CRIMINAL PROCEDURE

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This annual survey of 1959 decisions of the Supreme Court in the field of Criminal Procedure, like all other previous reviews, contains mostly reiteration of old and well-known principles applied to similar sets of facts and circumstances. The few doctrinal deviations can be ascribed to the fact that in no other branch of procedural law has the doctrine of *stare decisis* more binding force and effect than in Criminal Procedure because criminal proceedings in most cases involve the individual's precious and inalienable rights to life, liberty, and property. For this reason, every person, in the protection of these rights which are held sacred and inviolate under our fundamental law, must have the comforting assurance that the courts will follow a more or less fixed and rigid procedure in order to insure equality before the law.

PROSECUTION OF OFFENSES

A. *Complaint*

Section 1 of Rule 106 of the Rules of Court requires that "all criminal actions must be commenced either by complaint or information . . ." and according to section 2 of the same rule a "complaint is a sworn written statement charging a person with an offense, subcribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated."

The Revised Penal Code in the last paragraph of Article 360 states that "no criminal action which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party." Thus, the Supreme Court in *People v. Lydia Padilla*[1] held that "considering that under Article 360, paragraph 4, of the Revised Penal Code, no criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio can be brought except upon complaint expressly filed by the offended party, and the crime of adultery is one that cannot be prosecuted de oficio,[2] it is obvious that the information filed by the special counsel of Pasay City in this case is insufficient to confer jurisdiction upon the court of origin. The trial court was therefore correct in quashing the information."

This case must be distinguished from the earlier case of *People v. Flores*[3] wherein the Supreme Court upheld the contention of the prosecution that a complaint by the offended party is not indispensable to the prosecution for the crime of oral defamation when the defamatory words uttered by the accused constitute an imputation, either of a crime that may be prosecuted de oficio (such as that of stealing) or of a vice or defect, not constituting a

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* Member, Student Editorial Board, Philippine Law Journal, 1959-60.
1 G.R. No. L-11575, January 24, 1959.
2 Article 344, par. 1, Revised Penal Code.
3 G.R. No. L-11022, April 28, 1958.

crime (such as that of being an oppressor, or a land grabber or a cheater), tending to cast dishonor upon the offended party.

In *People v. Ponelas & Enorio*[4] the issue raised on appeal was whether or not the trial court acquired jurisdiction over the case in view of the complaint given in court by Leonor Sarabia who signed the complaint as guardian of the victim that gave rise to the prosecution of the two defendants. The Supreme Court held that Leonor Sarabia having filed the complaint for rape as guardian of the victim, after satisfying herself that the one lying in the morgue which she carefully examined and indentified was really her niece of which she stood as guardian in the C.F.I. of Manila, there was compliance with the requirement under Article 344 that the offense of rape can be prosecuted upon complaint filed by the offended party, her parents, grandparents or guardian and consequently the trial court acquired jurisdiction over the case.

B. *Sufficiency of complaint or information.*

In *People v. Nicasio Guiao y David*[5] the accused filed a motion to quash on the ground that the facts alleged in the information do not constitute an offense. It appears that on September 1, 1956, Nicasio Guiao y David was charged in the C.F.I. of Manila with having violated Section 2702 of the Revised Administrative Code, as amended by Section 1 of Republic Act No. 445, for having concealed in the back compartment of a car which he was driving "Sea Store Cigarettes" after the same have been imported contrary to law. It would appear that under section 2702 of the Revised Administrative Code as amended, any person who knowingly imports a merchandise contrary to law, or conceals cuch merchandise knowing that it has been imported contrary to law, commits an offense which is punishable under the provision of said law. The trial court reached the conclusion that the information filed against the accused does not allege an offense because in its opinion he did not import the cigarettes found in his possession because they are "Sea Store Cigarettes" which were not imported within the meaning of the law, and the reason given by the court in granting the motion to quash over the objection of the fiscal, is as follows: "Such sea store cigarettes are for the use and consumption of the crew members of the vessel and are not dutiable except the quantity in excess of the requirements for the vessel. They could not have been illegally or fraudently imported and therefore the concealment of such sea store cigarettes by the accused does not come within the penal sanction of Section 2702 of the Revised Administrative Code as amended."

The Supreme Court in overruling the order of the lower court held that this reasoning is erroneous in the light of the facts alleged in the information. The information alleged that the accused fraudently and knowingly imported into the Philippines said sea store cigarettes concealed in the back compartment of his car "knowing" the same to have been imported contrary to law. This is enough to constitute an offense. At least the information contains sufficient allegations to constitute such offense. The rest is a matter of evidence which may be presented when the case is tried on the merits. Evidently, the dismissal was premature according to the Supreme Court, and ordered the case remanded for further proceedings to the court a quo.

4 G.R. No. L-10853, May 18, 1959.
5 G.R. No. L-12623, January 27, 1959.

In *People v. Federico Bustamante*,[5a] the information charges the appellant of bigamy. It appears in the information that the appellant contracted the second marriage before the Justice of the Peace of Mapandan, Pangasinan, while the marriage certificates, Exhibit "B", and the testimonies of witnesses indicated clearly that it was performed by Francisco Nato, the Vice Mayor of Pangasinan, acting as Mayor at the time. Upon conviction, the accused appealed and assigns as error the admission by the lower court of the said evidence. The Supreme Court held that this is not reversible error. The wrong averment, if at all, was unsubstantial and immaterial that need not even be alleged, for it matters not who solemnized the second marriage, it being sufficient that the information charging bigamy alleges that a second marriage was contracted while the first still remained undissolved. The information in this case which properly states the time and place of the second wedding, was sufficient to apprise the defendant of the crime imputed. Neither procedural prejudice nor error was committed by the lower court in finding the appellant guilty of bigamy as charged in the information.

C. *Duplicity of offenses.*

Section 12, Rule 106, Rules of Court provides: "A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses." And Section 2 (e), Rule 113, Rules of Court authorizes a motion to quash on the ground "That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses."

This principle on duplicity of offenses was invoked by the accused in the case of *People v. Koh et al.*[6] It appears in this case that the information charged two separate offenses, namely (1) violation of Section 6, and (2) violation of Section 7 of the Central Bank Circular No. 31. Thus, the Supreme Court sustained the trial court's order of dismissal on account of duplicity and ordered the return of the record so that the People may amend its information, or present two separate informations as the circumstances may warrant.

PROSECUTION OF CIVIL ACTION

A. *Civil action is impliedly instituted with criminal action.*

The leading case of *People and Nicolas Manuel v. Celestino Coloma*[7] reiterates and explains the previous rulings on this point. It appears in in this case that when Criminal Case No. 2374 of the C.F.I. of Ilocos Norte entitled "*People v. Celestino Coloma*" was called for trial, on June 24, 1956, defendant Coloma appeared and, with the court's permission, he withdrew his former plea of not guilty to the crime of frustrated homicide, charged in the information, and entered a plea of guilty to the lesser offense of serious physical injuries committed upon the person of Nicolas Manuel. Thereafter on July 27, 1956, said court promulgated a decision, dated July 25, 1956 convicting Coloma of serious physical injuries and sentencing him to suffer the corresponding indeterminate penalty and to pay the costs but made no award of damages, upon the ground "that the information failed to allege any damages suffered." On August 10, 1956, complaint filed a petition to reopen the case in order that he could prove damages. This petition was

5a G.R. No. L-11598, January 27, 1959.
6 G.R. No. L-12407, May 29, 1959.
7 G.R. No. L-12345, February 29, 1959.

denied, also, on August 31, 1956. Hence, this appeal by Nicolas Manuel, who asserts that the lower court erred in not giving him a chance to prove damages. On the other hand, defendant alleges that when complaint's petition to reopen the case was filed, on August 10, 1956, the decision of the lower court had already been fully executed, and as a consequence, no longer subject to review. According to the Supreme Court, this argument is specious. The decision of the lower court covered two aspects of the case — defendant's criminal liability and his civil responsibility. By the defendant's incarceration, he had satisfied his criminal liability, and so much of said decision as referred thereto became executed. This does not mean, however, that the civil responsibility arising from his offense had been thereby irrevocably settled. Pursuant to Rule 107, Section 1 (a) of the Rules of Court: "When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately." Subject to these exceptions, every criminal case involves two actions, one criminal and another civil. From a judgment convicting the accussed, two appeals may, accordingly be taken. The accused may seek a review of said judgement, as regards both actions. Similarly, the complaint may appeal, with respect only to the civil action, either because the lower court has refused or failed to award damages, or because the award made is unsatisfactory to him. The right of either to appeal or not to appeal in the event of conviction of the accused is not dependent upon the other. The complaint cannot, by expressing his conformity to the award of damages, prevent the accused from appealing, either from said award or, from the judgment of convictiton. Neither may the accused, by acquiescing thereto prevent the complainant from appealing therefrom, in so far as the civil liability is concerned. Upon the other hand, an appeal by the camplainant, with respect to the aforementioned civil liability, would not impose upon the accussed the legal obligation to appeal. He may choose not to appeal from the judgment of conviction, and, hence, the same may become final and executory, and may be fully executed, without prejudice to the aforementioned appeal taken by the complainant.

The Supreme Court in deciding the case in favor of the offended party-appellant cited the ruling in the case of *People v. Ursua*,[8] to wit: "The right of the injured persons in an effense to take part in its prosecution and to appeal for purposes of civil liability of the accused, necessarily implies that such right is protected in the same manner as the right of the accused to his defense. If the accused has the right within fifteen days to appeal from the judgment as is prejudicial to him, and his appeal should not be dependent on that of the accused. If upon appeal by the accused the could altogether loses its jurisdiction over the cause, the offended party would be deprived of his right to appeal, although fifteen days have not yet elapsed from the date of the judgment, if the accused should file his appeal before the expiration of said period. Therefore, if the court, independently of the appeal of the accused, has jurisdiction, within fifteen days from the date of the judgment, to allow the appeal of the offended party, it also has jurisdiction to pass upon the motion for reconsideration filed by the private prosecutor in connection with the civil liability of the accused."

Referring now to the issue raised by the appeal of complainant herein, it will be recalled that, in order to justify the absence of an award for

8 66 Phil. 252, 254-255.

damages in its decision of conviction, the lower court said therein that "the information failed to allege any damages suffered." This was the very reason given by the lower court in *People v. Celorico*[9] in refusing to allow the prosecution to prove damages, which was eventually declared erroneous, for the reason that "Every person criminally liable for a felony is also civilly liable."[10] The civil liability of the accused is determined in the criminal action, unless the injured party expressly waives such liability or reserves his right to have damages determined in a separate action. Here, there was no waiver or reservation of civil liability, and the evidence should have been allowed to establish the extent of the injuries suffered by the offended party and to recover the same if proven.

In the case of *People v. Oraza*[11] the Supreme Court, speaking through Justice Montemayor, expressed itself as follows:

"xxx there is no need to allege in the information that the offended party had suffered damages and intends to make a claim for them. Every person criminally liable for a felony is also civilly liable according to Article 100 of the R.P.C. So, when a complaint or information is filed, even without any allegation of damages and the intention to prove and claim them, it is to be understood that the offender is liable for them and that, the offended party has the right to prove and claim them, unless a waiver or a reservation is made."

BAIL

A. *Definition.*

The Rules of Court in Section 1 of Rule 110 gives the following definition of bail: "Bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance."

The right to bail is guaranted by Article III, section 1 (16) of the Constitution as follows: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."

B. *Forfeiture of bail.*

Section 15, Rule 110 of the Rules of Court outlines the procedure to be followed by the courts in the forfeiture of bail. It states: "When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of the bond. Within the said period of thirty days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required to do so. Failing in these two requisies, a judgment shall be rendered against the bondsmen."

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9 67 Phil. 185-186.
10 Article 100, Revised Penal Code.
11 46 O.G. Supplement No. 11, pp. 86, 89.

In *People v. Pedro Gonzales and Alto Surey & Insurance Co., Inc.*,[12] the Supreme Court made the following findings:

Granting that the bondsman notified the accused long before the hearing on November 27, 1956 requiring him to appear on said date, that notice alone is not a sufficient compliance with its commitment under the bond for under Section 15, Rule 110 of the Rules of Court, a bondsman is in duty bound to produce the person of the accused when his appearance is required by the court, which shows that mere notification is not sufficient but the bondsman must make every effort to see that he actually makes his appearance. Because of such inaction, the trial court considered the bondsman negligent in the performance of its duty as the rule requires. We are not disposed to disturb this finding for in cases of this nature the determination of the sufficiency of the explanation given in a matter that lies in the discretion of the lower court." It was also reiterated in this case that when the obligation of bail is assumed, the sureties become in law the jailers of their principal. Their custody of him is the continuance of the original imprisonment and though they cannot actually confine him, they are subrogated to all the other rights and means which the government possesses to make their control of him effective.

Whether a bail bond upon which there is a default should be declared forfeited to is full amount or in a lesser amount, rests largely within the sound discretion of the court and depends upon the circumstances of each particular case. The Court of First Instance of Manila, in the case of *People v. Licerio and Philippine International Surety Co., Inc.*,[13] exercised its discretion in this regard, and, and reduced the liability of the bondsman from ₱10,000.00, the full amount of the bond, first to one third of its face value and finally to ₱2,000.00, after considering the satisfactory explanation given by the defendant surety for its failure to produce the body of its principal when required to do so. Whereupon the Government appealed. The Supreme Court sustained the order of the lower court and speaking through Justice Cesar Bengzon ruled that "the authorities consistently held the reduction to depend on the judge's discretion. In the cricumstances disclosed by the record, it cannot be said that there was such abuse as to call for correction by a higher court."

In *People v. Carlos Hernandez*,[14] the Supreme Court said that once the judge or court has fixed a lesser amount, it may not *ad libitum* and without cause require full payment of the bond. To do so, would constitute abuse of discretion, corrigible on appeal."

However, in *People v. Felipe Bustamante and Plaridel Surety and Insurance Co., Inc.*,[15] it was held that "while it is true that the accused had been finally captured and surrendered to the court through its efforts, the bondsman-appellant cannot claim complete discharge because the production of the accused was effected only after the order of confiscation and forefeiture had already become final. As a rule, the court has no power to discharge the sureties entirely after the thirty day period provided in Section 15, Rule 110, Rules of Court within which to produce the body of the accused has elapsed and the accused had not been brought to court. It could only miti-

12 G.R. No. L-12056, January 24, 1959.
13 G.R. No. L-12660, February 19, 1959.
14 G.R. No. L-13291, August 27, 1959.
15 G.R. No. L-13665 September 24, 1959.

gate or lessen their liability." The Supreme Court, thus, in conformity with this opinion, reduced the liability of the surety to ₱500.00 in this case, the original amount of the bond being ₱1,000.00.

In an *obiter dictum*, the Supreme Court, in the above-entitled case, citing *People v. Puyal*[16] explained the reasons behind the liberal policy of the courts in dealing with the bondsmen in criminal cases and in mitigating, in appropriate cases, their liability on the bond already confiscated because of the delay in the presentation of the accused. The following reasons were advanced:

(1) The ultimate desire of the State is not the monetary reparation of the bondsman's default,but the enforcement or execution of the sentence, such as the imprisonment of the accused or the payment by him of the fine imposed.

(2) If the courts were strict in enforcing the liability of the bondsmen, the latter would demand higher rates for furnishing bail for accused persons, making it difficult for such accused to secure their freedom during the course of the proceedings. If the courts were strict in the enforcement of the monetary responsibility of bondsmen, bail which is considered a precious right, would be difficult to obtain. Bondsmen will reduce rates only if the courts are liberal in dealing with them in the performance of their obligations.

(3) If courts are averse to mitigating the monetary responsibility of bondsmen after confiscation of their bond, bondsmen would be indifferent towards the attempts of the State to secure the arrest of the defendants, instead of helping it therein.

Regarding the execution of the order of forfeiture, the Supreme Court in the case of *People v. Jose Go and Alto Surety and Insurance Co., Inc.*,[17] held that in view of the doctrine laid down in *U.S. v. Carmen*,[18] it is not absolutely necessary to institute a separate and independent action for the execution of the order of forfeiture of a bail bond, which had been previously entered, and that a simple motion to that effect presented by the prosecuting attorney in the same criminal case is sufficient, and the procedure required by General Order No. 58 must be followed so that the appeal must be perfected within the unextendible fifteen days following the date upon which the sureties received notification of the order directing the execution of the judgment of forfeiture of the bond previously entered.

RIGHTS OF DEFENDANT

Section 1, Rule 111 of the Rules of Court enumerates the different rights of the accused in all criminal prosecutions. Some of these rights which are also guaranteed by the Constitution were invoked by the defendant in criminal cases decided last year. One of the most important of these rights is the right to have a speedy and public trial.

In the case of *People v. Tacneng et al*,[19] the Supreme Court sustained the lower court's order of dismissal of Criminal Case No. 1793 and held: "Evidently, the order of dismissal in Criminal Case No. 1793 was based on the right of the appellees to a speedy trial, and the same was duly issued because the record shows that at the time the said case was called for hear-

16 G.R. No. L-8091, February 17, 1956.
17 G.R. No. L-11368, October 30, 1959.
18 13 Phil. 455.
19 G.R. No. L-12080 April 30, 1959.

ing for the third time on April 21, 1954, the fiscal wanted to secure another postponement, and for that reason he manifested that he was not ready to go into trial on account of the absence of his witnesses, especially that of his principal witness, Mauro Hernaez whose appearance was uncertain as his whereabouts were then unknown. But since the absence of witnesses was the very same reason why the two previous postponements had been granted, the herein appellees protested and objected to a third postponement and moved for the dismissal of the case, and the court believing that the further postponement would be unreasonable and unfair to herein appellees who had a right to be tried promptly, dismissed the case in order to maintain inviolate their constitutional right to a speedy trial. This right which is consecrated in the Constitution has been upheld by us in *Conde v. Rivera*, *Kalaw v. Apostol*, and *Mercado v. Santos*.

The court further elaborated: "The right of the accused to have a speedy trial is violated not only when unjustified postponements of the trial are asked for and secured, but also, when, without good cause or justifiable motive, a long period of time is allowed to elapsed without having his case tried. The promoter fiscal has charge of the prosecution of all public crimes and offenses, and such prosecution is under his control and direction. For this reason he is duty bound to see to it that criminal cases are tried without *unfounded, capricious, vexatious, and oppressive delays*, so that courts may decide them on their merits and determine immediately whether the accused is guilty or not . . . so that when the herein appellees petitioned the lower court for dismissal of the Criminal Case No. 1793 by invoking their constitutional righ to a speedy trial, and the court dismissed the case such dismissal amounted to an acquittal of the herein appellees, which can be invoked by them as they did, in a second prosecuton for the same offense."

The same right to speedy trial was invoked by the accused in the case of *People v. Dr. Claro Robles*.[20] The Supreme Court in this case held that the dismissal of Criminal Case No. 11065 upon motion of the appellee on the ground that the case has been pending for three years and that in the meantime the defendants, including appellee have undergone mental anguish because of the pendency of this case, and that the trial has been postponed time and again on petition of the prosecution, is not a provisional dismissal but being predicated on the right of the appellee to a speedy trial, is tantamount to acquittal that would bar further prosecution of the accused for the same offense on the ground of double jeopardy.

ARRAIGNMENT

Section 1, Rule 112, Rules of Court provides how the arraignment of the accused made. It states: "The defendant must be arraigned before the court in which the complaint or information has been filed unless the cause shall have been transferred elsewher for trial. The arraignment must be made by the court or clerk, and shall consist in reading the complaint or information to the defendant and delivering to him a copy thereof, including a list of witnesses, and asking him whether he pleads guilty or not guilty as charged. The prosecution may, however, call at the trial witnesses other than those named in the complaint or information."

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20 G.R. No. L-12761, June 29, 1959.

Section 3 of the same rule imposes upon the court the duty of informing the accused of his right to have an attorney during the arraignment. It specifically requires: "If the defendant appears without attorney, he must be informed by the court that it is his right to have attorney before being arraigned, and must be asked if he desires the aid of attorney. If he desires and is unable to employ attorney, the court must assign attorney de oficio to defend him. A reasonable time must be allowed for procuring attorney."

This rule was applied in the case of *People v. Mamatik*[21] wherein it appears that Florencio Mamatik was accused of acts of lasciviousness committed in the municipality of Pugo, La Union, and in an uninhabited place, against the person of one Maria Lañgas, 13 years of age. When the case was called for arraignment before the Court of First Instance of La Union, the defendant appeared without counsel and the court appointed Atty. Ramon R. Villalon, Jr. as his counsel de oficio, and on the latter's petition that arraignment be postponed in order to enable him to confer with his client, arraignment was set for December 10, 1956. On that day, the defendant appeared without his counsel de oficio. The court asked him where his counsel was and Mamatik answered that a lawyer was no longer necessary because he would enter a plea of guilty. Thereupon, he was arraigned and he pleaded guilty. He was sentenced accordingly and began serving his sentence on that same date.

On December 19, 1956, Atty. Manuel B. Lasmarias, as counsel for defendant filed a motion for reconsideration, alleging that when arraigned, his client had no cousel. The motion was denied and the defense appealed. The Supreme Court in sustaining the lower court held that 'after carefully considering the facts in the case, particularly the circumstances attending the appellant's arraignment, plea of guilty, the sentence and the order of commitment, we are fully satisfied that the appeal is without merit. As the Solicitor General well observes in his brief, the trial court proceeded cautiously in arraigning the appellant and fully satisfied itself that his rights were duly protected, and that he understood the information and the consequences of his plea of guilty."

MOTION TO QUASH

Section 2, Rule 113, Rules of Court enumerates the different grounds for a motion to quash.

A. *That the facts charged do not constitute an offense.*

In *People v. Co King Song alias Songa, et al*[22] the accused were charged before the C.F.I. of Tarlac with the crime of estafa. Upon arraignment, the accused instead of pleading to the charge manifested their desire to file a motion to quash which in due time they did, stating that the facts alleged in the information do not constitute an offense. Notwithstanding the opposition interposed by the fiscal, the motion was sustained, and the case was dismissed. Hence, the present appeal.

Appellees contend that the facts alleged in the information do not constitute an offense because they did not receive the palay in question for deposit; there was no agreement between them and the offended party by virtue of which the palay was delivered for safekeeping, or with the obliga-

21 G.R. No. L-11922, April 16, 1959.
22 G.R. No. L-14076, April 17, 1959.

tion to return the same upon demand, and that they did not commit any conversion or misappropriation for the reason that the misappropriation alleged in the information is said to have taken place on February 2, 1956, or after the owner of the rice mill with whom the deposit was made had died.

However, the information clearly charges in effect that the appellees having assumed the control of the rice mill knowing that its late owner received for deposit from Trinidad Capinpin 1,000 cavans of palay under the express obligation to deliver the same to her, and in spite of their knowledge that they were received only for deposit, thy connived in misappropriating the same, or a portion thereof for their personal use and benefit. These are the elements which constitute the crime of estafa charged in the information. It is evident that the trial court erred in quashing the information. The Supreme Court reversed the trial court and ruled in favor of the appellant.

B. *That the court trying the cause has no jurisdiction of the offense charged or of the person of the defendant.*

The Revised Penal Code in the last paragraph of Article 360 states 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 of and upon complaint expressly filed by the offended party." This requirement is mandatory and jurisdictional and failure to comply with it is fatal and the action is subject to a motion to quash on the ground of lack of jurisdiction.

Thus, the Supreme Court in *People v. Lydia Padilla*[23] held that "considering that under Article 360, paragraph 4, of the Revised Penal Code, no criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio can be brought except upon complaint expressly filed by the offended party, and the crime of adultery is one that cannot be prosecuted de oficio, it is obvious that the information filed by the special counsel of Pasay City in this case is insufficient to confer jurisdiction upon the court of origin. The trial court was therefore correct in quashing the information."

In *People v. Maxima Orpilla-Moline, et al*[24] the defendants were charged with having committed indirect contempt of the Justice of the Peace Court of Alcala, Cagayan, before the Court of First Instance of Cagayan. The information alleges that the defendants unlawfully reentered the land from which they had been previously ejected by the sheriff by virtue of a final decision of said inferior court.

They raised the question of jurisdiction pointing out that the punishment provided for such contempt in Section 6 of the Rules of Court was a fine not exceeding ₱100.00 or imprisonment for not more than one month or both. Such penalty, they contended fell beyond the original jurisdiction of the Court of First Instance. Over the fiscal's objection the court sustained the defendants' contention and dismissed the complaint in its order of June 29, 1957. Hence, this appeal, which the Supreme Court found to be meritorious. Although R.A. No. 296 assigned to the Justice of the Peace Courts all criminal offenses penalized with imprisonment for not more than six months or a fine exceeding ₱200.00 or both, this case must be deemed

23 G.R. No. L-11575, January 24, 1959.
24 G.R. No. L-12703, March 25, 1959.

not included in such assignment because under Section 4 of Rule 64 of the Rules of Court, proceedings for contempt committed against a justice of the peace court "may be instituted" either in the Court of First Instance or in such Justice of the Peace Court.

Rule 64 is as much a law as R.A. No. 296; and both should be construed and upheld together, if possible, by making the former an exception to the latter. Besides, this contempt constituted at bottom a civil contempt, as distinguished from a criminal one. True, the proceeding is penal in nature as we have heretofore held; yet it would seem reasonable considering their true purpose, not to classify civil contempts as among the ordinary criminal cases alloted to inferior courts by the Judiciary Act of 1948.

It follows therefore that the trial court erred in sustaining the defendants' motion to quash on the ground of lack of jurisdiction.

C. *That the fiscal has no authority to file the information.*

This ground is well illustrated by the case of *Yao Lit v. Honorable A.M. Geraldez, et al.*[25] It appears in this case that petitioner Yao Lit was found by members of the Manila Police Department on August 15, 1957 at Salazar-Benavides streets in Manila, acting suspiciously, and he was placed under arrest. In his possession, they found a Chinese jueteng list. To establish his identity and other personal cricumstances, he was required to produce his registration certificate which he failed to do, as a result of which the Office of the City Fiscal filed two complaints against him: one for violation of the Gambling Law, Article 195 (c) of the Revised Penal Code in the C.F.I. of Manila, and another complaint for violation of Section 7 of R.A. No. 562 as amended by R.A. No. 751 in the Municipal Court of the same city. On September 25, 1957, petitioner filed a motion to quash the second complaint in the Municipal Court on the ground that the fiscal had no authority to file the complaint and consequently, the court did not acquire jurisdiction over the case.

Acting upon said motion to quash, respondent Judge denied the motion as well as the motion to reconsider his order of denial. Dissatisfied with said orders of the Municipal Judge, petitioner filed in the C.F.I. of Manila, an action for certiorari with injunction. When this case reached the Supreme Court, it was held that: "The intention of R.A. No. 751 amending R.A. No. 562 is to give the Commissioner of Immigration the discretion to choose whether to impose an administrative fine or to prosecute criminally the offender before the court. It is clear that under the amendatory provision, section 3, R.A. No. 751, the prosecuting official cannot immediately proceed to prosecute the offender without the Commissioner of Immigration having first exercised such discretion. Consequently, the prosecuting fiscal in immedately prosecuting the petititoner in court without first affording the Commissioner of Immigration an opportunity to exercise his discretion on the matter involved in the offense charged against the petitioner, clearly acted in excess of his authority." Motion to quash granted.

D. *That more than one offense is charged.*

In *People v. Koh, et al*,[26] the Supreme Court sustained the trial court's order of dismissal on account of duplicity and ordered the return of the record so that the People may amend its information, or present two se-

25 G.R. No. L-13428, November 27, 1959.
26 G.R. No. L-12407, May 29, 1959.

parate informations as the circumstances may warrant. It appears in this case that the information charged two separate offenses, namely (1) violation of Section 6, and (2) violation of Section 7 of the Central Bank Circular No. 31.

E. *That the criminal action or liability has been extinguished.*

In *People v. Jose Fule*,[27] the Provincial Fiscal filed an information for less serious physical injuries on June 18, 1957 with the office of the deputy clerk of court of the second branch of the C.F.I. of Laguna comprising the City of San Pablo. On June 20, 1957, said information was received in the office of the third branch of the C.F.I. of Laguna. Said information was transmitted to the third branch because pursuant to Administrative Order No. 116-149 series of 1955 of the Secretary of Justice, the offense committed was cognizable by the third branch.

On July 27, 1957, accused filed with the third branch of the court a motion to quash on the ground that the criminal action had been extinguished upon the theory that since according to the information the alleged offense was committed on December 20, 1956 and the information was filed June 20, 1957, the filing of the action was made after the lapse of six months.

The Supreme Court overruled the order of the trial court granting the motion to quash and held: "Jurisdiction is vested in the court, not in the judges. So that when a complaint or information is filed before one branch or judge, jurisdiction does not attach to the branch or judge alone to the exclusion of the others. Trial may be had or proceeding may continue by and before another branch or Judge. So that when the information was filed before the second branch of the C.F.I. of Laguna on June 18, 1957, the C.F.I. of Laguna acquired jurisdiction irrespective of the branch where the information was filed and consequently, from December 20, 1956 to June 18, 1957, not more than six months had elapsed and therefore the information was not filed out of time and the action has not yet prescribed."

In *Edilberto Barot v. Hon. Julio Villamor*,[28] a petition for certiorari was filed seeking to set aside the order of the respondent judge entered on August 5, 1957 ordering the city fiscal to file a second amended information setting forth therein certain additional facts required by the accused to apprise them of the real nature of the offense described in the information

Section 10, Rule 113, of the Rules of Court provides in part: "If the defendant does not move to quash the complaint or information before he pleads thereto, he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same."

The facts of the instant case call for the application of the rule above pointed out. Thus, it appears that the original information was filed on July 2, 1956. This information was amended on July 3, 1956. On July 10, 1956, accused Vicente Alunan filed his motion to quash alleging that the information does not conform to the requirement that it must apprise the accused of the offense of which he is charged. This motion was denied, the court stating that said amended information was clear enough to enable the accused to understand the real nature of the charge. Then, on January 5,

27 G.R. No. L-12915, July 28, 1959.
28 G.R. No. L-13131, February 28, 1959.

1957, Alunan pleaded not guilty to the amended information, and on June 20, 1957, he filed his second motion to quash reiterating practically the same ground of ambiguity he relied on in his previous motion.

Evidently, having pleaded not guilty to the amended information, Alunan can no longer file a second motion to quash on the ground that it does not apprise him of the true nature of the offense charged for the same is deemed to have been waived by him when he was arraigned and pleaded not guilty. The trial court should have denied the second motion to quash and should have proceeded with the trial of the case as ordained in Section 1 or Rule 113, of the Rules of Court. This is in line with the ruling laid down in the recent case of *People v. Manuel.*

DOUBLE JEOPARDY

Section 9, Rule 113 of the Rules of Court enumerates the different cases when the defense of double jeopardy can be invoked by the accused in a criminal prosecution. They are the following: (1) former conviction; (2) previous acquittal; (3) "the case against him dismissed or otherwise terminated without the express consent of the defendant;" provided that, in any of these cases, the following conditions are present: (1) "by a court of competent jurisdiction," (2) "upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction," and (3) "after the defendant had pleaded to the charge." The presence of these circumstances is a "bar to another prosecution for the same offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

Previous acquittal.

In *People v. Foster,*[29] the accused contended that she is placed in double jeopardy because she has already been acquitted in Criminal Case No. 14936 when she was charged for having committed similar acts but for the period comprising from 1948 to 1952. But she is now being prosecuted for subsequent acts committed from 1952 to November 18, 1954, when the information at bar was filed. Therefore, the accused is herein charged for acts other than those covered by Criminal Case No. 14936 wherein those subsequent acts are not necessarily included as provided for in Rule 113, section 9, Rules of Court. And as already ruled by the lower court in the motion to quash filed by the accused, her acquittal in said criminal case No. 14936 does not constitute a certificate of immunity or a certificate or recognition by the Government as provided for in Commonwealth Act. No. 190. To rule otherwise, an anomalous situation will be created because another fashion school may be opened and advertised, as recognized by the Government although it was not, and for so doing the owner of said school may be prosecuted and punished for the violation of said Commonwealth Act No. 180 just because of her acquittal in Criminal Case No. 14936.

Case Dismissed Without Consent of Defendant.

In *People v. Bonotan et al,*[30] the Government appealed from an order of the Court of First Instance of Davao, dismissing an information for direct assault upon a person in authority with physical injuries. It appears

29 G.R. No. L-12828, April 13, 1959.
30 G.R. No. L-12235, June 2, 1959.

that on April 21, 1956, the Chief of Police of Kapalong, Davao, filed with the Justice of the Peace Court of that town a *criminal complaint for less serious physical injuries.* After defendants had pleaded not guilty, the Chief of Police, without the conformity of the offended party, filed a motion to dismiss on the ground that the offense charged in the complaint did not correspond to the crime actually committed, and the court acting on that motion, granted the same upon the ground alleged. It is admitted that the dismissal was without the conformity of the defendants.

More than a month thereafter, the acting provincial fiscal of Davao filed against the same defendants an *information for direct assault upon a person in authority with physical injuries.* Upon arraignment on the new information, defendants moved to quash the same on the ground of double jeopardy and the court having granted the motion, the prosecution took the present appeal.

The Supreme Court ruled in favor of the defendants and held: "The defense of double jeopardy was well taken. Section 9, Rule 113, Rules of Court so provides. The dismissal of the complaint filed by the Chief of Police having been made without the express consent of the defendants and after they had already pleaded thereto and there being no dispute as to the validity of the complaint and the competency of the Justice of the Peace, the only question for determination is whether the offense charged in the information subsequently filed by the fiscal *necessarily includes or is necessarily included* in the offense charged in the complaint of the Chief of Police.

While the charge of direct assault upon a person in authority with physical injuries contained in the fiscal's information is not necessarily included in the charge contained in the complaint filed by the Chief of Police which is merely that of less serious physical injuries nevertheless, the charge of direct assault upon a person in authority with physical injuries as set out in the information necessarily includes the offense of less serious physical injuries. It follows that the dismissal of the complaint filed by the Chief of Police against the defendants in the Justice of the Peace court is, pursuant to Section 9, Rule 113, Rules of Court, a bar to the latters' prosecution for the offense charged in the fiscal's information in the Court of First Instance."

This case should be distinguished from the case of *People v. Benedicto Bao.*[31] Here the dismissal was at the instance of the defendant. The Supreme Court said in this case: "This Court has already held that the dismissal of a criminal case on the ground of variance between the allegations in the information and the evidence amounts to an acquittal. And while it appears that there is merit in the Solicitor General's contention *that the offense of intriguing against honor is necessarily included in the crime of serious oral defamation charged in the information and therefore the accused could be validly convicted by the trial court of that crime under the same information,* the fact remains that the case was dismissed after the prosecution had rested its case and upon motion by the defendant on the ground that the facts alleged in the information did not constitute the crime charged, and that, at any rate, the evidence presented was not sufficient to establish his guilt. This dismissal, likewise, amounts to an acquittal or discharge of the defendant, for which the prosecution cannot appeal without doing violence to the constitutional provision on double jeopardy. It goes

31 G.R. No. L-12102, September 29, 1959.

without saying that such dismissal constitutes a bar to another prosecution not only for the offense charged but also for any offense which necessarily includes or is necessarily included therein."

The Court in this case made an important observation. It believes that while the accused filed no brief on appeal raising the question of double jeopardy, nevertheless, the provision of Section 2 of Rule 118 of the Rules of Court that "The People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy", must be given force and effect. And neither may the fact that the order of dismissal complained of was upon the motion or at the instigation of the accused, preclude the application of double jeopardy. In several cases where the trial court's order of dismissal amounted to an acquittal, the Supreme Court sustained the theory of double jeopardy despite the fact that the dismissal was secured upon motion of the accused.

It is manifest in this case that the trial court made a mistake in dismissing the case. The judge should have convicted the accused of intriguing against honor which is a lesser offense necessarily included in the crime of serious oral defamation charged in the information instead of dismissing the case. This conclusion finds support in Section 4, Rule 116 of the Rules of Court which provides: "When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is necessarily included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

Dismissal with defendant's consent

In *People v. Togle and Togle*,[32] the Supreme Court, speaking through Justice Roberto Concepcion held: "Under Section 9 of Rule 113 of the Rules of Court, if the case against the accused is dismissed by the court without his consent, the dismissal is bar to another prosecution for the same offense; but if the case is dismissed upon his request or with his express consent, the dismissal is not a bar to another prosecution for the same offense, because his act constitutes a waiver of his defense of double jeopardy. In the present case, it is contended, the accused must be deemed to have waived such a defense when, considering that the prosecution cannot go to trial because of the inability of its important witness to appear, he expressly asked the court to dismiss the case provisionally "until the fiscal will be ready for trial." For this reason, the trial court dismissed the case provisionally. It appearing that the dismissal of the previous case was made provisionally and upon the express request of the counsel for the accused, we hold that the prosecution of the second case, even if it covers the same crime does not give rise to double jeopardy."

In another case the same rule was applied by the Supreme Court. This is the case of *People v. Hinaut et al.*[33] It appears that in a criminal complaint dated August 17, 1955, accused Hinaut, Taguioa, and another Hinaut were charged with the crime of theft before the Justice of the Peace of Lopez Jaena. After arraignment, wherein all of the defendants pleaded not guilty, the prosecution presented its evidence, both testimonial and documentary, and thereafter rested its case with reservation to introduce additional evidence.

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32 G.R. No. L-13709, January 30, 1959.
33 G.R. No. L-11315, March 18, 1959.

which was stated to be unavailable at the time. The defense followed, and likewise offered its evidence, but before it had entirely closed, the Provincial Fiscal submitted a motion for the provisional dismissal of the case. Accused expressed their consent thereto by placing their thumbmarks (only Agapito Hinaut signed his name) at the end of the motion, after the words "with our conformity."

In its order of December 19, 1955, the Justice of the Peace dismissed the case provisionally as prayed for. About six months later, the prosecution filed a motion to revive the case which was granted by the Justice of the Peace court in an order dated Jan. 8, 1956, The corresponding information was refiled by the Fiscal on June 1, 1956. The defense appealed to the CFI of Misamis Occidental, and after review of the above facts, the courts opined: "When a criminal case, after due arraignment and plea had been made and after trial had almost been completed, even if the case is dismissed with an express conformity of the accused, the said accused had already been placed in double jeopardy." Hence the prosecution appealed.

The Supreme Court, on appeal, overruled the trial court and held that the plea of double jeopardy was improperly sustained. According to the court, "it is important to note that what was sought by the Provincial Fiscal to which the accused expressed their agreement, was not a simple or unconditional dismissal of the case, but its provisional dismissal that prevented it from being finally disposed of. Certainly, the accused cannot now validly claim that the dismissal was in effect, on the merits and deny its provisional character. Even assuming moreover, that there was double jeopardy, they should be considered as having waived the constitutional safeguard against the same. What could have been done by the accused in the case at bar was the action suggested by this Court in the case of *Gandicela v. Luter* by invoking their constitutional right to a speedy trial rather than consent to a provisional dismissal of the case that would allow a valid reinstating thereof."

In *People v. Dr. Claro Robles*[34] the Supreme Court made a different pronouncement although it also involved a provisional dismissal. This case was originally instituted on May 12, 1950, but was provisionally dismissed on November 10, 1950, on motion of the prosecution; that it was revived on January 10, 1952, upon filing of another information for the same offense after a lapse of more than one year since its provisional dismissal; that when this case was set and called for trial on February 9, 1953, the trial was again postponed on petition of the prosecution on the ground that it was not prepared for trial and because some of the co-accused of appellee were still at large, which postponement was granted in order to afford the prosecution another opportunity to prepare for trial with the warning that the court will not entertain any other petition for postponement. It likewise appears that the defense vigorously objected to further postponement when the case was called for trial on March 19, 1953 and the prosecution was not again ready for trial on the ground that this case has been pending for three years and that in the meantime the defendants, including appellee have undergone mental anguish because of the pendency of this case, and that the trial has been postponed time and again on petition of the prosecution, the opposition of counsel for accused being predicated on the right of the defendant to speedy trial guaranteed by the Constitution and on the basis of these facts and reason advanced by the defense, the court dismissed the case with costs de oficio.

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34 G.R. No. L-12761, June 29, 1959.

On appeal by the prosecution, the Supreme Court held: "In the circumstances, we find no alternative than to hold that the dismissal of Criminal Case No. 11065 is not provisional in character but which is tantamount to acquittal that would bar further prosecution of the accused for the same offense on the ground of double jeopardy."

Failure to decide the case.

In *People v. Dagatan*,[35] it was held that "failure of the judge to decide the case after its submission for decision, did not terminate the case either by dismissal or by conviction so that defense of double jeopardy does not attach in case another information is filed charging the same offense."

PLEAS

Section 1, Rule 114, Rules of Court, provides: "The defendant shall plead to the complaint or information either by a plea of guilty or not gulity, submitted in open court, and entered of record; but a failure so to enter it shall not affect the validity of any proceeding in the cause."

A. *Essence of plea of guilty.*

In the case of *People v. Alejandro Santos and Jose Vicente*,[36] the Supreme Court citing the case of *People v. Acosta*,[37] reiterated that "the essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily and with full knowlegde of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime charged in the information, and is sufficient to sustain a conviction for *even a capital offense*, without the introduction of further evidence, the defendant having himself supplied the necessary proof; and that while it may be prudent and advisable in some cases, especially where grave crimes are charged, to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime, nevertheless, it lies within the sound discretion of the court whether to take additional evidence or not in any case where it is satisfied that the plea of guilty has been entered by the accused with full knowledge of the meaning and consequences of his act."

It appears in this case that the accused were charged and convicted of the crime of murder in the C.F.I. of Bulacan. The defendants upon being arraigned pleaded guilty, whereupon the lower court rendered judgment sentencing them to suffer the penalty of death and its accessory penalties. The death penalty having been imposed, records of the case were forwarded to the Supreme Court for review, pursuant to the provisions of Section 9, Rule 118 of the Rules of Court. The Supreme Court held that the conviction must stand. The records disclose that at the arraignment, the accused were assisted by counsel de oficio appointed by the presiding judge. Counsel was given time to confer with the defendants and did confer with them before entering their plea of guilty. There appears to be no doubt that their plea were given voluntarily and spontaneously. Under those facts, no irregularity was committed by the lower court.

New counsel de oficio in this review, however, contends that it was error for the lower court to consider against the accused the aggravating as well

35 G.R. No. L-10851, August 28, 1959.
36 G.R. No. L-12448, January 22, 1959.
37 C.G. No. 4, p. 1932.

as the qualifying circumstances stated in the information, there having been no hearing ordered by the said court to at least investigate the facts that were alleged as giving rise to those circumstances.

In several cases, the Supreme Court had occasion to rule that a plea of guilty removes all the necessity of presenting evidence of the crime charged and is sufficient to sustain a conviction for even a capital offense, without any further evidence, the requisite proof having been supplied by the accused himself. By plea of guilty, all the facts alleged in the information are deemed admitted. The taking of further evidence, including the ascertainment of circumstances which affect criminal liability rests entirely upon the sound discretion of the court.

In another case the same doctrine found square application. This is the case of *People v. Agaton Salazar*.[38] The accused in this case was charged in the C.F.I. of Batangas with the crime of malversation of public funds. Upon arraignment, he pleaded "not guilty", which he later withdrew and changed to one of "guilty", whereupon the court in consideration of voluntary surrender and plea of guilty on the part of the accused, and after considering the facts set out in the information, sentenced him accordingly. From this sentence, the accused appealed to the Supreme Court contending that the lower court erred in sentencing him to suffer the penalty imposed "without recommending executive clemency" for him on the ground that, he did not apply the missing funds to his personal use and benefit but lost the same while he was drunk. The contention is untenable according to the Supreme Court and held that "when the appellant entered the plea of guilty, he thereby admitted, not only his guilt, but also the material facts alleged in the information, namely: that he "wilfully, unlawfully, feloniously, and with grave abuse of confidence, misappropriate, misapply, embezzle, and convert to his personal use and benefit, from said funds, the sum of ₱13,879.77," thus clearly indicating malice or evilness of intent on his part. In penal statutes, 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."

Section 5 of Rule 114 of the Rules of Court provides: "Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed."

In *People v. Dimdiman*,[39] the above-stated rule was applied by the trial court. It appears in this case that the accused was charged in the lower court with the crime of robbery with multiple homicide. Upon arraignment, the accused entered a plea of "guilty" but later withdraw it and substituted therefore a plea of "not guilty". When the case came up for trial about a month later, the accused once more withdrew his plea of "guilty". and on the information being read to him again, entered that of "guilty". After satisfying itself that the accused, who was then assisted by counsel, was aware of the consequences of his plea, the learned trial judge nevertheless required the introduction of evidence as to the guilt of the accused

38 G.R. No. L-13371, September 24, 1959.
39 G.R. No. L-12622, October 28, 1959.

and the circumstances attendant upon thec ommission of the crime. This is in accordance with the settled practice in this jurisdiction which contemplates the taking of additional evidence in cases wherein pleas of guilty are entered to information charging grave crimes, and more especially crimes for which the prescribed penalty is death.

CONTINUANCE OR POSTPONEMENT OF THE TRIAL.

Section 2 of Rule 115 of the Rules of Court provides: "The court on the application of either party or on its own motion, may in its discretion for good cause postpone the trial of the case for such period of time as the ends of justice and the right of the defendant to a speedy trial require." The interpretation of this rule of procedure was involved in the case of *People v. Martinez and Atty. Magno T. Bueser.*[40] It appears in this case that on July 16, 1958, appellant entered his apperance as counsel for the accused in Criminal Case No. 4430 pending in the Court of First Instance of Manila for grave threats. On July 23, 1958, appellant received a copy of a notice setting the hearing of the case on August 5, 1958. On the same date he received a copy of said notice, he filed a motion for transfer for the reason that on August 5 and 6, 1958, he will appear as counsel for the accused in a criminal case for robbery in band pending before the Court of First Instance of Quezon, the hearing of which was arranged upon agreement made between the prosecution and the defense on June 6, 1958, at the same time praying that the hearing be set on August 4 or 11, 1958 if the calendar of the Court would so permit. This motion was denied on July 24, 1958 of which appellant was notified on July 29, 1958.

Upon being notified of this denial, appellant filed a motion to withdrew his appearance as counsel for the accussed for the reason that he could not attend to the hearing of the case set for August 5, 1958 on account of his previous commitment with the CFI of Quezon, furnishing a copy of his motion to the accused. On August 1, 1958, the accused filed a motion for postponement giving as ground the withdrawal of his attorney, but the court denied both the motion of appellant to withdraw and the motion of the accused to postpone the hearing and on August 5, 1958, it issued an order citing appellant to appear to show cause why he should not be punished for contempt for his failure to appear at the hearing of the case set on said date. Appellant appeared before the court as ordered, and by way of explanation he reiterated what he had already advanced before to the effect that his failure was due to his appearance as counsel for the accused at the hearing of the criminal case pending before the CFI of Quezon which was set long prior to the hearing of the present case. This explanation not having been found satisfactory, the court declared appellant guilty of contempt and imposed upon him a fine of ₱85.00. Hence, this appeal.

The Supreme Court, speaking through Justice Felix Bautista Angelo held: "While it is a settled doctrine that a motion to postpone is not a matter of right, but a matter that is addressed to the sound discretion of the court, there are however cases where the granting of the motion becomes imperative to afford substantial justice. As this Court has aptly said: 'While the granting or refusal of motions for continuance is discretionary, that

40 G.R. No. L-14262, February 26, 1959.

discretion must be exercised wisely with a view to substantial justice. The discretion should be exercised in the light of the peculiar circumstances obtaining in each case.'

In the instant case, appellant appears to have the law on his side . . . The order appealed from declaring appellant guilty of contempt is set aside, with costs de oficio."

Judgment of acquittal.

In *People v. Jose Sison,*[41] the court held that a judgment of acquittal bequittal becomes final immediately after promulgation and can not be recalled for correction or amendment. Dismissal of the case on the ground that the acts charged did not constitute an offense amounts to acquittal which decision is final upon promulgation.

41 G.R. No. L-11669, January 30, 1959.

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