CHANGES IN CRIMINAL PROCEDURE UNDER THE NEW RULES OF COURT

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Under the New Rules of Court, the Supreme Court has not only changed some of the Rules regarding Criminal Procedure but has also introduced entirely new ones. It is my task to explain, in the best way I can, said changes and new provisions.

Rule 110—Prosecution of Offenses

In Section 4, Rule 110, regarding the prosecution of criminal actions, the Supreme Court has incorporated the provisions of Article 344 of the Revised Penal Code concerning the prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness, which, I assume, are already familiar to you. But the Supreme Court has further clarified said provisions in conformity with its decisions on the matter, by adding that if the offended party is a minor, she has the right to file the action independently of her parents, grandparents and guardian, unless she suffers from any legal disability other than her minority, and that should said minor fail to file the complaint, her parents, grandparents or guardian may do so. However, the same rule remains that the right to file the action is granted exclusively to the offended party, her parents, grandparents or guardian and shall be exercised successively in the order in which they are named.

The last paragraph of said section, which is taken from Article 360 of the Revised Penal Code, refers to the institution of criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio*. It will be recalled that in the case of People vs. Jose de Martinez, 76 Phil. 699, the Supreme Court ruled that even if the defamation imputes a crime that may not be prosecuted *de oficio*, or a dishonorable matter not constituting a criminal offense, a written complaint filed by the offended party is absolutely indispensable. However, in the subsequent case of People vs. Santos, et al., 52 O.G. 203, the Supreme Court reversed itself and held that this particular provision contemplated only those crimes which, by their nature, cannot be prosecuted *de oficio*, that is, at the instance of the Government. To clarify once and for all the import

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and meaning of this provision, the Supreme Court has included as the last paragraph of Section 4 the proviso that the offenses which cannot be prosecuted *de oficio* are seduction, abduction, rape and acts of lasciviousness only, in which case the prosecution cannot be brought except at the instance of, and upon complaint filed by the offended party. Consequently, if the imputation consists of the commission of a dishonorable act which does not constitute a crime, this provision does not opply and the corresponding action can be filed by the Fiscal without the intervention or express complaint by the offended party.

In section 14 of this Rule which specifies the place where criminal action is to be instituted, there is an additional provision that "Other crimes committed outside of the Philippines but punishable therein under Article 2 of the Revised Penal Code shall be cognizable by the first Court of First Instance in which the charge is filed." Article 2 of the Revised Penal Code enumerates five (5) instances to which said Code will apply even if committed outside the Philippines.

Rule 111—Prosecution of Civil Actions

Section 2 of this Rule is entirely new. It states that "In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section (Section 1 of same Rule). Such civil action shall proceed independently of the criminal action, and shall require only a preponderance of evidence."

Article 31 of the Civil Code refers to a civil action based on an obligation not arising from an act or omission complained of as a felony; Article 32 consists mainly of violations of civil liberties; Articles 33 relates to civil action for damages arising from defamation, fraud and physical injuries; Article 34 refers to civil action for damages arising from the refusal or failure of a member of a City or Municipal Police Force to give or render aid or protection to any person in case of danger to life or property; while Article 2177 embraces civil action for damages arising from fault or negligence not based on pre-existing contractual relation between the parties, or what is known as "quasi-delict."

Under Section 1 of the Rule, the offended party may recover civil liability arising from a criminal action or in a separate civil action, the presentation of which has been expressly reserved by

him in the criminal action. In the absence of such reservation, the civil action for recovery of such civil liability is deemed impliedly instituted in the crmnal action. It will be noted, however, that under this new provision inserted by the Supreme Court, in order that the offended party may recover his damages in a separate civil action, he is also required to reserve such right in the criminal action. On the other hand, Articles 31, 32, 33, 34 and 2177 of the Civil Code do not require such reservation. It is merely provided that a civil action for recovery of damages arising from said articles shall proceed independently of a criminal action and shall require only preponderance of evidence. The only possible interpretation that can be made of this particular section is that when criminal cases are filed for violation of said articles of the Civil Code, the offended party may recover his damages in the same criminal case or in a separate civil action provided he makes the usual reservation of such right in the criminal case. Naturally, if no criminal case is instituted, then the plaintiff, for obvious reason, will not be required to make such reservation.

Section 5, which is also a new provision, states that "A petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil case, may only be presented by any party before or during the trial of the criminal action."

Prejudicial question is understood in law to be that which precedes the criminal action and which requires a decision before a final decision is rendered in the principal case with which said question is closely connected (Berbari vs. Concepcion, 40 Phil. 837). It is based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused. Prejudicial question has two elements: (1) It must be determinative of the case before the court; and (2) Jurisdiction to try said question must be lodged in another tribunal (People vs. Aragon, 50 O.G. 4862). Thus, if in a prosecution for bigamy, the accused claims that the first marriage is null and void and there is a pending civil action involving the validity of such first marriage, the civil action for nullity must first be decided before the action for bigamy can proceed. However, as provided in this section, in order that the criminal action can be suspended because of the pendency of a prejudicial question in a civil case, a petition to that effect must be presented by any party before or during the trial of the criminal action.

Rule 112—Preliminary Investigation

Section 1 of this Rule has been changed from "preliminary investigation" to "preliminary examination". The change is justified

because, in reality, this is the first stage of the preliminary investigation and its purpose is merely to find out whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof in order that a warrant of arrest may be issued against him.

Under Section 10 of the same Rule, the Supreme Court has added a new paragraph, to the effect that "In cases triable in the justice of the peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section." The reason for this is that, as we all know, upon the arrest of the accused, he can immediately be tried on the merits by the Justice of the Peace or Municipal Court, inasmuch as the offense charged against him is within the jurisdiction of said court.

Section 13 provides for the preliminary examination and investigation conducted by the Judge of the Court of First Instance. It will be remembered that under Section 4 of former Rule 108, when the complaint or information was filed directly with the Court of First Instance without any preliminary investigation having been previously conducted, the judge thereof would, himself, conduct the preliminary investigation and after he found a reasonable ground to believe that the defendant had committed the offense or charge, he would issue a warrant for his arrest and try the case on the merits. Under the present rule, however, where the complaint is filed directly with the Court of First Instance without any previous preliminary examination or investigation having been conducted by the Fiscal, the Judge thereof may either refer the complaint to the Justice of the Peace for preliminary examination and investigation or he himself may conduct both such preliminary examination and investigation at the same time. Should he find reasonable ground that the defendant committed the offense charged, instead of trying the case on the merits, as was done under the former rule, the judge shall issue the warrant for the arrest of the accused and then thereafter refer the case to the Fiscal for the filing of the corresponding information. The question is, once the case is referred to the Fiscal by the Judge of the Court of First Instance who has conducted the preliminary examination and investigation, is the Fiscal under obligation to file the corresponding information aganst the accused? It is believed that it is still within the discretion of the Fiscal whether or not to file the corresponding information. As held by the Supreme Court in the case of People vs. Ovilla, 65 Phil. 722, even if the corresponding preliminary investigation has already been conducted by the justice of the peace, the fiscal not only has the power but also

the duty to investigate the facts upon which the complaint filed in the justice of the peace court was based, to examine the evidence submitted to the justice of the peace and such other evidence as the parties may deem proper to submit on their own free will or on demand by the fiscal, for the purpose of determining whether there is at least *prima facie* evidence establishing the guilt of the accused and overcoming the presumption of innocence in his favor. It is submitted that this ruling is applicable to preliminary investigations conducted by the Judge of the Court of First Instance. Moreover, the prosecution of criminal offenses is the primary responsibility of the prosecuting officer; so much so that, according to the various decisions of the Supreme Court, he cannot be compelled by mandamus to institute such criminal action.

We now come to Section 14 concerning preliminary examination and investigation by the Provincial or city fiscal or by state attorney in cases cognizable by the Court of First Instance. It will be observed that this section now establishes a uniform procedure for such preliminary examination and investigation, by requiring that "no information for an offense cognizable, by the Court of First Instance shall be filed by the provincial or city fiscal or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conducted by him or his assistant by issuing the corresponding subpoena." Before the adoption of the present provision, Congress had provided for two different methods of preliminary investigation by the Provincial Fiscals, on the one hand, and by the City Fiscals and State Attorneys, on the other. Under Republic Act No. 1732 approved on June 18, 1952, amending Section 1637 of the Revised Administrative Code, the defendant was not entitled, as a matter of right, to any preliminary investigation conducted by the Provincial Fiscal and the latter had no duty to notify the accused of the holding of the preliminary investigation so that he would be present thereat. If the accused wanted to be present at such preliminary investigation, he should so inform the Provincial Fiscal and it was only then that he was entitled to notice of such preliminary investigation. Consequently, under said Republic Act No. 1732, the Provincial Fiscal could conduct the preliminary investigation *ex-parte*. On the other hand, Section 38, second paragraph, of Republic Act No. 409, as amended by Republic Act No. 1201 approved on September 2, 1954, provides that in all cases brought by the Office of the City Fiscal, involving crimes cognizable by the Court of Fiscal Instance, where the accused is not in the legal custody of the police, no complaint or information shall be filed without first giving the accused the chance to be heard in a prelimi-

nary investigation, where such accused can be subpoenaed and appears before the investigating fiscal, with the right to cross-examine the complaint and his witnesses. Republic Act No. 1198 approved on August 28, 1954, creating the Office of State Attorneys in the Department of Justice, contains similar provision. But as already stated, the present rule on preliminary investigation uniformly requires that the Provincial Fiscals, the City Fiscal and State Attorneys cannot file any information for any offense cognizable by the Court of First Instance without first giving a chance to the accused to be heard in a preliminary investigation conducted by him or his assistant by issuing the corresponding subpoena.

In this connection, the question arises as to whether the Supreme Court of the Philippines can amend, alter or change rules of procedure enacted by the Congress of the Philippines. Under Section 13 of Article VIII of the Constitution, the Supreme Court is given the power "to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law," and that the then existing laws on pleading, practice and procedure were repealed as statutes and declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. In the same constitutional provision, the Congress is vested with "the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines." Now, bearing in mind that the laws passed by Congress regarding preliminary investigation were enacted long after the approval of the Constitution, may such laws be amended or changed or repealed by the Supreme Court, under its aforementioned constitutional power "to promulgate rules regarding pleading, practice and procedure in all courts" in the Philippines? Personally, I submit that the Supreme Court does not have such power, for the rules concerning pleading, practice and procedure approved by Congress partake of the nature of substantive law, which only Congress can amend, modify or repeal.

Section 15 grants preliminary investigation to an accused who is detained without any warrant of arrest. But before he may be given such preliminary investigation, he must first sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, and the investigation must be terminated within seven (7) days from its inception. The purpose of the waiver is undoubtedly to prevent the officer having custody of said detained prisoner from being charged in court for delay in the delivery of detained persons to the proper judicial authorities as provided in said Article 125 of the Revised Penal Code. If the case has already been filed in court with-

out any preliminary investigation having been conducted by the Fiscal because the detained accused has not made any waiver of the provisions of Artirle 125 of the Revised Penal Code, said accused, within five (5) days from the time he learns of the filing of the information, can ask for reinvestigation with the same right to cross-examine the witnesses against him and to present witnesses in his favor.

Section 16 is a new provision which provides for preliminary investigation for prosecution under the Anti-Subversion Act by the prosecuting attorney. However, where the penalty for the offense charged under said law is *prision mayor* to death, the preliminary investigation shall be conducted by the proper Court of First Instance.

Rules 114—Bail

In Section 10 under this Rule, the sureties are required to describe in their affidavit the property by which they propose to justify their bond and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by them and remaining undischarged, and all their liabilities. The purpose of this new requirement is to enable the Court to determine properly the financial standing and capacity of the sureties.

Under Section 13 regarding bail on appeal, a new paragraph has been added to the effect that should the accused-appellant jump bail or escape confinement on appeal from the Justice of the Peace to the Court of First Instance, the appeal shall be dismissed and the judgment of the Justice of the Peace vacated by said appeal shall be revived.

In Section 18, the Supreme Court has added a new provision which is self-explanatory, in the sense that no bail shall be allowed after the judgment shall have become final or after the accused has commenced serving the sentence. So that when a criminal case is remanded to the trial court by the appellate court for the execution of the sentence and the accused asks for postponement of said execution, no new bond will be allowed as the judgment is already final.

Rule 115—Rights of the Defendant

Among the rights of the defendant enumerated in Section 1 of this Rule is to be present and defend in person and by attorney at every stage of the proceedings. The phrases "at every stage of the proceedings" has been clarified by the Supreme Court to mean from the arraignment to the promulgation of the judgment.

Rule 116—Arraignment

Section 4, which speaks of the appointment of attorney *de oficio* to assist and defend the accused, required that in appointing such counsel *de oficio*, the Court should consider the gravity of the offense and difficulty of the question that might arise, and that only such members of the Bar as by reason of their experience and ability may, in the opinion of the Court, adequately defend the accused, should be appointed.

According to Section 5, the counsel *de oficio* shall be given a reasonable time to consult with the accused and prepare his defense before proceeding further in the case, which shall not be less than two hours in case of arraignment and two days in case of trial which may, for good cause shown, be shortened or extended by the Court.

Section 6 grants the accused the right to move for or demand, either at the time of or before arraignment, a more definite statement or a bill of particulars of any matter which is not averred with sufficient definiteness or particularity in the information to enable him properly to plead or to prepare for trial. This new provision is in conformity with the ruling of the Supreme Court in the case of People vs. Abad Santos, 76 Phil. 744, to the effect that "Considering that in criminal cases not only the liberty but even the life of the accused may be at stake, it is always wise and proper that he be fully apprised of the true charges against him, and thus avoid all and any possible surprise which might be detrimental to his rights and interests."

Rule 117—Motion to Quash

Under Section 2-c, the Supreme Court has substituted the word "officer" for that of "Fiscal". So that one ground for motion to quash now is that "The officer who has filed the information has no authority to do so." Pursuant to this provision, if the Fiscal filing the information is not the Fiscal of the province or is not the Special Fiscal designated in accordance with law, the authority of the one filing the information may be challenged. For example, in one case where the person designated by the Secretary of Justice as an additional counsel to assist the Fiscal was not a subordinate from his office but an employee under the Department of Interior, the Supreme Court held that such designation was illegal and the person so designated had no authority to file the information (Villa vs. Ibañez, et al., 4313, March 20, 1951).

Rule 118—Pleas

Under the former Rule, a plea of guilty could be made only by the defendant himself in open court and a plea entered by any other

person, as by counsel, was null and void and could not be the basis of any conviction. Under Section 3 of this Rule, an exception is made whereby if the charge is a misdemeanor or a minor offense for which the penalty that may be imposed is a fine not exceeding ₱200.00, the plea of guilty may be entered on behalf of the defendant by his authorized counsel.

Section 3 is a new provision requiring the production or inspection of material evidence in the possession of the prosecution. You will remember that in the case of U.S. vs. Baluyot, 40 Phil. 385, the Supreme Court said that the Prosecuting Fiscal cannot be compelled, upon motion of the accused, to produce in court written statements made by witnesses for the prosecution when examined by the Fiscal during the preliminary investigation and that where an attorney desires to impeach a witness of the adversary by proof of contradictory statements, he should, in the cross-examination of such witness, lay a basis for the introduction of the contradictory proof by asking the witness if he did not, at the time and place specified, make certain statements different from those testified to by him. Now, under the present section, "Upon motion of any defendant showing good cause therefor and upon notice to all the parties, the court in which the action is pending may, in its discretion and to prevent unfair surprise, suppression or alteration, order the prosecution to produce and permit the inspection and copying or photographing, by or in behalf of the moving party, of any written statements given by the complainant and other witnesses in any investigation of the offense conducted by the prosecution or by other investigating officers, as well as of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not otherwise privileged, which constitute or contain evidence material to any matter involved in the action, and which are in the possession or under the control of the prosecution." Hence, the prosecuting attorney can now be compelled to produce in court whatever material evidence he has against the accused upon motion of the latter, without the necessity of laying the proper basis for its production as required in said case of U.S. vs. Baluyot, *supra,* provided that the motion is in accordance with the conditions specified in said Section 8 of said Rule.

Rule 119—Trial

Section 15 of this Rule is a new provision which provides for consolidation of cases involving charges and offenses founded on the same facts, or which form or are a part of a series of offenses of the same or similar character. Such cases may, in the discretion of the court, be tried jointly.

Rule 120—Judgment or Sentence

Section 6 of this Rule has clarified once and for all that only judgment of conviction shall be promulgated in the presence of the defendant if he is convicted of a grave offense but if the judgment of conviction is for a light offense, the same may be promulgated in the presence of his attorney or representative. If the judgment is one of acquittal, the presence of the accused is not necessary for its promulgation. The Supreme Court has added a new paragraph to this section to the effect that "If the defendant is confined or detained in another province or city, the judgment of conviction may be promulgated by the Judge of the Court of First Instance having jurisdiction of the place of confinement or detention upon the request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the appeal bond."

Rule 122—Appeal

Section 6 of this Rule has been modified in the sense that if an appeal is made from a judgment of conviction, the period of fifteen (15) days shall commence to run from its promulgation; but when an appeal is from any order, said period shall commence to run from receipt of notice of said order. The running for the period of appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney.

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The foregoing are the changes and new provisions introduced by the Supreme Court in the New Rules of Court regarding Criminal Procedure. I am not sure whether I have considered all of said new provisions and changes but I have tried to be as accurate as I can.

Before closing, I wish to remind the prosecuting attorneys present in this convention of their role in the prosecution of criminal cases which I can do no better than to quote the language of Justice Sutherland of the Supreme Court of the United States, which language was also adopted by our Supreme Court in the case of Suarez vs. Platon, et al., 69 Phil. 556. According to Justice Sutherland, the prosecuting officer "is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar

and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocent suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."