

## CRIMINAL LAW

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The 1963 decisions of the Supreme Court in the field of Criminal Law did not formulate any new doctrine. The Court in deciding cases merely cited old principles that have been laid down in so many decisions. Most of the cases involved questions of fact, and the Supreme Court invariably took into account the findings of the lower court. As stated in one case, "the rule is well established that when the issue involves credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, as the latter is in a better position to decide the question, having seen and heard the witnesses themselves and observed their behaviour and manner of testifying during the trial, except when it is shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case." Although, generally, only questions of law may be elevated to the Supreme Court, all criminal cases in which the penalty imposed is death or life imprisonment shall be reviewed by the said Court.<sup>1</sup> Furthermore, under section 9 of Rule 118<sup>2</sup> "the records of all cases in which the death penalty shall have been imposed by any Court of First Instance, whether the defendant shall have appealed or not, shall be forwarded to the Supreme Court for review and judgment as law and justice shall dictate."

Only one case, *People v. Soria*,<sup>3</sup> involved a pure question of law. It is discussed in the survey proper.

### CONSPIRACY

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>4</sup>

Generally, conspiracy is not punishable. It is punishable only in the cases in which the law specially provides a penalty therefor. Conspiracy is punishable in treason, rebellion, and sedition. When the conspiracy relates to crimes other than treason, rebellion or sedition, it is not a felony but only a manner of incurring criminal

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<sup>1</sup> See Sec. 17, Judiciary Act of 1948.

<sup>2</sup> See Sec. 9 Rule 122 of the REVISED RULES OF COURT.

<sup>3</sup> G.R. No. L-18982, January 31, 1963.

<sup>4</sup> Article 8, REVISED PENAL CODE.

liability, that is, when there is conspiracy, the act of one is the act of all.<sup>5</sup>

Thus, in the case of *People v. Curiano*,<sup>6</sup> where the accused met at a given place, and from there went together to the place where they knew their victims were to be found at the time, the court held that the manner of the commission of the crime shows a concerted action by several persons who conspired and confederated together and helped each other in its execution.

In *People v. Belen*,<sup>7</sup> it appears that late in the evening, the eleven accused went to a brook west of the house of Hilarion Zuniega and his second wife Felicisima Peritu. Eight of them remained near the brook while the rest went up the house. The spouses were killed after which Belen called the others who were by the brook and told them to come up the house which they did. Although eight of the accused did not directly participate in the killing, they were nonetheless held liable for conspiracy by the Supreme Court. Certain acts or events proving conspiracy were cited by the Court: (1) Three days before the commission of the crime all the accused except Belen met at a place near the house of Crispulo Mabalo. There Mabalo informed them that the previous night he and a certain Josefina Peritu had been kidnapped by two persons, one of whom he recognized to be Hilarion Zuniega and convinced them that if Zuniega was not killed they would also be in danger of kidnapping. Belen was not present but he apparently was the triggerman; (2) The defendants stood watch by the creek and with nobody watching them they made no attempt to escape for they were to stand guard and to help bury the victims of the killing; (3) The same defendants who did not directly kill the victims helped in burying the bodies of the said victims; (4) Their cooperating to dispose of the victims' belongings and their erasing all traces of the crime prove they had conspired.

And in *People v. Mohamad*,<sup>8</sup> the following circumstances proved the existence of conspiracy: the raiding party composed of nine members had previously met in an island where they planned the commission of the crime; armed with carbines, garands and other deadly weapons they rode on two vintas and landed near the airfield at about three in the morning; upon landing they concealed themselves among the bushes near the gate of the airport and waited for the arrival of the plane that usually carried the payroll money of the American Rubber Company.

<sup>5</sup> REYES, LUIS B., REVISED PENAL CODE, Vol. I, 96 (1960).

<sup>6</sup> G.R. No. L-15256-57, October 31, 1963.

<sup>7</sup> G.R. No. L-13895, September 30, 1963.

<sup>8</sup> G.R. No. L-14583, December 28, 1963.

In *People v. Cadacio*,<sup>9</sup> the appellants who were Huks angered at the failure to stop the jeep for one of the appellants and his wife, conspired to, and did retaliate by force. They waited for the jeepney to return from the trip. And when the jeep did return the appellants fired from all directions.

But in *People v. Honrado*,<sup>10</sup> the existence of conspiracy was discounted by the Supreme Court. It appears that while Leodizon Honrado and Regino Leonin were boxing their victim who was naturally defending himself, a passenger jeepney arrived and Anselmo Leonin alighting from the vehicle, pulled an iron bar from its front seat and then rushed to join the scuffle. Without warning, said Anselmo struck the victim with the iron bar three times as a result of which he died. The Court held that prior to the arrival of Anselmo, the other two accused had made no plans to kill the deceased. No motive had been shown that would kindle the desire to liquidate said deceased. The arrival of the accused Anselmo was purely coincidental. The fight happened in a street that said Anselmo regularly passed with his jeepney. He joined the scuffle upon the impulse of the moment. Seeing his brother in a mix-up, he reacted spontaneously. Only Anselmo who delivered the fatal blow was sentenced to *reclusion perpetua*. The other two accused who merely boxed the deceased were guilty only of slight physical injuries.

It was held in one case that conspiracy need not be established by direct evidence of the acts charged but may and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused done in pursuance of an apparently criminal or unlawful purpose in common between them.<sup>11</sup>

### COMPLEX CRIME

When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.<sup>12</sup>

In the case of *People v. Basbanio*,<sup>13</sup> a woman "tuba" vendor complained to the market fee collector that the defendant Raul Bas-

<sup>9</sup> G.R. No. L-12943, October 31, 1963.

<sup>10</sup> G.R. No. L-16499, September 30, 1963.

<sup>11</sup> *People v. Colman*, G.R. No. L-6652-54, February 28, 1958.

<sup>12</sup> Article 48, Revised Penal Code.

<sup>13</sup> G.R. No. L-16489, January 31, 1963.

banio had taken her "tuba" without paying for it. The fee collector told the woman to call a policeman. A few minutes later Raul Basbanio and Corporal Avanceña in police uniform passed by the main gate of the public market towards the police station but did not reach it because upon reaching the chicken stall the police officer was suddenly surrounded by the three defendants. Raul Basbanio facing Avancena stabbed him while Reynaldo Alimodian and Demetrio Alimodian stabbed him at the back. *Held*: The defendants are guilty of the complex crime of murder with assault upon an agent of a person in authority.

This ruling merely followed what was enunciated in the cases of *People v. Imson*<sup>14</sup> and *People v. Catacutan*,<sup>15</sup> where it was held that the killing of a person in authority or his agent while engaged in the performance of his duties constitutes the complex crime of murder or homicide with assault upon a person in authority or his agent.

In the case of *People v. Kamlon Hadji*,<sup>16</sup> the accused chanced upon their quarry gathering vines. Threatening to kill unless the pair went with them, the accused brought them to Luuk District where at that time Kamlon was residing. The victims were detained there overnight. The following day they were brought to the market place and in a store, they were made to sit on chairs. On being ordered by Kamlon their hands were then tied to the roof. Thus seated and with their hands tied to the roof, Kamlon levelled his automatic carbine at one of the victims and fired, killing him instantly. Kamlon then ordered Ulluh, also one of the accused, to cut the neck of the dead man whereupon Ulluh with a *barong* or native bolo, did as he was bidden. The Supreme Court found them guilty of the complex crime of kidnapping with murder and sentenced them to death.

#### QUALIFYING CIRCUMSTANCES

The attendant circumstances found in article 248, also found in article 14 are known as qualifying circumstances. If not expressly alleged in the information and any of them was proven, such circumstance would be treated only as generic aggravating which can be offset by a generic mitigating circumstance.<sup>17</sup> If two or more of said qualifying circumstances are present, only one would be regarded as qualifying and the rest would be generic aggravating.<sup>18</sup>

<sup>14</sup> 80 Phil. 284.

<sup>15</sup> 64 Phil. 107.

<sup>16</sup> G.R. No. L-12686, October 24, 1963.

<sup>17</sup> *People v. Campo*, 23 Phil. 369; *People v. Borbano*, 76 Phil. 702.

<sup>18</sup> *People v. Labai*, 17 Phil. 240.

## EVIDENT PREMEDITATION

The following are the requisites of evident premeditation: (1) the time when the offender determined to commit the offense; (2) an act manifestly indicating that the culprit has clung to his determination; (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequence of his act.<sup>19</sup>

The lapse of three and a half hours between the plan and the commission of the crime is sufficient time for the offenders to reflect dispassionately upon the consequences of their contemplated act.<sup>20</sup>

Thus, in the case of *People v. Canitan*,<sup>21</sup> the scheme to kill the deceased was plotted and decided by the accused at about 5:30 in the afternoon and it was past 8:00 in the evening of that day when the slaying was done. It was apparent according to the Court, that the qualifying circumstance of evident premeditation preceded the commission of the crime.

In *People v. Curiano*,<sup>22</sup> there was evident premeditation inasmuch as there were pieces of rope and stones present, objects which could not have been picked up anywhere at that time of the night and in that isolated place. The rope and the stones were in the banca before the accused went to the place of the incident.

In *People v. Belen*,<sup>23</sup> the court citing the case of the *People v. Timbang*<sup>24</sup> held that the existence of conspiracy presupposes evident premeditation. But it should be noted that in *People v. Leano*,<sup>25</sup> the Court of Appeals ruled that conspiracy does not necessarily imply premeditation.

In the following cases, however, evident premeditation was not taken into account: *People v. Sagaymo*,<sup>26</sup> where the attack was preceded by an incident; *People v. Tagaro*,<sup>27</sup> where the state's evidence was clear that the killing of the two victims came as a sequel to the sudden quarrel that flared up between the appellant's brother and the latter's father-in-law; *People v. Samson*,<sup>28</sup> where the shooting of the deceased by the appellant came about spontaneously from the

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<sup>19</sup> REYES, LUIS B., REVISED PENAL CODE, Vol. I, 270 (1960).

<sup>20</sup> *People v. Mostoles*, 85 Phil. 883.

<sup>21</sup> G.R. No. L-16498, June 29, 1963.

<sup>22</sup> *Supra* note 6.

<sup>23</sup> *Supra* note 7.

<sup>24</sup> 74 Phil. 295.

<sup>25</sup> C.A., 36 O.G. 1120.

<sup>26</sup> G.R. No. L-15961-62, October 31, 1963.

<sup>27</sup> G.R. No. L-18518, January 31, 1963.

<sup>28</sup> G.R. No. L-14110, March 29, 1963.

unexpected turn of events. And it was clear that it happened in the spur of the moment without any intervening period during which the appellant could have meditated, reflected and resolved upon the act she was about to commit, or sufficient time to allow her conscience to overcome the resolution (if she did ever resolve) to carry out what she had proposed to do.

### TREACHERY

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>29</sup>

In the case of *People v. Basbanio*,<sup>30</sup> although the victim who was a police officer was armed with a gun which he could have used to defend himself yet there was treachery even if there had been none at the inception because the sudden assault by the appellants by stabbing him in his front, side and back, holding his hands wrestling his gun rendered him defenseless. The fact that one of the assailants held him in the front and the other two assaulted him at the back was an aggression tending directly and specially to insure its execution without risk to the aggressors arising from any defense which the assaulted person might make.

In the following cases the Supreme Court also ruled the presence of treachery: *People v. Curiano*,<sup>31</sup> where the attack was instantaneous without giving the victim the least warning; *People v. Gonga*,<sup>32</sup> where the accused gave the victim a thrust with a bolo while the latter was standing up and was still buttoning his trousers after having sexual intercourse with his sweetheart. The attack was sudden and unexpected; *People v. Honrado*,<sup>33</sup> where the accused suddenly joined the scuffle and mortally hit the victim with an iron bar while the latter was trying to defend himself by parrying the blows from the other accused and he could not have been aware of any other assailant; *People v. Cadacia*,<sup>34</sup> where after the jeepney passed the residential part of the town, the accused suddenly attacked with deadly weapons firing from all directions; *People v. Ramos*,<sup>35</sup> where the victim was shot from behind.

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<sup>29</sup> Article 14, par. 6, Revised Penal Code.

<sup>30</sup> *Supra* note 13.

<sup>31</sup> *Supra* note 6.

<sup>32</sup> G.R. No. L-14030-31, July 31, 1963.

<sup>33</sup> *Supra* note 10.

<sup>34</sup> *Supra* note 9.

<sup>35</sup> G.R. No. L-17402-03, August 31, 1963.

But if there is nothing in the evidence to show that the defendant employed means, methods or forms in the commission of the crime without risk to himself, treachery cannot be taken into account. Thus, in *People v. Sagayno*,<sup>36</sup> because the attack was preceded by an incident near the artesian well and that before the assault somebody shouted "Horas na," the offended parties must have been warned. The fact that the fatal stab wound piercing the heart of the victim was a frontal one as well as his admission to Raymundo Virtuso when he asked for help while running in the cornfield after he had been fatally wounded that he fought the accused, shows that the victims were facing the appellants and therefore treachery cannot be deemed to have attended the commission of the crime.

In the following cases the court refused to take into account the presence of *alevosia*: *People v. Tagaro*,<sup>37</sup> where the appellant could not have deliberately sought to kill the victims at no risk to himself since their slaying was immediately preceded by an altercation; *People v. Sarmiento*,<sup>38</sup> where the victim was shot from the left side and the court held that such fact alone does not sufficiently and positively prove the treacherous nature of the killing.

#### ABUSE OF SUPERIOR STRENGTH

In the case of *U.S. v. Labai*,<sup>39</sup> it was held that the qualifying circumstances enumerated in article 248 must be expressly alleged in the information. If not expressly alleged and any of them was proven, such circumstance would be treated only as generic aggravating.

Thus, in the case of *People v. Tagaro*,<sup>40</sup> the qualifying circumstance of abuse of superior strength was proved but was not expressly alleged in the information. As a consequence the killing could not be deemed to constitute murder.

In the cases of *U.S. v. Tandoc*,<sup>41</sup> and *People v. Caros*,<sup>42</sup> the greater number of the assaulting party was considered by the Supreme Court in determining the circumstance of superior strength.

Consistent with this observation, in *People v. Curiano*,<sup>43</sup> it was held that when aside from being all armed with deadly weapons

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<sup>36</sup> *Supra* note 26.

<sup>37</sup> *Supra* note 27.

<sup>38</sup> G.R. No. L-19146, May 31, 1963.

<sup>39</sup> 17 Phil. 240.

<sup>40</sup> *Supra* note 27.

<sup>41</sup> 40 Phil. 954.

<sup>42</sup> 68 Phil. 521.

<sup>43</sup> *Supra* note 6.

their number (8 in all) was also superior in relation to the number of the assaulted parties (only 3 and a boy of 2 years), there was present abuse of superior strength. And in *People v. Ambran*,<sup>44</sup> where the defendant Tanji Moro and eleven others speared and hacked the victim on all sides, the presence of abuse of superior strength was considered by the Court.

#### USE OF POISON

In the case of *People v. Magborang*,<sup>45</sup> the accused was charged with the crime of murder qualified by the use of poison. The prosecution presented a witness who testified that she saw the accused place something inside the pot of "pinakbet" which was whitish in substance. Shortly after the victims had eaten the "pinakbet" they died. Convicted by the lower court, the accused appealed. *Held*: The conviction of the appellant rest entirely on circumstantial evidence. The weakest link in the chain is at the same time the most vital, namely, the circumstance that the "pinakbet" was the agency which carried the poison. There is no satisfactory proof of this. What was left of the "pinakbet" was not subjected to chemical analysis. The arsenic conceivably could have been mixed with rice or with the "ampalaya" and other vegetables before they were gathered, administered in the form of insecticide and deposited in their skin folds and ridges. This last possibility was conceded by the NBI Chemist who testified as an expert in the case. The appellant was acquitted.

#### CRUELTY

Cruelty would only be generic aggravating if other qualifying circumstances, like treachery, are present.<sup>46</sup> Cruelty is not aggravating, notwithstanding that the body of the deceased was dismembered and placed inside a sack, in the absence of proof that this was done while the deceased was still alive.<sup>47</sup>

In *People v. Curiano*,<sup>48</sup> the accused cannot be said to be guilty of cruelty since there was no showing that the wounds found on the bodies of the victims were unnecessarily inflicted while the deceased was still alive in order to prolong their suffering. The number of

<sup>44</sup> G.R. No. L-155581, April 29, 1963.

<sup>45</sup> G.R. No. L-16937, September 30, 1963.

<sup>46</sup> *People v. Oro*, 19 Phil. 548; *People v. De Leon*, 1 Phil. 63.

<sup>47</sup> *People v. Jimenez*, 54 O.G. 1361.

<sup>48</sup> *Supra* note 6.



wounds does not alone justify the circumstance of cruelty. It is necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims.

#### AGGRAVATING CIRCUMSTANCES

**Dwelling:** In *People v. Belen*,<sup>49</sup> where the accused late in the evening entered the house of the victims and shot them to death; *People v. Curiano*,<sup>50</sup> where the victims were killed in their dwelling place or on the ground thereof; *People v. Aguilar*,<sup>51</sup> where the accused early in the morning entered the house of the victims and demanded money. Before they left, however, they killed one of the victims. Nighttime and dwelling were taken into account and with no mitigating circumstance to offset them, the supreme penalty of death was imposed.

**Night time:** In *People v. Bumatay*,<sup>52</sup> late in the evening the defendants armed with firearms broke into the bakery and sari-sari store of the victims. In the course of the robbery one person was killed. Nocturnity was considered aggravating. The same circumstance was also taken into consideration in *People v. Gongora*.<sup>53</sup>

**Contempt of the public authority:** In *People v. Santok*,<sup>54</sup> this circumstance was taken into account since the deceased was shot while in the performance of his official duty as barrio lieutenant.

**Uninhabited place:** In *People v. Curiano*,<sup>55</sup> the Court held that considering the trees that abound and the thick shrubbery which was growing between the place of the incident and the nearest house which was more than one hundred meters away, the circumstance of uninhabited place has to be taken into account as it was apparent that at such a place the victims did not have a chance of being seen and helped by another person.

#### MITIGATING CIRCUMSTANCES

**Voluntary surrender:** In *People v. Pagulaya*,<sup>56</sup> the evidence showed that at about six o'clock in the morning the accused appeared before the town Mayor and reported that he shot the de-

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<sup>49</sup> *Supra* note 7.

<sup>50</sup> *Supra* note 6.

<sup>51</sup> G.R. No. L-16985, June 29, 1963.

<sup>52</sup> G.R. No. L-16620, April 30, 1963.

<sup>53</sup> G.R. No. L-14030, July 31, 1963.

<sup>54</sup> G.R. No. L-18226, May 30, 1963.

<sup>55</sup> *Supra* note 6.

<sup>56</sup> G.R. No. L-18226, May 30, 1963.

ceased. He was then taken by Sgt. Venturina of the Philippine Constabulary. While in the case of *People v. Basbanio*,<sup>57</sup> after the accused had killed the police officer, they surrendered themselves to Patrolman Alimodian who took them to the police station. And in *People v. Samson*,<sup>58</sup> the accused after she had shot her husband, went to the municipal building and reported the matter to the Chief of Police.

**Intoxication:** In *People v. Gongora*,<sup>59</sup> where the accused murdered a 16 year old girl, the alternative circumstance of intoxication was considered mitigating since there was no evidence that he was a habitual drunkard.

**Passion or obfuscation:** This circumstance was credited in favor of the accused in *People v. Samson*,<sup>60</sup> where the records showed that the deceased was cruel and of violent character. For many years the deceased had been maltreating the accused (his wife) at the slightest provocation and on several occasions inflicted upon her physical injuries. And that prior to the shooting the deceased pulled the hair of the accused because he did not like the kind of coffee she had bought for him.

#### REBELLION

The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands, or any part thereof of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.<sup>61</sup>

In *People vs. Capadocia*,<sup>62</sup> the court held that the act of one of the accused of selling ammunitions to the Huks is not punishable under our laws on rebellion although it might, under certain conditions, constitute a crime if committed in relation to treason. In the same case the prosecution wanted to impress upon the court that Nicolas Centeno, one of the accused, was an organizer of the People's Liberation Army and of the People's Institute. But the evidence presented showed that a Huk messenger contacted Centeno and

<sup>57</sup> G.R. No. L-16489, January 31, 1963.

<sup>58</sup> G.R. No. L-14110, March 29, 1963.

<sup>59</sup> G.R. No. L-14030-31, July 31, 1963.

<sup>60</sup> G.R. No. L-14110, March 29, 1963.

<sup>61</sup> Art. 134, REVISED PENAL CODE.

<sup>62</sup> G.R. No. L-4907, June 29, 1963.

told him that trigger men would be sent to kill him unless he helped the Huks which threat patently shows that Centeno was not a communist nor a Huk. Furthermore, the necessity of intimidating him indicates that he must have been wanting in tokens of cooperation with the Huk movement. Another defendant, Flavio Nava, was also acquitted of the charge of rebellion with multiple murder and arson because he was able to show *inter alia*, that he took part in a meeting of the Federacion Obrera de Filipinas of which he was National General Inspector and in that meeting he and other officers of the Federation unanimously approved and signed a resolution expelling therefrom Huk leader Guillermo Capadocia owing to a letter he had written to said Federation expressing views which the latter believed to "run counter to the mandates of the Republic of the Philippines."

In the case of *Cariño vs. People*,<sup>63</sup> the accused was charged as an accomplice in the crime of rebellion with murders, arsons, robberies, kidnappings. The Court found that the appellant did not take up arms against the government. Neither was he a member of the Hukbalahap movement. The Court further stated that "the act of sending cigarettes and food supplies supplies to a famous Huk does not prove intention to help him in committing rebellion or insurrection. Neither is the act of having \$6,000 changed to Philippine money or in helping Huks to open accounts, by themselves show an intent or desire to participate or help in an uprising or rebellion. Appellant's work was, as a public relations officer of the bank of which he was an employee, and the work above indicated performed by him was a part of his functions as an employee of the bank. But granting, for the sake of argument, that appellant had criminal intent of aiding the communists the assistance thus extended by him may not be considered efficacious enough to help in the successful prosecution of the crime of rebellion so as to make him an accomplice. The appellant was acquitted.

#### SEDITION

In the case of *People vs. Kamlon Hadji*,<sup>64</sup> the issue involved was whether the acts of violence like murder and kidnapping are absorbed by sedition. Distinguishing the present case from that of *People vs. Hernandez*<sup>65</sup> and *People vs. Geronimo*,<sup>66</sup> the Court

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<sup>63</sup> G.R. No. L-14752, April 30, 1963.

<sup>64</sup> G.R. No. L-12686, October 24, 1963.

<sup>65</sup> 52 O.G. 5506.

<sup>66</sup> 53 O.G. No. 1 p. 68.

pointed out that the aforecited cases cannot be properly invoked by the appellants since the two cases involved crime of rebellion and not sedition. Moreover, in those cases where it was held that there is no complex crime of rebellion and murder, the common crimes alleged to have been committed in furtherance of the rebellion were specifically charged in the information and for that reason were consequently necessarily alleged to have been committed for political ends. In the present case, the information makes no allegation of political motivation, and the evidence is totally devoid of any such motivation, for on the contrary the proof adduced shows that the killing had no political or social color but purely motivated by personal vengeance. Furthermore, the court found itself unfree at the moment to disregard the ruling in the cases of *People vs. Cabrera*<sup>67</sup> and *People vs. Umali*,<sup>68</sup> which allows for the treatment of the common offense of murder etc. as distinct and independent acts separable from sedition.

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## PARRICIDE

Any person who shall kill his father, mother or child, whether legitimate or illegitimate or may of his ascendants or descendants or his spouse shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.<sup>69</sup>

Parricide in article 246 does not include the killing of a brother or sister or adopted children. The parent or child need not be legitimate but the spouse must be lawful spouse. The other descendant or ascendant must be legitimate.<sup>70</sup>

In *parricide* the prosecution must prove the death of the victim, that he or she was killed by the accused and that the victim is a parent or child, whether legitimate or illegitimate, or the lawful spouse or legitimate ascendant or descendant of the accused. Once these matters are established beyond reasonable doubt, conviction is warranted. Matters of defense, mitigation, justification or exemption must be proven by a preponderance of evidence.<sup>71</sup>

In the case of *People vs. Samson*,<sup>72</sup> it appears that at about 7:00 o'clock in the morning, while standing on the stairway of his house and facing the street, Jose V. Samson was shot twice by Josefina

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<sup>67</sup> 43 Phil. 64.

<sup>68</sup> G.R. No. L-5803, November 29, 1954.

<sup>69</sup> Art. 246, REVISED PENAL CODE.

<sup>70</sup> AQUINO, RAMON C., REVISED PENAL CODE, Vol. II, 1171 (1961).

<sup>71</sup> *People v. Embalido*, 58 Phil. 154; *People v. Manzanares*, 81 Phil. 64.

<sup>72</sup> G.R. No. L-14110, March 29, 1963.

N. Samson with a carbine. Sentenced to life imprisonment by the lower court the appellant claimed that there was no competent evidence that the victim and the appellant were husband and wife. *Held*: there could be no better proof of marriage in a parricide case than the admission of the accused of the existence of such marriage. The testimony of the appellant on direct examination disclosed several times that she was married to the deceased in both "Church and civil marriages." On cross examination she testified on the exact date of her marriage to the deceased and the place where they were married. She did not only admit that the deceased was her husband but also brought out the fact that out of the marriage they had five children.

### HOMICIDE

Any person who, not falling within the provisions of article 246, shall kill another without the attendance of any of the circumstances of the crime of murder shall be guilty of homicide.<sup>73</sup>

When there is no proof as to how the victim was killed the crime should be characterized as homicide not murder.<sup>74</sup> If the qualifying circumstances were not established as clearly as the killing itself, the crime should not be considered murder but only homicide.<sup>75</sup> Where the proof does not reveal the antecedents of the killing and the exact manner it was committed, it would be incorrect to assert that any aggravating circumstance such as treachery or premeditation was present. The case is therefore one of simple homicide.<sup>76</sup>

The bulk of the cases decided by the Supreme Court in 1963 involved the crime of murder. The defendants who were convicted and sentenced to life imprisonment or death by the lower court naturally appealed to the Supreme Court. The following cases were found by the Supreme Court as constituting only of the crime of homicide: *People vs. Sagayno*,<sup>77</sup> where as a result of a fight that ensued, one was killed and another sustained serious stab wounds but treachery and evident premeditation were not duly proven; *People vs. Santok*,<sup>78</sup> where the accused shot to death a barrio lieutenant and the basis for the finding of the lower court of evident preme-

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<sup>73</sup> Article 249, REVISED PENAL CODE.

<sup>74</sup> *People v. Amansec*, 80 Phil. 424; *People v. Villaruel*, 87 Phil. 826.

<sup>75</sup> *People v. Arago*, G.R. No. L-13222, April 27, 1960.

<sup>76</sup> *People v. Rivera*, 53 Phil. 309.

<sup>77</sup> G.R. No. L-15961-62, October 31, 1963.

<sup>78</sup> G.R. No. L-18226, May 30, 1963.

dition qualifying the crime committed as murder was the testimony of Sgt. Moral to the effect that the accused upon investigation shortly after the arrest made the statement admitting *inter alia*, that he had committed the crime charged at the instigation of one Lino Madlangbayan who resented the refusal of the victim to turn over to him certain documents incriminating him in a case of rape. The Supreme Court did not believe that such evidence proved the existence of premeditation; *People vs. Sarmiento*,<sup>79</sup> where the information charged that the crime was committed with the qualifying circumstances of treachery and evident premeditation but which were found by the Court to be non-existent. With respect to treachery, the court held that the sole fact that the deceased was shot from the left side does not of itself and alone sufficiently and positively prove the treacherous nature of the killing. With respect to premeditation, although the evidence showed that two days immediately preceding the shooting the appellant threatened to shoot the deceased and expressed intention to finish him and that on the eve of the killing the appellant uttered the following words to the deceased: "This night I was not able to shoot you but tomorrow I will" the Court held that nevertheless, premeditation was not satisfactory proved. Citing the case of *People vs. Upao Moro*,<sup>80</sup> the Court pointed out that were threats to kill without evidence of sufficient time for meditation and reflection do not justify a finding of evident premeditation. And furthermore, the circumstances mentioned in article 248 of the Revised Penal Code qualifying as they do the crime of murder should be established by direct and positive evidence; mere presumption or inferences are insufficient; <sup>81</sup> *People vs. Tagaro*,<sup>82</sup> where the accused having boloed two persons was convicted by the trial court of double murder. On appeal the Supreme Court found the appellant guilty only of the lesser crime of double homicide. The qualifying circumstances averred in the information were not positively proven.

#### ROBBERY

Any person who, with intent to gain, shall take any personal property properly belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty robbery.<sup>83</sup>

<sup>79</sup> G.R. No. L-19146, May 31, 1963.

<sup>80</sup> G.R. No. L-6771, May 28, 1957.

<sup>81</sup> U.S. v. De Jesus, 2 Phil. 514; U.S. v. Banagale, 24 Phil. 69.

<sup>82</sup> *Supra* note 24.

<sup>83</sup> Art. 293, REVISED PENAL CODE.

The elements of robbery are that there is a taking of personal property: that the personal property belongs to another; that the taking be with *animo lucrandi* and that the taking be *con violencia o intimidacion en las personas o con fuerza en las cosas*.<sup>84</sup>

### ROBBERY WITH HOMICIDE

Robbery with homicide is different from the complex crime punished in article 48 which contemplates a situation where one offense is a necessary means for committing the other or where a single act results in two or more offenses. *Robo con homicidio* is an indivisible offense, a special complex crime. Consequently, treachery is only generic aggravating, not qualifying.<sup>85</sup> The complex crime of robbery with homicide comprehends also robbery with murder. The offense is nonetheless complex by reason of the fact that double homicide or murder is committed, instead of a single homicide or murder. An intent to commit robbery must precede the taking of human life in robbery with homicide. The fact that the criminal's intent is tempered with a desire also to revenge grievances against the murdered person does not prevent his punishment for the complex crime.<sup>86</sup>

In the case of *People vs. Aguilar*,<sup>87</sup> the accused early in the morning entered the house of the spouses Sulpicio Olario and Concesa Osorio. Concesa recognized one of the accused to be Aquilino Aguilar because she had known him for a long time to be a friend of her father. Aquilino demanded money and Sulpicio indicated that their money was in the drawer. After this the intruders ordered the spouses to lie down with their faces on the floor. Concesa raised her head to look but she was hit on the head by one with a chair. Shortly thereafter she heard an explosion and gathering strength she rose and ran to the window and jumped and shouted for help until her mother came to her rescue. When they returned to the house after the intruders fled, they saw the lifeless body of Sulpicio lying on the floor. Considering that the crime was committed at night and in the dwelling of the offended party and such circumstances were not offset by any mitigating that may be invoked in favor of the appellants, the Supreme Court imposed the death penalty.

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<sup>84</sup> AQUINO C., REVISED CODE, Vol. II, 1329 (1961).

<sup>85</sup> *People v. Mantawar*, 80 Phil. 817; *People v. Labita*, G.R. No. L-8481, September 15, 1956.

<sup>86</sup> *People v. Villorante*, 30 Phil. 59.

<sup>87</sup> G.R. No. L-16985, June 29, 1963.

In *People vs. Bumatay*,<sup>88</sup> the accused, late in the evening, armed with firearms broke into the bakery and sari-sari store of the victims firing volley of shots on their way up to the second floor of the bakery. Meanwhile, as one of the shots fired by the malefactors broke a window pane of the house across the street which belonged to Salvacion Ostrea, the latter focused her flashlight at said window pane. At this juncture one of the malefactors at the bakery fired his gun hitting Salvacion Ostrea on the breast thus killing her. *Held*: The appellants are guilty of the crime of robbery in hand with homicide. The penalty of death should be imposed but for lack of sufficient votes, however, as required by law, the penalty to be imposed is *reclusion perpetua*.<sup>89</sup>

In *People vs. Mohamad*,<sup>90</sup> the raiding party composed of nine members concealed themselves among the bushes near the gate of the airport and waited for the arrival of the plane that usually carried the payroll money of the American Rubber Company. The plane did arrive and shortly after took off again. Thinking that the payroll money had been delivered already to the two victims who were employees of the American Rubber Company, the defendants sprang from the bushes and were able to kill one of the two employees of said company. Finding the appellants guilty of robbery in band with murder, the Supreme Court imposed the supreme penalty of death upon them.

#### ROBBERY WITH RAPE

In the crime of robbery with rape the rape may be committed before, during or after the robbery. It is enough that robbery was accompanied by rape.<sup>91</sup>

In the case of *People vs. Mesias*,<sup>92</sup> the accused were charged with the crime of robbery in band with rape. It appears that late in the evening Pablo Maslong and wife Eufrosina Elorde and their step daughter Leonila Taquillo were awakened by calls from outside their home. When they opened the door three armed men entered and demanded money. The intruders ransacked the place and thereafter thru force and intimidation took turns in having sexual intercourse with Leonila. During the trial the accused were posi-

<sup>88</sup> G.R. No. L-16620, April 30, 1963.

<sup>89</sup> Sec. 9, Rep. Act No. 296 provides that whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Supreme Court. When eight Justices fail to reach a decision, the penalty next lower in degree than death shall be imposed.

<sup>90</sup> G.R. No. L-14583, December 28, 1963.

<sup>91</sup> *People v. Caisip*, G.R. No. L-8798, July 30, 1959.

<sup>92</sup> G.R. No. L-19250, August 31, 1963.



tively identified as the perpetrators of the crime. Taking into account the aggravating circumstance of night time, the penalty imposed by the Court was life imprisonment.

### SPECIAL LAWS

A special law is a penal law which punishes acts not defined and penalized by the Penal Code.<sup>93</sup> It is a statute enacted by the legislative branch, penal in character, which is not an amendment to the Revised Penal Code.<sup>94</sup>

The case of *People vs. Soria*,<sup>95</sup> involves a violation of a municipal ordinance. The accused made repairs in his house without first securing the necessary permit from the authorities concerned. The ordinance provided that any person who desires to make any construction or repairs on any building must first file an application for a permit which must show a sketch of the proposed construction or repairs and the materials to be used and must be favorably endorsed by the local health officer and the assistant engineer. The authority of the municipal council to prescribe the kind of buildings that may be constructed or repairs that may be made is expressly provided for in section 2243(c) of the Revised Administrative Code and the authority to impose fine or imprisonment or both within certain limits is expressly conferred by section 2239 of the same Code. The appellant questioned the validity of that part of the ordinance which required the removal of the illegal construction. The Court held that such requirement cannot be considered a penalty in its technical sense that may place it beyond the scope of the power of the municipal council for the same is but a necessary consequence of the infringement of the ordinance. It is an unavoidable measure intended to prevent those who undertake the illegal construction from making a mockery of the ordinance. Without such coercive measure any person who may desire to flout the ordinance may easily do so by paying a fine or undergoing a short term of imprisonment thereby flooding the town with many illegal constructions may also be justified under the "general welfare clause" embodied in section 2238<sup>96</sup> of the Revised Administrative Code conferring

<sup>93</sup> U.S. v. Serapio, 23 Phil. 584.

<sup>94</sup> REYES, LUIS B., REVISED PENAL CODE, Vol. I, 82 (1958).

<sup>95</sup> G.R. No. L-18982, January 31, 1963.

<sup>96</sup> The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein.

general authority to pass ordinances which are necessary to provide for the health and safety of the inhabitants of the municipality. The appellant was fined ₱50.00 and was required to remove the illegal repairs he made.

In *People vs. Romos*,<sup>97</sup> the accused was convicted of the crime of illegal possession of firearm because he used a "pistol" cal. 45 without first having obtained the necessary license to possess the same.

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<sup>97</sup> *Supra* note 32.