

CRIMINAL LAW

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The 1965 decisions of the Supreme Court, in the field of Criminal Law, actually laid down no new doctrines. They simply reiterated and expounded further, the doctrines which had already been stated in previous decisions. Thus, reference to earlier precedent-setting decisions are in great evidence.

Advocates of the modern approach to criminal law like Radzinowicz and Turner of Cambridge University might find comfort in the apparent inclination of the Supreme Court to adjudge the individual in the light of his psychological constitution and social environment, rather than appraise him *per se* for purposes of conviction. In reducing the death penalty to life imprisonment in favor of the accused inmates of the state penitentiary, the Supreme Court justified itself thus: The evidence compels us to agree with the trial court that the accused are found guilty beyond reasonable doubt of the crime of murder. But, the members of the Court cannot in conscience concur in the death penalty imposable. One finds it impossible to ignore the contributory role played by the inhuman conditions reigning in the Penitentiary. The government cannot evade responsibility for keeping prisoners under such subhuman and Dantesque conditions. "Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals and convert a prison term into a prolonged torture and slow death."¹ Indeed, these words are but reminiscent of Radzinowicz' postulate: "The causes of crime must be sought in the entirety of the personality of the delinquent and in the entirety of his social environment or the conditions of society in which he is placed and acts. It must be borne in mind that the personality is molded by the environment, and environment can only exercise its effects through the human personality."²

As in previous decisions, the Supreme Court gave great credence to the findings of fact made by the lower court; limiting itself to the more fundamental questions of law, reiterating the view "that as far as the credibility and veracity of witnesses are con-

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¹ *People v. Santos, et al.*, G.R. No. L-19067, July 30, 1965.

² Aquino, Ramon C., *Revised Penal Code*, Vol. I, 5 (1961), *citing* *Meaning and Scope of Criminal Science* by Radzinowicz and Turner, pp. 12-55.

cerned, the conclusions of the lower court command great weight and respect, on the ground that the trustworthiness of witnesses and the merit of the defenses are within the peculiar province of the trial court."³

MOTIVE AND INTENT

Motive is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such a result.⁴ Motive is never an essential element in a crime. One may be convicted of a crime whether his motive appears to be good or bad or even though no motive at all is proven. A good motive does not prevent an act from being a crime.⁵

The case of *People v. Reyno*⁶ illustrates this general principle on motive. In that case the defendant advanced the argument that he could not have been held for the crime because there was no reason for him to kill the deceased. Justice Paredes took occasion to set aside the argument by saying that the lack of motive does not preclude the commission of an offense. He further observed that "in this particular case, the accused Reyno must have resented the interference of the deceased, when he (accused) and three other persons tinkered with the water pipe in front of the Wesleyan Colleges. While ordinarily the incident would not have provoked the accused, or anyone for that matter, to commit an offense, it is of judicial knowledge that others have been killed or assaulted for lesser or no reason at all. In the present era, the impulsiveness of youth has given way to mature thinking."

In many criminal cases one of the most important aids in completing the proof of the commission of the crime by the accused is the introduction of evidence disclosing the motive which tempted the mind to indulge in the criminal act; and in nearly every case wherein the law places the penalty to be imposed in the discretion of the courts within certain limits, it will be found that a knowledge of the motive which actuated the guilty person is of greatest service in the exercise of this discretion.⁷

In *People v. Paz*⁸ findings as to motive became very essential. The appellant Paz, was previously held guilty of the crime of murder. He appealed his case to the Supreme Court on the contention that he should properly have been held, not for the crime of murder, but of simple rebellion under Article 134 of the Revised Penal Code. He contends that the killing of which he is charged was neither

³ *People v. Evaristo, et al.*, G.R. No. L-14520, February 26, 1965.

⁴ *People v. Molineaux*, 168 N.Y. 264, 61 NE 286, 62 LRA 193.

⁵ *Francisco, Vicente*, Revised Penal Code, Book I, 38, 2nd Edition.

⁶ G.R. No. L-19071, April 30, 1965.

⁷ *U.S. v. Carlos*, 15 Phil. 51.

⁸ G.R. No. L-17320, May 27, 1965.

personally nor privately motivated, that in fact it was politically motivated because of the fact that it was in furtherance of the Hukbalahap movement of which he was an admitted member. The Supreme Court disregarded this contention because the evidence sufficiently revealed that the motive behind the killing was a personal or private quarrel between the victim and Sulpicio Tica, a co-accused of appellant Paz. That apparently Tica had only utilized the Huks as instruments in pursuing his personal grudge and motive. The absence of a political motive, therefore negates the contention of appellant that the killing was in pursuance of rebellion. He was thus held to have been properly convicted of the crime of murder.

In *People v. Sagario*⁹ the court held that the defendants had sufficient motives to commit the crime of murder as charged. This was shown by the following circumstances: Antipas Sagario felt aggrieved at the intervention of the Police Force of Molave in favor of Pascual Badana in his conflict with the said Badana over the possession of a piece of land in Mahayag. Because of their intervention, he was deprived of the harvest of his corn crops. He had charged the Chief of Police with repeated abuses. He even denounced them to the late President Magsaysay. He hated them. Being unable to endure the said abuses any longer, he thus decided to take the law in his hands.

As for the other accused, Luis Gui-e, he too felt aggrieved at the abuses of the Chief of Police and the police force. He had been made a defendant in criminal cases which he believed to be fabricated. These were filed at the instance of the said Chief of Police and his police force. They put him to jail. He also believed that they had been partial in favor of Seneron against his employer (Attorney Villanueva-Benedicto). He too hated them. He could no longer endure the abuses of the Chief of Police and his men; so he decided to wreck vengeance on them. The Supreme Court made the observation that although motive is not an essential ingredient of the crime, nevertheless proof of motive becomes important, for it helps to point to the accused as party most likely to commit the diabolical act.

In *People v. Alipis*¹⁰ which is another case of murder, the accused was convicted of the charge in the lower court. The Supreme Court in acquitting the appellant took into consideration as one vital reason the fact that the appellant had no motive to commit the offense. The court observed that: "No motive has been shown for appellant to kill Captain Pagsuberon. The court *a quo* stated

⁹ G.R. No. L-18659, June 29, 1965.

¹⁰ G.R. No. L-17214, June 21, 1965.

it could think of no other motive than robbery, but even this has no support in the record."

In *People v. Francisco Evaristo, et al.*,¹¹ the Supreme Court held: As to the motive of the killing, the Court does not doubt that Pastor Moyot was killed because of his political activities. He was one of the strong supporters of the NP and he was outspoken in his attacks against the local administration. As a matter of fact, government witness Silvestra Balite heard defendant Francisco Evaristo and Pedro Cardeno in front of her house saying that Pastor Moyot was the only obstacle to the administration.

In *People v. Simbajon*¹² the motive for the murder of the victim was clearly adduced from the uncontradicted evidence of record and from the extra-judicial confessions made by the defendants, to the effect that during the lifetime and during the incumbency of the deceased as Mayor of Siabacan, he had committed abuses against the political followers of Simbajon, his political opponent; that the Simbajon group deeply resented said abuses; that in the evening of November 15, 1959, the defendants met in Simbajon's house and there agreed to kill Mayor Avanceña; Bonifacio, who was a sharpshooter having been designated to carry out the killing.

CONSPIRACY

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.¹³ The elements of conspiracy are: (1) there must be an agreement; (2) to commit a felony; and (3) the execution thereof must be determined.¹⁴

As a general rule, conspiracy is not punishable as a crime. The Revised Penal Code provides the specific instances where mere conspiracy will constitute a crime. They are: Treason (Art. 115); Rebellion (Art. 136); Sedition (Art. 141); Conspiracy or Combination in restraint of trade or commerce (Art. 186) and Brigandage (Art. 306). Despite the fact that conspiracy is not usually considered a crime, the existence of conspiracy becomes a fact of vital importance, when considered together with the other evidence of record in establishing the existence of the consummated crime and its commission by the conspirators.¹⁵

In *People v. Sagario*¹⁶ the Supreme Court held the following circumstances as pointing to the existence of a conspiracy: the attack on Gomez was concerted; they surrounded and disarmed him; Luis

¹¹ G.R. No. L-14520, February 26, 1965.

¹² G.R. Nos. L-18073-75, September 30, 1965.

¹³ Article 8, Revised Penal Code.

¹⁴ Feria and Gregorio, Revised Penal Code, Vol. I, 110 (1958).

¹⁵ U.S. v. Infante and Barreto, 37 Phil. 149, 154-155.

¹⁶ See Note 9.

Gui-e pressed the muzzle of his carbine upon the body of Gomez telling him not to move; Antipas Sagario expressed his hatred for Gomez, saying "This (referring to Gomez) is a tough policeman; let us make him taste of the punishment," they also shot Ursais as the latter appeared when he heard a shot. It was also observed that the defendants arrived and escaped from the scene of the crime, simultaneously in two motor vehicles.

In *People v. Sta. Maria*,¹⁷ the defense claims that the alleged conspiracy of the seven appellants has not been established for the simple reason that there is no evidence on the record proving such conspiracy existed, except for the confessions made by appellants Juanito de la Cruz, Restituto de la Cruz, Alfonso Balinguit and Ruperto Santos. The Court in dispensing with this contention said that the appellants lost sight of the fact that the confessions made by the other appellants Manuel Sta. Maria, Francisco Sta. Maria and Ignacio de Guzman corroborate the extrajudicial confessions made by the four appellants above-mentioned thereby establishing the conspiracy of said appellants.

It is not necessary that the agreement should require each conspirator to participate in the carrying out of every such detail; nor that a conspirator should know the exact part to be performed by the other conspirators in the execution of the conspiracy.¹⁸ Thus in the case of *People v. Paz*¹⁹ the involvement of the appellant in the conspiracy was shown by his admission that when the killing happened he stood guard to give warning to his companions if any army men approached. This fact, according to the Supreme Court, is adequate proof of his participation in the murder.

In *People v. Cabagel Macatembal*,²⁰ three separate informations for the crimes of double murder, frustrated murder and assault upon an agent of person in authority were filed against the defendant. In these informations, it is alleged that the above appellant committed the crimes charged in company of eight other persons and others whose identities were unknown. The question as to the presence of conspiracy necessitated the close appraisal by the court of the circumstances surrounding the commission of the three offenses. The Supreme Court held the following evidences adduced as indicative of the unquestioned presence of the element of conspiracy: that the passenger jeep driven by Florencio Hernandez enroute to Kabacan, Cotabato, at about 12:30 in the afternoon of August 30, 1953, was stopped and fired at; that two men, Avelino Hernandez and Mene Bagia were fatally hit and killed; that former patrolman Enrique

¹⁷ G.R. No. L-19919, October 30, 1965.

¹⁸ Francisco, *supra*, 163.

¹⁹ See Note 8.

²⁰ G.R. Nos. L-17486-88, February 27, 1965.

Oagdan and Florencio Hernandez were seriously wounded. The volley of gunshots coming from all directions, the wounds found on the bodies of the victims and the presence of a number of unidentified people in the scene of the crime.

In *People v. Edilberto de los Santos*,²¹ the defendants, members of a clique of inmates of the State Penitentiary at Muntinlupa, conspired in their respective brigades to annihilate the members of their rival gang, known as the OXO, the former being members of the Sigue-Sigue gang. The said members were convicted of the crime as charged, namely, multiple murder.

JUSTIFYING CIRCUMSTANCES

In a number of situations, acts which otherwise would constitute crimes are not criminal, because of the circumstances surrounding their commission, which are known in law as justifying circumstances. A person who acts with the concurrence of any of the justifying circumstances does not transgress the law because there is nothing unlawful in the act or conduct of the actor. This is because the act of such person is itself just and lawful. For the same reason, a person who acts under any of the justifying circumstances does not incur any civil liability.

Self-defense

Self-defense consists in availing of means in opposition to that of the assailant, sufficient to repel the attack and avoid injury. In a murder case, *People v. Mendoza*,²² defendants Villanueva and Mansaka, at the trial as well as on appeal, admit having stabbed to death Epifanio Paison. In justification, however, they plead self-defense. They claimed that in the morning of the incident, the victim provoked and with evident intent to kill, attacked Villanueva with a knife and the latter was only able to wrest the weapon from Paison and used it on him instead. And when Mansaka intervened to pacify and break up the two, the victim is alleged to have likewise turned on Mansaka with an ice-pick. As with Villanueva, Mansaka says that he merely wrested the ice-pick from Paison and used it on the victim. And consistently with their plea of self-defense, appellants repudiated at the trial the statements that they gave to Inspector Geronimo. They told the trial court that they affixed their signatures and thumbmarks respectively, on Exhibits E and F without knowing the contents as the said exhibits were not read to them. In the Supreme Court however, they admitted that said exhibits were executed voluntarily by them, wherein they admitted the commission of the offense, the motive for the same and

²¹ G.R. No. L-19067, July 30, 1965.

²² G.R. No. L-16392, January 30, 1965.

the trickery resorted to, to facilitate isolating the victim from the others, after which the two proceeded to stab him. In the light of the foregoing circumstances, the Supreme Court rejected the appellant's claim to self-defense upon the fundamental consideration that the said justifying circumstance may be accepted only when it is established at the trial that the accused did not initiate the unlawful aggression. In other words, where the victim has not been shown to have commenced the criminal attack, self-defense cannot arise as a justification for the injury or death that the defendants stand indicted for.

In the case of *People v. Calacala*²³ the Supreme Court refused to take into consideration the circumstance of self-defense. The gun, the appellant said, was already drawn and aimed at him when he took out the knife from his pocket. Surely there must have been plenty of time for the deceased to fire before the first knife blow was struck. The defense claims that the heel of one of the two or three cartridges inside the chamber bore a dent as if it had been struck with a firing pin. Assuming it to be so, and the bullet a dud, the deceased could have squeezed the trigger once or twice or more. This he did not do, nor did he even use the gun as a bludgeon with which to hit at his opponent. For if he had done so, appellant would have received at least a bruise. All the above circumstances led the court to doubt if there really was a gun used by the victim. Finally, they stated that if there was a gun and appellant had acted in self-defense he would have so declared to the police authorities to whom he surrendered, instead of refusing as he did, to make any statement.

In the case of *People v. Libed, et al.*,²⁴ one of the defendants contended that he was not guilty of the crime of murder for the reason that he killed the victim in self-defense. He tried to present evidence to show that the deceased chased him with a bolo. The Supreme Court disregarded this defense because of the inadequacy of the evidence presented. "It was incumbent upon the appellant to prove, by clear and convincing evidence, his plea of self-defense."²⁵ It is rather obvious that no such proof was adduced. As the court *a quo* significantly pointed out, appellant Eugenio Libed's affidavit, executed the day following the incident, does not state the all important detail testified to by him in court, namely that the deceased chased him with a bolo. Besides the contention that the victim first struck at Eugenio with a bolo, and that the latter parried the blow with a piece of wood (Exhibit A) is belied by the absence

²³ G.R. No. L-18348, May 31, 1965.

²⁴ G.R. No. L-20431, June 23, 1965.

²⁵ *People v. Bauden*, 77 Phil. 105; *People v. Cabrera*, G.R. No. L-6197, March 18, 1957.

of any deep cut on the said piece of wood. The only cut appellants could show on the piece of wood in question was admittedly very shallow; cutting only the skin of the ipil wood which could not have been caused by a parried blow from the deceased's bolo, alleged by the appellants themselves, to have been very sharp.

MITIGATING CIRCUMSTANCES

There may occur in the commission of a crime circumstances which not being justifying nor exempting, affect the degree of responsibility of the offender either by increasing or decreasing it. The circumstances which lessen the criminal liability are known in criminal law as mitigating circumstances.

When a crime is committed, the stimulus by which the offender was actuated may give rise to a mitigation or aggravation of his criminal liability. When the stimulus diminishes or hinders his free will or intelligence or intent, then there is a mitigation in the degree of responsibility of the offender. As a consequence, the penalty to be imposed upon the offender is generally reduced. As Silvela says: "To be of eighteen years of age, in which control of passions and appetites is more difficult; provocation and threat which lean inadvertently to revenge or to repel force by force; the circumstances of committing the act in the immediate vindication of an offense, or of acting under an impulse so powerful as naturally to produce passion and obfuscation, which circumstances are not essentially different from one another; and finally, that of committing the act in state of intoxication or of a more or less complete disturbance of the mind express or represent moments on which incitement to crime — be it or not controlled by freedom — is apparent. A crime may or may not be committed, but if it be a mitigation will be found in the stimulus by which the doer was actuated..."²⁶

Mitigating circumstances or *causas atenuantes* lessen the penalty. Generic or specific mitigating circumstances may reduce the penalty to the minimum period or lower it by one degree, as provided in Articles 62 to 64, depending on the presence of generic or specific aggravating circumstances which offset them. Special or privileged mitigating circumstances, such as minority and incomplete justification and exemption, cannot be offset by aggravating circumstances and may reduce the penalty by one or two degrees, as indicated in Articles 67 to 69.²⁷

²⁶ Derecho Penal, Vol. 2, 206.

²⁷ People v. Hernandez, C.A. 40 O.G. 46th Supp. 1.

Voluntary Surrender

One of the main characteristics of mitigating circumstances is that they are based on facts or grounds which weaken the will of the actor, or through the presence of which his freedom of will is diminished. It is also characteristic of such circumstances that the facts constituting the same must all be prior or simultaneous to the commission of the crime. The mitigating circumstance of voluntary surrender of the offender to a person in authority or the voluntary confession of his guilt before the court prior to the presentation of evidence for the prosecution does not possess these characteristics. These circumstances, however, mitigate the penalty of the offender because such voluntary surrender or confession of guilt is an act of repentance and respect for the law; it indicates a moral disposition in the accused favorable to his reform.²⁸

In *People v. Fortuna Mendoza, et al.*,²⁹ a murder case, the appellants Villanueva and Mansaka, surrendered themselves to the keeper of Brigade No. 3b, Cell No. 5 of the National Penitentiary in Muntinlupa, Rizal, one Arsenio Pallera. They told the latter that they had just killed a fellow inmate and would wish to be brought to the Prison Inspector. At the same time, they turned over to Pallera an improvised bladed knife and ice-pick. The court held that the only mitigating circumstance appreciable in their favor is voluntary surrender. There were, however, in this case aggravating circumstances, so that in accordance with paragraphs 3 and 4 of Article 64 of the Revised Penal Code, the maximum penalty provided by the Code was imposed.

Likewise, in a homicide case, *People v. Calacala*³⁰ the Supreme Court held in favor of the accused the mitigating circumstance of voluntary surrender.

Vindication of Grave Offenses

This mitigating circumstance requires the attendance of the following requisites: that a grave offense has been committed to the defendant, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degree; and that the act committed by the defendant was in the immediate vindication of such grave offense.

As may be seen, the vindication must be immediate and the offense must be grave. Although the law uses the word immediate, it is only needed that the vindication of the offense be proximate, which admits of a greater separation in point of time between the offense and its vindication.

²⁸ *People v. de la Cruz*, 63 Phil. 874.

²⁹ See Note 22.

³⁰ See Note 23.

The question whether or not a certain personal offense is grave or not must be decided by the court, taking into consideration the social condition of the parties, and the places and the occasion at which the personal offense was committed.

In *People v. Lumayag*³¹ the trial court found the accused guilty of the crime of murder, qualified by treachery, evident premeditation and taking advantage of nocturnity to better ensure the commission of the offense with the mitigating circumstance of vindication. The record showed that on July 8, 1958 the deceased boxed the accused several times on the face for which subsequently the deceased was convicted of less serious physical injuries by the Justice of the Peace Court of Lala, Lanao del Norte. Deceased appealed to the Court of First Instance of Lanao and at the time the accused killed the deceased the case was still pending in said Court of First Instance. In view of the length of time, approximately nine months, between the boxing incident and the killing of Jose Pampilo, the Supreme Court held that it cannot be said that the second incident was an immediate or proximate vindication of the first. Accordingly, the court *a quo* should not have considered it as a mitigating circumstance under paragraph 5, Article 13 of the Revised Penal Code.

Plea of Guilty

Chief Justice Avanceña says that "the confession of guilt although subsequent to the consummation of the crime and entirely alien to its development, constitutes a cause for the mitigation of the penalty, not because it is a circumstance modifying criminal responsibility already incurred and in the evolution of which it has not intervened absolutely, but because, as an act of repentance and respect for the law, it indicates a moral disposition in the accused favorable to his reform. It is clear that these benefits are not deserved by the accused who submits to the law only after the presentation of some evidence for the prosecution, believing that in the end the trial will result in his conviction by virtue thereof."³²

In order that this circumstance may be held to mitigate the offense, Par. 7 of Article 13, requires that the accused should have voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution. An interesting distinction of the terms employed by the statute was formulated by the Supreme Court in the case of *People v. Ortiz*.³³ The defendant was charged in the Court of First Instance of Pangasinan, with murder and frustrated murder. He pleaded not guilty. During the trial and after two prosecution witnesses had testified, the defendant

³¹ G.R. No. L-19142, March 31, 1965.

³² *People v. Francisco de la Cruz*, 63 Phil. 874.

³³ G.R. No. L-19585, November 29, 1965.

manifested his willingness to plead guilty to the lesser offense of homicide and frustrated homicide. The Assistant Provincial Fiscal with the approval of the Court, amended the information and upon a new arraignment, the said defendant entered a plea of guilty. In the decision of the lower court, it refused to give the defendant the benefit of the mitigating circumstance of plea of guilty, because the same was alleged to have been made after the prosecution had already commenced the presentation of evidence. The Supreme Court following its decision in the case of *People v. Intal*³⁴ held that said mitigating circumstance of plea of guilty should have been considered in favor of the defendant. "It is true that, upon the original information for murder and frustrated murder, the trial had already begun. However, in view of the willingness of appellant to plead guilty for a lesser offense, the prosecution with leave of court, amended said information to make it one for homicide and frustrated homicide, appellant pleaded guilty thereto. That was an entirely new information and no evidence was presented in connection with the charges therein before the appellant entered his plea of guilty."

Sufficient Provocation

In order that provocation or threat may mitigate an act, it should be immediate, which means that between the provocation and the act of repelling it, there should not intervene any interval of time; the provocation must originate from the offended party, and the provocation must be sufficient, which means that it should be proportionate to the act committed and adequate to stir to its commission.³⁵

In *People v. Calacala*³⁶ the Supreme Court refused to consider the element of sufficient provocation to mitigate the killing of the victim. It was held that the acts of the victim disrupting a Christmas dance and in continuing to create disorder was not provocation enough to be considered as a mitigating circumstance.

Lack of Intent to Commit So Grave A Wrong

Criminal liability is incurred by any person who commits a felony although the wrongful act done be different from that which he intended.³⁷ The offender however, may be entitled to the mitigating circumstance that he had no intention to commit so grave a wrong as that which resulted from his wrongful act. Whether the offender had intended or not to commit so grave a wrong as that committed by him is a question which may be determined by the fact whether there exists or not a notable and evident dispropor-

³⁴ G.R. No. L-10585, April 29, 1965.

³⁵ Francisco, *supra*, 358.

³⁶ See Note 23.

³⁷ Article 4, Par. 1, Revised Penal Code.

tion between the means employed to execute the criminal act and its consequences.³⁸

This mitigating circumstance was accepted in the case of *People v. Asilum*³⁹ because the evidence showed that the defendant Llorca fired his gun only at the right thigh of the victim and that the death of the victim did not result immediately, it being fatal only about a month later when he died by reason of hemorrhage. Thus, instead of inflicting on the defendants the maximum penalty, the penalty imposable had to be reduced proportionately.

AGGRAVATING CIRCUMSTANCES

Aggravating circumstances are based on the greater criminal perversity of the offender as shown by the means employed by him in committing the crime, the time, place and the occasion of such commission, the personal circumstances of the offender, etc., which if not off-set or compensated by any ordinary mitigating circumstance will serve to increase the penalty to its maximum period.

Treachery

According to the Code there is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.⁴⁰

In *People v. Dayday alias Ando, et al.*,⁴¹ the defendants were found by the Supreme Court guilty of the complex crime of Kidnapping through Double Murder and Murder. Both offenses were held qualified by treachery. Defendant Dayday, together with Santos Sinodlao alias Mon Aminga and Damian Barton alias Damin plotted to kill the Litan couple so as to kidnap the two children of the latter. On the day stipulated the two, Barton and Aminga hid among the bushes near the farmhouse of the victims. When afternoon came, Dayday joined the two carrying with him a bolo called Kalis and a rifle. When it was already dark and the Litan family was sound asleep, they came out of their hiding place and proceeded to the farmhouse, where they hacked and stabbed to death Simplicio Litan and Crispina Likayan and carried with them the two children of the couple.

In *People v. Egual*⁴² the crime committed was murder qualified by treachery, the evidence showing that when Julian Castillo was

³⁸ U.S. v. Reyes, 36 Phil. 904.

³⁹ G.R. No. L-19380, June 30, 1965.

⁴⁰ Article 14, subsection 16, Revised Penal Code.

⁴¹ G.R. No. L-20806, August 14, 1965.

⁴² G.R. No. L-13469, May 27, 1965.

killed his hands were tied, thus ensuring the commission of the crime without risk on the part of the defendants, arising from any defense which the victim might offer. Again in *People v. Eugenio Pasilan*⁴³ the defendant Pasilan before attacking the victim Abarra, required the latter to throw away his bolo, thereby adopting a measure tending to assure the commission of the offense without risk arising from any defense which Abarra might make. Accordingly, the Supreme Court held that there was treachery.

Suddenness of an attack, being without warning, constitutes treachery.⁴⁴ Thus in the case of *People v. Bonifacio Simbajon, et al.*,⁴⁵ the Supreme Court condemned the defendants guilty of murder qualified by treachery on the basis of the following facts adduced: at about 9:00 o'clock in the morning of November 14, 1959, Simbajon accompanied by his son, Panfilo and his son-in-law Arturo Yap, approached Mayor Avanceña near the municipal building of Sincaban, and while still at a distance raised his hands and said: "Pre, we surrender." Then, after shaking hands with Avanceña, Simbajon said: "Pre, we just forget everything in the past."; to which Avanceña replied: "That is alright, let us forget everything, anyway, that is always the case of election, some will lose and some will win." A little later Simbajon invited Avanceña to ride with him in his jeep in going to a wedding party to which apparently both had been invited, but the latter declined saying that he would use the jeep of the Health Office.

Shortly after this brief conversation, Simbajon and his party left and went down the slope leading to the National Highway, and sometime later, Avanceña and his Chief of Police, Isaias Macalisang and Patrolman Liberio Dominguez left the municipal building and followed the same route. As they reached the Highway, Simbajon who was then standing at the rear of the jeep parked near the house of Isabelo Plaza, offered his jeep again to Avanceña, but the latter politely declined the offer saying that he would take the jeep of the Municipal Health Officer. Immediately thereafter, shots were fired in rapid succession. As Avanceña was hit by the first shot he ran towards the house of Plaza, followed by the Chief of Police who apparently had not been hit. On looking towards the house of Plaza, Macalisang saw Simbajon shooting from the window thereof. The second volley of shots coming from the same direction hit Macalisang seriously and he fell to the ground. The elements of suddenness and surprise are easily noticed in the above set of facts, to warrant the finding of treachery.

⁴³ G.R. No. L-18770, July 30, 1965.

⁴⁴ U.S. v. Babasa, 2 Phil. 102.

⁴⁵ See Note 12.

Likewise, in the case of *People v. Cabagel Macatembal*⁴⁶ the same treacherous circumstance obtained. The Supreme Court in so concluding took cognizance of the following: Mariano Abellera together with ten passengers among whom were former Patrolmen Enrigue Oagdan, Avelino Hernandez and Mene Bagia left for Kabacan, Cotabato in a jeep. Near Kilometer 95, Syre National Highway, a Moslem by the name of Cabagel Macatembal stopped them. As the jeep slowed down between two passenger trucks, several explosions were heard. Mariano Abellera immediately jumped off and the other passengers also panicked and scrambled for safety. Avelino Hernandez seated at the right side of the driver's seat was killed; Oagdan and Florencio were wounded. Mene Bagia lay lifeless on the road.

In *People v. Francisco Evaristo, et al.*,⁴⁷ the following circumstances were held by the court as constitutive of the elements of treachery, thereby qualifying the offense into murder: On entering the town, the passenger bus stopped at a roadblock set up by the defendants. Accused Patrolman Dultra boarded the bus at the rear and poked his Thompson gun on the nape of the driver, and ordered him to stop the bus. While the bus was parking, accused Cardeno, pistol in hand, with his index finger on the trigger, approached the bus from the rear and inquired whether Atoy was there, referring to Pastor Moyot, the victim. Pastor Moyot alighted from the bus and threw his hands up in the air saying: "Diri aco ma'ato sa iyo" (I will not fight against you), addressing Cardeno at whose back were the other accused. At this juncture Mayor Evaristo with a .45 caliber revolver in hand came up to the bus shouting: "Fire, fire, it was yet before that I ordered you to fire immediately." Accused Chief of Police Cardeno, seconded the order to fire. Accused Giray fired his carbine hitting Pastor Moyot in the left breast, causing him to spin and to drop slowly to the ground groaning. While Moyot was thus sprawled Chief Cardeno again shouted fire, and accused Miano fire at Moyot. Pastor Moyot died on the spot.

In the second *People v. Equal*⁴⁸ case, which was a prosecution for the crime of assault against persons in authority, with triple murder, it was held that the killings were qualified by the element of treachery where it appeared that the defendants ambushed the victims.

In *People v. Calacala*⁴⁹ the Supreme Court refused to consider the circumstance of treachery to qualify the killing of the victim into murder, because it was shown that none of the elements of treachery

⁴⁶ See Note 20.

⁴⁷ See Note 11.

⁴⁸ G.R. No. L-14240, May 27, 1965.

⁴⁹ See Note 23.

existed and that the killing arose out of a quarrel between the parties and for which they even grappled together for some time before the fatal stabbing. The element of surprise was completely absent. In *People v. Lumayag*⁵⁰ the Supreme Court also denied the presence of the element of treachery because the same was not duly proven.

Evident Premeditation

Premeditation in its legal sense implies deliberate planning of the act before executing it. It involves cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at calm judgment.⁵¹ It was held that there is premeditation when the crime has been carefully considered by the guilty party; when he has prepared before hand the means he deems suitable for carrying it into execution; when he has had sufficient time dispassionately to consider and accept the final consequences; and when there has been a concerted plan.⁵²

Thus in *People v. Edilberto de los Santos*⁵³ a prosecution for multiple murder, the circumstance of evident premeditation qualified the said offense, it being proved by evidence which was uncontradicted, that the defendants as members of the so-called Sigue-Sigue Gang planned, prepared and did finally execute the annihilation of their rival gang the OXO.

In *People v. Eugenio Pasilan*⁵⁴ the defendant was convicted of the crime of murder, qualified by the aggravating circumstances of evident premeditation and treachery. That there was evident premeditation on the part of appellant was clearly illustrated in the following manner: Pasilan before stabbing Abarra first told Justina Miguel that he would make an exhibition and had first secured the disarming of his intended victim. Such facts indicate the state of mind of Pasilan who had plainly been on the look-out for Ciriano Abarra. It was well-known to Pasilan that Abarra accompanied the Japanese who raided the guerrilla camp in Bimaribar forest in which a companion of Pasilan was killed. Abarra likewise surrendered the Japanese rifle which Pasilan asked Abarra to be kept in the latter's house. Pasilan, the court held, had evidently been premeditating upon liquidating Abarra even prior to December 14, 1944.

In *People v. Evaristo*⁵⁵ a prosecution for murder, evident premeditation which qualified the offense was established by the following facts: Accused Francisco Evaristo and Pedro Cardeno, Mayor and Chief of Police respectively, on November 4, 1947, in the town

⁵⁰ See Note 31.

⁵¹ *People v. Durante*, 53 Phil. 363.

⁵² *U.S. v. Cornejo*, 28 Phil. 457.

⁵³ See Note 22.

⁵⁴ See Note 43.

⁵⁵ See Note 11.

of Bobon, Samar led a group of policemen and constructed a roadblock across the provincial road at the entrance of the town of Bobon, coming from Catarman. Between 2 and 3 in the afternoon the accused gathered near the roadblock in order to intercept the passenger buses coming from Catarman. Accused, Evaristo, harangued his co-accused thus: "You, Policemen, watch the buses from Catarman for Pastor Moyot might come; if you see him in the bus shoot him immediately; don't be afraid because I am responsible for you; the administration is ours, up and down; if you will not shoot I will shoot you; this Pastor Moyot is an obstacle to my administration; he is a beast; it was yet in Carangian that I wanted to liquidate him but I had no chance."

In the case of *People v. Sagario*⁵⁶ where the killing was qualified by the circumstance of treachery, the element of evident premeditation was taken as a generic aggravating circumstance. In this case it was shown that the determination to kill had existed long before the actual killing. This is indicated by the simultaneous arrival by the raiders at the municipal building, and their immediate attack upon Gomez. The fact, moreover, that the raiders, numbering about twelve, arrived with firearms and riding in motor vehicles clearly discloses that they were to carry out their intentions to kill, irrespective of any opposition. This evident premeditation was also present in the killing of Pat. Ursais even though the latter was not included in the plan.⁵⁷

But in the case of *People v. Calacala*⁵⁸ the element of premeditation was denied because it was shown that the appellant killed the victim only at the spur of the moment, and only because the victim was then trying to create disorder. There was definitely no interval between the altercation, of the appellant and the victim, and the killing. The killing was a direct and immediate result of the altercation and excluded the possibility of a period for dispassionate reflection.

Craft, Fraud or Disguise

Craft is characterized by intelligent trickery or cunning. These circumstances are characterized by the intellectual rather than by the physical means to which the criminal resorts to, in carrying out his design.⁵⁹

In *People v. Fortunato Mendoza*⁶⁰ the defendants were held by the court in availing of the aggravating circumstance of craft to perpetrate the murder of Epifanio Paison, an inmate in the Peniten-

⁵⁶ See Note 6.

⁵⁷ *People v. Ubiña*, G.R. No. L-6969, September 1, 1955.

⁵⁸ See Note 23.

⁵⁹ Aquino, *supra*, 337.

⁶⁰ See Note 22.

tiary at Muntinlupa. Neither of the defendants were supposed to be in the brigade where the victim was incarcerated, they were both inmates of Brigade No. 3a and they have not pointed to any authorization that could have justified their presence at Brigade No. 3b. The court held on the basis of their own confession that it was by trickery that they gained entry into the latter brigade. They held to a prison meal cart, pushed it towards Brigade No. 3b and pretended to be rancheros, that is, prisoners in charge of bringing the food to the cells. Once inside, the two defendants dragged the victim to the toilet and there took turns in stabbing the latter till he died.

Price, Reward or Promise

In *People v. Dayday*⁶¹ the Supreme Court held that as to Alejandro Dayday, the complex crime of kidnapping through double murder was aggravated by the circumstance of promise or reward. Uncontradicted evidence showed that on Sunday afternoon of May 15, 1960, Mon Aminga, one of the accused, informed Dayday that they wanted two small children whom they would sell to the Moros. Mon Aminga offered him a part of the price for his help in securing the two children. Readily he accepted the proposal of Mon Aminga. On the same afternoon they planned to kill Simplicio Litan and his wife and to kidnap their two children.

Abuse of Superior Strength

This aggravating circumstance of abuse of superior strength depends upon the relative strength of the party attacking the party attacked. To appreciate abuse of superior strength, 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 in order to consummate the offense.⁶²

In *People v. Libed*⁶³ the killing was considered as murder because it was qualified by the element of abuse of superior strength. It appears that the accused two brothers, clubbed to death Mariano Ringor as he passed by them in their land in pursuit of his carabao.

In *People v. Evaristo, et al.*,⁶⁴ the victim's death was attended not only by superior strength but also of superior arms. The defendants Mayor Francisco Evaristo, Chief of Police Cardeno and the other co-accused who were policemen of Bobon, Samar, were armed with guns ranging from pistols to carbines and Thompsons. The victim was alone and unarmed. Here, the Supreme Court held that the killing was qualified by treachery, and evident premedita-

⁶¹ See Note 41.

⁶² Aquino, *supra*, 343.

⁶³ See Note 24.

⁶⁴ See Note 11.

tion and the aggravating circumstance of superior strength and taking advantage of their public positions. Abuse of superior strength also attended the killing in *People v. Dayday*⁶⁵ where the couple were hacked and stabbed to death while they were asleep.

Nocturnity

The prevailing doctrine on the matter is the following: Nocturnity should be considered as an aggravating circumstance only when it appeared (1) that it was especially sought for by the offender, (2) that he had taken advantage thereof in order to facilitate the commission of the crime or for the purpose of impunity.⁶⁶

In the case of *People v. Asilum, et al.*,⁶⁷ the crime of robbery with homicide committed by the defendants was aggravated by the circumstance of nighttime because it was shown that the crime was committed at about midnight of November 15, 1957. Also in the case of *People v. Maranan*⁶⁸ the circumstance of nocturnity was taken into account where the crime of robbery with homicide was committed at about 8:00 p.m. on the evening of December 5, 1953.

In *People v. Dayday*⁶⁹ the perpetrators of the crime of kidnapping through double murder, went into hiding anticipating for night to come and for the couple to sleep, then proceeded to the commission of their foul deed.

Aid of Armed Men

In order that this circumstance may be considered as aggravating the liability of the offender, the crime must have been committed with the assistance of armed men, or at least the offender in committing the crime must have relied in their assistance. The casual presence of armed men near the place where the crime was committed does not constitute an aggravating circumstance when it does not appear that the accused did not avail himself of their aid or rely upon them to commit the crime.⁷⁰

In *People v. Maranan*⁷¹ this circumstance was taken into account where the defendants Raymundo Maranan, Dominador Galario and Agapito Torano, committed the crime while one of them had a knife, whereas the others had a pistol each.

Cruelty

Explaining the nature of this circumstance, the Supreme Court said: "This circumstance has its own value and meaning in law.

⁶⁵ See Note 41.

⁶⁶ *People v. Matbagan*, 60 Phil. 887.

⁶⁷ See Note 39.

⁶⁸ G.R. No. L-19211, April 30, 1965.

⁶⁹ See Note 41.

⁷⁰ *U.S. v. Abaigar*, 2 Phil. 417.

⁷¹ See Note 68.

There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary moral and physical pain in the consummation of the criminal act which he intends to commit."⁷²

Thus in *People v. Mendoza*⁷³ a prosecution for murder, the Supreme Court held that in so far as Lorenzo Villanueva's participation is concerned, the commission was attended by the aggravating circumstance of ignominy or cruelty as he confessed to cutting off the ear of the deceased while inflicting upon the said victim fifteen wounds, one in the neck, two in the abdomen, seven in the chest and others in the various parts of the arms.

Dwelling

The home is a sacred place for its owner. He who goes to another's house to slander him, hurt him or do him wrong, is more guilty than he who offends him elsewhere and he furthermore abuses the confidence which has been reposed in him by opening the door to him.⁷⁴

In *People v. Maranan*⁷⁵ the circumstance of dwelling was held to aggravate the crime of robbery with homicide where the crime was committed in a bakery and grocery store then occupied by the victims. Apparently therefore, this case would seem to indicate that the term "dwelling" is not synonymous to "residence" and that it could be considered despite the fact that the crime was committed not in a place of residence but in some other place which is used for dwelling. In *People v. Asilum*,⁷⁶ another case of robbery with homicide, the circumstance of dwelling was also taken to aggravate the offense because it was shown that the defendants entered the house of the victim, and while therein they perpetrated the killing and robbery which were the objects of the case.

Use of Motor Vehicles

The circumstance of using motor vehicles, airships, etc., which is frequently used by modern criminals, is considered aggravating because the use of the same furnished a quick means for their flight or concealment of the offense. This circumstance was taken to aggravate the crime of murder in *People v. Sagario*⁷⁷ because the defendants employed a jeep and a car in going to and escaping from the scene of the crime. It was also shown that defendant Sagario was at the wheel of the jeep.

⁷² *People v. Dayug, et al.*, 49 Phil. 423.

⁷³ See Note 22.

⁷⁴ Viada, Commentaries on the Penal Code, 5th Edition, Vol. II.

⁷⁵ See Note 68.

⁷⁶ See Note 39.

⁷⁷ See Note 9.

Taking Advantage of Public Position

To take advantage of public position means to avail himself of the influence, prestige or ascendancy which go with the position held, as a means of securing the execution of the crime. Hence, in order that this circumstance may be considered aggravating, the offender must abuse his public position in the commission of the felony.⁷⁸ This circumstance was conclusively held against the defendants in the case of *People v. Evaristo*.⁷⁹ In that case it was shown that defendants, Francisco Evaristo and Pedro Cardeno, Mayor and Chief of Police respectively, of Bobon, Samar, together with a group of policemen, set up a roadblock so that they can stop the bus in which the victim was on. It was in this manner that they facilitated the killing of the victim Pastor Moyot.

Recidivism

A recidivist is one who at the time of his trial for one crime shall have been previously convicted by final judgment of another crime embraced in the same title of the Penal Code.⁸⁰

In *People v. Maranan*⁸¹ where the accused was being prosecuted for the crime of robbery with homicide, the circumstance of recidivism was taken into consideration "he having been previously convicted by final judgment of the crime of homicide."

It should be noted, however, that the crime of robbery with homicide, is punishable under Title 10 of the Revised Penal Code, while the crime of homicide is punishable under Title 8 of the same Code.

PERSONS CRIMINALLY LIABLE FOR FELONIES

Those who are criminally liable for grave or less grave felonies are: Principals, Accomplices and Accessories. Those who are criminally liable for light felonies are: Principals and Accomplices.⁸²

Principals

There are three ways in which one can be considered a principal to a felony. They are: Principal by direct participation, Principal by inducement, and Principal by cooperation.

Principals by direct participation are those who, participating in the criminal resolution, proceed together to perpetuate the crime and personally take part in its realization, executing acts which directly tend to the same end.⁸³

⁷⁸ *People v. Teves*, 44 Phil. 275.

⁷⁹ See Note 11.

⁸⁰ Article 14, Revised Penal Code.

⁸¹ See Note 68.

⁸² Article 16, Revised Penal Code.

⁸³ Viada, *supra*, citing *People v. Tamayo*, 44 Phil. 38.

Principals by inducement are those who directly force or induce others to commit the offense. One is to commit a crime either by a command (precepto) or for a consideration (pacto), or by any other similar act which constitutes the real and moving cause of the crime and which was done for the purpose of inducing such criminal act and was sufficient for the purpose. The person who gives, promises, or offers the consideration and the one who actually commits the crime by reason of such promise, remuneration or reward are both principals.⁸⁴ Principals by cooperation are those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Thus in the case of *People v. Dayday*,⁸⁵ Mon Aminga offered Dayday a part of the price for the latter's help in securing the two children to be sold to the Moros. Dayday accepted the plan and together they executed the kidnapping by first killing the Litan couple and then taking their children. Both Mon Aminga and Dayday were held as principals of the crime of kidnapping through double murder.

In *People v. Paz*⁸⁶ the fact that when the killing happened, the appellant stood guard to give warning to his companions if any army men approached, was sufficient to hold him liable as a co-principal. The Supreme Court held that his guilt is clear. The avowed conduct in going with the band to the house of the deceased and standing guard while Dayrit was seized, abducted from his house and killed, is adequate proof of his participation in the murder.

In *People v. Asilum*⁸⁷ the lower court earlier held only one of the malefactors guilty of robbery with homicide and held the other as guilty only of robbery. It based its decision on the reason that there is "no evidence that Gaspar Asilum knew or conspired with Donato Llorca that the latter would shoot the victim." The Supreme Court decided to hold Gaspar Asilum liable also as principal for the crime of robbery with homicide. It cited the following reasons for doing so: the facts show that both of them entered the house of the deceased victim each armed with a gun and a bolo, respectively. This shows that they entered the house of the victim ready to kill if necessary. The fact that only one of the malefactors inflicted, the fatal wound does not excuse the other of the crime, because the actuations of both malefactors reveal that there was a complete community of purpose and action.

⁸⁴ Aquino, *supra*, citing *People v. Indanan*, 24 Phil. 207.

⁸⁵ See Note 41.

⁸⁶ See Note 8.

⁸⁷ See Note 39.

Accessories

Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principal or accomplice, take part subsequent to its commission in any of the manners provided by law.⁸⁸ The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories for the commission of a consummated felony.⁸⁹

In *People v. Marquez y Castro*⁹⁰ what was brought upon appeal was a question of law. The accused had pleaded guilty as accessories after the fact for the crime of theft as provided for by Article 309, par. 3 of the Revised Penal Code, the property stolen being valued at more than ₱200 but does not exceed ₱6,000. The penalty for the commission of the offense as charged in the information should be *prision correccional* in its minimum and medium periods, or an imprisonment of from six (6) months and one (1) day to four (4) years and two (2) months pursuant to the provisions of par. 3 of Article 309 of the Revised Penal Code. It is contended, however, that since the appellants had pleaded guilty to a lesser offense — that of accessory after the fact — the penalty that should be imposed on them should be “lower by two degrees than that prescribed by the law for the consummated felony”. The lower court imposed upon them the penalty of four (4) months and one (1) day of *arresto mayor*. The Supreme Court following and quoting the decision in *People v. Cristobal*⁹¹ held that the defendants should be sentenced to a penalty of one (1) month and one (1) day of *arresto mayor* and not four (4) months and one (1) day as previously imposed by the lower court.

PERIOD OF PREVENTIVE IMPRISONMENT DEDUCTED
FROM PENALTY

Offenders who have undergone preventive imprisonment shall be credited in the service of their sentences consisting of deprivation of liberty, with one half of the time during which they have undergone preventive imprisonment. This does not, however, accrue to: those who are recidivists; or who have been convicted previously twice or more times of any crime; those who upon being summoned for the execution of their sentence they have failed to surrender voluntarily and; those who have been convicted of rob-

⁸⁸ Article 19, Revised Penal Code.

⁸⁹ Article 53, Revised Penal Code.

⁹⁰ G.R. No. L-20139, May 19, 1965.

⁹¹ August 30, 1949, 47 O.G. 711.

bery, theft, estafa, malversation of public funds, falsification, vagrancy or prostitution.⁹²

In *People v. Reyno*⁹³ the lower court made a finding which was affirmed by the Supreme Court, that the accused being a detention prisoner one half of his preventive imprisonment was credited to his favor.

COMPLEX CRIMES

When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same applied in its maximum period.⁹⁴

A single crime exists when only one juridical right of interest is violated. There is a plurality of crime or what is called *concurso de delitos*, when the actor commits various delictual acts of the same or different kind. In providing for complex crimes the Code does not set up a category of crimes independent of the component ones, but only an aggravated form thereof. This rule was impelled by the desire to impose only one penalty for all offenses resulting from one and the same criminal impulse. Whether or not the offense constitutes a complex crime depends upon the court's appreciation of the facts of the case and applicable law.⁹⁵

Kidnapping may be absorbed in murder if the main purpose of the accused was to kill the victim and the kidnapping was merely resorted to in order to enable the accused to liquidate the victim in a more convenient place.⁹⁶ But there is also the complex crime of kidnapping with murder where the kidnapping was alleged to as a means for killing the victim.⁹⁷ Thus it has been observed that while there is a ruling that kidnapping may be complexed with murder, the ruling had been followed in some cases and ignored in others.⁹⁸ In the case of *People v. Sta. Maria*⁹⁹ the court found the appellants guilty of the crime of kidnapping with murder, because it was fully proven that on the evening of December 15, 1959 in Malibay, San Miguel, Bulacan, they dragged the victim, Domingo Sanqui, from his barn, into an awaiting jeep. They later brought the victim into the mountains of Tela Kawa, and there he was shot once and his head was decapitated by means of a bolo. The kidnappers had also previously left a note in the victim's home asking for a P30,000.00

⁹² Article 29, Revised Penal Code.

⁹³ See Note 6.

⁹⁴ Article 48, Revised Penal Code.

⁹⁵ Aquino, *supra*, 555-556.

⁹⁶ U.S. v. Nicolas Ancheta, et al., 1 Phil. 165.

⁹⁷ Parulan v. Roda, 78 Phil. 855.

⁹⁸ Aquino, *supra*, 501.

⁹⁹ See Note 17.

ransom. The lower court found them guilty of kidnapping with murder and they were sentenced to death. The Supreme Court while affirming the decision to accede to the recommendations of the Solicitor General and commuted the penalty to *reclusion perpetua*, four of the seven accused, because they had changed their plea of not guilty to one of guilty before the trial.

In *People v. Dayday*¹⁰⁰ the Supreme Court held the defendants guilty of the complex crime of kidnapping through double murder and murder. The three accused in order to facilitate the kidnapping of the children of the Litan couple, killed the latter two while asleep in their farmhouse and forthwith dragged the small children. Both offenses were qualified by treachery and attended by several other aggravating circumstances.

In *People v. Equal*¹⁰¹ the defendants were found guilty of the crime of assault against agents of person in authority with triple murder where it was proven that they had ambushed and killed three Philippine Constabulary soldiers who were then wearing civilian clothes, while they were crossing a coconut truck bridge.

EXTINCTION OF CRIMINAL LIABILITY

Criminal liability is totally extinguished: By the death of the convict, as to personal penalties; and as to pecuniary penalties, liability thereof is extinguished only when the death of the offender occurs before final judgment; by service of the sentence; by amnesty, which completely extinguishes the penalty and all its effects; by absolute pardon; by prescription of the crime; by prescription of the penalty; and by marriage of the offended woman, as provided in Article 344 of this Code.¹⁰²

Thus in the case of *People v. Sagario*¹⁰³ the case was dismissed as against one of the defendants, Antipas Sagario, because while the case was pending resolution he had died while under confinement.

PENALTY

In the case of *People v. Jose Ignacio y Santos*¹⁰⁴ appellant pleaded guilty to the complex crime of estafa through falsification of a commercial document, involving the sum of ₱4,608.62. Thereupon the Court of First Instance of Manila sentenced him to suffer one (1) year, eight (8) months and one (1) day of *prision correccional*, as minimum, to four (4) years, nine (9) months and eleven (11) days of *prision correccional* as maximum.

¹⁰⁰ See Note 41.

¹⁰¹ See Note 48.

¹⁰² Article 89, Revised Penal Code.

¹⁰³ See Note 9.

¹⁰⁴ G.R. No. L-21735, January 30, 1965.

Not satisfied with the penalty imposed, the accused appealed to the Court of Appeals; the latter Court certified the case to the Supreme Court as the "only question for determination is one of law."

The penalty for estafa where the amount involved is P4,608.62 is *arresto mayor* in its maximum period to *prision correccional* in its medium and maximum periods and a fine of not more than P5,000 (Article 172, par. 1, Revised Penal Code). So, for the complex crime afore-stated the penalty is that provided for falsification of a commercial document, the same to be applied in its maximum period (Article 48, Revised Penal Code).

The court applying the Indeterminate Sentence Law, held that the maximum of the Indeterminate Sentence Law should be "within the range of the penalty next lower to that prescribed by the Code for the offense." The basic penalty that the Code provides in this case is, as aforesaid, *prision correccional* in its medium and maximum periods. The penalty next lower to it, therefore, is *arresto mayor* in its maximum period to *prision correccional* in its minimum period; which is four (4) months and one (1) day to two (2) years and four (4) months. Thus the minimum of the sentence imposed by the court *a quo* is within the range prescribed by the Indeterminate Sentence Law. In the absence of abuse, and appellant has not shown any, the discretion of the court *a quo* to fix the minimum term of the Indeterminate Sentence Law anywhere within the range provided by law, will not be interfered with.¹⁰⁵

Another case which was decided solely on the basis of the imposable penalty was that of *People v. Marquez y Castro*¹⁰⁶ which had already been discussed in this survey under the heading of Accessories.

SPECIFIC CRIMES

Rebellion

In the case of *People v. Egual*¹⁰⁷ appellant contended that his motion to quash the information against him and his fellow defendants should have been sustained by virtue of the fact that the offense charged was absorbed by that of rebellion of which he had already been previously convicted. The Supreme Court rejected this contention because: Firstly, the act (murder) of which Egual was charged was not among those alleged in the Laguna case constituting the crime of rebellion; Secondly, because there was no evidence to show that the offense charged in the present case was

¹⁰⁵ *People v. De Joya*, 52 O.G. 788.

¹⁰⁶ See Note 90.

¹⁰⁷ See Note 42.

committed as a necessary means to commit that of rebellion or in furtherance thereof; Thirdly, because while the acts constituting the offense of rebellion covered by the Laguna case were committed in the Province of Laguna, the murder of which Equal was being charged was committed in the province of Batangas over which the Laguna court had no jurisdiction; Fourthly, because the deceased Julian Castillo was a mere overseer of a private property, with no established connection with the government at the time; and lastly, because Equal presented absolutely no evidence to show Castillo's connection with the killing of Commander Recto.

In the other case of *People v. Equal*¹⁰⁸ which was a prosecution for assault against persons in authority and triple murder, the appellants made the following contentions: Equal claimed that there was double jeopardy in his case by reason of the fact that the offenses charged against him in the present case were already included in his previous prosecution and conviction for the crime of rebellion in the Court of First Instance of Laguna; another appellant Diwa, contended that the offense charged in the present case was absorbed by that of rebellion of which he was found guilty in the Court of First Instance of Batangas, the information filed in the latter having charged that the crime of rebellion alleged therein was committed between June 30, 1950 and August 11, 1954 — a period which included the date of the crime charged in the present case; another appellant contends that the proper charge against him should have been rebellion and not assault against persons in authority, with triple murder.

The Supreme Court dispensed with the above-mentioned contentions by stating that in the case of Diwa and Equal, the murder of the three Philippine Constabulary soldiers was not mentioned at all in the rebellion cases filed against them, and besides, the acts constituting rebellion of which Equal was found guilty were committed in the province of Laguna. Furthermore the evidence for the defense did not show that the killing of the Philippine Constabulary soldiers were in furtherance of the crime of rebellion. As a matter of fact, according to Diwa, the victims were wearing civilian clothes at the time they were ambushed.

In *People v. Hernandez*¹⁰⁹ one of the defendants Marcelo Mendoza, who was also a defendant in the second case of *People v. Equal*¹¹⁰ contended that he should have been charged with the crime of rebellion and not murder, since he was a member of the Hukbalahap since June 1950 up to 1953, covering the time in which the killings now being charged were committed. The Supreme Court

¹⁰⁸ See Note 48.

¹⁰⁹ G.R. No. L-14209, May 27, 1965.

¹¹⁰ See Note 42.

following the rulings in the *Equal* cases, which were decided concurrently with this case, repudiated the contention of Mendoza stating that although Rubico was a barrio lieutenant, the record contains no evidence at all that his murder was absolutely necessary to carry out the purpose of rebellion. That Mendoza was a member of the Hukbalahap organization was no reason why all his acts and misdeeds should be considered in furtherance of or absorbed by rebellion.

In *People v. Paz*¹¹¹ the defendant contends that since he was a Huk, the killing of Tranquilino Dayrit was done in connection with and in furtherance of, the subversive movement of the Hukbalahaps. Hence, he should be held liable only for the crime of simple rebellion and not murder. The Supreme Court, in the same vein as the *Equal* and *Hernandez* cases rejected the contention of the appellant. It was shown that the killing of Tranquilino Dayrit was motivated by the personal or private quarrel which Sulpicio Tica, one of the accused, had with the victim. Tica had only utilized the Huks as the instruments in pursuing his desire of killing Dayrit because of his grudge against him for having filed a complaint in the Fiscal's office. The lone and uncorroborated assertion of appellant Paz that his superiors told him of Dayrit being an informer, and his suspicion that he was one, is neither sufficient or adequate to establish that the motivation for the killing was political.

Malversation

Malversation is the fraudulent appropriation committed by a public officer of funds or property of which he was in charge by reason of his office or employment. Thus, a clerk of court who received money as payment of the fine and costs imposed by the court upon a defendant, and appropriated the same to his own use, commits the crime of malversation of public funds, because he received the money as a public official and had appropriated the same to his own use.¹¹² Article 217 par. 5 provides, that in all cases, persons guilty of malversation shall also suffer the penalty of special perpetual disqualification and a fine ranging from one-half to the total value of the funds or property embezzled.

In the case of *People v. Pablo Consigna*¹¹³ the above-mentioned provision was interpreted. This was an appeal by the Solicitor General from the portion of the decision of the Court of First Instance ordering the reinstatement of the accused Consigna to his former position as property clerk in the office of the Division Superintendent of Schools, of Surigao del Norte. Pablo Consigna was

¹¹¹ See Note 8.

¹¹² U.S. v. Corrales, 28 Phil. 362.

¹¹³ G.R. No. L-18087, August 31, 1965.

accused of appropriating 860 G.I. corrugated sheets from the Bodega of the NAMARCO with a total value of ₱4,773.00. After trial the lower court rendered its judgment acquitting the accused and ordering his reinstatement. The Provincial Fiscal moved for a reconsideration of the portion of the said decision ordering the reinstatement of Consigna and payment of his salary. The fiscal invoked the decision rendered by the Commissioner of Civil Service dated September 16, 1959, Administrative Case No. 17195, finding Consigna upon the same facts alleged in the information filed against him, guilty of gross negligence and ordering his removal from office. The Supreme Court held:

"It seems obvious to us that the decision of the Commissioner of Civil Service is not binding upon the Courts.

"Upon the other hand, it is also well-settled that under the information filed against Consigna, he could have been convicted not only of the wilful offense expressly charged therein but also of the same offense of malversation through negligence. In a similar case — that of *Rufino T. Samson v. Court of Appeals*¹¹⁴ we held that while a criminal negligent act is not a simple modality of a wilful crime but a distinct crime in itself designated as a quasi-offense in our Penal Code, a conviction for the former can be had under an information exclusively charging the commission of a wilful offense, upon the theory that the greater offense includes the lesser one. This is the situation obtaining in the present case where Consigna was charged with wilful malversation of government property. Under the information filed he could have been convicted of the same offense but committed through negligence. Consequently, his acquittal by judgment rendered in October 1, 1960 for "absolute lack of evidence" showing his guilt of the wilful act of malversation charged, impliedly but necessarily acquitting him also of malversation through negligence."

Upon the question of whether or not considering the facts and circumstances of the present case, the trial court was justified in ordering the reinstatement of Consigna, the following were taken into consideration: According to Article 217 of the Revised Penal Code, a party found guilty of malversation of public funds shall be punished with imprisonment and the additional penalty of special perpetual disqualification. It is clearly inferable from this that his conviction necessarily results in his dismissal from the public office he occupied at the time he committed the offense. On the other hand, the preventive suspension of Consigna followed his indictment for the crime of malversation, and this was later followed by an order for his dismissal as a result of the administrative investigation to which he was subjected even while the criminal case for malversation was pending in court. It was observed that al-

¹¹⁴ G.R. No. L-10376.

though the administrative investigation was started after the filing of the criminal case, Consigna's administrative superiors went ahead with said investigation which ended with an order for his dismissal, instead of waiting for the result of the criminal case. The Supreme Court paraphrasing the decision in *Batungbakal v. National Development Company*¹¹⁵ stated that the "least that could be done is to restore to him the office and post of which he had been illegally deprived, . . . to remedy the evil and wrong committed," and to fully accomplish the vindication to which he is entitled.

Murder

Murder is the unlawful killing of any person, which is not parricide or infanticide and the killing is attended by any of the circumstances provided in Article 248 of the Revised Penal Code. The attending circumstances enumerated in Article 248 are known as qualifying circumstances.

In the case of *People v. Sagario*¹¹⁶ the crime was attended by the circumstances of treachery, evident premeditation and the use of motor vehicles. The element of treachery was qualifying and those of evident premeditation and use of motor vehicles were considered as generic aggravating circumstances. In that case, the defendants led a group of persons who raided the municipal building. The killing in the case of *People v. Egual*¹¹⁷ was also qualified by the element of treachery. The appellant armed with an automatic carbine, together with Hilarion Reyes, alias Commander Malvar, who was carrying a long firearm, with about twenty other armed persons, arrived in front of the house of Julian Castillo — an overseer of a private property. Upon seeing him Egual and Reyes grabbed him, tied his hands and led him westward towards the railroad tracks where Egual and his companions fired shots at him causing his death.

In *People v. Paz*¹¹⁸ the defendants, Huk Commander Romy, Commander Garcia, Tica and Catalone and some other Huks, were also convicted of murder where they entered the house of the victim Tranquilino Dayrit, hogtied, then dragged him out of said house. They pulled him to a grassy place along the road where they began hitting him with the butts of their guns. The accused, then, one after the other, struck and thrashed Dayrit with a balisong until the latter died. In *People v. Hernandez*¹¹⁹ the appellants were also found guilty of the crime of murder where it was established that at about eight o'clock in the evening of August 22, 1953, while

¹¹⁵ G.R. No. L-5127, May 27, 1953.

¹¹⁶ See Note 9.

¹¹⁷ See Note 42.

¹¹⁸ See Note 8.

¹¹⁹ See Note 109.

Ruperto Rubico, barrio lieutenant of Barrio San Lucas, Lipa City, and his family were sleeping in their house somebody shouted: "Ka Perto, Ka Perto". This awakened his daughter, Lilia, and also his wife, who in turn woke him up telling him that somebody wanted to talk to him. Thereafter, Ruperto, followed by his wife and daughter, went downstairs, where without warning, he was fired upon by the defendants, causing his death.

Abuse of superior strength was made qualifying in the case of *People v. Libed*.¹²⁰ On February 20, 1959, the victim together with members of his family were planting corn at barrio Candalao, Bautista, Pangasinan. After lunchtime, the carabao of the victim, Mariano Ringor, went wild, and after going in various directions proceeded towards Eugenio Libed's land. There the brothers, appellants Eugenio and Marcelino Libed, were likewise planting corn. Mariano Ringor pursued his carabao into the aforesaid piece of land. As Ringor passed by the brothers, they clubbed him, each with a piece of ipil wood used for planting corn. The Supreme Court ruled that they were properly held for murder.

In *People v. Reyno*¹²¹ the accused was convicted of murder where the evidence revealed that he suddenly stabbed the victim while the latter was walking home with some friends on the early morning of April 7, 1961. *People v. Valera*¹²² was a case of attempted robbery with murder. The killing was held to be murder and not homicide because it was proven that the assailant Valera, approached the victim, then suddenly and treacherously stabbed him several times on the breast with a knife.

In *People v. Alipis*¹²³ the Supreme Court acquitted the defendant of the charge of murder. It was decided that the participation of the defendant in the killing was not proven beyond reasonable doubt and that the circumstantial evidence relied upon by the lower court did not constitute an unbroken chain leading to a fair and reasonable conclusion that the appellant, to the exclusion of others, was guilty of the crime.

In *People v. Dayday*¹²⁴ the defendants were held by the court guilty of the complex crime of kidnapping through double murder and also murder. Subsequent to the killing of the Litan couple and the kidnapping of their two children, Dayday with the acquiescence of the other two accused, killed one of the two children. Dayday stabbed the child with his bolo through the stomach and then cast

¹²⁰ See Note 24.

¹²¹ See Note 6.

¹²² G.R. No. L-20286, October 29, 1965.

¹²³ See Note 10.

¹²⁴ See Note 41.

her away, where she was later found in an advanced stage of decomposition.

In *People v. Cabagel Macatembal*¹²⁵ three separate informations were filed against the accused, namely, murder, frustrated murder, and assault upon an agent of a person in authority. In all these informations, it was alleged that the appellant committed the crime in company of eight persons and others whose identities were still unknown. The evidence establishes that the killing was effectuated by an ambush. The lower court found the defendants guilty as charged, and the Supreme Court upheld the decision with only slight modifications as to penalty.

In *People v. Mendoza, et al.*,¹²⁶ the defendants Mandaka and Villanueva were convicted by the Court of First Instance of Rizal of the crime of murder; having killed a fellow inmate, named Paison, in the National Penitentiary. The defendants through craft gained entry into the brigade of the victim and there dragged him to the toilet and once inside stabbed him in turns. The Supreme Court affirmed the decision of the lower court, in having been proven beyond reasonable doubt that the crime was qualified by evident premeditation.

In the case of *People v. Evaristo*¹²⁷ the Supreme Court condemned the defendants for having murdered Pastor Moyot. The defendants set up a roadblock on the main highway and the mayor explicitly ordered the policemen to kill the victim when they saw him and also warned that in case they refused then he himself will kill them. The killing was held to have been attended and qualified by evident premeditation and treachery. Another murder case was that of *People v. Simbajon*.¹²⁸ The murder was qualified by treachery with the following aggravating circumstances: contempt of public authority; the use or employment of craft; evident premeditation.

In *People v. Pasilan*¹²⁹ the killing was attended by the qualifying circumstance of treachery. The motive established by evidence was the desire to avenge the death of the defendant's companion, who was killed by the Japanese in the raid at Bimaribar forest. The raid was made possible through the assistance of the victim. Defendant in this case wanted to avail of the benefit granted by amnesty Proclamation No. 8 of President Roxas. The Supreme Court held that to grant the defendant the said benefit would be inconsistent with the plea of guilty which the appellant entered upon arraignment. Amnesty, the honorable court went on to say, "presupposes the com-

¹²⁵ See Note 20.

¹²⁶ See Note 22.

¹²⁷ See Note 11.

¹²⁸ See Note 12.

¹²⁹ See Note 43.

mission of a crime, and when the accused maintains that he has not committed a crime, he cannot avail of amnesty."¹³⁰

Homicide

In the case of *People v. Calacala*¹³¹ it was not proven that the killing was attended by the qualifying circumstances of treachery and evident premeditation. The crime was therefore held by the Supreme Court to be simple homicide. The incident happened in the evening of December 22, 1959 during a Christmas dance held in the barrio of Balincannaway, Rosales, Pangasinan. The victim felt slighted because he was refused a dance by an intended partner. He thus proceeded to create trouble and disorder, causing some of the guests to go away. The appellant exerted efforts to pacify him. It seemed however that the victim could not be pacified, and instead he pushed the appellant, causing the latter to fall. Upon recovering himself, appellant drew his knife and repeatedly stabbed the victim, causing his death.

In *People v. Lumayag*¹³² the trial court found the defendant guilty of murder as charged in the information. On appeal, the Supreme Court held the defendants guilty of the crime of homicide not murder, as the prosecution failed to establish treachery and nocturnity as qualifying circumstances. While there is sufficient evidence to establish the killing of Jose Pampilo by the accused there is none however to show that he acted with treachery or evident premeditation or that he specially sought the advantage of night-time to facilitate the crime, hence the Court applied the doctrine laid down in *U.S. v. Banagale*¹³³ to the effect that when the details and circumstances surrounding the commission of the crime are unknown and there appears no evidence in the case that may indicate the situation of the victim when he was killed or when it is not conclusively shown that the violent death of a person was attended by any of the qualifying circumstances specified in Article 248, the crime must be classified as homicide and not murder.

Robbery with Homicide

In the case of *People v. Maranan*¹³⁴ the defendants entered the bakery and grocery store of Tan Hoc which was then occupied by Tan Hoc and Tan Guat. Thereupon, the malefactors tied the hands of Tan Hoc and Tan Guat to the legs of a table. After ransacking the premises in search of money, the malefactors blindfolded and gagged Tan Hoc and Tan Guat. A short while thereafter, Tan Hoc

¹³⁰ *People v. Geronimo*, 86 Phil. 396, 399.

¹³¹ See Note 21.

¹³² See Note 28.

¹³³ 24 Phil. 69.

¹³⁴ See Note 68.

heard Tan Guat moaning, then he himself became unconscious as a consequence of several blows to his head. The crime of robbery was clearly established because it was later found that the defendants had taken with them four watches, worth P400, and the sum of P5,260.70 in addition to a ring and fountain pen worth P25.00 and P11.00 respectively. It was also shown that Tan Guat had died because of eight incised stab wounds, a lacerated wound, a fracture and a contusion, all inflicted by the defendants.

In this case the defendants were accused of robbery in band with homicide and serious physical injuries. The lower court sentenced them for the crime of robbery in band with homicide, to the extreme penalty, and to indemnify the heirs of Tan Guat in the sum of P6,000.00; and for the crime of physical injuries, an indeterminate penalty ranging from six years, eight months and one day of *prision mayor* to twelve years and one day of *reclusion temporal* with the corresponding accessory penalties and to jointly and severally indemnify Tan Hoc in the sum of P5,656.70 with costs. The Supreme Court had to modify the decision saying that the defendants had committed, not two crimes as held by the lower court, but only one crime, namely, that provided for in Article 294, subdivision 1 of the Revised Penal Code. The Indeterminate Sentence Law was therefore eliminated and no other penalty than the maximum of that prescribed in said Article 294 or death, should be imposed upon the appellants.

In the case of *People v. Asilum*¹³⁵ it was shown that the defendants, in the evening of November 15, 1957, entered the house of Emilio Dionson and stole therefrom P1,500.00. It was also shown that one of the malefactors then fired his gun at Dionson, thereby inflicting upon him a bullet wound in the right thigh, in consequence of which he died. The malefactors were convicted of robbery with homicide.

The juridical concept of robbery with homicide does not limit the taking of human life to one single victim, making the slaying of human beings in excess of that number punishable as separate, independent offense or offenses. All the homicide or murders are merged in the composite, integrated whole, that is robbery with homicide so long as all the killings were perpetuated by reason or on occasion of the robbery.¹³⁶

Thus in the case of *People v. Enriquez*¹³⁷ the defendants were guilty of robbery with triple homicide where it was proven that, early in the evening of December 12, 1957, they entered the house

¹³⁵ See Note 36.

¹³⁶ *People v. Madrid*, G.R. No. L-3023, January 3, 1951.

¹³⁷ G.R. No. L-17388, October 30, 1965.

and store of Siaba alias Yu Siap, and inflicted upon him and his housemaids, Edith Balincasag and Flaviana Licanda, severe injuries in different parts of the body, in consequence of which they died due to hemorrhage, and it was also proven that the defendants stole ₱500 in cash and ₱166.10 worth of goods. Despite the multiple homicide perpetrated in this case only one penalty would be imposed upon the appellants, namely, that prescribed for robbery with homicide.¹³⁸

Possession of Picklocks and Similar Tools

The crime of possession of picklocks or similar tools is committed when a person shall, without lawful cause, have in his possession picklocks and similar tools specially adopted to the commission of the crime of robbery.¹³⁹

The term "false keys" shall be deemed to include: the tools mentioned in Article 304, picklocks or similar tools; genuine keys stolen from the owner; any keys other than those intended by the owner for the use in the lock forcibly opened by the offender.¹⁴⁰

In the case of *People v. Lopez*¹⁴¹ the accused obtained the dismissal of their case on the ground that the information merely stated that they had in their possession, custody and control seven (7) false keys, one of which is a picklock or master key. The trial court dismissed their case based on the argument that an essential element of illegal possession of false keys was not alleged, namely, that the picklock or false keys in the possession of the accused are "specifically adapted to the commission of the crime of robbery." The prosecution duly appealed from the order of dismissal.

The Supreme Court in setting aside the order of the lower court ruled that since the picking of locks is one way to gain entrance to commit robbery, a picklock is *per se* specially adapted to the commission of robbery. The description in the information of a picklock as "specially adapted to the commission of robbery" is therefore unnecessary for its sufficiency. Notwithstanding the omission of such superfluous description, therefore, the charge of the offense of illegal possession of a picklock is valid. The court was of the opinion that the elements of the crime were clearly alleged in the information. The court made the further ruling that the term "false keys" appearing in the information sufficiently described such tools. This is because the Revised Penal Code, in Article 305, defines "false keys" to include the "tools mentioned in the next preceding article." And Article 304 — which is the next preceding

¹³⁸ *People v. Manuel*, see Note 149; *People v. Chua and Milagros*, 45 Phil. 137.

¹³⁹ Article 304, Revised Penal Code.

¹⁴⁰ Article 305, *ibid.*

¹⁴¹ G.R. No. L-18766, May 20, 1965.

article — mentions picklocks or similar tools adapted to the commission of robbery.

Libel

In *People v. Alvarez*¹⁴² a criminal case for libel was filed by the Fiscal against Ricardo Alvarez on the basis of certain derogatory remarks contained in the opposition to quash filed by said Ricardo Alvarez. Appellee filed a motion to quash said information on the ground that it does not constitute an offense. The court granted the same on the theory that they are privileged communications. The Supreme Court in affirming the decision of the lower court took occasion to state that, it does not matter whether or not, there was malice on the part of the appellee in making the statements, since said statements are contained in judicial pleadings and protected by the mantle of privileged communications.

SPECIAL LAW

In the case of *People v. Desiderio*¹⁴³ the defendant was charged in an information for violation of section 3601 of Republic Act 1937, which is the TARIFF and CUSTOM CODE. He was alleged to have willfully, unlawfully and feloniously possessed, received, concealed, bought and sold (after illegal importation) eleven (11) cases and twenty (20) cartons of Chesterfield cigarettes and eleven (11) cartons of Camel cigarettes of foreign brand and manufactured in a foreign country, knowing that the same had been imported contrary to law. A plea of not guilty was entered by the accused; and subsequently he presented a motion to quash on the ground that his criminal liability had been extinguished by a compromise agreement with the Collector of Customs, in accordance with paragraph 1 of section 2307 of the same Republic Act 1937 which provides:

Settlement of case by payment of fine or redemption of forfeited property.—If, in any seizure case, the owner or agent shall, while the case is yet before the Collector of the district of seizure, pay to such Collector the fine imposed by him or, in case of forfeiture shall pay the appraised value of the property, or, if after appeal of the case, he shall pay to the Commissioner the amount of fine as finally determined by him or, in case of forfeiture, shall pay the appraised value of the property, such property shall be forthwith surrendered, and all liability which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent in respect to such property shall thereupon be decreed discharged. x x x

¹⁴² G.R. No. L-19072, August 14, 1965.

¹⁴³ G.R. No. L-20805, November 29, 1965.

Since the lower court granted the motion to quash the Solicitor General appealed the case. The Supreme Court reversed the order of the lower court by saying: It is urged by the accused that settlement under section 2307, prior to the filing of the criminal action, discharges all liabilities which may or might attach by virtue of such offense. Such interpretation would stretch the law too far. Section 2307 expressly states what are deemed discharged thereunder, namely, "all liability which may or might *attach to the property* by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent *in respect to such property*." It limits the effects of the aforesaid settlement to the liability that *attaches to the property*, or to the bond that replaces the property. It does not speak of the liability that fall on the *person or offender*. (Italics provided by the court)

In the case of *People v. Braulio de Venecia*¹⁴⁴ De Venecia was prosecuted for electioneering. Upon motion to quash, the court dismissed the case holding that section 54 of the Revised Election Code (upon which the prosecution rested) has been repealed by section 29 of Republic Act 2260. Hence, the appeal. The two legal provisions are as follows:

"SEC. 54. *Active intervention of Public Officers and employees*.—No justice, judge, fiscal, treasurer or assessor, of any province, no officer, or employee of the army, no member of the National, provincial, city, municipal or rural police force and no classified civil service officer or employee shall aid any candidate or exert influence in any manner, in any election or take part therein, except to vote, if entitled thereto, or to preserve public peace if he is a peace officer."

"SEC. 29. *Political Activity*.—Officers and employees in the civil service, whether in the competitive or classified, non-competitive or unclassified service, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views or current political problems or issues or from mentioning the names of candidates for public office whom he supports."

The only issue is whether the latter repealed the former. It is at once apparent that section 29 is administrative in nature. Whereas, section 54 is a penal statute. The first contains prohibitions of administrative character even as it grants or reserves some privilege to civil public servants. Of course logically, restrictions contained in section 29 that are not contained in section 54 could not be criminally punished, e.g., unclassified civil servants are not punishable under section 54. But realistic view would hold that activities per-

¹⁴⁴ G.R. No. L-20808, July 31, 1965.

mitted in section 29 though it is a mere administrative measure should not be criminally dealt with under section 54. The result is that although section 54 prohibits a classified civil servant from aiding any candidate, section 29 allows such classified employee to express his views on current political problems or issues, or to mention the name of his candidate for public office, even if such expression of views or mention of names may result in aiding one particular candidate. In other words the last sentence of section 29 is an exception to section 54(1) at most an amendment to section 54.

On the other hand, an employee (classified civil service) who contributes money for election purposes to a candidate violates section 54 and is punished with imprisonment because he "aided a candidate" and may not invoke the privilege reserved to him by section 29.

Applying these considerations to the case of De Venecia, the court found that the leaflets he distributed bore the symbol of the Nacionalista Party and read as follows:

"You should vote for Mayor Felipe Oda for the office of Mayor because he is our party's official candidate. I want him to win so that he will succeed in our undertaking."

Distributing handbills like the above according to the court is "aiding candidate Felipe Oda. It is not merely mentioning the candidate whom De Venecia supported, nor mere expression of his opinion on current political problems. It is an indorsement of the request for his support by gubernatorial candidate F. Estrella."

