CRIMINAL PROCEDURE

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The 1962 decisions of the Supreme Court in the field of Criminal Procedure mostly reiterated the settled principles already laid down in previous rulings. In no other branch of procedural law has the doctrine of *stare decisis* been more strictly followed than in Criminal Procedure. This is as it should be, because it is imperative that in this branch which directly involves a person's life, liberty and property, every person should be assured the same means and methods of defending his life, liberty and property.

JURISDICTION

The court has jurisdiction to try a criminal case and render a particular judgment only when the offense charged is within the class of offenses placed by law under its jurisdiction.[1]

The case of *People v. Daco, et al.*[2] reiterated the rule that a JP court has no jurisdiction to try cases of assault against a person in authority or his agent.[3] The Supreme Court held therefore, that the "decision" of the JP court convicting some of the accused was a nullity and did not bar the provincial fiscal from filing another information with the CFI, charging assault upon an agent of a person in authority with physical injuries.

In the case of *People v. Hon. Mendiola,*[4] the issue was whether or not the complex crime of serious physical injuries, with damage to property thru reckless imprudence was within the jurisdiction of the JP court. The Supreme Court fixed the amount of the damage to property at ₱320.00. The crime of damage to property thru reckless imprudence is penalized by a fine ranging from an amount equal to the damage to three times such value.[5] On the other hand, except as otherwise provided, the jurisdiction of JP courts in criminal cases is limited to offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not

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* Recent Legislations Editor, *Philippine Law Journal*, 1962-63.

[1] People v. Pegarum, 58 Phil. 715, citing In Re Bonner, 151 U.S. 242, 256, 257, 38 L.ed. 149, 151.

[2] G.R. No. L-17210, Nov. 30, 1962.

[3] Salabsal *et al.* v. Ang Key, G.R. No. L-15122, May 31, 1960; Villanueva v. Ortiz, G.R. No. L-15344, May 30, 1960; People v. Romualdo, G.R. No. L-3686, Jan. 31, 1951.

[4] G.R. No. L-14207, May 30, 1962.

[5] Art. 365, par. 3, Revised Penal Code.

more than two hundred pesos, or both such fine and imprisonment.[6] Considering that the fine imposable in this case was certainly more than ₱200.00, the Supreme Court held that the offense did not come within the jurisdiction of the JP court. It was contended by the accused that since the offense is a complex crime and under Article 48 of the Revised Penal Code, the penalty for the more serious crime shall be imposed, it follows that the offense comes within the jurisdiction of the JP court because serious physical injuries is the more serious crime and under paragraph 4, Article 263 of the Revised Penal Code, it carries a penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, well within the JP court's jurisdiction. The Supreme Court dismissed the contention saying that "even if the more serious crime is within the jurisdiction of the JP court, since the same is complexed with damage to property thru reckless imprudence wherein the fine to be imposed is beyond the jurisdiction of the JP court, the case comes within the jurisdiction of the CFI. Considering that it is the CFI that would undoubtedly have jurisdiction if the only offense was damage to property, it would be absurd to hold that the graver offense of serious physical injuries committed with damage to property thru reckless imprudence would lie within the jurisdiction of the JP court. Our system of apportionment of criminal jurisdiction proceeds on the basic theory that crimes cognizable by the CFI are more serious than those triable in JP or municipal courts." [7]

In criminal cases the court must have jurisdiction not only with respect to the crime charged but also with respect to the territory over which its jurisdiction may be exercised; otherwise, any judgment rendered is also a nullity.[8] With respect to territorial jurisdiction or venue, Section 14(a), Rule 106 of the Rules of Court provides: "In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place."

In the case of *Velez, et al. v. Victoriano, et al.*,[9] the Supreme Court held that the CFI of the City of Manila has jurisdiction over criminal cases for perjury committed relative to affidavits required by law to be presented to the Director of Mines whose office is in Manila irrespective of the place where said affidavits were prepared and executed. Thus, even though the affidavits were completely

[6] Sec. 87(c), Rep. Act No. 296 as amended.
[7] People v. Villanueva, G.R. No. L-15014, April 29, 1961.
[8] People v. Luistro, VI L.J. 265.
[9] G.R. No. L-18115, June 29, 1962.

prepared in Cebu and presented to an agent or a regional division of the Director of Mines in Cebu, the CFI of Manila has jurisdiction because the affidavits were to be presented to the Director in Manila.[10]

PROSECUTION OF OFFENSES

It is the almost universal rule that when the facts, acts, and circumstances are set forth in the body of the information with sufficient certainty to constitute an offense and to apprise the defendant of the nature of the charge against him, a misnomer or inaccurate designation of a crime in the caption or other part of the information will not vitiate it; in said case, the statement of facts controls the erroneous designation of the offense and the defendant stands charged with the offense charged in the statement of facts.[11]

The case of *Oca, et al. v. Jimenez, et al.*[12] followed this rule. Herein, accused were arraigned under an information charging "ill treatment." Accused filed a motion to quash on the ground that the information charged two offenses namely, "ill treatment" and "physical injuries." The Supreme Court affirmed the trial court's order of denial of the motion because, although the information designated the offense as "ill treatment," the statement of the acts complained of clearly make out a case of physical injuries for which the accused must stand trial. The designation of the crime by name in the caption of the information is a conclusion of law on the part of the fiscal. The denial of that conclusion raises no issue. The designation by the fiscal of the crime in the information by its technical name is a usurpation of the powers of the court and if binding, would be in effect an adjudication by him of the crime of which the accused must be convicted, if he were to be convicted of any offense. As a matter of fact, the court is the only person or institution authorized by law to say what crime has been committed.[13]

PROSECUTION OF CIVIL ACTION

Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.[14]

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[10] U.S. v. Canet, 30 Phil. 371.
[11] 27 Am. Jur. 628.
[12] G.R. No. L-17777, June 29, 1962.
[13] U.S. v. Lim San, 17 Phil. 273.
[14] Rule 107, section 1(d), Rules of Court.

In the case of *People v. Miranda*,[15] Miranda was charged with estafa thru falsification of commercial documents. He was acquitted on reasonable doubt but was held civilly liable to the complaining spouses for the sum of ₱2,000.00, the amount of the loan which the spouses contracted with a rural bank on the inducements of Miranda. The trial court imposed the civil liability because of its finding that the spouses never received the proceeds of the loan but were retained by Miranda. However, it also made the finding that the amount was received by Miranda pursuant to an arrangement with one of the spouses without the knowledge of the other. Upon appeal, Miranda contended that the civil liability which is included in a criminal action is that arising from and as a consequence of the criminal act. Since the trial court had acquitted him of the criminal liability on the finding that the money had been received by him pursuant to an arrangement with one of the complaining spouses, the imposition of any civil liability in the criminal case would be inconsistent with such positive finding.

Held: The contention is meritorious. The liability of defendant for the return of amount so received arises from a civil contract, not from a criminal act and may therefore not be enforced in a criminal case.[16] The judgment of the trial court as regards the civil liability should therefore be vacated.

PREJUDICIAL QUESTIONS

A prejudicial question is understood in law to be that which must precede the criminal action, or that which requires a decision before final judgment is rendered in the principal action with which said question is closely connected.[17] The prejudicial question must be determinative of the case before the court; this is its first element. Jurisdiction to try said question must be lodged in another tribunal; this is the second element.[18]

In the case of *Zapanta v. Hon. Montesa*,[19] a complaint for bigamy was filed against Zapanta by his second wife. Subsequently, he filed a complaint for the annulment of the second marriage on the ground that he was forced and intimidated into contracting it. Zapanta filed a motion to suspend the proceedings in the criminal case on the ground that the issue in the civil case was a prejudicial question. Motion was denied. Hence, this petition for prohibition to enjoin

[15] G.R. No. L-17389, Aug. 31, 1962.
[16] People v. Pantig, G.R. No. L-8325, Oct. 25, 1955.
[17] Berbari v. Concepcion, 40 Phil. 837.
[18] People v. Aragon, 50 O.G. 4863.
[19] G.R. No. L-14545, Feb. 28, 1962.

respondent court from proceeding with the trial of the criminal case. *Held:* Writ granted. The requisites of a prejudicial question are present herein. Should the question of annulment of marriage be resolved in favor of Zapanta, then his act of second marriage was involuntary and cannot be the basis for bigamy. Thus, the issue in the action for annulment is determimnative of Zapanta's guilt or innocence. In the case of *People v. Aragon,*[20] the Court held that, if the defendant in a bigamy case claims that the first mariage is void, and the right to decide such validity is vested in another court, the civil action for annulment must first be decided. There is no reason not to apply the same rule when the contention of the accused is that the second marriage is void because he was forced and intimidated into contracting it.

In the case of *People v. Hon. Villamor,*[21] the facts were that Puzon filed a complaint against Querubin to declare as non-existent and void certain documents of sale allegedly executed by Puzon in favor of Querubin. The CFI found for the plaintiff. Querubin appealed to the Court of Appeals. Pending appeal, the fiscal filed his information for false testimony against Querubin, alleging that Querubin falsely testified in the civil case that Puzon had executed a deed of sale. After the prosecution had rested its case, the defense started to present evidence to disprove the point covered by the prosecution that the document was non-existent. The prosecution then moved for suspension on the ground that the issue on which the accused was going to present evidence partakes of the nature of a prejudicial question which must first be decided in the civil case pending in the Court of Appeals. The trial court denied the motion. Hence, this petition to enjoin the respondent court from allowing the accused to present evidence as to the existence of the document. *Held:* Motion was rightly denied. The issue in the civil case is not prejudicial and even if it were so, the criminal case should not be suspended considering that the prosecution had presented evidence thereon, and the accused had indicated the desire to disprove it, it being her right to have the case terminated with the least possible delay and it being her opportunity to establish her innocence.

In the case of *Desalla v. City Attorney,*[22] the Supreme Court held that the time to ask for suspension of a criminal proceeding on the ground that there is a prejudicial question brought about by the institution of a civil action, is not during the preliminary inves-

[20] *Supra,* note 18.
[21] G.R. No. L-13530, Feb. 28, 1962.
[22] G.R. No. L-17338, May 30, 1962.

tigation by the city prosecutor, but after the investgation and after the filing of the information in court. Hence, the city prosecutor cannot be prohibited from proceeding with the preliminary investigation on this ground.

PRELIMINARY INVESTIGATION

A preliminary investigation may be conducted by the following: (1) justice of the peace or municipal judge[23]; city fiscal and provincial fiscal[24]; (3) municipal mayor, in the absence of the justice of the peace, when the investigation cannot be delayed without prejudice to the interest of justice[25]; (4) judge of the CFI if the complaint is filed directly before it.[26]

In the case of *Tagayuma v. Lastrilla, et al.*,[27] the Supreme Court held that the provincial fiscal or his assistants have no authority to conduct a preliminary investigation of any action for violation of the Revised Election Code,[28] and the CFI has the exclusive authority to do so as provided in Section 187 of the Revised Election Code. This provision is a limitation to the general authority granted to fiscals to conduct preliminary investigations under Rep. Act No. 732.

In the case of *People v. Papa and Alalo*,[29] the issue was whether or not a provincial fiscal may conduct its own preliminary investigation of a criminal case which had been previously investigated and dismissed by the JP. *Held:* The power of the provincial fiscal to conduct preliminary investigation of a criminal case previously investigated and dismissed by the JP is a settled question as previously held in *People v. Perez*.[30] If a charge for a crime cognizable by the CFI is filed in the JP and the accused waives preliminary investigation, and the JP finds a *prima facie* case and elevates the records to CFI, the fiscal is not called upon to conduct another investigation and may forthwith file the information in the CFI. Rep. Act No. 739 does not apply in such a case. But if a criminal case has been previously investigated and dismissed by the JP, the provincial fiscal may conduct the preliminary investigation because Rep. Act No. 732 as amended by Rep. Act No. 1799 applies.[31]

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[23] Sec. 47, Rep. Act No. 409, as amended by Rep. Act No. 1201.
[24] Sec. 1687 of the Rev. Adm. Code as amended by Rep. Act No. 732.
[25] Rule 108, section 3, Rules of Court.
[26] Rule 108, section 4, Rules of Court.
[27] G.R. No. L-17801, Aug. 30, 1962.
[28] Rep. Act No. 180 as amended.
[29] G.R. No. L-15345, May 26, 1962.
[30] G.R. No. L-15231, Nov. 29, 1960.
[31] People v. Padion, G.R. No. L-15960, April 29, 1961.

Under the Rules of Court, the justice of the peace or the officer who is to conduct the preliminary investigation must take under oath, either in the presence or absence of the defendant, the testimony of the complainant and the witnesses to be presented by him.[32] The use of the disjunctive-correlatives "either" and "or" before the phrase "in the presence" and the word "absence" contemplates that the accused may be present at the investigation not as of right, but in the discretion of the court, whenever the interests of justice so warrant.[33]

In the interrelated cases of *Santos v. Hon. Flores, et al.*[34] and *Molinyawe v. Hon. Flores, et al.*,[35] the issue was whether or not the petitioners had the right to examine the affidavits which were taken, and to cross-examine the witnesses who already testified at the preliminary investigation, prior to their request to be present at such investigation. *Held:* The right of an accused under Section 1687 of the Revised Administrative Code to be present and to cross-examine the witnesses is conditioned upon the existence of a request which must perforce, precede said investigation. There had been no such request before March 29, 1960, while the investigation was already proceeding, so that the request made by them on that date did not impose upon the prosecution the mandatory duty to disclose the details of the evidence introduced prior to that date. This was a matter entirely within the discretion of the prosecutors.

In the case of *Concepcion v. Gonzales*,[36] the question arose as to whether the fiscal of Manila had the authority to issue a subpoena *duces tecum* in connection with a criminal case already pending in court, the respondent having been charged with criminal contempt for refusing to obey such subpoena *duces tecum*. *Held:* The power of the City Fiscal to issue subpoenas under the Revised Charter of Manila,[37] extends only to cases pending investigation before him or his assistants. After a criminal charge has been investigated and the complaint or information filed in court as in this case, the inves-

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[32] Rule 108, section 6, Rules of Court.
[33] Moran, Comments on the Rules of Court, Vol. 2, 1957 ed., p. 672-3.
[34] G.R. No. L-18256, Aug. 31, 1962.
[35] G.R. No. L-18260, Aug. 31, 1962.
[36] G.R. No. L-15638, Aug. 31, 1962.
[37] Sec. 38-B, Rep. Act No. 409, as amended by Rep. Act No. 1201. The City Fiscal shall cause to be investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, *and for this purpose may issue subpoena, summon witnesses to appear and testify under oath before him*, and the attendance or evidence of any absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance.

tigation ceases to be that of the fiscal's office but of the court which then has the sole power to issue processes in connection therewith. Had the accused himself requested a re-investigation of the case pending trial, the fiscal could have been justified in re-opening the preliminary investigation and in issuing a subpoena *duces tecum* to the respondent, but in this case, there was no indication of such request. Furthermore, if the purpose of the subpoena was to aid the fiscal's preparation for trial, the same could have been addressed to the court trying the case so that said court could issue the necessary processes.

BAIL

Section 6, Rule 110 of the Rules of Court provides: "No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong." Capital offenses are thus bailable, in the discretion of the Court, before conviction.[38] And such discretion has no other reference than to the determination of whether or not the evidence of guilt is strong.[39]

In the case of *Bernadez v. Valera,*[40] the Supreme Court set aside the lower court's order denying the application for bail. It was held that although the offense charged was murder, a capital offense, it was obvious that the evidence of the prosecution, during the hearing of the application for bail to show that the evidence of guilt was strong, was not sufficient to establish that the offense committed was murder. The Supreme Court took into account, the following: (1) on the basis of the sworn statement of Bendito, one of the victims, on whom the case of the prosecution depends, that the accused could only be held liable for homicide; (2) the qualifying circumstances of evident premeditation or *alevosia* were not shown. Since homicide is not a capital offense, bail should be granted.

In the case of *Pareja v. Gomez et al.,*[41] the petitioner, Pareja, was denied bail in the lower court, so he filed a petition for *certiorari* with the Supreme Court to annul the order and secure an order for his release. He contended that the evidence against him is purely circumstantial and does not satisfy the requirements of Section 98, Rule 123 of the Rules of Court, with regard to sufficiency of circumstantial evidence for conviction; that he had voluntarily surren-

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[38] U.S. v. Babasa, 19 Phil. 198. Teehankee v. Rovira, 75 Phil. 634; People v. Alano, 81 Phil. 19.
[39] Montalbo v. Judge Santamaria, 54 Phil. 955.
[40] G.R. No. L-18462, April 13, 1962.
[41] G.R. No. L-18733, July 31, 1962.

dered himself; and that the triggerman of the alleged crime had been sentenced only to life imprisonment so that he could not possibly be sentenced to capital punishment; and that his conduct, social standing, and other personal circumstances indicate non-probability of flight. *Held:* The contentions are untenable for the following reasons: (1) Section 98 of Rule 123 is not decisive of the issue since it governs the quantum of evidence essential for conviction for which guilt must be established beyond reasonable doubt, whereas to forfeit the right to bail in capital offenses, it is enough that the evidence of guilt is strong; (2) the mitigating circumstances mentioned are not sufficient to offset the five aggravating circumstances set out in the information; (3) the Court can do no more than speculate as to non-probability of flight; and (4) the facts and circumstances are such that men may honestly disagree on whether or not petitioner should be released on bail, consequently it cannot be said that the respondent abused its discretion in denying bail. Writ denied.

Section 15, Rule 110 of the Rules of Court provides: ". . . If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce the principal and to show cause why a judgment should not be rendered against them for the amount of the bond. Within the said period of thirty days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court, when first required to do so. Failing in these two requisites, a judgment shall be rendered against the bondsmen."

In the case of *People v. Santos and Rizal Surety Co., Inc.*,[42] the Supreme Court held that it was well within the trial court's discretion to reduce the forfeited bail bond to one-half of the original amount when the accused eventually appeared after the thirty-day period from the time of forfeiture had elapsed. It was also acting within its discretion in refusing to lift the order of confiscation and execution or to further reduce the amount forfeited in spite of the appearance of the accused, when it had good reasons therefor, namely: (1) having been given a thirty-day period to produce the accused or to explain his failure to appear for trial, the surety company gave no explanation, but instead asked for an extension of more than twenty days after the expiration of such period; (2) it neglected to explain at the first opportunity why it failed to produce the accused on the

[42] G.R. No. L-17887, April 28, 1962.

day of trial. All these circumstances do not speak well of the company's diligence and care in securing the appearance of the accused for trial.

RIGHTS OF DEFENDANT

Speedy Trial

A speedy trial is one conducted according to fixed rules, regulations and proceedings of law, free from vexatious, capricious, and oppressive delays.[43]

After trial has terminated, the delay of the court to render the sentence does not make the detention illegal, because the defendant may, by *mandamus,* compel the court which unreasonably delays rendering the decision to do so, and for that reason, the defendant or prisoner is not granted the constitutional right to a speedy judgment.[44]

The case of *Acosta v. People* [45] reiterated this rule. It appears that the trial of the accused commenced on June 19, 1952 and was terminated on July 18, 1952. The trial judge retired without rendering a decision. His successor resigned, leaving the case undecided. The next judge rendered a decision on October 27, 1958, convicting Acosta. On appeal, the Court of Appeals ordered a retrial because of irregularities thereof. Acosta appealed from this order contending that the Court of Appeals should have acquitted him because he had been deprived of his right to speedy trial, the decision of the trial court having been rendered six years after the termination of the trial. *Held:* The constitutional right to a speedy trial does not extend to the act of pronouncement of sentence.[46] Trial and judgment are two different stages of a judicial proceeding. The former is provided for in Rule 115 and the latter is covered by Rule 116 of the Rules of Court. Furthermore, since the accused did not avail themselves of *mandamus* to compel the trial judge or his successors to pronounce judgment, it may be said that they had waived their right to a speedy trial.[47] Moreover, the delay in the rendition of the decision by the trial court was due to circumstances beyond the control of the presiding judges.

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[43] 14 Am. Jur. sec. 135, p. 859.
[44] Talabon v. Iloilo Provincial Warden, 78 Phil. 599 citing Reed v. State, 147 Ind. 41, 46 N.E. 135, 136; Felisino v. Gloria, 47 Phil. 967.
[45] G.R. No. L-17427, July 31, 1962.
[46] Reed v. State, *supra,* note 44.
[47] Talabon v. Iloilo Provincial Warden, *supra,* note 44.

MOTION TO QUASH

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

In the case of *Oca, et al. v. Jimenez, et al.*,[48] it was held that since the accused had already pleaded not guilty before they filed a motion to quash on the ground that the information charges two offenses, the accused, by pleading beforehand, are deemed to have waived all objections which are grounds for such a motion except those specifically mentioned in Section 10, Rule 113, of the Rules of Court, and therefore the belated motion to quash was rightly denied.

In the case of *People v. Monton*,[49] the issue was whether or not the privileged character of an alleged libelous communication constitutes a legal basis for the dismissal of the information. *Held:* It is not a ground for a motion to quash. The prosecution is entitled to go to trial and present the necessary evidence, disproving the privileged character of the commuunication.

The same ruling was made in the case of *Duque, et al. v. Santiago, et al.*,[50] wherein the court added that "whether the publication is privileged or not, the trial court will have to pass upon in a trial on the merits."

DOUBLE JEOPARDY

Section 9, Rule 113 of the Rules of Court enumerates the different cases when the defense of double jeopardy may be invoked by the accused or made a ground for a motion to quash: (1) former conviction; or (2) previous acquittal of the same offense; or (3) when the case against him has been dismissed or otherwise terminated without his express consent, provided that, in any of these cases, the following conditions are present: (1) by a competent court; (2) upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction; and (3) after he has been arraigned and has pleaded to the charge.

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[48] *Supra*, note 12.
[49] G.R. No. L-16772, Nov. 30, 1962.
[50] G.R. No. L-16916, Nov. 29, 1962.

The presence of these circumstances is a bar to another prosecution for the same offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[51]

A. *Previous Acquittal*

In the case of *People v. Silva*,[52] the bus driven by the accused collided with another bus. As a result of the accident one person died, two suffered serious physical injuries and three others suffered minor physical injuries. Silva was charged in an information with slight physical injuries thru reckless imprudence in the JP court. On the same day, Silva was charged in another information with homicide with serious physical injuries thru reckless imprudence in the CFI. While the case was pending, accused was acquitted under the first information by the JP court. So he filed a motion to quash on the ground of double jeopardy, alleging that his acquittal in the JP court constituted a bar to his further prosecution. The CFI dismissed the case before it on this ground, for the reason that the offense in the second information necessarily includes the offense in the first information. One of the contentions of the prosecution was that they had no other choice but to file two separate informations, one in the JP court and the other in the CFI, because under the provisions of Article 48 of the Revised Penal Code, slight physical injuries thru reckless imprudence, being a light offense, could not be complexed with homicide with serious physical injuries thru reckless imprudence, and because the JP court had jurisdiction only over criminal cases of the former but not of the latter. The CFI held that this contention is untenable because the prosecution had the choice as to which charge they would first prosecute until final judgment. They were not obliged to prosecute the minor charge before the more serious one. For the same reasons given by the CFI, the Supreme Court sustained the order of dismissal.

B. *Dismissal of Case Without Consent of Defendant*

In the case of *People v. Manlapas et al.*,[53] after the accused had pleaded, the lower court found that no preliminary investigation had been conducted on the amended complaint. So, the court dismissed the case, *motu propio* without prejudice to the refiling of

[51] People v. Ylagan, 58 Phil. 851.
[52] G.R. No. L-15074, Jan. 30, 1962.
[53] G.R. No. L-17993, Aug. 24, 1962.

the same. The issue was whether such dismissal had the effect of barring further prosecution on the ground of double jeopardy. *Held:* Double jeopardy can be invoked only if the case is finally disposed of or terminated. The dismissal contemplated in Section 9, Rule 113, of the Rules of Court is a definite or unconditional dismissal which terminates, and not a dismissal without prejudice as in the present case.[54] If the dismissal contains a reservation of the right to file another action, the case cannot be said to have terminated and jeopardy does not attach.

In the case of *Cabarroguis v. Hon. San Diego*,[55] the Supreme Court held that a verbal order of dismissal of a criminal case dictated in open court while the complainant was under direct examination, but withdrawn and set aside as soon as it was dictated, and before it could be reduced to writing and signed by the trial judge, is an incomplete order and does not have the effect of acquitting the accused. Consequently, the plea of double jeopardy as a consequence of such verbal order of dismissal does not lie.

C. *By a Competent Court*

In the case of *People v. Daco, et al.*,[56] a complaint for assault upon an agent of a person in authority was filed in the JP court. After receiving evidence during the preliminary investigation, the JP court rendered a "decision" convicting some of the accused for slight physical injuries. Notwithstanding the "decision," the provincial fiscal filed an information with the CFI, charging all the five accused with assault upon an agent of a person in authority, with physical injuries. The defendants who were convicted by the JP court moved to quash the information on the ground of double jeopardy. CFI sustained the motion and dismissed the case. Hence, this appeal. *Held:* Inasmuch as the JP court has no jurisdiction over a criminal case for assault upon a person in authority or his agent, its "decision" was a nullity and therefore, the plea of double jeopardy cannot be sustained since one of its essential elements namely, a judgment or final order rendered by a competent court, is not present. Besides, the record of the case shows that the JP court heard the case only to conduct the preliminary investigation, not to try it.

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[54] Jaca v. Blanco, 47 O.G. Supp. 12, p. 108; People v. Jabayab, G.R. No. L-9238-39, Nov. 13, 1956.

[55] G.R. No. L-19517, Nov. 30, 1962.

[56] *Supra*, note 2.

D. *Waiver*

In the case of *People v. Manantan*,[57] the state appealed the order of dismissal of the criminal case against Manantan by the trial court. The dismissal was ordered without the consent of Manantan. Manantan failed to raise the issue of double jeopardy by way of resisting the appeal of the State and again failed to allege the defense in the brief presented to the Supreme Court. The Supreme Court held that his failure to do so constituted a waiver of the defense of double jeopardy.[58] Hence, Manantan could not, on the ground of double jeopardy, take exception to the Supreme Court's order remanding the case to the trial court for trial on the merits.

In the case of *Cabarroguis v. Hon. San Diego*,[59] the Supreme Court held that, since Cabarroguis failed to object to the taking of the testimony of the complainant after the verbal order of dismissal had been made, and since his counsel cross-examined the complainant afterwards, this amounted to a waiver of his defense of double jeopardy.

In the case of *People v. Carreon*,[60] an information charging Carreon with light threats was filed in the municipal court. The municipal court tried and convicted him of unjust vexation. He appealed the judgment to the CFI. The city fiscal reproduced before the CFI, the same information that had been filed in the municipal court. Carreon filed a motion to quash before the CFI, on the ground of double jeopardy. The motion was granted. Hence, this appeal by the state. Counsel for Carreon contends that the statement of the municipal court that "it seriously doubts as to whether the accused could be held guilty of other light threats as charged in the information," and on that fact convicted Carreon of unjust vexation, amounted to an acquittal with respect to other light threats, and since the information before the CFI is captioned as "light threats," the proceedings under that information would subject Carreon to double jeopardy. The second contention was that the facts in the information do not constitute the crime of light threats. *Held:* The first contention is untenable because: (1) the statement of the municipal court was not a finding of acquittal but a mere statement of doubt; (2) when the accused unqualifiedly appeals from a sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open for review

[57] G.R. No. L-14129, Aug. 30, 1962.
[58] People v. Casiano, G.R. No. L-15309, Feb. 16, 1961; People v. Pinuela, G.R. No. L-11374, May 30, 1958.
[59] *Supra*, note 55.
[60] G.R. No. L-17920, May 30, 1962.

of the appellate court, which is then called upon to render judgment,[61] as accused did in this case; (3) when Carreon filed a notice of appeal from the judgment convicting him of unjust vexation, said judgment was vacated and the information against him for other light threats was actually reproduced, and the CFI will try the case anew completely unaffected by what the municipal court had found. Thus, against the proceedings in the CFI which the accused brought about by appeal, he cannot interpose double jeopardy. The second contention is also untenable because the information charges other light threats and not unjust vexatiion. What the CFI will determine is whether the accused will be found guilty of other light threats or unjust vexation, or not at all, under the facts alleged in the information and proved during the hearing, and this is something which cannot be anticipated at this stage. Furthermore, accused himself admits the sufficiency of the allegations in the information as to other light threats. The CFI should have therefore denied the motion to quash.

PLEA

There are two kinds of pleas: guilty and not guilty. The essence of a plea of guilty is that the accused admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime charged in the complaint or information.[62] A plea of guilty is not only an admission of guilt but also of all the material facts alleged in the complaint or information.[63]

In the case of *People v. de la Cruz*,[64] the appellants contended that they entered a plea of guilty to the charge of multiple murder without understanding the consequences and meaning of the plea. In an affidavit signed by the appellants and included in the appeal brief, they stated that they were prevailed upon to plead guilty upon the assurances of their counsel that, if they pleaded guilty, the sentence they would get would be at the most, life imprisonment. The Supreme Court held that there was no compelling reason to interfere with the trial court's finding that the defendants pleaded guilty voluntarily and spontaneously. The affidavit, instead of showing

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[61] Lontoc v. People, 74 Phil. 513, 519.

[62] U.S. v. Burlado, 42 Phil. 72; U.S. v. Dineros, 18 Phil. 566, 572; U.S. v. Jamad, 37 Phil. 305.

[63] U.S. v. Barba, 29 Phil. 206; U.S. v. Burlado, 42 Phil. 72; People v. Valencia, 59 Phil. 42; U.S. v. Look Chaw, 18 Phil. 573; U.S. v. Santiago, 35 Phil. 20; People v. Tapel, 64 Phil. 112; People v. Buco, G.R. No. L-2633, Feb. 28, 1950; People v. Sabilul, 49 O.G. 2743.

[64] G.R. No. L-14187, Aug. 31, 1962.

involuntariness or lack of understanding with regard to the plea, showed their consciousness of guilt for if they were innocent, they would shirk even from the possibility of a life sentence.

In the case of *People v. Arconado*,[65] accused changed his plea of not guilty to guilty with the request that he be allowed to present evidence as to some mitigating circumstances. The request was granted by the trial court. He was then able to prove minority and voluntary surrender. When the counsel for the accused further requested permission to prove the mitigating circumstance of sufficient provocation on the part of the offended party, the prosecution objected and the trial court denied the request on the ground that if the accused were allowed and he is able to prove this particular circumstance, the facts of the case would no longer be consistent with the plea of guilty. *Held:* It is true that discretion is lodged with the trial court to permit or not, submission of evidence as to mitigating circumstances after a plea of guilty has been made. But such discretion must be exercised in accordance with the facts and circumstances of the case, and should not be used to prevent the disclosure of circumstances that would mitigate the responsibility of the accused pleading guilty, when the record of the case itself intimates that mitigating circumstances are present. If the discretion of the trial judge on this matter were made absolute, no accused would be induced to enter a plea of guilty, consequently, criminal proceedings would not be abbreviated. The trial court therefore should have granted the request.

In the case of *People v. Manibpel*,[66] accused on arraignment, pleaded not guilty. During the trial and while the prosecution's third witness was being cross-examined, the accused agreed that should said witness swear by the Koran to the truth of his testimony, he would substitute his plea to one of guilty. After concluding his testimony, the witness swore by the Koran. Accused was arraigned anew and he pleaded guilty. He was convicted. He appealed, contending that the trial court erred in sanctioning the swearing by the Koran as the basis of the withdrawal of the original plea of not guilty and its substitution with a plea of guilty. *Held:* the fact that the swearing by the Koran of the witness was the reason for the substitution of the plea, is immaterial. Even if the witness took no such oath by the Koran, the appellant's withdrawal of his original plea and his subsequent plea of guilty would have been perfectly regular. Judgment affirmed.

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[65] G.R. No. L-16175, Feb. 28, 1962.
[66] G.R. No. L-15077, Dec. 29, 1962.

STATE WITNESS

In the case of *People v. Taruc*,[67] one of the errors assigned by Taruc on his appeal from the judgment of conviction for murder, was that the trial court erred in allowing the prosecution to utilize Balagtas, one of the accused, as a state witness without first discharging him from the amended information. It appears that Balagtas was discharged from the original information charging illegal detention with murder, in order to be a state witness. Subsequently, the information was amended so as to charge the complex crime of kidnapping with murder and multiple murder. The latter was again amended. *Held:* the discharge affects not only the original information but all subsequent informations. The amended information are not new informations but continuations of the original, hence, the discharge of Balagtas under the original information continues as regards the subsequent information. The trial court, therefore, did not err.

MISTAKE IN CHARGING THE PROPER OFFENSE

Section 12, Rule 115 of the Rules of Court provides: "When it appears after trial has begun and before judgment is taken, that a mistake has been made in charging the proper offense, and the defendant cannot be convicted of the offense charged, nor of any other offense necessarily included therein, the defendant must not be discharged, if there appears to be a good cause to detain him in custody, but the court must commit him to answer to the proper offense. . ." Furthermore, the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed thereby in double jeopardy.[68],

In the case of *People v. Abuy*,[69] it appears that on April 1, 1962, Abuy was charged in an information for trespass to dwelling. On November 5, 1959, the case was dismissed on motion of the prosecution. Abuy was discharged. On November 13 of the same year, a new information charging unjust vexation was filed. The lower court dismissed this second information because it was filed too late. Unjust vexation, being a light offense which prescribes in six months, had already prescribed. On appeal from the order of dismissal, the prosecution contended that the lower court erred in discharging Abuy after the case for trespass to dwelling was dismissed;

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[67] G.R. No. L-14010, May 30, 1962.
[68] Rule 106, section 13, Rules of Court.
[69] G.R. No. L-17616, May 30, 1962.

instead it should have committed him to answer the proper offense which was unjust vexation, as there appeared to have been a mistake in charging the proper offense. *Held:* The contention is untenable because in the first place, the fiscal moved for dismissal not on account of an alleged mistake in charging the proper offense, but because the evidence of the prosecution could not sustain the charge of trespass to dwelling; secondly, even if the intent of the fiscal was to subsequently charge unjust vexation, since the offense had already prescribed, it would not be proper for the lower court to further commit the accused to answer the proper charge to be subsequently filed.

JUDGMENT

The judgment must be written in the official language, personally and directly prepared by the judge and signed by him.[70]

In the case of *Cabarroguis v. Hon. San Diego,*[71] the Supreme Court held that pursuant to Section 2, Rule 116 of the Rules of Court, an order of dismissal that is not put in writing or signed by the judge is incomplete and does not have the effect of acquitting the accused, if the verbal order is immediately withdrawn.

NEW TRIAL

In the case of *Aguilar v. Hon. Natividad, et al.,*[72] the issue was whether the respondent Court of Appeals erred in denying petitioner's motion for reconsideration and/or new trial on the ground of newly discovered evidence, consisting of the sworn statement of the offended party, Dacumos, also the lone witness for the prosecution. In the sworn statement, Dacumos retracted on his original testimony in the lower court wherein he identified petitioner as his assailant. *Held:* It is well settled in this jurisdiction that recantation by prosecution witnesses does not entitle defendant to a new trial, such question being dependent upon all the circumstances of the case.[73] Moreover, in resolving such question, one cannot but bear in mind that testimony given at the trial with the solemnities prescribed by law and in the presence of the judges who observed the conduct and demeanor of the witnesses, carries with it the presumption that it was truthful, spontaneous and freely given.[74] Upon the other hand, for obvious reasons, scant weight can be placed upon

[70] Rule 116, section 2, Rules of Court.
[71] *Supra,* note 55.
[72] G.R. No. L-17849, Aug. 31, 1962.
[73] People v. Follantes, *et al.,* 64 Phil. 577.
[74] People v. Cu Unjieng, 61 Phil. 906.

sworn statements of witnesses withdrawing testimony previously given by them at the trial and accepted as true by the trial judge.[75] Reason for the above rule is that, if a new trial were to be granted every time an interested party succeeds in inducing some of the witnesses against him to vary their testimony after trial, there would be no end to litigation.[76] Even when the testimony of the recanting witnesses is the only evidence sustaining the judgment of conviction, a new trial may be granted only upon a clear showing of the existence of special circumstances sufficient to raise a substantial doubt as to the truth of the testimony given at the trial and accepted as true by the trial judge.[77] Considering all the circumstances disclosed by the record, the affidavit of Dacumos relied upon in support of the motion for a new trial is insufficient to raise such substantial doubt as to the truth of his original testimony.

APPEAL

In order that a judgment may be appealed, it is necessary that it be final in the sense that it completely disposes of the cause, so that no further questions affecting the merits remain for adjudication.[78] An order overruling a motion to dismiss does not dispose of the cause upon the merits and is thus merely interlocutory and not a final order.[79]

The case of *Duque, et al. v. Santiago, et al.*[80] reiterated this rule. The Supreme Court held that the denial of a motion to quash, which alleged that the publication charged as libelous is privileged and that the information charges the two offenses of libel and slander, is interlocutory and not appealable.

With respect to appeals from the JP or municipal courts to the CFI, Section 8, Rule 119 of the Rules of Court provides: "After the notice of appeal, all the proceedings and judgment of the justice of the peace or municipal court are vacated, and the case shall be tried anew in all respects in the Court of First Instance as if it were a case originally instituted in that court."

In the case of *People v. Carreon*,[81] the Supreme Court explained the application of this section. It said that no new information

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[75] People v. Olfindo, 47 Phil. 1.
[76] Reyes v. People, G.R. No. L-47583, April 22, 1941.
[77] People v. Dacir, 26 Phil. 503.
[78] People v. Labay, 52 O.G. 3561.
[79] Fuster v. Johnson, 1 Phil. 670; People v. Manuel, G.R. Nos. L-6794-5, Aug. 11, 1954; People v. Virola, G.R. No. L-6647, Sept. 2, 1954.
[80] *Supra*, note 50.
[81] *Supra*, note 60.

need be filed in the CFI in order that it may acquire jurisdiction to try and decide the case.[82] The prosecution may choose to stand on the information filed in the JP court or to file a new information in the CFI, provided the same charges the same criminal act for which the accused was tried by the JP court.[83] It further said that if the rule, that when the accused unqualifiedly appeals from the sentence of the trial court, he waives the defense of double jeopardy,[84] is true with respect to appeals from the CFI, with more force would it be in relation to appeals from the JP or municipal courts, in view of this section.

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[82] Crisostomo v. Director of Prisons, 41 Phil. 368; People v. Co Hiok, 62 Phil. 501.

[83] Andres v. Wolfe, 5 Phil. 60.

[84] *Supra*, note 61.