CRIMINAL PROCEDURE

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PROSECUTION OF OFFENSES

(a) Sufficiency of complaint or information:

A complaint or information is sufficient if it states the name of the defendant, the designation of the offense by the statute, the acts or omission complained of as constituting the offense, the name of the offended party, the approximate time of the commission of the commission of the offense, and the place wherein the offense was committed.[1] The determination of the sufficiency of the information or complaint is based solely upon such facts as are alleged therein.

In the case of *People v. Sunpad*,[2] an information was filed charging the defendants of violation of Paragraph 2, of Article 316, of the Revised Penal Code,[3] worded as follows:

> ". . . that the accused, Pastor Sunpad and Brigida Ungos, well knowing that the 2-story residential house owned by them has been mortgaged by them to Teresa Bautista for ₱2,500, and well knowing that the same cannot be encumbered, alienated or disposed of during the existence of said mortgage without the written consent of said Teresa Bautista, willfully, unlawfully and feloniously and knowingly sold, transferred and conveyed the same house by way of absolute sale to one Damian Vasquez for ₱7,000 by making it appear to the latter that the same is free from all liens and encumbrances of whatever nature, thereby defrauding the said Teresa Bautisto in the aforesaid sum of ₱2,500."

The lower court dismissed the information on the ground that the facts alleged therein do not constitute an offense. *Held:* The instant case falls within the purview of the clear provision of law cited, under which the appellees were prosecuted. Appellees sold the property in question to Vasquez knowing that the same was mortgaged to Bautista, although such encumbrance be not recorded. The mortgagee was prejudiced, had come to the court to vindicate her right as an offended party. The ground for dismissal of the case is that

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[1] Rule 106, Sec. 5, RULES OF COURT.

[2] G.R. No. L-18747, March 30, 1963.

[3] Art. 316, REVISED PENAL CODE, provides: Other forms of swindling—The penalty of arresto mayor in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value shall be imposed upon:

. . .

2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not registered. . . .

the facts alleged in the information do not constitute an offense. This being the case, the sufficiency of the information must have to be determined solely upon such facts as alleged therein. A cursory reading of the information, heretofore, quoted, shows that sufficient allegations have been set forth, to render appellees' acts, a violation of Par. 2, Art. 315, of RPC. While the appellees as the vendors, had not made misrepresentations to the mortgagee, because the mortgagee know of the encumbrance made in her favor, still the vendors-appellees committed or practiced fraud upon her, because appellees sold to the vendee the property which they had previously mortgaged to the mortgagee (herein offended party), without her knowledge and consent. So that, "if it can be proven as charged and which is in fact charged in the information that the mortgagee suffered damages in the amount of ₱2,500, by the act of the vendors in misrepresenting to the vendee that the real property in question (house) was unencumbered, well knowing that it was encumbered in favor of the mortgagee, then the vendors could be held liable."

(b) Amendment of informations:

The information or complaint may be amended, in substance or form, without leave of court, at any time before the defendant pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused. If it appears at any time before judgment that a mistake has been made in charging the proper offense, 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, and may also require the witnesses to give bail for their appearance at the trial.[4] If the motion to quash is sustained the court may order that another information be filed.[5]

In the case of *People v. Plaza*,[6] an information was filed charging Esperanza Lamboyog, Capistrano Lamboyog and Maximo Plaza with estafa, alleging:

> ". . . that the said accused conspiring, cooperating together and helping one another with accused Esperanza Lamboyog and her husband Capistrano Lamboyog, pretending and misrepresenting themselves to be the sole owner of a real estate . . . when in fact and in truth the above-named accused knew that the said land was already sold in a pacto de retro sale and latter converted the same sale into an absolute sale in favor of Felipe Paular, did then and there willfully, unlawfully and fe-

[4] Rule 106, Sec. 13, RULES OF COURT.
[5] Rule 113, Sec. 7, RULES OF COURT.
[6] G.R. No. L-18819, March 30, 1963.

loniously with intent to defraud said Felipe Paular knowing that said property has been previously sold to the said Felipe Paular in the amount of ₱400, both accused entered into agreement whereby the said property was sold by the accused Esperanza Lamboyog and her husband Capistrano Lamboyog, to his co-accused Maximo Plaza and falsely represented the same property to be free from encumbrance, to the damage and prejudice of said Felipe Paular in the amount of ₱400 excluding the improvement thereon."

Defendant Plaza filed a motion to quash the information on the ground that the facts charged do not constitute an offense insofar as he was concerned. The court found the ground to be well taken and dismissed the information as against him. *Held:* A perusal of the information discloses that it charges the three defendants with "conspiring, cooperating together and helping one another, etc." to commit the offense charged, while at the same time another portion thereof would seem to imply that the Lamboyog spouses falsely represented to their co-defendant, Maximo Plaza, that the property they were selling to him was free from encumbrance—an allegation justifying the inference that Plaza did not know that the property he was buying had been previously sold to the offended party Felipe Paular. In view of this, the Court was of the opinion that the real defect of the information is not that the facts alleged therein do not constitute a punishable offense but that its allegation, as to Plaza's participation and possible guilt, are vague. But even in assuming that the lower court was right in holding that the facts alleged in the information do not constitute a punishable offense, as far as defendant Plaza was concerned, the Court said that the case should not have been dismissed with respect to him. Instead, pursuant to the provision of Section 7, Rule 113, Rules of Court, the lower court should have given the prosecution an opportunity to amend the information. That under the provision of said rule the trial court may order the filing of another information or simply the amendment of the one already filed is clearly in accordance with the settled rule in this jurisdiction.[7]

In the case of *People v. Ladisla,*[8] a motion to amend the original information was filed by the fiscal, after the accused were already arraigned on the original information, alleging that the actual date of the commission of the crime by the accused thru their own admission and some eye-witnesses, was in the middle of December, 1959, instead of Feb. 17 to 18 as stated in the original information and claiming that the said amendment is not substantial in nature as to prejudice the interest of the accused. Counsel for the accused

[7] U.S. v. Muyo, 2 Phil. 177; People v. Tan, 48 Phil. 877, 880.
[8] G.R. No. L-18011, August 31, 1963.

objected to the admission of the amended information on the ground that the amendment sought is fundamental, which objection was sustained for which reason the motion for the admission of the amended information was denied. Forthwith, the assistant fiscal submitted the case. Subsequently, the court dismissed the case. A motion for reconsideration was presented by the fiscal, alleging that the amendment was not substantial and argued that the rules even provide that it is not necessary to state in he information the precise time at which the offense was committed, except when time is material ingredient of the offense.[9] The motion was opposed by the accused on various grounds, among which was that the reconsideration of the order of dismissal of the case, would thereby place them in jeopardy. The motion for reconsideration was denied. *Held*: The appeal was directed against the order of dismissal and is not from the order denying the admission of the amended information. The Court further observed:

> "We also find that after the denial of the admission of the amended information, the fiscal submitted the case, which was dismissed unconditionally, and that the appeal was not from the denial to admit amendment of the information, but from the order of the court dismissing the case. This being true, it would seem that double jeopardy exists when, among others, the case against the accused is dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after defendant had pleaded to the charge.[10] All the above requisites appear in the case at bar. The accused opposed the admission of the amended complaint. The court not only denied the admission thereof, but dismissed the case *motu propio*. This is a dismissal without the express consent of the accused. In a case, the Solicitor General claimed that the order of dismissal was null and void because it was entered *motu propio*. This Court, resolving the point said: 'We do not believe that this circumstance alters the legal effects of the order of dismissal. The fact is that the case was dismissed without the petitioner's consent, after a valid and sufficient complaint was filed which confered justification upon the court before final judgment was entered therein.'" [11]

In view of the above conclusions, the Court added, that it becomes immaterial and unnecessary to pass upon the question of whether or not the proposed amendment in the information was substantial. The trial court might have been wrong in dismissing the case, instead of merely denying the motion to amend, but such error could not be corrected in order to disregard the defense of double jeopardy, which will result in the impairment of the substantial rights of the

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[9] Rule 106, Sec. 10, RULES OF COURT.

[10] Rule 113, Sec. 9; See People v. Ylagan, 58 Phil. 851; Mendoza v. Almeda Lopez, 64 Phil. 820.

[11] Esguerra v. Hon. S. de la Costa, 6 Phil. 134, and cases cited therein.

accused-appellees. The Court finally concluded by saying that perhaps, had the fiscal not submitted the case, but directed his appeal to the order denying the petition to amend the information, the Court could and/or may have intervened and make a ruling regarding the proposed amendment.

PROSECUTION OF CIVIL ACTION

A general rule of substantive law declares that every person criminally liable for a felony is also civilly liable therefore.[12] Except as otherwise provided by law, when a criminal action is instituted, the civil action for recovery of the civil liability arising from the offense charged shall be considered instituted therewith, unless the offended party expressly waives the civil action or reserves his right to institute it separately.[13]

In the case of *People v. Samson*,[14] the defendant Josefina Samson was charged with parricide for the death of Jose Samson and was found guilty of the offense and sentenced accordingly to suffer the penalty of reclusion perpertua and to indemnify the heirs of the deceased in the sum of ₱6,000. The defendant appealed contending that the action to enforce civil liability had been reserved and, therefore, the trial court erred in awarding civil damages to the heirs of the deceased, quoting what the trial court stated during the hearing of the case in support of her contention, to wit:

> "Court: The court reserves the right of the heirs to prosecute the civil action independently, as soon as a guardian is appointed in that special proceeding. We will hold this in abeyance until a guardian is appointed by the court who can represent the heirs in this case."

Held: According to Section 1 (a) of Rule 107, Rules of Court, the offended party must reserve his right to institute separately the the civil action to enforce the civil responsibility arising from the offense charged. No one is authorized to make the reservation except the offended party. These are the minor children of the deceased. No such reservation having been made by them or by their duly appointed guardian, the trial court did well in condemning the appellant to pay her civil liability to the heirs of the deceased.

In the case of *People v. Chavez*,[15] the accused appellees were charged with theft of different sizes of canvass valued at ₱2,800 belonging to the offended party and appellant Ng Kok Corporation.

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[12] Art. 100, REVISED PENAL CODE.
[13] Rule 107, Sec. 1(a), RULES OF COURT.
[14] G.R. No. L-14110, March 29, 1963.
[15] G.R. No. L-19104, December 26, 1963.

Upon arraignment, all the accused pleaded guilty and the Municipal Court of Lucena City rendered judgment. As the judgment did not mention the civil liability of the accused, or order the restitution of the stolen goods, the offended party by counsel, and within the reglementary period, presented a motion asking the court to provide accordingly. The municipal court denied the motion stating that the civil liability in this case being evidentiary, the Court cannot exercise discretion alone in determining the nature and extent of civil liability upon mere allegations in the complaint. The issue is whether or not under the facts obtaining in this case, the trial court was correct in denying the motion for reconsideration. *Held*: There seems to be conflict regarding the fact that the plea of guilty admits the material allegations of the information or complaint and that with the institution of the criminal action, the civil liability is deemed included therewith, except when there is a waiver or reservation on the part of the complainant, which was not done in the present case.[16] The trial judge is not having included civil liability in the decision, stated that it cannot exercise discretion alone in determining the liability upon the mere allegations, the same being evidentiary. In answer to this, the Court said:

> "Considering, however, the fact that the trial court's attention was drawn to the existence of a *lapsus* in the decision, in the motion for reconsideration filed within the reglementary period, and taking into account the petition to supply what had been omitted, the trial judge could have set the motion for reconsideration for hearing, in order to receive evidence, as to the value of the properties admittedly stolen by the accused, or to the return of the goods, if it was still feasible."

In an identical case,[17] the Court ordered the said case remanded to the court of origin, for the purpose of determining the civil liability of the accused, where the lower court had failed to provide for the corresponding civil liability.

PRELIMINARY INVESTIGATION

Preliminary investigations are governed by the Rules of Court [18] for cases begun in the Justice of the Peace Courts and Republic Act No. 732, as amended by Republic Act No. 1799, for cases originally instituted by the fiscal to the Court of First Instance.

In the case of *People v. Tan*,[19] a complaint was filed charging Jose Tan with homicide with the Justice of the Peace Court of Laoag,

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[16] People v. Pabtig, G.R. No. L-8325, October 25, 1955, cited in People v. Miranda, G.R. No. L-17389, August 31, 1962.

[17] People v. Ursua, 60 Phil. 252, citing U.S. v. Heery, 25 Phil. 600.

[18] Rule 108, RULES OF COURT.

[19] G.R. No. L-17791, April 30, 1963.

Ilocos Norte. After conducting the first and second stages of the corresponding preliminary investigation, said court dismissed the complaint and forwarded the records to the Court of First Instance. The Provincial Fiscal subsequently conducted his own preliminary investigation, and then filed with the CFI an information charging Tan with the same offense. The defendant moved to dismiss this information upon the ground that, in view of the dismissal of said complaint by the Justice of the Peace Court, the Provincial Fiscal could not, under the Republic Act No. 1799, amending Rep. Act 732, file a new information with the court of first instance "without first obtaining an order directing the Justice of the Peace to conduct another preliminary investigation." The CFI issued the order dismissing the aforementioned information. A reconsideration of this order having been denied, the prosecution interposed the present appeal. The issue is whether the provincial fiscal could validly file said information, after a preliminary investigation made by him, in which he found that a probable cause exists against the accused, considering that the complaint filed with the Justice of the Peace Court had been dismissed by the same, after conducting the second stage of the preliminary investigation. The lower court resolved the question in the negative relying upon the cases of *U.S. v. Marfori*,[20] and *People v. Magbanua*,[21] *Held:* The Court agreed with the appellant that the lower court erred in reaching its decision. The *Marfori* case is not in point for no preliminary investigation was conducted therein by the provincial fiscal. The decision of the Court of Appeals in the *Magbanua* case was, also, invoked by the accused in the case of *People v. Pervez*,[22] which is identical to the one at bar. Like the lower court in the present case, the CFI granted the motion to dismiss, the information in the *Pervez* case. Yet the Court reversed the order of dismissal therein upon the ground that:

> ". . . if the charges for a crime cognizable by the CFI is filed by a competent party or officer in the Justice of the Peace Court, and the accused waives preliminary investigation therein, or the Justice of the Peace, after regular preliminary investigation, finds that a *prima facie* case exists, and consequently, elevated the records to the CFI, the Provincial Fiscal is not called upon to conduct another preliminary investigation, and may forthwith file the information in the CFI. Republic Act 732 does not apply in such a case. But if the Justice of the Peace, after due investigation, dismissed the charge, then, the case stands as if no charge had been made, and the Provincial Fiscal may thereafter conduct his own investigation of the same charge under the aforementioned Republic Act 1799 (amending Republic Act 732), making it in the presence of the accused if and when the latter so requests."

[20] 36 Phil. 666.
[21] C.A. G.R. No. L-19544-R, 54 O.G. 4500.
[22] G.R. No. L-15231, November 29, 1960.

Upon the authority of the aforementioned decision in *Pervez* case, which was reiterated in *People v. Reginaldo*,[23] and *Abubaar v. Aoa*,[24] the Court set aside the order appealed from and the case remanded to the lower court for further proceedings.

BAIL

(a) Condition of the bail:

The condition of the bail is that the defendant shall answer the complaint or information in which it is filed or to which it may be transferred for trial, and after conviction, if the case is appealed to the Court of First Instance upon application supported by an undertaking or bail, that he will surrender himself in execution of such judgment as the appellate court may render, or that, in case the cause is to be tried anew or remanded for a new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes thereof.[25]

In the case of *People v. Valle, Alto Surety & Insurance Co., Inc.*[26] defendant Ambrosia Valle was convicted of estafa in the Municipal Court of Manila, and appealing to the CFI of Manila, she filed an appeal bond in the sum of ₱500 posted by the appellant, the Alto Surety & Insurance Co., Inc. The accused was convicted of the charge on Sept. 14 and was ordered to appear on Sept. 29, the last day to appeal from said decision and in order to perfect her appeal, notifying the appellant accordingly. Appearing in the morning of said date, the accused asked that she be given up to the afternoon to file her notice of appeal, which was granted but she failed to appear. The court ordered the bail confiscated and the defendant arrested. On Oct. 14, appellant surrendered the accused and filed a motion to lift the order of confiscation and for the cancellation thereof but said motion was denied. The appellant filed notice of appeal from said orders, maintaining that the lower court erred: 1. in postponing or in not immediately executing its judgment of conviction after the promulgation or reading thereof on Sept. 14; 2. in releasing the accused after the promulgation of its judgment without the appellant's knowledge or consent; 3. in confiscating the appellant's bond after having produced the accused on the date of promulgation and/or execution of its judgment (Sept. 14) and on another subsequent date (Sept. 29); and 4. in denying the appellant's motion to lift the order confiscating its bail and to cancel the same. *Held:*

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[23] G.R. No. L-15960, April 29, 1961.
[24] G.R. No. L-14916, December 29, 1962.
[25] Rule 110, Sec. 2, RULES OF COURT.
[26] G.R. No. L-18044, April 30, 1963.

The first assignment of error has nothing to do with the propriety or validity of the order of confiscation of the bond. Moreover, since the defendant was entitled to appeal, the lower court had the discretion to postpone, until the last day for the perfection of such appeal, the determination of the question whether it should or should not order the defendant's detention or the execution of the decision of conviction. With respect to the other alleged errors assigned by the appellant, it should be noted that its liability, under the bond, continued until after the accused had been surrendered and the court had ordered the cancellation of said bond. The court cited the case of *People vs. Lorredi*,[27] where it was held:

> "Moreover, one of the conditions of the bond subscribed by the appellant is that if the accused is convicted, he will render himself amenable to the judgment as well as the execution thereof. After notification of the judgment, the accused had fifteen days within which to perfect his appeal, and it is only after the expiration of the said fifteen days, without the accused having made use of his right, that the said judgment becomes final.[28] Neither the fact, then, that the court granted the accused ten days within which to comply with the judgment, nor the fact that his attorney guaranteed said compliance, relieves his sureties from their liability in case of non-compliance with said judgment, because, as we have already see, in order to be relieved from the obligation contracted by them by virtue of their bond, a judicial order relieving them of their liability is necessary."

Inasmuch, however, as the person of the accused was surrendered to the court shortly after the appellant's bond had been ordered confiscated and the arrest of the accused had been decreed, the question arises as to whether the appellant's liability under said bond should be reduced or not. The court stated:

> "We do not think it should be, for this is a matter left to the sound discretion of the lower court, and its action should not be disturbed because appellant had misrepresented thereto, in its motion to lift the confiscation of the appeal bond, that the court had, on Sept. 29, granted the accused two days within which to file his notice of appeal and appeal bond, which is not true."

(b) Forfeiture of bail:

When the appearance of the defendant is required by the Court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond.

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[27] 50 Phil. 218.
[28] Sec. 47, General Orders No. 58.

Within the said period of thirty days, the bondmen (a) must produce the body of their principal or give reason for its non-production; and (b) must explain 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.[29]

In the case of *People vs. Cordero*,[30] the accused Arnaldo Cordero was charged by the City Fiscal of Iloilo and the appelant Manila Surety & Fidelity Co., Inc. posted the bail bond in his behalf in the amount of ₱2,000 for his provisional release. On February 3, 1955, for failure of Cordero to appear at the arraignment, the Court ordered the confiscation of the bond and the arrest of the accused and on May 27, 1958, the Court rendered judgment against the appellant in the amount of ₱2,000. On Aug. 12, 1961, the court ordered the issuance of a writ of execution which was thereafter issued and served upon appellant on Aug. 15, 1961. On Sept. 16, appellant Surety Co., filed an urgent motion to set aside the writ of execution and on Oct. 2, filed a brief memorandum in support of its aforesaid motion to set aside the writ of execution, alleging: (1) that the movant's principal, died sometime in May, 1957, long before Aug. 15, 1961, when judgment was rendered against the bond; (2) that, as shown by the order of confiscation dated Feb. 3, 1955, the appellant was not directed to produce the accused and to show cause why judgment should not be rendered against it for the amount of the bond, in the manner provided by Section 15, Rule 110, Rules of Court; (3) that a personal bail band shall be cancelled and the sureties discharged from liability when the defendant dies during the pendency of the action, which is a fact in this case; and (4) that the accused having died during the pendency of his case his criminal liability was thereby extinguished in accordance with par. 1, Art. 89 of RPC. On Oct. 18, 1961, the court issued an order (received by appellant on Oct. 17) denying the motion to set aside the writ of execution. *Held:* The main argument of appellant is that under Rule 110, Sec. 15, after declaration of forfeiture, the bondsman should be given 30 days to produce their principal and show cause why judgment should not be rendered against them but that the court, on Feb. 3 1955, merely ordered the accused arrested and the forfeiture of his bond; then three years later, still without ordering the surety to show cause, the court rendered judgment against the surety. To this the Court said:

> "While the lower court did not act in strict conformity with the Rules of Court, it is well to note that on May 20, 1958, the appellant surety was served copy of the Fiscal's motion for judgment against it, and made

[29] Rule 110, Sec. 15, RULES OF COURT.
[30] G.R. No. L-19363, December 19, 1963.

> no move to counter it, or to plead the violation of the Rules of Court of which it now complains. It was only on September 6, 1961, almost three years and four months after judgment was entered (on May 27, 1957) and execution was subsequently issued, that the surety for the first time asked to be released, on the ground that the accused had died on May 20, 1957, a week before the judgment against the surety was entered. All the facts pleaded in its motion of Sept. 15, 1961 to set aside the execution, and its supplemental petition of Sept. 22, 1961, occurred before the judgment of May 27, 1958 was rendered, and could have been (but were not) pleaded within a reasonable time thereafter. This laches of the appellant cured whatever irregularity arose from the court's failure to give it opportunity to show cause."

And as to the contention of the appellant that the death of his principal during the pendency of the action discharged the surety from liability, the Court declared:

> "The bail bond having been broken when the appellant surety failed to make the accused appear in court for arraignment on Feb. 3, 1955, the subsequent illness or death of said accused three years later could not excuse the breach of the conditions of the bond.[31] Particularly should this be the rule where, as in the case before us, the bondsman's own motions show that no proper supervision had been maintained over the accused, to the extent that the bondsman (who, in law, is the jailer of the accused) never found out the whereabouts of the accused, or the fact of his death, until 1961, six years after the default. It is manifested that after putting up bail, the surety company took no steps to keep in touch with the accused, as it was its bounded duty to do, resting (in all probability) on the counter-guarantors to protect it from any prejudice."

With respect to the finality of the order of execution in the case and no longer was appealable, the Court concluded:

> "Finally, counting from the time the writ of execution was issued and served on appellant (Aug. 15, 1961) until it filed its notice of appeal on October 26, 1961, a period of seventy-one days (that passed between the filing of its motion) had elapsed. Deducting the thirty-one days to set aside the writ of execution (Sept. 15, 1961) and the receipt of notice of its denial (Oct. 17, 1961) leaves a remainder of forty days, a period far in excess of the time allowed for perfecting appeal, that is only fifteen days from notice of the order directing the execution of the judgment of forfeiture.[32]

In the case of *People vs. Weber, Fieldmen's Insurance Co., Inc.*,[33] the appellant corporation failed to produce the body of the accused for arraignment, after granting the said accused several postponements. The lower court ordered the bond filed forfeited and gave

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[31] U.S. v. Babasa, 19 Phil. 198; U.S. v. Paginada, 27 Phil. 18; U.S. v. Sunico, 40 Phil. 286; People v. Tuising, 61 Phil. 404; People v. Kantong Ali, 53 O.G. 1438.

[32] People v. Loredo, 50 Phil. 209; People v. Go, 57 O.G. 1391.

[33] G.R. No. L-18746, January 31, 1963.

the bondsmen 30 days within which to produce the person of the accused and show cause why judgment in the amount of their bond should not be finally entered against them. Since the appellant failed to produce the accused, the court ordered the issuance of the corresponding writ of execution of the total amount of the bond. The appellant, in a "Motion for Partial Execution of Bond" pleaded that its liability be reduced to 10% of the amount on the ground that the accused was seriously ill. The said motion was not, however accompanied by a sworn medical certificate. The court denied the motion for partial execution of the bond. *Held:* It was incumbent upon the bondsmen to show to the complete satisfaction of the court that the accused was seriously ill, in view of the damaging report of Chief Medico-Legal Officer of the NBI who said that the accused "is one who is prone to the extent of feigning or pretending to be physically weak by all means to justify his failure to appear in court in a previously set date." The court observed that:

> "No expert testimony whatsoever was offered to convince the court that Weber was not pretending to be sick. The bondsmen could have presented easily any of the four doctors to testify as to his alleged malady or it could have requested the court to see for itself his real condition. In short, the bonding company did not take any steps to protect its interest. It did not exert any effort to show its good faith in endeavoring to comply with the orders of the court. Mere allegation that the accused is seriously ill is not sufficient. In fact, there are strong ground to suspect that the accused was purposely delaying the trial of his case of which appellant may be chargeable, at least, with constructive knowledge."

As the accused had been subsequently arraigned and tried, no permanent injury to public interest appears to have been caused so that the Court was of the opinion that the bondsmen is entitled to a mitigation of liability [34] although not to the ten *percentum* prayed for, which would be irrisory and will stimulate, rather than deter, bondsmen to hinder speedy trials and prompt despatch of cases. A reduction of the forfeiture to ₱1,000 would serve the interest of justice in this regard.

In the case of *People vs. Ignacio, et al., Philippine International Surety,*[35] accused Ignacio failed to appear on April 8, 1959 when the case was called for hearing, and as a consequence the court issued an order declaring the bond confiscated and requring the bondsman to show cause why judgment should not be rendered against it on the bond. The accused was apprehended and surrendered to the court only on January 19, 1960. The bondsman prayed that its bond be cancelled and the confiscation thereof issued

[34] People v. Bustamante, G.R. No. L-13665, September 24, 1959.
[35] G.R. No. L-18572, July 21, 1963.

by the court be lifted. The court denied the motion for the lifting of the confiscation but reduced the bondsman's liability by 50%. The appellant contends that taking into account all the expense, efforts and difficulties it had undergone to locate and produce the accused, the court erred in not exercising its discretion in completely exonerating it from the liability under the bond. *Held:* The lower court did precisely what our rules require.[36] It gave appellant sufficient time to show cause why it failed to produce the accused, or why judgment should not be rendered against it for the amount of the bond. This appellant failed to do, and was only able to surrender the accused on Jan. 11, 1960, or almost 9 months after the failure of the accused to appear at the hearing. There was, therefore, no plausible reason for relieving appellant from its liability notwithstanding the efforts it made to locate and surrender the accused. The most that can be said considering the efforts made by the appellant is that it is entitled to a mitigation of its liability which discretion has already been exercised by the lower court when it reduced appellant's liability by 50%.

(c) Discharge of sureties:

Upon application filed with the court and after notice to the fiscal, the bail bond shall be cancelled and the sureties discharged from liability (a) where the sureties so request upon surrender of the defendant to the court; (b) where the defendant is re-arrested or ordered into custody on the same charge or for the same offense; (c) where the defendant is discharged by the court at any stage of the proceedings, or acquitted, or is convicted and surrendered to serve the sentence; and (d) where the defendant dies during the pendency of the action.[37]

In the case of *People vs. Caderao, Associated Insurance & Surety Co., Inc.*,[38] accused Procopio Caderao, after his conviction for estafa, was admitted to bail. To secure performance of the conditions of the bond, the Surety Co. filed a personal bond in the amount of ₱2,000. The bondsman was given up to December 31, 1956 within which to produce the person of the accused to the prison authorities, after granting other orders of extension of time. The surety company failed to produce the accused but on January 4, 1957, it effected the arrest of the accused and surrendered him to the Bureau of Prisons. The surety company submitted a motion for cancellation of its bond and for discharge from liability as surety, alleging that it had already complied with its obligation.

[36] Rule 110, Sec. 15, RULES OF COURT.
[37] Rule 110, Sec. 16, RULES OF COURT.
[38] G.R. No. L-15699, April 22, 1963.

The motion was denied and judgment was rendered on the bond for the amount of ₱500. *Held:* Since the accused, despite the several extensions of time, failed to appear or surrender himself on or before the date required, and appellant surety was not able to produce or surrender him until January 4, 1957, it can not be validly claimed that said appellant has complied with its obligation so as to be exonerated completely from liability under the bond. It is the bonding company's responsibility to produce the accused whenever required, and its failure to do so indisputably constitutes a breach of guaranty. The Court further said:

> "Of course, as held in the case of *People v. Tan*,[39] cited by the appellant, the failure of a surety to produce the principal at a date set by the court does not constitute a complete and irrevocable breach of the bond. And neither is the order of forfeiture nor even the judgment then rendered against the surety to pay the amount of the bond, final and irrevocable. They are merely provisional in character, subject to the contingency that the surety may finally secure the arrest of the principal and the production of his person as required. This does not mean, however, that the mere production or appearance of the accused after his failure to appear when first required suffices to exonerate the surety from liability, nor entitles it to release as a matter of right. It is still necessary that it gives satisfactory reasons why the accused failed to appear when first required to do so." [40]

The determination of the sufficiency of the explanation given by a surety for its failure to produce the person of the accused when his appearance is required by the court and the reduction of its liability are matters within the discretion of the court. Furthermore, courts are generally liberal in dealing with bondsmen in criminal cases in mitigating their liability on the bonds already confiscated when the accused is presented or produced without considerable delay.[41]

In the case of *People vs. Kusain Said and Guiana Akan, Luzon Surety Company, Inc.*,[42] a motion was filed by the Surety company to set aside the writ of execution of judgment already rendered against the bonding company, alleging that the defendant Akan died on November 15, 1956, in a battle with a PC patrol in Bualan, Tubud, Lanao, and thus should be declared relieved from liability on the bail, attaching to the motion a copy of a letter dated 16 April 1957 of Hadji Datu Samar Mangelen, Mayor of Buluan, Cotabato, an Arabic letter of bandit leader Mote Arba where he stated that

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[39] G.R. No. L-6239, April 30, 1957.
[40] People v. Sy Reng Guat and Manila Surety & Co., Inc., G.R. Nos. L-12097 and 12042, April 29, 1959.
[41] See People v. Daisin, G.R. No. L-6713, April 29, 1957.
[42] G.R. No. L-17060, May 30, 1963.

on Nov. 15, 1956, Akan died from a gunshot wound, and a joint affidavit executed by Katip Muscad and Daya Gundalangan, reciting the fact that Akan died on November 15, 1956. *Held:* The death of the bailed accused cannot be deemed established by such hearsay evidence. The Mayor of Buluan, the bandit leader Mote Arba and the two affidavits should have been examined under oath. Thus the Court remanded the case to the lower court to determine by admissible and competent evidence the fact of death of the bailed defendant.

MOTION TO QUASH

(a) That the facts charged do not constitute an offense:

When the complaint or information is substantially insufficient because it fails to allege the essential facts constituting the offense charged, the defendant may move to quash the complaint or information on the ground that the facts charged do not constitute an offense.[43]

In the case of *People vs. Ignacio, et al.*,[44] an information was filed against the defendants. The accused moved to quash the information on the ground that the facts therein did not constitute an offense. The lower court granted the motion and dismissed the information. The charge for perjury was premised on paragraph 4 of the application for registration filed by the accused wherein they stated that they do not know of any mortgage or encumbrance of any kind whatsoever affecting the land in question, or that any other person has any interest therein, legal or equitable. It was argued that in making such a statement the accused deliberately stated a falsehood, as they very well knew that in Civil Case No. 4399, CFI of Rizal, the plaintiffs therein, complainants in the criminal case, claim ownership of the parcel of land sought to be registered. *Held:* The motion to quash was correctly sustained considering that (1) the mention of the claim of the complainants is not required by the law; (2) that what is required by the law to be stated in an application are valid and legal claims to the property sought to be registered, and not those that are merely groundless and invalid, as the claim of the complainants was found to be; and (4) there being no allegation in the information that the matter omitted was known by the accused-appellees to be material matter required to be stated in their application.

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[43] Rule 113, Sec. 2(a), RULES OF COURT.
[44] G.R. No. L-18572, July 21, 1963.

(b) That the criminal liability has been extinguished:

One of the grounds under our Revised Penal Code when criminal action or liability is totally extinguished is the prescription of the crime.[45]

In the case of *People vs. Coquia,*[46] from an incident which occured on July 1, 1957, one David Naval filed with the Municipal Court of the City of Naga a complaint for grave oral slander against the defendant-appellee, Coquia. On July, 1957 the same court forwarded the records of the case to the CFI of Camarines Sur for the continuance of the proceedings. On August 2, 1957 the court endorsed the case to the Office of the City Attorney for reinformation. For some unexplained reasons, the case was left completely unacted on by the City Fiscal's Office until January 26, 1959 when the City Fiscal filed with the Court of First Instance the corresponding information for grave oral defamation against the accused. The defense filed a Motion to Dismiss on the ground of prescription which was sustained and the case was dismissed. *Held:* Under Article 91 of the RPC, it is provided that the period of prescription shall be interrupted by the filing of the complaint or information. As ruled in the case of *People vs. Tayco,*[47] the complaint or information referred to in the said provision is that which is filed in the proper court and not the *denuncia* or accusation lodged by the offended party in the Fiscal's Office. The records of the case clearly show that no formal complaint or information was contemplated by the aforementioned Art. 91, was ever filed therein within the reglementary period. The formal complaint or information was filed only after the lapse of more than one year. Considering therefore that under the Code, the prescriptive period for grave oral defamation is six months,[48] the only conclusion deducible is that the same has prescribed.

DOUBLE JEOPARDY

The protection against double jeopardy, under section 9 of this 113, Rules of Court, may be invoked by the accused in any of the following cases: (1) previous acquittal; or (2) conviction of the same offense; or (3) when the case against him has been dismissed or otherwise terminated. But in all these cases, legal jeopardy does not exist but under the following conditions: (a) upon a valid complaint or information; (b) before a competent court; (c) after he

[45] Art. 89, REV. PENAL CODE.
[46] G.R. No. L-16456, June 29, 1963.
[47] 73 Phil. 509.
[48] Art. 90, REV. PENAL CODE.

has been arraigned; and (d) after he has pleaded to the complaint of information.[49]

In the case of *People vs. Pacita Madrigal Gonzales, et al.*,[50] the accused was charged with malversation of public funds and on the same date, the accused was charged together with her co-accused with the crime of falsification of public documents under 27 separate informations. The issue was "whether the Order of the three (3) different branches of the Manila CFI, namely: the Order of Dismissal issued by Branch XVIII in Criminal Cases Nos. 36894, 36899 and 36904; the Order of Branch X dismissing Criminal Case No. 36882; and the decision of Branch XIII in Criminal Case 36885 acquitting the accused, constitute a bar to the prosecution of the remaining 22 falsification charges, filed against the accused appellee, which were lodged and still pending resolution with the other branches of said Court on the ground of double jeopardy." *Held:* The 27 falsifications perpetrated on separate vouchers, at different dates and in various amounts, constitute 27 separate and independent crimes, which were not continuous.[51] In respect to the defense of former jeopardy, it must appear by the plea that the offense charged in both cases was the same in law and in fact. The plea will be bad if the offenses charged in two indictments are perfectly distinct in point of law, however nearly they may be connected in fact.[52]

In the case of *People v. Bellosillo, et al.*,[53] an information was filed charging defendants with the crime of theft of coconuts. Predicated on the ground that, upon a reinvestigation conducted at the request of the accused, it turned out that the property from which the coconuts were allegedly stolen was involved in a civil case between the complainant and the accused, said criminal case was, on motion of the prosecution, and "with the express conformity" of the accused, dismissed on January 4, 1960. However, on March, 23, 1960, the prosecution filed against the accused an identical information. Before the arraignment, the accused moved to quash the last information upon the ground that the facts alleged therein do not constitute an offense and the previous information therefor had been dismissed. The lower court granted the motion. *Held:* The Court in setting aside the order appealed from, stated:

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[49] People v. Ylagan, 58 Phil. 851; Mendoza v. Almeda Lopez, 64 Phil. 820.
[50] G.R. Nos. L-16688-90, April 30, 1963.
[51] U.S. v. Infante & Barreto, 36 Phil. 148-149; People v. Villanueva, 58 Phil. 671; People v. Cid, 66 Phil. 354; Regis v. People, 67 Phil. 43.
[52] 23 Am. Jur. 700.
[53] G.R. No. L-18512, December 27, 1963.

"The order of January 4 dismissing the case, cannot be an obstacle to the institution of the present case for, not being a decision on the merits, said order cannot bar the present case upon the principle of *res-adjudicata*, and the provision of Rule 30, section 3 of the Rules of Court, to the effect that a "dismissal shall have the effect of an adjudication upon the merits unless otherwise provided by the Court," does not apply to criminal cases. Neither does the present action place the accused twice in jeopardy of punishment for the same offense, not only because he had never been in jeopardy of punishment therefor in the previous case, the same having been dismissed before arraignment and plea, but, also, because its dismissal took place with the express consent of the accused." [54]

APPEAL

An order overruling a motion to dismiss presented by the defendant against the information does not dispose of the cause upon its merits and is thus merely interlocutory and not a final order within the meaning of section 1 of Rule 119 of the Rules of Court.[55]

In the case of People v. Macandog,[56] the accused was charged in the Municipal Court of Manila in two informations for slander and for slight physical injuries. The accused filed motions to quash both informations challenging the jurisdiction of the municipal court in the slander case and claiming that the slight physcal injuries ease had already prescribed. The motions were denied and appealing to the CFI of Manila, the appeal was dismissed. The issue is whether the order of the municipal court denying the motions to quash both informations is appealable. *Held*: The order denying the motion to quash is merely interlocutory, and, therefore, not appealable.[57] Section 1, Rule 113 of the Rules of Court specifically provides that the accused "shall immediately plead" after the motion to quash is overruled. This means that trial shall go on, and if judgment is rendered against her, she can later appeal and then raise again the same question which she is now seeking to be reviewed.

A case appealed to the Court of First Instance stands as if it were originally instituted in that Court.[58] This principle was re-

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[54] Rule 113, Sec. 9, RULES OF COURT; U.S. v. Palisoc, 4 Phil. 207; U.S. v. Solis, 6 Phil. 676; U.S. v. Sobreviñas, 35 Phil. 32; People v. Turla, 50 Phil. 676; People v. Romero, G.R. No. L-4517, July 31, 1961; Gaudicela v. Lutero, G.R. No. L-4069, Resolution of May 31, 1951; People v. Reyes, G.R. No. L-7712, March 23, 1956.

[55] Fuster v. Johnson, 1 Phil. 670; People v. Manuel, G.R. Nos. L-6794-95, August 11, 1954; People v. Virola and Alba, G.R. No. L-6647, September 2, 1943.

[56] G.R. No. L-18601, January 31, 1963.

[57] Collins v. Wolfe, 4 Phil. 534; People v. Aragon, G.R. No. L-4930, February 17, 1954; People v. Manuel, G.R. Nos. L-6794-95, August 11, 1954.

[58] People v. Jaranilla, G.R. No. L-8030, November 18, 1955.

iterated in the case of *People v. Romulo de la Merced,*[59] where it was *held* that the appellant stood trial before the Court of First Instance and it was entirely *de novo,* independently of the trial had in the municipal court.

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[59] G.R. No. L-19145, February 27, 1963.