CRIMINAL LAW

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A survey of the decisions of the Supreme Court in Criminal Law for the year 1962 shows a decided adherence to and reiteration of previously enunciated doctrines. In a few cases there have been reversions from more recent rulings in favor of prior ones. Some cases afforded room for clarification and amplification of certain penal code provisions, with fine distinctions pointed out.

It is also to be noted that there has been reluctance on the part of the High Tribunal to impose the supreme penalty of death. Decisions of the lower courts imposing such penalty received affirmation only in extreme cases, with the culprits showing unusual criminal perversity.

MOTIVE

Motive is the moving force which impels one to action, as distinguished from criminal intent, which is the purpose of doing the means to effect the result.[1] Intent is an essential element of a felony committed by "dolus," but motive is not necessary as an essential element of a crime. It is only when there is doubt as to the identity of the perpetrator of a crime that motive becomes material for conviction. But it will be noticed that as an additional element of proof, the Supreme Court frequently takes into consideration the motive that attaches to the commission of the crime.

In *People v. Solana,*[2] the Court reiterated the aforementioned rule that motive is unessential to conviction when there exists no doubt as to the identity of the culprit, as when all the defendants admitted participation in the criminal event.

In *People v. Rogales,*[3] the Prosecutor failed to establish any motive for appellant to kill the deceased who was his cousin, but the court sustained conviction stating: "Motive is not absolutely necessary to pin appellant's liability. Proof of motive is essential only in case of doubt as to the identity of the killer, not so when the killer's liability is established by clear, positive, and direct evi-

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* Book Briefs Editor, *Philippine Law Journal*, 1962-63.
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[1] Padilla, A., Criminal Law, Vol I, 36 (1959).
[2] G.R. No. L-13967, Sept. 28, 1962.
[3] G.R. No. L-17531, Nov. 30, 1962.

dence (*People v. Miranda*, G.R. No. L-5385, Dec. 28, 1953; *People v. Corpuz*, G.R. No. L-12718, Feb. 24, 1961)."

In *People v. Padua*,[4] the basis of the conviction of the accused, which was the prosecution witness' testimony that he saw the accused fire at his sister on the night in question, was strengthened by the evidence of motive. The deceased had previously charged the accused with the crime of robbery committed in their house.

Likewise, in the case of *People v. Iman Sawah*,[5] while conviction was based entirely on the testimony of the state witness, the presence of motive on the part of the appellant was a determining factor in the Court's decision. The facts revealed the enmity between the defendant and the deceased. The state witness testified that the defendant promised to pay him ₱500.00 reward for killing the deceased. In the absence of improper motive on the part of the witness to implicate the accused, the Court gave full faith and credit to his testimony.

In *People v. Dumlao*,[6] the Court discussed the motive after being convinced that the accused were guilty of the crime charged. The motive, according to the Court was that accused believed the deceased to be responsible for or instrumental in the execution by the guerrillas of their cousins, as supposed spies of the Japanese.

Again, in the case of *People v. Regal*,[7] while the evidence showed beyond reasonable doubt that it was the accused who fired the fatal shot, the Court did not consider it amiss to note that he had sufficient motive to commit the crime. Some three weeks before, he had a quarrel with the deceased over the boundary separating his land from that being administered by the deceased.

In *People v. Domenden*,[8] the Court emphasized the presence of motive to support its judgment, saying, "As to the motive of the killing, it appears that a few hours before the incident, the deceased Foronda and Appellant Domenden had an altercation. Appellant harbored resentment against Jovita because he suspected her of having illicit relations with said Foronda. The husband of Jovita, who was with the U.S. Army in the United States, is a close relative of Domenden. When Domenden's uncle was killed by Quinto, Foronda shielded Quinto and threatened to shoot Domenden's relatives who wanted to get even with Quinto."

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[4] G.R. No. L-14547, April 28, 1962.
[5] G.R. No. L-15333, June 29, 1962.
[6] G.R. No. L-17163, Sept. 8, 1962.
[7] G.R. No. L-14753, July 31, 1962.
[8] G.R. No. L-17922, Oct. 30, 1962.

On the other hand, when there is doubt as to the testimony of the witness, the absence of motive furnishes the ground for acquittal. Thus, in *People v. Ablog*,[9] the Court exonerated the appellant, reasoning, "The witness' testimony that both Santos and Appellant fired at the deceased stands unsupported and the possibility that he may have erred is strong. While he was able to describe Santos' position in minute detail in the act of shooting, he simply said when questioned as to appellant's position, that it was the same as that of Santos. Whether or not the three bullets were fired from one gun alone is not definitely known, but as reasoned out by the trial court, considering that the wounds were very close together and that all the three shots were fired in succession from a carbine, it is hard to believe that the shots came from two firearms. Moreover, while Santos had a motive in killing Abigania, the same cannot be attributed to the appellant."

JUSTIFYING CIRCUMSTANCES

Justifying circumstances are those which make an act, otherwise criminal, lawful and justified. A person who acts with the concurrence of a justifying circumstance does not transgress the law, that is, does not commit any crime in the eyes of the law, because there is nothing unlawful in the act or conduct of the actor; the act of such person is in itself both just and lawful.[10] A person so acting does not incur any criminal liability.[11] Therefore, there is neither a crime nor a criminal and hence there is neither criminal nor civil liability.[12]

Self-Defense

Self-defense as a justifying circumstance requires the concurrence of three elements—unlawful aggression, reasonable necessity of the means employed by the defendant and lack of sufficient provocation on his part. As an element of self-defense, unlawful aggression, means actual or imminent peril to one's life or limb, either by actual physical assault, or at least by threat to inflict injury. But the threat must be offensive and positively strong to show the intent of the aggressor to commit the injury. A mere threatening attitude is not sufficient.[13] Lacking in any of the above requisites, the plea of self-defense cannot be sustained.

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[9] G.R. No. L-15310, Oct. 31, 1962.
[10] Francisco, V. J., Revised Penal Code, Vol. I, 131-132 (1952).
[11] Revised Penal Code, Art. 11.
[12] Padilla, *supra*, p. 130.
[13] U.S. v. Guysayco, 13 Phil. 292.

It is incumbent upon the accused, in order to avoid criminal liability, to establish the justifying circumstance to the satisfaction of the court by clear and convincing evidence. Thus, in *People v. Solana,* the Court stressed that if the accused must hope to be sustained in his plea of self-defense, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution.

In *People v. Carlos,*[14] self-defense was interposed as one of the defenses. Appellant claimed that the deceased drew a hand grenade from his pocket, whereupon the appellant drew his revolver, upon seeing which the deceased put back the hand grenade and tried to get appellant's revolver. In the scuffle that ensued, the deceased was killed. The Court opined: "Since, according to appellant's own testimony, the deceased had returned the hand grenade to his pocket upon seeing the appellant draw his revolver, appellant was not in grave danger of his life as the deceased was otherwise unarmed. It has not been shown that the deceased ever was in a position to be able to snatch the revolver. The firing at the deceased was unjustified."

In *People v. Santella,*[15] self-defense was also claimed as a justifying circumstance. However, as observed by the Court, the fact that the deceased had several gunshot wounds, two of which were on his back, belied appellant's theory that he fired only once and in self-defense. None of the elements of self-defense was proved.

In denying the plea of self-defense in the case of *People v. Bautista,*[16] the Court explained: "The theory of self-defense is predicated upon the fact that when Bautista met the deceased on the eventful night, he was not armed and when the deceased stabbed him with a balisong knife, they grappled for the possession of the knife and he was able to wrest the knife with which he stabbed the deceased seven times, leaving him dead. This narration is in clear contrast to the finding of the attending physician that the wounds of the victim were inflicted at least by three instruments which could not have been produced by the only knife referred to by Bautista."

In *People v. Susukan,*[17] the Court held that "appellant's claim of self-defense must fail because, in the first place, if the deceased made the attack, it is very improbable that he would have received the fatal wounds on the neck and head as he did, and the appellant would have certainly received more serious injuries than were the

[14] G.R. No. L-16306, July 31, 1962.
[15] G.R. No. L-16665, April 23, 1962.
[16] G.R. No. L-17772, Oct. 31, 1962.
[17] G.R. No. L-18030, Oct. 31, 1962.

skin-deep wounds he showed the physician a month later. Furthermore, the testimony of the prosecution witness to the effect that the accused suddenly ran from behind and hacked the deceased is confirmed both by their (witnesses') position as they walked behind the deceased and the mortal wound found on the head of the deceased. Lastly, it is improbable that the deceased would have attacked a much bigger adversary who was, besides, armed with a bigger weapon than that he was carrying. With his position as a public school teacher, it is hard to believe that without provocation he would have started a fight."

In the above cases, the Court took into consideration the weapon used, the nature, character and position of the wounds inflicted, the manner by which the attack was committed, in addition to the elements of unlawful aggression and insufficiency or lack of provocation on the part of the deceased, in determining the presence or absence of self-defense as a justifying circumstance.

MITIGATING CIRCUMSTANCES

Mitigating circumstances are those which if present in the commission of the crime, do not entirely exonerate the actor from criminal liability but serve only to reduce the penalty. They may be attributed to the impulsive causes of the felony; to the physical, intellectual or moral capacity of the delinquent; or to his subsequent conduct with respect to the felony and its consequences.[18]

Incomplete Self-Defense

Incomplete self-defense as a mitigating circumstance requires that the accused must have acted in defense of self, but not all the elements of self-defense, as a justifying circumstance, are present.

In *People v. Oñas*,[19] the accused claimed justification for the killing of the deceased on the ground of self-defense. The Court, in refusing to give full credit to the claim, pointed out the facts, explaining: "Consideration of evidence especially of the wounds found in the person of Oñas and contusion in the arm of his wife plus the testimonies of two witnesses leads us to believe that the deceased Gallego must have previously attacked Oñas with a cane . . . as a consequence of which Oñas was compelled to defend himself. We find that deceased started the aggression because if Oñas was already provided with bayonet before the deceased struck him with a cane, Oñas and his wife would never have received their injuries

[18] Francisco, *supra*, p. 240.
[19] G.R. No. L-17771, Nov. 29, 1962.

because a bayonet is a more deadly and effective instrument than a cane. We find in consequence that the stabbing of the deceased was preceded by an unlawful aggression, without provocation on the part of the accused. But the Court was quick to add that "However, the appellant is not entitled to complete acquittal because of the absence of the second element of self-defense, namely, the reasonableness of the means used to repel the unlawful aggression. With his cane the appellant could have warded off the blow made by the deceased, and even if he had actually drawn his bayonet, this drawing of the bayonet would have been sufficient to prevent the deceased from continuing with the attack. In stabbing the deceased with his bayonet appellant went beyond what was necessary to defend himself against the unlawful aggression made by the deceased."

As a prerequisite in incomplete defense of self, relative or stranger, there must be unlawful aggression. Otherwise, there can be no defense, complete or incomplete.[20]

In *People v. Pinca,*[21] the victims were killed by the appellants with firearm, and bolo, inside the house of the former, after having gained entrance therein through an opening not intended for entrance or egress. These facts precluded the element of unlawful aggression necessary for the claim of incomplete self-defense as a mitigating circumstance. As pointed out by the Court, "Neither the defense of incomplete self-defense can be taken into consideration because our Supreme Court in the case of *People v. Buenafe,* 34 O.G. p. 2504, said, 'There must be an unlawful aggression, otherwise this defense cannot be invoked. Even admitting that the victims tried to defend themselves against the herein defendants, said acts cannot be construed as an unlawful aggression.' "

No Intention to Commit So Grave a Wrong

Criminal liability is incurred by any person who commits a felony although the wrongful act done be different from that which he intended.[22] But he is entitled to a mitigating circumstance.[23] This circumstance can be taken into account only when the facts proven show that there is a notable and evident disproportion between the means employed to commit the criminal act and its consequences.[24] Intention involves a mental process and is an internal state of the mind. Hence, intention to commit a crime or the lack

[20] Padilla, *supra,* p. 225.
[21] G.R. No. L-16595, Feb. 28, 1962.
[22] Revised Penal Code, Art. 4, Par. 1.
[23] Revised Penal Code, Art. 13, Par. 3.
[24] U.S. v. Reyes, 26 Phil. 791.

of intention to commit so grave a wrong as that committed must be judged by the action, conduct and external acts of the accused,[25] such as the force employed, the location of the wound or the kind of weapon used.

The Court in the case of *People v. Pinca* applied the foregoing rule, denying the accused the benefit of this mitigating circumstance because "anyone firing several shots to somebody and striking several blows with a bolo at a person, cannot claim that his intention was not to commit so grave a wrong as that committed."

Passion and Obfuscation

The circumstances must be such that a person loses his reason and self-control, thereby diminishing the exercise of his will power. Such passion and obfuscation must arise from lawful sentiments, and not from vicious, immoral or unworthy pasions.[26]

In *People v. Cutura,*[27] the facts were: When Cimafranca (victim) was arrested and brought to the headquarters of Lt. Cuevas with both hands tied, he was immediately taken before said lieutenant who then and there made the admonition that the time had come for him to pay what he had done. Cimafranca did not utter a word, and yet simply induced by such admonition appellant and his co-accused jumped upon him and inflicted the injuries that killed him. Based on these facts, the Court concluded that "there really appears no justification for concluding that appellant participated in the assault prompted by passion and obfuscation."

Voluntary Surrender

Voluntary surrender to a person in authority or his agents, 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.[28]

In *People v. Tenorio* [29] this mitigating circumstance was deemed present, based on the following facts: After plunging the bolo into the victim's chest, the defendant ran toward the west. Then he ran towards the tennis court facing the municipal building. Immediately, the defendant threw away his bolo and raised his two hands. The policeman then drew his revolver. At that time another police-

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[25] Padilla, *supra* p. 233.
[26] Padilla, *supra*, p. 245.
[27] G.R. No. L-12702, March 30, 1962.
[28] People v. Conwi, 71 Phil. 595.
[29] G.R. No. L-15478, March 10, 1962.

man was behind the defendant, with drawn gun. The Court held that "it cannot be said that defendant was cornered by the two policemen, because while running away from where he stabbed the deceased up to the point where he met the first policeman, the defendant did not look or turn his face back, so that he did not know that another policeman was chasing him. Besides, if the defendant wanted to escape, he would not have run to the municipal building. Also the fact that on seeing the first policeman who had not even drawn his gun, the defendant threw away his bolo, raised his two hands, offered no resistance and said to the policeman, 'Here is my bolo, I stabbed Atty. Bello,' is indicative of his intent to surrender voluntarily to the authorities."

In *People v. Valera* [30] the appellant was credited with this mitigating circumstance, although he posted the bond for his provisional liberty 18 days after the commission of the crime and 14 and 15 days respectively after the first and second warrants had already been issued. The Court held: "The fact that the warrants had already been issued is no bar to the consideration of this mitigating circumstance because the law does not require that the surrender be prior to the arrest (*People v. Tecla*, 48 Phil. 740)."

As a requisite condition, voluntary surrender to be considered a mitigating circumstance, must be made in connection with the crime charged. In *People v. Rafanan* [31] the surrender was not connected with the crime charged but with the activities of the accused in the Huk movement. The Court did not award it in his favor.

Analogous Circumstances

Poverty—On the question of the claim of extreme poverty as a mitigating circumstance, the Court in *People v. Tabanao* [32] ruled: "Poverty may not be claimed by a clerk receiving salary. Poverty is a condition worse than that of a poor person. He may have been poor but with his salary as clerk he certainly was not in a condition of poverty."

Intoxication—In *People v. Enot* [33] the Court elucidated on this point in the following manner: "To be available as a means to lighten the penalty the fact of intoxication must be proved to the satisfaction of the court. In the case at bar appellants made no offer to show that during the commission of the crime they were drunk to the

[30] G.R. No. L-15662, Aug. 30, 1962
[31] G.R. No. L-17530, Oct. 30, 1962.
[32] G.R. No. L-17233, Sept. 29, 1962.
[33] G.R. No. L-17464, Aug. 31, 1962.

point of losing the use of their reason and self-control. Neither was it shown that before they committed the crime, appellants had in fact been drinking. The lower court acted rightly in not appreciating drunkenness."

Fact of Being a Muslim—Fact of being a Muslim inhabitant of a Moro province was considered a mitigating circumstance in a case of bigamy.[34]

Lack of Instruction—In *People v. Enot,* the Court held that the benefit of lack of instruction is unavailing to mitigate the crime as this circumstance is not applicable to crimes of theft or robbery and much less to the crime of homicide.

AGGRAVATING CIRCUMSTANCES

Aggravating circumstances evidence greater criminal perversity of the offender as shown by the means employed, the time, place and occasion of such commission or the personal circumstances of the offender.[35] If not offset by any mitigating circumstances, they serve to increase the penalty to its maximum period.

Crime Committed in Contempt of or with Insult to the Public Authorities

The circumstance of contempt of or insult to public authority is considered aggravating if (1) the person in authority is engaged in the exercise of his functions, (2) he is not the person against whom the crime is committed, and (3) the offender knows him to be a person in authority.[36]

In *People v. Tenorio,* a public rally was going on at the place where the defendant stabbed the deceased. Many people were present. Among the public authorities present were the Acting Provincial Governor, the Mayor of Caoayan, Judge Antonio Quirino and the Municipal Secretary. All of them were seated on an elevated stage easily seen or viewable by the public. The place of the rally and of the crime was a public plaza, directly opposite the municipal building of Caoayan. Based on these facts the Court held that the defendant's denial that public authorities were there present could not be accepted.

Disregard of Rank, Age or Sex

The aggravating circumstance of age may be taken into account only in crimes against person and honor. As such it requires proof

[34] People v. Manibpel, G.R. No. L-15077, Dec. 29, 1962.
[35] Padilla, *supra,* p. 281.
[36] Reyes, Criminal Law, Vol. I, 19 (1956).

of the specific fact that the accused disregarded the respect due the offended party other than that the victim is "an old man" in which case abuse of superior strength may be considered. It must be shown that the offender deliberately intended to offend or insult the age of the offended party.[37]

In *People v. Valera* the Court took into consideration this aggravating circumstance, the victim being a sexagenarian while appellant was only 27 years old. The facts showed that the appellant in company with another accosted the 62-year old victim, demanding money with which to buy drinks. The latter excused himself saying he had no money and walked away. Whereupon appellant's companion hit the old man who fell on the ground. Without warning, appellant darted to the fallen man and stabbed him.

Dwelling

For dwelling to be aggravating, the crime must be committed not only in a dwelling, but in the dwelling of the offended party, provided the latter has not given provocation.[38]

Dwelling and scaling as aggravating circumstances were held present in the commission of the crime of robbery with homicide, ". . . because the store where it was committed was a dwelling . . . and because there is scaling where the entrance is effected through an opening not intended for the said purpose. The foregoing circumstances are certainly not inherent in the crime committed because the crime being robbery with violence or intimidation against persons, the authors thereof could have committed it without the necessity of violating or scaling the domicile of their victim." [39]

With Aid of Armed Men or Persons to Insure or Afford Immunity

Mere reliance upon the aid of any number of armed men is sufficient under Article 14, paragraph 8, Revised Penal Code, for actual aid is not necessary, unlike a band where the cooperation of more than three armed malefactors is necessary.[40]

In *People v. Pinca* the crime was committed with the aid of armed men. At least two of the accused were armed with carbine and bolo, when the five accused perpetrated the crime.

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[37] People v. Mangsant, 65 Phil. 548.
[38] Padilla, *supra*, p. 290.
[39] People v. Pinca, *supra*.
[40] Padilla, *supra*, p. 307.

Abuse of Superior Strength

There are two circumstances involved here, namely that (a) advantage be taken of superior strength and (b) means be employed to weaken the defense of the offended party.[41] "Advantage be taken" means to use purposely excessive force out of proportion to the means of defense available to the person attacked.[42]

In *People v. Cortes*,[43] it was proved that aggressors not only had the numerical superiority but were all armed against the weaponless victim. This fact was taken into account only as a generic aggravating circumstance, not having been alleged in the information as qualifying circumstance.

Treachery

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specifically or specially to insure the execution thereof, without risk to himself arising from the defense which the offended party might make.[44] Thus, where the deceased started the aggression and received the dagger thrust after he had already inflicted blows on the defendant and his wife, it cannot be stated that the defendant made the assault on the deceased with treachery.[45]

In *People v. Pinca*, the Court reiterated previous rulings: "Abuse of superior strength is not treachery although it might be absorbed by the latter (*U.S. v. Estopia*, 28 Phil. 47). Superiority of strength may be derived from the number of assailants and the simultaneousness of the attack (*U.S. v. Lozada*, 21 Phil. 287). If treachery is present, it may absorb superior strength (*People v. Mobe*, 81 Phil. 58)."

"Except in special cases, nighttime and treachery always go together. Nighttime cannot be considered as an aggravating circumstance independent of treachery and abuse of superior strength.[46] Nighttime forms part of the treacherous means to insure the execution of the crime," as held by the Court in *People v. Enot*.

Cruelty

For cruelty to be considered an aggravating circumstance, it is essential that the wrong done in the commission of the crime be

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[41] Padilla, *supra*, p. 330.
[42] Revised Penal Code, Art. 14, Par. 15.
[43] G.R. No. L-13968, Oct. 31, 1962.
[44] Padilla, *supra*, p. 336.
[45] People v. Onas, *supra*.
[46] People v. Balagtas, 68 Phil. 675.

deliberately augmented and that such wrong is unnecessary for the accomplishment of the purpose of the offender. It is a specific aggravating circumstance in crimes against persons.[47]

Thus where the victim was buried while still alive, it was held that cruelty was present as an aggravating circumstance.[48]

PERSONS CRIMINALLY LIABLE

Principals in a felony fall under three categories: (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and, (3) those who cooperate in the commission of the offense by another act without which it could not have been accomplished.[49]

Principals by direct participation do not only participate in the criminal resolution but proceed to personally take part in the perpetration of the crime. They include those offenders who take part in the commission of the crime whenever the following circumstances concur—(1) There is conspiracy among them; (2) they intentionally contribute material or moral aid which directly tend to the same end, showing unity of purpose and intention.[50]

In conspiracy, there is participation in the criminal resolution. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[51] Conspiracy may be proved by the confession of an accused. However it is not essential that there be proofs as to previous agreement and decision to commit the crime. It is sufficient that the malefactors acted in concert pursuant to the same objective, showing unity of purpose and action.[52] Once conspiracy is proved, for consideration of criminal liability, the act of one is the act of all, even though such acts differ radically and substantially from that which they intended to commit.

In *People v. Rogel*[53] appellant claimed that he should be convicted of simple robbery only, considering that the subject matter of the conspiracy was merely the robbery and the kidnapping of the Chinaman and not his killing. Appellant sought shelter under the ruling in the case of *People v. Basisten* (47 Phil. 493) wherein it was held that where homicide has not been the subject matter of

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[47] Padilla, *supra*, p. 362.
[48] People v. Rogel, G.R. No. L-15378, March 31, 1962.
[49] Revised Penal Code, Art. 17.
[50] People v. Tamayo, 44 Phil. 38.
[51] Revised Penal Code, Art. 8.
[52] People v. San Luis G.R. L-2365, May, 1951.
[53] G.R. No. L-15318, March 31, 1962.

the conspiracy to commit robbery, the conspirator committing homicide by reason of or on the occasion thereof, is alone guilty of the complex crime of robbery with homicide, and the rest who did not have any intervention in the killing are guilty of simple robbery only. As to this contention, the Court held: "We do not share appellants' view . . .; for as early as 1926, one year after we enunciated the ruling in the Basisten case, we decided to revert to the former doctrine laid down in *U.S. v. Macalalad,* 9 Phil. 1, in the following language:

> "The Supreme Court of Spain, interpreting the provisions of the Penal Code touching the complex crime of *Robo con Homicidio,* has frequently decided that, where the complex crime has been committed, all those who took part as principals in the commission of the robbery are guilty as principals in the crime of *Robo con Homicidio,* unless it appears that they endeavoured to prevent the killing.

"Appellant Ramos did not only conspire with his co-accused, he also led and engineered the robbery and kidnapping. As a conspirator, he is liable for all the consequences of the acts of his co-conspirators. The fact that the appellant participated in snatching the victim alone, makes him liable as principal hereto; and it is immaterial whether or not the victim was killed by his co-conspirators (*People v. Suarez,* 82 Phil. 484). It is not even necessary that he took part in every act; neither is it imperative that he knew the exact role of the others in the conspiracy. It is enough that they agreed on the plan to accomplish a purpose by means and methods which from time to time might be found expedient. Appellant should have anticipated or known that when the victim was hogtied and kidnapped for ransom, by appellant and his band, harm or death awaited him, if the ransom was not given. Only objection to or desistance from taking part in the detention and killing of the victim could have saved the appellant from liability therefor (*People v. Villamar,* G.R. No. L-9559, May 14, 1958)."

In *People v. Timoteo Cruz* [54] the facts showed that while Valencia (victim) was before a fruit stand someone shot him in close range. Soon thereafter he died. At the time, Eliseo Cruz, a companion of Valencia noticed appellant Felipe de la Cruz several feet behind Valencia with a drawn .45 caliber pistol. Thereupon there was a second shot coming from another place which lodged on the front side of the fruit stand. As Eliseo bent over his fallen companion, a man ran in front of him, whereupon Eliseo looked up and saw appellant Timoteo Cruz, with a drawn gun several meters away.

[54] G.R. No. L-15361, April 26, 1962.

The Court held: "Although there is no direct proof of conspiracy between the appellants, the simultaneous presence of both at the scene of the crime, the shot fired by appellant immediately after Valencia had been shot by Felipe de la Cruz and the circumstances that forthwith ensued, thereafter, the latter boarded the former's car, which was there ready for the get away, leave no room for doubt as to the existence of unity of action and purpose between them."

In *People v. Villanueva*[55] the Court in finding all appellants equally guilty relied upon the following extrajudicial confession, supported and corroborated by sufficient evidence to establish conspiracy: Loreto Estacio was killed in the camarin of Emeterio Villanueva who had resented the filing of a criminal charge against him by Estacio. The son of Estacio beat Loreto while Percal stabbed him. Habarcon and Percal were paid by Villanueva for their cooperation.

Where a co-conspirator participated as principal by inducement, the court made some distinctions as to the liability of the perpetrators of the crime. In *People v. Tuazon*[56] the appellants participated in the ambush in the following manner: Tabaniag by offering a reward of money to those who would ambush and kill Capt. Hermoso; Mayor Tuazon by cooperating with Tabaniag in making the offer and making the ambushers sleep in his house on the eve of the ambush. Kigao alias Leppago was also present at the house of Tuazon and was among those who actually ambushed the victim. De la Fuente was present at the meeting when the decision to ambush the victim was made, and acted as a look out for the coming of the victim. Taberdo, Tauro, Antonio Tamo and Manuel Tamo were present in the meeting on the eve of the ambush upon the promise of reward.

The Court found Tuazon, de la Fuente, Leppago, Taberdo, Tauro, Manuel and Antonio Tamo and Tabaniag guilty of killing Ballao Hermoso; on the other hand it found Leppago, Tauro, Manuel and Antonio guilty of killing of Masibag Hermoso, since Tabaniag, Tuazon and Taberdo induced their co-conspirators to make an ambush of Ballao Hermoso, without mentioning the latter's companion, Masibog Hermoso, and there was no evidence that they ordered the killing of the latter.

In the absence of proof of conspiracy, liability is individual[57] and mere passive presence at the scene of the crime does not make a person co-principal.[58] These two doctrines were again reflected

[55] G.R. No. L-12687, July 31, 1962.
[56] G.R. No. L-10614, Oct. 22, 1962.
[57] People v. Manzo (CA), 44 O.G. 2295.
[58] People v. Samano, 77 Phil. 136.

by the following rulings: (1) "Appellants' presence at the Abiganias' premises when the crime was committed could not be for an innocent purpose, armed as he was and in the company of the assailant. These circumstances show his knowledge of the criminal intent of his brother Santos. But since no conspiracy has been shown to exist and since his acts do not clearly appear to be either directly or absolutely necessary for the commission of the offense, or that they constituted an inducement thereof, and considering the principle that when doubt exists as to whether a person acted as principal or accomplice the court would favor the milder liability, the judgment finding appellant guilty as accomplice should be upheld." [59]

(2) "As to Dionisio Regal, except for his presence at the scene of the killing, there is absolutely no evidence of his complicity. Where there is no proof of conspiracy, mere passive presence of the accused at the scene of the crime does not make him co-principal. It does not appear that Dionisio did anything to help his father or that he shared his father's sentiment against Abuyen (victim). He should therefore be acquitted." [60]

(3) "The attack on the deceased is not the result of conspiracy or of a preconceived plan hatched by the accused and for that reason their liability can only be considered in the light of their individual participation, and not of a common criminal design." [61]

Principal by Direct Participation

The expression "those who take a direct part in the execution of the act" means those who, participating in the criminal resolution, proceed to perpetrate the crime and personally take part in the same.[62]

In *People v. Cutura* the evidence showed that appellant actually participated in the assault which resulted in the victim's immediate death. Appellant hit the deceased on the head with a big piece of wood which contributed to his death. The Court's opinion was: "The blow inflicted by the appellant may not have been mortal, but it certainly accelerated the death of the victim. It is not necessary that each of the separate injuries be necessarily fatal in itself. It is sufficient if they cooperated in bringing about his death or contributed mortally thereto."

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[59] People v. Ablog, *supra*.
[60] People v. Regal, *supra*.
[61] People v. Cutura, *supra*.
[62] People v. Tamayo, *supra*.

Principals by Inducement

The principal by inducement is one who (1) directly forces another or (2) induces others to commit a felony. In (2), the inducement must be made directly with the intention of procuring the commission of the crime and such inducement must be the determining cause of the commission of the crime. There are two ways of inducing another: (1) by giving price, reward, or promise, and (2) by words of inducement.[63]

In *People v. Taruc,*[64] the appellant was found guilty of murder as principal by induction based on the strength of the testimony of the state witness that Luis Taruc (Hukbalahap chief) gave the orders for the liquidation of the victims.

In *People v. Balancio,*[65] the facts were: While appellant Querubin was in the convent with Father Balancio, the place was stoned. Appellant went down to find out who were the culprits. On the way out, he met the deceased whom he shot, as a result of which the latter died. Father Balancio was implicated on the strength of testimonies that he induced his close friend, Querubin, to shoot the deceased. The Court exonerated Father Balancio reasoning out as follows: "These two witnesses could not even agree on what Father Balancio allegedly told appellant Querubin, before the shooting happened. But even assuming that Father Balancio really told Querubin to shoot the deceased, that would not be legally sufficient to sustain his conviction of murder by inducement in the absence of other incriminating evidence. Where the alleged inducement was not made directly with the intention of procuring the commission of the crime, and it did not appear that such inducement was the determining cause of the commission of the crime, the same is insufficient to sustain a finding of guilt.

COMPLEX CRIMES

When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.[66]

In *People v. Lasala,*[67] the Court in holding that there was no complex crime of Serious Slander by Deed with Less Serious Phys-

[63] Reyes, *supra*, p. 298.
[64] G.R. No. L-14010, May 30, 1962.
[65] G.R. No. L-17520, May 30, 1962.
[66] Revised Penal Code, Art. 48.
[67] G.R. No. L-12141, Jan. 30, 1962.

ical Injuries, explained: "An analysis of the provisions of the article (Art. 265, par. 2, Revised Penal Code) reveals that whenever an act has been committed which inflicts upon a person less serious physical injuries with manifest intent to insult or offend him or under circumstances adding ignominy to the offense, the offender should be sentenced to the penalty therein prescribed. The specific provision should be considered as an exception to the rule contained in Article 48 of the Revised Penal Code relative to complex crimes. A complex crime exists only in cases where the Code has no specific provision penalizing the same with definite, specific penalty."

In *People v. Vendiola*,[68] although the Court declared a specific crime as provided for in Article 365, paragraph 3, Revised Penal Code, as a complex crime, it did not impose the penalty prescribed for complex crimes under Article 48, Revised Penal Code. It held: "Article 365, paragraph 3 of the Revised Penal Code simply means that if there is only damage to property the amount fixed therein shall be imposed, but if there are also physical injuries, there should be an additional penalty for the latter. The information cannot be split into two, one for physical injuries and another for the damage committed for both the injuries and the damage committed were caused by one single act of the defendant and constitute a complex crime of Physical Injuries and Damage to Property."

DEATH PENALTY

Death penalty is impossible in the following felonies: Treason, Qualified Piracy, Parricide, Murder, Kidnapping and Serious Illegal Detention, and Robbery with Homicide.

But our Supreme Court has not resorted to this absolute penalty, except in a few cases of marked gravity or of extreme perversity on the part of the offender. Death was meted out as a penalty in *People v. Tuazon*.[69] It held: "But Mariano Tabaniag should be meted a more severe penalty because it was he, who promised the principal reward and he was not satisfied with securing the services of only one or two individuals but had to get those of a group of more than six, all of them fully armed with firearms in order to better insure the execution of his illegal purpose to eliminate his antagonist in his land troubles, as a result of which not only was his antagonist killed but also the latter's nephew, an innocent party. The court believes that he deserves the supreme penalty of death,

[68] G.R. No. L-14207, May 30, 1962.
[69] G.R. No. L-10614, Oct. 22, 1962.

justified by the great number of persons and firearms he had engaged to carry out his criminal intent and design."

In a case of Robbery with Multiple Homicide the death sentence was affirmed, the crime having been committed with the aggravating circumstance of treachery, abuse of superior strength, disregard of the sex and age of the victims, evident premeditation, and dwelling, with only one mitigating circumstance, the plea of guilty to offset the same.[70]

In *People v. Tiongson y Garcia,*[71] the defendants being badly in need of money planned to rob a jewelry store. Once inside, Tiongson hit the deceased on the head with a monkey wrench, which led to his death, and meanwhile Navarro ransacked the showcases taking watches therefrom. Held: "The crime at bar, Robbery with Homicide, having been committed with the aggravating circumstances of evident premeditation, treachery and abuse of confidence, the decision imposing death penalty is affirmed."

PRESCRIPTION

One of the causes of total extinction of criminal liability is prescription of the crime or of the penalty. Prescription of the crime is forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain time.[72]

The law provides for different prescriptive periods for different kinds of felonies in accordance with their gravity. In the computation of prescription of offense the period shall commence to run from the day in which the crimes are discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceeding terminates without the accused being convicted or acquitted, or is unjustifiably stopped for any reason not imputable to him.[73]

In *People v. Ventura,*[74] the Court declared: "It is clear that the 4-year period of prescription of the offense charged should be computed from February, 1955 when the NBI discovered appellant's alleged illegal practice of medicine, not when the accused began practicing his method of drugless healing 35 years ago."

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[70] People v. Enot, *supra.*
[71] G.R. No. L-15201 & 15203, Oct. 31, 1962.
[72] Padilla, *supra,* p. 418.
[73] G.R. No. L-15079, Jan. 31, 1962.
[74] Revised Penal Code, Art. 91.

The Court held in the case of *People v. Abuy* [75] that the complaint or information that will interrupt the period must be the proper complaint or information. In the instant case, Abuy was charged with unjust vexation for the offense allegedly committed, after a lapse of 6 months and 20 days. The Court explained: "The crime of unjust vexation is a light offense and prescribes in 2 months. Here the first information was trespass to dwelling, the elements of which are entirely different from the elements of unjust vexation. Consequently the filing of one does not interrupt the prescriptive period as to the other."

When the penalties imposed by law is a compound one, the highest penalty shall be made the basis of the application of the rules on prescription of crimes.[76]

In *People v. Crisostomo,*[77] compound penalty was construed to include those involving both fine and imprisonment. The Supreme Court in a reversing stand held: "Article 26 of the Penal Code declares without qualification that a fine is either afflictive, *correccional* or light penalty. The fine is considered afflictive if it exceeds ₱600, *correccional* if it does not exceed ₱600 but is not less than ₱200, and a light penalty if it be less than ₱200. The Code contains no provision which states that a fine when imposed in conjunction with an imprisonment is subordinate to the main penalty. In conjunction with imprisonment, a fine is as much as principal a penalty as imprisonment. Neither is one subordinate to the other. Moreover Article 90 provides that when the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules . . . In the instant case, the fine is higher than the imprisonment because it is afflictive in view of the amount involved and should be the basis for computation to determine the prescriptive period. The Court holds therefore, that when a penalty consists of imprisonment and fine, whichever penalty is the higher should be the basis in computing the period of prescription."

MALVERSATION

Malversation may be committed by the public officer accountable for public funds or property, who (1) appropriates, takes or misappropriates public funds; (2) permits through abandonment or negligence another to take public funds; and (3) is otherwise guilty of misappropriation.[78]

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[75] G.R. No. L-17616, May 30, 1962.
[76] Revised Penal Code, Art. 90.
[77] G.R. No. L-16945, Aug. 31, 1962.
[78] Revised Penal Code, Art. 21.

The question of whether students' deposits for the payment of loan and breakages of college instruments incurred by students constitute public funds within the purview of the above offense was passed upon by the court in *People v. Montemayor.*[79] The Court held: "The amounts paid by the students to the college, in order to answer for the value of materials broken, were no more 'deposits' in law than bank 'deposits' are so. There was no showing that the college undertook to keep safe the money in question and return it later to each student in the very same coins or bills in which it had been originally received. The college merely bound itself to reimburse or repay to each student the amount 'deposited' by him or her, after deducting or setting off the value of broken equipment. The relation thus established between college and students was one of debtor and creditor, not one of depositor and depository. As a loan, the college acquired the ownership of the money paid by the students, subject only to the obligation of reimbursing equivalent amounts, unless a deduction should happen to be due. Such being the case, the money became public funds from the time the college received them, since the college was, and is, a public entity.

"However, to constitute the crime charged, there must be diversion of the funds from the purpose for which they had been originally appropriated by the law or ordinance (Art. 217, Revised Penal Code) and, as correctly found by the court below, the students' payments had not been so appropriated. The resolution of the college authorities that the amounts paid by the students should later be refunded nowhere implied that the repayment was to be made precisely out of the money received, and as the refund could be made out of any available funds of the college, there was no appropriation for a particular purpose that was violated by the accused."

MURDER

The aggravating circumstance must be alleged in the complaint or information to qualify the offense as murder, otherwise the crime becomes homicide with aggravating circumstances, if proved.

The cases on murder passed upon by the Supreme Court for the year 1962 presented no particular points of controversy or deviations from prior rulings. These cases were mainly attended by the qualifying circumstance of treachery and taking advantage of superior strength.

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[79] G.R. No. L-17449, Aug. 30, 1962.

In treachery the mode of attack must be consciously adopted and therefore requires preparation in order to save the offender from risk.[80]

An attack from behind is as a rule treacherous, unless it was made by (1) bare fist, unless it is sufficient to be fatal, or (2) the attack was not thought of.[81] If the attack is frontal, it is not treacherous unless it is (1) sudden (2) unprovoked (3) even if provoked if it was unexpected[82] or arms are used (4) made with a deadly weapon under conditions where the victim is unable to defend himself, that is, the victim is unarmed, helpless and in a condition where he is unable to flee or defend himself.

In the following cases treachery was deemed present as a qualifying circumstance: the accused suddenly from behind fired upon the deceased;[83] the deceased was fired upon from behind without any warning, thus insuring the execution of the crime without any risk arising from the defense that he might make;[84] the accused fired several times upon the deceased with his carbine;[85] the accused armed with a carbine entered the room where the defenseless deceased was and twice fired upon him;[86] the deceased was fired upon as she was crossing the river;[87] the victims were in their house when all of a sudden three shots rang out from below, at one-second intervals, killing the deceased as he lay asleep;[88] the victims were fired upon in ambush by the assailants;[89] the deceased while on her way home was shot by the accused, who was then hidden behind a tree;[90] the deceased was stabbed from behind;[91] the victim, an old man was stabbed by the accused, as the former lay on the ground defenseless;[92] while the victim was conversing with another, accused stealthily approached him from behind and stabbed him with a bolo;[93] where the victim was killed while bound and blindfolded;[94] where the victims were shot in their sleep;[95] while a dance was going on,

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[80] Reyes, *supra*, p. 244.
[81] People v. Tumaob, 83 Phil. 738.
[82] People v. Noble, 77 Phil. 95.
[83] People v. Dante, G.R. No. L-15634, April 23, 1962.
[84] People v. Cruz, *supra*.
[85] People v. Santella, G.R. No. L-16665, April 28, 1962.
[86] People v. Cloma, G.R. No. L-15580, May 10, 1962.
[87] People v. Dumlao, *supra*.
[88] People v. Abog, *supra*.
[89] People v. Telan, G.R. No. L-17921, June 29, 1962.
[90] People v. Regal, *supra*.
[91] People v. Largo, G.R. No. L-18175, July 31, 1962.
[92] People v. Valera, *supra*.
[93] G.R. No. L-13486, Oct. 31, 1962.
[94] People v. Rogel, *supra*.
[95] People v. Pinca, *supra*.

appellant suddenly showed up and without much ado fired two shots at the victim, a bystander.[96]

When the aggression is continuous, treachery must be present at the beginning of the assault in order to be considered as an aggravating or qualifying circumstance, but when the assault is not continuous, it is sufficient that treachery is present at the moment of the fatal blow is given.[97]

In *People v. Solaña,* the Court applied the above doctrine explaining: "Moreover, assuming that the deceased lunged at Genaro with a butcher's knife, still after Genaro had boloed the deceased causing him to fall helplessly, the subsequent attacks by the other appellants when the victim would no longer be of any risk to them constitute *alevosia,* thus qualifying the crime to murder."

But where the victim is able to defend himself, treachery cannot be held present as in the case of *People v. Cortez*[98] "At the moment of the stabbing, the victim was already under attack by Patueg and Sacang and was in fact trying to defend himself. In other words, appellant did not commit the act in such a manner as to insure its success or make it impossible or hard for the victim to defend himself. The decision to kill was sudden, and if the latter's (victim) position was vulnerable, it was not deliberately sought by appellant but was purely accidental."

In *People v. Bautista,* the accused was found guilty of murder qualified by abuse of superior strength. The victim was assaulted and attacked by five appellants who at the time were armed with an iron bar and several balisong knives.

HOMICIDE

This is the unlawful killing of another without the attending circumstances qualifying the crime as murder or parricide.

In *People v. Lumantas,*[99] there was a frontal and hand-to-hand clash between two groups, ready to fight each other, both sides armed, and in its inception, was not treacherous in character. The accused were convicted of homicide.

In *People v. Carlos,* the Supreme Court reversed the decision of the lower court finding the accused guilty of murder qualified by treachery and evident premeditation. The shooting in this case was preceded by a struggle or was in the course thereof. Nothing

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[96] People v. Rogales, *supra.*
[97] Reyes, *supra,* p. 252.
[98] G.R. No. L-13968, Oct. 31, 1962.
[99] G.R. No. L-16383, May 30, 1962.

in the record showed that appellant had any previous intention to kill the deceased. Appellant was guilty of homicide only.

In *People v. Balancio,* neither treachery nor evident premeditation was proven by the prosecution for the killing of the deceased. The Supreme Court upheld the lower court's finding of Homicide based on the following facts: The appellant being a good friend of Father Balancio resented the unjust vexation to which the latter had been subjected frequently by the stoning of his convent. When the convent was stoned again while appellant was there, his anger was aroused and in that state of mind, he went down, met the deceased and believing the latter as the culprit, fired at him.

ROBBERY WITH HOMICIDE

This is an indivisible crime punishable by one distinct penalty, *reclusion perpetua* to death. It is not a complex crime. The killing may occur before or during the robbery but must be by reason or in the occasion thereof. As held in the case of *People v. Rogel:*

> "It is likewise immaterial that the killing was made at another place the following day. To determine the existence of the crime of robbery with homicide, the accessory character of the circumstances leading to the homicide is not of much importance, provided that the homicide be produced by *reason* or *on the occasion* of the robbery (People v. Guinto, G.R. No. L-8919, Sept. 28, 1956; citing Decision of SC of Spain, Jan. 12, 1869; Cuello Calon's Codigo Penal, pp. 501-502). In the instant case, Ty Twi was killed *by reason* of the robbery, or *on the occasion* of the robbery. As he was always shouting, and by so doing the malefactors could no longer conceal the robbery, they killed him (U.S. v. Palmadres, 7 Phil., 20). As the intention to kill or the killing comprehends the robbery, it is immaterial that the homicide may precede or follow the robbery in point of time (People v. Manuel, 44 Phil., 33)."

In *People v. Recolizado,*[100] the victim died of the assault on the occasion of the robbery. The court imposed the penalty of *reclusion perpetua.*

In *People v. Enot,* the accused having previously planned to rob the house of Conje went up to said house armed with bolos. Upon gaining entrance thereto and without provocation whatsoever, the accused attacked Conje and his wife and children which brought instantaneous death to four and injury to one. The accused then took one fighting cock and a trunk which they forcibly opened then and took therefrom assorted clothing . . . The Court adjudged the

[100] G.R. No. L-16176, July 19, 1962.

accused guilty of Robbery with Multiple Homicide and Physical Injuries.

In *People v. Lampitoc,*[101] four individuals all armed entered the house of Tagata and Baingan, and others were down below guarding the house. Once inside the house the malefactors demanded money from Tagata. On the occasion of the assault, Tagata and his son died. The Court convicted the accused of the crime of Robbery in Band with Double Homicide.

In *People v. de los Santos,*[102] the victim was shot in an adjoining passageway by one of the appellants while the others ransacked the victim's sari-sari store for money. Appellants were convicted of Homicide.

ROBBERY WITH RAPE

This is also an indivisible complex crime penalized with a single penalty. The rape must accompany the robbery.[103]

In *People v. Asi et al.,*[104] the malefactors after demanding money from the mother, took the 17-year old daughter among the tall grass and successively abused her. The accused were held guilty of Robbery in Band with Rape.

In the case of *People v. Roxas,*[105] the armed appellants, after inflicting the injuries which resulted in the death of the deceased, ransacked the house for money and successively raped the deceased's wife. The conviction of the lower court for Robbery with Homicide and Rape was upheld.

ESTAFA

In general, deceit and damage are essential elements of estafa, except in those cases where there is fraudulent conversion or misappropriation of property received in trust or commission or under administration or under any obligation involving the duty to make delivery, for deceit in receiving is substituted by abuse of confidence in misappropriating.[106]

Confronted by the issue of whether the violation of the terms of the trust receipts constituted estafa, the Court in *Samo v.*

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[101] G.R. No. L-16176, July 19, 1962.
[102] G.R. No. L-16304, Nov. 30, 1962.
[103] Padilla, *supra,* p. 559.
[104] G.R. No. L-17410, June 20, 1962.
[105] G.R. No. L-16947, Nov. 29, 1962.
[106] Padilla, *supra,* Vol. II, p. 656.

People [107] made the following expostulation: "A trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported and purchased. Trust receipts, as contracts, in a certain manner partake of the nature of a conditional sale . . . that is, the importer becomes absolute owner of the imported merchandise as soon as he has paid its price. The ownership of the merchandise continues to be vested in the owner thereof as in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been sold, the proceeds of the sale should be turned over to him by the importer or by his representative or successor in interest. . . . In the present case petitioner admits the execution of the trust receipts and despite repeated demands from the bank, failed either to turn over to the bank the proceeds of the sale of the goods or to return said goods, if they were not sold. Consequently the lower court correctly found her guilty of having violated the provisions of Article 315, paragraph 1 b of the Revised Penal Code. The fact that subsequent to the filing of the case, petitioner made partial payments on account does not alter the situation. Payment does not extinguish the criminal liability for estafa."

In *Panlileo v. CA*,[108] the same abuse of confidence was considered by the Court as a misappropriation constituting the crime of estafa. It held: "The information specifically alleged that petitioner received the amount of ₱1,000.00 from Roberto Surla in trust and custody and for the purpose of buying commercial goods for the latter, with the understanding that if petitioner failed to buy the said goods, he should return the amount within one week from date of receipt. Although the evidence of misappropriation by the petitioner is not direct, it is not disputed that petitioner issued a receipt acknowledging receipt of said amount and for the same purpose and that if he failed to buy the goods, said amount should be returned to Surla within one week. These facts suffice to establish the misappropriation imputed to petitioner. It is true petitioner sought to prove that he and Surla had established a partnership and that the status of its accounts had not been liquidated x x x But had a partnership been established, the goods would have been purchased for the partnership, not for Surla."

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[107] G.R. No. L-17603-04, May 31, 1962.
[108] G.R. No. L-16955, May 30, 1962.

LIBEL

Article 353 of the Revised Penal Code 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 circumstance, tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

A presumption of malice attaches to every defamatory statement as provided for in the next article of the Penal Code, Article 354, as follows:

> "Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
> 1. A private communication made by any person to another in the performance of a moral, legal, or social duty; and
> 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any act performed by public officers in the exercise of their functions."

Article 354 speaks of qualified privilege. The privilege is lost if no good intention and justifiable motive for making it is known.[109]

Whether a private communication addressed to the President of the Philippines in the performance of a moral, legal, or social duty, can be considered libelous in view of the exception provided in Article 354, paragraph 1, Revised Penal Code, was a question resolved by the Court in the case of *People v. Monton*,[110] where it elucidated on the meaning of said codal provision in the following opinion: "Libel as defined in Article 353 has three elements: the imputation must be defamatory, it must have been given publicity, and it must be malicious. A fourth element may also be considered implicit in this provision, namely, that the victim of the libel must be identifiable. The defamatory character of the imputation is shown by the recitals thereof. No evidence *aliunde* need be adduced to prove it. With respect to malice the same is established by presumption or by proof. If nothing but the defamatory imputation itself is presented before the court, malice is presumed from it, and to overcome this presumption there must be showing of good intention and justifiable motive. In other words, the burden of proof is upon the defendants to overcome the legal inference of malice. Under the doctrine of qualified privilege, however, this burden does not arise, for the occasion on

[109] Padilla, *supra*, p. 886.
[110] G.R. No. L-16772, Nov. 30, 1962.

which the communication was made, that is the performance of the moral, legal, or social duty rebuts the inference. But this does not mean that malice may not at all be shown; it simply puts the burden of doing so on the prosecution. As stated in *Lu Chu Sung v. Lu Tiong Gui* (76 Phil. 669):

> "Defendants' contention that the charge filed by him in the City Fiscal's Office was a privileged communication, is not a proper ground for the dismissal of the complaint. In the first place, it is a matter of defense. In the second place the fact that a communication is privileged does not mean that it is not actionable; the privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case."

ORAL DEFAMATION OR SLANDER

Highly defamatory statements uttered publicly may give rise to the question of characterization of the offense as slander or libel. Libel may be committed by, among other means of transmission, radio.[111] Where defamatory remarks are made through the medium of an amplifier system the Court made a clarification of the distinction as follows: "Prosecution maintains that the medium of an amplifier system, through which the defamatory statements imputed to the accused were allegedly made, fall within the purview of Article 355 in the sense that an 'amplifier system', is a means similar to 'radio'. This pretense is untenable. Radio as a means of publication is the transmission and reception of electro-magnetic waves without conducting wires intervening between transmitter and receiver (Library of Universal Knowledge), while transmission of words by means of an amplifier system is not through electro-magnetic waves and is with the use of conducting wires between the transmitter and receiver. Secondly, the word 'radio' used in Article 355 should be considered in relation to the terms with which it is associated—writing, phonograph, engraving, etc. all of which have a common characteristic, namely their permanent nature as a means of publication, and this explains the graver penalty for libel than that prescribed for oral defamation. In short the present case constitutes the crime of oral defamation punished in Article 358."[112]

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[111] Revised Penal Code, Art. 355.
[112] People v. Santiago, G.R. No. L-17663, May 30, 1962.