CRIMINAL LAW

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PRECONDITIONS OF CRIMINAL RESPONSIBILITY

1. *Voluntariness*

The whole corpus of our criminal law rests on the basic theory that criminal conduct can only arise from, and hence responsibility therefor depends on, conscious wrongdoing. Implicit in this theory is the principle that no criminal responsibility can attach to an act or omission unless it is the product of a free and intelligent exercise of the will — that is, it is voluntary.[1] The assumption, however, is that every man is rational and wills or is aware of what he is doing.[2] And it is for this reason that, under our law, a criminal act is presumed to have been performed voluntarily.[3]

This presumption may, however, be rebutted and it is in an attempt to do so that the appellant in the *Macalisang* case,[4] a chief of police, raised the plea that he was unconscious or under shock at the time he shot the victim. As cause of this condition, he pointed out the fact that a few moments before the incident, in the burst of gunfire which resulted in the killing of the mayor whom he was escorting, he had received gunshot wounds "from the point of his penis hitting my . . . (gonads) to my lap," that his left leg was broken, and that he fell into a canal. His doctor testified that these injuries would cause momentary unconsciousness for a time the length of which depends on the resistance of the patient and that there was a "very big *probability* that the appellant was unconscious during the time of the accident." He emphasized, however, that it was *possible* that appellant could recover consciousness after 10 minutes, could have recognized persons and could have been in full control of his upper extremities. It was shown that about 10 to 15 minutes elapsed from the time he was hit by gunfire to the time the town priest, who heard the shots, came to the scene where he and the

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[1] U.S. v. Ah Chong, 15 Phil. 488 (1910); People v. Taneo, 58 Phil. 255 (1933); 1 PADILLA, CRIMINAL LAW 43 (1964).

[2] 1 AQUINO, REV. PEN. CODE 3 (1961); Padilla, *Classical Theory of Criminal Law* (Speech delivered at the Opening of the Plenary Session on July 14, 1965 of the CONFERENCE ON CRIMINAL LAW REFORM sponsored by the University of the Philippine Law Center.

[3] People v. Macalisang, G.R. No. 24546, February 22, 1968; People v. Formigones, 87 Phil. 658 (1950); People v. Cruz, G.R. Nos. 13219-20, August 31, 1960.

[4] *Supra*, note 3.

mayor were shot. It was also shown that when placed on the jeep after he was shot, he took the precaution of placing his service revolver on his lap. Upon these facts, the Court held that it "cannot seize upon speculation or guesswork to overturn" the presumption of voluntariness.

2. *Intent*

Criminal intent is also essential in a crime arising from an act, it being the well-known maxim that *actus non facit reum nisi reus sit rea* (a crime is not committed if the mind of the person performing the act complained of be not criminal.)[5] Being by nature a mental and internal process, criminal intent, both as to its existence and character, must be inferred from external and overt acts accompanying it, as well as from the circumstances attendant to such acts.[6] Consonantly with this rule, intent to kill the occupants of a house was deduced, in *People v. Elizaga*,[7] from the fact that the appellants showered the house with bullets, knowing that it was inhabited.

External and overt acts need not, however, always be present. In their absence, an admission, such as one made in the form of an extra-judicial confession,[8] may supply the proof necessary to establish intent.

3. *Motive*

Motive as an essential element of crime

The common conception, constantly hammered upon in the classroom as well as in the courts, has been that motive, as distinguished from intent, is not — or, as some commentators maintain, is never — an essential element of a crime. The opposite view, that this conception is not entirely accurate because in certain cases motive forms an essential element of the offense, finds explicit confirmation by the Supreme Court in *People v. Diva*.[9] After taking cognizance of the existence of authority for the common view, the Court went on to state:

> "It is also true, of course, that in some cases it is absolutely necessary to establish a particular motive as a matter of substance *because it forms an essential element of the offense*, and not merely to meet the procedural requirement of proof beyond reasonable doubt, such as in the cases of libel or slander, and malicious mischief. For in those cases, the *onus* of proving malice lies on the plaintiff who must bring home to the defendant the existence of malice as the true motive of the conduct."[10]

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[5] U.S. v. Catolico, 18 Phil. 504 (1911); People v. Pacana, 47 Phil. 48 (1924); People v. Beronilla, 96 Phil. 567 (1955).

[6] U.S. v. Reyes, 36 Phil. 904 (1917); U.S. v. Mendoza, 38 Phil. 691 (1918).

[7] G.R. No. 23202, April 30, 1968.

[8] People v. Narciso, G.R. No. 24484, May 28, 1968.

[9] G.R. No. 22946, April 29, 1968.

[10] Compare *Criminal Law*, SURVEY OF PHILIPPINE LAW AND JURISPRUDENCE, 230 *et seq.* (1966), and 42 PHIL. LAW J. 227 *et seq.* (1967).

The lesson that can be gleaned from this pronouncement of the Court is that one cannot make a sweeping statement about whether or not motive is an essential element of a crime. It is a question of what crime is committed. Murder is one crime which does not count any particular motive among its essential components. Accordingly, the Court, finding that the identity of one of the appellants in the *Diva* case was not disputed and that in fact he admitted the killing, did not hesitate to apply, as to him, the settled rule that, *in murder cases,* motive is unessential to conviction when the identity of the culprit is not in doubt or where he has admitted the killing.[11]

Sufficiency of motive

Whether or not a certain motive is sufficient to impel a person to commit a particular offense is always a relative question; no fixed norm of conduct can be decisive of every imaginable case.[12]

In the case of *People v. Jamero,*[13] the prosecution presented as proof of motive the testimony of a witness as to the bitter rivalry between the accused and the victim during the political campaign held more than two years before the murder in which, among other things, they hurled angry invectives and epithets against each other. The defense contended that these incidents were too remote in time to constitute a sufficient motive for the crime. The Court brushed aside this contention, stating that, when taken together with other circumstances testified to by other witnesses, these incidents sufficed to impel the accused to perpetrate the killing. Among these other circumstances was an altercation between the victim and one of the accused in which the latter was beaten and another of them intervened so that there was a near-shooting.

In *People v. Elizaga,*[14] the leader of the defendants had a competitor in the ferryboat business who had accused him of grave threats in court. Subsequently, a case of frustrated murder was filed against him by another person whom he suspected to have been instigated by his competitor. At noontime, on the day of the crime, the complainant in the frustrated homicide case attempted to assault the leader of the defendants. These facts, according to the Court, provided him with motive to shower his competitor's house with bullets, resulting in the death of the victim.

The appellant in *People v. Guardo*[15] in whom motive for the killing of the victim was found to exist was in a somewhat different situation

[11] People v. Villalba, G.R. No. 17243, August 23, 1966.
[12] People v. Figueroa, 82 Phil. 559 (1949).
[13] G.R. No. 19852, July 29, 1968.
[14] *Supra,* note 7.
[15] G.R. No. 23541, August 30, 1968.

from that of the leader in the *Elizaga* case in that, instead of being the defendant in a criminal suit, he was the complainant. Basis of his complaint were the several quarrels which took place between him and the victim before the latter was fatally assaulted. This was, however, taken to indicate that he must have considered himself the aggrieved party in those quarrels and this feeling must have been aggravated when the case he filed against the victim was dismissed, prompting him to commit the crime in conspiracy with the other appellants.

Criminal Liability

One who commits a felonious act incurs criminal liability even if its result be different from what he intended so long as it flows therefrom as its direct and natural consequence.[16] The fact, therefore, that in *People v. Guevarra*[17] the person shot and killed by the appellant was different from that which he intended to kill was considered not to have the effect of altering the nature of the latter's criminal act nor lessen his criminal liability. Nor did the fact that the immediate cause of the victim's death in *People v. Parayno*[18] was accidental drowning free one of the appellants from criminal responsibility, the victim having fallen into the river as a consequence of the beating given him by said appellant.

Stages of Execution

Attempt

The Code penalizes, although less heavily, an act even when it constitutes a mere attempt to commit a crime. There is an attempt when the offender starts to perform overt acts directed towards the execution of an offense but fails, for reasons other than his own spontaneous desistance, to execute all acts necessary for its consummation.[19] One of the defendants in *People v. Narciso*[20] was convicted only of attempted murder because, while he and his co-defendants admittedly intended to kill the victim, it was indubitably established that the blow which he dealt on the latter could not have produced the intended result.

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[16] Rev. Pen. Code, art. 4; U.S. v. Brobst, 14 Phil. 310 (1909); People v. Cagoco, 58 Phil. 524 (1933); People v. Vagallon, 47 Phil. 332 (1925); People v. Almonte, 56 Phil. 54 (1931); U.S. v. Zamora, 32 Phil. 218 (1915); U.S. v. Sornito, 4 Phil. 357 (1905); U.S. v. Monasterial, 14 Phil. 391 (1909); People vs. Rellin, 77 Phil. 1038 (1947); People vs. Borbano, 76 Phil. 702 (1946); People v. Cornel, 78 Phil. 458 (1947).

[17] G.R. No. 24371, April 16, 1968.

[18] G.R. No. 24804, July 5, 1968.

[19] Rev. Pen. Code, art. 6, par. 3; People v. Lamahang, 61 Phil. 703 (1935).

[20] *Supra*, note 8.

CONSPIRACY

1. *Importance*

Collective responsibility

The outstanding significance of conspiracy lies in the fact that, where attendant, the act of one of the conspirators is treated as the act also of all the others[21] and, regardless of the degree and character of their respective participation in the execution of the crime, all the conspirators share an equal and common responsibility.[22] This rule is said to be founded on the impossibility of graduating the separate liability of each of the conspirators without considering the close and inseparable relation which he has with the criminal act for the commission of which they have all acted by common agreement. This solidarity of act and intent between the conspirators characterizes the act as that of the band or party created by them.[23] Hence, their collective responsibility.

This doctrine of collective responsibility should, however, be understood to be limited to acts which are contemplated in the conspiracy or, at least, necessary consequences of the intended crime. Acts done outside the common agreement or design, which are neither necessary for its execution nor unavoidable incidents thereof, are the sole and separate responsibility of those actually committing them.[24]

It must likewise be borne in mind that one may only be held to share in the solidary responsibility springing from conspiracy if it is established that he performed an overt act in pursuance of the conspiracy. Such overt act may consist (1) in actively participating in the actual commission of the crime, (2) in lending moral assistance to his co-conspirators by being present at the scene of the crime, or (3) in exerting moral ascendancy over the rest of the conspirators as to move them to

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[21] People v. Atencio, G.R. No. 22518, January 17, 1968; People v. Jamero, G.R. No. 19852, July 29, 1968; People v. Paredes, G.R. No. 19149-50, August 16, 1968; People v. Peralta, G.R. No. 19069, October 29, 1968. People v. Patricio, 79 Phil. 227 (1947); People v. Danan, 83 Phil. 252 (1949); People v. Santos, 84 Phil. 97 (1949); People v. Bersamin, 88 Phil. 292 (1951); People v. Upao Moro, G.R. No. 6771, May 28, 1957, People v. Abrina, 102 Phil. 695 (1957).

[22] People v. Peralta, *supra*, note 21; People v. Guardo, *supra*, note 15.

[23] U.S. v. Bundal, 3 Phil. 89 (1903), cited in People v. Peralta, *supra*, note 21.

[24] People v. De la Cerna, G.R. No. 20911, October 30, 1967; People v. Pelagio, G.R. No. 16177, May 24, 1967; People v. Hamiana, 89 Phil. 225 (1951); People v. Daligdig, 89 Phil. 598 (1951); People v. Umali, 96 Phil. 185 (1954); People v. Dueñas, G.R. No. 15307, May 30, 1961, 59 O.G. 35 (Jan., 1963). This rule is subject to two qualifications: (1) it is not applied where there is no direct proof of conspiracy, i.e., conspiracy is merely inferred from the circumstances attending the commission of the offense (See People v. Condomena, G.R. No. 22426, May 29, 1968, and People v. Capito, G.R. No. 24466, March 19, 1968); and (2) it does not in any case apply where the offense committed is robbery and it is committed by a band, for then all the conspirators are liable for any assault, including those not contemplated in the conspiracy, committed by any of the band's members (People v. Pelagio, *supra*, this note).

executing the conspiracy.[25] Without showing that a person has contributed to the achievement of the common evil design in any of these ways, his mere presence at the discussion of the conspiracy, or even his approval of it, will not suffice for his conviction.[26]

Effect on admissibility of evidence

Another importance of conspiracy is that, once established, it creates an exception to the well-known principle that an extrajudicial confession is admissible only against the person who made it.[27] It makes the acts or statements of one conspirator admissible against all the others.[28]

2. *Proof required*

Because of its far-reaching consequences, the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy. In other words, it must be shown to exist by positive evidence,[29] as clearly and convincingly as the commission of the offense itself[30] in order to uphold the fundamental principle that no one shall be found guilty of crime except upon proof beyond reasonable doubt.[31]

Preconceived plan or prior agreement

The above rule is not satisfied unless there is proof of a preconceived plan or agreement to which the accused have concurred an appreciable time or immediately prior to the commission of the offense.[32] Such preconceived plan or prior agreement was found not to exist, and hence conspiracy was ruled out, where the commission of the crime was unexpected,[33] or when the initial attack, in which the appellants who did not inflict the fatal injuries participated, was due mainly to the heat generated by the discussion between the victim and one of the assaulters.[34]

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[25] People v. Peralta, *supra*, note 21.

[26] People v. Izon, 104 Phil. 690 (1958), and People v. Pelagio, *supra*, note 24, both cited in People v. Peralta, *supra*, note 21.

[27] People v. Cabiltes, G.R. No. 18010, September 25, 1968.

[28] *Id.*, citing People v. Belen, G.R. No. 13895, September 30, 1963.

[29] People v. Peralta, *supra*, note 21, citing People v. Ancheta, 66 Phil 638 (1938).

[30] People v. Portugueza, G.R. No. 22604, July 31, 1967.

[31] People v. Tividad, G.R. No. 21469, June 30, 1967.

[32] People v. Peralta, *supra*, note 21; People v. Tumayao, 56 Phil. 587 (1932).

[33] People v. Wong, G.R. Nos. 22130-32, April 25, 1968. Prior agreement not having been shown, the Court refused to take against the two appellants their presence at the time the other appellant was shooting one of the victims as evidence that they conspired with the latter.

[34] People v. Garcellano, G.R. No. 25345, May 13, 1968.

Direct proof not required

The preconceived plan or prior agreement which conspiracy presupposes need not, however, be proven by direct evidence.[35] Owing to the nature of conspiracy, which is plotted in utmost secrecy, direct evidence is seldom available.[36] Circumstantial evidence, provided it is competent and convincing, will therefore constitute sufficient proof.[37] Such evidence may consist of a number of indefinite acts, conditions and circumstances, varying according to the objective sought to be accomplished.[38] But the important thing is that they should indicate clearly that the accused have acted, collectively and individually, in furtherance of a common unlawful objective.[39]

When conspiracy presumed

The presence of conspiracy need not be proved where the crime is robbery committed by a band.[40] In this particular case, the law presumes conspiracy from the existence of the band with the consequence that "any member of (the) band who is present at the commission of (the) robbery . . . shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same."[41]

Does not necessarily include evident premeditation

The question of whether evident premeditation is inherent in conspiracy was presented in *People v. Peralta*.[42] The trial court held that it is always inherent but the Supreme Court reversed its holding on appeal. As reason for the reversal, the high court stated that the absence of evident premeditation does not necessarily mean that there is no conspiracy. This is so because conspiracy arises the moment its participants agree, expressly or impliedly, to commit a crime and decide to commit it; unlike evident premeditation, it does not require the lapse of a period of time sufficient to afford the perpetrators full opportunity to reflect on their intended act.[43]

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[35] People v. Capito, *supra*, note 24.

[36] People v. Cadag, G.R. No. 13830, May 31, 1961; People v. Romualdez, 57 Phil. 148 (1932) cited in People v. Peralta, *supra*, note 21. For a case where conspiracy was established by direct evidence, see People v. Paredes, *supra*, note 21.

[37] People v. Peralta, *supra*, note 21.

[38] People v. Cabrera, 43 Phil. 64 (1922).

[39] People v. Capito, *supra*, note 24; People v. Condomena, *supra*, note 24. People v. Fontillas, G.R. No. 25298, April 16, 1968; People v. Carbonel, 48 Phil. 868 (1926).

[40] People v. De la Rosa, 90 Phil. 365 (1951).

[41] REV. PEN. CODE, art. 296, second paragraph; People v. Peralta, *supra*, note 21.

[42] *Supra*, note 21.

[43] The Court cited People v. Monroy, G.R. No. 11177, October 30, 1968. It has been held, however, that if entered into for an appreciable time prior to the commission of the offense, conspiracy is a conclusive proof of evident premeditation (People v. De la Cerna, *supra*, note 24. U.S. v. Cornejo, 28 Phil. 457 (1914); People v. Bangug, 52 Phil. 87 (1928). To the same effect is the pronouncement in People v. Custodio, 97 Phil. 698, 704-705 (1955).

CLASSES OF OFFENSES

Light felonies

According to their gravity, offenses are divided into three categories under the Code: grave, less grave, and light. Light felonies refer to those infractions of law to which the penalty of *arresto menor* or a fine not exceeding two hundred pesos (₱200.00), or both, is attached.[44] The penalty for orally threatening another in the heat of anger with some harm constituting a crime is, under paragraph 3 of article 285, *arresto menor* in its minimum period or a fine not more than two hundred pesos (₱200.00). It is, therefore, a light felony.[45]

JUSTIFYING CIRCUMSTANCES

1. *Self-defense*

Evidence required to prove self-defense

When an accused admits having inflicted the injury but claims to have done it in self-defense, the burden is on him to establish all the facts necessary to prove self-defense.[46] This he must do by adducing clear, sufficient, satisfactory and convincing evidence, if he is to avoid conviction.[47] He cannot simply rely on the weakness of the prosecution's evidence since, even granting it is weak, the same cannot be disbelieved after the admission of the act.[48]

This burden is not discharged where, as in *People v. Garcellano*,[49] the accused presents only his uncorroborated testimony that the deceased was stabbed by him while they were grappling for the possession of a bolo being held by him (accused) when he stood up to help his sister who was allegedly criminally assaulted in the middle of the night and it appears that he is completely unscathed, the different locations of the eight wounds of the deceased shows that he was not attacked by the accused alone, and the accused's sister was with several other persons in the small room, lighted by a kerosene lamp, where she is supposed to have been criminally assaulted, thus making improbable and incredible the alleged assault.

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[44] REV. PEN. CODE, art. 9, par. 3.
[45] Medrano v. Mendoza, G.R. No. 24364, Feb. 22, 1968.
[46] People v. Buenbrazo, G.R. No. 278521, November 29, 1968.
[47] People v. Garcellano, *supra*, note 34, citing People v. Berbano, *supra*, note 16; and People v. Ansoyon, 75 Phil. 772 (1946). See also People v. Wong, *supra*, note 33; People v. Berio, 59 Phil. 533 (1934); People v. Diva, *supra*, note 9; People v. Jorge, 71 Phil. 451 (1941).
[48] People v. Navarra, G.R. No. 25607, October 14, 1968, citing People v. Ansoyon, *supra*, note 47.
[49] *Supra*, note 34.

In *People v. Diva*,[50] the Court also rejected as incredible and unconvincing the self-defense theory of the defendant based on his and his wife's declarations that he was treacherously attacked from behind by the victim while they were working in the coconut plantation of "their" father. In holding their story unworthy of credence, the Court upheld the trial court's finding that the fact that the accused's injuries were not serious, being curable within fifteen days, belies his allegation that they were treacherously inflicted by the victim from behind. If this were true, noted the court, the accused's injuries would have been serious or fatal considering that the victim was admittedly more robust and taller than the former and that he was armed with a sharp, pointed and double-bladed bolo.

The absence of any injury, not even a scratch, also led the Court, adopting the finding of the trial judge, to brush aside the defendant's claim in *People v. Buenbrazo*[51] that the deceased was the first to attack. The Court pointed out that he could not have escaped getting injured considering that, as alleged by him, the deceased was armed with a hunting knife.

In the *Navarra* case,[52] the accused policemen, Navarra and Cruz, bolstered their self-defense argument with the story that the deceased, whom they were taking home after finding that there was no charge filed for which he could be investigated, grabbed Cruz' service revolver from his waist. The gun went off and hit the deceased while they grappled for it but the deceased finally wrested possession of it. By that time, Navarra, who had left them and whom Cruz had been calling for help, arrived and warned the deceased to drop the gun. Disregarding the warning, the latter pointed the gun at Navarra, saying, "You also." Navarra immediately shot him, firing four times. In discrediting this story, the Court stated that it was unnatural for the deceased not to have fired a shot after grabbing the gun; that, after having been wounded, it does not seem credible that the deceased could have handled the gun so ably and could have aimed it at Navarra; that the gun could not have misfired to hit the deceased if he had the upperhand in the struggle for its possession; and that, being drunk at the time, it is improbable that he could have struggled so spiritedly.

Number and location of wounds

A plea of self-defense cannot be sustained when flatly contradicted by the undisputed physical facts, such as the nature, number and location

[50] *Supra*, note 9.
[51] *Supra*, note 46.
[52] *Supra*, note 48.

of the wounds of the victim.[53] The Supreme Court refused to give serious consideration to the appellants' plea of self-defense in *People v. Panganiban*[54] because of the number of wounds, totalling nineteen (19), suffered by the deceased.

The location of the wounds of the deceased was used to debunk the appellant's self-defense plea in *People v. Pelago*.[55] He claimed that he stabbed the deceased's left arm while encircled around his (appellant's) neck. It was, however, admitted that the hunting knife with which he hit the left arm of the deceased penetrated to his abdomen. In view of this fact, appellant's theory could not be believed because it was physically impossible for the knife to have penetrated to the deceased's stomach through his arm while encircled, as alleged, around appellant's neck. Agreeing with the lower court, the Court regarded the prosecution's theory that the deceased was stabbed while standing with his arms crossed at his abdomen, as "more in harmony with the location of the injuries."

Behavior after the act

In the *Pelago* case, the trial court and the Supreme Court, in rejecting the plea of self-defense, also took into account the behavior of the appellant after he had stabbed the deceased. Instead of surrendering to the authorities, he escaped to his house and threw away the hunting knife.

2. *Defense of relative*

The Code does not look upon one who acts in defense of his brother as a criminal and, therefore, exempts him from criminal liability.[56] In *People v. Paat*,[57] the appellant's brother, Virgilio, and the victim, Teodorico Catuiran, intervened in an altercation between the former's uncle, Juan Donato, and the latter's brother, Eulogio Catuiran. While Teodorico's hands were being held by Virgilio and Juan Donato, the appellant approached from behind and stabbed Teodorico in the back with a bolo. Virgilio and Juan Donato then released their hold as appellant pulled out his bolo from Teodorico's back, at which instant Teodorico also pulled out and swung his bolo, hitting Virgilio in the abdomen. The question was whether under these circumstances the appellant's plea that he acted in defense of his brother can be sustained. It was held that appellant's plea cannot be sustained since the stabbing by the victim came only after he had already been stabbed by the appellant. Though the Court did not

[53] People v. Tolentino, 54 Phil. 77 (1929).
[54] G.R. No. 22476, February 27, 1968.
[55] G.R. No. 24884, August 31, 1968.
[56] See Article 11, sec. 2.
[57] G.R. No. 22231, March 21, 1968.

say so, it is manifest that, under the situation, Virgilio was in no danger when appellant stabbed the deceased.[58]

EXEMPTING CIRCUMSTANCES

1. *Insanity*

Exemption from criminal responsibility on the ground of insanity is a consequence of the principle that, to incur criminal liability, a person committing a punishable act must have done so voluntarily. An act is done voluntarily if it is intended and is the product of a free and intelligent exercise of the will.[59] A person afflicted with insanity has neither reason or intelligence nor freedom of the will; he is unable to distinguish right from wrong and, therefore, does not intend the consequences of his acts.[60]

Lest sane offenders escape punishment through the mere expedient of pleading insanity,[61] however, the law presumes all acts to be voluntary and hence performed in a state of sanity.[62] It is therefore made incumbent upon the accused who pleads insanity as a defense to prove this fact by clear and convincing evidence.[63] Such evidence must consist of positive proof that the accused was completely deprived of his intelligence or that he was without the least discernment[64] a few moments before or during the execution of the offense.[65] Proof showing merely abnormality of mental faculties,[66] violent temper or nature evinced by breaking glasses and smashing of dishes,[67] passion or eccentricity, mental weakness or mere depression resulting from physical ailment[68] would not suffice to rebut the presumption of sanity and exculpate the accused.

Evidence that the accused was calm and collected and showed no sign of anger when he committed the crime was held in *People v. Pantoja*[69] to strengthen instead of undermine the presumption of sanity. And

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[58] For another case on defense of relative, see People v. Garcellano, *supra*, note 34, and People v. Wong, *supra*, note 38. In the *Wong* case, the defense of relative theory was rejected for being negated by the number and nature of the injuries inflicted on the deceased.

[59] U.S. v. Ah Chong, *supra*, note 1, citing PACHECO, CODIGO PENAL 74.

[60] People v. Formigones, *supra*, note 3; People v. Cruz, *supra*, note 3.

[61] People v. Bonoan, 64 Phil. 87, 93 (1937).

[62] People v. Formigones, *supra*, note 3; People v. Cruz, *supra*, note 3.

[63] *Id.*

[64] *Id.*

[65] *Id.* People v. Bonoan, *supra*, note 61, allows the reception, for purposes of ascertaining a person's mental condition at the time of the act, "evidence of the condition of his mind a *reasonable* period both *before* and *after* that time".

[66] People v. Cruz, *supra*, note 3; also People v. Formigones, *supra*, note 3.

[67] People v. Cruz, *supra*, note 3.

[68] People v. Bonoan, *supra*, note 65, at 94.

[69] G.R. No. 18793, October 11, 1968.

the fact that in said case the accused fired four more times at the already prostrate body of the victim who had refused to allow him to sit beside the girl whom the victim and his six companions were serenading, was deemed to show revenge rather than insanity. Nor was his insanity proved by the fact that he was suffering from psychoneurotic depressive reaction and psychoneurotic dissociative reaction.

2. *Duress or uncontrollable fear*

The principle that, to merit punishment, the commission of an offense must have sprung from the perpetrator's own free will, *i.e.*, he must have done it voluntarily, also underlies the exemption from punishment of one who acts under the compulsion of an irresistible force[70] or under the impulse of an uncontrollable fear of an equal or greater injury.[71] A force is irresistible, and hence exempting, if, coming from a third person, it reduces the person on whom it operates to a mere instrument, compelling his mind and body to obey in spite of any resistance he may put up.[72] And impulse of an uncontrollable fear of an equal or greater injury is present where the threat which inspired such fear relates to a crime so grave and imminent that it would have controlled the will of an ordinary man.[73] In either case, the duress or fear, to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb, not one which is merely imaginary, speculative, fanciful, flimsy or remote.[74]

In *People v. Peralta*,[75] the defense of one of the appellants based on both these grounds, and allegedly consisting in his co-accused's threat to kill him if he disobeyed their orders, was held to be negated by his active participation in the killings. His active participation was considered to be a clear indication that he acted voluntarily.

In the hammer slaying-robbery case of *People v. Gervacio*,[76] the other accused, Mocorro, asserted that his participation in the crime was in obedience to the orders of Gervacio, who was then holding a gun. He thus claimed to have acted under the impulse of an uncontrollable fear. This defense was dismissed on the ground that there was no evidence that Gervacio ever pointed the gun at Mocorro so that he would cooperate and it appearing that when the former gave him the sledge hammer with which he struck the head of one of the victims, he continued striking her without

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[70] REV. PEN. CODE, art. 12, sec. 5.
[71] *Id.*, art. 12, sec. 6.
[72] People v. Elicanal, 35 Phil. 209 (1916).
[73] *Id.*
[74] People v. Gervacio, G.R. No. 21965, August 30, 1968; People v. Jesus, 88 Phil. 53 (1951); People v. Bagalawis, 78 Phil. 174 (1947).
[75] *Supra*, note 21.
[76] *Supra*, note 74.

any suggestion from his co-accused. His alleged fear that Gervacio, who was still holding a gun, might kill him if he did not comply with his order to kill another of the four victims was considered as merely imaginary and not the uncontrollable fear envisioned by the Code.

3. *Insuperable cause*

This exempting circumstance is illustrated in *People v. Macalisang*,[77] which is discussed in the opening topic of this survey.

MITIGATING CIRCUMSTANCES

1. *Incomplete self-defense and provocation by victim*

The accused in *People v. Oandasan*[78] saw his son being chased by the deceased. When the accused asked the deceased the reason for the chase, the latter struck him on the left shoulder with a wooden club. This prompted the accused to draw his knife, upon which the deceased clubbed him on the head. The accused then stabbed the latter on the front. The trial court, in convicting the accused of homicide, merely credited him with the ordinary mitigating circumstance of provocation by the deceased. On appeal, the Supreme Court held that the deceased's actuation did not only constitute provocation under Article 13(4) but unlawful aggression under Article 11(1) to repel which the accused employed means which, the Court found, was not reasonably necessary.[79] It, therefore, appreciated in his favor the privileged mitigating circumstance of incomplete self-defense.

2. *Minority*

The fact that the accused was, at the time of the commission of the offense, below eighteen years of age is a privileged mitigating circumstance which entitles him, under article 68 of the Revised Penal Code, to

[77] *Supra*, note 3.

[78] G.R. No. 29532, Sept. 28, 1968.

[79] It must be noted that a defendant who used a pocketknife in stabbing one who struck him on the head with a cane has been held by the Court to have employed a reasonably necessary means to repel the attack. (People v. Laurel, 22 Phil. 252 [1912]). The Court has also laid down the rule that reasonable necessity of the means employed does not imply a material commensurability between the means of attack and defense, the primary considerations being "the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense." (People v. Lara, 48 Phil. 153 [1925]). The proportionateness of the means employed, therefore, "does not depend upon the harm done, but rests upon the imminent danger of such injury". (People v. Paras, 9 Phil. 367 [1907]). For in "emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation". (People v. Padua, CA-G.R. No. 723, May 5, 1941, 40 O.G. 998 [Aug., 1941]).

a reduction of penalty by one degree if he is not below fifteen and by at least two degrees, if he is below fifteen but over nine.[80]

If the accused was eighteen years old or over at the time of the commission of the crime, he is no longer entitled to a mitigating circumstance.[81] In one case,[82] however, the fact that one of the accused was only eighteen when he committed the murder was considered by the Court in refraining from imposing the death penalty on him.[83]

3. *Passion and obfuscation*

Two requisites must be established in order that passion and obfuscation may mitigate criminal responsibility: (1) the existence of an act which is both unlawful and sufficient to produce such a state of mind; and (2) the act producing such a mental condition must not be so far removed in point of time from the commission of the crime that the offender had no time to regain his composure.[84]

The first requisite was not established, and therefore the trial court was held in error in appreciating this circumstance, where the accused stabbed the victim from behind while the latter, who had intervened in the altercation between his brother and the accused's uncle, was rendered helpless because his hands were held by accused's brother and uncle.[85]

Failure to prove the second requisite was the ground for the denial of the benefits of the circumstance from the principal defendant in *People v. Gervacio*.[86] He claimed that the victims, who had not been paying his wages as house servant regularly, used to scold and beat him always. There was no proof adduced, however, as to when those acts of the victims were done so that it could not be determined whether he had no time to reflect and cool off.

4. *Voluntary surrender*

The all-important consideration in the appreciation of this circumstance is that the surrender must have been made in such a manner as to

[80] People v. Mongaya, G.R. No. 23708, October 31, 1968. People v. Cesar, G.R. No. 26185, March 13, 1968.

[81] People v. Gervacio, *supra*, note 74.

[82] People v. Mongaya, *supra*, note 80.

[83] See also People v. Develos, G.R. No. L-18866, January 31, 1966, where, even if the accused was already 22 years old when he committed the crime of robbery with homicide. the Court, because of "the youth of the appellant", could not reach the necessary number of votes to impose the death penalty despite the presence of four aggravating circumstances and the total absence of a mitigating circumstance.

[84] People v. Gervacio, *supra*, note 74, citing cases.

[85] People v. Paat, *supra*, note 57.

[86] *Supra*, note 74.

make clear the accused's intention to submit himself unconditionally to the disposal of the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expense of searching for him.[87]

It is not required that the accused must give himself up to the authorities of the municipality where the crime was committed. This was the the holding in *People v. Diva*[88] where the accused, after the commission of the offense, went to a neighboring town to have his wounds treated by a doctor who lived there and, after the treatment, surrendered himself the following day to the chief of police of that town. A situation like that presented in the *Gervacio* case[89] would, of course, be different. The appellant who claimed this mitigating circumstance in that case fled to Leyte with his two co-suspects, making it necessary for the authorities of Quezon City, where the crime was committed, to go to that province and search for them. His plea was denied because he surrendered to the mayor of a town in that province only after twelve days following the commission of the offense and only after the discovery of one of his co-suspects which led to the arrest of the other co-suspect. These facts were taken to indicate that the appellant surrendered not because of his spontaneous desire to acknowledge his guilt or to spare the authorities the trouble and expense of his capture, but because he believed that escape had already become impossible.

While appreciated against the appellant in the *Gervacio* case, the length of time intervening between the perpetration of the offense and the surrender also does not seem to be controlling. Nor is the fact that the surrender was made after the issuance of the warrant of arrest. *People v. Diva*[90] and *People v. Gervacio*[91] cite the case of *People v. Yecla,*[92] where the accused was given the benefit of voluntary surrender even if he presented himself in the municipal building to post a bond for his temporary liberty only five days after the date of the offense and two days after the issuance of the warrant for his arrest. The *Diva* case also cites *People v. Valera,*[93] where the accused posted the bond for his provisional liberty after eighteen days following the commission of the crime and sixteen and fourteen days, respectively, after the first and second warrants of arrest were issued and still was allowed to avail of this mitigating circumstance. An extreme case is that of *People v. Coronel,*[94] where the Court held the

[87] People v. Sakam, 61 Phil. 27 (1934); People v. Honrada, 62 Phil. 112 (1935). Restated in People v. Gervacio, *supra,* note 74.
[88] *Supra,* note 9.
[89] *Supra,* note 74.
[90] *Supra,* note 9.
[91] *Supra,* note 74.
[92] 68 Phil. 740 (1939).
[93] G.R. No. 15662, August 30, 1962.
[94] G.R. No. 19091, June 30, 1966.

appellant's surrender to be voluntary even if it was made after more than three years from the commission of the crime wherein he was a principal.[95] But a different holding was made where the appellant surrendered only after the warrant of arrest issued by the justice of the peace was served upon him.[96]

5. *Plea of guilty*

To be mitigating, a plea of guilty must be made at the first opportunity before the competent court that is to try the case.[97] It is in consonance with this rule that a plea of guilty in the Court of First Instance to which appeal is made in lieu of that of not guilty earlier made in the municipal court is held not to be mitigating.[98] The reason for this is that the spontaneous desire on the part of the accused to admit his guilt is lacking[99] and a contrary rule would permit an accused to speculate on the results of the proceeding against him.[100]

The objection to a change of plea on appeal to the Court of First Instance does not, however, apply where, as happened in *People v. Oandasan*,[101] the municipal court before which the accused pleaded not guilty was merely conducting a preliminary investigation, the crime charged, homicide, being within the jurisdiction of the Court of First Instance. Such plea was, according to the Supreme Court, no plea at all since it was not made before the court which had jurisdiction to try the case. There was, therefore, no change of plea to speak of when the accused in said case pleaded guilty in the Court of First Instance. And since this plea was made upon arraignment, and hence before the start of trial, it was counted in the accused's favor.[102]

Plea of guilty is mitigating, but an accused must be cautious to avoid its dire consequences if made unqualifiedly. For, as restated in *People v. Apduhan*,[103] an unqualified plea of guilty constitutes an admission of all the material allegations of the information, including those on aggravating circumstances.[104]

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[95] The plea of voluntary surrender was also granted in People v. Garcellano, *supra*, note 34 (accused surrendered about midnight on the same evening of the killing) and People v. Pantoja, *supra*, note 69 (immediately after the commission of the crime, appellant surrendered to his detachment camp commander).

[96] People v. Roldan, G.R. No. 22030, May 29, 1968.

[97] People v. De la Peña, 66 Phil. 451 (1938).

[98] People v. Nazario, 79 Phil. 297 (1947); People v. Rapirap, 102 Phil. 863 (1958).

[99] People v. Fortuno, 73 Phil. 597, 598 (1942).

[100] People v. Oandasan, *supra*, note 78.

[101] *Id.*

[102] Plea of guilty was also taken into account as mitigating in People v. Cesar, *supra*, note 80, and People v. Roldan, *supra*, note 96.

[103] G.R. No. 19491. August 30, 1968.

[104] People v. Egido, 90 Phil. 762 (1952); People v. Santos, 105 Phil. 40 (1958).

AGGRAVATING CIRCUMSTANCES

1. *Taking advantage of official position*

The Court refused to take this circumstance against the appellant in *People v. Guevarra*[105] because there was no proof that when he shot the victim he used the influence, prestige or ascendancy which his office as policeman gave him in order to realize his objective.[106] For the same reason, the Court did not deem it proper to consider this circumstance against the Philippine Army sergeant who committed multiple murder in *People v. Pantoja*[107] and the chief of police who, together with other persons, committed robbery with homicide in *People v. Paredes*.[108]

2. *Disregard of sex and age*

In *People v. Gervacio*, the Court upheld the counsel *de officio's* contention, concurred in by the Solicitor-General, that the aggravating circumstances of disregard of sex and age should not be considered independently of treachery, being included therein.[109]

3. *Dwelling*

People v. Atencio[110] and *People v. Apduhan*[111] state the cases when dwelling may be considered inherent in the crime committed and hence not appreciable as aggravating and when it may not be so considered and hence aggravating. Dwelling (*morada*) is said to be inherent only in crimes which cannot be committed except in the house of another, and among these are trespass and "robbery in an inhabited house," as *Apduhan* puts it, or "simple robbery," in the words of *Atencio*. It has a separate and independent existence and the effect of aggravating the offense in other crimes like robbery with violence or intimidation of persons (robbery with homicide, for example) or murder.[112] The reason is that, in the case of the latter, the crime can be committed without need of violating the abode of the victim.

4. *Nighttime*

It is not enough, for purposes of taking this circumstance into account, that the offense was committed at night. There must be showing or evi-

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[105] *Supra*, note 17.
[106] The Court cited U.S. v. Rodriguez, 19 Phil. 156 (1911).
[107] *Supra*, note 69.
[108] *Supra*, note 21.
[109] *Supra*, note 74. The Court cited People v. Limaco, 88 Phil. 35 (1951); People v. Mangsant, 65 Phil. 548 (1938). People v. Balines, G.R. No. 9045, September 28, 1956.
[110] *Supra*, note 21.
[111] *Supra*, note 103.
[112] People v. Catalino, G.R. No. 25403, March 15, 1968. See also People v. Gervacio, *supra*, note 74 and People v. Condomena, *supra*, note 24.

dence that the peculiar advantages of nighttime, making it easier to commit the crime or insuring impunity because it prevents recognition of the perpetrators or facilitates their escape, were purposely and deliberately sought.[113] For lack of such showing or evidence, nighttime was ruled out in *People v. Condomena*[114] and in *People v. Estrada*.[115] It was also excluded in *People v. Narciso*[116] because the crime was thought of only shortly before its commission.[117]

Evidence that nighttime was deliberately chosen for the commission of the crime was found to exist in *People v. Atencio*[118] where the three appellants invited another person to join them in a "good time" that evening, revealed their plan to rob the victim, and tried to ascertain whether the occupants of the house were asleep. The last circumstance was held to indicate the culprit's desire to carry out their plan with the least detection or to insure its execution with a minimum of resistance. The same finding was made in *People v. Apduhan*[119] where it appeared that the accused waited until dark before they came out of their hiding place to consummate the crime of robbery in band with homicide.

Though nighttime be proven to have been purposely sought, however, it would generally be improper to take it into account where treachery is concurrent for then it is deemed absorbed in the latter circumstance. The reason is that in such a case it forms part of the peculiar treacherous means and manner adopted to insure the commission of the offense.[120] This doctrine was applied in *People v. Catalino*[121] and in *People v. Guevarra*.[122]

5. *Band*

There is no band within the contemplation of article 14(6) where, while three of the four malefactors were equipped with bolos, the fourth was unarmed.[123]

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[113] People v. Sina-on, G.R. No. 15631, May 27, 1966; People v. Gagui, G.R. No. 20200, October 28, 1966; People v. Boyles, G.R. No. 15308, May 29, 1964. 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.

[114] *Supra*, note 24.

[115] G.R. No. 26103, January 17, 1968.

[116] *Supra*, note 8.

[117] Citing People v. Pardo, 79 Phil. 568 (1947).

[118] *Supra*, note 21.

[119] *Supra*, note 103.

[120] People v. Corpus, G.R. No. 12718, February 24, 1960; People v. Pardo, *supra*, note 117; People v. Alfaro, 83 Phil. 85 (1949); People v. Balagtas, 68 Phil. 675 (1939); People v. Buncad, 25 Phil. 530 (1913); People v. Empeinado, 9 Phil. 613 (1908); People v. Sigayan, G.R. Nos. 18523-26, April 30, 1966; People v. Manobo, G.R. No. 19798, September 20, 1966. People v. De Gracia, G.R. No. 21419, September 29, 1966.

[121] G.R. No. 25403, March 15, 1968.

[122] *Supra*, note 17.

[123] People v. Atencio, *supra*, note 21, citing U.S. v. Melegrito, 11 Phil. 229 (1908). Band is a special aggravating circumstance by virtue of Article 295

6. *Reward or promise*

It is a requisite of this circumstance that the reward or promise must be the primary consideration which induced the person or persons to whom it was offered to commit or participate in the commission of the crime.[124] As held in *People v. Paredes*,[125] this requirement is not satisfied if the offerees had already decided to commit the crime when the offer was made, even if it had the effect of further inducing them to do so.

7. *Recidivism*

There is recidivism when, at the time of his trial for one crime, the accused shall have been previously convicted by final judgment of another crime embraced in the same title of Revised Penal Code.[126] The appellant in *People v. Macalisang*[127] was held to be a recidivist because, prior to his conviction for homicide, he had already been convicted of serious physical injuries and less serious physical injuries.

8. *Quasi-recidivism*

The special aggravating circumstance of quasi-recidivism provided in Article 160 of the Code was counted against the six accused in *People v.*

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in robbery falling under subdivisions 3 (when by reason or on the occasion of the robbery, physical injuries are inflicted which result in the injured person's losing his power of speech, hearing or smell or an eye, a hand, a foot, an arm, or a leg or the use of any such member, or his getting incapacitated for his habitual occupation), 4 (if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission physical injuries resulting in the injured person's becoming deformed or losing any part of his body or the use thereof or his becoming ill or incapacitated for the performance of his habitual work for more than thirty days), and 5 (other cases of robbery with violence or intimidation of persons) of Article 294 (People v. Apduhan, *supra*, note 103). Until as late as *People v. Ubaldo*, G.R. No. 19490, August 26, 1968 (four days before the promulgation of the *Apduhan* decision) it was appreciated as a special aggravating circumstance even in robbery with homicide under subdivision 1 of Art. 294 despite the holding earlier made in People v. Casunuran, G.R. No. 7654, August 16, 1956, and People v. Leyesa, G.R. No. 7842, August 30, 1956, that it can only be appreciated as generic aggravating with respect to this crime and those falling under subdivision 2 of Article 294. The *Apduhan* decision, modifying the *Ubaldo* decision, People v. Flores, G.R. No. 17077, April 29, 1968, and earlier ones of similar import (People v. Valeriano, 90 Phil. 15 [1951]; People v. Halasan, G.R. No. 21495, July 21, 1967) and reaffirming the *Casunuran* and *Leyesa* decisions, ruled that band is only an ordinary aggravating circumstance in cases falling under subdivisions falling under subdivisions 1 (robbery with homicide) and 2 (robbery with rape, intentional mutilation, or serious physical injuries resulting in insanity, imbecility, impotency or blindness).

[124] U.S. v. Flores, 28 Phil. 29 (1914).

[125] *Supra*, note 21.

[126] Art. 14(9).

[127] *Supra*, note 3.

Peralta[128] because at the time they committed the multiple murders they were serving sentences for various crimes by virtue of convictions by final judgment.

9. *Evident premeditation*

Proof of three things by the same quantum of evidence required to establish the crime itself is essential to a finding that this circumstance exists. These are (1) the time when the offender determined to commit the offense; (2) an act manifestly indicating that the offender has clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect and meditate upon the consequences of his act[129] so as to permit his conscience to overcome his resolution if he desires to harken to its warnings.[130]

Requisites present

The foregoing requisites are illustrated in *People v. Estrada*[131] and in *People v. Mongaya*.[132] In the *Estrada* case, the appellant had suffered stab wounds inflicted upon him by the deceased. After nursing the wound for more than one month, the appellant evinced his determination to revenge by several acts. He warned a friend to stop going with the deceased, else he might meet an accident. He made known his resolution to many of his friends so that one of them warned the deceased even in the presence of a policeman that his end was near. He and his friends who conspired with him arrived simultaneously at the scene of the crime, immediately attacked the victim, and got away together in the same taxi that was made to wait for them till they had carried out their plan — facts which, according to the Court, showed their determination to kill, despite more than ample time to reflect.

In the *Mongaya* case, the two accused passed by Juan Briones at about 5:00 o'clock p.m. and asked him if he saw the victim, against whose family they harbored ill-feelings due to previous incidents. Briones asked why they were looking for the victim and one of the accused replied, "If only I will see him now, it will not last up to tomorrow morning, we will kill him." Later in the evening, at about 6:00 p.m., he was on his way to the house of the victim's brother in order to warn him when he heard someone groaning near a hill planted with bananas. He looked in that direction and saw one of the accused stabbing the victim while the other held his left arm. The Court held that, under these circumstances, there was evident premeditation.

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[128] *Supra*, note 21.
[129] People v. Diva, *supra*, note 9.
[130] People v. Parayno, *supra* note 18.
[131] *Supra*, note 115.
[132] *Supra*, note 80.

Sufficient lapse of time

Evident premeditation was also held to exist where, as the case was in *People v. Gamao,*[133] the accused started plotting the killing five days before its commission. Evident premeditation was not deemed present, however, where the attack was thought of only fifteen minutes before it was made[134] or only half an hour intervened from the time the defendant left the house where the victims were serenading, went to his camp, put on his fatigue uniform, got a garand rifle and returned to the house and followed the serenaders, then fired.[135] In either of these cases, the accused did not have sufficient time to reflect.

Intention as affecting existence of evident premeditation

Evident premeditation could not be reckoned to qualify the offense in *People v. Parayno*[136] to murder because it did not appear that the appellant had conceived of killing the victim. The appellant had merely threatened to beat the latter and other children for getting the fruits of his "payar" tree and did beat the victim who thereupon fell into the river and died of drowning.

And even in a case where the appellant had confided to another his intention to kill "a person," evident premeditation was held as not proved beyond reasonable doubt since the appellant's revealed intention had no particular reference to the victim and it was the main evidence adduced to prove this circumstance.[137]

When evident premeditation cannot be appreciated even if present

There are at least two instances wherein evident premeditation cannot be made to aggravate or qualify an offense even if proven to exist. One is when the person against whom it is committed is other than the intended victim, a situation which, presenting itself earlier in the case of *People v. Guillen,*[138] reappeared in *People v. Guevarra.*[139] The other instance is when, owing to the nature of the crime, evident premeditation is inherent. Such is the case in robbery, including one complexed with homicide.[140] It would be aggravating in the latter kind of robbery, however, if it is proved that the plan was not only to rob also but to kill.[141]

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[133] G.R. No. 19347, February 27, 1968.
[134] People v. Narciso, *supra,* note 20.
[135] People v. Pantoja, *supra,* note 69.
[136] *Supra,* note 18.
[137] People v. Belchez, G.R. No. 21196, March 28, 1968.
[138] 85 Phil. 307 (1950).
[139] *Supra,* note 17.
[140] People v. Atencio, *supra,* note 21; People v. Valeriano, 90 Phil. 15 (1951); People v. Pulido, 85 Phil. 695 (1950); People v. Daos, 60 Phil. 143 (1934); U.S. v. Blanco, 10 Phil. 298 (1908).
[141] People v. Atencio, *supra,* note 21, citing People v. Pulido, *supra,* note 140.

10. *Abuse of superior strength*

Evidence required

The essence of this circumstance is that advantage is taken by the offender of his physical strength which is relatively superior to that of the offended party. The fact that the offender is stronger does not of itself prove its existence.[142] Thus, in *People v. Parayno,*[143] the Court excluded this circumstance in determining the proper penalty notwithstanding the fact that the appellant was already sixty-one when the offense was committed while the victim was only nine because the peculiar circumstances surrounding the commission of the offense negated the prosecution's theory that appellant took advantage of his physical superiority.

Nor is the circumstance established by mere superiority in number of the offenders.[144] Even if, for instance, the assailants were four and each of them beat the victim who was alone, abuse of superior strength was not considered in *People v. Narciso,*[145] they having attacked the latter alternately, one after the other.

A trial judge's finding that there was abuse of superior strength was, however, upheld where two of the four accused held the hands of the victim, who was unarmed, before stabbing him, while another guarded his wife with the point of a gun at her face.[146] A similar finding was also affirmed in a case where the victim was drunk, unarmed, and smaller than one of the two assailants who were fully armed policemen and attacked him with their guns unexpectedly.[147]

Distinguished from cuadrilla

In *People v. Apduhan,*[148] the prosecution sought to withdraw its allegation of abuse of superior strength on the ground that it was necessarily absorbed by the circumstance that the offense charged, robbery with homicide, was committed by a band. Holding this position erroneous, the Court distinguished the two circumstances by stating that appreciation of band (*cuadrilla*) is proper regardless of the comparative strength of the victim or victims provided the offense is committed by more than three armed malefactors; in other words, the number of

[142] People v. Apduhan, *supra*, note 103; People v. Elizaga, 86 Phil. 364 (1950).
[143] *Supra*, note 18.
[144] People v. Esrtada, *supra*, note 115. Cf. People v. Guevarra, *supra*, note 17, where the reason for ruling out abuse of superior strength was that only one of the two accused was responsible for the crime.
[145] *Supra*, note 20.
[146] People v. Condomena, *supra*, note 24.
[147] People v. Navarra, G.R. No. 25607, October 14, 1968.
[148] *Supra*, note 103.

aggressors is important. In abuse of superior strength, the number of aggressors is immaterial, the essential consideration being their relative physical strength as compared with that of the offended party and that they have taken advantage of it.

11. *Treachery*

The attendance of this aggravating circumstance is found in the concurrence of two conditions: (1) the employment of means, method or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to do so;[149] (2) that such means, method or manner of execution was deliberately or consciously chosen.[150]

Means or manner of execution found treacherous

The means, method or manner of execution was found to be treacherous where the assailant, at night and without being noticed, suddenly thrust a bolo at the victim's abdomen from under the house through the bamboo slats of the floor;[151] upon surreptitiously entering the house of the victim spouses, who were taking their supper, the several accused immediately and without warning hacked them from behind;[152] the culprits suddenly rushed upon the deceased and while two of them held his hands, another stabbed him on the right side of the breast;[153] the offended party was lying down on his back on the cement floor of the prison cell when the offenders covered his face with a blanket and, one after the other, mauled him with a piece of wood;[154] the wrongdoers showered an occupied house with bullets in the darkness of the night;[155] appellant shot the victim when he was well hidden behind a tree so that the latter, who was unarmed and unaware, had no way of defending himself;[156] the offended party, when stabbed from behind by one of the accused, was, to a certain degree, helpless because another of the accused put his right arm on his left shoulder;[157] al-

[149] People v. Casalme, G.R. No. 18033, July 26, 1966, Bernabe v. Bolinas, G.R. No. 22000, November 29, 1966, People v. Ramos, G.R. No. 22348, August 23, 1967; People v. Pengzon, 44 Phil. 224 (1922); People v. Sagayno, G.R. Nos. 15961-62, October 31, 1963; People v. Glore, 87 Phil. 739 (1950).

[150] People v. Dadis, G.R. No. 21270, November 22, 1966; People v. Tumaob, 83 Phil. 738 (1949); People v. Clemente, G.R. No. 24363, September 28, 1967.

[151] People v. Catalino, *supra*, note 121.

[152] People v. Gamao, *supra*, note 133.

[153] People v. Condomena, *supra*, note 24.

[154] People v. Narciso, *supra*, note 20.

[155] People v. Elizaga, *supra*, note 7.

[156] People v. Guevarra, *supra*, note 17.

[157] People v. Ramos, G.R. No. 19143, November 29, 1968.

though stabbed from in front, the victim could not defend himself because he was held fast by his left arm by the other accused;[158] the offender followed the serenaders without making any indication that he would shoot, then suddenly fired from behind two shots in rapid succession from a distance of about five meters;[159] the defendant took advantage of the relative confusion created by the shower by stabbing the victim when people were going out of the dance hall to seek shelter;[160] or the attack was made while the victims were asleep.[161]

The fact that the victims may have been awake when attacked because they were aroused by the movements of the robbers in their house was, over the argument of the defense, considered in the *Atencio* case not to affect the treacherous character of their immediate slaying. Citing the case of *People v. Avila*,[162] the Court said that an attack upon a person who has just awakened from sleep is attended by treachery because the victim, who may still be dazed and unprepared for the attack, could not be in a position to offer any risk or danger of retaliation to the attackers.

When attack held non-treacherous

The attack was not deemed treacherous where, though sudden, the victim was able to avoid being hit by the first hacking blows and was only hit when he was already in the act of defending himself.[163]

In *People v. Belchez*,[164] the offended party and his three companions were fishing at night when they were stoned. They did not mind it until one of them was hit in the left shoulder, whereupon the offended party flashed his lamp to where the stones came from and saw appellant advancing. The offended party was stooping down to place his lamp on the ground when appellant hit his face with a stone, making him fall to the ground. Appellant then rode on his back and continued hitting his head and face with the stone in his hand until the offended party fell unconscious. Was the attack treacherous? The Court gave a negative answer, stating that these facts are insufficient to show that appellant wanted to take the offended party by surprise so as to avoid danger to himself. The appellant's act of first throwing stones at the deceased and his companions, which served to put them on guard, the fact that the weapon used was nothing more than a stone

[158] People v. Mongaya, *supra*, note 80.
[159] People v. Pantoja, *supra*, note 69.
[160] People v. Tilos, G.R. No. 28596, February 21, 1968.
[161] People v. Atencio, *supra*, note 21.
[162] People v. Avila, 92 Phil. 805 (1953).
[163] People v. Diva, *supra*, note 9.
[164] *Supra*, note 137.

and the attack was made in the presence of the deceased's companions, were pointed out as disproving the existence of treachery.

Conscious or deliberate choice

Suddenness of the attack[165] or the fact that it was made from behind[166] is not in itself sufficient to establish treachery as an aggravating circumstance. The treacherous means must be deliberately chosen with a view to accomplishing the offender's purpose without danger to himself.[167] Such deliberate or conscious choice was held non-existent where the attack was the product of an impulse of the moment.[168] This is also true where the assailant did not make any preparation to kill the victim,[169] i.e., the decision to attack was sudden and the victim's position was accidental.[170]

Effect where the victim was not the one intended

Treachery, where present, is not to be excluded even if the person killed or injured is other than the intended victim.[171] In this respect, this circumstance may be distinguished from evident premeditation which may not be appreciated where the evil deed befalls another person.[172]

Personal to accused employing it

A very interesting case in connection with this circumstance is that of *People v. Garcellano*.[173] In that case, the victim was clubbed with a piece of bamboo by one of the appellants' co-accused while he was rendered helpless by the hold of the appellant Garcellano. When the victim tried to escape, another co-accused blocked his way and then stabbed him with a knife. The question was whether the treachery with which the victim was clubbed and then stabbed could be appreciated against Garcellano and his co-appellant, considering that conspiracy between them and their already deceased co-accused (they died during the pendency of the case) was not established. It was held that

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[165] Perez v. Court of Appeals, G.R. No. 13719, March 31, 1965; People v. Delgado, 77 Phil. 11 (1946).

[166] People v. Baldos, (C.A.) 34 O.G. 1937 (1936).

[167] People v. Tumaob, *supra*, note 150; People v. Dadis, *supra*, note 150.

[168] People v. Macalisang, *supra*, note 3.

[169] People v. Delgado, G.R. No. 24884, August 31, 1968.

[170] People v. Macalisang, *supra*, note 3, citing People v. Cadag, G.R. No. 13830, May 31, 1961. See also People v. Clemente, *supra*, note 150, where the attack arose from a chance encounter and quarrel and the victim's being stabbed while prostrate on the ground was merely incidental to the pursuit.

[171] People v. Guevarra, *supra*, note 17.

[172] See the subtopic dealing on cases when evident premeditation cannot be appreciated even if present, *supra*.

[173] *Supra*, note 34.

the treachery could not qualify the appellants' responsibility since there was no showing that Garcellano took hold of the victim to enable the assailant to club him.

Circumstances absorbed in treachery

The circumstances of nighttime, abuse of superior strength, and disrespect to age and sex, if concurrent with treachery, may not be taken into account, they being absorbed in the latter.[174]

12. *Ignominy*

This circumstance requires that the offense be committed by the employment of means or under circumstances which tend to make its effects more humiliating, *i.e.*, add to the moral suffering of the victim.[175] The mere fact that the appellant fired one more shot at the prostrate body of one of the victims and four more shots at the similarly prostrate body of the other was held, in *People v. Pantoja*,[176] insufficient to establish this circumstance.[177]

13. *Use of unlicensed firearm under Article 296*

Use by the members of a band of an unlicensed firearm in the commission of a robbery is, under Article 296, a special aggravating circumstance which makes imperative the imposition of the corresponding statutory penalty in its maximum period. Under a previous holding this special aggravating circumstance was applicable to all forms of robbery with violence or intimidation of persons enumerated in Article 294 as long as commission thereof is by a band.[178] The case of *People v. Apduhan*[179] declares this ruling as having lost force in the sense that this circumstance can no longer be appreciated in the forms of robbery

[174] People v. Catalino, *supra*, note 112; People v. Gervacio, *supra*, note 74. There are cases, however, when night time may be taken as aggravating even if treachery is co-existent, as long as the one is separable from or independent of the other (People v. Salgado, 11 Phil. 56 [1908]; People v. Bredejo, 21 Phil. 23 [1911]; People v. John Doe, G.R. No. 2463, March 31, 1950). Where, for example, the hands of the victims were tied at the time they were beaten, the circumstance of nighttime is not absorbed in treachery since, in this instance, it can be perceived distinctly from the latter which rests on an independent factual basis.

[175] U.S. v. Abaigar, 2 Phil. 417 (1903).

[176] *Supra*, note 69.

[177] Such acts may, however, constitute outraging or scoffing at the victim's person or corpse which would qualify the killing to murder under Article 248(6), assuming they are done after the victim has been rendered lifeless. Thus, in People v. Orzame, G.R. No. 27773, May 19, 1966, this qualifying circumstance was held present because, 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, causing his brain to scatter.

[178] People v. Bersamin, 88 Phil. 292 (1951).

[179] *Supra*, note 103.

enumerated in paragraphs 1 and 2 of article 294, namely, robbery attended by homicide, rape or mutilation or serious physical injuries resulting in insanity, imbecility, impotency or blindness. This is in consequence, according to the Court, of the change effected in article 295 by Republic Act No. 373, which limits the application of the special aggravating circumstance of (among others) band to the less serious forms of robbery with violence or intimidation of persons enumerated in the last three paragraphs of article 294. In support of this conclusion, the Court cited the observation of the sponsor in Congress of Republic Act No. 12, which had earlier amended Article 296, to the effect that this latter article is a corollary of Article 295.[180]

[180] Reliance by the Court on the observation of the sponsor of Republic Act No. 12 as to the nature and purpose of Article 296 and its relation to Article 294 overlooks the rule that statements of a legislator, made in the course of congressional debates or deliberations, concerning the purpose of an amendment and the application of the law as it exists are not controlling (Song Kiat Chocolate Factory v. Central Bank of the Phil., 102 Phil. 477 [1957]). Indeed, even statutes declaring "what the law was before" have been held not to be binding on courts (Endencia v. David, 93 Phil. 696 (1953).

Actually, the observation that Article 296 is a corollary of Article 295, and hence if the latter does not apply to certain cases, the former should not also be applied to such cases, is not borne out by the history of these articles as they relate to Article 294. As originally embodied in the Revised Penal Code and the old Penal Code (Article 504), Article 295 was limited in its application to the offenses mentioned in subdivisions 3, 4 and 5 of Article 294 while Article 296 was already in its present form (literally under the Revised Code and substantially under Article 505 of the old Code) except that it did not contain the provision introduced in 1946 by Republic Act No. 12 as to the use of an unlicensed firearm. Aside from introducing this amendment to Article 296, Republic Act No. 12 made Article 295 applicable to all crimes specified in Article 294. But even before the passage of Republic Act No. 12, Article 296 was applied to crimes falling under Article 294 to which Article 295 did not apply, especially robbery with homicide committed by a band (or cases decided under the Revised Penal Code, see People v. Pallemos, 61 Phil. 885 [1935], and People v. Morados, 70 Phil. 558. For cases decided under the old Code, see U.S. v. Santos, 4 Phil. 189 [1905]; U.S. v. Macalalad, 9 Phil. 1 [1907]; U.S. v. Tiongco, 37 Phil. 951 [1918]; People v. Bautista, 49 Phil. 389 [1926], cited in People v. Morados, *supra;* People v. Salamuddin, 52 Phil. 670 [1929]). Republic Act No. 373 brought back the situation obtaining prior to the passage of Republic Act No. 12 by again limiting the applicability of Article 295 to the last three subdivisions of Article 294 but without touching Article 296 as amended by the addition of the special aggravating circumstance of use of unlicensed firearm. And after this reversion of Article 295 to its former scope, the Court continued to apply Article 296 to cases not covered by Article 295. (See People v. Mendoza, 84 Phil. 148 [1949], citing People v. Morados, *supra,* this note, and other cases. See also People v. Libre, 93 Phil. 5 [1953] and People v. Demetrio, 86 Phil. 344 [1950], both of which cases cite decisions rendered prior to the enactment of Republic Act No. 12). This bit of history conclusively shows that, prior to the *Apduhan* decision herein being commented upon, Article 296 had always been applied independently, and irrespective of the scope at any particular time, of Article 295.

Indeed, contrary to the *Apduhan* ruling, there is more reason to apply the special aggravating circumstance of use of unlicensed firearm to crimes falling under the first two subdivisions of Article 294 than to those covered by the last three subdivisions of said Article. For in the latter group of crimes, the penalty is already raised to the maximum by any of the special aggravating circumstances (band, for instance) provided in Article 295; this renders useless and for no purpose the further appreciation with respect to these crimes of the circumstance of unlicensed firearm under Article 296 for a penalty cannot be raised twice

14. *Motorized watercraft*

Republic Act No. 5438, amending Article 14(20) of the Revised Penal Code, adds as aggravating circumstance the use of a motorized watercraft in the commission of the crime.

ALTERNATIVE CIRCUMSTANCES

1. *Intoxication*

Intoxication serves to mitigate criminal liability if it is not habitual or intentional.[181] To be given this effect, however, the fact of intoxication itself must be proved by satisfactory evidence. The accused is not relieved of this burden simply because the prosecution admits the non-habituality of the intoxication for lack of evidence in its hands to disprove the defendants' claim to that effect. A contrary rule, according to *People v. Apduhan*,[182] would allow unscrupulous and deceitful collusion between defense and prosecution in order to unduly and unjustly minimize the penalty impossible.[183]

It would not suffice for the purpose of establishing that the offense was committed in a state of intoxication to introduce the accused's testimony that before the perpetration of the wrongful deed, he took a bottle of wine which he drunk little by little until he got drunk and that of the arresting policemen to the effect that the accused smelled of wine and vomitted.[184] Neither is it sufficient to merely introduce evidence that the defendant had a gallon of *tuba* with him when he committed the crime[185] or, as in the *Apduhan* case, the uncorroborated self-serving allegation of the accused that at that moment he was intoxicated although he was "not used to be drunk."

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to its maximum or beyond it. The law could not have added this special circumstance as a mere surplusage. In the case of the crimes within the purview of the first two subdivisions of Article 294, band would only be a generic aggravating circumstance which, being capable of being offset by mitigating circumstances, need not result in the imposition of the maximum penalty and thus permits the application of the special circumstance of use of firearms. This assures the imposition of the maximum penalty and gives effect to the apparent purpose of the law to set up more stringent deterrent measures with respect to these more serious crimes.

Furthermore, the second paragraph of Article 296 is, by its express terms, applicable to "*any* of the assaults" committed by a band on the occasion of a robbery.

[181] *Intentional* means resorted to or subsequent to the plan to commit the crime.

[182] *Supra*, note 103.

[183] There is something hairsplitting in the Court's position that the prosecution intended only to admit the non-habituality of the intoxication. If the prosecution admitted the non-habituality, did it not implicitly admit what was claimed to be non-habitual, the intoxication?

[184] People v. Noble, 77 Phil. 93 (1946).

[185] People v. Pardo, 79 Phil. 568 (1947).

Once established satisfactorily, however, intoxication is presumed to be non-habitual or unintentional, the burden being then shifted to the prosecution to prove the contrary.[186]

2. *Lack of instruction and education*

The settled rule is that lack of instruction and education is not mitigating in crimes against property like theft and robbery.[187] It was, therefore, held erroneous for the trial court to take it into account as mitigating in *People v. Condomena,*[188] a case of robbery in band with homicide.

PERSONS CRIMINALLY LIABLE

1. *Principals*

Who may be principals

Article 17 of the Code enumerates three ways whereby a person may become criminally liable as a principal, namely: (1) by direct participation in the execution of the act; (2) by directly forcing or inducing others to commit it; or (3) cooperation through the performance of another act indispensable to the commission of the offense. One may also be held liable as a principal without regard to the extent and manner of his participation if he is a party to a conspiracy[189] or the crime committed is robbery in band in which homicide or any other offense involving physical assault is committed, unless in the latter case it is shown that he, being present at the commission of the robbery, attempted to prevent any of the assaults committed by any member of the band.[190]

Principal by inducement

A person may be regarded as a principal by inducement if his acts or words, done or uttered before the commission of the offense for that purpose, were the direct and determining cause thereof.[191]

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[186] People v. Apduhan, *supra,* note 103, citing U.S. v. Fitzgerald, 2 Phil. 419 (1903).

[187] People v. Melendrez, 59 Phil. 154 (1933); People v. de la Cruz, 77 Phil. 444 (1946); People v. Mendoza, 100 Phil. 811 (1957); People v. Semañada, 103 Phil. 790 (1958). It is also not mitigating in crimes against property (Molesa v. Director of Prisons, 59 Phil. 406 [1934]; People v. Lopez, G.R. No. 14347, April 29, 1960, 58 O.G. 4280 [May, 1962]).

[188] *Supra,* note 24.

[189] See the cases cited in note 21, *supra.*

[190] REV. PEN. CODE, art. 296; People v. Condomena, *supra,* note 24, citing People v. Evangelista, 86 Phil. 112 (1950) and People v. Garduque, G.R. No. 10133, July 31, 1958.

[191] People v. Indanan, 24 Phil. 203 (1913); People v. Omine, 61 Phil. 609 (1935); People v. Lawas, G.R. Nos. 7618-20, June 30, 1955; People v. Castillo, G.R. No. 19238, July 26, 1966.

The appellant Rodrigo Honorio Lopez in *People v. Jamero*[192] was convicted as a principal by inducement even if he did not participate in the actual killing of the victim because it was he who gave the final instructions to the participants in the actual killing and the go-signal for committing the crime with the lights of the car with which he had earlier followed the victim's jeep.

In *People v. Del Castillo*,[193] a Huk leader and his men wanted to kidnap someone from Gumaca, Quezon for ransom but could not decide on the person. For the purpose of selecting and pointing to the prospective victim, they called on the appellant, a councilor and prominent citizen of that town. Appellant suggested the Principe family and pinpointed Elvira Tañada, wife of one of the Principes, as the ideal victim. He also told them that the Principe family would have no difficulty in producing the ransom money for her release. The Huk leader and his men, convinced of appellant's suggestion and reasoning, decided then and there to kidnap Elvira Tañada. The Huk leader then told appellant that the latter would be informed as to when the kidnapping was to be effected, to which appellant answered that he could be counted upon by the leader all the time. The question was whether, under these facts, the appellant could be held liable for the kidnapping with ransom. The Court affirmed his conviction as a principal by inducement, stating that, taken together, the foregoing circumstances showed that the appellant enjoyed such ascendancy of mind over that of the Huk leader that his suggestion was the efficacious inducement which led the latter and his men to execute their criminal intention.

PENALTIES

1. *Temporary absolute disqualification and perpetual special disqualification from the right of suffrage*

Prior to his election to the office of mayor in November 1967, the respondent in *Lacuna v. Abes*,[194] had been convicted of counterfeiting treasury warrants for which he was sentenced to a certain period of *prision mayor* and a fine. This principal penalty, the maximum of which was to have been completely served in 1961 were the respondent not conditionally pardoned in 1959, carried with it the accesory penalties of temporary absolute disqualification and perpetual special disqualification for the exercise of the right of suffrage. Both these accessory pe-

[192] *Supra*, note 21.
[193] G.R. No. 16941, October 29, 1968.
[194] G.R. No. 28613, August 27, 1968.

nalties involve disqualification from election to public office,[195] and it was on this ground that his eligibility for the office to which he was elected was challenged in a quo warranto proceeding. During the pendency of the proceeding, the Chief Executive granted respondent an absolute and unconditional pardon and restored to him "full civil and political rights." Two of the issues raised were: (1) whether the disqualification of the respondent arising from his conviction expired with the expiration of his prison sentence in 1961; and (2) whether the absolute pardon granted in his favor had the effect of blotting out all the consequences of his conviction, including such disqualification.

On the first issue, the Court held that the accessory penalty of temporary absolute disqualification lasts only during the term of the prison sentence and hence, in the case of the respondent, expired in 1961.

The other accessory penalty — perpetual special disqualification for the exercise of the right of suffrage — did not, however, expire on said date since, in the words of the Court, it "deprives the convict of the right to vote or to be elected to or hold public office *perpetually*, as distinguished from temporary special or disqualification." Elaborating in this respect, the Court clarified the meaning of Article 32[196] as follows:

> "The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus, the word "perpetually" refers to the perpetual kind of special disqualification, while the phrase "during the term of the sentence" refers to temporary special disqualification. The duration between (*sic*) the *perpetual* and the *temporary* (both special) are necessarily different because the provision, instead of merging their durations into one period states that such duration is "according to the nature of said penalty" — which means according to whether the penalty is the perpetual or the temporary special disqualification."

Be that as it may, the Court, in resolving the second issue, held that the respondent's perpetual disqualification was obliterated by the plenary pardon extended to him.[197]

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[195] REV. PEN. CODE, arts. 27(2) and 32.

[196] "Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.—The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification."

[197] The Court gave a retroactive effect to the absolute pardon granted to the respondent, stating that a different ruling would unduly impose on the Chief Executive's prerogative on the matter a limitation not contemplated by the Constitution. Quoting from Pelobello v. Palatino, 72 Phil. 441 (1941), the Court said that, in the absence of a constitutional provision to the contrary, this prerogative cannot be restricted or controlled by legislative action. Under this principle, it would seem that the provision contained in Articles 40, 41, 42 and 43

2. *Complex crime*

The general rule is that all the penalties corresponding to several violations of law should be imposed. The concept of complex crime set forth in article 48 is an exception to this rule.[198]

Two shots fired in rapid succession

The defendant in *People v. Pantoja,*[199] using a garand rifle, fired two shots in rapid succession. The first shot hit one of the victims and the second hit the other. The trial court found the defendant guilty of a complex crime, double murder. Is this finding correct? *Held*: The lower court was in error. There were two acts of shooting, not a single one. And either one was obviously not necessary to commit the other.

May a light felony committed through negligence be complexed with grave or less grave felonies resulting from the same negligent act?

This recurrent question is raised again in *People v. Buan.*[200] But, as in the past,[201] the Court does not meet it squarely, giving what amounts to a merely evasive, not a categorical answer. Disposing of the contention of the Solicitor General that the charge of slight physical injuries through reckless imprudence (which had been dismissed by the Justice of the Peace) could not be joined with the accusation for serious physical injuries and damage to property arising from the same act of imprudence (which the Court of First Instance dismissed for being barred by the dismissal of the first charge) because article 48 of the Code allows only the complexing of grave or less grave felonies, the Court merely reiterated the following holding it made in *People v. Diaz:*[202]

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of the Code that, though pardoned, the offender shall continue to suffer the accessory penalties of perpetual absolute disqualification for public office and perpetual special disqualification from the right of suffrage "unless the same shall have been expressly remitted in the pardon" constitutes an undue curtailment or restriction of the pardoning power. The validity of this provision was not touched upon in the case under review, apparently for the reason that the plenary pardon extended to the respondent expressly restored to him "full civil and political right".

[198] People v. Peralta, *supra,* note 21.

[199] *Supra,* note 69.

[200] G.R. No. 25366, March 29, 1968.

[201] People v. Cano, G.R. No. 19660, May 24, 1966; Pabulario v. Palarca, G.R. No. 23000, November 4, 1967. People v. Lizardo, G.R. No. 22471, December 11, 1967, citing People v. Silva, G.R. No. 15974, January 30, 1962 (in which the Court first made the pronouncement in *People v. Diaz* quoted in the text), holds that cases of slight, less serious, serious physical injuries, damage to property and homicide through reckless imprudence arising out of one and the same incident should be filed and prosecuted under one information on the ground that a defendant should not be harassed with various prosecutions based on the same act. But while this holding in effect rules that the said crimes cannot be complexed all together, it was made not with reference to Article 48, but to the question of double jeopardy.

[202] 94 Phil. 714 (1954).

> "The prosecution's contention might be true. But neither was the prosecution obliged to first prosecute the accused for slight injuries through reckless imprudence before pressing the more serious charge of homicide with serious physical injuries through reckless imprudence. Having first prosecuted the defendant for the lesser offense in the Justice of the Peace Court . . . which acquitted the defendant, the prosecuting attorney is not now in a position to press in this case the more serious charge of homicide with serious physical injuries through reckless imprudence which arose out of the same alleged reckless imprudence of which the defendant has been previously cleared by the inferior court."

Aside from sidestepping an important issue, this ruling disregards essential requirements which must exist to make previous dismissal or acquittal a bar to a subsequent prosecution on the ground of double jeopardy. *Firstly*, on the theory (which the Court granted for the sake of argument) that the charge of slight physical injuries through reckless imprudence is separate from, because it cannot be complexed with, the charge of serious physical injuries, the Court's ruling throws overboard the condition that, for double jeopardy to exist, the offense which was dismissed or of which the defendant was acquitted must be the same offense charged in the subsequent complaint or information.[203] It must be emphasized that the double jeopardy rule embodied in the Constitution and in the Rules of Court speaks of *offense*, not of an *act* resulting in one or more offenses. *Secondly*, on the opposite theory (apparently preferred by the Court[204]) that there was only one, single offense, the Court's ruling would run counter to another fundamental requirement of double jeopardy, which is, that the complaint or information which was dismissed or under which the accused was tried

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[203] 4 MORAN, COMMENTS ON THE RULES OF COURT 207, 212 *et seq.* (1963). This is not to disregard the rule that identity of offenses charged is present when the first includes or is included in the second. For the application of this rule requires a showing that the second offense charged includes or is included in the first one according to the facts specifically alleged in the first complaint or information and not simply because the second offense by definition of law or in a general way includes or is included in the other. *Id.*, at 213-214 (1963). citing U.S. v. Buiser, 32 Phil. 439 (1915), and U.S. v. Andrada, 5 Phil. 464 (1905). In the case under review, the second charge (serious physical injuries and damage to property thru reckless imprudence) cannot be said to include the earlier charge of slight physical injuries because the physical injuries alleged in the second information were suffered by persons other than those who sustained the slight physical injuries. Factually, therefore, the two sets of physical injuries are different from each other.

[204] The Court's preference for this theory may be gleaned from the following passage in the *Buan* decision: "For the essence of the quasi offense of *criminal negligence* under Article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes this negligent act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offense. And as the careless act is single, whether the result should affect one person or several persons, the *offense* (*criminal negligence*) *remains one and the same x x x.*" This theory is criticized under the topic on criminal negligence, *infra*.

and acquitted must be valid and sufficient in form and substance.[205] For the complaint charging slight physical injuries through reckless imprudence was, under this theory, obviously insufficient for omitting the greater elements of the offense committed, the serious physical injuries and the damage to property. Under the same theory, the justice of the peace court would have had no jurisdiction of the offense had it been properly charged, another consideration which would have precluded a finding of double jeopardy.[206]

3. *Application of penalties*

Effect of presence or absence of aggravating or mitigating circumstances

The medium period of the corresponding penalty was applied in three cases[207] because neither an aggravating nor a mitigating circumstance was present.

The penalty prescribed was applied in its maximum in a case where there was one aggravating but not mitigating circumstance.[208]

But the penalty next lower by two degrees was imposed where there was no aggravating circumstance but there were present the privileged mitigating circumstance of incomplete self-defense and the two generic mitigating circumstances of voluntary surrender and plea of guilty.[209]

Proper method of computing penalty

The defendant in *People v. Cesar*[210] committed the complex crime of direct assault upon a person in authority with homicide. There was attendant the privileged mitigating circumstance of minority and the ordinary mitigating circumstance of plea of guilty. Taking into account the complex nature of the offense, the trial court first applied the penalty for the more serious offense of homicide, *reclusion temporal*, in its maximum period. It then lowered this penalty to *reclusion temporal* medium in view of the privileged mitigating circumstance of minority. It imposed this latter penalty as the maximum of the indeterminate sentence but applied it in its minimum range to give effect to the

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[205] 4 MORAN, *op. cit. supra*, notes 203, at 207 *et seq.*

[206] People v. Martinez, 55 Phil. 6 (1930); U.S. v. Ledesma, 29 Phil. 431 (1915). For the reasons stated in note 203, *supra*, the ruling in People v. Besa, 74 Phil. 57 (1942), and People v. Belga, 100 Phil. 996 (1957), that if the requirements of the "second offense includes or is included in first" rule are satisfied, "there is double jeopardy regardless of whether the Court trying the first charge had no jurisdiction to try the second offense" is not applicable to the present case.

[207] People v. Narciso, *supra*, note 20; People v. Parayno, *supra*, note 18; People v. Sedano.

[208] People v. Macalisang, *supra*, note 3.

[209] People v. Oandasan, *supra*, note 78.

[210] G.R. No. 26185, March 13, 1968.

generic mitigating circumstance of plea of guilty. And as minimum of the indeterminate sentence, it imposed the minimum of the next lower penalty — *reclusion temporal* minimum. This method followed by the trial court was held erroneous by the Supreme Court.

The proper method, according to the Court, "is to start from the penalty imposed by the Revised Penal Code, *i.e., reclusion temporal,* then apply the privileged mitigating circumstance of minority and determine the penalty immediately inferior in degree, i.e., *prision mayor,* and finally, apply the same in its maximum degree but within the minimum range thereof because of the ordinary mitigating circumstance of plea of guilty. *Prision mayor* being the maximum of the indeterminate sentence, the minimum of the indeterminate penalty is within the range of the penalty next lower to it as prescribed by the Revised Penal Code, *i.e., prision correccional.*"

Legality and practicality of imposing multiple death penalties

Article 70 of the Code does not specifically provide, as did its predecessor,[211] that "all penalties corresponding to the several violations of law shall be imposed." Nevertheless, article 70 assumes this power of the courts when it states that "(w)hen the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit" and that "in the imposition of the penalties, the order of their respective severity shall be followed." But, apart from article 70, this judicial prerogative may be founded on the fact that for every individual crime committed, a corresponding penalty is provided by law.[212] The legality of imposing multiple death penalties is, therefore, beyond question.

The exercise of this power has, however, been objected to as impractical and as constituting a useless formality, the reason advanced being that, after the service of one death sentence, the execution of the others would no longer be possible because the convict has only one life to forfeit. The *Peralta* decision[213] convincingly demonstrates the practicality and importance of imposing multiple death penalties when proper. *First,* it is not impossible to serve all such penalties because they can be served simultaneously under article 70. *Second,* since the imposition of several such penalties is an index of the extreme criminal perversity of the convict, the possibility of an improvident grant of executive clemency is reduced, the penitentiary authorities being more likely to exercise judicious restraint in recommending clemency or leniency to the convict. *Third,* even if the Chief Executive commutes the multiple

[211] Old Penal Code, Art. 87.
[212] People v. Peralta, *supra,* note 21.
[213] *Supra,* note 21.

death penalties to multiple life imprisonments, the practical effect is that the convict has to serve a maximum of forty years of imprisonment and not merely thirty years, as would result if only one death sentence were imposed and commuted to life imprisonment.

4. *Indeterminate sentence*

It is now settled that the basis of the application of the Indeterminate Sentence is the penalty actually imposed after considering all the aggravating and mitigating circumstances and not the basic penalty provided by law which may be imposed in the discretion of the court.[214] In accordance with this rule, the indeterminate sentence of the appellant in the *Oandasan* case was based on *prision correccional* even if he was convicted of homicide, which is punishable with *reclusion temporal*, because the penalty next lower in degree had to be imposed in view of the circumstances. By the same token, it was held error for the lower court to extend the benefits of the law to one convicted of murder, a crime penalized with reclusion temporal in its maximum to death, whose proper penalty was *reclusion perpetua* because there was neither an aggravating nor a mitigating circumstance.[215]

5. *Recommendation of executive clemency*

When the penalty which results from a strict adherence to the Code is clearly excessive, taking into consideration the degree of malice and the injury caused by the offense, it is the duty of the Court, without suspending the execution of the sentence, to make the necessary and proper recommendation for a mitigation of such penalty.[215a] In pursuance of this duty, the trial court in *People v. Apduhan*[216] recommended to the President of the Philippines the commutation to life imprisonment of the death sentence which it imposed on the appellant. It pointed out, as grounds for its recommendation, the appellant's plea of guilty, which it considered to be spontaneous and insistent, and the *possibility* that the firearm he used in the robbery with double homicide was used in order to counteract the resistance of the deceased victims. Upon review, the Supreme Court held this recommendation to be unjustified.

Considering the first ground relied upon by the lower court, the high Court said that the appellant's plea of guilty was neither spontaneous nor insistent, as the lower court observed, because the appellant initially pleaded not guilty but later changed his plea with the persistent condition that he be sentenced to life imprisonment, not death, and he

[214] People v. Oandasan, *supra*, note 78.
[215] People v. Estrada, *supra*, note 115.
[215a] Rev. Pen. Code, art. 5, second par.
[216] *Supra*, note 103.

decided to waive this condition only after much equivocation, because of which the trial court had to reopen the case to make certain the nature of his plea. But such plea, even if it were spontaneous and insistent and therefore constituted a manifestation of sincere repentance, cannot, according to the Court, obliterate the attendant aggravating circumstances of band, dwelling, nighttime, and abuse of superior strength which patently reveal the appellant's criminal perversity.

Anent the second ground of the trial court's recommendation, the Court said that it was likewise no justification for executive clemency because it was a mere conjecture, a mere possibility. Besides, even if it were true, the employment of a firearm in subduing the lawful resistance of innocent persons is, concluded the Court, a criminal act by any standard.

EXTINCTION OF CRIMINAL LIABILITY

1. *Prescription*

Article 91 of the Code provides that "(t)he period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents and shall be interrupted by the filing of the complaint or information, and ***shall commence to run again when such proceedings*** terminate without the accused being convicted or acquitted, or ***are unjustifiably stopped for any reason not imputable to him.***"[217]

Stoppage of proceedings neither unjustifiable nor unimputable to accused

Suppose the complaint or information is filed on the expiration date of the prescriptive period but subsequently, following the filing of a motion to quash by the accused, the court orders the prosecution to amend the original complaint for, say, grave threats to one for light threats only within five days. The five days elapse and no complaint is filed. May the proceedings then be deemed unjustifiably stopped for reasons not imputable to the accused and the running of the prescriptive period resumed pursuant to article 91? Resolving this question in the case of *Medrano v. Mendoza,*[218] the Supreme Court ruled that the stoppage of any of the proceedings in such a case is neither for reasons not imputable to the accused nor unjustifiable. The accused himself causes the alleged stoppage by his motion to quash which in effect is granted by the court's order that the complaint be amended to charge only the lighter offense. And if there is a delay caused by the filing of the amended complaint beyond the five-day period granted by the

[217] Emphasis supplied.
[218] G.R. No. 24364, February 22, 1968.

court, the same cannot be said to be unjustifiable since it was excused by the court's acceptance of the amended complaint, the court having retained the discretion to accept or reject it.

Basis of computing period when penalty is complex

The Code fixes different prescriptive periods for the various crimes depending on the class of the penalties attached to them or, in the case of those punished by less than a correctional penalty, on whether the crime is libel or similar offenses, oral defamation or slander by deed, or a light offense. A distinction is also made as to crimes penalized with correctional penalties. *Arresto mayor* is a correctional penalty but crimes to which it is attached prescribe in five years while crimes punished by other correctional penalties prescribe in ten years.[219]

There are cases, perhaps constituting the majority, where the penalty provided is a compound one, *i.e.*, consists of two or more different degrees of penalty. In such cases, the highest penalty shall be the basis for computing the prescriptive period, provided said penalty is at least of the correctional category.[220] Thus, if the prescribed penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, *prisión correccional* in its minimum period, not *arresto mayor* in its maximum period, shall be considered in determining the prescriptive period which, for this reason, would be ten years instead of five.[221]

2. *Pardon*

See note 197.

3. *The novation theory*

Criminal liability is the concern of the State and, except in crimes against chastity,[222] may not, by compromise, pardon or otherwise, be waived or extinguished by the offended party.[223] As such, acceptance by the offended party of full or partial reparation from the offender has been held not to preclude the State from enforcing the criminal liability already incurred.[224]

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[219] See Article 90.

[220] Article 90, last paragraph; People v. Cruz, G.R. No. 15132, May 25, 1960.

[221] Tadeo v. Visperas, G.R. No. 20891, May 23, 1968.

[222] REV. PEN. CODE arts. 23 and 344; People v. Infante, 57 Phil. 138 (1932).

[223] People v. Gervacio, 102 Phil. 687 (1957).

[224] U.S. v. Mendezona, 2 Phil. 353 (1903); U.S. v. Ongtenco, 4 Phil. 144 (1905); U.S. v. Rodriguez, 9 Phil. 153 (1907); People v. Leachon, 56 Phil. 739 (1932); Javier v. People, 70 Phil. 550 (1940); People v. Benitez, G.R. No. 15923, June 30, 1960, 58 O.G. 1407 (March, 1963).

Novation of the contract which has been criminally breached has, in several decisions of the Supreme Court,[225] been similarly rejected as having the effect of obliterating criminal liability for *estafa*. But in at least three decisions, one decided in 1964 and two in 1968, the Court has made pronouncements to the effect that novation of contract may result in the avoidance or extinction of criminal liability under the contract novated if the novation is made prior to the institution of criminal proceedings. This doctrine, originated by the Court of Appeals,[226] is based on the theory that up to the institution of criminal proceedings "the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability as distinguished from the civil."

Although recognition of the doctrine was first given by the Supreme Court in *People v. Nery*,[227] the only case so far where the Court found the transaction novated so that the accused could no longer be prosecuted is that of *Gonzales v. Serrano*.[228] It is also in this latter case where the Court first states the doctrine without the equivocating qualifications made in its previous decisions. The complainant in this case sold to the private respondent plastic flowers and leaves worth ₱10,172. The sale was allegedly on a C.O.D. basis, but complainant himself claimed that the respondent received the goods on consignment with the obligation to sell them and to deliver to him the proceeds thereof or to return those she (respondent) could not sell. Before the delivery, the respondent made a cash deposit of ₱2,000. The balance of ₱8,172 was paid in check, which complainant accepted, when the goods were delivered on October 27, 1964. On the following day, the respondent asked the complainant to hold off encashment of the check, she not having been able to deposit sufficient funds to cover the check because she had failed to deliver the goods to her customer the previous night. Complainant did not deposit the check, showing his agreement. On November 17, 1964, the respondent made, and complainant accepted, a partial payment on account of the check in the amount of ₱5,556 which, added to the deposit of ₱2,000, left an unpaid balance of ₱2,612. Sometime thereafter, the complainant charged the respondent

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[225] See cases cited under the immediately preceding note.

[226] See People v. Galsim, CA-G.R. No. 531-R, February 26, 1948, 45 O.G. 3466, (Aug., 1949); People v. Trinidad, CA-G.R. No. 14258, October 31, 1956, 53 O.G. 731 (Feb., 1957); People v. Doniog, CA-G.R. No. 16993-R, Feb. 27, 1957, 53 O.G. 4500 (July, 1957); People v. De Rama, CA-G.R. No. 17677-R, May 21, 1958.

[227] G.R. No. 19567, February 25, 1964.

[228] G.R. No. 25791, Sept. 23, 1968.

with estafa before the City Fiscal. The said official dismissed the charge, holding that the proper action was one for specific performance and not for *estafa* since the alleged C.O.D. agreement was novated. The trial court, before which a mandamus proceeding was brought, held similarly, prompting the complainant to appeal directly to the Supreme Court. The high court regarded the transaction between the complainant and the respondent as more in the nature of a sale on commission than a C.O.D. sale. But it held that, even if it was originally a C.O.D., the same was novated into a sale on credit by virtue of the subsequent acts of the parties. As the novation took place prior to the filing of the criminal information, the respondent could no longer be held criminally responsible.

Invocation of the doctrine was rejected in the earlier two cases. In the leading case of *People v. Nery*,[229] extension of its benefits was denied because the alleged novation took place after the criminal case had been instituted and while it was pending trial. In the second case, *People v. Tanjuatco*,[230] two grounds were advanced by the Court why it could not be availed of by the appellant. *First*, the doctrine does not apply to cases involving no *contractual* relationship between the parties, an element absent in the offense of qualified theft committed by the appellant which insisted in the mere taking of the complainant's property over which he never acquired juridical possession. *Second*, the fact that the complainant accepted properties belonging to the accused and his relatives which were assigned to the former for the partial settlement of the amounts taken by the latter did not of itself produce novation, intent to extinguish the original relationship not having been shown.

CIVIL LIABILITY

1. *Nature of civil liability of an offender*

A person who is criminally liable also incurs civil liability.[230a] It must, however, be borne in mind that this civil liability is a part of the penalty to which the offender may be sentenced[231] and as such may be imposed on appeal even if unawarded by the appealed judgment, pursuant to the well-known rule that the penalty imposed may be increased by the appellate court, the whole case being open for review.[232]

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[229] *Supra*, note 227.

[230] G.R. No. 23924, April 29, 1968.

[230a] REV. PEN. CODE, art. 100.

[231] Quemuel v. Court of Appeals, G.R. No. 22794, January 16, 1968, citing Bagtas v. Director of Prisons, 84 Phil. 692 (1949) and Erlinda v. Director of Prisons, G.R. No. 47326, March 18, 1940.

[232] People v. Carreon, G.R. No. 17920, May 30, 1962; Lontoc v. People, 74 Phil. 513 (1943); People v. Fresco, 63 Phil. 526 (1936); People v. Olfindo, 47 Phil. 1 (1924); Pendleton v. U.S., 40 Phil. 1033 (1910); U.S. v. Gimenez, 34 Phil. 74 (1916).

Owing to this characteristic and for the further reason that it springs from either a tort or crime, this civil liability may not be considered a debt within the contemplation of the constitutional injunction against imprisonment for debt, which is limited to obligations to pay a sum of money arising from contract.[233]

2. *Liability of persons acquitted*

Article 100 of the Revised Penal Code speaks of the civil liability of persons *criminally liable.* Does it necessarily mean that a person who is cleared of criminal liability for a certain act may not be held civilly responsible for the same act? The Civil Code and the Revised Rules of Court do not allow such an inescapable implication. Under article 29 of the Civil Code, acquittal for lack of proof beyond reasonable doubt is not a bar to a civil action for damages. And under Section 3(c) Rule 111 of the Revised Rules of Court, extinction of the penal action does not carry with it extinction of the civil, unless it is declared in a final judgment that the fact from which the civil might arise did not exist.

In *Paraon v. Priela,*[234] the judgment acquitting the defendant of the crime of damage to property through reckless negligence was appealed by the complainant as to the civil aspect of the case. It, however, appeared that in the judgment of acquittal the trial court declared that the collision which caused the damages sought to be recovered by appellant had not been due to any negligence on the part of the defendant. Because of this, the defendant's acquittal was held to have extinguished his civil responsibility and the complainants could, therefore, no longer pursue their appeal

3. *Amount of civil indemnity for death due to crime*

The minimum of amount of compensatory damages for death due to crime is fixed by article 2206 of the Civil Code at ₱3,000. In this it repealed by implication Commonwealth Act No. 284, which fixed the minimum indemnity at ₱2,000. But even before the approval in 1949 of the Civil Code by both houses of Congress, the Supreme Court had already awarded ₱6,000 as compensatory damages for death by murder or homicide, taking into consideration the difference between the value then of Philippine currency and that prevailing in 1938 when Commonwealth Act No. 284 was enacted. Finding the amount fixed in the Civil Code also inadequate, the Court adhered to this amount

[233] See PHIL. CONST., art. III, sec. 1(12); Quemuel v. Court of Appeals, *supra*, note 231.

[234] G.R. No. 23122, August 2, 1968.

as the minimum even after said Code went into effect in 1950.[235] and continued to do so until October 10, 1968. In its decision in *People v. Pantoja*,[236] promulgated on the following day, the Court felt the necessity of making another adjustment and increased the amount to ₱12,000. As justification, the Court stated that:

> "It is of common knowledge that from 1948 to the present (1968), due to economic circumstances beyond governmental control, the purchasing power of the Philippine peso has declined further such that the rate of exchange now in the free market is US$1.00 to almost ₱4.00 Philippine peso. This means that the present purchasing power of the Philippine peso is one-fourth of its pre-war purchasing power. We are, therefore, of the considered opinion that the amount of award of compensatory damages for death caused by crime or quasi-delict should now be ₱12,000."[237]

4. *Subsidiary civil liability of employees, etc.*

Under article 103 of the Code, employers, teachers, and persons and corporations engaged in any kind of industry are subsidiarily liable for felonies committed by their servants, pupils, workmen, apprentices or employees in the discharge of their duties.

Effect of judgment of conviction

By virtue of this provision, a judgment convicting an employee of an offense committed in the performance of his duties is not only admissible against but conclusively binding upon his employer with respect to his subsidiary civil liability and the amount thereof. It is of no moment that the employer was not a party to the criminal suit leading to the conviction. This has been the ruling since *Martinez v. Barredo*.[238] It is reiterated in *Jocson v. Glorioso*[239] and in *M.D. Transit & Taxi Co., Inc.*[240]

Effect of dismissal of action based on quasi-delict

If a judgment of conviction for an employee's felonious act is binding upon his employer, what would be the effect of the dismissal on

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[235] See People v. Hernandez, G.R. No. 3391, May 23, 1952; People v. Segovia, G.R. No. 5037, March 19, 1953; People v. Banlos, G.R. No. 3413, December 29, 1950; Alcantara v. Surro, 92 Phil. 472 (1953); People v. Yakans Pawin, 85 Phil. 528 (1950); Maranan v. Perez, G.R. No. 22272, June 26, 1967.

[236] *Supra*, note 69.

[237] The Court has since then consistently awarded this amount. See People v. Peralta, *supra*, note 21; People v. Sangaran, G.R. No. 21757, November 26, 1968; People v. Gutierrez, G.R. No. 25372, November 29, 1968.

[238] 81 Phil. 1 (1948). An earlier case held such judgment inadmissible (City of Manila v. Manila Electric Co., 52 Phil. 586 [1928], while another held that it is merely *prima facie* evidence (Arambulo v. Manila Electric Co., 55 Phil. 75 [1930]).

[239] G.R. No. 22686, January 30, 1968.

[240] G.R. No. 23882, February 17, 1968.

the merits of a quasi-delict suit based on the same act for which the employee is criminally prosecuted, the employer being a party to the civil suit? Does it not constitute a bar to the enforcement of the employer's subsidiary liability under article 103? This question, described by the Court as novel, was encountered in *Jocson v. Glorioso*.[241] Relying on a previous decision,[242] which dealt with a somewhat related but non-identical issue, the Court gave a negative answer. Quoting from the *Diana* decision, the Court said that the previous dismissal of the action based on *culpa aquiliana* could not be a bar to the action to enforce the subsidiary liability provided by article 103 because the latter action involves a different remedy and a different cause of action.

CRIMES AGAINST PROPERTY

1. *Robbery*

Interrelation of Articles 294, 295, and 296

See note 180, *supra*.

2. *Theft*

Importance of accurate identification of owner of stolen property

The crime of theft defined in paragraph 1 of article 308 of the Code has five essential components: (1) the taking of personal property; (2) that the property belongs to another; (3) that the taking was done with intent of gain; (4) it was done without the consent of the owner; and (5) that it was accomplished without violence or intimidation of persons nor force upon things.[243]

The rule is that every essential element of a crime must be alleged in the complaint or information.[244] In averring the essential fact that the taking of the personal property was done without the consent of the owner, is it imperative for the validity of the information that the identity of the owner be accurately alleged? This was the question raised in *Pua Yi Kun v. People*[245] where the first information alleged that the stolen stock certificates belonged to Lepanto Consolidated Mining Co. and Consolidated Mining, Inc. but it turned out that, as averred in the second information filed after the first had been dismissed upon

[241] *Supra*, note 239.

[242] Diana v. Batangas Transportation Co., 93 Phil. 391 (1953).

[243] Pua Yi Kun v. People, G.R. No. 26256, June 26, 1968, citing U.S. v. De Vera, 43 Phil. 1000 (1921); People v. Mercado, 65 Phil. 665 (1938); People v. Yusay, 50 Phil. 598 (1927); People v. Rodrigo, G.R. No. 18507, March 31, 1966.

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

[245] *Supra*, note 243.

motion of the fiscal for lack of evidence to support it, said stocks actually belonged to Chiong & Co., Inc. Did the error made as to the identity of the owner of the stolen certificates affect the validity of the first information such that its dismissal could not be set up to bar the prosecution of the second information on the ground of double jeopardy? The Court resolved the issue in the affirmative stating in effect that it is the consent of the real owner that must be alleged to be absent.

Rule where accused acquired possession of the thing with the owner's consent; theft distinguished from estafa

One accused of theft usually comes into possession of the thing alleged to have been stolen without the consent of the owner. The element of taking without the owner's consent, which is essential in theft, is not, however, limited to this sense and may embrace a situation where the accused received the possession of the thing from the owner or acquired such possession with the latter's consent.[246] In such a case, it becomes necessary to determine the degree of possession transferred by the owner to the accused for upon this will depend whether the accused is to be found guilty of theft or estafa committed through abuse of confidence or only civilly liable. For this purpose, there is no clearer and more complete statement of the governing rule in existence than that made by Justice Albert in *People v. Aquino*,[247] to wit:

> "Where only the material possession is transferred, conversion of the property gives rise to the crime of theft; where both juridical and material possession is transferred, misappropriation of the property would constitute *estafa;* and where in addition to the juridical and material possession, the ownership of the property is transferred, misappropriation could only give rise to a civil obligation."

Only the material, but not the juridical possession is transferred when there is no agreement by which the transferee can exercise a better right of possession over the object received than the owner himself, or by which the latter may have the right to dispose of said property in any manner binding to the owner.[249] This was found to be the case,

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[246] U.S. v. De Vera, 43 Phil. 1000 (1921).

[247] (CA) 36 O.G. 1886 (1938), cited by the Supreme Court with approval in Ricafort v. Fernan, 101 Phil. 575 (1958).

[248] People v. Aquino, *supra,* note 247. Tolentino enumerates the following degrees of possession:

> "(1) Mere holding, or possession without title whatsoever, and in violation of the right of the owner. Here, both the possessor and the public know that the possession is wrongful. Example: possession of a thief or a usurper of a land.
>
> (2) Possession with juridical title, but not that of ownership. This is possession peaceably acquired, such as that of a tenant, depository, or pledgee.

and the appellant was therefore held guilty of theft instead of estafa, in *People v. Tanjutco*[249] where the appellant misappropriated portions of amounts of money given to him for deposit in the bank.

3. *Estafa*

Falsely pretending to possess influence

Falsely pretending to possess influence is penalized under subdivision 2(a) of article 315. As in effect held in *Tan v. People*,[250] this offense may be committed by one who manifests and misrepresents to another that he is influential with the President of the Philippines and his Executive Secretary, knowing this to be false and making it only to obtain ₱2,000 from the other party who, relying on such misrepresentation, parts with this amount.

Novation as a defense

See the sub-topic on novation under the topic on Extinction of Criminal Liability, *supra*.

CRIMES AGAINST CHASTITY

1. *Simple seduction*

The information in *People v. Yap*[251] charged that "on or about May 15, 1959 and for sometime subsequent thereto . . . (the) accused, by means of deceit and false promise of marriage, did then and there willfully, unlawfully and feloniously seduce and have sexual intercourse several times with Catalina Babol, a virgin over 12 but under 18 years of age." Relying on the phrase "sexual intercourse several times," the defense moved to quash on the ground that the information charged more than one offense, its theory being that every sexual intercourse the accused may have had with the complainant constituted a complete and consummated offense of seduction. This contention was rejected on the ground that the information did not allege that every act of intercourse was the result of a separate act of deceit. The fact that there were several acts of intercourse consented to by the offended party

(3) Possession with a just title, or a title sufficient to transfer ownership, but not from the true owner. Example: the possession of a vendee of a piece of land from one who pretends to be the owner thereof.

(4) Possession with a just title from the true owner. This is possession that springs from ownership." (2 TOLENTINO, CIVIL CODE OF THE PHILIPPINES 203 (1963).

[249] *Supra*, note 230.

[250] G.R. No. 25460, March 13, 1968.

[251] G.R. No. 25176, February 27, 1968.

in reliance upon the same promise of marriage, did not, therefore, give rise to separate offenses.

Simple seduction and qualified seduction distinguished

In at least two respects, simple seduction and qualified seduction may be said to be diametrically opposed to each other. One manifestation of this polarity is virginity, which is an essential requisite of qualified seduction but not of simple seduction. A widow may thus be the victim of simple seduction, what is important in this offense being that the offended party, be she unmarried or a widow, be a woman of chaste life and good reputation.[252]

Another polar difference between these offenses lies in the fact that simple seduction requires that the offended party's submission to the sexual intercourse be induced through the employment of deceit.[252a] Qualified seduction does not require proof of deceit, this element being replaced by abuse of confidence.[253]

2. *Condonation or pardon*

Condonation or pardon by the offended party bars a criminal prosecution for concubinage.[254] A defense that the wife had pardoned her husband of this offense was rejected where her letters after she became positive about the illicit relations between him and his co-defendant attest to the contrary and the wife in fact filed a legal separation suit against him based on said relations.[255]

CRIMES AGAINST HONOR

1. *Grave slander*

Utterances made in the course of judicial proceedings are regarded as absolutely privileged, and hence may not be the basis of a criminal action, even if they are defamatory in character and made with malice,[256] provided that they are connected with or relevant, pertinent or material to the cause in hand or subject of inquiry.[257]

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[252] People v. Iman, 62 Phil. 92 (1935).

[252a] U.S. v. Sarmiento, 27 Phil. 121 (1914); People v. Fontanilla, G.R. No. 25354, June 28, 1968.

[253] Abuse of confidence has been held to imply deceit or fraud (People v. Fontanilla, *supra*, note 252a citing U.S. v. Santiago, 41 Phil. 793 (1917); U.S. v. Arlante, 9 Phil. 595 (1908).

[254] REV. PEN. CODE, art. 344.

[255] Castro v. Court of Appeals, G.R. No. 22159, July 31, 1968.

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

[257] Tolentino v. Baylosis, G.R. No. 15742, January 31, 1961, 59 O.G. 2881 (May, 1963); People v. Alvarez, G.R. No. 19072, August 14, 1965; People v. Aquino, G.R. No. 23908, October 29, 1966.

In *People v. Balao*,[258] the defendant Ex-Senator sued, both civilly and criminally, the complainant for libel. In the civil suit, the defendant made the following remarks in the course of his testimony:

(a) "I was put to shame because I was being attacked by an extortionist, . . . and a man of no consequence because he has no visible means of living."
(b) "I do not invite criminals."
(c) "I cannot avoid being felicitatious even to criminals. At least, it is a gentleman's attitude even towards criminals."

For these words the complainant charged the defendant with grave slander. The latter moved to quash the charge, claiming that his utterances were protected by the rule on absolutely privileged communications. The lower court upheld this defense and dismissed the charge. Inasmuch as the Solicitor General had, on appeal, limited his brief to the procedural aspect of the case and did not touch on the question of whether the utterances in question were absolutely privileged, the Supreme Court upheld the dismissal, no ground for reversal having been shown.

2. *Prosecution of defamation*

Form in which action may be filed

Article 360 of the Code provides that "(n)o criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* shall be brought except at the instance of and upon complaint expressly filed by the offended party." The trial court in *People v. Atienza*[259] construed this provision to imply a prohibition against the prosecution of a defamation charge upon complaint by the offended party when the defamation consists in the imputation of a crime which may be prosecuted *de oficio*. The Supreme Court held this construction to be unwarranted. Citing the case of *Balite v. People*,[260] it stated that such construction unreasonably constricts criminal prosecution of defamation which can be prosecuted *de oficio* by limiting its initiation to the filing of information. Exclusion of criminal action started by complaint is, according to the Court, a concept alien to the statute.

CRIMINAL NEGLIGENCE

Nature of criminal negligence

The Court's current concept of criminal negligence is stated in *People v. Buan*,[261] Holding that one who was convicted or acquitted

[258] G.R. No. 22250, May 22, 1968.
[259] G.R. No. 19857, October 26, 1968.
[260] G.R. No. 21475, September 30, 1966, 64 O.G. 5713 (June, 1968)
[261] *Supra*, note 200.

of a charge of slight physical injuries through reckless imprudence may not again be prosecuted for serious physical injuries and damage to property arising from the same act of reckless imprudence which caused the slight physical injuries on the ground that the accused would thereby be placed in double jeopardy, the Court stated that:

> ". . . the essence of the quasi offense of criminal negligence under Article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and cannot be split into different crimes and prosecutions."

The Court modifies its position expressed in *Quizon v. Justice of the Peace of Bacolor, Pampanga*[262] and reiterated in *People v. Cano*[263] when it says in the present decision that the law penalizes "the negligent or careless *act*, not the result thereof." In the *Quizon* and *Cano* decisions, it said that what is principally punished in negligence or imprudence "is the *mental attitude* or condition behind the act, the dangerous recklessness, lack of care or foresight, the *"imprudencia punible,"* as distinguished from intentional crimes where "the act itself is punished." But the Court clings to the novel theory it adopted in those earlier decisions, and thus perpetuates an error, when in the present one it speaks of criminal negligence as if it were an offense in itself. Thus the Court makes reference to "the quasi offense of criminal negligence under Article 365" and "the offense (criminal negligence)" which "remains one and the same." But the fact is that the Code does not refer to the imprudence or negligence spoken of in article 365 as an offense or quasi offense; nor does it refer to the various acts committed through imprudence or negligence penalized therein as a single quasi offense. The acts defined in said article are referred to in the title (Title Fourteen) under which it falls as "quasi offenses." In other words, the Code looks at article 365 as defining not a single quasi offense but several such offenses. This points to no other conclusion than that criminal negligence under said article is, as held by the Court prior to the *Quizon* and *Cano* decisions, not a distinct crime but simply a way of committing one and merely determines a lower degree of criminal liability.[264]

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[262] G.R. No. 6641, July 28, 1955.

[263] G.R. No. 19660, May 24, 1966.

[264] People v. Faller, 67 Phil. 529 (1939). For a more extended critique of the Court's position in the *Quizon* and *Cano* cases, see the topic on Criminal Negligence in BAUTISTA, *Criminal Law*, SURVEY OF PHILIPPINE LAW AND JURISPRUDENCE — 1966 227, 274-278 (1967).

No negligence

In *Faraon v. Priela,*[265] the plaintiffs' car got stuck into a rut on top of the railroad tracks crossing the road. A few moments later a diesel train operated by the defendant appeared after turning the bend which preceded the railroad crossing. The person in the car then got down and signalled the train to stop. However, the train proceeded headlong and hit the car, completely destroying it. The question was, was the defendant negligent? It appeared that the curve preceding the crossing where the car got stuck was bounded on both sides by high earthen embankments which prevented the defendant and his fireman from seeing the car until it was about 75 meters away. It was also proven by expert testimony that, pulling eleven coaches at a speed of 30 to 40 miles an hour, the train would cover a distance of about 300 meters from the place where its air brakes were applied. Under these circumstances, the trial court concluded, and the Supreme Court affirmed its finding, that the train could not have stopped before reaching the car and, hence, the hitting of the car was due to "a freak accident so unusual and unique as to defy all expectations" and not to defendant's negligence.

[265] *Supra,* note 234.