# CRIMINAL LAW

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In criminal law, 1966 may be noted for at least three things. *First,* in a field where the soil seldom yields more than mere reiterations or reapplication of old principles, the year germinated new rulings, albeit ever so few, which may regarded as precedential.[1] *Second,* two pieces of significant legislation were enacted, one amending the prescriptive period for libel and another creating an offense with respect to the sale, dispensation and use of contraceptive drugs and devices. *Third,* it brought to a marked degree of prominence a trend which had begun to be visible in previous years: the increasing reluctance of the Supreme Court to impose the death penalty in cases where it is called for, despite the presence in such cases of several aggravating circumstances showing the convict's perversity and the total absence of a mitigating circumstance. This development does not only constitute a reversal of the policy (probably more justified today than when adopted) behind the amendment, introduced by the Judiciary Act of 1948, reducing the number of justices of the Court required to vote unanimously for the imposition of a death sentence.[2] It further reflects an attitude on the part of the Court which is indeed a far cry from its position on the matter more than fifteen years back when it declared:

> "Today there are quite a number of people who honestly believe that the supreme penalty is either morally wrong or unwise or ineffective. However, as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases it is the duty of judicial officers to respect and

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[1] See, e.g., topics on similar or analogous mitigating circumstances, complex crimes, subsidiary civil liability, kidnapping with ransom, and theft, *infra.*

[2] See Rep. Act No. 296, Sec. 9, amending by implication paragraph 2 of Article 47, Revised Penal Code. "Before the approval on June 17, 1948, of Republic Act No. 296, the concurrence of all the Justices of the Supreme Court was necessary for the pronouncement of a judgment imposing the the death penalty. Evidently, to remedy the notorious difficulty, if not virtual impossibility, of obtaining such unanimity and in view of the alarming rise of criminality, and particularly the rampancy of the crime of murder, that for some years prevailed (and is still prevailing in this country), the Congress x x x changed the former law by requiring the concurrence of only eight Justices in the imposition of the death penalty." People v. Young, 83 Phil. 702 (1949).

> apply the law regardless of their private opinions. It is a well-settled rule that the courts are not concerned with the wisdom, efficacy or morality of laws. That question falls exclusively within the province of the Legislature which enacts them and the Chief Executive who approves or vetoes them. The only function of the judiciary is to interpret the laws and, if not in disharmony with the Constitution, to apply them. And for the guidance of the members of the judiciary we feel it incumbent upon us to state that while they as citizens or as judges may regard a certain law as harsh, unwise or morally wrong, and may recommend to the authority or department concerned, its amendment, modification or repeal, still, as long as said law is in force, they must apply it and give it effect as decreed by the law-making body."[3]

To better achieve its purpose, attempt is made in this survey to give, where necessary and to the extent permitted by the time which had been given for its preparation, the background and status of each principle or doctrine applied in the decisions reviewed. Rulings or pronouncements of the Supreme Court which are believed to be erroneous,[4] as well as conflicting[5] and confusing[6] ones, are also critically analyzed and assessed with the hope that they may be re-examined or reconsidered and accordingly corrected, reconciled, or clarified. Needless to state, the Court owes it as a most imperative judicial duty, especially in criminal law, to correct itself where it has erred, to state a definite rule where there are conflicting or shifting ones, and to make clear what is unintelligible or ambiguous.

## ACT AND INTENT

*Intention though admitted not sufficient; act must be shown to have been committed —*

Except in the case of omissions punished by law,[7] for a crime to exist it is necessary first of all that there be an act committed.[8] The act must be an overt one, that is, it must consist in an outward physical movement or process manifesting an intention or design to produce or accomplish an unlawful result.[9] It is not enough that an intention to produce or do the harm exists, no

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[3] People v. Limaco, 88 Phil. 35. (1951).

[4] See topic on suspension of sentence of minors; also topics on motive and crimes committed through negligence, *infra*.

[5] See, e.g., topic on the Indeterminate Sentence Law, *infra*.

[6] See topics on complex crimes (second portion) and prosecution of crimes against chastity, *infra*.

[7] Revised Penal Code, Art. 3.

[8] People v. De Guzman, 31 Phil. 494 (1915).

[9] 1 CUELLO CALON, DERECHO PENAL (10th ed.) 275 (1951); Dissent, Felix J., People v. Somera, CA, 52 O.G. 3973 (1956); People v. Go Kay, CA, 54 O.G. 2225 (1958).

matter how evil or outrageous it may be, mere ideas or internal events being outside the domain of penal law.[10]

This primordial principle is fittingly illustrated in the case of *People v. Manobo*.[11] The defendants in this case were charged with robbery with triple homicide but they were convicted of triple homicide only because of inadequate proof of the robbery. The appellants extrajudicially admitted that they intended to rob the victims. But the Supreme Court, in upholding the trial court's decision, said that the intention to rob did not constitute actual robbery, since there was no evidence that anything was *taken* from the victims' house or from the trunks therein. And while there was testimony that four or five days prior to the commission of the crime Kee Kang, one of the victims, received a large amount of money, there was no proof that the money remained with him until the killings. The interval, the Court said, between the reception of the money and the killings was long enough for Kee Kang to send the money elsewhere. Therefore, not only was there no proof of the act of taking but it was further not adequately established that there was something to be taken.[12]

*Intent determined from overt acts and attendant circumstances*

Criminal intent — another essential element of a crime committed by deceit — is by nature a mental and internal process and thus cannot be determined, in the absence of an admission, except by inference from the external and overt acts accompanying it and from the circumstances attendant to such acts.[13]

This rule was again applied in two cases involving the question of whether the crime committed was frustrated[14] or attempted homicide,[15] or merely serious or less serious physical injuries. These cases are discussed under the topic on crimes against persons.

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[10] CUELLO CALON, *op. cit. supra*, note 9; 1 FERIA & GREGORIO, COMMENTS ON THE REVISED PENAL CODE 29 (1958).

[11] G.R. No. 19798, September 20, 1966.

[12] "(F)or the prosecution of the crime of theft or robbery, proof is necessary of the former existence, and subsequent loss, of the chattel, belonging to a third person, and the taking of the same against the will of the owner." People v. De Guzman, *supra*, note 8.

[13] Decision of the Supreme Court of Spain, December 12, 1876, cited in U.S. v. Reyes, 36 Phil. 904 (1917); U.S. v. Mendoza, 38 Phil. 691 (1918).

[14] People v. Raquinio, G.R. No. 16488, August 12, 1966.

[15] Mondragon v. People, G.R. No. 17666, June 30, 1966.

## MOTIVE

*Importance of Motive*

The place of motive in criminal law has not been well appreciated. It is common to find, in decisions[16] and in commentaries,[17] the statement that motive, as distinguished from criminal intent, is not — two commentators say, *never*[18] — an essential element of a crime, and hence need not be proven for purposes of conviction — a mere matter of procedure. These authorities would limit its importance to cases where there is doubt regarding the identity of the accused.

These assertions are, however, too sweeping to be accurate, and are not only inadequate but misleading. For one thing, in some cases it is not only important but absolutely necessary to establish a particular motive, as a matter of substance, i.e., as an element of the crime, and not merely to meet the procedural requirement of proof beyond reasonable doubt. Such is the case with the crime of libel or slander where the defamatory imputation is privileged in character.[19] In this instance, it is an indispensable requisite for conviction that the imputation was made with malice or bad motives, and not justifiable ones.[20] The same thing is true of the crime of malicious mischief,[21] to establish which it is essential to show that the wilful damaging of another's property was done out of hate, revenge or other evil motive.[22] Indeed, it may be said in such cases that motive and criminal intent are indistinguishable from the other.

Motive is also essential in determining what qualification should be given to a criminal act in certain cases. Thus, in a prosecution for murder, homicide, robbery or kidnapping committed on the occasion of an uprising, a showing that the act was done for

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[16] E.g., U.S. v. McMann, 4 Phil. 561 (1905); U.S. v. Balmori, 18 Phil. 578 (1911); People v. Zamora, 59 Phil. 568 (1934); People v. Ragsac, 61 Phil. 146 (1935); People v. Ramponit, 62 Phil. 284 (1935); People v. Cagganan, 94 Phil. (1953); People v. Echavez, CA-G.R. No. 219-R, December 14, 1948; People v. Santajo, CA- G.R. No. 17732-R, July 16, 1957.

[17] E.g., 1 WHARTON'S CRIMINAL LAW 210 *et seq* (1932); 1 FRANCISCO, THE REVISED PENAL CODE 38 (1954); 1 PADILLA, CRIMINAL LAW: REVISED PENAL CODE ANNOTATED 41 (1964).

[18] FRANCISCO, *supra*, note 17; PADILLA, *supra*, note 17.

[19] Revised Penal Code, Art. 354.

[20] U.S. v. Bustos, 37 Phil. 731, 743 (1918): "The onus of proving malice then lies on the plaintiff. The plaintiff must bring home to the defendant the existence of malice *as the true motive* of his conduct." (Italics supplied). See also Lim Chu Sing v. Su Tiong Giu, 76 Phil. 669 (1946); People v. De La Vega-Cayetano, CA, 52 O.G. 240; People v. Cantos, CA, 51 O.G. 2995.

[21] Revised Penal Code, Arts. 327-331.

[22] People v. Gerale, 4 Phil. 218 (1905); People v. Tayucon, CA, 55 O.G. 4848; People v. Alvaran, CA-G.R. No. 17765-R, January 15, 1958.

personal motive, and not in furtherance of a political movement or purpose, is of prime importance. Proof of one or the other motive will determine whether the act committed constitutes rebellion or a non-political crime like murder, etc.[23] In *People v. Taruc*,[24] this rule was applied to resolve the question of whether there was double jeopardy. The appellant therein, Cenon Bungay, claimed that since he had already been convicted of rebellion coupled with multiple murder, arson and robbery, he should be acquitted of the separate charge of murder which was subsequently filed against him and the other defendants. Taking this as a valid issue, the Supreme Court held that the evidence showed that the motive for the murder was that appellant and his companions thought that the victim, Father Limlingan, had abused some women under his religious influence, and not in furtherance of the Huk rebellion movement, as claimed by him.

Not only has motive been of special importance in determining which of two kinds of felonies was committed, but it has also been determinative of whether criminal liability should be imposed. Thus in many cases involving the application of the Amnesty Proclamation of President Roxas, extension of the benefits thereof depended on whether the crimes committed by those who claimed its benefits were motivated by personal motives or were in furtherance of the resistance movement.[25] And in at least two cases where the defense of lack of voluntariness of the act was made, the defendants were acquitted because of the absence of motive for the commission of the act.[26]

It has likewise been observed by one of the truly learned magistrates who had sat in our highest court, Justice Carson, that while it is not always indispensable for conviction that the motive behind the act be established, "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 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 a guilty person is of the greatest service in the exercise of this discretion."[27]

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[23] People v. Aquino and Cortes, G.R. No. 13789, June 30, 1960; People v. Hernandez, 52 O.G. 2946; People v. Yuzon, G.R. No. 9462, July 11, 1957.

[24] G.R. No. 18308, April 30, 1966.

[25] E.g., People v. Gajo, 84 Phil. 107 (1949); People v. Gempes, 83 Phil 267 (1949).

[26] People v. Basco, 44 Phil. 204 (1922); People v. Taneo, 58 Phil. 255 (1933).

[27] U.S. v. Carlos, 15 Phil. 47 (1910).

Motive is thus much more significant and varied in its application than we have been made to understand in many decisions and by some commentators. It was, therefore, a forward step from misleading generalizations and towards clarification when, in *People v. Villalba*, the Court held in a less generalized manner that "motive is unessential to conviction in *murder cases* when there is no doubt as to the identity of the culprit."[28]

The ruling that where the offender has admitted the deed, the failure to establish motive is completely inconsequential[29] was reiterated in *People v. Serdeña*.[30]

*Sufficient motive*

The question of what motive is sufficient to impel one to commit a particular offense is always relative, and no fixed norm of conduct can be said to be decisive of every imaginable case.[31] The following motives were held to be sufficient:

1. In a murder case, the appellant's desire to collect the ₱3,000 value of the victim's life insurance policy of which the appellant, who was the one paying the premiums, was the sole beneficiary.[32]

2. In an arson case, the appellant's desire to profit by his fire insurance policy.[33]

3. In another murder case, ill-will or resentment arising from an altercation between appellant and the victim which happened in the following manner: The deceased asked for ₱20 in payment of the pig appellant had beaten, and appellant offered to pay only ₱10 and pleaded for time to pay, but the deceased unceremoniously walked out. The Court said that appellant must have resented this action of the deceased for, after all, the incident developed because the pig of the latter strayed into appellant's place and ate his chicks.[34]

## CONSPIRACY

A conspiracy is said to exist when two or more persons come to an agreement concerning the commission of a felony and de-

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[28] G.R. No. 17243, August 23, 1966. The rule thus stated does not, of course, apply only to murder cases; but the point is that it should not be so formulated as to encompass all crimes.

[29] People v. Javier, G.R. No. 7841, December 14, 1956; People v. Ramirez, G.R. No. 10951, October 23, 1958.

[30] G.R. No. 18032, April 30, 1966.

[31] People v. Figueroa, 82 Phil. 559 (1949).

[32] People v. Orzame et al., G.R. No. 17773, May 19, 1966.

[33] People v. Lao Wan Sing, G.R No. 16379, December 17, 1966.

[34] People v. Villalba, G.R. No. 17243, August 23, 1966.

cide to commit it.[35] Its significance is that when it is established to have attended the commission of a crime, all acts of any one of the conspirators in the course or incidental to the execution of the crime are considered acts also of the others, and thus all the conspirators have the same criminal liability.[36] On the other hand, failure to prove it may result either in the acquittal of one or some of the accused[37] or their being assigned a different criminal responsibility.[38] It is because of these far-reaching consequences that, in prosecutions where there are two or more defendants, the existence or non-existence of a conspiracy is frequently a fiercely contested issue.

*Express or direct and prior agreement not necessary; may be inferred from circumstances surrounding commission*

For a time controversy in this respect concerned the meaning of the term "agreement" in the definition of conspiracy. This has, however, become settled and the rule is to the effect that while the law speaks of an "agreement," the agreement need not be in writing or expressly manifested.[39] In other words, it is not necessary that the parties, for an appreciable time prior to the commission of the crime, had actually come together and agreed in express terms to enter into and pursue a common design.[40] It is enough that, at the time the offense was committed, the participants had the same purpose and were united in its execution, as may be inferred from the surrounding circumstances.[41]

Despite the fact that these rulings have attained the status of a dogma, the defense in *People v. Pedro et al.*[42] made capital of the fact that there was no evidence of an agreement to commit the crime in assailing the trial court's verdict finding the four defendants therein equally guilty of the crime of robbery with homicide and frustrated homicide and sentencing them to suffer, among others, the supreme penalty of death. The evidence showed that only one of the defendants fired the shots that inflicted the wounds resulting in the death of one of the victims

[35] Revised Penal Code, Art. 8, second paragraph.
[36] People v. Patricio, 79 Phil. 227 (1947); People v. Danan, 46 O.G. 4840 (1949); People v. Santos, 46 O.G. 6085 (1949); People v. Bersamin, G.R. No. 3097, March 5, 1951; People v. Upao Moro, G.R. No. 6771, May 28, 1957; People v. Abrina, 54 O.G. 4958 (1957).
[37] People v. Castillo et al., G.R. No. 19238, July 26, 1966.
[38] People v. Halili et al., G.R. No. 14044, August 5, 1966.
[39] People v. Ging Sam, G.R. No. 4287, December 29, 1953.
[40] People v. Carbonel, 48 Phil. 868 (1926); People v. Ging Sam, *supra*.
[41] People v. Binasing, 53 O.G. 5208 (1956); People v. Garduque, G.R. No. 10133, July 31, 1958.
[42] G.R. No. 18997, January 31, 1966.

and almost causing the death of another. The other three, who were armed with guns as well, stood at both sides of the copra-loaded truck which they held up and demanded and received from Agapito Tan, the buyer of the copra, ₱1,800.00 in cash, his Bulova wrist watch, record books, and portfolio. Rejecting the defense's contention, the Supreme Court said that these facts clearly manifested a common purpose or design as well as concerted action on the part of the appellants. Conspiracy was, therefore, sufficiently established, even if, as in fact, there was no express or direct agreement among them to perpetrate the act.

*Evidence of Conspiracy*

With a ruling so well established, it would perhaps be avoiding futility for lawyers to confine their arguments on whether under the circumstances surrounding the commission of a particular crime, conspiracy may be inferred. It is, therefore, important to know what facts or sets of facts or circumstances have been held to indicate or negative the existence of a conspiracy.

In *People v. Reyes*,[43] the following evidence was held to show clearly that all the five appellants had conspired to commit the murder they were convicted of, thus rendering of no consequence the fact that not all the wounds inflicted upon the deceased were fatal, to wit: that they all used bladed weapons and attacked the deceased unexpectedly, one after the other, and that they were not only relatives amongst themselves but members of a local group known under the name of Seven Lucky Gang.

In *People v. Akiran*[44] — a case of kidnapping to extort ransom — it was urged by the four appellants that there was no conspiracy because only one of them, Jarang Askali, was active while the others remained passive and silent and, furthermore, because at the time the money was given to Askali, of the other kidnappers, only Jammang Dahim (not an appellant) was present. This argument was junked by the Supreme Court in the face of the following facts: that, heavily armed, all the kidnappers waited for the truck of the kidnapped victim, Isirani, and stopped it when it came; and that the others fully concurred in Askali's criminal design when he demanded ₱1,600 for Isirani's release and affirmed their assent when they escorted Isirani to the abaca plantation where he was confined. Thus, the Court held, even if they went home afterwards or did not get part of the money,

[43] G.R. No. 18892, May 30, 1966.
[44] G.R. No. 18760, September 29, 1966.

they had fully and directly cooperated and done their part so that Askali's resolution would be carried out.

*Code's provision on conspiracy applicable to illegal possession of firearms under the Revised Administrative Code*

The defendants in *People v. Fajardo*[45] moved to quash the information charging them with having illegally possessed, in conspiracy, a "paltik" on the ground, among others, that "two persons cannot be held responsible for the illegal possession of one (1) Paltik as it cannot be actually possessed by both of them at the same time, it being well-settled that the rule of conspiracy in the Revised Penal Code is not applicable to violations of any provisions of the Revised Administrative Code." Hence, they contended, the facts charged did not constitute an offense. The trial court found the motion meritorious, and so the prosecution appealed. The Supreme Court reversed the lower court's order but did so in a manner which did not deal squarely with the issue of whether the provision on conspiracy in the Revised Penal Code applies to illegal possession of firearms. Nevertheless, it made the statement that "since the information charged both appellees with having conspired and helped each other in possessing the firearm, both could have been convicted of that crime, even if only one was in actual possession of the firearm." This in effect seems to amount to a holding that Article 8 of the Revised Penal Code applies to illegal possession of firearms.

## SELF-DEFENSE

*Self-defense claim refuted by location of wounds*

The defendant in *People v. Dadis,*[46] a member of the police force of Lagonoy, Camarines Sur, was ordered by his chief to go to barrio Baliwag to disarm Alfredo Estrelles, who had threatend to shoot one Pedro Rivero. Defendant went to Rivero's house in said barrio and inquired where Estrelles could be found. Rivero told him that Estrelles was not in his house, a few meters away, but that he probably would show up later. Defendant then decided to patrol the vicinity. At about 8:00 p.m., Estrelles showed up. According to the prosecution, as Estrelles was heading towards his house, Dadis, who was standing beside a coconut tree nearby, said, "halt," and then cocked his gun; Estrelles became scared thereby and so begun to run away. Dadis then fired his

[45] G.R. No. 18257, June 30, 1966.
[46] G.R. No. 21270, November 22, 1966.

rifle at Estrelles, inflicting on the latter two gunshot wounds which caused his death. Defendant claimed that at that time Estrelles was coming towards him, so he (Dadis) took cover behind a coconut tree and twice bade the former to halt; that Estrelles ignored these warnings and advanced slowly towards Dadis, looking intently at him; that this induced Dadis to believe that Estrelles intended to fight, so Dadis warned him again and fired into the air, whereupon Estrelles placed his right hand on the left side of his waist, as if to draw a gun therefrom, because of which Dadis fired, aiming at the other's legs.

In rejecting Dadis' theory and sustaining that of the prosecution, the Supreme Court took into account, not only the testimony of one Zamudio who was then walking a few paces behind Estrelles, but also the location of the wounds found in the body of the victim. One wound was on the *left side* of his body, at about 15 centimeters below the left axila; the other was at the *right side* of the middle part of his back. The prosecution urged that the latter (the wound on the back) was the entry wound. But the Court said that even if the bullet had entered the victim's body through its *left side,* under the axila (the location of the other wound), this fact shows that Estrelles was not advancing towards defendant when he was shot, for if defendant's claim were true, the entry wound would have been on the *anterior* part of the deceased's body.

The position of the stab wounds in the victim's body was also used by the Court in discrediting the testimony of one of the accused in *People v. Reyes et. al.*,[47] offered to support his claim of self-defense, that he fought the deceased face to face. One wound was on the right side of the back just below the right shoulder; another was on the left side of the body near the back of the waist.

## MITIGATING CIRCUMSTANCES

### 1. *Minority*

In two cases, the Supreme Court found erroneous the failure of the trial courts concerned to take into account the minority of some of the defendants. In one of these cases, *People v. Pedro et. al.*[48] (robbery with homicide), two of the four accused were aged 16 and 15, respectively, "at the time of the *trial.*" In the

[47] *Supra,* note 43.
[48] *Supra,* note 42.

other, *People v. Juan*[49] (murder), the appellant was only 14 years, 8 months, and 9 days old "at the time of the commission of the *offense*". Because of the privileged nature of this mitigating circumstance, the Court, in both cases, modified the lower courts' decisions by reducing by one degree the penalties imposed as to these defendants, despite the concurrence of several aggravating circumstances.

2. *Plea of guilty*

Upon arraignment, the appellant in *People v. Coronel*[50] pleaded not guilty, and when the prosecution rested its case, he moved to dismiss on the ground that the evidence presented showed that the crime committed was not robbery, as charged, but rebellion. His motion was denied. When the hearing was resumed, after several postponements for the presentation of his evidence had been granted upon his motion, he voluntarily entered a plea of guilty, at the same time invoking the mercy of the court for a lighter penalty. Did this plea constitute a mitigating circumstance? The Supreme Court said that it may not be so considered under the law. However, the Court recognized this admission of guilt as indicating appellant's submission to the law and a moral disposition on his part to reform. Accordingly, the Court took it into account, together with another factor, in imposing upon appellant the penalty of life imprisonment, instead of death.

3. *Voluntary surrender*

To entitle an offender to the benefit of this circumstance, his surrender must have been spontaneous, indicating his intention to surrender unconditionally to the authorities, i.e., to a person in authority or his agents, "either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture."[51]

*Not voluntary*

Surrender was not considered voluntary:

1. Where the accused went to see the chief of police, not for the purpose of surrendering but because the latter had called for them for reasons they did not know.[52]

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[49] G.R. No. 11077, August 23, 1966.
[50] G.R. No. 19091, June 30, 1966.
[51] People v. Sakam, 61 Phil. 27 (1934); People v. Honrada, 62 Phil. 112 (1935); People v. Catacutan, 64 Phil. 107 (1937), and others. See 1 AQUINO, REVISED PENAL CODE 255-256 (1961).
[52] People v. Agustin et al., G.R. No. 18368, March 31, 1966.

2. Where the appellant gave up after he was surrounded by the constabulary and police forces, when he had no alternative except to surrender.[53]

*Voluntary*

The element of voluntariness was found to exist in the following cases:

1. *People v. Quintab,*[54] where the accused, a prisoner, had ran for about ten meters from the scene of the crime when he met the provincial warden, and thereupon surrendered to the latter the *flamenco* with which he stabbed the victim, saying: "Sir, I have stabbed somebody."

2. *People v. Secapuri et al.,*[55] where the appellants, on their way to Iloilo City, met some PC soldiers who had been sent to pick them up, and they gave themselves up to the latter, who brought them to Miagao town for a brief interrogation.

3. *People v. Casalme,*[56] where the defendant voluntarily surrendered, first to the Justice of the Peace, with whom he posted a bond, and then to the Constabulary headquarters of the province, without the order of arrest issued against him being ever served.

4. *People v. Coronel,*[57] where the appellant surrendered to Col. Molina at Camp Murphy after more than three years from the commission of the crime wherein he was a co-principal.

*Not proof of innocence*

In the *Secapuri* case,[58] it was argued for the appellants, in support of their plea of innocence, that if they were indeed the perpetrators of the crime, they would not have heeded the invitation of the PC soldiers to come over to the headquarters for investigation, but would have fled as the other accused did. It was insisted that they were afforded every opportunity to escape which they disdained precisely because they were innocent. Answering this argument, the Supreme Court said that the appellants' voluntary surrender could be appreciated only as a mitigating circumstance, and not as a conclusive indication of their innocence. "The wilful and free submission to authorities," the Court

[53] People v. Sigayan et al., G.R. Nos. 18523-26, April 30, 1966.
[54] G.R. No. 21417, January 31, 1966.
[55] G.R. Nos. 17518-19, February 28, 1966.
[56] G.R. No. 18033, July 26, 1966.
[57] *Supra,* note 50.
[58] *Supra,* note 55.

observed, "is not irreconcilable with the fact of guilt, and it is precisely for this reason that the criminal code assigns to it the value of a mitigating circumstance."

4. *Similar or analoguous circumstances*

*Extreme poverty*

While extreme poverty has been held to mitigate criminal liability in a crime against property, such as theft,[59] it was held for the first time in *People v. Agustin et al.*[60] that it may not be given that effect in a crime of violence, like murder.

*Youth*

In *People v. Develos et al.*,[61] the appellant was only 22 years old when he committed with his co-defendant the capital crime of robbery with homicide. The Court said that, "considering the youth of the appellant," it could not reach the necessary number of votes for the imposition of the death penalty. Consequently, it imposed instead the penalty of *reclusion perpetua*, despite the fact there were four aggravating circumstances and no mitigating circumstance was present.

## AGGRAVATING CIRCUMSTANCES

1. *Dwelling of the offended party*

This circumstance was taken into account against the accused in *People v. Sina-on*,[62] a case of robbery with homicide and physical injuries; in *People v. Manobo and Manobo*,[63] a triple murder case; and in *People v. Gagui*,[64] where the offense was robbery with rape.

2. *Abuse of confidence or obvious ungratefulness*

There is both abuse of confidence and obvious ungratefulness under paragraph 4, Article 14 of the Revised Penal Code when, as in *People v. Develos*,[65] the perpetrator of the offense of robbery with homicide was an employee of the victim, living with him in the same dwelling.

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[59] People v. Macbul, 74 Phil. 436 (1943).
[60] *Supra*, note 52.
[61] G.R. No. 18866, January 31, 1966.
[62] G.R. No. 15631, May 27, 1966.
[63] *Supra*, note 11.
[64] G.R. No. 20200, October 28, 1966.
[65] *Supra*, note 61.

3. *Nighttime*

As reiterated and again applied in *People v. Sina-on*[66] and in *People v. Gagui*,[67] nighttime is aggravating where it is purposely sought to facilitate the commission of the crime or to insure impunity because it prevents recognition of the perpetrators or enables them to escape more readily.[68]

Even so — or, it may be said, precisely because of this — where treachery is present, nighttime is generally considered inherent and absorbed in the former, and so may not, even if concurrent and especially sought in committing the crime, be appreciated separately. In such a case it forms part of the peculiar treacherous means and manner adopted to insure the commission of the offense.[69] This doctrine was applied in *People v. Sigayan*,[70] in *People v. Manobo*,[71] and in *People v De Gracia*.[72]

There are cases, however, where nighttime may be taken as aggravating even if treachery is coexistent, as long as the one is separable from or independent of the other.[73] Thus, as the case was in *People v. Berdida*,[74] where the hands of the victims were tied at the time they were beaten, the circumstance of nighttime is not absorbed in treachery. For, in this instance, it can be perceived distinctly therefrom. since the treachery rests on an independent factual basis.

4. *Uninhabited place*

This circumstance was found present in *People v. Pedro et al.*,[75] where the scene of the crime (robbery with homicide and frustrated homicide) was 4 or 5 kilometers from the national highway and around the place there were merely uninhabited small huts for drying copra during rainy days.

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[66] *Supra*, note 62.

[67] *Supra*, note 64.

[68] People v. Billedo, 32 Phil. 574 (1915); People v. Perez, 32 Phil. 163 (1915); People v. Alcala, 46 Phil. 739 (1924); People v. Matbagon, 60 Phil. 887 (1934), and many others.

[69] People v. Empeinado, 9 Phil. 613 (1908); People v. Buncad, 25 Phil 530 (1913); People v. Balagtas, 68 Phil. 675 (1939); People v. Pardo, 79 Phil. 568 (1947); People v. Alfaro, 83 Phil. 85 (1949).

[70] *Supra*, note 53.

[71] *Supra*, note 11.

[72] G.R. No. 21419, September 29, 1966.

[73] People v. Salgado, 11 Phil. 56 (1908); People v. Bredejo, 21 Phil. 23 (1911); People v. Perez, 32 Phil. 163 (1915); People v. John Doe, G.R. No. 2463, March 31, 1950.

[74] G.R. No. 20183, June 30, 1966.

[75] *Supra*, note 42.

In *People v. De Gracia,*[76] it was held not to exist, because there was a house occupied by two people only a few meters from the scene of the murder.

5. *Committed by a band*

This circumstance is present when more than three armed men have acted together in the commission of an offense.

Illustrations: *People v. Pedro*[77] and *People v. Agustin.*[78]

6. *On the occasion of a conflagration*

In *People v. Lao Wan Sing,*[79] the appellant set fire on his establishment as the fire which broke earlier in the neighborhood spread out towards his place, and while the people were going about in confusion as a result of the fire. Appellant took advantage of the situation to make it appear that the fire in his place was caused by the spread of the earlier fire. He was found guilty of arson with the aggravating circumstance of taking advantage of the confusion occasioned by another fire.

7. *Price or reward*

This circumstance was considered present in *People v. Salvacion*[80] because the appellant hired the killers of his father-in-law.

8. *Evident premeditation*

For this circumstance to be taken into consideration, it must be shown clearly that the offender had deliberately planned to commit the offense and that he had tenaciously and persistently clung to his plan, notwithstanding ample opportunity or sufficient time on his part to reconsider and overcome his determination, if he had desired, after meditation and reflection.[81] In *People v. Berdida et al.*[82] the appellants argued that the lower court improperly appreciated this circumstance against them. They claimed that the premeditation, if any, was not evident, for lack of sufficient lapse of time between the execution of the offense and a previous showing of intent to commit it. This contention was held to be negated by the evidence. It was clear therefrom that (1) the victims were told at the start, when they were taken captives, that they were the ones who stabbed and killed one

[76] *Supra,* note 72.
[77] *Supra,* note 42.
[78] *Supra,* note 52.
[79] G.R. No. 16379, December 17, 1966.
[80] G.R. No. 20022, April 30, 1966.
[81] People v. Gonzales, 76 Phil. 473 (1946); People v. Carillo, 77 Phil. 572 (1946); People v. Custodio, G.R. No. 7442, October 24, 1955; People v. Mendoza, G.R. No. 7030, January 31, 1957.
[82] *Supra,* note 74.

Pabling and for that reason they were to go with the appellants; (2) the victims were taken to a spot where they were ordered to dig their graves; (3) the appellants were previously armed with deadly weapons, and their assault was a concerted and group action; and (4) the victims were apprehended at about 10:00 o'clock in the evening and the crime was consummated at about 1:00 o'clock early the following morning. The first three circumstances made evident the appellants' plan. As to the last circumstance, the Court stated that sufficient lapse of time in the concept of evident premeditation is not simply a matter of the precise number of hours, but of the reasonable opportunity, under the situation and circumstances, to ponder and reflect upon the consequences. Under the circumstances, the lapse of three hours from the apprehension of the victims to the execution of the crime afforded such opportunity to the appellants.

In *People v. Quintab*,[83] the Court deduced the existence of a plan constituting evident premeditation from the behavior of the appellant's two co-accused. Appellant Quintab and his co-accused, Prado and Diapante, were all prisoners at the provincial jail in Bacolod. The victim, Navarra, and his friend Berja, visitors thereat on the day of the incident, were conversing with two detainees regarding their bail bonds when suddenly appellant stabbed Navarra from behind. After the third stab, which Navarra was able to parry, Berja tried to help but appellant ran away, passing through Gate 2 of the jail. Berja wanted to overtake him, but, at the gate, Prado and Diapante, armed with knives, blocked the way. This fact, according to the Court, showed that the killing of Navarra was planned.

There is no evident premeditation, however, where the defendant, who is a police officer, had gone to the scene of the crime, by order of his superior, to disarm the victim. This was the ruling in the *Dadis* case.[84]

9. *Abuse of superior strength*

The rule that abuse of superior strength, like nocturnity, is absorbed in treachery where the last circumstance is present[85] was applied in the *Agustin*[86] and *De Gracia*[87] cases.

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[83] *Supra*, note 54.
[84] *Supra*, note 46.
[85] U.S. v. Macalinao, 4 Phil. 407 (1905); U.S. v. Estopia, 28 Phil. 97 (1914); People v. Tiongson, G.R. Nos. 9866-67, November 28, 1964.
[86] *Supra*, note 52.
[87] *Supra*, note 72

Abuse of superior strength was held to be present:

1. In the *Develos* case,[88] where, aside from the fact that appellant and his co-accused were two while the victim was alone, the latter was unarmed and defenseless.

2. In the *Sina-on* case,[89] where the three accused were armed with a carbine and two revolvers, while the four victims had no arms at all and one of them was a girl.

3. In the *Gagui* case,[90] where the accused were four and the victims-spouses were only two. The husband-victim was taken away from the house to a dike where he was asked for money, hit and stabbed. He was able to escape but the accused returned to the house where they took turns in raping the wife-victim, after which they looted the house.

10. *Treachery*

*Importance and special characteristics*

Treachery is one of the most important circumstances in crimes against persons. As already stated, where present it absorbs, if concurring, abuse of superior strength and, except in rare cases, nocturnity,[91] and for this reason is often decisive on whether a penalty should be imposed in its maximum or not. Then its nature is such that it is either qualifying or aggravating. As a qualifying circumstance it can raise a killing to the category of murder or a case of physical injuries to the level of an attempted or frustrated murder.[92] As such, it becomes an element of the crime which must be alleged in the information. Failure to allege it, however, does not prevent its being proved and, if proven, to be given the weight of a generic aggravating circumstance.[93] The reason for this rule, which is re-affirmed in the *Raquinio* case,[94] is that it is necessary to show the precise manner in which the offense actually charged was committed so that the court may be aided in assessing the penalty to be imposed. And because in such a case evidence of an aggravating circumstance is not intended to bring about a change in the nature of the crime averred, the accused may not object to such evidence as

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[88] *Supra*, note 61.
[89] *Supra*, note 62.
[90] *Supra*, note 64.
[91] See topics on nighttime and superior strength, *supra*.
[92] People v. Raquinio, *supra*, note 14, citing People v. Mercado, 51 Phil. 99 (1927); People v. Orongan, 58 Phil. 426 (1933); People v. Reyes, 61 Phil. 341 (1935); People v. Parana, 64 Phil. 331, 334; People v. Boyles et al., G.R. No. 15308, May 29, 1964.
[93] U.S. v. Campo, 23 Phil. 688 (1912); People v. Collado, 60 Phil. 610 (1934); People v. Domondon, 60 Phil. 729 (1934).
[94] *Supra*, note 92.

violating, for it does not violate, his constitutional right to be informed of the nature and cause of accusation against him.[95]

*When treachery present*

There is treachery, according to the Code, "when the offender commits any of the crimes against the person, 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."[96]

Pursuant to this definition, treachery was found to exist where: (1) the appellant suddenly struck the victim from behind without warning;[97] the accused suddenly and unexpectedly fired at their victims while the latter were riding on a truck on their way home from their farm;[98] the victims were attacked during the night with consummate surprise and suddenness while they were lying down inside their house to sleep;[99] the attack was suddenly launched by the accused from a hidden position;[100] the culprits, upon approaching the house they were going to rob, riddled it and the neighboring one with bullets, resulting in the death of five persons;[101] the appellant pulled out from a bag (which he told his companions contained bread) a Thompson sub-machine gun and with its handle immediately began hitting the victim several times on the right ear, face and back of the head while the victim was still sitting down;[102] the offenders tied the hands of the victims before killing one of them and seriously injuring the other;[103] the victim was fired upon from outside while he was standing with his back near the door of his house;[104] the victim was pursued by the two accused who attacked him with their bolos;[105] one of the culprits held the victim's left arm and another his right arm, after which a third stabbed him in the abdomen.[106]

*Does not connote element of surprise alone*

On the morning of the day before the incident in the *Casalme* case,[107] the victim, Veras, gave the defendant a fist blow on the

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[95] *Id.;* Phil. Constitution, Article III, Sec. 1(17); Revised Rules of Court, Rule 115, Sec. 1(c).
[96] Revised Penal Code. Art. 14, paragraph 16.
[97] People v. Develos, *supra,* note 61.; People v. Quintab, *supra* note 54.
[98] People v. Pedro, *supra,* note 42.
[99] People v. Secapuri, *supra,* note 55.
[100] People v. Agustin, *supra,* note 52.
[101] People v. Sigayan, *supra,* note 53.
[102] People v. Orzame, *supra,* note 32.
[103] People v. Berdida, *supra,* note 74.
[104] People v. Li Bun Juan, *supra,* note 49.
[105] People v. Genila, G.R. No. 23681, September 3, 1966.
[106] People v. De Gracia, *supra,* note 72.
[107] *Supra,* note 56.

left cheek, whereupon the latter withdrew and ran to the house of a certain Meneses, at the same time shouting to Veras, "Magbabayad ka rin." Veras claimed that Casalme had called him "sipsip" and spat on his face. At about seven in the evening of the next day, Veras was walking home on the barrio road where there were two stores, one near the other, on the roadside, both of which were well illuminated. As Veras reached a spot fronting the space between the two stores he encountered Casalme who had just come out of his sister's house nearby. Casalme uttered two words — "panahon na" — aimed his pistol at Veras and fired five times in quick succession. Veras could only say "huwag" before the first shot and soon thereafter fell on the ground with three wounds, one of which was fatal. Convicted of murder qualified by treachery, Casalme contended on appeal that since the deceased had been threatened since the day before the shooting, when Casalme said "Magbabayad ka rin," he (the deceased) was not caught by surprise at all. Dismissing this argument, the Court said that treachery does not connote the element of surprise alone, but exists when the aggressor has adopted a mode or means of attack tending directly to insure or facilitate the commission of the offense without risk to himself arising from the defense or retaliation which the offended party might put up. The Court said that when the appellant accosted his victim, who could have no idea as to just how the threat to him might be carried out, and without warning shot him five times, nothing could possibly have been done by the latter to defend himself.

This principle was also applied in *People v. Bolinas*.[108] The widow of the victim in this case filed a mandamus proceeding against the provincial fiscal of Iloilo and his assistant because the latter refused to amend the information for homicide, which they filed in connection with her husband's death, to one for murder. The fiscals moved to dismiss, contending that, from the affidavits of the witnesses for the government, there was no treachery attending the stabbing and killing of the victim. According to said affidavits, early in the evening when the incident happened the accused and one Castromayor had engaged in a fight wherein the accused was beaten. They were separated by the deceased, Sedesias, who afterwards left with Castromayor. At about 9:30, while Sedesias, Castromayor and two companions were on their way home, a speeding jeep came heading to their direction which caused Sedesias to shout to his companions "Get away from the road, there is a jeep!" The jeep veered towards Sedesias, bump-

[108] G.R. No. 22000, November 29, 1966.

ing and throwing him to the ground. Thereupon the accused got down from the jeep, struck the fallen man with something on the head and then stabbed him twice in the neck. The fiscals claimed that since it was the deceased himself who warned his companions of the coming of the accused's jeep the attack cannot be considered sudden in the sense of being treacherous. The Supreme Court overruled the fiscals, stating that under the situation recited in the affidavits there can be no doubt that the victim was in a helpless condition when he received the injuries which caused his death. The fact that he had seen the coming of the vehicle does not justify the fiscals' conclusion that he could have prepared for the attack by the accused. On the other hand, the fact that he was bumped by the jeep is an indication that he was not anticipating that he would be bumped or hit by it. much less that while he was lying on the ground somebody would inflict injuries on him. Under the situation there could be no risk to the accused of defense or retaliation from the victim when he inflicted the fatal injuries. Hence, the act was committed with treachery.

*Treacherous manner must be purposely adopted*

It is not enough, however, that the means, method or form of execution tends directly and specially to facilitate the commission of the offense without danger to the offender arising from the defense that might be made by the offended party. It is further required, for this circumstance to be given weight, that such means, method or form was reflected upon or consciously adopted by the offender. Thus, treachery was ruled off in the *Dadis* case[109] because, according to the Court, although the victim, while running away, had no means of defending himself, Dadis did not purposely take advantage of this situation to kill the former without danger to himself. Dadis believed that the victim was armed with a gun. In other words, Dadis was "merely scared as well, perhaps, as somewhat trigger happy."

11. *Unusual cruelty (enseñamiento)*

This circumstance consists in the commission of acts which are unnecessary for the execution of the offense but are deliberately done to augment or prolong the victim's suffering.[110] It was found to exist in *People v. Develos*[111] where, after striking

[109] *Supra*, note 46.

[110] Revised Penal Code, Art. 14, par. 21; People v. Bersabal, 48 Phil. 439 (1925); People v. Dayug, 49 Phil. 432 (1926); People v. Mariquina, 84 Phil. 39 (1949).

[111] *Supra*, note 61.

the victim in the occipital region with a blunt instrument, the appellant strangulated him with a rope and set him on fire with alcohol poured all over the body while he (the victim) was still alive. It was established that the victim could have died by the impact of the blow alone, even without burning and strangulating him.

12. *Outraging or scoffing the victim's corpse*

This circumstance qualifies the killing to murder,[112] but in *People v. Orzame*[113] it was only appreciated as an ordinary aggravating circumstance because of the presence of another qualifying circumstance.[114] In that case, it consisted in the fact that, although already dead, the body of the deceased, aside from being stabbed on the face several times, was still subjected to further beatings on the head with the Thompson sub-machine gun used to kill him, causing the brain to scatter.

## ALTERNATIVE CIRCUMSTANCES

Alternative circumstances are either aggravating or mitigating depending on the nature and effects of the crime and the other conditions attending its commission.[115] There are three alternative circumstances: (1) the relationship, (2) intoxication, and (3) the degree of instruction and education of the offender. Only the last two found application in 1966.

Intoxication is mitigating when the offender has committed the felony in a state of drunkenness, provided it is not habitual or subsequent to the plan to commit the felony; it is aggravating when it is habitual or intentional.[116] The appellants in *People v. De Gracia*[117] were under the influence of liquor when they accosted and stabbed the deceased, but because habituality was not established, it was considered as a mitigating circumstance. The Court, however, failed to consider whether the appellants' drunkenness was intentional, a relevant inquiry considering that it was clearly proven that at the time of the incident they were waiting for an intended victim other than the deceased.

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[112] Revised Penal Code, Art. 248, par. 6.
[113] *Supra*, note 32.
[114] People v. Li Bun Juan, *supra*, note 49.
[115] Revised Penal Code, Art. 15, first par.
[116] *Id.*, Art. 15, third par.
[117] *Supra*, note 72.

Except in crimes against property[118] and chastity,[119] lack of instruction is generally mitigating. On the other hand, high degree of instruction is aggravating when it is abused.[120] So that the benefit of the condition of lack of instruction may be accorded, it must be established that the offender was not only illiterate but that his illiteracy was coupled with such a low degree of intelligence that he did not fully realize the consequences of his criminal act.[121] This principle was applied by the Supreme Court in the *Agustin* case[122] in denying the appellants' plea that this circumstance be considered in their favor.

## PERSONS CRIMINALLY LIABLE

### 1. *Principal by inducement*

The principals in a crime are: (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and (3) those who cooperate in the commission of the offense by another act without which it would not have been accomplished.[123]

It is settled that, in order that a person may be regarded as a principal by inducement, his acts or words must have preceded the commission of the offense and must have been the direct and determining cause thereof[124] and intended for that purpose. The Supreme Court was called upon to apply this principle to the peculiar situation that arose in *People v. Castillo*.[125] In that case, the son of the appellant, Marincho, was slapped by Juan Vargas as a result of an altercation which arose between them because a cow of the former had gone astray and destroyed some plants of the latter. Unable to retaliate then, Marincho said: "You, Manong Juan, will have your own day." One afternoon, about three months afterwards, appellant, who was holding a gun, was talking face to face with Juan Vargas when Marincho came from behind and hacked the latter on the head. As Marincho was

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[118] People v. Melendrez, 59 Phil. 154 (1933); People v. De la Cruz, 77 Phil. 444 (1946).

[119] Molesa v. Director of Prisons, 59 Phil. 406; People v. Lopez, 58 O.G. 4280 (1960).

[120] People v. Roque, C.A, 40 O.G. 1710 (1941); No. 21102-R, September 29, 1959; REYES, THE REVISED PENAL CODE: CRIMINAL LAW 404, 408 (1965).

[121] People v. Ripas, 95 Phil. 63 (1954); People v. Gorospe, G.R. No. 10644, February 19, 1959; People v. Magpantay, G.R. No. 19133, November 27, 1964.

[122] *Supra*, note 52.

[123] Revised Penal Code, Art. 17.

[124] People v. Indanan, 24 Phil. 203 (1913); People v. Omine, 61 Phil. 609 (1935); People v. Lawas et al., G.R. Nos. 7618-20, June 30, 1955.

[125] *Supra*, note 37.

about to strike Vargas a second time, appellant said: "You kill him." Was appellant guilty of having induced the murder? Following the earlier case of *People v. Caimbre*,[126] the Court said that the words "You kill him" were uttered by appellant only after his son had already fatally boloed Vargas on the head. The alleged inducement was, therefore, no longer necessary to induce the son to commit the crime. Accordingly, appellant was acquitted.

2. *Accomplice*

An accomplice is one who, not being a conspirator and not having committed acts attributable to principals, cooperates in the execution of the offense by previous or simultaneous acts.[127] In the case of *People v. Halili*,[128] it was neither proven that the appellant had conspired with his co-accused nor that he had actually participated in the commission of the crime of robbery with homicide. Although for this reason he could not be considered a principal, he was, however, found guilty as an accomplice because, knowing the criminal intention of his co-accused to rob the house and store of the victim, he went there with them and, while the others went inside the store to rob and kill, he stayed and waited outside the house. By doing so, said the Court, appellant effectively supplied the criminals with material and moral aid.

## PENALTIES

1. *Effect of pardon by offended party*

A pardon by the offended party does not extinguish criminal liability, except in crimes against chastity where the pardon is made before the institution of criminal proceedings. However, civil liability with regard to the interest of the injured party is extinguished by his express waiver.[129]

In *Balite v. People*,[130] after the briefs had been filed and the case submitted for decision in the Supreme Court, the offended party submitted an affidavit wherein he stated that the prosecution of the petitioner "was brought about by a misunderstanding in good faith among friends"; that the petitioner's remarks were "uttered out of heat and passion engendered by a heated inter-

[126] G.R. No. 12087, December 29, 1960.
[127] Revised Penal Code, Art. 18 and Art. 8.
[128] *Supra*, note 38.
[129] Revised Penal Code, Arts. 23 and 344; People v. Infante, 57 Phil. 138 (1932).
[130] G.R. No. 21475, September 30, 1960.

change" between him and the petitioner; that he and the petitioner had "made up and reconciled"; and that "in conscience I hereby withdraw, condone, dismiss and waive any and all claims, civil, criminal or administrative, that I may have against Amancio Balite due to or by reason of the misunderstanding which brought about the filing of the said criminal case."

Applying the principles just stated, the Supreme Court refused to dismiss the case and affirmed the lower court's judgment convicting the petitioner of grave oral defamation. It, however, gave the offended party's affidavit the effect of having wiped out the petitioner's civil liability for the crime and accordingly deleted from the judgment the civil indemnity of ₱5,000.00 awarded by the lower court.

2. *Imposition of the death penalty*

The Code provides two exceptions to the rule that the death penalty shall be imposed in all cases in which it must be imposed under existing laws. The first is when the guilty person is more than 70 years old. The second is when, upon appeal or revision of the case by the Supreme Court, at least eight[131] justices are not unanimous in their voting as to the propriety of the imposition of the death penalty.[132]

A third exception has been added by the Supreme Court. This is the case where the most guilty has been sentenced only to life imprisonment or to a lower penalty[133] or where, as in the *Coronel* case,[134] not all those involved in the crime were sentenced to the extreme penalty of death.

The second exception — namely, the failure of the required number of justices to vote unanimously for the imposition of the death penalty — has in recent years been the most frequently applied. In 1966, only in four of the twelve cases which called

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[131] See note 2, *supra*.

[132] Commentators, like Padilla and Reyes, add the case of a minor below 18 years of age who, under Art. 68, par. 2, is entitled to a penalty next lower than that prescribed by law. But this is clearly not contemplated by Article 47 which refers to "cases in which (the death penalty) *must be imposed* under existing laws." Even without Article 47 the death penalty can never be imposed upon a minor.

[133] People v. John Doe et al., G.R. No. 2463, March 31, 1950: "It appears, however, from our consideration of the facts of this case, that the accused Lobiano was the mastermind and the most guilty, who, on his plea of guilty, was sentenced only to life imprisonment. *In line with the ruling laid by this Court in People v. Sakam* (67 *Phil.* 27), *we shall refrain from imposing the death penalty upon this appellant . . .*" (Italics supplied).

[134] *Supra*, note 50.

[135] People v. Pedro, *supra*, note 42; People v. Orzame, *supra*, note 32; People v. Berdida, *supra*, note 74; People v. Sigayan, *supra*, note 53.

for its imposition was the death penalty meted out.[135] In all the remaining eight cases,[136] the accused were sentenced to life imprisonment instead of death because of lack of the necessary number of votes for the imposition of the latter penalty. Yet in most of these latter cases, there were attendant at least two, three, or four aggravating circumstances showing the perversity of the accused, aside from the qualifying one, and no accompanying mitigating circumstances.[137]

3. *Complex crimes*

*Incriminatory machinations through unlawful arrest*

May there be a complex crime of incriminatory machinations through unlawful arrest? This was the question, the first of its kind, raised in *People v. Alagao*.[138]

The information in that case alleged that the accused policemen, "without reasonable ground therefor and for the purpose of delivering . . . Marcial Apolonio y Santos to the authorities, did then and there . . . feloniously arrest (him); that after (he) had been arrested in the manner aforestated, and while the latter was supposedly investigated by the said accused, the said accused did then and there place or commingle a marked ₱1.00 bill together with the money taken from said Marcial Apolonio . . ., supposedly given to the latter by one Emerita Calupas de Aresa, so that he (Marcial Apolonio . . .), then an employee of the Local Civil Registrar's Office of Manila, would appear to have performed an act not constituting a crime, in connection with performance of his . . . duties, which was to expedite the issuance of a birth certificate, thereby directly incriminating or imputing to said Marcial Apolonio y Santos the commission of the crime of bribery."

The accused maintained that the complex crime charged — incriminatory machinations through unlawful arrest — does not exist in law, hence the information was defective. The trial court dismissed the information, not for the reason urged by the accused, but on the ground that the acts of unlawful arrest and incriminatory machinations are two separate and independent acts because the alleged planting of the evidence took place while the victim was already under investigation, long after the consumma-

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[136] People v. Sampang, G.R. No. 15843, March 31, 1966; People v. Develos, *supra*, note 61; People v. Sina-on, *supra*, note 62; People v. Tania, G.R. No. 18514, April 30, 1966; People v. Agustin, *supra*, note 52; People v. Salvacion, G.R. No. 20022, April 30, 1966; People v. Manobo and Manobo, *supra*, note 11; People v. Akiran, *supra*, note 44.

[137] See comments, introductory portion of this survey, *supra*.

[138] G.R. No. 20721, April 30, 1966.

tion of the alleged unlawful arrest. The Supreme Court reversed the trial court's finding, stating that the information clearly conveys the idea that the unlawful arrest was resorted to as a necessary means to plant evidence in the person of the offended party and that there is nothing in the information to indicate that the investigation took place "long after" the arrest, which by the way is a matter of evidence. It sustained the Solicitor General's argument that the accused had to arrest the victim because it was only that way that they could with facility detain him and, more importantly, search his person or effects and, in the process, commingle therewith the marked peso bill.

It was, therefore, assumed (or held indirectly) by both the trial court and the Supreme Court that there can be a complex crime of incriminatory machinations through unlawful arrest.

*May slight physical injuries now be complexed with grave or less grave felonies arising from the same imprudent act?*

It had seemed to be a settled rule that slight physical injuries committed through reckless imprudence, being a light felony,[139] may not be complexed with grave or less felonies concurrently arising from the same imprudent act, and must therefore be prosecuted separately.[140] The case of *People v. Cano*,[141] however, *seems* to hold the contrary. One cannot be certain because of the evasive and oblique and, consequently, confusing manner in which the Supreme Court disposed of this question in this latest case on the matter. The trial court dismissed the information and ordered its amendment by "deleting therefrom all reference to slight physical injuries" on the ground that this felony cannot be complexed with the damage to property and serious and less serious physical injuries through reckless imprudence charged therein. But the high court ruled on the issue thus raised as follows:

(1) The trial court erred in finding that the information purports to complex slight physical injuries through reckless imprudence with the graver felonies because "it merely alleged that, thru reckless negligence of the defendant, the bus driven by him hit another bus causing upon some of the passengers serious physical injuries, upon others less serious physical injuries, and still upon others slight physical injuries, in addition to damage against property."

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[139] Rep. Act No. 1790, amending Article 365 of the Revised Penal Code.
[140] People v. Turla, 50 Phil. 1001 (1927); People v. Benitez, 73 Phil. 671 (1942).
[141] G.R. No. 19660, May 24, 1966.

(2) The trial court wrongly assumed that the information thereby charged two offenses — slight physical injuries through reckless imprudence and damage to property with serious and less serious physical injuries through reckless negligence — because there is only one offense, that of *reckless negligence.*[142]

(3) The trial court had jurisdiction to try the defendant for damage to property, serious or less serious physical injuries through reckless negligence, and should have reserved its resolution after the hearing on the merits. "It may not be amiss to add that the purpose of Article 48 x x x, in complexing several felonies resulting from a single act, or one which is a necessary means to commit another, is to *favor* the accused by prescribing the imposition of the penalty for the most serious crime, instead of the penalties for each one of the aforesaid crimes, which put together, may be graver than the penalty for the most serious offense."

(4) "From the point of view both of trial practices and justice, it is, to say the least, doubtful whether the prosecution should split the action against the defendant, by filing against him several informations, namely, one for damage to property and serious and less serious physical injuries, thru reckless imprudence, before the court of first instance, and another for slight physical injuries thru reckless negligence, before the justice of the peace or municipal court. x x x Such splitting of the action would work unnecessary inconvenience to the administration of justice in general and to the accused in particular, for it would require the presentation of substantially the same evidence before the two different courts, the municipal court and on appeal to the court of first instance, said evidence would still have to be introduced once more in the latter court."

The first ground for reversal impliedly recognizes, or is consistent with, the view that slight physical injuries through reckless negligence may not be complexed with any other offense. The second ground rules out the possibility of a complex crime because its burden is that, in the situation envisaged in the information, there is only one non-complex offense. The third implies that the light felony may be complexed if, after hearing on the merits, the result would be favorable to the accused. The fourth is consistent with either the theory of a single non-complex offense or that of a complex crime in which slight physical injuries through reckless imprudence may be one of the elements.

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[142] This view is criticized under the topic on criminal negligence, *infra.*

As to which of these different rules or theories is the controlling one, the Supreme Court did not state.[143]

4. *Indeterminate Sentence Law*

The Indeterminate Sentence Law excludes from its application "persons convicted of offenses punished with death penalty or life imprisonment."[144] The penalty provided by law for an offense may be *reclusion perpetua* or death or *reclusion perpetua* to death or *reclusion temporal* in its maximum period to death, but the penalty imposed in a case may, in view of the attendant circumstances, be lower than either death or life imprisonment. In instances like this, what should be the basis for applying or not applying the Indeterminate Sentence Law: is it the basic penalty *provided* by law or the penalty actually *imposed* by the court after considering all mitigating or aggravating circumstances?

The Supreme Court has not given a consistent answer to this question. It has swung in a pendulum between two conflicting rules. In a 1951 case, the Court extended the benefit of an indeterminate sentence to a minor convicted of murder, an offense punishable with *reclusion temporal* in its maximum period to death. The Court, therefore, made as basis the penalty actually imposed which, in view of the privileged mitigating circumstance of minority, was lower than life imprisonment.[145] But in a 1958 case likewise involving a minor convicted of murder, the Indeter-

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[143] The Court begged the question, therefore, when it remanded the case to the lower court "for trial on the merits and rendition of judgment that the facts proven and the applicable law may warrant." For, precisely, what is the applicable law? Does Article 48 apply or does it not? If, as implied in the Court's first ground for overruling the lower court, it does not but the allegations referring to slight physical injuries are retained in the information, what would be the effect of such allegations on a subsequent criminal action based thereon? May not such allegations constitute a defense grounded on pendency of another suit or double jeopardy? This observation may also be applied if the trial court follows the third theory that it should proceed trying the case and determine later whether or not to apply Article 48 with respect to the slight physical injuries, depending on whether such application would be favorable or not to the accused. If, pursuant to the Court's second theory, the offense is tried as a single non-complex offense, what penalty should be imposed under Article 365 of the Code, which fixes different penalties for different results or acts committed through imprudence? Going back to the third theory, if the trial court finds out after hearing on the merits that Article 48's application would work against the accused's favor: what is the effect of the allegations with reference to the slight physical injuries on the prescription of the offense? Should the prescriptive period be counted from the date of dismissal or from the occurrence of the negligent act? Lastly, if Article 48 is applied, pursuant to one alternative interpretation of the Court's fourth ground, does it mean that the words "grave or less grave felonies" in said article are inconsequential insofar as cases of this kind are concerned?

[144] Act No. 4225, Sec. 2.

[145] People v. Roque et al., G.R. No. 3513, September 29,1951.

minate Sentence Law was not applied, although the penalty actually imposed was only an imprisonment of 12 years and 1 day of *reclusion temporal.*[146]

In the 1966 case of *People v. Pedro,*[147] the Court swung back to the rule followed in *People v. Roque.*[148] It applied the Indeterminate Sentence Law to two of the appellants, who were minors, inspite of the fact that they were convicted of robbery with homicide, which is punishable with *reclusion perpetua* to death.[149]

## SUSPENSION OF SENTENCE OF MINORS

Article 80 provides for the suspension of sentence of a minor accused of a grave or less grave felony committed by him while under sixteen years of age and his commitment to the custody or care of a public or private, benevolent or charitable institution. But while the article clearly indicates that the law, as it presently stands, considers *the date of the commission of the offense* as determining the application of its provisions, the Supreme Court has ruled in several cases that the same are applicable only to offenders who are below sixteen years of age *both* at the time of the commission of the offense *and* at the date of the trial.[150] Despite its patent erroneousness, this ruling has become accepted without question and so, following it further, the Supreme Court held in *Brua v. Inting*[151] that, even if the defendant-petitioner was below sixteen at the time of the commission of the offense, he could no longer be granted the benefits of Article 80 because he was already 19 years and 5 months old when his petition claiming such benefits was decided by the (Supreme) Court.

That this ruling is a gross judicial error may be demonstrated by looking into its history and that of Article 80. The rule was first enunciated in the case of *People v. Estefa,*[152] which succeeding decisions have ever since cited as precedent. In that case, the Court applied Article 80 as originally enacted in 1930 and as it was when the Code took effect in 1932. The Court quoted the Spanish version thereof, to wit:

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[146] People v. Colman et al., G.R. Nos. 6652-6654, March 26, 1958.
[147] *Supra,* note 42.
[148] *Supra,* note 145.
[149] Revised Penal Code, Art. 295, par. 1. People v. Genilla, G.R. No. 23681, September 3, 1966, also seems to consider the penalty actually imposed as controlling.
[150] People v. Capistrano, 92 Phil. 125 (1952), citing People v. Estefa, 86 Phil. 104 (1950); People v. Garcia, 47 O.G. 4191 (1950); People v. Lingcuan, 93 Phil. 9 (1953).
[151] G.R. No. 19905, February 28, 1966.
[152] *Supra,* note 150.

"ART. *Suspension de la sentencia en caso de menores.* — Siempre que un menor de dieciocho años de uno u otro sexo, *fuere acusado de un delito,* el tribunal, previo el juicio correspondiente, en vez de dictar sentencia, suspendera toda actuacion y ordenara que dicho menor sea puesto bajo la custodia o cuidado de una institucion benefica o caritativa de caracter publico o privado, establecida de conformidad con la ley para el cuidado, correccion o educacion de niños huerfanos, sin hogar, defectuosos y delincuentes, o bajo la custodia o cuidado de alguna persona responsable en cualquier otro lugar, sujeto a la inspeccion general y supervision del Comisionado de Bienestar Publico..."[153]

This provision was, however, amended on December 7, 1933 by Act No. 4117 which inserted the phrase "at the date of the commission of a crime." This amendment has remained since then, except that on October 3, 1946 the age requirement was reduced by Republic No. 47 from "eighteen" to "sixteen". The crime committed in the Estefa case took place on September 17, 1946 (less than one month before the enactment of Republic Act No. 47) and the trial took place on August 19, 1947 (or almost a year after said Act took effect). The appellant was 17 years, eight months on the date of the offense but was more than eighteen at the time of trial. It may be granted, therefore, that the Court was correct in applying the age limit of eighteen because that was more favorable to the appellant, who committed the crime before the age limit was reduced to sixteen. But the Court was applying the wrong provision when it failed to take into account the amendment introduced in 1933 by Act No. 4117. It may be admitted that the Court was correct in its interpretation of the unamended provision of Article 80 which clearly made the date of accusation or trial the basis for the application of its provisions. As amended by Act No. 4117, however, the determining factor for its application is, by both letter and intention and as a matter of practical policy, the date of the commission of the offense regardless of the offender's age during the trial or at the time of his conviction as long as he is below twenty-one. This interpretation is reinforced by the portion of the Article providing that the commitment of the minor who is granted its benefits to the custody or care of a charitable

[153]Italics in the provision's text supplied. The English version was as follows: "ART. 80. *Suspension of sentence of minor delinquents.* — Whenever a minor under eighteen years of age of either sex, *be accused of a crime,* the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law for the care, correction, or education of orphaned, homeless, defective and delinquent children, or to the custody or care of any other responsible person in any other place subject to the visitation by the Public Welfare Commissioner..." (Italics in text of provision supplied).

institution, etc., shall be "until such minor shall have reached his majority or for such less period as the court may deem proper."[154]

When in succeeding cases the Court applied the article as thus amended but, by authority of the Estefa case, it declared that the article is applicable only to minors who are below sixteen years both at the time of the commission of the offense and at the date of the trial, the Court has in effect made the date of the trial the determining consideration. Based as it is upon the authority of a decision which had applied the wrong law, this ruling is not only manifestly contrary to the unequivocal meaning of the amendment and the reason behind it but defeats the purpose of the entire article as well. The insertion of "at the time of the commission of the offense" was obviously made in recognition of the actualities regarding our machinery of criminal justice. For one thing, it often takes time to apprehend an offender. Then, after he is apprehended, a preliminary investigation has to be conducted, a process which in itself often takes not only months but years. If the date of accusation (which means accusation in court) or of trial is made the basis for the application of the article, the result would be that, considering our processes of criminal justice, there will only be very few, if any, offenders who are a few months or even a year or more before they reach the age of sixteen who would not be benefited by its provisions. This is unjust because those who lose the benefits of the article in this manner do so for a cause or reason beyond their control. The absurdity of the Court's ruling may further be shown by an example. Suppose the offender commits the offense one day before he reaches the age limit? Does the Court expect the trial to be held on that day — an obviously impossible proposition? It is of common knowledge that a trial is not done only in a day; in this country, more often than not, it takes years to finish a trial. Does date of trial mean the entire duration of the trial? Or does it mean only its beginning or its end? Assuming that the trial takes place only in one day, suppose the offender was below sixteen on the day of the trial but the court, which must study the evidence as well as the applicable law, finds him guilty only after he has become sixteen? If, as seems obvious from the Court's ruling, this offender would be entitled to the application of Article 80, does he materially differ from the one who is tried on the day he has reached sixteen and is convicted after about the same length of time? And if an offender who was tried while under sixteen can continue enjoying

[154] Last portion, first paragraph, Art. 80.

the benefits of Article 80 even if he is already twenty years old, why should a seventeen-year old minor who was tried while already sixteen not be given a chance to prove that he can be reformed? The absurdity here is that, in the first case, the minor who has exhibited some difficulty to reform such that he remains in confinement in a correctional institution even if he has reached the age of twenty continues being extended the benefits of such confinement; but the seventeen-year old minor, who may not even prove as difficult to reform, aside from the fact that he is more tender in years and hence more susceptible to the bad influence of contact with hardened criminals, is immediately sent to jail.

And, precisely, herein lies the reason why the Court's ruling is likewise defeative of the purpose and philosophy behind Article 80, aside from being impractical and productive of absurdities. As the Court itself stated in the Estefa case, the primordial objective of the article is to prevent minors from being thrown into contact with hardened criminals who are confined in prison. Is not the Court laying aside this objective when, by its decisions, it would commit such minors to jail simply on the technical ground that they have reached the age of sixteen at the time they are tried, a ground that is not even warranted by the letter of the law?

It is indeed unfortunate that the Court did not choose to follow the direction impliedly suggested in what is probably a more enlightened decision[155] which it handed down before the Estefa case. In that case, the Court considered the fact that the appellant was between 15 and 16 when the crime was committed as the controlling factor. The Court clearly indicated that, were it not for the fact that the appellant was already 21 when his appeal was decided by the Court, it would have ordered his commitment to the custody of the proper institution provided in Article 80.

## PRESCRIPTION OF CRIMES

The prescriptive period for libel has been reduced from two years to one year by Republic Act No. 4661[156] which amended Article 90 of the Revised Penal Code for this purpose. The authors of the amendment justified[157] it on the ground that there exists a controversy on whether the civil action for the enforcement of civil liability arising from libel is still deemed instituted with the criminal action thereon if the latter action is filed after one year.

[155] People v. Celespara, 46 O.G. 2052 (1948).
[156] Approved June 18, 1966.
[157] See explanatory note, H. No. 1037.

The problem has allegedly arisen because under Article 1147 of the Civil Code the civil action for defamation prescribes in one year while, before the amendment of Article 90 of the Revised Penal Code, the criminal action would prescribe in two years. The remedy, according to the authors, is to reduce the prescriptive period for the criminal action so that it would be the same as that fixed for the civil action. They also stated that with this amendment "(n)ewspapers will not have to keep documents supporting their publications for an unnecessarily long period. Such documents, if kept through the years, would be too voluminous, expensive and a fire hazard."

Without saying more about the second justification than that, if a little bit ludicrous, it reveals the real reason and forces behind the amendment, the first one is more specious than real. If, before the amendment, the criminal action were filed after one year without an independent suit having been filed, then the latter action could no longer be deemed to be impliedly instituted with the criminal action because it had by then become extinct. The purpose of the criminal action is different from that of, and does not necessarily involve, much less revive, the civil action.

## CIVIL LIABILITY

The decision in the case of *Bantoto v. Bobis*,[158] penned by Justice J.B.L. Reyes, enunciates for the first time important rulings on the nature and extent of the subsidiary civil liability of masters or employers under Article 103 of the Revised Penal Code. In that case, the driver of appellant Vallejo's jeepney hit, while operating the vehicle, the three-year old daughter of the plaintiffs as a result of which the girl died. The driver was convicted of homicide through reckless imprudence and, aside from the penalty, was sentence to indemnify the girl's heirs (the plaintiffs) in the sum of ₱3,000.00. Subsequently, the plaintiffs instituted a civil suit against the driver and appellant Vallejo, pleading the foregoing facts and seeking to have the defendants declared solidarily liable for damages consisting of the ₱3,000.00 indemnity imposed upon the driver in the criminal case, plus moral and exemplary damages, attorney's fees, and costs. A motion to dismiss filed by him on the ground that the complaint did not aver that the driver was insolvent having been denied, appellant filed his answer stating as affirmative defenses, among others, that the complaint stated no cause of action against him and that his liability was only subsidiary. After trial, the lower court sentenced him to pay to

[158] G.R. No. 18966, November 22, 1966.

the plaintiffs civil indemnity in the sum of ₱3,000.00, plus ₱1,000.00 exemplary damages and ₱500.00 attorney's fees. Hence his appeal.

The first issue was whether the liability of appellant, as a master or employer within the meaning of Article 103, was predicated on the insolvency of the driver, so that he (appellant) could not be sued until that fact was proven. The Court answered in the negative saying that nothing in Article 103 indicates the insolvency of the servant or employee as a condition precedent. "In truth," the Court explained further, "such insolvency is required only when the liability of the master is being made effective by execution levy, but not for the rendition of judgment against the master. The subsidiary character of the employer's responsibility merely imports that the latter's property is not to be seized without first exhausting that of the servant. And by analogy to a regular guarantor (who is the prototype of persons subsidiarily responsible), the master may not demand prior exhaustion of the servant's (principal obligor's) properties if he can not 'point out to the creditor available property of the debtor within Philippine territory, sufficient to cover the amount of the debt' . . . This rule is logical, for as between the offended party (as creditor) and the culprit's master or employer, it is the latter who is in a better position to determine the resources and solvency of the servant or employee." At this point the Court clarified its decision in *Marquez v. Castillo*[159] relied upon by appellant wherein it was stated that the master's liability under Article 103 "arises and takes place only when the servant . . . commits a punishable criminal act while in the actual performance of his ordinary duties . . ., *and he is insolvent thereby rendering him incapable of satisfying by himself his own civil liability.*' This passage, according to the Court, was a mere obiter, the *ratio decidendi* in that case being that the accident involved therein, unlike in the present case, did not occur in the performance of the driver's assigned duties.

The second substantive issue concerned the propriety of the lower court's award of exemplary damages. The Court held that, since no such damages were imposed on the driver, the award was improper for the master can not incur greater civil liability than his convicted employee, any more than a guarantor can be held responsible for more than the principal debtor.

The high Court, however, agreed with the lower court with respect the award of attorney's fees. It reasoned out that ap-

[159] 68 Phil. 571 (1939).

pellant had reason to know that the driver could not pay the ₱3,000.00 indemnity imposed in the criminal case because if he could, or if he had money or leviable property worth that much, the driver would be driving his own jeepney instead of another's. Furthermore, the Civil Code provides for the award of such fees in separate civil actions for the recovery of civil liability arising from crime.

What if after conviction the employee is released by a compromise agreement between him and the victim's heirs? It was held in *De la Cruz v. Berroya*[160] that in such a case the employers are necessarily released even if they were not named in the instrument of release. The release of the party primarily liable of necessity means likewise the release of those who might be subsidiarily liable.

## SPECIFIC CRIMES UNDER THE CODE

### A. Crimes Against The Fundamental Laws

#### 1. *Arbitrary detention*

One of the ways by which arbitrary detention may be committed is by delaying or failure on the part of the public officer or employee to deliver to the judicial authorities a person detained by him for some legal ground[161] without the aid of an arrest warrant.[162] Delay or failure to deliver in this instance consists in not filing, within the time fixed by law, an accusation or charge against the person detained with the proper court or judge.[163] In the case of murder or other offenses punishable by afflictive or capital penalties, or their equivalent, the charge must be filed within 18 hours from arrest.

The petitioner in *Medina v. Orozco,*[164] was arrested at 12:00 noon on November 7, 1965 and the information against him for murder was actually filed on November 10, 1965 at 3:40 p.m. Between these two events was a lapse of over 72 hours. The question was: Was petitioner arbitrarily detained? Deciding in the negative, the Supreme Court took into account the fact that November 7 (the day of arrest) was a Sunday; November 8 was declared a national holiday; and November 9 (election day) was also an official holiday. During these three days, the Court

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160 G.R. No. 21950, December 28, 1966.
161 Revised Penal Code, Art. 125.
162 2 Reyes, The Revised Penal Code: Criminal Law 49 (1965).
163 Sayo et al., v. Chief of Police of Manila et al., 80 Phil. 859 (1948).
164 G.R. No. 26723, December 22, 1966.

said, it was not easy for a fiscal to look for his clerk and stenographer, draft the information and search for the judge to have him act thereon, and get the clerk of court to open the court house, docket the case and have the order of commitment prepared. The Court considered these circumstances sufficient to deter it from finding that the petitioner was arbitrarily detained, since he was brought to court on the very first office day following his arrest.[165]

In *People v. Manobo and Manobo*,[166] a case of robbery with triple homicide, the Court called the attention of the authorities concerned to the testimony of the accused and their witnesses to the effect that they were detained for several days for purposes of investigation, which, it said, is in violation of Article 125. It suggested a thorough investigation of the matter, so that if the charge is substantiated the persons responsible may undergo condign punishment.

## B. CRIMES AGAINST PUBLIC ORDER

### 1. *Rebellion*

Ruling on the contention of the appellant in *People v. Coronel et al.*[167] that he should have been charged with rebellion, instead of robbery with homicide, because the latter crime was committed in furtherance of the rebellion movement of the Hukbalahap organization, the Supreme Court adopted the lower court's pronouncement that the robbing and killing of Judge Basilio Bautista and his son could not be considered essential elements or ingredients of the crime of rebellion, robbing having been the main crime committed in the case. This ruling is consistent with previous holdings that if the killing or robbing is done for personal motive, not for a political one, it is not deemed absorbed in rebellion and hence must be punished separately.[168] To the same effect is the holding in *People v. Taruc et al.*[169]

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[165] The Court cited U.S. v. Vicentillo, 19 Phil. 118 (1911); Sayo et al. v. Chief of Police of Manila et al., *supra*, note 163; People v. Acacio, 60 Phil. 1030 (1934), wherein it was held that, for the purpose of determining the criminal liability of an officer detaining a person for more than the time prescribed by the Revised Penal Code, the means of communication as well as the hour of arrest and other circumstances, such as the time of surrender and the material possibility for the fiscal to make the investigation and file in time the necessary information, must be taken into consideration.

[166] *Supra*, note 11.

[167] *Supra*, note 50.

[168] People v. Hernandez, 52 O.G. 5506 (1956); People v. Geronimo, 53 O.G. 68 (1956); People v. Romagosa, 56 O.G. 2946 (1958); People v. Yuzon, G.R. No. 9462, July 11, 1957.

[169] *Supra*, note 24.

## C. Crimes Against Public Interest

### 1. *Illegal possession and use of false treasury or bank notes and other instruments of credit*

Article 168 of the Code penalizes "any person who shall knowingly use or have in his possession, with intent to use any false treasury or bank note or any other falsified instrument" referred to in Section Three, Chapter One, Title Four, Book Two of the Code. Interpreting this provision in the case of *People v. Digaro*,[170] the Court made the pronouncement that possession of false treasury or bank notes alone, without anything more, is not a criminal offense. To constitute a crime, possession must be coupled *with intent to use* said false treasury or bank notes. It therefore held as charging no offense the information against the appellant which alleged possession by him of such notes without alleging that he intended to use them.

## D. Crimes Against Persons

### 1. *Less serious physical injuries*

The question in *Mondragon v. People*[171] was whether the crime committed by the petitioner was attempted homicide or less serious physical injuries. The resolution of this question turned on whether, from the evidence, there was intent to kill. The complainant in the case was opening the dike of his ricefield to drain the water therein and prepare the ground for planting the next day. He then heard a shout from afar telling him not to open the dike but the complainant continued opening it and the same voice shouted again, "Don't you dare open the dike." When he looked up, he saw the petitioner coming towards him. The complainant explained why he was opening the dike. Petitioner then tried to fist-hit the complainant but the latter dodged the blow. Thereupon petitioner drew his bolo and struck the complainant on different parts of his body. The latter backed out, unsheathed his bolo and hacked petitioner on the head and forearm and between the middle and ring fingers to defend himself. The petitioner retreated, and the complainant did not pursue him but went home instead.

The Court of Appeals upheld the trial court's decision finding the petitioner guilty of attempted homicide. It, however,

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[170] G.R. No. 22032, March 4, 1966.
[171] *Supra*, note 15.

inferred petitioner's intention to kill solely from his admission in court that he would have done everything he could to stop the complainant from digging the dike because he needed the water.

Reversing the Court of Appeals, the Supreme Court held that intent to kill, which is an essential element of attempted homicide, was not established. Firstly, the statement of the petitioner during the trial should not be considered as an accurate indication of what he had in mind at the time of the incident because (1) it was made — the trial took place — almost five years after the incident; and (2) the term "will do everything" has a broad meaning and it should be construed in a manner that would give the petitioner the benefit of the doubt as to what he really meant to do. Secondly, the following facts indicate that the petitioner had no intention to kill, namely: the petitioner started assaulting the offended party by just giving him fist blows; the wounds inflicted on the offended party were of slight nature (they could be cured in less than 30 days), indicating no homicidal urge on the part of the petitioner; the petitioner retreated and went away when the offended party started hitting him with a bolo, thereby indicating that if he intended to kill the offended party he would have held his ground and kept on hitting the latter with his bolo.

2. *Frustrated homicide*

The case of *People v. Raquinio*[172] also involved the question of the lack or presence of intent to kill. Affirming the finding of frustrated homicide, the Court pointed out the following circumstances as belying the appellant's disclaimer of intent to kill: firstly, he used a lethal weapon, a bolo; secondly, the thrust, sudden and unexpected, was directed at a vital spot of the body, the abdomen; thirdly, appellant would have finished off with his victim, were it not for the fact that another person held him fast and grabbed the bolo from his hand; and fourthly, the wounds suffered by the victim would have been fatal, were it not for the timely and adequate medical assistance given him. "Intention to kill, a mental process," said the Court, "may be inferred from the nature of the weapon used, the place of the wound, the seriousness thereof and the persistence to kill the victim." All these were present in this case.

[172] *Supra*, note 14.

## E. Crimes Against Personal Liberty And Security

### 1. *Kidnapping with ransom*

A question of first impression in this jurisdiction was presented in the case of *People v. Akiran et al.*[173] The accused therein argued that they should not be convicted of kidnapping for ransom because their intention was merely to compel Isirani (the kidnap victim) to fulfill his promise of defraying the hospital expenses of Hayani (brother of one of the accused) who was shot by Isirani. Accepting this to be the real purpose of the accused — i.e., to compel the payment of the alleged obligation — was the money received by them, through the kidnapping and detention, "ransom" within the meaning of the provision that "(t)he penalty shall be death where the kidnapping or detention was committed *for the purpose of extorting ransom from the victim or any other person . . .*"? In answering this question, the Supreme Court explained that this provision, introduced in 1954 as an amendment[174] to Article 267 of the Revised Penal Code, was derived from statutes of the United States, particularly the Lindbergh Law. Hence, American jurisprudence regarding such statutes may be adopted here. Under American rulings, "ransom," as used in statutes making kidnapping with intent to hold for ransom a capital offense, means money, price or consideration paid or demanded for the redemption of a captured person or persons, a payment that releases from captivity. Applying this definition, the Court concluded that since the accused in the *Akiran* case demanded and received money as a condition for releasing their victim from captivity, the money was still ransom under the law, whatever other motive might have impelled them to do so.

## F. Crimes Against Property

### 1. *Theft*

*When intent of gain need not be alleged*

The rule is fundamental that every element of a crime must be alleged.[175] Intent of gain is generally considered as an essential element of theft. The question is, must it always be alleged?

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[173] *Supra*, note 44.

[174] The amending statute is Rep. Act. No. 1084.

[175] U.S. v. Legaspi, 14 Phil. 38 (1909); U.S. v. Campo, 23 Phil. 368 (1912); People v. Patricio, 79 Phil. 227 (1947).

Based on an examination of the provisions of Article 308,[176] the Supreme Court made a distinction in *People v. Rodrigo*.[177] Under the first paragraph of Article 308 the essential elements are (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done *with intent of gain;* (4) the taking away was done without the consent of the owner; and (5) the taking away was accomplished without violence or intimidation against persons or force upon things.[178] But under subparagraph 1 of the second paragraph of said article, the elements, according to the Court, are (1) the finding of lost property; and (2) the failure of the finder to deliver the same to the local authorities or to its owner. In this latter kind of theft, intent of gain need not be alleged because the same may be inferred from the deliberate failure to return the property to the proper person, the finder knowing that the property does not belong to him.

*Meaning of "lost property"*

In the *Rodrigo* case,[179] the accused-appellee also contended that the *stolen* horse referred to in the complaint does not fall within the meaning of "*lost* property" under subparagraph 1 of the second paragraph of Article 308. This argument was held to be without merit for the reason that the word "lost" in the provision in question is generic in nature, and embraces loss by stealing or by any other act of a person other than the owner, as well as by the act of the owner himself or through some casual occurrence. In fact, the Court pointed out, the finder who fails deliberately to return the thing lost may be considered more blameworthy if the loss was by stealing than if it occurred through some other means.

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[176] "ART. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

"Theft is likewise committed by:

"1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

"2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

"3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products."

[177] G.R. No. 18507, March 31, 1966.

[178] U.S. v. De Vera, 43 Phil. 1000 (1922).

[179] *Supra*, note 177.

2. *Estafa*

It is not necessary, in a estafa committed by abuse of confidence, to pinpoint the items misappropriated or the specific time the same were misappropriated. It is sufficient for conviction to show beyond reasonable doubt that the accused was short in his cash accountability of a specific total amount and that, upon demand for the same, he could neither account for nor cover the shortage. This was the holding in *People v. Sullano.*[180]

G. CRIMES AGAINST CHASTITY

1. *Consented abduction*

Article 343 of the Code punishes the abduction of a virgin over twelve and under eighteen years of age, carried out with her consent and with lewd designs — the felony known in law as consented abduction.

It is settled that the essence of this offense is not the wrong done to the woman, but the outrage to her family and the harm produced in it by the disappearance of one of its members.[181] For this reason, virginity, as an essential element of the offense, should not be understood in its material sense and does not exclude the idea of abduction of a virtuous married woman of good reputation.[182] As thus defined, virginity is to be presumed, in accordance with the fundamental principle that every person shall be presumed innocent of crime or wrongdoing.[183] This principle has been held to include the presumption of morality and decency and, as a consequence, of chastity.[184] Therefore, as held in *Valdepeñas v. People,*[185] the allegation that, in abducting the victim, the accused had taken "advantage of the absence of her mother" implies that the victim is a minor living under *patria potestas* and, hence, single, and as such must be presumed to be a virgin, apart from being virtuous and of good reputation.

2. *Prosecution of Crimes against chastity*

Under Article 344 of the Code, the "offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted

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[180] G.R. No. 18209, June 30, 1966.
[181] U.S. v. Alvarez, 1 Phil. 351 (1902); U.S. v. Reyes, 20 Phil. 510 (1911); U.S. v. Reyes, 28 Phil. 352 (1914).
[182] U.S. v. Casten, 34 Phil. 808 (1916).
[183] Rules of Court, Rule 131, Sec. 5(a); U.S. v. Alvarez, *supra,* note 181.
[184] 6 MORAN, COMMENTS ON THE RULES OF COURT 28-29 (1963), citing Adong v. Cheong Seng Gee, 43 Phil. 43 (1922).
[185] G.R. No. 20687, April 30, 1966.

except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be."

Suppose that a complaint for forcible abduction was duly signed and sworn to and filed by a 17-year old girl and her mother and on the basis thereof the corresponding information was filed. The accused is convicted by the trial court of the forcible abduction charged but the Court of Appeals modifies the decision by convicting him only of consented abduction. Upon motion for reconsideration and new trial filed by the accused, the case is retried in the lower court, this time for consented abduction only, after which said court convicts him accordingly. May the accused argue thereafter that, since no complaint for consented abduction was signed under oath and filed by the offended party, the trial court did not acquire jurisdiction over that crime?

Addressing itself to this question in *Valdepeñas v. People*,[186] the Supreme Court cited its previous pronouncement that the offended party's (or her relative's) complaint required in Article 344 was imposed "out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial."[187] Considering this spirit of the provision, the assent of the offended party and her mother in the case at bar to undergo the scandal of a public trial for forcible abduction, shown by their filing a complaint for that purpose, is also evidence of their willingness to undergo the same thing in a case for consented abduction. Hence, apart from the established rule that under an information for forcible abduction the accused may be convicted of abduction with consent,[188] the filing by the offended party of a complaint charging the latter offense was unnecessary.

These were strong enough reasons to support the Court's decision in the above case. Unfortunately, however, it made a pronouncement which, aside from adding nothing to the force of its argument, merely serves to confuse by contradicting its former rulings. In several cases in the past, the Court held that the trial court would not acquire any jurisdiction to try a crime

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[186] *Ibid.*

[187] Samilin v. Court of First Instance of Pangasinan, 57 Phil. 298 (1932).

[188] U.S. v. Mallari, 24 Phil. 366 (1913); U.S. v. Asuncion, 31 Phil. 614 (1915); U.S. v. Yumul, 34 Phil. 169 (1916).

against chastity unless the requirement under Article 344 has been complied with.[189] But now, in the *Valdepeñas* case, the Court has come out with the statement that Article 344

> "x x x does not determine x x x the jurisdiction of our courts over the offenses therein enumerated. It could not affect said jurisdiction, because the same is governed by the Judiciary Act of 1948, not by the Revised Penal Code, which deals primarily with the definition of crimes and the factors pertinent to the punishment of the culprit. The complaint required in said Article 344 is merely a *condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties.*"[190]

This utterance, considering the manner in which it is made, certainly casts doubt on the Court's previous ruling already adverted to as to the nature of the requirements of Article 344. Yet it constitutes a misleading dictum, firstly, because it is misplaced and, secondly, because it is not accurate. It is misplaced for the reason that the issue raised in the *Valdepeñas* case refers to the acquisition of jurisdiction by the trial court over the case considering the nature of the offense involved therein; the issue does not concern what offenses may be brought within the jurisdiction of the court, a matter governed by the Judiciary Act. The Court's utterance is furthermore inaccurate because, no matter what words may be used to disguise the fact, the provisions of Article 344 affect the jurisdiction of our different courts over the crimes referred to therein. Jurisdiction over the subject-matter has been defined as the power of the court to entertain a particular kind of action or to administer a particular kind of relief.[191] Obviously, the court is powerless to entertain a criminal action for a crime covered by the provisions of Article 344 unless a complaint, signed under oath by the offended party or other persons specified therein, has been filed. This is so because Article 344 constitutes a modification of, — that is, adds to — the provisions of the Judiciary Act conferring jurisdiction upon the different courts. Article 344 is as much a law as the Judiciary Act, and therefore there is no point to the Court's observation that jurisdiction over the subject matter is and may be conferred only by law and, in the case of crime, not by the parties involved in the offense.

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[189] People v. Gariboso, 25 Phil. 171 (1913); People v. Narvas, 14 Phil. 411 (1909); People v. De los Santos, 21 Phil. 404 (1912); People v. Trinidad, 58 Phil. 163 (1933); People v. Dahino, G.R. No. 2067, February 26, 1951.

[190] Emphasis the Court's.

[191] Blanco Español-Filipino v. Palanca, 37 Phil. 921 (1918).

## H. CRIMES AGAINST HONOR

### I. *Libel*

The case of *People v. Aquino*[192] further strengthens the protection given to lawyers against the risk of criminal prosecution or civil action for damages for utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions, and motions. Such utterances are regarded as absolutely privileged in the sense that they are protected regardless of defamatory character and whether or not they are made with malice,[193] the only condition being that they are connected with or relevant, pertinent, or material to the cause in hand or subject of inquiry.[194]

The *Aquino* case arose out of a civil suit filed by Ex-Judge Demetrio Encarnacion against Thomas Gonzales to recover damages for allegedly libelous statements, contained in the latter's letter to his sister, imputing that the former had been separated from his position on the bench by reason of his supposedly "dirty and indecent ways of dispensing human justice and of his... having been leading an immoral life." Gonzales filed an answer with counterclaim alleging that the letter was "written with the sincere desire to comply with an obligation, social and moral, and with the honest belief in the truthfulness of the statements contained there" and that because of the unfounded suit he had suffered mental anguish, wounded feelings, etc., thus entitling him to moral damages. The ex-judge, through counsel Venancio H. Aquino, filed a Reply and Answer to the Counterclaim containing among others the following allegations: "To this, our applicable Reply are the words of our Honorable Supreme Court to a party for shamelessly making untrue, libelous statements, to wit: '(This party) appears to belong to the class of individuals who have no compunction to resort to falsehood or falsehoods... as part of their systematic campaign of falsehood, and slanders directed against us, is an imposture that only ignorants, blackhands and other mental pachyderms (like him) can swallow.'... defendant was the impertinent assaulter of plaintiff's reputation, the malefactor who concocted the preposterous and malicious insinuations against the plaintiff, so that defendant has no feelings, if at all to be wounded." For these allegations, Gonzales filed a criminal suit for libel against counsel Aquino.

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[192] G.R. No. 33908, October 29, 1966.

[193] Tupas v. Parreño, G.R. No. 12545 April 30, 1959; Sison v. David, G.R. No. 11268, January 28, 1961.

[194] Tolentino v. Baylosis, G.R. No. 15741. January 31, 1961; People v. Alvarez, G.R. No. 19072, August 14, 1965; People v. Aquino, *supra*, note 192.

Upholding the trial court, which dismissed the criminal action, the Supreme Court observed that, strong or offensively worded though they may be, the allegations in Aquino's pleading, the import of which is that Gonzales' posture of innocence was a shameless pretense, were pertinent and related to the subject of inquiry in the civil case, namely: whether the defendant (Gonzales) acted out of sheer malice, with intent to cast dishonor upon the plaintiff, or in good faith, pursuing a sense of social or moral duty. Said allegations were, therefore, privileged and may not be the basis of a criminal action.

2. *Oral Defamation*

*What may be considered defamatory*

Oral defamation, otherwise known as slander, is penalized under Article 358 but what may be considered defamatory and punishable thereunder is defined in Article 353, which applies to both libel and slander.[195] Under the latter article, defamation consists in the "public and malicious imputation of a crime, or a vice or defect, real or imaginary, or any act, omission, dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead."

This definition is well illustrated in the *Sario*[196] and *Requiron*[197] cases, which were consolidated and resolved in one decision. The accused in these cases were alleged in six separate informations to have called the complainant a "mangkukulam." The trial court dismissed the informations on the ground that to call another a "mangkukulam" or "witch" is not a malicious imputation because in this modern age nobody believes anymore in witches and witchcraft. This ruling was found erroneous on appeal for the following reasons: (1) the truth of the lower court's statement is questionable for in fact the very imputations alleged to have been made by the accused attest to the contrary; (2) at any rate, the imputed vice or defect need not be real or existing in order that the imputation may be punishable, an imaginary vice or defect being sufficient; and (3) even if belief in the existence of witches

[195] The word "libel" in Article 353 is an incorrect translation of "difamacion" in the Spanish text. "Defamation", the correct translation, includes both libel and slander. Libel refers to insults committed under Article 355, and slander to oral defamation penalized under Article 358. People v. Del Rosario, 86 Phil. 163 (1950); Su Chu Sing et al. v. Su Tiong Gui, 76 Phil. 669 (1946).

[196] People v. Carmen Sario, G.R. Nos. 20754 & 20759; People v. Dulce Sario, G.R. Nos. 20755 & 20758; People v. Francisco Sario, G.R. No. 20757, June 30, 1966.

[197] People v. Requiron, G.R. No. 20757, June 30, 1966.

may have waned, nonetheless the terms "mangkukulam" and "witch" have accepted meanings from which it is clear that they are terms of derision, and for one to be so labelled is to be an object of contempt, even of odium.

Of the same malicious and offensive character, according to the Supreme Court in the same cases, is the word "aswang" with which two of the defendants had likewise called the complainant.

Even the imputation of a crime committed through a means which may be unreal or imaginary would be defamatory under Article 353. Thus in *People v. Sario*,[198] the defendant's alleged statement attributing to the complainant the death through witchcraft of three persons was considered a defamatory imputation of a crime.

The statement of Dulce Sario[199] that the complainant inherited her power of witchcraft from her father and had probably bequeathed it to her child, who had become thinner as a consequence, is, according to the Court, likewise derogatory as it charged the complainant with having taught her child evil practices — an act which is immoral and highly reprehensible.

*Imputation need not be direct; may be implied from acts and words.*

It was contended by the accused in the case of *De Guzman v. People and Court of Appeals*[200] that she did not call the complainant a thief, nor did she directly accuse her of having stolen her money. From the evidence, however, it appears that when she confronted the complainant regarding the loss of the money she said that the latter was the only one who had approached her table and that as soon as the complainant left the money disappeared. When the complainant denied having taken the money, the accused replied, "who knows," and then asked why the complainant had her wallet the first time she came to see the accused but was not carrying it anymore on her return. The accused further suggested that complainant should allow herself to be searched. Upon the basis of this evidence, it was held that while it is true that the accused did not directly call the offended party a thief, yet the implication of her acts and statements, made in a loud voice in the presence of many persons, was clearly to that effect.

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[198] *Supra*, note 196.
[199] People v. Dulce Sario, *supra*, note 196.
[200] G.R. No. 19075, November 23, 1966.

*Extent of right to make inquiries*

The appellant in the *De Guzman* case likewise contended that she was acting within her rights in confronting the complainant with the loss of her money, and that it was a natural impulse for anybody to do what she did under the circumstances. The Court answered that petitioner had the right to make inquiries, but she went beyond that and practically accused the offended party of the theft, subjecting her to embarrassment and ridicule before their co-employees.

*Malice and justifiable motives*

Appellant Estefania De Guzman further argued in the same case that there was no malice in law or in fact in her utterances since it was her well-grounded belief that the offended party was the one who took her money and her motive in confronting her with the loss was merely to locate it, a motive that was obviously justified. In determining the merit of this contention, the Supreme Court took into account the following circumstances: Appellant was irked when the offended party failed to comply with her promises regarding the payment of her indebtedness. Appellant was insisting on such payment, although after realizing that the offended party had no money to pay, she agreed to accept the security of the latter's jewelry in the meantime. It was then that the petitioner discovered that her money in the amount of ₱90.00 was missing, and forthwith sent for the complainant to ask her about the loss. With these circumstances in mind, the Court concluded that appellant's remarks, particularly the suggestion that the complainant submit her person to search, show the existence of malice in fact. If it did not exist, the inquiry should have been made discreetly and not in the form of imputations within the hearing of other employees.

*U. S. distinction between libel and slander not applicable here*

In the *Sario* and *Requiron* cases,[201] the accused appellees cited the U. S. doctrine that "libel" differs from "slander" in that a publication may be libelous although if spoken orally it would not be slanderous, thus intimating that the imputations they made might constitute libel if they had been written, but since they were made orally they do not constitute slander. The Court countered by saying that in themselves their imputations fall within the meaning of slander under Article 358, which precludes any distinction as to the application of Article 353.

[201] *Supra*, notes 196 and 197.

*Distinction between grave and slight slander*

Article 358 distinguishes, however, between grave and slight slander, the first being referred to therein as one "of a serious and insulting nature" and the latter one which does not possess that character. As to whether the defamatory words in a particular case belongs to one or the other category will, of course, depend not alone on the grammatical sense of the words uttered, taken separately, but as well on the particular circumstances of the case, the antecedent events which happened, as well as the relationship, between the offender and the offended party, all of which facts contribute to show the intent of the offender when he made the slanderous utterance.[202] Applying this principle in the case of *Balite v. People*,[203] the Supreme Court found the following language as doubtless serious and insulting: that the complainant "has sold the union;" he "has swindled the money of the members;" he "received bribe money in the amount of ₱10,000.00... and another ₱6,000.00;" he "is engaged in racketeering and enriching himself with capitalists;" he "has spent the funds of the union for his personal use." In this instance, said the Court, no circumstances need be shown to qualify the crime to grave slander but for appellant's claim that his words were intended "to correct a procedure which was degrading to the affairs of the union." The following antecedent facts, however, were found by the Court to belie this claim: Appellant wanted the union officers to pocket the sum of ₱10,000.00 offered by a shipping company instead of distributing it to the union members. He was, however, frustrated in his wish, because of which he conducted a smear campaign against the union president (complainant), and for this he was expelled from the union. Thereafter, in the absence of the complainant, he uttered the slanderous statements.

## CRIMINAL NEGLIGENCE

*Is criminal negligence a crime in itself or just a modality for committing crime?*

Until about a dozen years ago, it was an unquestioned proposition that criminal negligence under Article 365 of the Penal Code is not a distinct crime but simply a way of committing one and merely determines a lower degree of criminal liability. Although the classic and first direct statement of this doctrine was

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[202] 5 Viada, Codigo Penal (Quinta edicion) 494, cited in Balite v. People, *supra*, note 130.

[203] *Supra*, note 130.

made only in 1939, in a one-page decision written by Chief Justice Avanceña,[204] it had always been assumed as axiomatic in the decisions and commentaries since the enforcement in this jurisdiction of the old Spanish Penal Code. Then, in 1955, a dictum contained in a decision penned by Justice J. B. L. Reyes put forward the daring view that criminal negligence is not just a mode of committing a crime but a crime in itself. Apparently, this novel view has gained currency in the Supreme Court, for in the 1966 case of *People v. Cano*,[205] Justice Reyes' dictum was quoted in full to support a point.[206] For purposes of analysis and for a better appreciation of the exact position of the Court on the matter, the pertinent portion of the *Cano* decision, which was written by then Justice (now Chief Justice) Concepcion, is hereby reproduced in full:

> However, the information herein does not purport to complex the offense of slight physical injuries with reckless negligence with that of damage to property and serious and less serious physical injuries thru reckless imprudence. It is merely alleged in the information that, thru reckless negligence of the defendant, the bus driven by him hit another bus causing upon some of its passengers serious physical injuries, upon others less serious physical injuries and upon still others slight physical injuries, in addition to damage to property. Appellee and the lower court have seemingly assumed that said information thereby charges two offenses, namely: (1) slight physical injuries thru reckless imprudence and (2) damage to property, and serious and less serious physical injuries, thru reckless negligence — which are sought to be complexed. This assumption is, in turn, apparently premised upon the predicate that the *effect* or consequence of defendant's negligence, *not the negligence* itself, is the principal or vital factor in said offenses. Such predicate is not altogether accurate.
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> As early as July 28, 1955, this Court, speaking thru Mr. Justice J. B. L. Reyes, had the occasion to state, in Quizon v. Justice of the Peace of Bacolor, Pampanga (G.R. No L-6641), that:
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> > "The proposition (inferred from Art. 3 of the Revised Penal Code) that 'reckless imprudence is not a crime in itself but simply a way of committing it and merely determines a lower degree of criminal liability' is too broad to deserve unqualified assent. There are crimes that by their structure can not be committed through imprudence: murder, treason, robbery, malicious mischief, etc. In truth, criminal negligence in our Revised Penal Code is treated as a mere quasi-offense, and dealt separately from wilful offenses. It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is prin-

[204] People v. Faller, 67 Phil. 529 (1939).
[205] *Supra*, note 141.
[206] See discussion under topic on complex crimes (second portion), *supra*.

> cipally penalized is the *mental attitude* or condition behind the act, the dangerous recklessness, lack of care or foresight, the '*imprudencia punible*'. Much of the confusion has arisen from the common use of such descriptive phrases as 'homicide through reckless imprudence', and the like; when the strict technical offense is, more accurately, '*reckless imprudence* resulting in homicide'; or '*simple imprudence* causing damages to property'.
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> 'Were criminal negligence but a modality in the commission of felonies, operating only to reduce the penalty therefor, then it would be absorbed in the mitigating circumstances of Art. 13, specially the lack of intent to commit so grave a wrong as the one actually committed. Furthermore, the theory would require that the corresponding penalty should be fixed in proportion to the penalty prescribed for each crime when committed wilfully. For each penalty for the wilful offense there would then be a corresponding penalty for the negligence variety. But instead, our Revised Penal Code (Art. 365) fixes the penalty for reckless imprudence at *arresto mayor maximum* to *prision correccional* minimum if the wilful act would constitute a grave felony, notwithstanding that the penalty for the latter could range all the way from *prision mayor* to death, according to the case. It can be seen that the actual penalty for criminal negligence bears *no* relation to the *individual* wilful crime, but is set in relation to *whole class* or series of crimes.' "[207]

But how sound is this view newly adopted by the Court?

In the *first* place, it is not correct to say that the proposition stating the old view regarding the nature of criminal negligence is merely inferred from Article 3 of the Revised Penal Code. Article 365 itself explicitly indicates that criminal negligence is but a way of committing a felony and by itself does not constitute a distinct crime. Note the italicized portions of the following paragraphs of said article:

> ART. 365. *Imprudence and negligence.* — Any person who, *by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony.* shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed.
>
> Any person *who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony,* shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.

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[207] Emphasis the Court's.

> *When the execution of the act covered by this article* shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.
>
> A fine not exceeding two-hundred pesos and censure shall be imposed upon any person who, *by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.*

*Secondly,* it is wrong to make the distinction that "(i)n intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible.*" As clearly indicated in the above-quoted provisions of Article 365, it is the commission of an act, as in the case of intentional crimes, that is penalized thereunder, the negligence or imprudence being only the manner in which the act penalized is committed and the determining consideration for the imposition of a penalty lower than that which would be imposed if the act were intentional. This is in perfect accord with Article 3 which defines felonies as *acts* and omissions punishable by law. Under this definition, only *acts* and *omissions* are made punishable and so may constitute a crime. Imprudence or negligence is neither an act or omission but, as the Court itself said in the Quizon case, a "mental attitude or condition behind the act." It is simply one of the two ways whereby, under the second and third paragraphs of Article 3, a felonious act may be committed, the other being *dolo* or deliberate intent. Accordingly, no matter how gross the imprudence or negligence may be if no act is committed thereby which is penalized by law, there is no crime. If, for instance, a man hurts only himself through his own consummate recklessness, he cannot be punished for such recklessness.

*Thirdly,* it is not true that criminal negligence, if considered but a modality in the commission of felonies operating only to reduce the penalty therefor, "would be absorbed in the mitigating circumstances of Article 13, specially lack of intent to commit so grave a wrong as the one actually committed." In the first place, the mitigating circumstances provided in Article 13 come into play only after criminal negligence has been taken into account for the purpose of applying the proper penalty prescribed in Article 365. It is this penalty provided by law, taking into account the attendance of criminal negligence, that may be reduced or lowered further by mitigating circumstances if pre-

sent. In other words, consideration of imprudence or negligence takes precedence over that of mitigating circumstances; and it is given effect by law regardless of the presence or absence of such circumstances. In the second place, the mitigating circumstance of lack of intent to commit so grave a wrong as the one actually committed *contemplates the existence of an intent to commit an offense* other, and albeit, less serious, than the resulting one. Consequently, this mitigating circumstance cannot absorb criminal negligence because negligence and intent negate each other.[208] Besides, a mitigating circumstance, unless it is privileged (like minority), may lower a penalty only by one period and may further be offset by aggravating circumstances. On the other hand, criminal negligence is given by law a fixed reductional value which may not be affected by any aggravating circumstance.

*Fourthly*, there is no compelling necessity for the law to adjust or proportion with mathematical precision the penalty for each crime committed through negligence to the penalty for the corresponding individual wilful crime. In point is Justice Holmes' aphorism to the effect that the law is not to be treated as if it were a book of mathematics. It was, therefore, perfectly legitimate for the law, in fixing the penalties provided in Article 365, to take account only of the class, according to gravity, to which the crime of the negligent variety would belong had it been intentional; and this fact does not in itself furnish an indication that the law treats criminal negligence as an offense *sui generis*.

It, therefore, behooves the Court to reconsider its new position on the matter. The consequences are serious. For one thing, its new theory, as already stated, rules out the applicability of Article 48 to crimes committed through criminal negligence. The Court's past decisions have held said article to be applicable to such crimes. For another thing, its new theory renders meaningless the provisions of the last two paragraphs of Article 3 of the Revised Penal Code.

## CRIMES UNDER SPECIAL LAWS

1. *Unlawful sale, dispensation, or distribution of contraceptive drugs and devices*

Republic Act No. 4729, approved and made effective on June 18, 1966, makes it unlawful for any person, partnership or corporation to sell, dispense, or otherwise distribute, whether for or

[208] People v. Nanquil, 43 Phil. 232 (1922); People v. Sara, 55 Phil. 939 (1931); People v. Castillo, 76 Phil. 72 (1946).

without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is made by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner.[209]

"Contraceptive drugs," under the Act, is any medicine, drug, chemical, or potion which is used exclusively for the purpose of preventing fertilization of the female ovum;[210] while "contraceptive device" refers to any instrument, device, material, or agent introduced into the female reproductive system for the primary purpose of preventing conception.[211]

The penalty for violation of the Act is a fine of not more than ₱500 or an imprisonment of not less than six months or more than one year, or both, in the court's discretion.[212]

2. *Illegal possession of firearms*

*Meaning of "firearm"*

It is unlawful, under Section 878 of the Revised Administrative Code, for any person to possess any firearm without a license or permit duly issued therefor in accordance with the provisions of Article IV, Chapter 35 of said Code. One of the issues in *People v. Fajardo and Liwanag*[213] was: Considering that no license or permit may be issued for a "paltik," is it a firearm within the coverage of the prohibition? *Held*: Since a "paltik" discharges bullets by means of gunpowder, it falls within the meaning of the term "firearm" which, under the Revised Administrative Code, "includes rifles, muskets, carbines, shotguns, revolvers, pistols, and *all other deadly weapons from which a bullet*, ball, shot, shell, or other missile *may be discharged by means of gunpowder or other explosive*."[214] It is, therefore, immaterial that no license or permit may be issued for its possession.

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[209] Section 1.
[210] Section 2(a).
[211] Section 2(b).
[212] The purpose of the Act is "to regulate the indiscriminate dispensation of contraceptive drugs and devices. From the medical point of view, the unrestricted use of these drugs and devices poses a serious threat to the health and safety of the individual, unless under the close supervision of a qualified medical practitioner. Oftentimes, complication arises resulting in death. Yet, despite this danger to life and health one can buy these drugs and devices from any drugstore or even in the sidewalk without any question asked.
"But the more paramount consideration is the effect of such unbridled practice on the morals of our people. Unless properly regulated, the sale of these contraceptive drugs and devices would encourage the commission of immoral acts. This may undermine the very outstanding and noble moral traits of the Filipino people." (Explanatory note, S. No. 401).
[213] *Supra.* note 45.
[214] Revised Administrative Code, Sec. 877; emphasis supplied.

*May a person be convicted of illegal possession even if the firearm is in the actual possession of another?*

It has become a dogma that one does not have to be in actual physical possession of a firearm to be guilty of illegal possession thereof. The law does not punish physical possession alone but possession in general, which includes not only actual physical possession but also constructive possession, or the subjection of the thing to the owner's control.[215] Consequently, if two persons have conspired and helped each other in possessing the firearm, both can be convicted of that crime, even if only one was in actual physical possession.[216]

3. *Falsification or perjury under the Land Registration Act.*

Section 116 of the Land Registration Act provides that "(w)hoever knowingly swears falsely to any statement required to be made under oath by this Act shall be guilty of perjury and liable to the penalties provided by the laws for perjury."

This provision, according to the Supreme Court in the case of *People v. Cainglet,* [217] applies to all persons and does not distinguish those who make false statements and successfully procure registration by such statements and those whose statements were not given credence by the land registration court. The Court, therefore, dismissed the contention of the appellant that the judgments of the land registration court awarding him two lots upon his representations that he is the owner and possessor of such lots were conclusive on the question of whether his representations were true or not and thus constituted a bar to criminal actions for falsification or perjury based on the falsity of such representations.

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[215] People v. Villanueva, 43 O.G. 1271 (1947).
[216] People v. Fajardo, *supra,* note 45.
[217] G.R. Nos. 21493-94, April 29, 1966.