing under article 247 is a special crime, which has similarity to the killing on the occasion of a robbery or in tumultous affray, which the prosecuting attorney should state the facts and circumstances under which a man was killed. That it defines a crime is clear in article 247 which has its own title — "Death or Physical Injuries under Exceptional Circumstances." The exceptional circumstances in this article cannot be taken as mitigating or exempting circumstance. Article 247 should have been placed under Chapter 2 of Title 1, entitled "Justifying Circumstances and Circumstances which Exempt from Criminal Liability." Besides, to equate this article to exempting or justifying circumstance is to proceed from a wrong premise. Justifying circumstances are not pleaded and hence they are a matter of defense because they involve several elements which need proof. In article 247, when the circumstances therein are present, there is nothing illogical for the prosecuting officer to include them in the information, and knowing the penalty attached to the killing is *destierro*, the prosecuting officer should file it in the JP, as was done in this case.

MURDER

Any person, other than those guilty of parricide, who kills another with the attendance of any of the qualifying circumstances, commits murder.[20] Treachery qualifies the killing into murder,[21] so also with evident premeditation[22] and the use of superior strength, as when four armed brothers killed the victims or a group of soldiers maltreated a detainee to death.[24]

KIDNAPPING

Any private individual who kidnaps or detains another, or in any other manner deprives him of his liberty, for more than five days, commits the crime of kidnapping.[25] Thus, where the victims were detained by the defendants for more than 15 days in an uninhabited hut under heavy guard from orders of a Huk commander, the crime committed is kidnapping.[26]

ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS

Robbery with Homicide: — There is robbery when "any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything."[27] When *by reason* or *on occasion* of the robbery, homicide is committed, the crime is robbery with homicide, which is a single indivisible crime punishable by a penalty of *reclusion perpetua* to death.[28]

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20 Article 248, RPC.

21 See discussion on treachery, supra; People v. Dacanay, G.R.L-11568, March 30, 1959; People v. Serrano, G.R.L-7973, April 27, 1959; People v. Elumba, G.R.L-11165, November 28 1959; People v. Salatombas, G.R.L-11283, May 29, 1959; People v. Aporado, G.R.L-11076, May 29, 1959; People v. Rendora, G.R.L-14356, September 30, 1959; People v. Dagatan, G.R.L-10851, August 28, 1959; People v. Santos, G.R.L-12448, January 22, 1959; People v. Salazar, G.R.L-11601, June 30, 1959; People v. Gorospe, G.R.L-10044, Febraury 19, 1959; People v. Arcillas, G.R.L-11792, June 30, 1959; People v. Macabenta, G.R.L-9732, August 27, 1959;

22 See discussion on this topic, supra; People v. Mutya, G.R.L-11255-56, September 30, 1959; People v. Mantala, G.R.L-12109, October 31, 1959.

23 People v. Nuto, G.R.L-9406, July 31, 1959.

24 People v. Alvarez, G.R.L-10650, Octoer 31, 1959.

25 Article 167, RPC.

26 People v. Bautista, G.R.L-10079, August 21, 1959.

27 Artitcle 297, RPC.

28 Article 294, par. 1, RPC; People v. Cidro, G.R.L-11301, February 28, 1959; People v. Pesino, G.R.L-11413, March 31, 1959; People v. Tondo, G.R.L-9131, July 31, 1959; People v. Banoso, G.R.L-11923, September 18, 1959; People v. Ca-andi, G.R.L-13024, September 30, 1959; People v. Valladolid, G.R.L-12405, October 20, 1959; People v. Ayam, G.R.L-11122, October 27, 1959.

Robbery with Rape: — If robbery is accompanied by rape, the crime committed is robbery with rape, which is also a single indivisible crime punishable by *reclusion temporal* in its medium period to *reclusion perpetua*.[29] The crime is still robbery with rape even if the rape was committed *before, during,* or *after* the robbery and whether or not rape was planned as part and parcel of the robbery. Under article 294, par. 2, it is enough that robbery shall have been accompanied by rape to be punishable as such.[30]

ESTAFA

When personal property, such as palay, is delivered in trust for deposit to a rice mill under the management of a person who subsequently died, does the misappropriation of the palay to the prejudice of the ower by other persons who later took over the management of the rice mill constitute estafa? To answer this problem is to discuss one of the ways of committing estafa.

Article 315, par. 1, sub-par. b, provides that estafa is committed "with unfaithfulness or abuse of confidence, by misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or in commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property." Under this provision, demand for the return of the thing is necessary.[31] Likewise, the degree of possession of the goods given in trust is involved, which in turn determines the kind of crime committed — whether estafa, theft or merely an act giving rise to civil liability. If only the material or physical possession is transferred, the misappropriation will constitute theft; if both physical and juridical possession is transferred, the crime is estafa; and if what is transferred is not only the physical and juridical possession but also ownership, failure to return gives rise to civil liability.[32] On the basis of this preliminary statement, does the misappropriation in the above-mentioned problem constitute estafa?

The Supreme Court, in *People v. Co Sing Song*,[33] gives an affirmative answer. It appears that one Capinpin delivered for deposit 1,000 cavanes of palay to a rice mill owned by one Chica who died later. Defendants took over the management of the rice mill where the palay was on deposit. When Capinpin demanded the return of the palay, accused could deliver only a part of it. An information for estafa was filed, but the trial court dismissed it on the ground that it did not charge an offense. On appeal by the fiscal, the Supreme Court held:

"It would appear that, to constitute the offense charged, the goods or personal effects must have been received by the offender for commission or administration or under obligation involving the duty to make delivery of or to return the same, but instead of delivering or returning as required, the goods or effects are misappropriated. These elements are present in the instant information. Indeed these elements are reflected in the following portion of the information: 'the above named accused, having assumed operation, . . . as well as the obligaton of the Central Rice Mill, and as such

29 Article 294, par. 2, RPC.
30 People v. Caisip, G.R.L-8798, July 30, 1999; People v. Bantug, G.R.L-12689, June 12, 1959.
31 People v. Evangelista, 69 Phil. 583.
32 Padilla, op. cit. supra, at 572.
33 G.R.L-14076, April 17, 1959

they knew that the late Juan Chica, owner of said rice mill during his life time received for deposit from Capinpin, 1,000 cavanes of palay . . . under the express obligation to deliver the same to said Capinpin, but the said accused, in spite of their knowledge that the 1,000 cavanes of palay above-mentioned was not owned by the Central Rice Mill, but were there only on deposit and must be delivered to the said owner upon demand failed to comply with the obligation aforesaid . . "

PROSECUTION OF CRIMES AGAINST CHASTITY

Article 344, par. 3, reads: "The offenses of seduction, abduction, rape, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor in any case if the offender has been expressly pardoned by the above-named persons, as the case may be." The requirement that the complaint be signed and filed by the persons named therein, as the case may be, is jurisdictional, non-compliance therewith is a fatal defect[34] which may be invoked at any stage of the trial. The persons herein named are exclusive and successive, except when the offended party is a minor, in which case she need not sign and file it herself, which may be done by the person next in line.[35]

When a complaint is properly filed, the fiscal need not file an information in the court for the latter to acquire jurisdiction. However, this will not preclude the fiscal to file an information based on the complaint. This will also comply with the requirement of the law. Thus, in *People v. Carena*,[36] where the record reveals that while the information for attempted rape with physical injuries filed with the CFI was signed by the assistant fiscal, the amended complaint filed with the JP, on which the information was based, was signed by the offended party herself, the Supreme Court held that "it is apparent that the appellant's sole ground for attacking the jurisdiction of the trial court, that is, the absence of signature on the information of the aforementioned persons, does not purport to be a true and valid ground."

This case should be distinguished from the case of *People v. Palabao*[37] to dispel any doubt as to the meaning of the requirement of complaint. Palabao was prosecuted for abduction with consent. There was no complaint signed and filed by the offended party. However, the offended party put her signature above that of the fiscal in the information filed by the latter; the information also cited that the fiscal filed the charges "at the instance of the offended party." The court held that there was no valid compliance with the law.

The term "guardian" means legal guardian, one appointed by the court in acocrdance with the procedure laid down by law.[38] There is, however, no prescribed form of establishing the guardian-ward relationship. It is enough that one affirms under oath that he or she is the guardian,[39] or leads the authority to believe that he or she is one. Conformably with this rule, a complaint for rape filed by a person who led the authorities to believe that she was the guardian of the victim who had no known parents or grandparents, and who after the prosecution has rested its case denied her previous

34 See People v. Engresso, 49 O.G. 1505 and the cases cited therein.
35 Benga-Oras v. Evanagelista, 51 O.G. 5165.
36 G.R.L-9648, November 28, 1959.
37 G.R.L-8827, August 31, 1959.
38 People v. de la Cruz, 59, Phil. 531.
39 People v. Fomento, 60 Phil. 434.

claim and testified in behalf of the defense that she was not the victim's guardian, meets the requirements of article 344.[40]

Corollary to the foregoing principle is the rule found in article 360, par. 4, which provides that "no criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* shall be brought except at the instance and upon complaint expressly filed by the offended party." Crimes which cannot be prosecuted *de oficio* are adultery, concubinage, rape, seduction, abduction and acts of lasciviousness. The recent case of *People v. Padilla*[41] illustrates the application of this provision. Here, the defendant was charged of violating article 564 (intriguing against honor), but the information filed by the special counsel of Pasay alleges that "with the principal purpose of blemishing the honor and reputation of one Fausta Bravo, a married woman, (the accused did) circulate and spread gossips, rumors or stories highly offensive and defamatory to her honor, virtue and reputation, by then and there telling some people in the neighborhood that said Fausta Bravo was a paramour of one Sangalang, a man not her husband." The Supreme Court held that while the accused was charged of violating article 364, the information avers facts which constitute adultery, a crime which cannot be prosecuted *de oficio* except upon complaint filed by the offended party. Since there was no complaint, it is obvious that the information filed by the special counsel is insufficient to confer jurisdiction upon the court of origin.

BIGAMY

Bigamy is committed by "any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings."[42] Bigamy, which is a crime against civil status and therefore not a private crime, contemplates of two or more marriages: the first marriage must be valid,[43] and the subsequent one, having all the essential requisites, would be valid were it not for the subsistence of the first marriage.[44] Consequently, if the first marriage is void and the second is valid, or if the second marriage is void (except for the fact that the first marriage is subsisting) and the first is valid, there is no bigamy.

The Civil Code lays down the essential requisites for the validity of marriage, namely, legal capacity of the contracting parties; their consent freely given; authority of the person performing the marriage; and a marriage license, except in marriages of exceptional character.[45] Article 56 of the Civil Code enumerates the different persons with authority to solemnize marriage, one of whom is the *mayor* of a city or municipality. Problem: is a person *acting as mayor* legally authorized to solemnize marriage? The case of *People v. Bustamante*,[46] which was a prosecution for bigamy, answers the problem in the affirmative. Bustamante contracted two marriages, the first was solemnized by the justice of the peace and the second, by one Nato who was then acting as mayor. Accused of bigamy, he contended that

40 People v. Ponelas, G.R.L-10853, May 18, 1959.
41 G.R.L-11575, January 24, 1959.
42 Article 349, RPC.
43 People v. Mendoza, 50 O.G. 4767. People v. Aragon, 53 O.G. 3749.
44 People v. Dumpo, 62 Phil. 246.
45 Civil Code, Article 53; see also Artitcle 80, CCP.
46 G.R.L-11598, January 27, 1959.

the second marriage was void because a person acting as mayor had no authority to solemnize marriage, laying stress upon the distinction between acting mayor and acting as mayor. In rejecting this contention, the court ruled:

"Where the issue involves the assumption of powers and duties of the office of the mayor by the vice mayor, when proper, it is immaterial whether it is because the latter is the acting mayor or merely acting as mayor, for in both instances, he discharges all the duties and wields the powers appurtenant to said office." It was also held in this case that an averment in the information that the second marriage was constracted before a justice of the peace while the evidence showed that the second marriage was contracted before the person acting as mayer is an unsubstantial and immaterial one as to constitute a fatal defect, "for it matters not who solemnized the marriage, it being sufficient that the information charging bigamy alleges that a second marriage was ontracted while the first still remained undissolved."

LIBEL

Definition of Libel: — A libel is a public and malicious imputation of a crime, or a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[47]

Elements of Libel:—The elements of libel are:

1. There must be a defamatory imputation which causes dishonor, discredit, or contempt. It may be an imputation of a crime, such as calling a person a swindler, perjurer or adulterer; or of vice or act, such as imputing upon a person lascivious and immoral habits; or of any act, omission, condition, status or circumstance, such as telling a person that he used to borrow money without intention to pay, calling him a bastard or leper or coward, vile soul, dirty sucker or a savage.

2. The imputation must be publicly made. This means that there must be publication. To publish is to make public, to make known to the public in general. "Public" may refer to only one third person or a number of persons.[48] The fact that the offender parts with the possession of the libelous matter to another who could have read it gives rise to the presumption that there is publication. This does not arise, however, if the libelous matter sent to another is contained in a sealed envelope, unless there was reasonable probability that it was exposed to be read by a third person or persons.[49]

3. The imputation must be malicious. There are two kinds of malice—malice in fact and malice in law. Malice in fact is "the particular intent of the actor to cast dishonor, discredit or contempt on the person libeled."[50] Malice in fact is not presumed; it must be proved or shown by the ill-will or hatred of the actor. Malice in law, on the other hand, is presumed. Thus, article 354 provides that "every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for

47 Article 353, RPC.
48 People v. Atencio, G.R.L-11351-R-1153-R, December 14, 1954.
49 Lopez v. Delgado, 8 Phil. 26; People v. Adamos, 35 O.G. 496.
50 Padilla, op. cit. supra, at 750.

making it is shown." This presumption ceases in privileged communications, which consist of (1) a private communication made by any person to another in the performance of any legal, moral, or social duty; and (2) a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.[51]

4. The imputation must be directed to a natural or judical person or persons. This requires that the person libeled must be identified. There is no difficulty if the libelous matter expressly or specifically names the victim. The problem arises when the libelous publication does not name or accurately describe the victim. In such a case, the rule is that the offended party must be identified by the testimony of other persons, not by the victim himself, as having been the object of the libel. Short of identification, there is no libel.[52]

5. The imputation must be written. This requirement is satisfied when it is committed by "means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means."[53]

With these mentioned elements in mind, the case of *People v. Rojas*,[54] which was a prosecution for libel allegedly aimed at the late President Elpidio Quidino, can be better appreciated. Defendant here was authorized by the Cabinet to export sugar to Japan. This authorization created a storm of protest from sugar planters, and in the heat of the controversy, then Economic Coordinator Araneta resigned. On Jan. 22, 1952, defendant, pressed for an explanation by his buyers from Japan, wrote a letter explaining the delay in the shipment of the sugar. Somehow, a photostatic copy of this letter came into the hands of Senator Tañada, which he read in the Senate and which was published in full in the papers. On the basis of this letter, defendant was prosecuted for libel and convicted by the trial court.

The portion allegedly damaging to the integrity of the late President Quirino reads: "The campaign has gone to such an extent that the President, sensing the selfish motive behind it, has openly made known his personal feelings about the matter . . . It is also apparent that he is not sparing anything or anybody that tries to block my commitment . . . and as proof of this he has gone to the extent of accepting the resignation of one of his Cabinet members, ... for trying to block my sugar deal which was approved by our Cabinet. So determined is the President to put an end to this sugar controversy that I expect other persons to be dismissed from the Government for attempting to sabotage the President's sugar policy.

"Yesterday, President Quirino made a public statement vigorously stressing the fact that he will take full responsibility for the immediate compliance of my contractual obligations to you because he wants to protect the prestige of our Government. He has already instructed, I have been told, all the department heads of our Government who have anything to do with sugar to expedite all papers in order to settle once and for all my contractual obligations to you. . . . " The Supreme Court, in acquitting the defendant, held: While

51 Article 345, RPC.
52 Kunkle v. Coolenews American, 42 Phil. 757; People v. Andrada, 37 O.G. 1783.
53 Article 355, RPC.
54 G.R.L-8266, June 2, 1959.

the original is not produced, there is no question that the photostatic copy is a true reproduction. This letter, however, was written by the defendant in response to his buyers' demand for explanation in the delay in the shipment of sugar and with the end of securing extension of the validity of the letters of credit issued in his favor. Having been made in the usual course of business to uphold the writer's interest, and in the performance of at least a moral, if not a legal duty, the letter could be considered *prima facie* a privileged communication. That the alleged libelous imputation were made, according to the trial court, as an attempt to justify his failure to live up to his part of his supposed bargain, needles to say, does not take the letter out of the category of privileged communication, since the fact that the writer had an interest to be upheld is precisely one of the essential elements that make a communication privileged.

The rule, continued the court, is that a communication loses its privileged character and is actionable on proof of actual malice. Malice is a term used to indicate the fact that the defamer is prompted by personal ill-will or spite and speaks not merely in response to duty but merely to injure the reputation of the person defamed. And the onus of proving malice in privileged communication lies on the plaintiff. In the present case, there is no evidence of malice. On the contrary, it is undisputed that defendant was a good friend and staunch political follower of the President. That he did not communicate to any outsider the contents of the letter prior to its publication, of which he had nothing to do, should disprove malice. And what is more, the letter itself is not defamatory. A dispassionate reading of the letter, leaving politics out of it, gives the general impression that defendant was acting in good faith.