CRIMINAL LAW

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INTENT AND MOTIVE

Felonies or acts and omissions punishable by law may be committed by means of deceit (*dolo*). There is deceit when the act is performed with deliberate intent.[1] Malice or criminal intent in some form is thus, an essential requisite of all crimes and offenses defined in the Revised Penal Code, except in those cases where the element required is negligence (e.g., Art. 224, 257 and 365).[2] Criminal intent is presumed conclusively and indisputably to exist from the very commission of an unlawful or felonious act, unless there is proof to the contrary.

Motive is the moving power which impels one to action for a definite result.[3] It is not, however, a necessary or essential element of a crime. Lack of it is not a proof of innocence. It is important where there is a doubt as to whether the defendant is or is not the person who committed the offense.[4] The motive need not be fully established if the identity of the culprit is known.[5] Proof of motive is not necessary when guilt is otherwise established by sufficient evidence. Motive need not be established if the guilt of the accused is shown beyond reasonable doubt.[6]

The rule has also been stated in this manner: It is not indispensable to conviction that the particular motive for committing the crime be established where commission of the crime by the accused is clearly proven, conviction may and should follow even if the reason for its commission is unknown. However, in some cases, one important aid in completing the proof of the commission of the crime by the accused is the motive which tempted the mind to indulge in the criminal act.[7]

In *People v. Indic et. al.*[8] the Court, reiterating this rule on motive, held: "Proof of motive is not indispensable to convict, the

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1 Art. 3, Revised Penal Code.
2 Aquino, Ramon C., Revised Penal Code, Vol. I, 33 (1961).
3 Reyes, Luis B., Revised Penal Code, Vol. I, 52 (1963).
4 People v. Arcilla, G.R. No. L-11792, June 30, 1959.
5 People v. Del Rosario and Murray, G.R. No. L-4467, April 30, 1959.
6 People v. Corpus and Serquino, G.R. No. L-12718, February 20, 1960.
7 People v. Daniel Carlos, 15 Phil. 47.
8 G.R. Nos. L-18071-18072, Janualy 31, 1964.

guilt of the accused having been sufficiently established by the testimony of several witnesses who directly and categorically identified the appellant Cabias to be one of the culprits." Similarly in *People v. Raquel* [9], the Court did not take into account the motive for the killing because the accused was clearly and positively identified as the perpetrator of the crime.

In *People v. Riveral et al.*,[10] when the accused and four other men ambushed three men in a jeep killing one, the Court took note of the acute political rivalry between the accused and the deceased as the principal cause for the commission of the crime. Likewise, in *People v. Martin et al.*,[11] the Court strengthened the evidence for the prosecution by appreciating the motive for the crime. The Court held in that case: "Edmundo Nepomuceno met his death because of the ill-feeling the Martin brothers had harbored against him sometime prior to the event which led to his death. It should be recalled that Edmundo had a common-law wife (Conchita Sanchez) with whom he had two children but that this relationship notwithstanding he succeeded in winning the affection of the accused's sister, Carmen Martin, whom he married, but which, however was not enough to assuage their feeling, since one week thereafter, the Martin brothers took her back as an eloquent proof of their disapproval of the affair. And not long after this event, the affray took place wherein Edmundo found himself to be the victim of the collective aggression of the Martins who heaped upon him simultaneous thrusts with their knives leaving him helpless until he expired."

In *People v. Simon*,[12] where the accused were positively identified by one of the victims as the persons who shot to death the other victim and wounded seriously the witness, the Supreme Court held that "proof of motive for the otherwise senseless killing is not essential." However, the Court surmised: "It could well be that the assailants realized that they were known to their victims, and for this reason, wanted them liquidated."

In *People v. Romawak* [13], however, the Supreme Court found it necessary to inquire into the motive of the accused for the killing of one Ariston Soriano. Witnesses for the defense and the accused himself maintained that it was another person who killed the victim. The Court held jealousy as the motive because both the victim and the accused were courting the same girl.

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[9] G.R. No. L-17401, November 28, 1964.
[10] G.R. No. L-14077, March 31, 1964.
[11] G.R. Nos. L-18763-18764, May 23, 1964.
[12] G.R. No. L-18035, February 28, 1964.
[13] G.R. No. L-19644, October 31, 1964.

CONSPIRACY

Conspiracy implies a concert of design or unity of purpose, an agreement concerning the commission of a felonious or unlawful act coupled with the decision to commit it. Under Art. 8, Revised Penal Code, conspiracy, as a rule, is not a crime. It is a crime only in treason, rebellion and sedition. The existence of conspiracy, however, is decisive in determining the liability of persons who participated in the commission of an offense, that is, whether liable severally and individually, or collectively as co-principals regardless of the extent of their actual participation in the execution of the crime.[14] When there is conspiracy the act of one is the act of all.[15] Each is responsible for the acts of his companions.

Conspiracy may be inferred from the overt acts of the accused. Where such acts show community of purpose or design to perpetrate a felonious act, then there is conspiracy. It is not necessary that there be direct proof of a previous agreement to commit a felony. In *People v. Castro et. al.*[16], the accused were charged with double murder for the killing of a town mayor and the latter's wife. There was no direct proof of any previous contract or agreement between the four accused. However, the Supreme Court held: "While no direct evidence was produced that a previous agreement was had among them, their concerted action in going armed, and together to their victim's house, and there, while one stayed as a lookout, the other two entered and shot the mayor and his wife, leaving again together afterwards, admits no other rational explanation than conspiracy."

In one case, the Court declared that the following circumstances show conspiracy: Both accused were inside the store when one of the victims unsuspecting knocked at the door; the other victim was lying prostrate on the floor, face down and hands tied thus rendered defenseless by the accused; one opened the door while the other stood guard with a gun; and the instant and simultaneous flight from the scene of the crime by the accused after shooting the victims.[17]

In *People v. Tiongson et. al.*[18], the Court reiterated previous rulings on conspiracy in this manner: "This Court has repeatedly decided that conspiracy may be inferred from the acts of the accused themselves when such acts point to a joint purpose and design (People v. Upao-Moro, G.R. No. L-6771, May 28, 1957). Un-

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[14] Aquino, *supra*, 440.
[15] Reyes, *supra*, 110.
[16] G.R. No. L-17465, August 31, 1964
[17] People v. Simon, *supra*.
[18] G.R. Nos. L-9866-9867, November 28, 1964.

like in evident premeditation where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his intended deed (US v. Gil, 13 Phil. 530), conspiracy arises on the very instant the plotters agree, expressly or impliedly, to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime committed by any one of them (People v. Abrina et. al., G.R. No. L-7849, Dec. 24, 1957). Hence, the accord between the accused is evidenced by their concerted assault upon their victim, rendering each assailant liable for the entire consequences of the unlawful act (People v. Monroy and Indica, 55 O. G. 9042)."

In *People v. Mojica*,[19] the Court declared the presence of conspiracy from mere statements contained in the extrajudicial confessions of the two accused, that they had agreed to kill the deceased Artus to avenge the death of a leader of the OXO gang.

In the case of People v. Monroy,[20] the Court held that conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and decide to pursue it. This doctrine was illustrated in a recent case[21] thus: Indic, Cabias and Estaco went to the house of Cosmiana Camadoc and challenged her brother, Alberto, to a fight. Alberto did not accept the challenge through the advise of his cousins Barbara and Bernardo. When Bernardo shouted from the opposite house to Alberto advising the latter not to come down, the three men went up the house of Bernardo and hacked him. Bernardo jumped out of the window to escape, but was pursued by the three men and stabbed. In his appeal, Indic alleged the defense that there was no conspiracy for Bernardo was his uncle and that he had no motive to kill him. Held: Contrary to the pretensions of the defense, conspiracy has been shown. Conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and decide to pursue it. In the instant case, conspiracy arose from the moment the three accused challenged Alberto to a fight and continued until Indic attacked Bernardo inside a house, and later joined by appellant Estaco, who was in the yard, in the pursuit of Bernardo who ran away until he was overtaken and wounded simultaneously by them.

It is not enough that a person participate in the assault made by another in order to be considered a co-principal in the crime committed. He must also participate in the criminal resolution of the

[19] G.R. No. L-17234, March 31, 1964.
[20] G.R. No. L-11177, October 30, 1958.
[21] People v. Indic, *supra*.

other.[22] But this does not mean that every co-conspirator should take a direct part in every act and should know the part which everyone has to perform.

In *People v. Paz*,[23] the accused members of a striking union asked the Huks led by Paz to raid the RIZ-MAN Transit garage in Pillila, Rizal. The Huks staged the raid without any of the accused strikers having participated in it or having been seen together with the Huks in or near the destroyed garage during the raid. No evidence of actual participation in the execution of any of the criminal acts was presented during the trial of the case. The Supreme Court, however, held that there was conspiracy. In so deciding, the Court said: "Conspiracy implies concert of design and not participation in every detail of execution. It is sufficient that there is a general plan to accomplish the result sought by such measures as may from time to time be found expedient. It is not material that each had taken part in every act or that he knew the exact part to be performed by the other conspirators, in the execution of the conspiracy." The Court further held that Art. 8 of the Revised Penal Code is not applicable in cases where the crimes subject of the conspiracy or proposal in question were consummated.

MITIGATING CIRCUMSTANCES

Mitigating circumstances are those which, if present in the commission of the crime, do not entirely free the actor from criminal liability, but serve only to reduce the penalty. They are based on the diminution of either freedom of action, intelligence, or intent, or on the lesser perversity of the offender.[24] Mitigating circumstances may be generic or privileged. Generic or specific mitigating circumstances may reduce the penalty in Arts. 62 to 64, depending on the presence of generic or specific aggravating circumstances and may reduce the penalty by one or two degrees, as indicated in Arts. 67 to 69.[25]

Old Age

The death penalty cannot be imposed on an offender over 70 years old.[26] In *People v. Alcantara*,[27] it was held that "the fact that he is above 70 years of age" is mitigating and hence is a ground for reduction of penalty.

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22 Reyes, *supra*, 38.
23 G.R. No. L-15052, August 31, 1964.
24 Reyes, *supra*, 206.
25 Aquino, *supra*, 22, citing People v. Honradez, CA, 40 O.G. 46th Supp. 1.
26 People v. Reontillo, CA 38 O.G. 3286.
27 G.R. No. L-17212, May 23, 1964.

No Intent To Commit So Grave A Wrong

That the offender had no intention to commit so grave a wrong as that committed is mitigating because the perpetrator cannot be made to answer fully for the act committed, when there exists a discrepancy between the intention and the result, the latter being more serious than the former. Intent is an essential element of a crime. Therefore, when the intent is less than the material act committed, reason, good sense and the public conscience dictate that a mitigated responsibility be imposed on the culprit.[28]

Thus in *People v. Conde*,[29] appellant was given the benefit of mitigating circumstance no. 3, Art. 13 of the Revised Penal Code, merely because "it is within the realm of possibility" that he—not being physically present at the scene of the occurence—"had no intention to commit so grave a wrong" as that above mentioned."

The intent is determined at the time of commission of the crime and not at the time of planning. In *People v. Robles*,[30] the Court held that Art. 13, paragraph 3 of the Revised Penal Code addresses itself to the intention of the offender "at the particular moment when he executes or commits the criminal act, not to his intention during the planning stage. Therefore, when, as in the case under review, the original plan was only to rob, but which plan, on account of the resistance offered by the victim, was compounded into the more serious crime of robbery with homicide, the plea of lack of intention to commit so grave a wrong cannot be rightly granted. It is utterly of no moment that the herein accused set out only to rob. The irrefutable fact remains that when they ganged up on their victim, they employed deadly weapons and inflicted on him mortal wounds in his neck. At that precise moment, they did intend to kill their victim, and that was the moment to which Art. 13, paragraph 3 of the Revised Penal Code refers."

No intent to commit so grave a wrong is a matter for the defense to prove. In *People v. Paz et al.*,[31] the accused were charged with the crimes of arson and robbery with homicide. They were convicted of both crimes. On appeal, the appellants advanced the theory that they are not liable for robbery and homicide because they never intended or agreed to commit these crimes. They alleged as their only objective the burning of the RIZ-

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[28] People v. Payumo, 54 Phil. 181.
[29] G.R. No. L-18777, May 27, 1964.
[30] G.R. No. L-15308, May 27, 1964.
[31] See note 22.

MAN Transit buses in Pillila, Rizal. The Court emphasized the necessity of proving such defense, saying, "There was no evidence presented by them (appellants) to this effect. Such a defense must be established by appellants, in the same manner that the mitigating circumstance of lack of intention to commit so grave an offense, is a matter for the defense to prove." The Court further added that in a plan to destroy a garage, where trucks, valuables, money and office equipments were kept and people were working and staying, robbery and looting were to be expected and violence or killings might ensue, either to silence or prevent them from making any effort to resist or repel the raiders. Hence, robbery and on the occasion thereof, the killing of one employee was a necessary ingredient of the conspiracy to destroy the garage.

Passion and Obfuscation

Passion or obfuscation is mitigating because it produces a diminution of the conditions of voluntariness of the offense committed. When there are causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power.[32]

There is passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts or due to a legitimate stimulus so powerful as to overcome reason.[33] This mitigating circumstance, therefore, is not appreciated if the causes which overcome reason are unlawful or unjust. It cannot be considered when it arises from "vicious unworthy or immoral passions." Ordinarily then, where a person kills his common-law wife after she leaves him and refuses to return to their former relationship, passion or obfuscation is not mitigating because the causes which produce in the mind loss of reason and self-control are unlawful and unworthy.

In *People v. Bello*,[34] however, where the accused killed his common-law wife, Alicia Cervantes whom he earlier induced to accept an employment as a "public hostess" but later entreated to quit her calling and return to their formal relation, passion and obfuscation was considered mitigating despite the state's claim based primarily on the strength of the rule that passion and obfuscation cannot be considered when "arising from vicious, unworthy and immoral passions." The Court found the following circumstances to favor the accused: he had previously reproved the deceased for allowing her-

[32] U.S. v. Salandanan, *et al.*, 1 Phil. 464.
[33] Aquino, *supra*, 242.
[34] G.R. No. L-18792, February 28, 1964.

self to be caressed by a stranger. Her loose conduct was forcibly driven home to the accused by another person's remarks on the very day of the crime that the accused was the husband "whose wife was being used by Maring for purposes of prostitution", which remark so deeply wounded appellant's feelings that he had to drink tuba before visiting Alicia to plead with her to leave her work. Alicia's refusal to renew their former relation showed her determination to pursue a lucrative profession. This case then is an exception to the rule that common-law relationship being immoral, passion or obfuscation in the killing of the common-law wife is not mitigating. The other exception is when the common-law wife is caught in *flagrante* copulating with another person when the impulse upon which the defendant acted and which naturally produced passion and obfuscation was not that the woman declined to have relations with him but the sudden revelation that she was unfaithful to him and his discovery of her in *flagrante* in the arms of another man.[35]

In the *Bello* case the accused's rage did not arise from the fact that the deceased refused to return to their abode but from "her flat rejection of the accused's entreaties for her to quit her calling as hostess and return to their formal relation, aggravated by her sneering statement that the accused was penniless and invalid" and precipitated by the circumstances of having caught her caressed by a stranger inside a theater and having heard the snide remarks of other people. The Court hit the nail right on the head when it said that even without benefit of wedlock, a monogamous liason appears morally of a higher level than gainful promiscuity.

Voluntary Surrender To The Authorities

In order that voluntary surrender may be appreciated, "it is necessary that the same be spontaneous in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture." [36]

It must be proven that the accused freely placed himself at the disposal of the law-enforcing authorities,[37] and that the surrender must be immediate, voluntary and unconditional. Thus in *People v. Tiongson et. al.*,[38] the Court considered the mitigating circumstance of voluntary surrender in favor of appellants Guieb and Alicante,

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[35] People v. De la Cruz, 22 Phil. 429.
[36] People v. Sakam, 61 Phil. 27.
[37] Aquino, *supra*, 256.
[38] See note 18.

for it appeared that the two gave themselves up to the Quezon City police "right after the incident."

Voluntary surrender may be inferred from the conduct of the accused.[39] Hence, it cannot be contended that the PC officers and men effected a "capture" when they met Sgt. Araman and accused Alcaraz and Fajardo "already peacefully on their way to the poblacion." [40] It was further held in the *Magpantay* case that the fact that PC soldiers had surrounded the poblacion does not absolutely prove that the accused had no other alternative course but to surrender. On the other hand, the fact that the PC authorities had waited at a designated place for the mayor to bring down the accused, shows that they conformed to the idea of surrender and not capture of the accused.

Plea of Guilty

Where the accused had voluntarily confessed his guilt before the Court prior to the presentation of evidence for the production, he is entitled to the mitigating circumstance of plea of guilty. In order that the plea of guilty may be mitigating, two requisites must be present: 1) That the offender voluntarily confessed his guilt in open court, that is, before the competent court that is to try the case, and 2) That the offender voluntarily confessed his guilt before the presentation of the evidence for the prosecution.[41]

In *People v. Tamba* [42] the accused was charged with arson with homicide before the Court of First Instance of Davao under an information stating that, with grave abuse of confidence, wilfully, unlawfully and feloniously, she burned the house owned and inhabited by one Carlos Gavila to the damage and prejudice of its owner and as a result of which a minor son of the latter was burned to death. Upon arraignment, the accused, with the assistance of her counsel *de oficio*, pleaded guilty to the charge. The Court considered the plea mitigating and used it to offset the aggravating circumstance of nighttime.

In *People v. Robles* [43] the Court, citing its previous rulings, reiterated the rule on the effect of plea of guilty that there may be conviction of a capital offense despite a plea of guilty. Said the Court in that case: "While a plea of guilty is mitigating, at the same time it constitutes an admission of all the material facts alleged in

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[39] Aquino, *supra*, 257.
[40] People v. Magpantay and Alcaraz, G.R. No. L-19133, November 27, 1964.
[41] Reyes, *supra*, 250, citing People v. De la Peña, 66 Phil. 451.
[42] G.R. No. L-18768, Februaly 28, 1964.
[43] G.R. No. L-15308, May 29, 1964.

the information, including the aggravating circumstances alleged, such as nocturnity, use of superior force, dwelling, etc. (cited cases omitted). It matters not that the offense is capital, for the admission (plea of guilty) covers both the crime as well as its attendant circumstances qualifying and/or aggravating the crime, (cases omitted)."

However, though a plea of guilty constitutes an admission of all the material facts alleged in the information there are exceptions to this rule, as when the information is ambiguous. Thus, in *People v. Magpantay* [44] the narration of the commission of the crime in the information avers five (5) circumstances which may qualify or aggravate the crime, namely: treachery, evident premeditation, superior strength, nocturnity, and band. However, in the succeeding paragraph, it specifies only the qualifying circumstance of treachery and the generic aggravating circumstances of evident premeditation and superior strength without alleging anew the other circumstances. This separate specification certainly could have misled the accused and diverted their attention from the other aggravating circumstances included in the detailing of the crime. Under the circumstances, appellant in all probability pleaded guilty upon the estimation that the two aggravating circumstances stressed in the last portion of the information could be and were neutralized by their voluntary surrender and plea of guilty. Doubt should be resolved in favor of the accused who are not to blame for the ambiguous terms of the information.

AGGRAVATING CIRCUMSTANCES

Aggravating circumstances are those which, if attendant in the commission of the crime, serve to increase the penalty without, however, exceeding the maximum of the penalty provided by law for the offense.[45] They increase the penalty because they indicate the unusual criminality or perversity and dangerousness of the offender.[46] When there are more aggravating than mitigating circumstances it is mandatory to impose the greater penalty.[47]

There are four kinds of aggravating circumstances: 1) Generic—those that can generally apply to all crimes, 2) Specific—those that apply only to particular crimes, 3) Qualifying—those that change the nature of the crime, and 4) Inherent—those that must of necessity accompany the commission of the crime.[48]

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[44] See note 40.
[45] Reyes, *supra*, 259-60.
[46] Aquino, *supra*, 273.
[47] People v. Robles, *supra*.
[48] Reyes, *supra*, 260-1.

Abuse of Confidence

Abuse of confidence exists as an aggravating circumstance only when the offended party has trusted the offender who later abuses such trust by committing the crime.[49] It is necessary therefore, to show the confidence granted or given in order to determine whether there was or was not an abuse of it.[50]

In *People v. Bello*,[51] there was no abuse of confidence in the killing of a young common-law wife by the 54-year accused because "there (was) nothing to show that the accused and the victim reposed in one another any special confidence that could be abused, any gratitude owed by one to the other that ought to be respected, and which could bear any relation, or connection, with the crime committed. None is inferable from the fact that the accused was much older than his victim, or that he was penniless while she was able to earn a living and occasionally gave him money, since both lived together as husband and wife."

Nocturnity (Nocturnidad)

Nocturnity is not necessarily an aggravating circumstance.[52] It becomes aggravating only when it is especially sought by the offender or that he has taken advantage of it in order to facilitate the commission of the crime or for the purpose of impunity.[53]

In *People v. Bello*,[54] where the accused killed his common-law wife at night, nocturnity was not aggravating because the accused did not seek or take advantage of the night the better to accomplish his purpose. But in the case of *People v. Tamban* [55] where the darkness of the night was especially sought by the accused in burning the house to the damage and prejudice of the owner and as a result of which the minor son of the owner was burned to death, nocturnity was aggravating. Said aggravating circumstance, however, was offset by the mitigating circumstance of plea of guilty.

In *People v. Robles*,[56] the Court, reiterating a previous doctrine, held: By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime

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49 Reyes, *supra*, 284.
50 Aquino, *supra*, 293.
51 See note 34.
52 People v. Balagtas and Jaime, 19 Phil. 164.
53 People v. Alcala, 46 Phil. 739.
54 See note 34.
55 G.R. No. L-17868, February 28, 1964.
56 See note 43.

to insure his immunity from capture.[57] The Court further held in the *Robles* case that: "Stated differently, in default of any showing or evidence that the peculiar advantages of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain *nocturnidad*. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night."

Price

Price is aggravating because it manifests the greater perversity of the offender, as shown by the motivating power itself.[58] But before it is so considered, it must be proven beyond reasonable doubt that money or other valuable consideration was given for the purpose of inducing another to perform the deed.[59] When this aggravating circumstance is present, there must be two or more principals, the one who gives or offers the price or promise and the other who accepts it, both of whom are principals: the former, because he directly induces the latter to commit the crime, and the latter, because he commits it.[60]

But in the case of *People v. Contante* [61] where the accused shot to death one Anatolio Adayo with a shotgun previously given to him by Tomas Garchitorena in consideration of ₱500.00 to be paid by Garchitorena and a promise by the latter to take care of the family of the accused, price was considered aggravating only as regard the accused. Only the accused was charged in the information filed by the provincial fiscal before the CFI of Camarines Sur. Tomas Garchitorena was discharged from the complaint for insufficiency of evidence at the termination of the preliminary investigation. The Supreme Court, however, recommended an inquiry by the Department of Justice as to the liability of Garchitorena as regards the case.

Evident Premeditation (Premeditacion Conocida)

This circumstance must be established with equal certainty and clearness as the criminal act itself.[62] Hence it is necessary to prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit had clung to his determination and (c) a sufficient interval of time between the deter-

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[57] People v. Matbagon, 60 Phil. 887.
[58] Reyes, *supra*, 308.
[59] People v. Gamao, 23 Phil. 81.
[60] I Viada, 262, cited in Reyes, *supra*.
[61] G.R. No. L-14639, December 28, 1964.
[62] People v. Navarro, 7 Phil. 713.

mination and the execution of the crime to allow him to reflect upon the consequences of his act.[63]

In other words, the essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[64] And the absence of this "mature and cold reflection" in a recent case [65] made the Court declare the absence of the circumstance of evident premeditation. The Court held in the *Navarro* case that the fact that on the night of the killing, Jaime Navarro was provided with a piece of wood and Glicerio Navarro carried two empty coca-cola bottles; that soon after Jaime hit Debil with the wood and the unidentified relative hit Debil with a coca-cola bottle and thereafter Glicerio struck Debil with the same piece of wood, "does not show the existence of a mature and cold reflection to kill Debil or deliberate perpetration to execute the plan" that the circumstance of evident premeditation cannot thus be considered. But in *People v. Mojica*,[66] the circumstance of evident premeditation attended the commission of the crime. The crime was planned to avenge the death of an OXO leader and "there was sufficient time that intervened between its inception and execution."

In *People v. Bello* [67] evident premeditation was not established. "The accused had been carrying a *balisong* with him for a long time as a precaution against drunkards, and without any pre-set plan or intent to use it against (the deceased). That he watched her movements daily manifested his jealous character, but there is no evidence that from this jealousy sprouted a plan to snuff out her life."

Abuse of Superior Strength

Abuse of superior strength, like nocturnity, is absorbed in treachery. It cannot be estimated as an independent aggravating circumstance when treachery is present.[68] Thus in the *Tiongson* case,[69] the Supreme Court held that abuse of superior strength, though present, was absorbed in the circumstance of treachery.

To appreciate abuse of superiority, what should be considered is not that there were three, four or more assailants of one victim, but whether the aggressors took advantage of their combined strength

[63] People v. Leaño, IACR 447, 36 O.G. 1128.
[64] People v. Durante, 52 Phil. 363.
[65] G.R. No. L-20860, November 28, 1964.
[66] See note 34.
[67] G.R. No. L-17234, March 31, 1964.
[68] People v. Jamino, 3 Phil. 702.
[69] See note 18.

in order to consummate the offense.[70] Hence in the *Robles* case[71] it was held that had not the appellants seized upon their greater number and greater power to overwhelm the deceased, the latter might have defended himself more successfully. And, reiterating its previous rulings,[72] the Court further held that the number of its aggressors point to the aggravating circumstance of superior force.

Likewise in the *Indic* case,[73] the Supreme Court appreciated the presence of this generic aggravating circumstance in the crime where the "accused who were all armed and decidedly superior in number, made a concerted attack upon the lone Bernardo who was armed."

The rule enunciated by the Supreme Court in several cases[74] is that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.

In *People v. Bello*,[75] however, where the accused killed his common-law wife with a *balisong*, the Court found no evidence to show any superior strength on the part of the accused, and not possessing it, he could not take advantage of it. That the accused was armed with a *balisong* was not considered by the Court sufficient to show a marked superior strength of the accused. "The accused was old and *baldado* (invalid) while the victim was in the prime of her youth and not infirm. Possession of a balisong gives an aggressor a formidable advantage over the unarmed victim but the physique of the aggressor ought also to be considered. At any rate, taking into account the emotional excitement of the accused, it is not clearly shown that there was *'intencion deliberada de prevalerse de la superioridad o aprovecharse intencionalmente de la misma'* (Sent. TS Oct. 1906), i.e., deliberate intent to take advantage of superior strength."

Treachery (Alevosia)

The rule on alevosia has been definitely affirmed in the case of People v. Devela.[76] In that case, the court held that: "In a nutshell, there is treachery when the culprit lies in wait for the victim, as in an ambuscade, or approaches him from behind and attacks him, unseen or where an attack is made upon a sleeping person, or a per-

[70] People v. Antonio and Desargo, 73 Phil. 421.
[71] See note 43.
[72] U.S. v. Bañagalo, 24 Phil. 69; People v. Carez, 68 Phil. 521.
[73] See note 8.
[74] Notably: U.S. v. Consuelo, 13 Phil. 612; People v. Quesada, 62 Phil. 446.
[75] See note 34.
[76] 3 Phil. 625.

son was killed after he was rendered helpless and defenseless, as when he was first disarmed. Where the attack was made on the spur of the moment, or it was not deliberate, and the culprit did not employ means directly and especially tending to insure the killing without risk to himself, there is no treachery. Thus, reiterating this ruling, the Court held in the case of *Indic*[77] that where the joint attack on the deceased Bernardo by the three accused does not appear to have been directly and specifically or conscientiously adopted to insure its execution without risk arising from any defense the deceased might make but was rather unplanned, sudden and impulsive, prompted or provoked only by the latter's flight, treachery is not present. But two men stabbing another forty times in vital parts of the body cannot but insure the death of the latter, evidencing treachery.[78] Where the attack though frontal was sudden, and perpetrated in a manner "tending directly and especially to insure its execution, free from any danger that the victims might defend themselves," the killings were held to have been attended by *alevosia*.

In People v. Alcantara[80] which affirmed the early ruling in People v. Villanueva,[81] the Court held that a qualifying circumstance which is not alleged in the information or complaint, although proven, may only be considered as an aggravating circumstance (generic in the case of treachery), but will not qualify the offense charged. Thus, in the recent case of *People v. Navarro*,[82] although treachery attended the commission of the crime for the attack was sudden, from behind, while the victim was urinating, done at nighttime purposely sought to insure the success of the attack and with abuse of superior strength, nevertheless "treachery cannot qualify the crime to murder as the information does not allege it as a qualifying circumstance." It is interesting to note that in the *Navarro* case, the Court appreciated the circumstance of treachery as aggravating, although it was not alleged in the information, ruling that the same absorbed the circumstances of nocturnity and superiority alleged as aggravating circumstances in the information.

The circumstance that the victim sustained wounds in the back is not sufficient in itself to prove treachery. The would might have been the last one inflicted in order to finish the victim or might have been inflicted by accident, or inflicted in a frontal encounter.[83] In

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[77] See note 8.
[78] People v. Mojica, *supra*, note 19.
[79] People v. Santiago, G.R. No. L-17401, November 28, 1964.
[80] 55 O.G. 3451.
[81] 2 Phil. 61.
[82] G.R. No. L-20360, November 28, 1964.
[83] People v. Atig, 36 Phil. 303 and similal cases.

People v. Bello [84] the Court reiterated this rule. Although the victim was stabbed at the back, the wound was but a part and continuation of the aggression. The four stab wounds were inflicted indiscriminately, without regard as to which portion of the body of the victim was the subject of the attack. The stab in the back was inflicted while the victim was running away.

The characteristic and unmistakable manifestation of treachery is the deliberate, sudden and unexpected attack of the victim from behind, without any warning and without giving him an opportunity to defend himself or repel the initial assault.[85] In the case of *People v. Romawak,*[86] the attack was so sudden that it did not afford the deceased and his companions opportunity to prepare for their defense. The accused barged into the house while the deceased and his companions were seated at a table near the door. The positions of the wounds inflicted on the deceased and on one of his companions sufficiently showed the treacherous manner of the assault.

As a general rule, treachery must exist at the inception of the attack. However, there are cases wherein treachery may be exhibited in the final stage or consummation although said factor was not present at the inception of the assault as when the victim is first seized and bound and then slain either by the person who bound him or by another.[87] This settled rule is exemplified in the case of *People v. Simon,*[88] where the two accused tied the hands of one of the victims and made him lay flat on the floor, face down before he was shot by one of the accused.

ALTERNATIVE CIRCUMSTANCES

"Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are relationship, intoxication and the degree of instruction and education of the offender." [89] In People v. Sari,[90] the Court held that it is not illiteracy alone but lack of sufficient intelligence and knowledge of the full significance of one's acts that should be considered. That is why it is for the trial court rather than the appellate court to find and consider the circumstances of lack of in-

[84] See note 34.
[85] People v. Mercoleta, 17 Phil. 317 and similar cases cited in Aquino, *supra*, 355.
[86] G.R. No. L-19644, October 31, 1964.
[87] People v. Cañete, 44 Phil. 478.
[88] G.R. No. L-18035, February 28, 1964.
[89] Art. 15, Revised Penal Code.
[90] G.R. No. L-7169, May 30, 1956.

struction and similar circumstances in favor of the accused. This ruling was again stated in the case of *People v. Bonifacio Indic et al.*[91] In that case, the lower court considered the mitigating circumstance of lack of instruction in appellant's favor, declaring that they "are ignorant, if not entirely illiterate persons." As regards this, the Supreme Court held that "as it is for the trial court, rather than the appellate court, to find the existence of this circumstance, for it is not illiteracy alone, but the lack of sufficient intelligence and knowledge of the full significance of one's acts which only the trial court can appreciate that determines such mitigating circumstance, we hold that appellant is entitled to the same."

PERSONS CRIMINALLY LIABLE

Principal by Inducement

A principal is one who took a direct part in the commission of the crime, or directly forced or induced another to commit it or cooperated in its commission by some indispensable act.[92] Inducement, under the second category of principal, exists if the compact, the command or the advice is of such a nature that without its concurrence the crime would not have been committed.[93] In *People v. Oscar Castelo et al.*,[94] Castelo was convicted by the Supreme Court as a principal by inducement in the crime of murder for it was shown that he had a desire and interest to eliminate the deceased Monroy whom Senator Recto used as a witness in his charges against the then Secretary of Justice and National Defense Oscar Castelo. Furthermore, the order of Castelo to kill Monroy was amply proven by the testimonies and confessions of his bodyguards. Finally, Castelo, as Secretary of two important cabinet positions, had bodyguards subservient to do his bidding. It was easy for him to have ordered that Monroy be shot. In convicting him, the Supreme Court held that "the case of the People is so strong against him (Castelo) that it be unjust to set him free and yet imprison his seven subordinates who merely carried out his commands."

Accomplice

An accomplice is one who cooperates in the execution of the offense by previous or simultaneous acts, but who is not included in the provisions of Art. 17, Revised Penal Code.[95] Thus, in one case,[96] it was held that the "lack of complete evidence of conspiracy

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[91] G.R. Nos. L-18071-18072, January 31, 1964.
[92] Art. 17, Revised Penal Code.
[93] People v. Hernandez, 28 Phil. 109.
[94] G.R. No. L-10774, May 30, 1964.
[95] Art. 18, Revised Penal Code.
[96] People v. Riveral *et al.* G.R. No. L-14077, March 31, 1964.

that creates the doubt whether the accused had acted as principals or accomplices in the perpetration of the offense, impels the Court to resolve in their favor the question, by holding that they were guilty of the milder form of responsibility." The Court made a similar ruling in the case of *People v. Alcantara et al.*[96a] In this case, the Court held that while it has grave doubts as to whether the appellant Espedido had himself induced Alcantara and Velarde to kidnap Yumul and conspired with them to effect the kidnapping, it was satisfied that Espedido participated in the crime "in some other manner." There was evidence that the appellant was sent by his son-in-law Mayor Osuna to confer with Velarde and the other Huks presumably on the plan to kidnap Yumul, and said appellant was present when the negotiations, although he did not take part therein, were being made between Osuna and the Huks, so that he had knowledge of the kidnapping. Furthermore, he performed "certain acts" related to the kidnapping, although these acts cannot be considered as direct inducement or direct participation in the conspiracy to commit the crime of kidnapping. However, since there was no evidence proving beyond reasonable doubt that Espedido was an actual co-conspirator in the crime or a principal by inducement, but that he merely acted as a go-between of the parties conspiring to commit the crime, the Court convicted him merely as an accomplice.

Accessory

An accessory takes part subsequent to the commission of the crime but is not guilty as a principal or an accomplice, by profiting or assisting the offender to profit from the crime, by concealing or destroying the body of the crime, or the effects or instruments thereof, or by harboring, concealing or assisting in the escape of the principal of the crime. In the case of *People v. Antonio,*[96b] Modesto Antonio shot Porfirio Gabiran to death with a .22 caliber rifle and had him buried by two men at gun point. Bonifacio Tolete drove the truck where the shooting occurred. Seven months later, Tolete returned to Gabiran's grave and exhumed the remains of deceased, with the objective of disposing of them in the river. Antonio was convicted of murder as principal and Tolete as accessory after the fact.

EXTINCTION OF CRIMINAL LIABILITY

Criminal liability is totally extinguished by: (1) the death of the convict, (2) service of sentence, (3) amnesty, (4) absolute pardon, (5) prescription of the crime, (6) prescription of the penalty,

[96a] G.R. No. L-17212, May 27, 1964.
[96b] G.R. No. L-16547, May 30, 1964.

and (7) the marriage of the offended woman, as provided in article 344 of the Revised Penal Code.[97] It is partially extinguished by conditional pardon, commutation of the sentence, and good conduct allowances which the culprit may earn while he is serving sentence.[98]

Criminal liability is not extinguished by the novation of a contract the violation of which gave rise to the criminal liability.[99] Neither is it extinguished by reason of the extinguishment of the civil liability to pay taxes because of the failure of the government to take any action, judicial or administrative to collect income tax liabilities within the time provided by law.[100]

In *People v. Nery*, the accused received from Federico Matilano two diamond rings to be sold by her on commission with the agreement that she deliver the purchase price minus the commission to her principal. She failed to show up on the date agreed and Matilano brought the matter to the attention of the police. Later, accused was charged with estafa, but during the pendency of the case in the CFI, she executed a deed promising to pay at certain specified dates and, in installments, the price. She paid only one installment. Trial Court convicted accused of the crime of estafa. On appeal, the accused contended that there is no legal prohibition to prevent parties to a contract to novate it so that any incipient criminal liability under the first contract is avoided. The Court in not upholding this contention held: "Novation theory may perhaps apply prior to the filing of the criminal information by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation thereby placing complainant in estoppel to insist upon original trust. But after judicial authorities have taken cognizance of the crime and instituted action in court the offended party may no longer divest prosecution of its power to exact criminal liability as distinguished from civil. The crime being against the state, only the latter can renounce it. (cases omitted). Novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished . . ."

In *People v. Tierra*, the defendant was charged in four separate informations of violation of the income tax law for filing false and fraudulent income tax returns for the years, 1946, 1947 and 1949 and for his failure to keep and preserve his own books of account and those of the corporation of which he was the president as required by section 337 of the National Internal Revenue Code.

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[97] Art. 89, Revised Penal Code.
[98] Art. 94, Revised Penal Code.
[99] People v. Nery, G.R. No. L-19567, February 5, 1964.
[100] People v. Tierra, G.R. Nos. L-17177-17180, Dec. 28, 1964.

Defendant was found guilty of the violations charged in the four informations by the lower court. On appeal, defendant-appellant insisted, among others, that his criminal liability in the first three informations has been extinguished by reason of the extinguishment of his civil liability to pay taxes because of the failure of the government to take any timely action, judicial or administrative, to collect his income tax liabilities. The Court held: "The filing of a false and fraudulent income tax return and the failure to pay the tax necessarily makes the delinquent taxpayer amendable to the penal provisions of Section 73 of the (National Internal Revenue Code). Any subsequent satisfaction of the tax liability by payment or prescription, *will not operate to extinguish such criminal liability*, since the duty to pay the tax is imposed by statute independent of any attempt on the part of the taxpayer to evade payment. Whether under the National Internal Revenue Code or under the Revised Penal Code, the satisfaction of civil liability is not one of the grounds for the extinction of the criminal action . . . . . The criminal action subsists so long as there are no legal grounds that would bar its prosecution."

REBELLION

The gravamen of the crime of rebellion is the armed public rising against the government. This uprising may have for its purpose either to destroy the allegiance to said government or its laws of any Philippine territory or any part of its armed forces or to deprive the Chief Executive or the Legislature of any of their powers-removal of allegiance or deprivation of executive or legislative powers.[101] Rebellion is a political crime because it is aimed directly *against the political order or committed to achieve a political purpose.*

In *People v. Paz et al.*,[102] the accused disgruntled strikers were charged and later convicted of the crimes of arson and robbery with homicide. On appeal, they advanced the theory that, if at all, they may be liable for simple rebellion only because they committed the said crimes together with a Huk band led by Commander Romy. The Court in discrediting this theory held that there was no evidence presented to show that the appellants had risen publicly and taken arms against the government for the purpose of removing allegiance to said government or its law, Philippine territory or any part thereof. The Court found the following relevant facts: There was no taint of political complexion in the crimes committed; the fight was between the disgruntled strikers and the management of the RIZ-MAN Trans-

[101] Aquino, Ramon C., Revised Penal Code, Vol. II, 837 (1961).
[102] G.R. No. L-15052, August 31, 1964.

it. The fact that the appellants were aided by a Huk band in the locality, according to the Court, did not alter the intrinsic nature of the crimes committed and reduce them to simple rebellion. The appellants recruited the Huks to help them in their dispute with the Transit Company and as far as the crimes committed are concerned the appellants were aided by goons and not by known, notorious and decided Huks.

In *People v. Hernandez et al.*,[103] the Court held that mere membership in the Committee on Labor Organization cannot be considered as having actually taken up arms in rebellion against the Government of the Philippines. The Committee on Labor Organization had no function but that of indoctrination and preparation of the members for the uprising that would come. It was only a preparatory organization prior to the revolution, not the revolution itself.

CONSPIRACY TO COMMIT REBELLION

Conspiracy to commit rebellion is expressly made punishable under Art. 136 of the Revised Penal Code. There is conspiracy to commit rebellion if two or more persons merely conspire and come to an agreement to commit rebellion or insurrection, without actually committing it or performing the acts constituting it, i.e., without actually rising publicly and taking arms against the Government.[104]

But mere advocacy of communism or delivering speeches favoring communism is not considered as a conspiracy to commit rebellion. In *People v. Hernandez et al.*,[105] the Court explained this as follows: "Mere advocacy of theory or principle (of communism) is insufficient unless the communist advocates action, immediate and positive, the actual agreement to start an uprising or rebellion, or an agreement forged to use force and violence in an uprising of the working class to overthrow constituted authority and seize the reins of government itself. Unless action is actually advocated or intended or contemplated, the Communist is a mere theorist, merely holding belief in the supremacy of the proletariat . . . As a theorist the Communist is not yet actually considered as engaging in the criminal field subject to punishment." As regards speeches of propaganda in favor of communism, the Court said: "Mere fact of giving and rendering speeches favoring communism would not make (one) guilty of conspiracy, unless there is evidence that the hearers of his

[103] G.R. Nos. L-6025-6026, May 30, 1964.
[104] People v. Geronimo, 53 O.G. 68.
[105] See note 103.

speeches of propaganda then and there agreed to rise up in arms for the purpose of obtaining the overthrow of the democratic government as envisaged by the principles of communism."

GAMBLING

There are two requisites in gambling: (1) that money or other consideration of value be at stake and (2) that the result of the game depends totally or partially upon chance or hazard.[106] For a game to be considered gambling these requisites must concur. In *Magdaluyo et al. v. Acting Director of NBI*,[107] the Court delved into the issue of whether the operation of slot machines constitutes gambling. It was held in that case that although the operation of slot machines in the Philippines may—under certain conditions—constitute gambling, the latter is illegal *not per se*, but only if and when prohibited by statute. And applying what the Court called the "theory of preventive justice" it held that under this theory, the state may by law prohibit and punish such things as it may be deemed inimical to the common good, such as lottery lists, tickets and advertisements, and papers and other matters containing letters, figures, signs or other symbols which pertain to or are in any manner used in the game of *jueteng* or any similar game, as well as instruments or implements intended to be used in the commission of the offenses of counterfeiting, falsification, the possession of which is punished in the Revised Penal Code (Art. 176, 195[c] and 196), but neither said Code nor any other law punishes the possession of slot machines of any kind whatsoever.

MURDER

The unlawful killing of a human being which is not parricide if committed with any of the attendant circumstances mentioned in Article 246 is murder. The attendant circumstances referred to are known as qualifying circumstances. They must be expressly alleged in the information in order to qualify the killing as murder and not homicide. If not so alleged and any of them is proven, such circumstance would be treated only as generic aggravating which can be offset by a generic mitigating circumstance.[108]

The qualifying circumstances attendant to the murder cases decided by the Supreme Court for the year 1964 were treachery, abuse of superior strength, evident premeditation, and price.

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[106] II Padilla, Criminal Law, 311 (1958).
[107] G.R. No. L-18899, March 31, 1964.
[108] People v. Campo, 23 Phil. 369.

Treachery was considered as a qualifying circumstance in the following cases: where the accused attacked the deceased and his companions without giving them opportunity to prepare for their defense by suddenly barging into the door of the house of the girl who was the object of the affections of both the deceased and the accused;[109] where the two accused first tied the hands of a Chinese and made him lay flat on the floor before shooting him to death;[110] where the accused suddenly entered the house of the mayor of the municipality of Cabugao, Ilocos Sur and shot to death the latter and his wife while the family was enjoying their supper;[111] where the attack was sudden while the victim was urinating and the wounds were inflicted at the back.[112]

But in the *Indic* case,[113] where the accused jointly attacked the deceased, treachery was not qualifying because the attack was unplanned, provoked only by the flight of the deceased and not appearing to have been directly and consciously adopted to insure its execution without risk arising from any defense the deceased might make. Likewise, in *People v. Bello,*[114] no treachery was considered because the wound at the back of the victim was but a part and continuation of the aggression and was inflicted while the victim was running away. The other stab wounds were inflicted indiscriminately.

Abuse of superior strength was qualifying in the following cases: where the accused who were all armed and decidedly superior in number, made a concerted attack upon the lone victim;[115] where the aggressors were armed while the victim was unarmed and only with his wife who was later raped on the spot where the husband was dying;[116] where the accused were four in number and armed with high-caliber weapons while the victim and his companions were unarmed.[117] But in the *Bello* case,[118] where the accused was armed with a *balisong* abuse of superior strength was not imputed because the accused was old and invalid while the victim was in the prime of her youth and not infirm.

The qualifying circumstance of evident premeditation was established in the case of *People v. Mojica* [119] where the crime was planned

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[109] People v. Romawak, G.R. No. L-19644, Octobel 31, 1964.
[110] People v. Simon, G.R. No. L-18035, February 28, 1964.
[111] People v. Castro *et al.*, G.R. No. L-17465, August 31, 1964.
[112] People v. Navarro, G.R. No. L-20860, November 28, 1964.
[113] People v. Indic, *supra.*
[114] See note 34.
[115] People v. Indic, *supra.*
[116] People v. Robles, *supra.*
[117] People v. Tiongson *et al.*, *supra.*
[118] See note 34.
[119] See note 36.

to avenge the death of an OXO leader and sufficient time elapsed between its inception and execution, but not in the Bello case [120] where although the accused had been carrying a balisong he did not intend to use it against the deceased but only as a precaution against drunkards; nor in the *Navarro* case where there was no showing that a mature and cold reflection to kill the victim preceded the actual crime.

Price was considered qualifying in *People v. Contante* [121] where the accused killed the deceased in consideration of ₱500.00 and a promise that his family would be taken cared of.

HOMICIDE

This is the unlawful killing of a human being which is neither murder nor parricide.[122] The killing should not be attended by any of the circumstances mentioned in Art. 248.

In *People v. Imdic,* the crime committed was homicide and not murder. The accused were challenging to a fight another person and turned on the deceased only when the latter advised the person challenged not to accept the challenge. "This being the case, it does not appear that the accused reflected on an intention and clung to such intention to kill (the deceased), between the time when they jointly acted to consummate the crime and the time it was actually committed."

In *People v. Simon,*[123] although two separate crimes of murder and frustrated murder, both qualified by treachery, were fully established, the accused were not convicted and punished for the said crimes. The information filed against the accused was only for attempted robbery of an inhabited house with homicide and frustrated homicide. However, the accused were held guilty of homicide and frustrated homicide, aggravated by treachery.

In *People v. Bello* the accused was convicted only of homicide and not of murder. The qualifying circumstances of treachery, evident premeditation, and abuse of superior strength although alleged in the information were discredited by the Supreme Court.

KIDNAPING FOR RANSOM

Under the Revised Penal Code, kidnapping for ransom is punishable with death without any alternative.[124] Under the last para-

[120] See note 34.
[121] See note 61.
[122] Aquino, *supra,* 1193, 1217.
[123] See note 8.

graph of the next provision however,[125] the attendance of certain circumstances will reduce the kidnapping to slight illegal detention. These circumstances under Art. 268 of the Revised Penal Code, are: voluntary release of the kidnapped victim within 3 days and failure to attain the purpose intended, both of which must be prior to the institution of criminal proceedings against the kidnaper. In the case of *Asistio et al. v. Hon. Lourdes San Diego*,[126] the question arose whether the provision of the last paragraph of Art. 268 of the Revised Penal Code is applicable to the last paragraph of Art. 267. In that case, it was held that: "It is argued that unless the reduction of penalty provided for in the 3rd paragraph of Art. 268 is made applicable to kidnapping for ransom under Art. 267, the life of the person kidnapped would be endangered, since his captors would find no reason to release him, as by so doing they would not benefit from a reduction of penalty. This argument appears to us to be better addressed to the discretion of the lawmaker that dictates the policies to be followed in repressing lawlessness. It is certainly a consideration that would not justify the court's disregard of the evident intent of the law, as disclosed by the structure and the historical development of Arts. 267 and 268 of the Revised Penal Code, heretofore discussed, and which, in our opinion, render it clear beyond doubt that the 3rd paragraph of Art. 268 was not, and could not have been, intended by the lawmaker to apply in any way to kidnapping or serious illegal detention punishable under Art. 267. The successive increases in the gravity of the penalty for kidnapping for ransom merely evidences the law's intent to deter such crime from being committed *at all.*"

ESTAFA

One mode of perpetrating swindling or estafa is by misappropriating goods received in trust or on commission or for administration or under any other obligation involving the duty to deliver or to return.[127] In *People v. Yumang*,[128] Asuncion Rodriguez gave eight pieces of jewelry to Yumang to be sold on commission with the obligation to deliver the proceeds or return the jewels within one month. The receipt for the jewelries provided that Yumang was not to entrust them to anybody and that she herself was to sell it. Yumang pledged five of the jewelries in a pawnshop without the permission of the owner. The Court held that the pledging of the articles with-

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[124] Art. 267, Revised Penal Code.
[125] Art. 268, Revised Penal Code.
[126] G.R. No. L-21991, March 31, 1964.
[127] Art. 315, Revised Penal Code.
[128] G.R. No. L-19569, May 30, 1964.

out the prior consent and knowledge of the complainant and the subsequent failure on the part of the accused to account for said jewelries upon demand, constituted misappropriation, or conversion, an element of estafa.

CHATTEL MORTGAGE

Art. 319 of the Revised Penal Code penalizes two acts: (1) the removal of mortgaged property without the written consent of the mortgagee, and (2) the sale or pledge of personal property already pledged or mortgaged without the consent of the mortgagee duly noted in the records of the Chattel Registry. In *People v. Chupeco*,[129] the accused mortgaged certain properties to the Agricultural and Industrial Bank to secure a loan of ₱20,000.00 (assets of AI Bank were later transferred to RPC). During the pendency of the mortgage, he pledged the same properties to a certain Pinile, without having fully satisfied the mortgage and without the consent of mortgagee. The pledged properties were transferred from Manila to Zambales, causing damages to the RFC for the unpaid balance of the mortgage. *Held:* An essential element common to the two acts punished under Art. 319 of the Revised Penal Code is that the property removed or repledged, as the case may be, should be the same or identical property that was mortgaged or pledged before such removal or repledging. Despite the Court's jurisdiction over the case, accused is acquitted on the ground that there is no sufficient proof to show that the same properties were repledged.

ARSON WITH HOMICIDE

The burning of an inhabited house, knowing it to be occupied, is punished under Art. 321, paragraph 1. In this kind of arson the severity of the penalty is not measured by the value of the property that may be destroyed, but rather by the human lives exposed to destruction.[130] The settled rule in this kind of arson is that there must be knowledge on the part of the accused that the building set on fire is occupied. Such knowledge is an essential element of the offense. Stated otherwise, the requisite that the accused should know that the house was occupied "is so important that if its existence has not been proven as conclusively as the arson itself, there can be no legal ground to convict an accused under Art. 321, paragraph 1." [131]

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[129] G.R. No. L-19568, March 31, 1964.

[130] People v. Butardo, 11 Phil. 60 and similar cases, cited in Aquino, *supra*, 1541.

[131] People v. Lamuntad, 65 Phil. 605, cited in Aquino, *supra*.

In *People v. Tamba*,[132] the accused pleaded guilty to a charge of arson with homicide. Thereupon, the trial court rendered decision finding her guilty as charged "under Art. 321, paragraph 1, in relation to Art. 249 of the Revised Penal Code." The accused, through her counsel, appealed raising the question that it was error for the court to have found her guilty of homicide under Art. 321, paragraph 1, in relation to Art. 249, considering that the information did not expressly allege that the accused knew that the house was occupied at the time she set fire to the same. The Supreme Court in finding this contention meritorious held: "Knowledge on the part of the accused that the building set fire to is occupied, is an essential element of the form of arson defined in Art. 321 of the Revised Penal Code and the information must allege that the accused had such knowledge at the time of the commission of the crime in order to sustain a conviction under that article." The Court added that "considering that a plea of guilty admits only what is actually alleged in the information, the accused can only be found guilty of what is actually alleged therein which at most constitutes the crime of arson described in Art. 321, paragraph 2 (subsection b), dealing with the burning of an inhabited building, the offender not knowing whether or not such building was occupied at the time of the commission of the crime."

This last ruling is a restatement of the decisions of the Supreme Court in the cases of Macalma,[133] Lianting and Ket,[134] Silvestre,[135] and Ilo v. Court of Appeals.[136]

ADULTERY

"Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married even if the marriage be subsequently declared void." [137] Under the above definition, it appears that both the guilty woman and the man concerned must be included in the prosecution. But in a recent case,[138] the Court held that it is not necessary for both offenders to be tried together. In the *Oplado* case, Guyot's husband accused her and Oplado of adultery. In view of the failure of the prosecution to arrest Guyot, the trial of the case had to be repeatedly postponed, although the prosecu-

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[132] G.R. No. L-18769, February 28, 1964.
[133] People v. Macalma, 44 Phil. 170.
[134] People v. Lianting and Ket, 49 Phil. 225.
[135] People v. Silvestre, 56 Phil. 353.
[136] G.R. No. L-11241, July 26, 1960.
[137] Art. 333, Revised Penal Code.
[138] People v. Oplado and Guyot, G.R. No. L-20146, September 30, 1964.

tion had always been ready to proceed with the trial with respect to the co-accused Oplado. Finally, when the case was again called for trial three years later, the case was provisionally dismissed. *Held:* While the husband cannot institute a prosecution for adultery without including both guilty parties if both are living, the statute does not require that both must necessarily be tried together. When the complaint is filed by the offended husband against both of the guilty parties, the proceedings then pass into the hands of the prosecuting officer, who may move for dismissal of the complaint as to the paramour if he is certain that he cannot establish guilty knowledge on the part of the man of the fact that the woman was married, and such dismissal would not of itself require the Court to acquit the woman. Nor would the death of the woman during the pendency of the action defeat the trial and conviction of the man.

ACTS OF LASCIVIOUSNESS

Acts of lasciviousness punished under Art. 336, Revised Penal Code are acts performed upon a person of either sex, short of lying with a woman and anything leading up to it, independently of the intention of the wrongdoer. The motive that impelled the offender to commit the offense is of no importance because according to the definition of the offense, the essence of lewdness is in the act itself.[139] All lewd acts, short of lying with a woman, are acts of lasciviousness.[140]

Lewd design, as in other crimes against chastity, is an indispensable element in acts of lasciviousness. It is necessary, therefore, that it be alleged in the information. In *People v. Gilo*[141] the accused was charged before the Justice of the Peace Court with a crime labelled as "Acts of Lasciviousness" described in a complaint filed by the offended party. There was no allegation of lewd design. However, after the preliminary investigation, the Justice of the Peace having forwarded the case to the Court of First Instance, the provincial fiscal filed an information charging a similar crime but this time with an allegation that the acts were committed with lewd design. The trial court convicted the accused but on appeal the Supreme Court reversed the decision saying: "Considering that in order that a crime constituting acts of lasciviousness may be committed it is necessary that it be alleged that it was committed with lewd design, the latter being an indispensable element of all crimes against chastity including acts of lasciviousness, the complaint cannot really

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[139] People v. Bailoses, 2 Phil. 49, cited in Aquino, *supra*, 1600.
[140] People v. Panopio, CA 49 O.G. 145.
[141] G.R. No. L-18202, April 30, 1964.

be considered as charging the crime of acts of lasciviousness because of the absence of such element even if the complaint is labelled as "Acts of Lasciviousness."

"The words 'feloniously and criminally' contained in the complaint filed by the offended party in the Justice of the Peace Court, are mere general terms which denote the criminal intent of the accused but which do not necessarily connote the idea of lust needed in the commission of the act. Lust or lewd design is an element apart from the criminal intent of the offender, and as such must be always present in order that it may be considered in contemplation of law. The absence of such element converts the act into another crime, which in this case is unjust vexation." The last sentence is an affirmation of a previous ruling of the Supreme Court in People v. Gomez.[142]

DEFAMATION

Under Art. 360 of the Revised Penal Code, a criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* cannot be brought except at the instance of and upon complaint expressly filed by the offended party. The provision of this article was applied in the case of *Campita v. Villanueva.*[143] In this case, Campita accused Dator of acts of lasciviousness. A little over a week later, a constabulary officer in turn accused her of serious oral defamation for having allegedly stated—"yang si Mayor Dator ay walang hiya, bastos. masamang tao at manggagahasa." Campita moved to dismiss said complaint against her upon the ground that the municipal court had no jurisdiction over the case because the aforementioned defamatory statement imputes to Dator the crime of either rape or acts of lasciviousness, none of which may be prosecuted except upon complaint of the offended party, pursuant to Art. 360 of the Revised Penal Code. *Held:* There can be no doubt, that the above quoted statement of the petitioner herein imputed to appellee the commission of the crime of either acts of lasciviousness or rape. Since neither may be prosecuted "except upon complaint filed by the offended party," it follows that the complaint did not confer jurisdiction upon the municipal court to try petitioner for offense charged.

SPECIAL LAWS

Special laws are those which apply to particular individuals in the state or to a particular section or portion of the state only. Art.

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[142] 30 Phil. 22.
[143] G.R. No. L-20228, November 23, 1964.

10 of the Revised Penal Code provides that special laws are not subject to the provisions of said code and shall be supplementary to the same unless the latter shall provide otherwise. In *People v. Sabbun*,[144] the accused was charged with the violation of R.A. 145 (which limit the compensation for services rendered in filing claims for pension of war veterans to ₱20.00) by exacting a total fee of ₱2,250.00, when the law allows him only ₱40.00 for two claims. Defense moved to quash information filed by fiscal alleging that the criminal action charged has been extinguished. Court sustained motion as to collections made 4 years prior to filing of information but denied it as to those made within the 4-year period. The prosecution appealed contending that the offense charged is a continuing offense and that prescriptive period is 8 years and not 4 years and should be counted from date crime was discovered in 1957. *Held:* "Offense charged is a continuing offense. The first collection of ₱600.00 made in 1949 is an integral part of the offense committed, and so are the collections thereafter up to Sept. 1957. The collections made on different dates from 1949–1957 are all part of the fees agreed upon in compensation for the service rendered in filing the claim and collecting the pensions received by the offended party from time to time. The periodical collections form part of a single criminal offense of collecting a fee which is more than the prescribed amount fixed by law. The collections were impelled by the same motive that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse (People v. Lawan, G.R. No. L-7618, June 30, 1955). Only one offense was, therefore, committed and since the last act of collection was made within the period of prescription, the offense has not prescribed as yet at the time of the filing of the information. The offense may not be considered divided into different acts, each act subject to prescription independently of the others."

In *People v. Hernandez et al.*,[145] the Court held that being a communist is not a ground for conviction unless conspiracy to commit rebellion is committed. This is so because in the *Hernandez* case the Anti-Subversion Act [146] did not yet apply because it was approved only on June 20, 1957, and was not in force at the time of the commission of the acts charged against appellants. The Anti-Subversion Act punishes participation or membership in an organization committed to overthrow the duly constituted Government, a crime distinct from that of actual rebellion with which appellants are charged.

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[144] G.R. No. L-18510, January 31, 1964.
[145] G.R. Nos. L-6025-6026, May 30, 1964.
[146] R.A. 1700.

In *De la Cruz v. Tiango* [147] the court restated the 2nd paragraph of Art. 10 of the Revised Penal Code that said code is supplementary to special laws unless it provides the contrary.

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[147] G.R. No. L-19326, July 31, 1964.