CRIMINAL LAW

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Criminal Law is one of the most stable branches of public law in the Philippines. Not that an unreasonable aversion towards change enslaves the mind of our Supreme Court to stick, fanatically, to outmoded precedents; rather, it is the noticeable propensity of our criminals to trace the footsteps of their predecessors that imposes this state of things. It is observed that specific crimes are committed almost always in, relatively, similar fashion. Inevitably, in deciding similar situations, the Judiciary must, except in very rare instances where deviation is made imperative by previous reversible errors, finds guidance in its precedents; otherwise, absurdity, nay damaging confusion will visit upon our criminal jurisprudence. For criminal law immediately affects life, liberty, and property of an individual, indecision will not only be a reflection of immaturity but a potent instrument of destruction of the objectives which the Judiciary, as the bulwark of private rights, seeks to attain.

This work is a survey of criminal cases decided in 1960 minus a few ones which deal more with procedural (adjective) than substantive law. As has been said, Criminal Law thrives, mostly, on precedents. In the following survey, we will consider an array of cases to prove this point.

FELONIES

Criminal Intent; Distinguished From Motive

Acts and omissions punishable by law are felonies.[1] To constitute a crime, the following elements must concur: (1) an act or omission (2) which must be voluntary and (3) punishable by law.[2] But where the act alleged to constitute a crime is committed by means of dolus or deceit there is an added requisite for criminal liability, namely, the presence of criminal intent—*actus non facit reum nisi mens sit rea.* The act does not make the person a criminal unless his mind be criminal.[3] In determining the presence of criminal intent in the commission of a felony, care must be taken in the appreciation of circumstances from which criminal intent may be inferred and circumstances which are mere indicia of motive. It must always be remembered that while criminal intent is an essential ingredient of a felony, motive is not. The latter merely constitutes the special or personal reason which may prompt or induce a person (defendant) to perform an act or commit a crime.[4] If it performs an important function at all in the realm of criminal law, that is only when the witnesses fail to indubitably identify the culprit; or if there be a need to determine which of two (2) conflicting theories would explain the commission of the acts constituting the offense. Conversely, if the defendants were seen and identified clearly by the witnesses, motive need not be proved before there could be a valid conviction.[5] Thus, in *People v. Borja*[6] the motion of the fiscal to exclude

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[1] Article 3, Revised Penal Code.
[2] 1 Padilla, Criminal Law, 8th Ed. (1959), p. 33.
[3] *Ibid.*, p. 34.
[4] *Ibid.*, pp. 36-37.
[5] People v. Necesito, G.R. No. L-13467, September 30, 1960.
[6] G.R. No. L-14327, January 30, 1960.

from the information the accused Flora Tandang and Joaquin Odog for the purpose of establishing the personal motive of their co-accused in killing the deceased, was turned down by the Court on the ground that proof of motive is not absolutely indispensable or necessary to establish the commission of a crime.

In Mala Prohibita Criminal Intent is Immaterial but Intent to Perpetrate Act is Required

But the rule requiring the presence of criminal intent in felonies committed by deceit before there could be conviction is not true in all cases. In statutory crimes or mala prohibita as distinguished from mala in se (penalized by the Revised Penal Code) the rule is that prosecution will lie by the mere fact that the accused did perpetrate the act prohibited by the statute, with or without criminal intent.[6a]

A recent decision on this point is the case of *People v. Golez*[6b] wherein it was held that illegal practice of medicine is a statutory offense wherein criminal intent is taken for granted so that a person may be convicted thereof irrespective of his intention and in spite of his having acted in good faith.

STAGES OF EXECUTION

Physical Injuries Not Frustrated Homicide

Physical injuries should not be confused with the crime of frustrated homicide. The latter is always characterized by the presence of the criminal intent to kill while the former of its absence. This is axiomatic in Criminal Law.[7]

Consummated Illegal Exportation of Gold

A felony is consummated when all the elements necessary for its execution and accomplishment are present.[8] In some very rare cases the law considers, for practical reasons, mere attempts in fact as consummation of a felony. One illustration of this species of crime is the case of *People v. Lim Ho*.[9] In this case, the defendants were held guilty of illegal exportation of gold, in violation of Circulars Nos. 20 and 21 of the Central Bank, for having in their possession, custody, and control four pieces of gold with manifest and unmistakable desire and purpose of exporting them to Hongkong through a PAL plane. In dismissing the contention of the defendant that the law for the violation of which they were being prosecuted does not penalize mere attempted or frustrated exportation of gold, the Supreme Court citing the case of *People v. Jollife*, G.R. No. L-9553, May 13, 1959, said: "Sec. 4 of Circular No. 21 explicitly applies to any person *desiring* to export gold and hence it contemplates the situation existing prior to the consummation 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."

[6a] 1 Padilla, Criminal Law, 8th Ed. (1959), p. 44.
[6b] G.R. No. L-14160, June 30, 1960.
[7] People v. Cano, et al. G.R. No. L-12270, April 29, 1960.
[8] Article 6, Revised Penal Code.
[9] G.R. No. L-12091-12092, January 28, 1960; see also People v. Tan, G.R. No. L-9275, June 30, 1960.

CONSPIRACY

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[10] Although the mere existence of a conspiracy does not constitute a crime except in cases where the law specially provides otherwise, it has a very significant effect in the distribution of criminal liability among those who voluntarily take part in it after a crime has in fact been committed pursuant to the conspiracy, namely, each co-conspirator becomes equally responsible for all the acts of the other co-conspirators.[11]

The existence of conspiracy may be shown by circumstantial evidence. The prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy. It is enough that from the individual acts of the accused, it may be reasonably deduced that they had a common plan to commit the felony.[12] The case of *People v. Mitra* [13] states the rule in this manner: "... Yet the details of a common plan is not material. It is enough that each accused pursued the same object and achieved it through their collective acts. Direct proof is not essential to show conspiracy if it is proved that the accused aimed, by their acts, towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert is proved." *Khaw Dy v. People* [14] illustrates this doctrine. It appears that after a brief conversation between Ang Go Pia and one of the defendants, in the public market of Malabon, the latter struck the former with a balance. Ang was able to parry the blows. At this juncture, Khaw Dy darted from his stall and boxed Ang, who exchanged fist blows with him. Khaw immediately returned to his stall and grabbed a knife, whereupon Ang took to his heels, pursued by the defendants. Unfortunately, the victim slipped and while he was in a kneeling position, defendant Co Chiam held him by the hair while Khaw Dy stabbed him on the back. Ang attempted to escape from his assailants but Co Chiam held him again and Khaw Dy stabbed him several times. *Held:* This is a clear case of conspiracy. The simultaneous acts of the defendants in pursuing Ang and the manner in which Co Chiam cooperated with Khaw Dy not only when he stabbed Ang for the first time but also when, being thus aware of the homicidal intent of Khaw Dy, he held Ang by the hair, after his attempt to escape, thus enabling Khaw Dy to further inflict injuries upon him. Consequently both of the defendants were held principals in the commission of homicide.

SPECIAL LAWS

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.[15]

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[10] Article 8, Revised Penal Code.
[11] People v. Labak, *et. al.*, G.R. No. L-11892, October 31, 1960; People v. Estacio, G.R. No. L-11430, January 30, 1960.
[12] People v. Cotao, G.R. No. L-9532, April 29, 1960.
[13] G.R. No. L-13290, June 30, 1960; see also People v. Zapata, Note 24; People v. Ambahaag, et al., G.R. No. L-12907, May 30, 1960; People v. Cunanan, G.R. No. L-13007, December 23, 1960; People v. Berganio, G.R. No. L-10121, Dec. 29, 1960; People v. Guarnes, G.R. No. L-12819, December 29, 1960.
[14] G.R. No. L-14822, September 30, 1960.
[15] Article 10, Revised Penal Code.

The case of *People v. Lim Ho, supra*, interprets the second sentence of the above mentioned provision in upholding the validity of the forfeiture of the gold attempted to be illegally exported. It held that Article 45 of the Revised Penal Code authorizing the forfeiture of the proceeds of a crime and the instruments or tools with which it was committed is supplementary to the provisions of Republic Act No. 265 upon the strength of which Circulars Numbers 20 and 21 were promulgated, inasmuch as the said Republic Act does not contain any provision specifically to the contrary. The aforequoted provision seems to imply that as long as the special law does not specifically provide that the Revised Penal Code shall not apply, necessarily, the Revised Penal Code shall supplement it. This implication, however, seems to be inconsistent with the rulings in the cases of *People v. Gonzales* [16] and *People v. Respecia*.[17] In the latter case, the defendants pleaded guilty to the crime of illegal possession of dynamite penalized by Act No. 2555 as amended by Act No. 3023. They contended that their plea of guilty must mitigate their criminal liability in accordance with article 64 of the Revised Penal Code, on the theory that article 64 of said Code is supplementary to the special law violated and the special law concerned does not specifically provide otherwise. However, the Supreme Court chose to adhere to its precedents saying: "in several cases we held that the provisions of the Revised Penal Code regarding the application of the circumstances modifying the criminal liability of the accused are not applicable to special laws." This ruling does not appear to be warranted by the letter of the provision. The law itself does not distinguish when it should fill in gaps in special laws and when it should not. The ruling in the case of *People v. Lim Ho* appears to us to be more in accordance with Article 10 of the Revised Penal Code, so that provisions of the Revised Penal Code should be given suppletory force or effect if such application will not run counter to the public policy upheld by the special law concerned.

JUSTIFYING CIRCUMSTANCES

Self-Defense—To avail of the justifying circumstance of self-defense the defendant must prove the concurrence of the following elements: (1) Unlawful aggression on the part of the victim; (2) Reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[18]

Unlawful aggression—It is defined as a sudden, unprovoked attack which poses an actual and imminent threat to the life safety, or rights of the person attacked.[19] Its presence is absolutely indispensable for without it there can be no self-defense whether complete or incomplete.

In *People v. Aragon and Lopez* [20] it appears that while the defendants, then 17 and 18 years old respectively, were sleeping in the campus of the Masbate National Agricultural School, the deceased Gabino B. Buhay came and kicked the duo violently. Lopez picked up a piece of wood and tried to hit Buhay but the latter was able to grab the said weapon and attempted to hit Lopez in turn. At this juncture, Aragon hit Buhay, with a hammer, on the head. Lopez followed beating Buhay twice, knocking him down. The defendants pleaded self-defense. The Supreme Court *held:* They cannot plead self-defense for at no time were their lives endangered, the kicks and blows

[16] 82 Phil. 307
[17] G.R. No. L-13569, April 29, 1960.
[18] People v. Ansoyon, 75 Phil. 772.
[19] Padilla, Criminal Law, 8th Ed. (1959), p. 143.
[20] G.R. No. L-13222, April 27, 1960.

(delivered by the deceased) being known to them as mere disciplinary measures, excessive though they may be.[21]

Defense of Relatives—To interpose this defense as a valid justifying circumstance, the following requisites must be established: (1) Unlawful aggression on the part of the victim; (2) Reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) In case provocation was given by the person attacked, the person making the defense had no part in the provocation.[22]

In *People v. Gungub* [23] it appears that in the early morning of July 2, 1957, while Teofilo Pepito, Francisco Gungub and Dionisio Gungub were playing cards in the church plaza of Liloan, Cebu, Pedro Magale approached Francisco and asked the latter for fifty centavos. Francisco refused. Magale, angered, attempted to box him but was prevented from doing so by Teofilo. Then Magale, with his hands over Dionisio's shoulders, asked Dionisio for money. At this very moment accused Pedro Gungub, who had been from the dance in the park, was on his way to look for his brother Dionisio. He saw Magale, with his hands over Dionisio's shoulders. He also heard Magale insistently ask for money from Dionisio but the latter adamantly refused to give any. Finally, when Dionisio still refused to give money to Magale, the latter boxed him, hitting the former on the Adam's apple. Magale appeared bent on finishing off Dionisio. At this precise moment, Pedro Gungub, the herein defendant abruptly rushed towards Magale and stabbed him with a knife. The latter expired later. *Held:* Gungub was acquitted. The element of unlawful aggression has been sufficiently established by the decedent's aggressive attitude towards Francisco and Dionisio in demanding money under threats of physical injury and boxing Dionisio when he refused to give any. There was no malicious motive on the part of the defendant when he defended his brother. He used his knife on the deceased at the precise moment when the latter was apparently determined to maul Dionisio to death. Considering the comparatively burly physique of the deceased and his criminal record, the defendant was justified in using a knife.

MITIGATING CIRCUMSTANCES

No Intention To Commit So Grave A Wrong—In *People v. Zapata,*[24] it was held that where the accused merely intended to denounce the deceased as a witch but in the process they beat her more severely than she could take, resulting in her consequent death, the defendants should be entitled to the mitigating circumstance of lack of an intention to commit so grave a wrong.

Voluntary Surrender—In order that surrender may be considered voluntary, hence mitigating, it must be spontaneous, showing the intent of the accused to submit himself unconditionally to a person in authority or his agents and before he was, in fact, arrested.[25]

Consequently, where after killing his victim, the defendant went to the Chief of Police and admitted that the bolo he brought with him was the weapon he used in killing the deceased, it cannot be gainsaid that there was voluntary surrender.[25a]

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[21] Citing U.S. v. Carrero, 9 Phil. 544. U.S. v. Firmo, 37 Phil. 133; People v. Yuman, 61 Phil. 786.
[22] 1 Padilla, Criminal Law, 8th Ed. (1959), p. 175.
[23] G.R. No. L-13338, May 25, 1960.
[24] G.R. No. L-11074.
[25] People v. Conwi, 71 Phil. 595.
[25a] People v. Baloyo et al., G.R. No. L-11215, January 30, 1960.

However, there can be no mitigating circumstance of voluntary surrender after the defendant has already been arrested and upon being caught pretended to say he was about to surrender.[26] But this rule should be distinguished from a case where though the defendant fled after the commission of the crime, he did so in order to protect himself from physical harm and not for the purpose of eluding the authorities. In *People v. Dayrit*[27] the accused fled to the Imperial Hotel after stabbing his victim because he was being pursued by the companions of the deceased and at the moment there were no policemen around to whom he could surrender himself up. His purpose was purely to protect himself from the companions of the deceased who were determined to avenge the death of their comrade. As a matter of fact, when the policemen came to investigate the incident he readily surrendered the fatal knife and went with the agents of the law voluntarily. *Held:* There is voluntary surrender.

Admission of Guilt—Plea of guilty is mitigating because it is an act of repentance and respect for the law; it indicates a moral disposition in the accused favorable to his reform.[28] Not every plea of guilty, however, is mitigating. To be such, the plea must be spontaneous and made before the court prior to the presentation of evidence by the prosecution.[29] In *People v. Quesada*[30] this principle is reiterated. The accused was charged with frustrated homicide in the Court of First Instance of Manila. Upon being arraigned, he pleaded not guilty. However, after the fiscal presented its first witness, the defendant moved to withdraw his plea in order to substitute a plea of guilty. The motion was granted but the lower court did not consider the change of plea as mitigating. The defendant appealed from this particular ruling of the court a quo. *Held:* Article 13, par. 7 of the Revised Penal Code requires that the plea of guilty, to be mitigating, must be made in open court, spontaneously, and prior to the presentation of the evidence for the prosecution. In the case at bar, the last requisite is lacking. Although the plea might have been born out of the defendant's sincere desire to repent, still he cannot be given credit for that because he did so only after the prosecution had commenced presenting its evidence.

As already adverted to, confession of guilt, to be considered as an extenuating circumstance, must be spontaneous. It must not be subject to condition. Thus, where the accused offered to plea guilty to a lesser offense, this cannot be availed of.[31] But if after the accused offered to plead to a lesser offense and the information was correspondingly amended and the accused pleaded guilty, it is an error for the lower court not to appreciate the plea of guilty as a mitigating circumstance.[32]

AGGRAVATING CIRCUMSTANCES

Disregard of Sex—It is a requisite under this provision that the offender deliberately intended to offend or insult the sex of the offended party before there could be an aggravating circumstance of disregard due to the sex of the offended party. Therefore the mere fact that the victim be a woman does not necessarily aggravate the offense committed. Likewise, where

[26] People v. Rubinial, G.R. No. L-12275, Nov. 29, 1960.
[27] G.R. No. L-14388, May 20, 1960.
[28] People v. De la Cruz, 63 Phil. 874.
[29] People v. De la Peña, 66 Phil. 451
[30] G.R. No. L-15372, April 29. 1960.
[31] People v. Noble, 77 Phil. 93.
[32] People v. Mancera, G.R. No. L-13290, June 30, 1960.

the crime committed is one against chastity, disregard of sex cannot aggravate the offense for the simple reason that it is inherent therein.[33]

Obvious Ungratefulness—In the case of *People v. Baloyo, et al.*,[34] the defendant murdered the deceased in spite of the latter's generosity consisting of allowing the defendant to stay within the premises of his sawmill and maintain a store without paying any rent and to hold cockfights therein. In view of this, the Supreme Court held that the circumstance of obvious ungratefulness should be taken against the defendant.

Nighttime—To be aggravating, nighttime must be especially sought to insure the commission of the crime or for the purpose of impunity.[35] Consequently, there can be no aggravating circumstance of nighttime, if it is the deceased who went to the place of the accused and there is no evidence that the latter has chosen nighttime to perpetuate the crime.[36]

Evident Premeditation—This aggravating circumstance requires the concurrence of three indispensable elements, namely, (1) that the offender determined to commit the crime; (2) a notorious act manifestly indicating that he has adhered to such determination; and (3) a sufficient lapse of time between the determination and the execution, to allow him to reflect upon the consequences of his acts.[37] In *People v. Baloyo, et al.*,[38] the Court held that the threat made by the defendant that he will not get out of the premises of the deceased's sawmill without killing anybody should not be taken as conclusive of evident premeditation because it was contingent upon his being forced to move out from the compound and ordered to stop the gambling games in his house. "At most," the Supreme Court went on, " appellant only expressed determination to commit a crime, which is entirely distinct from the premeditation which the law requires to be well-defined."

Treachery (Alevosia)—There is treachery when the offender commits any of the crimes against 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.[39] On the basis of this definition and of innumerable precedents, it was recently held that in an assault, made suddenly and unexpectedly, preceded by the focusing of a flashlight at the face of the deceased to temporarily blind his vision, which tended to insure the killing without affording the latter the least opportunity of defending himself[40] or where the defendant shot the deceased after calling the latter by name and as he was turning towards the accused, unprepared to defend himself against the sudden attack of the defendant,[41] the presence of treachery is manifest. In *People v. Mario*,[42] one of the accused grabbed the waist of the deceased and placed his hands around it, pinning the latter's arms thereby enabling the other defendant to stab the deceased at the left breast above the nipple. The Supreme Court *held:* There was treachery in the killing. By the acts of one of the defendants, the killing was insured without risk to themselves arising from the defense which the deceased might make.

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[33] People v. Lopez, G.R. No. L-14347, April 29, 1960.
[34] See Note 25a.
[35] I PADILLA, CRIMINAL LAW, 8th Ed. (1959), p. 298; see Note 25a.
[36] See Note 25a.
[37] I PADILLA, CRIMINAL LAW, 8th Ed. (1959), p. 318.
[38] See Note 25a
[39] Article 14, Par. 16, Revised Penal Code.
[40] See Note 25a.
[41] People v. Dacudao, G.R. No. L-13966, June 30. 1960.
[42] G.R. No. L-13295, May 31, 1960.

Abuse Of Superior Strength—In order that superior strength may aggravate the commission of the offense, it must be proved that the accused was physically stronger and abused such superiority.[43] This can be inferred from the facts of the case as when the assailants were all armed and in fact superior in number[44] or when the victim was a sexagenarian and undersized while the accused were not only superior in number but were also very much younger.[45]

ALTERNATIVE CIRCUMSTANCES

Intoxication—Intoxication is mitigating if the same is not habitual or subsequent to the plan to commit a crime.[46] In the absence of proof to the contrary, intoxication is presumed accidental and therefore mitigating.[47] This ruling is reiterated in the case of *People v. Ablao*.[48]

Degree of Instruction—As a general rule, lack of instruction is mitigating. There are however, two notable exceptions, namely, (1) in crimes against chastity and (2) in crimes against property. The first exception finds its latest support in the case of *People v. Lopez*,[49] wherein it was held that lack of instruction cannot be considered as a mitigating circumstance in the crime of rape.

PRINCIPALS

Inducement—It is well-settled in this jurisdiction that to be a principal by induction, it is necessary that the inducement should precede the commission of the offense and must be the determining cause thereof. With this as the basis, should an individual be held liable for the death of another if by reason of the *orders of investigation* he gave, his subordinates beat a civilian to such an extent that he died? This question was resolved in the negative by the Supreme Court in the case of *People v. Alvarez, et al.*[50] Said the Court: "The acts of Alvarez were limited to ordering the investigation of civilian Malaluan; he seems to have meant that Malaluan should be subjected to some punishment for his insolence against and resistance to the police officers, but there is nothing beyond that; there is nothing to show that his orders were to beat Malaluan to such an extent as to produce his death. In order that Alvarez may be considered as principal by induction, it would be necessary for the prosecution to prove that he actually directed, whether directly or indirectly, the beating of Malaluan."

For the same reason, where the appellant uttered the words "you had better killed him" to another who would have perpetrated the murder with or without such exhortation, it cannot be said that the former is a principal by inducement.[50a]

Indispensable Cooperation—To be a principal by indispensable cooperation, the accused must have participated in the criminal resolution and performed acts without which the offense would not have been accomplished.[51] Hence, in *People v. Mario*[52] the Supreme Court found that the victim could not have been stabbed by the defendant Mario had not his codefendant Dulay rendered the deceased helpless by grabbing his waist and pinning his arms to such

[43] I PADILLA, CRIMINAL LAW, 8th Ed. (1959), p. 330; People v. Yakan Abang, G.R. No. L-14623, December 29, 1960; People v. Guarnes. See Note 13.
[44] See Note 13.
[45] See Note 24
[46] Article 15, par. 3, Revised Penal Code.
[47] People v. Dacunay, et al., G.R. No. L-11568, March 30, 1959.
[48] G.R. No. L-13900, October 31, 1960.
[49] See Note 33.
[50] G.R. No. L-10650, July 26, 1960.
[50a] People v. Guarnes, see Note 13.
[51] I PADILLA, CRIMINAL LAW, 8th Ed. (1959), p. 409.
[52] See Note 42.

an extent that he could not perform an act of defense. On account of this, it was *held:* that Mario participated to such an extent as to fall within the pale of the law penalizing a principal by indispensable cooperation.

ACCOMPLICES

An accomplice or accessory before the fact is one who, without being a principal, cooperates in the execution of the offense by previous or simultaneous acts which are not sufficient to consummate the offense.[53] It is an essential condition to the existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice but is furthermore necessary that the latter, with knowledge of the criminal intent of the principal should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious way.[54] The case of *People v. Templonuevo*[55] well illustrates this statement. It appears that in the early morning of December 8, 1953, while Mamerto Balla and Cipriano Tapia were preparing breakfast in the house of Jaime Templonuevo, Leopoldo Gonzalo arrived and asked for the loan of a bolo. Tapia refused because the bolos were then being used. Disappointed, Gonzalo left. However, after the maid of Templonuevo told Tapia that he could lend the bolo, the latter went after Gonzalo. Before Tapia could say anything, Gonzalo angrily remarked, "putang ina mo." A quarrel ensued and the defendant, who was with Tapia struck Gonzalo on the forehead rendering him unconscious. Thereupon, Tapia slashed the throat of the deceased (Gonzalo) with a hunting knife. To what extent is Templonuevo liable? *Held:* The defendant is at most an accomplice because by rendering the deceased unconscious, he merely facilitated his subsequent slaying by Tapia. In other words, he cooperated in the slaying by previous or simultaneous, albeit non-indispensable acts for Tapia could have killed Gonzalo just the same without the intervention of Templonuevo.

DEATH PENALTY

Under article 47 of the Revised Penal Code, as amended by Republic Act No. 296, death penalty must be imposed in all the cases in which it must be imposed under the existing laws, except when the guilty person is more than seventy years of age and when upon appeal or review of the case by the Supreme Court, eight justices fail to agree as to the propriety of the death penalty, in which case reclusion perpetua shall be imposed. The second exception is amply illustrated in a number of recently decided cases.[56]

COMPLEX CRIMES

Single Act Constitutes Two or More Grave or Less Grave Felonies

Under Article 48 there is a complex crime when either a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for the commission of another.

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[53] I PADILLA, CRIMINAL LAW, 8th Ed. (1959), p. 417.
[54] People v. Arranchado, G.R. No. L-13943, September 19, 1960.
[55] G.R. No. L-12280, January 30, 1960.
[56] People v. Collado, et al., G.R. No. L-12002, Nov. 23, 1960; People v. Prias, G.R. No. L-13767, July 30, 1960; People v. Ablao, G.R. No. L-13900, October 31, 1960; People v. Sanchez, G.R. No. L-13335, November 29, 1960; People v. Del Prado, G.R. No. L-13336, November 29, 1960; People v. Pelonia, et al., G.R. No. L-14624, July 26, 1960; People v. Estacio, G.R. No. L-11430, January 30, 1960; and People v. Manigbas, G.R. No. L-10352, September 30, 1960, People v. Cunanan, See Note 13; People v. Pando, G.R. No. L-15167-68, December 29, 1960.

In *People v. Lopez*,[57] the accused was a rejected suitor of a widow. One night, during their rendezvous at a cane field, he decided to grab the opportunity of abusing his victim. This he accomplished by previously delivering fist blows at the widow, rendering her unconscious. After satisfying his lust, he grew afraid that his ignoble deed might be discovered, which impelled him to kill the widow. *Held:* The crime committed is rape complexed with murder because the accused's act of rendering the deceased unconscious with fist blows and in killing, after having carnal knowledge of her constitute just one and single continuous act resulting in the commission of the felonies of rape and murder.

Where, on the other hand, two offenses did not spring from one act although they were committed on the same occasion, there can be no complex crime.[58] In *People v. Lim Ho*,[59] the defendants were charged, in one information, of illegal exportation of gold in violation of Circulars Nos. 20 and 21, on the one hand, and of violating Circulars Nos. 20 and 42, the latter as amended by Circular No. 55 for failure to declare foreign exchange before departure for abroad and its exportation without license, on the other, both violations occurring on the same occasion.

Among the issues raised was whether or not the two crimes charged constitute a complex crime. The Court *held:* Although the crimes were committed on the same occasion, it should be borne in mind that one does not constitute a necessary means to commit the other nor were they the result of one single act. Therefore the violations committed should be charged and prosecuted under two separate informations and if found guilty, the defendants should be meted out with separate penalties for each offense.

In *People v. Remollino*,[60] appellant shot six persons successively and at short intervals. The lower court found him guilty of six separate crimes of homicide but imposed the penalty for three homicides only on the theory that par. 4 of article 70 precludes the imposition of the penalty for the other three. *Held:* There are six separate crimes. In order that a crime may be considered double homicide, in accordance with the provisions of article 48, it is necessary that the offenses constituting it be the result of one single act. This case should be distinguished from the case of *People v. Lawas, et al.*,[61] where though the death of 35 innocent persons was not the result of a single act, the Court held that there is one complex crime of multiple homicide only and not 35 separate homicides. The reason for this deviation from the general rule, according to the Court, is the fact that in this case the killing was the result of a single criminal impulse. There was no intent on the part of the appellants either to fire at each and everyone of the victims as separately and distinctly from each other. As Article 48 R.P.C. is not applicable, there must therefore be imposed as many penalties as there are crimes committed, since Article 70 R.P.C. governs successive service of sentences and not the imposition of penalties.

INDIVISIBLE PENALTIES

Article 63, par. 2 provides: In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

[57] See Note 33.
[58] See Note 9.
[59] *Ibid.*
[60] G.R. No. L-14008, September 30, 1960.
[61] G.R. No. L-7618-20, June 30, 1955.

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

Robbery with homicide falls perfectly within purview of this article. The penalty prescribed by law for this offense is reclusion perpetua to death. Where it is committed by a band, at nighttime, and in the dwelling of the offended party without the presence of any mitigating circumstance, the proper penalty should be the capital punishment. In *People v. Collado*,[62] death penalty was not imposed because the requisite number of justices failed to agree upon the propriety of the penalty.

The same article also provides in par. 2(4): When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. Therefore, if in the commission of the crime of robbery with homicide, the aggravating circumstances of treachery, dwelling, and disregard of sex of the offended party are attendant together with the mitigating circumstances of intoxication and plea of guilty, the greater penalty of death is in order. Again, as we have already noted, in *People v. Ablao*,[63] death penalty was not imposed for lack of agreement among at least eight justices on the propriety of the death penalty.

PENALTIES WITH THREE PERIODS

In cases where the penalty prescribed by law contains three periods, it should be imposed in its medium period where there are neither aggravating nor mitigating circumstances attending the commission of the offense.[64] If the crime committed be murder, the corresponding penalty is reclusion perpetua.[65]

Where the offense is committed with only one mitigating circumstance attendant, the penalty should be imposed in it is minimum period.[66] Thus, if the crime committed is murder and is attended by the mitigating circumstance of voluntary surrender, the proper penalty is reclusion temporal in its maximum period,[67] otherwise, if attended by an aggravating circumstance only, for instance dwelling; the maximum penalty is in order.[67a]

On the other hand, when both mitigating and aggravating circumstances are present, the courts are enjoined by law to reasonably offset those of one class against the other according to their weight.[68] Where the crime of homicide is attended by the mitigating circumstances of voluntary surrender and provocation and by the aggravating circumstance of disregard of rank, the penalty shall be imposed in its minimum period.[69]

But when murder qualified by treachery is attended by the aggravating circumstances of night time and abuse of superior strength, and by the mitigating circumstance of lack of intention to commit so grave a wrong as the one

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[62] G.R. No. L-12002, November 23, 1960.
[63] G.R. No. L-13900, October 31, 1960.
[64] Article 64 (1), Revised Penal Code.
[65] See Note 26; People v. Sorio, G.R. No. L-13113, November 29, 1960; People v. Atanacio, G.R. No. L-11844, November 29, 1960.
[66] Article 64 (2), Revised Penal Code.
[67] People v. Oyco, G.R. No. L-15815, September 26, 1960.
[67a] Art. 64(3) Revised Penal Code.
[68] Art. 64(4) Revised Penal Code.
[69] See Note 20.

committed, the maximum penalty should be imposed;[69a] and when the aggravating circumstance of obvious ungratefulness and mitigating circumstance of voluntary surrender concur, the medium penalty for the crime.[69b]

PENALTY UPON MINOR

According to article 68(2) the penalty to be imposed upon a minor over fifteen but under eighteen years of age shall be that next lower in degree than that prescribed by law. It follows that if the offenders, at the time of the commission of the crime of homicide, were between seventeen and eighteen years of age, the penalty next lower in degree than that prescribed by law for the offense (reclusion temporal) should be imposed in its proper period. The penalty next lower in degree from reclusion temporal is prision mayor.[70]

SUCCESSIVE SERVICE

In the case of *People v. Remollino*,[71] the lower court refused to impose all the penalties corresponding to six separate crimes of homicide on the theory that according to par. 4 of article 70 the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. The Court reiterated the doctrine in the case of *People v. Escares*,[72] that this article shall be taken into account, not in the imposition of the penalty, but in connection with the service of the sentences imposed. It is therefore an error for the lower court to refrain from imposing all the penalties that should be imposed for the commission of separate crimes because the threefold rule is applicable only in connection with the service of the sentences previously imposed.

INDETERMINATE SENTENCE LAW

Section 2 of the law provides among others that it shall not apply to those whose maximum term of imprisonment does not exceed one year. In *People v. Mancera*,[73] the Indeterminate Sentence Law was not applied because the penalty imposed upon the defendant was only 4 months and 1 day to 1 year.

PRESCRIPTION OF CRIMES

Article 90 of the Revised Penal Code provides that "crimes punishable by a correccional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years. x x x x And when the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in this article."

These provisions find application in the case of *People v. Cruz*.[74] On October 19, 1948, the accused, a private person and an applicant for Civil Service examination filled up the blanks in a Philippine Service Form No. 2, by stating in said document that he had never been accused, indicted or

[69a] People v. Pelonia, et al., G.R. No. L-14624, July 26, 1960. Should not abuse of superior strength and nighttime be absorbed by treachery? See People v. Sacayanan, G.R. Nos. L-15024-25, December 31, 1960, holding that these circumstances are absorbed by treachery.
[69b] See Note 25a.
[70] See Note 20.
[71] See Note 60.
[72] 55 O.G. 623.
[73] See Note 32.
[74] G.R. No. L-15132, May 25, 1960.

tried for violation of any law, ordinance or regulation before any court. It was, however, established that the defendant had been previously charged before the Justice of the Peace Court of Cainta, Rizal for the crimes of "atentado contra la autoridad," "lesiones menos graves," and slight physical injuries. On February 27, 1956, Cruz was charged before the Court of First Instance of Rizal with the crime of falsification of public document. He contended that the crime committed by him was perjury and that this offense had already prescribed at the time of the filing of the charge against him. Assuming that the crime committed by him is perjury, is the contention that it has already prescribed tenable? *Held:* Perjury is punishable by arresto mayor in its maximum period to prision correccional in its minimum period. Under par. 3 of article 90, "The crimes punishable by a correccional penalty shall prescribe in ten years with the exception of those punishable by arresto mayor which shall prescribe in five years." However, where the penalty prescribed by law is a compound one, the highest penalty shall be the basis of the application of the above rule. The penalty for the crime of perjury being a compound one the highest of which is a correccional penalty, said crime prescribes in ten years. Even assuming, therefore, that the prescription of the offense here in question began to run from the date of its commission since there was nothing that was concealed or needed to be discovered, as maintained by the accused, it is apparent that the present proceedings were, under the law, commenced within the statutory period. From October 19, 1948 when the application form was accomplished to February 27, 1956 when these proceedings were instituted, only 7 years, months and 8 days have elapsed.

Under the same Article of the Revised Penal Code, it is provided that "the crime of libel x x x shall prescribe in two years," which, pursuant to Article 91 of the same Code, "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 x x x." A question of importance, respecting the interpretation of the latter provision, was raised in the case of *People v. Olarte*.[75] From what time should the interruption of the period of prescription be reckoned, from the filing of the complaint with the Justice of the Peace Court, if it was so filed therein, or from the time the information was filed with the Court of First Instance? In the *Olarte* case, the defendant was charged with libel for having unlawfully written certain letters which were libelous, contemptuous and derogatory to a certain Miss Visitacion Meris, on or about February 24, 1954 and subsequently thereafter. On February 22, 1956, Miss Meris filed with the Justice of the Peace Court of Pozorrubio, Pangasinan, a complaint for libel against Olarte, which court forwarded the case to the Court of First Instance of Pangasinan, in which the corresponding information was filed on July 3, 1956.

The defendant argues that it is the filing of the information with the Court of First Instance that interrupts the running of the prescriptive period, not the presentation of the complaint in the Justice of the Peace Court or the receipt in the Court of First Instance of the record forwarded by said inferior court, because the proceedings in the Justice of the Peace Court merely seek to ascertain the existence of probable cause, and the prosecution still has to file an information, with the Court of First Instance before the latter can proceed with the determination of the merits of the case. Furthermore, it is argued that when Rep. Act No. 1289 changed the words "proper court"

[75] G.R. No. L-13027, June 30, 1960.

in the old law to the words "court of first instance" the intention of the law was to divest the Justice of the Peace Courts of the authority to conduct preliminary investigations in criminal actions for libel. But the Supreme Court dismissed these contentions. *Held:* "In *People v. Joson*, 46 Phil. 380, 385, this Court held that the filing of the complaint had the effect of interrupting the running of the prescriptive period so that an information was not necessary therefor. If our lawmakers intended to change the laws, the jurisprudence and established practice concerning the preliminary investigations in criminal actions for libel and the interruption of the period of prescription for said offense, they would have enacted a provision analogous to that of Section 187 of Republic Act No. 180 (Revised Election Code) which provides: The Courts of First Instance shall have *exclusive original jurisdiction to make preliminary investigations*, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this code..." In view of this, it is clear that the period of prescription was interrupted on February 22, 1956 when the complaint for libel was filed with the Justice of the Peace Court of Pozorrubio, Pangasinan, which was still within two years from the time the offended party discovered the crime.

But the mere lodging of an accusation by the offended party in the Fiscal's Office is not a sufficient compliance with the requirements of the law for the interruption of the running of the prescriptive period.[75a]

REBELLION

It has been settled in the *Hernandez*[76] and *Geronimo*[77] cases that rebellion can never be complexed with other crimes. If common crimes were committed on the occasion and in furtherance of the rebellion, they are absorbed as ingredients of the crime.[78] If not in furtherance of the crime of rebellion, such common crimes should be penalized separately.

In *People v. Rodriguez*,[79] it appears that the defendant was charged in the Court of First Instance of Laguna with illegal possession of firearms and ammunition. It is proved however, that the gun for the possession of which he is being indicted was one of the guns used in furtherance of the rebellion of which the defendant was charged and found guilty. The defendant moved to quash the information filed against him on the ground that the illegal possession of firearm is already absorbed by the crime of rebellion and therefore his additional conviction would place him in double jeopardy. *Held:* Considering that any or all of the acts described in article 135 when committed as a means to or in furtherance of the subversive ends described in article 134, become absorbed in the crime of rebellion and cannot be regarded or penalized as distinct crimes in themselves and cannot be considered as giving rise to a separate crime, the conclusion is inescapable that the crime with which the accused is charged in the present case is already absorbed in the rebellion case and to press it further now would be to place the defendant in double jeopardy.

Another notable case on the same point is the case of *People v. Nana*,[80] The defendants were convicted of the crime of rebellion. But certain Alejan-

[75a] People v. Tayco, 73 Phil. 509; People v. Del Rosario, G.R. No. L-15140, December 29, 1960.
[76] 52 O.G. 5506.
[77] 53 O.G. 68.
[78] People v. Aquino, G.R. No. L-13789, June 30, 1960; People v. Agarin, G.R. No. L-12298, September 29, 1960; See Notes 76 and 77.
[79] G.R. No. L-13981, April 25, 1960.
[80] G.R. No. L-9483, January 30, 1960.

dro Briones and Delfin Bumanlag were further found guilty of the crimes of multiple murder and murder, respectively. From this portion of the decision of the court a quo, Briones and Bumanlag appealed contending that in view of the case of *People v. Hernandez* [81] their additional conviction of the crimes of multiple murder and murder cannot stand, because these offenses form part of, and are absorbed in the crime of rebellion. On the other hand the prosecution contends that inasmuch as the defendants pleaded guilty to the information, they should be convicted not only of the crime of rebellion but also of the other crimes charged for failure to object to the multiple crimes charged in the information. In support of this contention, the prosecution cited the case of *People v. Romagosa*.[82] *Held:* The contention of the defendants is correct. The *Romagosa* case is not applicable because in that case the defendant was found guilty not only of rebellion but also of another crime having pleaded guilty to an information which charged him not only of committing the crime of rebellion but also of another crime, not alleged to be in furtherance of rebellion. But in the present case, it is alleged in each specific count that the acts therein charged were committed in furtherance of rebellion. The defendants should only be convicted of the crime of simple rebellion.

FALSIFICATION OF PUBLIC DOCUMENT BY PUBLIC OFFICER

Untruthful Statements in Narration of Facts

In order that there can be a conviction under article 171 par. 4, there must be a legal obligation to make a narration of *facts* and the facts narrated be false.[83] Consequently, if the misrepresentation relates to a matter of law, falsification is not committed.[84] In *People v. Yanza*,[85] it appears that in the general elections held on November 8, 1955, Yanza was elected municipal councilor of Tayabas, Quezon. She was duly proclaimed and took her oath of office on March 31, 1956. A quo warranto proceeding was filed against her on the ground that in November 1955 she had not yet completed her 23rd birthday inasmuch as she was born in March 1933. But the proceeding was dismissed because it was not filed within a week after her proclamation as required by section 173 of the Election Code.

On August 4, 1956, the fiscal filed an information charging her with falsification because in her certificate of candidacy, she had made the false statement, wilfully and feloniously, that she was eligible to the office concerned although she knew fully well that she under 23 years of age, thereby making in this manner an untruthful statement in the narration of facts. *Held:* Considering that the defendant certified that she was *eligible* for the position, she practically made *a conclusion of law*, which turned out to be inexact or erroneous, and for such act she may not be held guilty of falsification. Article 171 of the Revised Penal Code punishes only the making of untruthful statements in a narration of *facts*. Had she stated that she was born on March 29, 1931, she would undoubtedly have been guilty of falsification because the date of her birth was a matter of fact. But when she declared that she was *eligible* she merely expressed her belief that 23 year requirement could be adequately satisfied if she attains 23 years upon assuming the councilorship.

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[81] See Note 76
[82] G.R. No. L-8476, February 28, 1959.
[83] 2 PADILLA, CRIMINAL LAW, 8th Ed. (1960), p. 268.
[84] 22 AM. JUR. 454
[85] G.R. No. L-12089, April 29, 1960.

USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS

Need there be a pretense of official position before the crime of usurpation of official functions can be committed? This query was answered in the affirmative in the case of *People v. Lidres*.[86] In this case, Dionisio Lidres and Lesita Diotay applied for the position of a school teacher of Biasong Elementary School of Balamban, Cebu, which position was temporarily left vacant by Magdalena Eschavez. The supervising teacher, Laspiñas, requested both applicants to sign an agreement to the effect that they take over the position left by Eschavez on a fifty-fifty basis.

On February 12, 1954, defendant, relying upon such agreement, appeared at the Biasong Elementary School to take over the class then being conducted by Diotay. The latter refused to give way to the former. When the question was brought before the supervising teacher, he retained Diotay and advised Lidres not to return anymore. In defiance of this order the defendant continued taking over Diotay's class, against the latter's will. On the basis of these facts, an information was filed charging the defendant of having, "without pretense," usurped the functions of a public officer. *Held:* Under Republic Act 379, the law in force at the time of the commission of the offense charged, pretense of official position is an essential element of the crime of usurpation of public functions. Inasmuch as the information specifically states that the defendant committed the acts charged as crime "without pretense of official position" the defendant cannot be convicted of usurpation of official functions.

MURDER

Killing is qualified to murder when it is attended, among others, by the circumstance of treachery. We have already mentioned that where the assault was made suddenly and unexpectedly, preceded by the focusing of a flashlight at the face of the deceased to temporarily blind his vision, which tended to insure the killing without affording the latter the least opportunity of defending himself,[87] or when the defendant shot the deceased after calling the latter by name and while he was turning around in response to such call, unprepared to defend himself against the sudden attack of the defendant,[88] treachery is present.

In *People v. Rubinial*,[89] the facts are as follows: During a benefit dance in barrio Bacolod, Cagwait, Surigao, Inocencio Davila called Teotimo Rubinial a "notorious bandit" because the latter attended the dance without having paid a ticket. Teotimo left the place only to return later, with his brother Acasio, to seek for revenge.

When Teotimo and Acasio reached the place, they went to the house where Davila was eating. Acasio went straight to Davila, whose back was towards the former, and stabbed him. Davila managed to run but Teotimo overtook and stabbed him. Immediately thereafter, Teotimo kicked Davila on account of which the latter fell to the ground. *Held:* The wounds were inflicted with treachery thus qualifying the slaying to murder.

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[86] G.R. No. L-12495, July 26, 1960.
[87] People v. Kusain Saik, G.R. No. L-6406, January 30, 1960; See also People v. Tuazon, G.R. No. L-12142, March 30, 1960; Note 25a; and People v. Sorio, G.R. No. L-13113, November 29, 1960.
[88] See Note 41.
[89] See Note 26.

SLIGHT PHYSICAL INJURIES

Where there is dearth of proof as to the period of the offended party's incapacity for labor or of the required medical attendance, only the crime of slight physical injuries under article 266(2) is committed.[90]

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Under the last paragraph of article 267, where the kidnapping was committed for the purpose of extorting ransom from the victim or any other person, the penalty of death shall be imposed upon the kidnapper. However, before the supreme penalty of death could be imposed, it is indispensable, as in any other case of illegal detention, that the victim be deprived of liberty.[91] Whether or not there is such deprivation of liberty is a question to be determined according to the circumstances of each particular case. In *People v. Acosta*,[92] the defendant Consolacion Bravo took Juan Albaira, Jr. from his home and brought him to Camp Murphy at the house of one Herminia Ocampo. There she left the child with the warning that he must not leave the place. Much as the child wanted to leave he could not do so because he did not know his way home. On the following day the defendant brought the child to Tondo and left him with Antonia de Viernes with the same warning that the child should not leave the house. Thereafter, on the same day, Bravo phoned the mother of the child demanding P75.00 for the return of the child. *Held:* While it is true that the child was playing while he was in the house of Herminia Ocampo at Camp Murphy the fact remains that he was under the control of the accused Bravo, who left him there as he could not leave the house until she should return for him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty. "It is like putting him in a prison or in an asylum where he may have freedom of locomotion but not the freedom to leave it at will. The same thing can be said of his stay in the house in Tondo . . . In addition, the Court continued to say that because the boy was of tender age and he was warned not to leave until her return, he was practically a captive in the sense that he could not leave because of his fear to violate such instruction.

The crime committed is kidnapping as defined in the last paragraph of article 267, as amended by Republic Act No. 1084. But inasmuch as the defendants do not appear to belong to that type of kidnappers who deserve the supreme penalty of death considering the small amount involved and the circumstances under which it was committed, and for lack of the requisite vote, the penalty of a reclusion perpetua was imposed.

In *People v. Sacayanan*,[92a] the accused were not convicted of kidnapping for having taken their victims 40 meters away from the latter's house and shot them because there was no proof showing the former's intention to deprive their victims of liberty for some time and for some purpose. There was even no appreciable time between the taking and the shooting from which kidnapping may be inferred.

GRAVE THREATS

The crime of grave threat is committed by anyone who shall threaten another with the infliction upon the person, honor or property of the latter

[90] See Note 54; People v. Penesa, 81 Phil. 398.
[91] People v. Suarez, et al., 82 Phil. 484.
[92] G.R. No. L-11954, March 24, 1960.
[92a] See Note 69a.

or of his family any wrong amounting to a crime.[93] Suppose, however, in threatening another by means of a letter, libelous or derogatory remarks were used, should the offender be held to answer for the crimes of grave threat and libel or for the crime of grave threats alone? In *People v. Yebra*[94] it was held that the defendant should be held liable for grave threats only. The facts of this case may be briefly stated: On February 7, 1958, Yebra sent a letter to Narciso Dames, the pertinent portion of which is quoted in the information as "They must not be stubborn about Mr. Luciano Sta. Catalina's fooling the people. And if there is nobody who will care among the authorities in the government in this request of my being belittled and belittling of others and if Sta. Catalina will not pay what I paid and others paid for the donation, you can be sure that I will do, life for life against those people who have been fooling our barrio and to the authorities in the government, I hope they will not withhold all what I said in this respect." *Held:* The letter is more threatening than libelous and the intent to threaten is the principal aim and object of the letter. The libelous remarks contained therein are merely preparatory remarks culminating in the final threat. The defendant should not be prosecuted separately for the crime of libel on account of such derogatory remarks, which should be considered part of the more important offense of threat.

ROBBERY WITH HOMICIDE

This is a special complex crime, distinct from the complex crimes defined under article 48, and for the commission of which the Revised Penal Code prescribes a special penalty, that of reclusion perpetua to death. However, to fall within the purview of the provision defining this crime, it is necessary to show that the principal object of the accused was to commit robbery, but that before or during the robbery and by reason or on the occasion thereof, a killing was perpetrated.[95] So that if the principal aim of the accused is not to rob but to kill, this is not the offense committed, regardless of whether or not robbery in fact took place afterwards.[96]

Homicide Used In a Generic Sense

"Homicide" as used in article 294, par. 1 of the Revised Penal Code is to be understood in a generic sense and contemplates killing in every sense of the word, it being immaterial whether qualifying circumstances are attendant or not.[97] This principle was reiterated in the case of *People v. Dagundong*,[98] on the basis of the following facts: On October 7, 1950 between 7 and 8 o'clock in the evening defendants conspired to rob the house of Alice Lake popularly known as Anita Linda. All armed with pistols, the defendants left their jeep some distance away from the house and climbed over its walls. Dagundong and Bulaon entered the kitchen door while Ebrada and Serrano stood guard outside the windows. Dagundong shot Alice's sister several times and ransacked the latter's bedroom. Due to timely intervention of police authorities, robbery was not consummated. The lower court sentenced all the defendants except Dagundong guilty of frustrated robbery with homicide but found Dagundong guilty of murder, qualified by treachery, with the aggravating circumstances of abuse of superior strength, in band, night time, and

[93] Article 282, Revised Penal Code.
[94] G.R. No. L-14348, September 30, 1960.
[95] 2 PADILLA, CRIMINAL LAW, 8th Ed. (1960), p. 606.
[96] People v. Atanacio, G.R. No. L-11844, November 29, 1960.
[97] People v. Bulan, G.R. No. L-14934, July 25, 1960; People v. Manuel, et al., 44 Phil. 333.
[98] G.R. No. L-10398. June 30, 1960; People v. Yakan Abang, See Note 43.

with the aid of motor vehicle, and was consequently sentenced to death. On the point raised by Dagundong in his appeal, the Supreme Court, through Mr. Justice David, declared: "It was established that it was he (Dagundong) who had fired the fatal shots at Mrs. Hewell. But though the slaying was attended by treachery, his crime was not murder. The term 'homicide' in par. 1 of article 294 is used in its generic sense and the offense defined therein comprehends not only robbery with homicide in its limited sense but also murder. So an offense is not taken out of the purview of this article merely because the homicide rises to the atrocity of murder." The decision of the lower court was accordingly modified.

Nevertheless, the presence of circumstances, which would otherwise qualify killing to murder, should be considered as generic aggravating circumstances.[98a]

Liability of the Principals for all the Consequences of Robbery

Similar to the legal axiom that one should be responsible for all the direct and natural consequences of his unlawful act is the principle enunciated in *People v. Morados, et al.*[99] and reiterated in *People v. Carunungan*,[100] namely: Whenever a homicide has been committed as a consequence or on the occasion of robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the crime of robbery with homicide although they did not take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.

ESTAFA

What Constitutes Damage in Estafa

Estafa or swindling is governed by articles 315 to 318 of the Revised Penal Code. As a general rule, deceit and damage are essential elements of this crime. But in cases where there is fraudulent conversion or misappropriation of property received in trust, on commission, or under administration or under any obligation involving the duty to make delivery deceit is not necessary for in such cases damage and abuse of confidence make up the offense.[101] The case of *People v. Galsim*[102] illustrates the general rule. In this case, the accused received from the complainant Mauro Magno the sum of ₱2,500, by way of loan. To secure the same, the former executed in favor of the latter a deed of chattel mortgage on a 2-story house expressly warranting therein that the said building was free from any lien or encumbrance. But such was not the case for the accused's property has in fact been previously mortgaged in favor of spouses Alejandro Anatolio and Juliana dela Torre, which mortgage was still subsisting. Magno's application for the registration of the deed of mortgage was therefore denied. The defendant contends that he cannot be held guilty of estafa for there was nothing to show that the complainant had suffered any damage or injury as a result of the execution of the second mortgage. *Held:* The contention of the defendant is untenable. The complainant had been deprived of the use of his money because of such misrepresentation and he stood to lose it in view of his failure to obtain the registration of the deed of mortgage. It must be noted that when Magno tried to register the mortgage in the office of the registrar of

[98a] People v. Yakan Abang, See Note 98.
[99] 70 Phil. 558.
[100] G. R. No. L-13283, September 30, 1960.
[101] 2 PADILLA, CRIMINAL LAW, 8th Ed. (1960), p. 726
[102] G.R. No. L-14577, February 29, 1960.

deeds, the latter refused registration for the apparent reason that the same could not be registered as first encumbrance on the property. Under the circumstances, the damage or injury that such failure to register has caused the complainant is apparent and constitutes one of the elements of estafa under the law.

Failure To Account Upon Demand Is Circumstantial Evidence Of Misappropriation

People v. Benitez[103] reiterates the doctrine that proof of actual conversion or misappropriation is not indispensable for conviction of the crime of estafa. Briefly, the facts of the case can be stated thus: The accused, as collector of the rentals from the houses of the offended party, failed, upon demand, to turn over to the latter his collections amounting to ₱540.00. To pay this off Benitez offered to work in the establishment of the offended party, Jose Chua, and from the salary that he might earn, the sum of ₱100.00 would be deducted until the sum of ₱540.00 shall have been fully paid. This offer was accepted by Chua. The accused proved not to be true to his words for after a few days he quit working. He was sued for estafa.

Benitez contended that he could not be held guilty of the crime because there is no proof of conversion or misappropriation of the said ₱540.00. For his second defense, he added that his agreement with his employer converted his criminal liability, if any, into a mere civil obligation. Rejecting both contentions, the Court *held:* Failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation. In the case at bar, the accused admitted having collected the sum of ₱540.00 as rentals from the different tenants of his employer. It is likewise admitted that he failed to account for and turn over said amount to his employer, upon demand therefor, without giving any reason or explanation whatsoever. These circumstances, together with the fact that the accused obligated himself to make restitution, clearly point to misappropriation.

As to his other contention that his criminal liability has been converted into a mere civil obligation as a consequence of the written agreement him and his employer, it is well-settled that criminal liability for estafa is not affected by compromise for it is a public offense which must be prosecuted and punished by the government on its own motion though complete reparation should have been made of the damage suffered by the offended party.[104]

ARSON

In order that there can be a proper conviction of arson under par. 1 of Article 321, it is necessary that there should be specific allegation in the information that the defendant set a building on fire *knowing* it to be occupied at the time by one or more persons. This defect cannot be cured by evidence. Neither can there be a valid conviction under par. 5 of the same article if there is no allegation in the information that the building burned is used as a dwelling and is located in an uninhabited place. But this formal defect should not shield the accused from punishment if it is proven beyond reasonable doubt that he committed arson, in which case he falls within the purview of Article 322, which penalizes arson not included in Article 321.[105]

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[103] G. R. No. L-15923, June 30, 1960.

[104] See also Tubo v. People & Court of Appeals, G.R. No. L-9811, April 22, 1957; People v. Zamora, 2 Phil. 382; People v. Lumbo, 51 O.G. (CA) 228.

[105] Ilo v. Court of Appeals, G.R. No. L-11241, July 26, 1960.

PROSECUTION OF CRIMES AGAINST CHASTITY

Complaint By The Offended Party Is Jurisdictional

Article 344, par. 3 provides: "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 guardians..." This requirement is mandatory and jurisdictional.[106] This principle finds its latest application in the case of *People v. Aranda.*[107] In this case, the defendant was charged in the Court of First Instance of Batangas with the crime of acts of lasciviousness penalized by Article 336 of the Revised Penal Code. The information was subscribed by the First Assistant Provincial Fiscal and not by the offended party. Neither the complaint subscribed and sworn to by the offended party was transmitted to the Court of First Instance nor was it offered in evidence at the trial of the case. *Held:* According to Article 344, the crime of acts of lasciviousness among others may be prosecuted only upon the complaint filed by the offended party or her parents, grandparents, or guardian. It is not enough that at the beginning of the first paragraph of the information it recites that it is filed at the instance of the offended party.[108] Failure to comply with this requirement is a fatal defect.[109]

This case should be distinguished from the case of *People v. Perido*, 44 O.G. 2764 where the complaint subscribed and sworn to by the mother of the offended party was attached to the record of the case in the Justice of the Peace Court and although the complaint was not introduced in evidence in the Court First Instance, it was actually transmitted to this latter court to form part of the record of the case. Here the complaint was not filed in the Justice of the Peace Court nor in the Court of First Instance to form part of the record of the case. Neither was it introduced in evidence by the prosecution at the trial of the case.

LIBEL

Motion For Reconsideration Is A Privilcged Communication

Article 353 defines libel as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstances tending to cause dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

From the foregoing definition, the four elements of libel are apparent, viz., (1) Defamatory imputation, which causes dishonor or discredit; (2) malice, which may either be in law or in fact; (3) publication; and (4) victim must be identifiable.[110]

Malice constitutes the desire to impeach the reputation, integrity and honesty of the defamed person. Although as a general rule, malice is presumed from defamatory statements, however, in privileged communications, as defined in Article 354, it must be proved by the prosecution. In a case,[111] it was held that if a motion for reconsideration contains imputations which, albeit libelous, are nevertheless pertinent and relevant to the movant's cause, it cannot be

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[106] 2 PADILLA, CRIMINAL LAW, 8th Ed. (1960), p. 904.
[107] G.R. No. L-12661, January 30, 1960.
[108] People v. Palabao, G.R. No. L-8027, August 31 1954.
[109] U.S. v. Narvas, 14 Phil. 410; U.S. v. Cruz, 20 Phil. 263; People v. Trinidad, 58 Phil. 163; People v. Manaba, 58 Phil. 665; People v. Ugalde (Unpublished); People v. Mundia, 60 Phil. 372; Tolentino v. De la Costa, 66 Phil. 97; and People v. Palabao, See Note 108.
[110] 2 PADILLA, CRIMINAL LAW, 8th Ed. (1960), p. 955.
[111] People v. Andres, G.R. No. L-14548, April 29, 1960.

said that there is present a desire to impeach the integrity, reputation and honesty of another.

VENUE OF LIBEL CASES

Reason For The Law

Before Article 360 was amended by Republic Act No. 1289, the offended party was permitted to file the civil and criminal complaints for libel in any of the places where the writing complained of has been circulated. Under the present state of the law, in cases of libel, the place of trial has to be either the residence of the offended party or the residence of the accused and if the criminal action is brought in one province the civil action has necessarily to be presented in the same court and in the same province.

The reason for this change is stated by the Supreme Court in the case of *People v. Olarte*,[112] quoting Senator Lorenzo Sumulong, as follows: "This provision in our existing law (the old law) has oftentimes subjected to harrassment or hardship reporters or publishers of newspapers who are accused of libel because under the law when an alleged libel in the newspaper which circulated throughout the Philippines is filed, the action whether criminal or civil may be presented in any place where the libel was published and it can well happen that the libel suit whether criminal or civil may be filed in a province or district far away from the residence of the accused. It may also happen under our present law that the alleged offended party may divide his complaint by filing a criminal action in one province where the libel was published and then filing a civil action in another province very far away from the province where the criminal case was filed and this will largely work hardship and tremendous expenses as well as difficulties to the accused. And it is for this reason that this bill was originally filed in the Lower House where it has been passed..."

Where Republic Act 1289 Does Not Apply

The last proviso of the law provides: "That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions to which, have been *filed in court* at the time of the effectivity of this law." What is meant by the words "filed in court" under the abovementioned provision? This question was resolved in the case of *People v. Te*.[113] It appears therein that a complaint for libel was filed against the defendants in the Justice of the Peace Court of Balayan, Batangas, on March 4, 1955 based on an alleged libelous article published in "Bagong Buhay" in its issue of August 12, 1954. After the corresponding preliminary investigation, the Justice of the Peace Court elevated the case to the Court of First Instance and the Fiscal filed the corresponding information on July 8, 1955. Meanwhile, it appears that the City Fiscal of Manila had already filed an information charging the same offense on May 18, 1955. Where was the case first *filed in court*, in Batangas or in Manila? If the complaint filed in the Justice of the Peace Court in Balayan, Batangas constituted *filing in court*, there is no question that the Court of First Instance of Batangas acquired jurisdiction of the case to the exclusion of other courts. *Held:* The phrase "have been *filed in court*" contemplates the filing of the criminal and/or civil case with the court of competent jurisdiction. Certainly, the Justice of the Peace Court of Balayan was not the proper court because it could not have tried and

[112] See Note 75.
[113] G.R. No. L-11747, March 24, 1960.

decided the case which is triable by the Court of First Instance. Consequently, the filing of the information in Manila being of a previous date, it has jurisdiction to try the case to the exclusion of the Court of First Instance of Batangas.

Te Case Distinguished From Olarte Case

Note that in this case (Te case) the Supreme Court said: "The filing of the complaint x x x for the purposes of preliminary investigation by the justice of the peace cannot be said to be the commencement of the action." Does this conflict with the ruling in the case of *People v. Olarte* and therefore be deemed to have been abrogated, the latter case being later in point of time? The Court, in the *Olarte* case itself answered this question in the negative. It held that the issue in *Te* case is whether or not the filing of a complaint for the purposes of preliminary investigation should be deemed a part of an action or the commencement thereof, to be precise; while in the *Olarte* case the controversy centers around the question of whether the filing of a complaint with the Justice of the Peace Court for the purpose of preliminary investigation interrupts the running of the prescriptive period for the crime of libel.

CRIMINAL NEGLIGENCE

Criminal negligence or quasi-offenses may be committed either by reckless imprudence or by simple negligence. The law as it is now holds one liable if he commits through reckless or simple imprudence, as the case may be, an act which if committed wilfully would constitute a grave, less grave or a light felony.[114] However, before Article 365 was amended by Republic Act No. 1790 an act committed through reckless imprudence was not penalized if it would constitute only a light felony were it committed wilfully, while if committed through simple negligence, being of a lighter degree, an act would constitute a felony. As already adverted to, this absurdity has been cured by the aforementioned amendatory act.

Where Criminal Negligence Coexists With Good Faith

The test for liability under Article 365 is not the presence or absence of good faith on the part of the accused. In *People v. Golez*,[115] the accused without being duly licensed to practice medicine and knowing fully well that she was incompetent and not possessing the necessary technical or scientific knowledge or skill, treated another person, who died as a consequence. In convicting the accused the Court *held:* That the defendant may not have been motivated by a desire to kill the victim but ordinary diligence counsels one not to tamper with human life by trying to treat a sick man when he knows that he does not have the special skill, knowledge and competence to attempt at such treatment and cure, and may consequently reasonably foresee harm or injury to the latter.

[114] People v. Aguilar, et al., G.R. No. L-11302, October 28, 1960.
[115] See Note 60.