CRIMINAL PROCEDURE

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A survey of the 1964 Supreme Court decisions in the field of Criminal Procedure reveals a dearth of cases relating to the subject. This is largely due to the fact that most of the criminal cases this year dealt with the appreciation of aggravating and mitigating circumstances, or questions of evidence.

No new doctrine on any aspect of the subject was encountered. The Court in most of the cases merely reiterated well-settled doctrines, although in some instances it differentiated a case from one previously adjudicated.

PROSECUTION OF OFFENSES

In the case of *People v. Nery*,[1] the Supreme Court had occasion to state that after the justice authorities have taken cognizance of the crime and instituted action in court the offended party may no longer divest the prosecution of its power to exact criminal liability, as distinguished from the civil.

In this case, the accused received two diamond rings to be sold on commission, but failed to turn over the proceeds thereof. She was charged with estafa, but during the pendency of the case she executed a deed promising to pay complainant the price of the rings in installments. She failed to pay the balance, hence the criminal action was revived.

The accused insisted that there is no prohibition in our law to prevent the parties to a contract to novate it so that any incipient criminal liability under the first contract could be avoided. The Court rejected this contention and stated that the novation theory may perhaps apply prior to the filing of the criminal information in court 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 the complainant in estoppel to insist on the original trust.

Lack of allegation of lewd design in information for acts of lasciviousness

Section 7, Rule 110 of the Revised Rules of Court provides that "whenever possible, a complainant or information should state the

* Member, Student Editorial Board, *Philippine Law Journal*, 1964-65.
[1] G.R. No. L-19567, February 5, 1964.

designation given to the offense by the statute, besides the statement of the acts or omissions, constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it."

In *People v. Gilo*,[2] the complaint for acts of lasciviousness subscribed by the offended party lacked the allegation of lewd design, but the information filed by the provincial fiscal contained the allegation that the acts were committed with lewd design. Trial was conducted in the Court of First Instance and after the prosecution rested its case accused filed a motion to dismiss alleging lack of jurisdiction in view of the lack of allegation of lewd design in the complaint. The lower court deferred action on the motion until after trial; it thereafter found that the act committed was merely one of unjust vexation.

The Supreme Court ruled that the allegation of lewd design is an indispensable element of all crimes against chastity, such as abduction, seduction and rape, including acts of lasciviousness. The complaint in the instant case cannot be considered as charging the crime of acts of lasciviousness because of the absence of such element, even if the complaint is labelled as such. What characterizes a criminal charge is not the title but the body of the complaint or information. In this sense, the lower court did not acquire jurisdiction over the case, even if the information filed by the provincial fiscal be one for acts of lasciviousness, because the complaint that gave initial life to the case is really one of unjust vexation. This fatal defect can only be cured by making the proper correction in the complaint filed by the offended party, which was not done. The lower court acted without jurisdiction.

Venue

Section 14 of Rule 110[3] states:

> Sec. 14. *Place where action is to be instituted.* (a) In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place. x x x"

In the case of *People v. Jumang*,[4] the accused was convicted of estafa in that she pawned the jewelry entrusted to her for sale on commission without the owner's permission. The pawnshop was located in Manila. Appellant argued that since the receipt and delivery of the jewelry was executed and made in Quezon City, the

[2] G.R. No. L-18202, April 30, 1964.
[3] Revised Rules of Court.
[4] G.R. No. L-19569, May 30, 1964.

case was outside the territorial jurisdiction of the Court of First Instance of Manila, and should have been dismissed.

The Court held that the lower court had jurisdiction. The pledging of the articles without the prior consent and knowledge of the owner and the subsequent failure on the part of the acccused to account for said jewelry upon demand constituted misappropriation or conversion, an element of estafa. In the case at bar, it is evident that an essential ingredient of the offense was committed in the City of Manila.

A similar ruling was made in the case of *People v. Chupeco*.[5]

PRELIMINARY INVESTIGATION

Section 2 of Rule 112, Revised Rules of Court provides:

> "Sec. 2. *Officers authorized to conduct preliminary examination.* Every justice of the peace, municipal judge, city or provincial fiscal, shall have authority to conduct preliminary examination or investigation in accordance with these rules of all offenses alleged to have been committed within his municipality, city or province, cognizable by the Court of First Instance. x x x"

The question arises as to who may conduct the preliminary investigation in a case cognizable by the Municipal Court now the City Court of a chartered city.

Two cases promulgated last year are squarely in point.

In the case of *Arive v. Tuason*,[6] the City Attorney of Naga City filed an information for frustrated murder, based on a letter of complaint of the chief of police, against petitioner with the Municipal Court of Naga City. After conducting the first stage of the preliminary investigation and upon finding that the accused was probably guilty of the offense charged, said Court issued the necessary warrant of arrest. On the date set for the second stage of the preliminary investigation petitioner appeared and presented the plea of not guilty, but instead of presenting exculpatory evidence or waiving the preliminary investigation he filed a motion to have the case remanded to the Office of the City Attorney, claiming that it was the latter and not the Municipal Court which had jurisdiction to hold the preliminary investigation.

The charter of the city reveals the powers and duties of the City Attorney as well as the jurisdiction of the Municipal Court.[7]

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[5] G.R. No. L-19568, March 31, 1964.
[6] G.R. No. L-16152, March 31, 1964.
[7] Sec. 24, par. (f) of the Charter of the City of Naga (R.A. 305) provides:
"(f) He shall investigate all charges of crimes, misdemeanors, and vio-

Resolving the issue whether it was the Office of the City Attorney or the Municipal Court which had jurisdiction to conduct the preliminary investigation of criminal offenses committed within the territorial jurisdiction of the city and cognizable by the CFI, the Supreme Court held that such jurisdiction was concurrent. The Court took note of the fact that the city attorney exercised, not his alleged jurisdiction to conduct a preliminary investigation under the Rules of Court, but the authority mentioned in the city charter.

In the second case,[8] the issue was whether the provincial fiscal, instead of the city attorney, could conduct the preliminary investigation in a criminal case cognizable by both the Municipal Court and the Court of First Instance.

The Supreme Court answered in the affirmative. Republic Act No. 732 authorized the provincial fiscal to conduct investigation of any crime or misdemeanor and to have the necessary information or complaint prepared or made against persons charged with the commission of the crime. If the offense charged falls within the original jurisdiction of the Court of First Instance the provincial fiscal may himself conduct the preliminary investigation and file the information directly with said court. The Supreme Court reasoned that to deny him the power to conduct such preliminary investigation is to hobble him unduly in the exercise of his duty to prosecute and to make the findings and conclusions of the city attorney conclusive upon him. Prosecution does not begin with the trial of a case after it is filed in court; it includes the process of investigation leading to the formal charge.

Effect of plea of guilty to a defective information

In the case of *People v. Tamba*,[9] the accused was charged with arson with homicide, the information stating that "with grave abuse

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lations of laws and city ordinances and prepare the necessary informations or make the necessary complaints against the person accused. He may conduct such investigations by taking oral evidence of reputed witnesses and for this purpose may, by subpoena, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance."

On the other hand, Section 77 of the same Act, after providing that the Municipal Court of said City shall have the same jurisdiction at present conferred upon it by law, expressly provides that said Municipal Court "may also conduct preliminary investigation for any offense, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court."

[8] People v. Sayon, G.R. No. L-16986, April 30, 1964.

[9] G.R. No. L-18768, February 28, 1964.

of confidence, wilfully, unlawfully and feloniously, she burned the house owned and inhabited by one Carlos S. Gavila to the damage and prejudice of its owner in the amount of ₱30,000 and as a result minor Regino Gavila III was burned to death." She pleaded guilty, but on appeal she alleged that it was error for the lower court to have found her guilty of homicide under Article 321, par. 1, in relation to Article 240, Revised Penal Code, considering that the information did not expressly allege that the accused knew that the house was occupied at the time she set fire to it.

Held: There is merit in this contention. 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 by Article 321 of the Penal Code, and the information must contain allegations to the effect that the accused had knowledge at the time of the commission of the crime in order to sustain a conviction under that article.

Considering that a plea of guilty admits only what is 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 Article 321, paragraph 2, subsection (b) of the Revised Penal Code.

BAIL

Forfeiture of bail bond

Under Section 15, Rule 114, "when the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty (30) days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen."

Several cases concerning forfeiture of bond were passed upon by the Supreme Court.[10] In all of them the Court gave emphasis on the two requisites provided for by the rules in upholding the lower

[10] People v. Pacomio, G.R. No. L-20077, Sept. 30, 1964; People v. Celestino, G.R. No. L-19924, Dec. 23, 1964; People v. Segarino, G.R. No. L-20138, Nov. 27, 1964; People v. Padilla, G.R. No. L-20076, Oct. 30, 1964.

court's order of forfeiture. However, in *People v. Segarino*,[11] the Court reduced the bonding company's liability under the bond by one-half. It allowed this partial remission due to the production, although tardily, of the body of the accused.

MOTION TO QUASH

In *People v. Cloribel*,[12] the Court was called upon to rule on the issue of whether the defense can invoke the protection of the double jeopardy rule in an instance where the case was provisionally dismissed due to failure of the prosecution to appear at the time of the trial, which trial had been postponed for at least six times or some four years after the case was filed.

The respondents relied on Rule 117, Section 9,[13] and contended that the dismissal herein was an acquittal within the meaning of the rule, because it was ordered subsequent to arraignment by a competent court and upon a valid information. Furthermore, they urged that the qualification of the dismissal into "provisional" is of no legal consequence since it was beyond the judge's power to do so.

In upholding respondent's contention, the Court quoted with approval several decisions [14] to the effect that said dismissal constitutes a bar to another prosecution for the same offense.

In *People v. Quimsing*,[15] the Court reached the opposite conclusion. In this case, the accused were charged with illegal cockfighting . The Municipal Court of the City of Iloilo ordered the provisional dismissal of the case because the prosecution was not ready for trial. After a reconsideration of this first dismissal was granted, the prosecution again was not ready for trial, so the court dismissed the case provisionally for the second time. When asked by the court whether it consents to a provisional dismissal of the case, the de-

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[11] G.R. No. L-20138, Nov. 27, 1964.
[12] G.R. No. L-20314, Aug. 31, 1964.
[13] Section 9, Rule 117 provides:
"When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."
[14] People v. Robles, G.R. No. L-12761, June 29, 1959; People v. Tacneng, G.R. No. L-12082, April 30, 1959; People v. Diag, G.R. No. L-6518, March 10, 1954; People v. Labatete, G.R. No. L-12917, April 7, 1960.
[15] G.R. No. L-19860, Dec. 23, 1964.

fense assented. The accused filed a motion to quash on the ground of double jeopardy when the fiscal filed the same charges in the same court.

The Court ruled that double jeopardy did not attach. According to the highest tribunal, even assuming that there was a dismissal in open court of the case (notwithstanding the qualification made by the trial court that the dismissal was "provisional") and that the accused could correctly raise the defense of double jeopardy against the reconsideration of the dismissal, still the accused did not pursue their defense of double jeopardy. Instead, they agreed to have the trial postponed and at the hearing of the case, the accused abandoned or waived their defense of double jeopardy.

When the second case was again dismissed, the accused once more agreed to a provisional dismissal, thereby abandoning their defense of double jeopardy for the second time. Consequently, when the fiscal refiled the case the accused were in estoppel to plead double jeopardy. Furthermore, it does not affirmatively appear that the motion to quash was filed after a plea by the accused was entered. Before a plea no jeopardy attaches.[16]

ARRAIGNMENT

In the case of *Alberca v. The Superintendent of the Correctional Institution for Women,*[17] the appellant was charged with theft. The information was filed at 2:15 p.m. of April 8, 1957. At 10:00 p.m. of the same day she was arraigned and, upon her plea of guilty, was sentenced to imprisonment.

Appellant contended that her right to due process had been violated, because she was not given sufficient time to prepare for trial and she was not represented by counsel. She relied on Section 7, Rule 114 (now Rule 118) to the effect that the defendant in a criminal case is entitled to at least two days to prepare for trial, and she averred that less than 48 hours had elapsed between the time of her arrest and the time she was arraigned and received the pronouncement of sentence.

The Supreme Court did not sustain her contention. Section 7 does not apply, for it refers only to a case where the defendant enters a plea of not guilty. A plea of guilty dispenses with the necessity of trial, and hence of such time as may be required to prepare for the trial.

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[16] Citing People v. Pascual, G.R. No. L-9490, Nov. 29, 1957.
[17] G.R. No. L-16896, Jan. 31, 1964.

As to her alleged right to counsel the Court relied on the presumption that official duty had been regularly performed, that is, that appellant was duly informed of her right to secure the services of counsel. Besides, the right to counsel may be waived, as by a plea of guilty voluntarily given.

TRIAL

Section 8 of Rule 119 provides:

> "Sec. 8. *Trial of joint defendants.* When two or more defendants are jointly charged with any offense, they shall be tried jointly, unless the court in its discretion upon motion of the fiscal or any defendant orders separate trials. x x x"

In *People v. Oplado and Guyot,*[18] the issue was whether the provisional dismissal of an adultery case due to the failure of the prosecution to arrest one of the accused although the prosecution and the other accused were ready to go to trial was proper or not.

The Court held that while the husband cannot institute a prosecution for the crime of adultery without including therein both of the guilty parties, if they are both living, the statute does not require that both must necessarily be tried together. A defendant in an adultery case may be tried alone or separately from his co-defendant if the prosecution and the party available are ready for it. The only difference between the old rule (Section 33, Gen. Orders No. 58, as amended) and the present Section 8 of Rule 115 (now Rule 119) of the Revised Rules of Court is that under the old law a separate trial can be demanded by a co-defendant as of right and the Court had no authority to deny the petition, while under the present rule it is discretionary upon the trial court to order a separate trial.

Discharge of one of several defendants to be witness for the prosecution

In the event that a co-accused, discharged from the information under the provisions of Sections 9, 10 and 11 of Rule 115 (now Rule 119) failed to live up to his promise to the State, should his reinstatement or reinclusion be made in the same information, or should the prosecution file a separate information charging the accused with the offense allegedly committed by him and the fact that he failed to live up to his promise to the government?

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[18] G.R. No. L-20146, Sept. 30, 1964.

The Supreme Court, in the case of *Bernardo v. Del Rosario*,[19] opined that such recalcitrant should be prosecuted again in the same information. The pertinent provision of the rules on the matter[20] does not direct that he be prosecuted anew in another information. The filing of a separate information would necessitate the commencement of another preliminary investigation of the principal case; it would amount to splitting the case into as many separate cases as there are recalcitrant accused; and because the discharge operates as an acquittal for him, there might be created a situation where the question of double jeopardy could be raised and which might frustrate the very purposes of the rule providing for the discharge of an accused.

When a defendant is discharged from the information, a contract is created between him and the State. The discharge will be secured, if the defendant will honestly and fairly make a full disclosure of the crime. It is incumbent upon him to keep his part of the contract if he hopes to receive the promised immunity; and if his testimony is corrupt or his disclosure is only partial (as in the case at bar), he gains nothing but forfeits his rights under the contract.[21]

Motion for trial with assessors

In the case of *People v. Mariano*,[22] the accused appealed from an order of the lower court denying his motion for the appointment of assessors on the grounds that the appointment of assessors is discretionary and that the purpose of the motion is dilatory.

The Court did not stop at holding that the order complained of was interlocutory.[23] It went on to dispose of the issue on the merits in order to settle the case "once and for all". It held that whereas a party in a criminal case in the City of Manila may, in his discretion, move or not for the appointment of assessors, once a motion to this effect has been filed, the appointment of assessors is mandatory.[24] However, the tribunal refused to reverse the lower court's order, because it was obvious that defendant's motion was merely for a dilatory purpose since it took him over eight months since his arraignment to ask for appointment of assessors.

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[19] G.R. No. L-18237, Jan. 31, 1964.
[20] Sections 9, 10 and 11 of Rule 119, Revised Rules of Court.
[21] 15 Am. Jur. Sec. 32, p. 17; U.S. v. Grant and Kennedy, 18 Phil. 122.
[22] G.R. No. L-19243, Feb. 29, 1964.
[23] The case was yet on the trial stage, hence the proper remedy should have been a writ of certiorari and mandamus.
[24] Primicias v. Ocampo, 49 Off. Gaz., 2230.

APPEAL

Effect of changing the nature of crime in information on appeal of case from JP Court to CFI

In *People v. Villarin*,[25] the accused was found guilty of acts of lasciviousness with consent of the offended party by the Justice of the Peace Court. He appealed to the Court of First Instance. After conducting a preliminary investigation, the provincial fiscal filed with the court an information for corruption of minors under Article 340 of the Revised Penal Code, and upon being arraigned under the new information he pleaded not guilty. Thereupon, he filed a motion to quash on the ground that the information did not allege facts constituting the crime charged, which motion was granted.

The Supreme Court agreed with the observation of the prosecution that the rule is that when an appeal is perfected from a judgment of the JP or Municipal Court the judgment is vacated [26] and the case is tried *de novo* in the Court of First Instance as if it were there originally instituted. No new information need be filed in the latter court in order that it may acquire jurisdiction to try the case. Although the prosecution may choose to stand on the information filed in the Justice of the Peace Court, or file a new information in the Court of First Instance, it cannot change the nature of the offense charged in the information filed with the JP Court if it chooses to file a new information. If the prosecution files a new case unrelated to the appeal the court could not act on the strength of its appellate jurisdiction. It could only proceed to act if it has the approval of both the prosecution and the accused.

What orders are appealable

"From all *final* judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeal from said courts, an appeal may be taken to the Court of Appeals or to the Supreme Court as hereinafter prescribed." [27]

In *People v. Doctor*,[28] the accused failed to appear at the time set for trial, so the lower court issued an order directing the forfeiture of the bail bond, as well as his arrest and giving the bondsman 30 days within which to produce the accused and show cause

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[25] G.R. No. L-19795, July 30, 1964.
[26] See Section 8, Rule 123, Revised Rules of Court.
[27] Section 1. Rule 122, Revised Rules of Court.
[28] G.R. No. L-20150, Sept. 30, 1964.

why judgment should not be rendered for the amount of said bond. Appellant surety company surrendered the accused 11 days later, and at the same time moved to cancel the warrant of arrest and lift the order of confiscation of the bond. The motion for reconsideration was denied, so the bondsman appealed.

The Court ruled that the orders appealed from were obviously interlocutory, and cannot be appealed before the rendition of the judgment. There was as yet no official determination or declaration of appellant's liability under the bond. The order merely required the appellant to show cause why judgment should not be rendered against it for the amount of the bond.