

CRIMINAL LAW

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The too-oft-repeated application and reiteration of age-old doctrines and principles sometimes makes the task of yearly surveying decisions in criminal law a stale, flat and seemingly unprofitable enterprise. But there is in reading them something that makes one persevere and at times even whets an appetite to devour them as one would an interesting tale. And this something is what anyone who would probe into the darker depths or phases of human nature could, if he did well to try, discover in the laboratory of criminal jurisprudence. Here he would find generously unfolded to his view no less than a panorama of man's baser instincts and attributes, his violent passions, his lusts, his greed, his horrid schemes, his unquenchable thirst for vengeance, and his incredibly infinite capacity for inequity to his kind. In no clearer form could he see than here the "murderer that always lurks not far beneath" in every man, ready to spring at the slightest provocation. Here too is the predator in him prone to rapine and plunder at the sight of prey. It is a shuddering experience — this grim, variegated picture of man acting in the raw according to the untamed laws of his jungle origins. In this context, the criminal law seems so ineffectual one is for a moment tempted to conclude that it has largely been nothing more than and remains to be a moral code, merely signifying man's persistent striving to rise above, if not entirely shake off, his bestial roots. Robert Louis Stevenson, of course, once said with characteristic stoicism that in this effort man is doomed to fail. But this dismal view of human destiny dissipates, partly at least, as we reflect upon civilization. For, despite his failings and the wayward and blundering creature that he is, man has travelled far indeed, far from the heart of the jungle and its brutal darkness, even though he has not yet reached its boundaries or risen above its over-arching branches and is far from being vouchsafed a glimpse of the bright horizon beyond its rims. And in this long, long journey out, it cannot be gainsaid that the criminal law has not been, and will not be, entirely without a role in clearing the path.

Such is the spectacle presented and such are the reflections inspired by reading the 1970 decisions, as those of other years, in this field of law. To come by these, however, one has to delve into the decisions themselves.

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A survey like this one can only offer the cryptic scenes of a preview and the dry, flesh-less bones of the age-old doctrines.

CONSPIRACY

Existence

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.¹ The agreement need not be written or otherwise expressly or directly made prior to the commission of the crime.² It is not required that the offenders had, for an appreciable time prior to the commission of the crime, actually come together and agreed in express terms to pursue a common purpose.³ It is sufficient that, at the time of the commission of the offense, the perpetrators had the same objective and were united in its accomplishment, as shown by their concerted action and other attendant circumstances.⁴

Such unity of purpose and concerted determination to execute it was found to exist in *People v. Alcantara*⁵ where (1) all three of the accused were at the same place, a Japanese bamboo grove at the scene of the crime, (2) they stabbed the murder victim in rapid succession, and (3) fled together when the victim's daughter shouted "Enough!" and the third of them was about to deliver his intended blow. These circumstances, according to the Court, demonstrate that the three acted in concert and pursuance of the same objective, joint purpose and design, namely, to kill the victim.

Conspiracy was also held to be clearly inferable in *People v. Empeño*⁶ where, enraged by the destruction of their fence by the victims, the defendants, armed with bolos and taking cover behind clumps of tall grass surrounding the trail leading to the hut of the victims, one after the other and almost simultaneously attacked the latter as they passed the trail.

It must be noted, however, that mere concerted action does not necessarily indicate the existence of conspiracy. In one case, for instance, it appeared that one of two accused held the deceased in a tight embrace from behind and while in this helpless condition, the other accused stabbed him with a balisong. But the circumstances showed that the one who embraced the deceased did so in order to stop him (the deceased) from further hitting his nephew whom he came upon having a quarrel and a fist fight with the deceased. Because of this it was not deemed justifiable to qualify his participation as that of a conspirator.⁷

¹ REV. PEN. CODE, art. 8.

² *People v. Ging Sam*, G.R. No. 4287, December 29, 1953, 94 Phil. 139 (1953).

³ *People v. Carbonel*, 48 Phil. 868 (1926); *People v. Ging Sam*, *supra*.

⁴ *People v. Bagatsing*, 98 Phil. 902 (1956); *People v. Garduque*, G.R. No. 10133, July 31, 1958.

⁵ G.R. No. 26867, June 30, 1970, 33 SCRA 812 (1970).

⁶ G.R. No. 27610, May 28, 1970, 33 SCRA 40 (1970).

⁷ *People v. Manansala*, G.R. No. 23514, February 17, 1970, 31 SCRA 401 (1970).

Similarly, it was held in *People v. Gande*⁸ that the fact that the appellant was seen together with his brother and another man, all of them armed with long bolos, going towards the house of the principal homicide victim does not warrant the inference of a common plan among them to commit the crime. In this case, no convincing evidence was adduced that the brother and the third person committed any overt act or actively participated in concert with the appellant's act of killing the principal victim, or in connection with the death of the other victims, from which to deduce a unity of action and purpose among themselves.

Effects

Except when entered into with respect to the commission of treason, rebellion, or sedition, conspiracy does not constitute a crime.⁹ But where established, its effects are far-reaching. The most important of these is that the act of any of the conspirators becomes the act of all the others and responsibility for the act will be borne by them equally regardless of the extent and character of their participation in the commission of the crime.¹⁰ Thus a conspirator who claimed to have merely stood guard for the one who inflicted the 23 gunshot wounds of the victim was, even granting his claim to be true, nonetheless held equally responsible and accorded the same punishment as the latter.¹¹ The same treatment was given to one of three conspiring defendants who was unable to deliver his intended knife blow simply because of the shout of the victim's daughter, upon which all three fled together.¹²

This effect of conspiracy is even more far-reaching where the crime committed is robbery complexed with any other crime. Ordinarily, collective and solidary responsibility resulting from conspiracy is 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.¹³ But this limitation of the doctrine of collective and solidary responsibility does not apply to robbery with homicide or any other complex crime where robbery is the principle purpose. In such case, any crime committed on the occasion of the robbery or as a consequence of it beomes, even if not contemplated in the conspiracy, the collective responsibility of all those

⁸ G.R. No. 28163, January 30, 1970, 31 SCRA 347 (1970).

⁹ REV. PEN. CODE, art. 8 in relation to arts. 115, 136 and 141.

¹⁰ *People v. Alcantara*, *supra*, note 5; *People v. Patricio*, 79 Phil. 227 (1947); *People v. Danan*, 83 Phil. 252 (1949); *People v. Bersamin*, 88 Phil. 292 (1951); *People v. Abrina*, 102 Phil. 695 (1957).

¹¹ *People v. Fernando*, G.R. No. 24781, May 29, 1970, 33 SCRA 149 (1970).

¹² *People v. Alcantara*, *supra*, note 5.

¹³ *People v. De la Cerna*, G.R. No. 20911, October 30, 1967, 21 SCRA 569 (1967); *People v. Pelagio*, G.R. No. 16177, May 24, 1967.

who agreed to and participated in the robbery, even if they did not in any way take part in the commission of such other crime.¹⁴ It was for this reason that one of the defendants in *People v. Espejo*,¹⁵ whose participation was limited to guarding the jeep which they used for escape and to load their loot, argued in vain that since the killing of the victim was not a part of the conspiracy, he should not be held to account for it but merely for the robbery.

The only way a participant in a robbery could exonerate himself from liability for assaults committed incidental to or on the occasion thereof is to prove clearly that he endeavored to prevent such assaults. This is true whether or not the robbery is committed in band.¹⁶

JUSTIFYING CIRCUMSTANCES

1. SELF-DEFENSE

Evidence required to prove self-defense

A plea of self-defense, to be successful, must be proved by sufficient, satisfactory and convincing evidence, not merely by declarations of doubtful veracity.¹⁷

Such evidence was not found to exist in *People v. Manansala*¹⁸ where the appellant claimed self-defense on the basis of the theory that the victim was himself armed with a knife with which he tried to stab him. The theory was shown to be spurious by several circumstances. Firstly, the appellant sustained no knife wound at all. Secondly, not one of the policemen who arrived at the scene of the crime almost immediately after its commission saw the knife allegedly used by the victim. Thirdly, when the defendant surrendered he declined to make any statement, much less one amounting to a protestation of innocence, which is the logical and spontaneous reaction of a man who finds himself in an inculpatory predicament, the policemen having come upon the appellant while he was still clutching the death weapon.

The Court could not also accept the self-defense theory put up by the five defendants in *People v. Empeño*¹⁹ who were found to have concertedly

¹⁴ *People v. Atencio*, G.R. No. 22581, January 17, 1968, 22 SCRA 88 (1968); *People v. Pujinio*, G.R. No. 21690, April 29, 1969, 27 SCRA 1185 (1969); *People v. Rogel*, G.R. No. 15318, March 31, 1962; *People v. Bautista*, 49 Phil. 389 (1926); *U.S. v. Macalalad*, 9 Phil. 1 (1907); *People v. Carunungan*, G.R. No. 13283, September 30, 1960, 60 O.G. 2094 (April, 1964); *People v. Morados*, 70 Phil. 558 (1940); *People v. Libre*, 93 Phil. 5 (1953); *U.S. v. Santos*, 4 Phil. 189 (1904). For *contra*, see *People v. Basisten*, 47 Phil. 493 (1925).

¹⁵ *People v. Espejo*, G.R. No. 27708, December 19, 1970, 36 SCRA 400 (1970).

¹⁶ *Id.*

¹⁷ *People v. Paras*, 80 Phil. 149 (1948); *People v. Borbano*, 76 Phil. 702 (1946); *People v. Tenorio*, G.R. No. 2835, May 19, 1950.

¹⁸ *Supra*, note 7.

¹⁹ *Supra*, note 6. See also the case of *People v. Manos*, G.R. No. 27791, December 24, 1970, 36 SCRA 457 (1970).

attacked the two victims in ambush. They maintained that the injuries sustained by both victims had been inflicted by one of them, Aurelio Empeño, single-handedly in self-defense. They related that when Aurelio was fetching one of his carabaos in the afternoon of the occurrence, one of the victims, Jaime Amilagan, came and immediately wounded him with a bolo slash in his left forearm. Aurelio drew out his bolo and swung it at Jaime's head. The other victim, Ernesto Amilagan, then approached and attacked him with a bolo. Aurelio evaded the bolo slashes given by Ernesto and reciprocated them with his own bolo, thereby inflicting several wounds upon Ernesto. In rejecting this story as lacking in credibility the Court noted that it is bolstered mainly by the testimony of the defendants themselves whereas that of the prosecution is supported by two third persons who were then with the victims. Furthermore, the policeman who first came upon the scene of the crime positively testified that when he met Aurelio Empeño that afternoon, immediately after the incident, he did not have any injury in the body. Besides, Aurelio himself admitted that the victims had no possible reason to try to kill him.

EXEMPTING CIRCUMSTANCES

1. IRRESISTIBLE FORCE AND UNCONTROLLABLE FEAR

The law exempts from criminal liability any person who acts under the compulsion of an irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury.²⁰ Does mere membership in the Huk or HMB organization suffice to exempt one from liability for murder committed pursuant to an order of a commander of the organization? The appellant in *People v. Fernando*²¹ urged that it should, since, according to him, any member who disobeys or refuses to carry out the organization's order may be liquidated or given another form of severe punishment. For this reason he asked that he should be deemed to have acted under the compulsion of an irresistible force and/or under the impulse of an uncontrollable fear of an equal or greater injury. He, however, failed to show that threats were made or that actual physical or moral compulsion was exerted upon him. On the contrary, he himself testified that he freely stood on guard outside the store where the killing was committed while his companion went inside and shot the victim. Absent an actual threat of such gravity and imminence that any ordinary man would have buckled down under it or an actual physical or moral force exerted by a third person and reducing the defendant to mere instrument, the uncontrollable fear or irresistible force contemplated by law does not, said the Court, exist.

²⁰ REV. PEN. CODE, art. 12, pars. 5 & 6.

²¹ *Supra*, note 11.

MITIGATING CIRCUMSTANCES

1. LACK OF INTENTION TO COMMIT SO GRAVE A WRONG

The law makes a person performing an unlawful act responsible for all the consequences of such act even if they be different from what he intended.²² The fact that he did not intend to commit so serious a wrong as that resulting from his act does not eliminate his criminal responsibility for that wrong.²³ But since intent is an essential element of a crime, the law has deemed it proper and dictated by reason, good sense and public conscience to fix a mitigated responsibility whenever the intent is less than the actual act committed.²⁴ Hence the mitigating circumstance of lack of intention to commit so grave a wrong.

This circumstance is considered when there is a great disproportion between the means employed to execute the criminal act, on the one hand, and its consequences, on the other. The intention of the offender is judged by the greater or less proportion of the means employed by him to the evil produced by his act, and where the extent of the evil is in proportion to that means or could reasonably be expected to result therefrom, the mitigating circumstance cannot be presumed or admitted.²⁵

In *People v. Amit*,²⁶ a rape with homicide case, the defendant claimed that he intended merely to rape the offended woman and did not mean to kill her as well. He therefore sought the benefit of this circumstance. Through his own admission, however, it was established that when the offended woman, who was 57 years old, resisted the defendant's attempt to rape her by biting and scratching him, to subdue her, defendant boxed her and then "held her on the neck and pressed it down" while she was lying on her back and he was on top of her. These acts, according to the Court, were reasonably sufficient to produce the result which they actually produced — the death of the offended woman. It consequently refused his plea to mitigate his responsibility on the basis of this circumstance.

2. SUFFICIENT PROVOCATION

The defendant was held entitled to the benefits of this mitigating circumstance where, as happened in *People v. Manansala*,²⁷ the victim boxed him on the eye before the fight.

²² REV. PEN CODE, art. 4.

²³ U.S. v. Brobst, 14 Phil. 310 (1909); U.S. v. Luciano, 2 Phil. 96 (1903); U.S. v. Candelaria, 2 Phil. 104 (1903); U.S. v. Tengco, 2 Phil. 189 (1903); U.S. v. Martinez, 2 Phil. 199 (1903); U.S. v. Fitzgerald, 2 Phil. 419 (1903).

²⁴ *People v. Payumo*, 54 Phil. 181 (1929).

²⁵ U.S. v. Reyes, 36 Phil. 904 (1917).

²⁶ G.R. No. 29066, March 5, 1970, 32 SCRA 95 (1970).

²⁷ *Supra*, note 7.

3. PASSION OR OBFUSCATION

To be appreciated in favor of the defendant, this circumstance requires the concurrence of two requisites, namely, (1) that the act producing passion and obfuscation must have been unlawful and sufficient to produce such condition of mind, and (2) such act must not have been so far removed from the time of the commission of the crime that the perpetrator could recover his equanimity.²⁸ The Court was apparently satisfied that both these requisites were present in *People v. Empeño*²⁹ where, on the day before the occurrence of the crime, the victims broke the barbed wire fence of the defendants.

4. VOLUNTARY SURRENDER

To be availed of as a factor in mitigating liability, the offender's surrender must have been spontaneous, indicating his intention to surrender unconditionally to the authorities, "either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture."³⁰

In a 1966 case, the Supreme Court considered the appellant's surrender voluntary even if made after more than three years from the commission of the crime wherein he was a co-principal.³¹ But in *People v. de la Cruz*,³² the Court held that the spontaneity of the surrender is belied by the fact that the search for the accused had already lasted four years. It may be asked, of course, whether there is a qualitative difference between more than three years and four years.

AGGRAVATING CIRCUMSTANCES

1. NIGHTTIME

The cloak of night, to be considered aggravating, must be sought purposely or taken advantage of to facilitate the commission of the offense or to insure impunity. This rule was reiterated in *People v. Modelo*,³³ where the following circumstances surrounding the commission of the crime were not deemed sufficient to warrant a finding that nighttime was so sought or taken advantage of, to wit: At midnight, the victim, while viewing a singing contest in a certain barrio, was approached by one of the appellants, her schoolmate, who said: "Come, your mother is sending for you." At first she took this as a joke but when he repeated it, she decided to heed her

²⁸ *People v. Alanguilang*, 52 Phil. 663 (1929); *People v. Constantino*, G.R. No. 23558, August 10, 1967, 20 SCRA 940 (1967).

²⁹ *Supra*, note 6.

³⁰ *People v. Salcam*, 61 Phil. 27 (1934); *People v. Honrada*, 62 Phil. 112 (1935); *People v. Catacutan*, 64 Phil. 107 (1937), and others.

³¹ *People v. Coronel*, G.R. No. 19091, June 30, 1966, 17 SCRA 509 (1966).

³² G.R. No. 30059, December 19, 1970, 36 SCRA 452 (1970).

³³ G.R. No. 29057, October 30, 1970, 35 SCRA 633 (1970).

classmate, who was then with the other defendant. She went with them towards a riverbank where her mother was supposed to be in a banca waiting for her. Upon reaching a dark place, beside a nipa swamp near the river and about 50 meters away from the crowd watching the singing contest, her schoolmate snatched her handkerchief and inserted it into her mouth. The other defendant then held her two hands and forced her to lie down, whereupon her schoolmate placed himself on top of her, tore off her panties and had carnal knowledge of her. The other defendant then exchanged places with him and also abused her.

But this circumstance was taken into account in *People v. Amit*,³⁴ a case also of rape but complexed with homicide.

2. EVIDENT PREMEDITATION

Three things must be proven by the same quantum of evidence required to establish the crime itself in order that this circumstance may be said to exist. 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 act³⁵ so as to permit his conscience to overcome his resolution if he desires to harken to its warnings.³⁶

In *People v. Villaseñor*³⁷ the accused, immediately before firing his gun at the victim, asked the latter whether he (the victim) was still mad at him. This fact was made the basis for alleging evident premeditation. But the time interval between the act, if any, on the part of the victim that might have provoked the accused, or the time when the victim might have intimated his anger at the accused, and the actual killing was not shown. As it could not thus be determined whether the accused had sufficient time within which to reflect on the evil character of the crime before he committed it, the Court held that evident premeditation was not proven.

Evident premeditation was, however, held sufficiently established in a case³⁸ where the assailant had, for sometime before the incident, been waiting for the victim to appear, and as soon as the latter showed up, the assailant met him and held him by the neck.

3. TREACHERY

Treachery is present when the crime is committed with the following circumstances concurring: (1) the culprit employed means, method or man-

³⁴ *Supra*, note 26.

³⁵ *People v. Diva*, G.R. No. 22946, April 29, 1968, 23 SCRA 332 (1968).

³⁶ *People v. Parayno*, G.R. No. 24804, July 5, 1968, 24 SCRA 3 (1968).

³⁷ G.R. No. 28574, October 24, 1970, 35 SCRA 460 (1970).

³⁸ *People v. Pajenado*, G.R. Nos. 27680-81, February 27, 1970, 31 SCRA 812 (1970).

ner of execution which would ensure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity was given to the latter to do so;³⁹ and (2) that such means, method or manner of execution was deliberately or consciously chosen.⁴⁰

The killing was considered treacherous, and hence constituted murder, where one of the appellants stabbed the victim while the latter was in the tight embrace of the other appellant and thus in a condition wherein he was practically helpless and unable to put up any defense.⁴¹

The same ruling was made in *People v. Baluran*⁴² where the victim, a tricycle driver, was suddenly hit by one of the defendants with a blunt instrument and thereafter successive blows rained on his head, face and other parts of the body—all these while the victim, who was astride on the tricycle's driver's seat, was waiting for the defendants, who had temporarily alighted, to return to the vehicle.

But because of the absence of any other evidence, treachery was ruled out in *People v. Sibayan*,⁴³ it appearing from the prosecution's own evidence that the accused and the victim were facing each other when the fatal blow was struck.

4. USE OF MOTOR VEHICLE

This aggravating circumstance was taken against the defendants in *People v. Espejo*⁴⁴ because they used a jeep belonging to one of them in going to the place of the crime of robbery with homicide, in carrying away its effects, and in facilitating their escape.

ALTERNATIVE CIRCUMSTANCES

1. LACK OF INSTRUCTION

The culprit's illiteracy and dissociation from the civilized community is comprehended by this mitigating circumstance.⁴⁵ But their appreciation as such will preclude the further extension of the benefits of Section 106 of the Administrative Code of Mindanao and Sulu.⁴⁶ This was the holding in *People v. Gande*.⁴⁷

³⁹ *People v. Casalme*, G.R. No. 18033, July 26, 1966, 17 SCRA 717 (1966); *Bernabe v. Bolinas*, G.R. No. 22000, November 29, 1966, 18 SCRA 812 (1966); *People v. Ramos*, G.R. No. 22348, August 23, 1967, 20 SCRA 1109 (1967); *People v. Pengzon*, 44 Phil. 224 (1922); *People v. Sagayno*, G.R. Nos. 15961-62, October 31, 1963; *People v. Glorie*, 87 Phil. 739 (1950).

⁴⁰ *People v. Dadis*, G.R. No. 21276, November 22, 1966, 18 SCRA 699 (1966); *People v. Tumaob*, 83 Phil. 738 (1949); *People v. Clemente*, G.R. No. 24363, September 28, 1967, 21 SCRA 261 (1967).

⁴¹ *People v. Maransala*, *supra*, note 7.

⁴² G.R. No. 28582, March 25, 1970, 32 SCRA 71 (1970).

⁴³ *People v. Sibayan*, G.R. No. 25174, January 30, 1970, 31 SCRA 246 (1970).

⁴⁴ *Supra*, note 15.

⁴⁵ *People v. Talok*, 65 Phil. 696 (1938); *People v. Limaco*, 88 Phil. 35 (1951); *People v. Mandagoy*, 46 Phil. 838 (1923); *People v. Dinulon*, 47 Phil. 745 (1925).

⁴⁶ See *People v. Salazar*, 105 Phil. 1064-1065 (1959).

⁴⁷ *Supra*, note 8.

PERSONS CRIMINALLY LIABLE

PRINCIPAL AND ACCOMPLICE

The Code enumerates three ways by which a person may become liable as a principal: (1) by direct participation; (2) by inducement; or (3) by indispensable cooperation.⁴⁸ There is another mode by which a person may become a principal: by being a co-conspirator.⁴⁹

A principal by indispensable cooperation is one who "cooperates in the commission of the offense by another act without which it would not have been accomplished." This kind of principal must be distinguished from an accomplice.

An accomplice is one who, not being a conspirator and not having performed acts attributable to principals, cooperates in the execution of the offense by previous or simultaneous acts.⁵⁰

In *People v. Manansala*,⁵¹ the other accused was cleared as a principal through conspiracy because even though he held the victim in a tight embrace while his nephew, the assailant, stabbed him with a *balisong*, he did so merely to stop the victim from further hitting his nephew with his fists. He was not entirely freed from liability, however, owing to the fact that even after the first knife thrust had been delivered, he did not try to stop the assailant. Instead he continued to hold the victim and even forced him down to a bamboo bed with the assailant still pressing his attack. But this act of his gives no warrant for saying that without it the offense would not have been accomplished, so as to qualify him to be a principal by indispensable cooperation. Nonetheless, it was a contributing factor, for it facilitated the infliction of the thirteen wounds on the victim. He was, therefore, held liable as an accomplice.

PENALTIES

COMPLEX CRIMES

See the discussion under the topic on Civil Liability (sub-topic Rape and Rape with Homicide).

APPLICATION OF PENALTIES

Indivisible penalties

The case of *People v. Amit*⁵² applies the rule that when the law prescribes an indivisible penalty, like death, it shall be imposed regardless of the presence of mitigating circumstances.

⁴⁸ REV. PEN. CODE, art. 17. For an example of a principal by inducement, see the case of *Caisip v. People*, G.R. No. 2816, November 18, 1970, 36 SCRA 17 (1970), discussed under the topic on grave coercion, *infra*.

⁴⁹ See the cases cited in note 10, and *People v. Peralta*, G.R. No. 19069, October 29, 1968, 25 SCRA 759 (1968).

⁵⁰ REV. PEN. CODE, art. 18 in relation to art. 8.

⁵¹ *Supra*, note 7.

⁵² *Supra*, note 26.

Penalties which contain three periods

The rule is that when both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.⁵³

This rule finds a curious application in the case of *People v. Empeño*.⁵⁴ For even though the two aggravating circumstances of band and superior strength⁵⁵ were separately appreciated, both were considered offset by the single mitigating circumstance of passion and obfuscation. As a result, the Court merely imposed the medium period (life imprisonment) of the penalty for murder in each of the two murders committed by the appellants.

EXTINCTION OF CRIMINAL LIABILITY

PRESCRIPTION OF CRIMES

Under Article 91 of the Revised Penal Code the running of the period of prescription is interrupted by the filing of the complaint or information. Whether the filing of a complaint in the municipal court for purposes of preliminary investigation of an offense triable by the Court of First Instance constitutes filing within the meaning of this provision has been resolved in the affirmative in the 1967 case of *People v. Olarte*,⁵⁶ which declared the better rule between two conflicting sets of decisions.

*David v. Santos*⁵⁷ presents a slight twist in that, instead of the complaint being filed in the municipal court, it was filed in the Court of First Instance for purposes of preliminary investigation. At any rate, the complaint could not have been filed in any other court because the charge was for violation of the Revised Election Code, as to which the Court of First Instance's exclusive jurisdiction extend not alone to trial on the merits but to preliminary investigation as well.⁵⁸ The prescriptive period for the offense is two years from commission or from discovery.⁵⁹ The complaint was filed by the accused's opponent in the preceding elections well within the two-year period, but the preliminary investigation conducted by the Court of First Instance continued even after the expiration of said period from the alleged crime's date of commission. Did the filing of the complaint and the prelim-

⁵³ REV. PEN. CODE, art. 64(4).

⁵⁴ *Supra*, note 6.

⁵⁵ Band (cuadrilla) and superior strength, even if concurring, may be appreciated separately. As stated in *People v. Apduhan*, G.R. No. 19491, August 30, 1968, 24 SCRA 798 (1968), appreciation of band 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 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.

⁵⁶ G.R. No. 22465, February 28, 1967, 19 SCRA 494 (1967).

⁵⁷ G.R. No. 26336, February 27, 1970, 31 SCRA 738 (1970).

⁵⁸ REV. ELECTION CODE, sec. 187.

⁵⁹ REV. ELECTION CODE, sec. 188.

inary investigation conducted by the Court of First Instance interrupt the two-year period, or was the filing of an information for trial on the merits necessary to effect such interruption? The Court held that the *Olarte* ruling applies — indeed, applies with more force because the complaint was filed directly with the court which had jurisdiction to try the case.

CIVIL LIABILITY

Where Death results

In consonance with its ruling in *People v. Pantoja*,⁶⁰ the Court continued to award ₱12,000 as indemnity for death resulting from the crime, increasing the indemnity to that amount whenever the lower court had awarded less.⁶¹

In a parricide case, it was held that such indemnity is due to the victim's heirs except the culprit even if some of them, his mother and a brother, testified in his favor.⁶²

Rape and rape with homicide

In simple or multiple rape cases, the Court affirmed indemnity awards of ₱1,000, ₱3,000, and ₱5,000.⁶³

One decision, however, involving a case of robbery with rape,⁶⁴ presents something of a puzzle. While the trial court saw fit to indemnify the rape victim in the sum of ₱5,000 and her grandmother in the sum of ₱1,000, the Supreme Court reduced both indemnity awards to the single sum of ₱58 (fifty-eight pesos) "which, according to the evidence, is the total value of the cash and articles of which the victims were robbed." If some other explanation, which the Court did not give, for this ruling were sought, one could only surmise that the Court probably considered the fact that the crime committed was not that of a simple rape but a complex one of robbery with rape and hence should be treated as a public crime (which can be prosecuted *de officio*) and not as a private offense (which cannot be prosecuted *de officio*)⁶⁵ and hence the civil liabilities provided in Article 345 of the Revised Penal Code with respect to crimes against chastity do not apply. But this conjecture as to the possible reason behind the Court's ruling is contradicted by the fact that it meted out a criminal sentence to the

⁶⁰ G.R. No. 18793, October 11, 1968.

⁶¹ *People v. Sibayan*, *supra*, note 43; *People v. Lacandazo*, G.R. No. 29058, January 30, 1970, 31 SCRA 370 (1970); *People v. Empeño*, *supra*, note 6.

⁶² *People v. Manos*, G.R. No. 27791, December 24, 1970, 36 SCRA 457 (1970).

⁶³ See *People v. Celis*, G.R. No. 26977, September 30, 1970, 35 SCRA 129 (1970); *People v. Soriano*, G.R. No. 29057, October 30, 1970, 35 SCRA 633 (1970); *People v. Modelo*, G.R. No. 29144, October 30, 1970, 35 SCRA 639 (1970).

⁶⁴ *People v. Corpin*, G.R. No. 28356, January 30, 1970, 31 SCRA 354 (1970).

⁶⁵ See *People v. Yu*, G.R. No. 13789, January 28, 1961, 1 SCRA 199 (1961), holding that the complex crime of rape with homicide may be prosecuted on the basis of an information of the fiscal. The complaint of the victim's parents or guardian is not essential.

defendants in accordance with Article 335 (defining and penalizing rape) and not under Article 294 (penalizing robbery with rape) of said Code. In other words, it treated the crime not as special complex crime under Article 294 (the proper qualification of the offense) but as an ordinary complex crime under Article 48, under which the penalty for the higher offense, rape in this instance, shall be imposed, the same to be applied in its maximum period.⁶⁶ Logically, the civil liabilities provided in Article 345 should have been imposed as well. These include (1) indemnification of the offended woman, (2) acknowledgment of the offspring, and (3) support of the offspring. The pecuniary indemnity to be awarded under this Article has been held to be absolute and not subject to the condition that it would be paid in case there should be an offspring.⁶⁷ And in case of non-payment of this indemnity because of insolvency, the offender is bound to suffer subsidiary imprisonment.⁶⁸ Under the manner in which the Court actually characterized the crime, therefore, it was clearly in error in not awarding indemnities under Article 345.

But even if the Court had, as it should have, treated the offense committed in this case as a special complex crime punishable under Article 294, it is submitted that it would, just the same, not have been justified in limiting, as it did, its award of damages to the value of the cash and articles of which the victims were robbed. The law provides for the recovery of civil liability arising from crime precisely because of the damage or injury caused thereby to the offended party or parties. The simple fact that in this instance the law lumps the crime of rape together with that of robbery does not obliterate the consequences of one of these crimes, namely, rape. Indeed, the consequences of rape, both criminal and civil, are much more serious, much more injurious, than that of robbery, especially in this instance where the property taken was only ₱58. It is in recognition of this fact that Article 294 imposes upon the special complex crime of robbery with rape a penalty (*reclusion temporal* in its medium period to *reclusion perpetua*) approximating that attached to rape (which is *reclusion perpetua*, *reclusion perpetua* to death, or death, depending on the circumstances attending its commission). The lower penalty for robbery through violence or intimidation which is unaccompanied by another crime (*prision correccional* in its maximum period) is apparently taken into account merely in fixing the minimum

⁶⁶ Here the Court committed another error. For, instead of imposing death (the maximum period of the penalty provided for rape committed by two or more persons, which is *reclusion perpetua* to death), it merely imposed *reclusion perpetua* on the ground that "the record does not show conclusively the existence of any aggravating circumstance attending the commission of the offense charged." But Article 48 of the Revised Penal Code requires the imposition of the *maximum period* of the penalty for the graver offense regardless of the presence or absence of aggravating circumstances.

⁶⁷ *People v. Licerio*, 61 Phil. 361 (1935).

⁶⁸ GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE, 530 (1957), citing 3 VIADA, CODIGO PENAL 159.

period of the penalty for this special complex crime (namely, *reclusion temporal* in its medium period, which is still much higher than that provided for the robbery). This shows that the law places honor and person on a higher category in our hierarchy of values than property, and hence accords greater protection to them than it does to the other.

SPECIFIC CRIMES UNDER THE CODE

A. CRIMES AGAINST PUBLIC ORDER

1. *Rebellion — Distinguished from murder*

The rule is that the crime of rebellion cannot be complexed with murder, robbery, kidnaping or other crimes committed in the course of a rebellion for such crimes are absorbed by, and form part and parcel of, the rebellion.⁶⁹ Because of the much lighter penalty for rebellion, many a rebel charged with murder or other private crimes has sought refuge in this doctrine through the expedient of claiming that the crime charged had been committed as part of his dissident activities. This is precisely what the appellant in *People v. Fernando*⁷⁰ did. He claimed that since he and his unarrested co-accused were, as members of the Hukbalahap organization, ordered by a commander of that organization to liquidate the victim, the murder committed by them should be held to be in furtherance of and absorbed by the crime of rebellion, with which they should have been charged instead. There was no evidence, however, that the murder was committed as a necessary means to commit rebellion. It did not appear that the victim had an established connection with the government when he was killed. On the contrary, the appellant had admitted in an unrepudiated confession that the killing was inspired by personal motives consisting in the desire to avenge the alleged killing of a relative of the Huk commander and the alleged maltreatment of the unarrested accused's father, both upon the order of the victim. The motive not being political (that is, to further the cause of the dissident movement) but personal, the Court held that the murder cannot be deemed absorbed in rebellion and should be separately prosecuted.

Speaking of motives, appellant contended that the personal motives of his commander and his co-accused did not apply to him, he having merely obeyed as a mere soldier or member of the HMB. This fact, however, availed him nothing in view of his awareness of his commander's and his co-accused's personal motivation and his acquiescence thereto, apart from the absolute absence of evidence that the murder was necessary to or in

⁶⁹ *People v. Hernandez*, 99 Phil. 515 (1956); *People v. Geronimo*, 100 Phil. 90 (1956).

⁷⁰ *Supra*, note 11.

furtherance of the rebellion. Reiterating *People v. Hernandez*,⁷¹ the Court said that the mere fact that the accused is a member of the Hukbalahap organization "is no reason why all his acts and misdeeds should be considered in furtherance of or absorbed by rebellion."

2. *Assault upon an agent of a person in authority*

In order to establish the crime of assault upon an agent of a person in authority, either of two essential facts must be shown, namely: (1) that the accused knew that the person assaulted was an agent of a person in authority and acting in the exercise of his duties at the time of the attack;⁷² or (2) that the assault was by reason of past performance of official duty, in which case it is not essential that the person assaulted be in the performance of the duties of his office at the time of the assault.⁷³

In the case of *People v. Villaseñor*,⁷⁴ it was established that the victim, a police sergeant, was, at the time of the incident (8:00 to 8:30 in the evening), patrolling the market place of Boac together with two other policemen. The place was well-lighted and the victim's gun could be seen buttoned up inside the leather holster hanging from his belt by his right waist. The police blotter also showed that the victim was, on that date, detailed on a 24-hour duty. But, even in the face of these facts, the Court ruled out direct assault upon an agent of a person in authority for lack of proof that the defendant knew that the victim was then performing his official functions as police sergeant. The Court pointed out that the victim was not in uniform at the time, being then in dark pants and a polo shirt tucked inside his waistline. While he then had his service firearm buttoned inside its holster hanging by his right waist, and was then with two other policemen, these facts alone do not, according to the Court, indicate that he was then in the performance of his police duties. Neither was there proof that the accused personally knew of the entry in the police blotter that the victim was then on 24-hour duty as field sergeant. Nor was there evidence that the assault was provoked, or was by reason of an act performed, by the victim in his official capacity.

B. CRIMES AGAINST PUBLIC INTEREST

Falsification — meaning of public or official document

The petitioner in *Bermejo v. Barrios*,⁷⁵ was, together with a certain Julia "Doe" (unidentified), accused of having committed the crime of falsification

⁷¹ *Supra*, note 69.

⁷² *People v. Rellin*, 77 Phil. 1038 (1947).

⁷³ *Justo v. Court of Appeals*, G.R. No. 8611, June 28, 1956; *People v. Imson*, 80 Phil. 284 (1948).

⁷⁴ *Supra*, note 37.

⁷⁵ G.R. No. 23614, February 27, 1970, 31 SCRA 764 (1970).

of public or official document. It was charged that he and his unknown co-defendant stated and made it appear in an amended habeas corpus petition that the same was signed and sworn to by Jovita Carmorin as one of the petitioners when in truth Jovita Carmorin never signed and swore to that petition. The petition was signed and sworn to by the petitioner and Julia "Doe" before the clerk of court and filed with the Court of First Instance. The petitioner moved to quash the information for failure to charge an offense, arguing that the amended petition for habeas corpus is not a public or official document within the contemplation of Article 172 of the Revised Penal Code. The Supreme Court disagreed, stating that the petition, having been subscribed and sworn to before the clerk of court and filed with the Court of First Instance, formed part of the court records in the proceedings. As such it is a public document, which includes, among others, any instrument authorized by any notary public or a competent public official, with the solemnities required by law,⁷⁶ or public records, kept in the Philippines, of private writings.⁷⁷

C. CRIMES AGAINST PUBLIC MORALS

Prostitution—distinguished from adultery

It is a rule of criminal procedure that defamation consisting in the imputation of a private offense can be prosecuted only in the manner required for private offenses,⁷⁸ that is, upon complaint of the party defamed. If the remark "your daughter is a prostitute and she is a prostitute because you too are a prostitute" were directed to a married woman, is a complaint signed and filed by the married woman necessary for prosecution? The accused in *People v. Hong Din Chu*⁷⁹ insisted that it is, claiming that the defamatory remark imputed the crime of adultery. This claim, which the trial court sustained, is based on the fact of the offended party's being a married woman. On appeal, the Supreme Court reversed the lower court's ruling, holding that —

"x x x while the utterance in effect also imputed on (the offended party) the commission of adultery, the offended party being a married woman, the particular conduct she was particularly charged with was the crime of prostitution, not adultery. And it may be pointed out that prostitution and adultery are not one and the same thing; the first is a crime against public morals, committed by a woman, whether married or not, who for money or profit, habitually indulges in sexual intercourse or

⁷⁶ U.S. v. Asensi, 34 Phil. 750 (1916).

⁷⁷ REV. RULES OF COURT, Rule 132, sec. 20. The Court also cited the principle obtaining in the United States that defendants' pleadings and papers, which are involved in civil actions and which are in custody of the clerk of court, are public documents within the meaning of a statute making alteration of court records an offense.

⁷⁸ REV. RULES OF COURT, Rule 110, sec. 4; REV. PEN. CODE, art. 360.

⁷⁹ G.R. No. 27830, May 30, 1970, 33 SCRA 199 (1970).

lascivious conduct, whereas adultery is in the nature of a private offense committed by a married woman who shall have sexual intercourse with a man not her husband. In short, the essential element in prostitution is not simply entering into marital relations with a man other than her husband, if she happens to be married, but the existence of pecuniary or financial gain as inducement to, or consideration for, that woman's engaging in sexual activities. Thus, to call a woman a prostitute is not merely to proclaim her an adulteress, a violator of her marital vows; it is to charge her of having committed an offense against public morals, of moral degeneracy far exceeding that involved in the maintenance of adulterous relations."

D. CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

1. *Kidnapping* — *penalty where purpose is to extort ransom*

*People v. Pingol*⁸⁰ reiterates and applies the rule that where kidnapping is committed for the purpose of extorting ransom from the victim or any other person, the penalty is death.

2. *Grave coercion*

Grave coercion is committed by "any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong."⁸¹

It has been held that a policeman who, without warrant, arrests a person who has not committed any crime or misdemeanor is guilty of the crime of grave coercion.⁸² Whether this crime is also committed by two policemen who arrest a woman for weeding and refusing to leave a piece of land which she and her husband had been ordered in a final judgment and the corresponding writ of execution in a forcible entry proceeding to vacate within twenty days, the twenty-day period not having expired, was one of the issues in *Caisip v. People*.⁸³ Another issue was whether the overseer of the hacienda of which the land was a part could also be held guilty of the same crime, he having been the one who brought the two policemen when the complainant refused to stop weeding and leave the land upon his bidding.

The background facts showed that the land, which is a portion of a hacienda, used to be tenanted by the complainant's father, after whose death she and his husband took over in cultivating it. Sometime in 1957 her

⁸⁰ G.R. No. 26931, May 28, 1970, 33 SCRA 73 (1970).

⁸¹ REV. PEN. CODE, art. 286.

⁸² U.S. v. Alexander, 8 Phil. 29 (1907). This was a holding under the Old Penal Code. It would seem that, under the Revised Penal Code, the crime would properly be arbitrary detention.

⁸³ *Supra*, note 48.

husband brought an action in the Court of Agrarian Relations wherein he sought recognition as a lawful tenant; but the action was dismissed on the ground of the court's lack of jurisdiction. Thereafter, the hacienda owner, Roxas y Cia., brought forcibly entry proceedings against him. In the court's decision he was ordered to vacate the lot and to pay damages and accrued rentals. A writ of execution was then issued and served on him giving him twenty days from the day of service within which to vacate the land. The hacienda's overseer wanted the immediate enforcement of the writ but the sheriff was of the opinion that a new order from the court was necessary for this to be done before the expiration of the period fixed in the writ. Sometime before the expiration of the twenty-day period, the complainant was seen weeding the land's portion which was planted to rice. The hacienda's overseer approached her and bade her to leave but she refused, saying that she and her husband had a right to stay there and that the crops thereon belonged to them. The overseer threatened to call the police, but the complainant remained adamant. The overseer then called the policemen, whom he had earlier requested the chief of police to be detailed to that part of the hacienda. One of the policemen told the complainant to stop weeding. When she insisted on her right to stay on the lot, he grabbed and twisted her right hand and wrested from it the trowel she was holding. The other policeman then held her left hand, and both dragged her to a forested area while the overseer stood nearby with a drawn gun. The complainant shouted for help and her neighbors came and asked the policemen why they dragged her. They answered that they were taking her to the municipal building. By this time, the complainant had already been dragged about eight meters and her dress as well as her blouse were torn. She then agreed to be taken and asked to be first allowed to pass by her house in order to breast-feed her nursing infant but her request was turned down. When they reached town, she was turned over to the policeman on duty. The complainant was released after being interrogated by the chief of police.

Prosecuted for grave coercion, the policemen and the overseer urged that their acts were justified under Article 429 of the Civil Code which provides that "(t)he owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof (and) for this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property." The Supreme Court rejected this contention as untenable, holding that Article 429 is inapplicable to the case because, having been given twenty days within which to vacate the lot, the complainant did not *invade* or *usurp* said lot, but had merely remained in possession thereof even though the hacienda owner may have become its co-possessor. The defendants did not "*repel* or *prevent* actual or *threatened* unlawful

physical *invasion* or usurpation." They *expelled* her from the property despite the fact that the sheriff had, pursuant to the writ of execution, explicitly authorized them to stay thereon up to twenty days after service of the writ of execution.

The defendants also contended that, by weeding and refusing to leave the lot, the complainant had committed a crime in the presence of the policemen, and this in spite of the twenty-day period which they claim the sheriff had no authority to grant. The Court likewise overruled this contention, pointing out that: (1) said period was granted in the presence of the hacienda owner's overseer who, by not objecting to it, had impliedly consented to or ratified the act performed by the sheriff; (2) the complainant and her husband were thereby allowed to remain, and had in fact remained, in possession of the premises perhaps together with the owner of the hacienda or his representative, the defendant overseer; (3) the act of removing weeds from the ricefield was beneficial to its owner and to whomsoever the crops belong, and even if they had not authorized it, does not constitute a criminal offense; (4) although the complainant and her husband had been sentenced to vacate the land, the judgment against them did not necessarily imply that they, as the parties who tilled and planted on it, had no rights of any kind whatsoever in or to the standing crops since the costs of cultivation, production and upkeep has been held to partake of the nature of necessary expenses which, under the Civil Code,⁸⁴ must be refunded to every possessor.

Anent the overseer's argument that he could not be held guilty since he did not use violence or force against the complainant, the Court adopted the lower court's finding that he supplied the motivation and inducement for the coercion perpetuated on the complainant. He was the one who first approached the complainant for the purpose of preventing her from weeding the land. It was he who fetched the policemen in order to accomplish this purpose, and even when the policemen were already abusing their authority, he simply stood by without attempting to stop their abuses. For these reasons, the Court affirmed his conviction as co-conspirator and principal by inducement.

E. CRIMES AGAINST PROPERTY

1. *Robbery*

For the prosecution of the crime of robbery, proof is necessary of the former existence, and subsequent loss, of the chattel belonging to a third person, and the taking of the same against the will of the owner.⁸⁵

⁸⁴ Art. 546.

⁸⁵ *People v. de Guzman*, 31 Phil. 494 (1915).

In *People v. Gande*,⁸⁶ the appellant was charged with and convicted of robbery with multiple homicide. But while the killings were positively established, there was no independent proof that the money alleged to have been stolen were still at the place where one of the victims was supposed to have kept them when the crime was committed or that the accused took them away after the death of the victims. Neither did the witnesses for the prosecution who went to the victim's house after the occurrence testify as to the absence or loss of the money. The loss or disappearance of the money not having been proved, the Court held that two essential elements of robbery were lacking, namely: intent of gain (*animus lucrandi*) and unlawful taking or asportation.

2. *Estafa—retention by agent of collection to cover unpaid commissions*

A commission agent is under obligation to turn over to the principal the amount collected by him minus his commission.⁸⁷ If he unlawfully retains more than his commission, he becomes guilty of estafa, under paragraph (b), subdivision 1, Article 315 of the Revised Penal Code. Whether the retention is unlawful or justified is a question regarding which no fixed rule is applied other than that each case should be decided on its own particular facts, reference being had primarily to the good or bad faith exhibited by the accused in withholding the money.⁸⁸ And it has been held that conviction for estafa cannot be sustained against any person who has in good faith retained money committed to his care for the purpose of reasonable protection against his principal in the same or related matters.⁸⁹ Accordingly, an insurance agent who in good faith believed his company to be indebted to him in the amount which he collected and failed to turn over was acquitted of the charge of estafa.⁹⁰

Much the same, among other, reasons were given to exonerate the defendant in *People v. Jumawan*.⁹¹ In this case, the accused, a radio sales agent of three related firms, in a number of instances collected various amounts by receipts from customers of said firms. These collections were turned over to the firms except the last ones, amounting to the total sum of ₱55, which he retained in his possession and refused to deliver to the firm to which the amount pertained because of the non-payment of his accrued commissions in the larger amount of ₱65 earned on previous collections actually turned over, as well as non-payment of his expense allowance of ₱1.50 per day. The reason given by his principal for not paying his earned commission was that of business losses. These facts

⁸⁶ *Supra*, note 8.

⁸⁷ *U.S. v. Reyes*, 36 Phil. 791 (1917).

⁸⁸ *U.S. v. Berbari*, 42 Phil. 151 (1921).

⁸⁹ *Id.*

⁹⁰ *U.S. v. Santiago*, 27 Phil. 408 (1914).

⁹¹ G.R. No. 28060, February 27, 1970, 31 SCRA 825 (1970).

were held as clearly showing the absence of criminal intent on the part of the accused in retaining the collected amount of ₱55, which was even less than what was actually due and owing to him from his principal.

Another reason given by the Court for acquitting the accused was that damage or prejudice, an essential element of estafa,⁹² was not established by the principal. Actually, said the Court, the principal could not claim any damage or prejudice for the accused had set off merely in part what was justly and long due him, with a balance still owing to him.

"All these factors,"—the Court concluded—"the absence of criminal intent on appellant's part and lack of prejudice or damage caused to the principal, *besides the appellant's proven good faith*, entitle appellant to a verdict of acquittal."

F. CRIMES AGAINST CHASTITY

Adultery—distinguished from prostitution

See the discussion under the sub-topic on prostitution, *supra*.

Rape—how committed

Rape is committed by having carnal knowledge of a woman under any of three circumstances: (1) by intimidating or using force upon her; (2) when she is deprived of reason or otherwise unconscious; (3) when she is under twelve years old.⁹³

Force or intimidation is ruled out when the woman consented or did not resist the act. Such consent or lack of resistance, however, is not necessarily established by the mere fact that the woman's hands were on her sides while the defendant was having sexual intercourse with her. This is especially so where, as in *People v. Modelo*,⁹⁴ the complainant, a young innocent girl of mere thirteen years, could not have resisted the defendant, a full-grown man of forty and her stepfather, who held her by the shoulders and then forced her to lie down and who must have awed her so much that when he told her not to tell her mother about what he had done to her, she meekly answered: "Yes, father."

Consent was also held incredible where carnal knowledge of the woman was had by two or three men one after the other in the presence of each other, there being absent any evidence that the woman was a prostitute or as morally debased as one.⁹⁵

If the woman is below twelve years of age, rape is committed by the mere fact of having sexual intercourse with her without need of the con-

⁹² *Gonzales v. Serrano*, G.R. No. 25791, September 23, 1968, 25 SCRA 64 (1968).

⁹³ REV. PEN. CODE, art. 335.

⁹⁴ *Supra*, note 63.

⁹⁵ *People v. Soriano*, *supra*, note 63.

currence of any other circumstance.⁹⁶ This means that, as the Code and *People v. Celis*⁹⁷ explicitly state, the defendant need not have used force or intimidation—even the girl's consent does not exculpate him—or the victim need not have been deprived of reason or otherwise unconscious at the time of intercourse.

Liability when committed by two or more persons

It is a settled doctrine that when two or more persons coordinate in the commission of rape, all of them are individually guilty for each and all violations.⁹⁸ Each is guilty as principal not only of the rape committed by him but also of that committed by each of his co-defendants.⁹⁹ Applying this rule in *People v. Soriano*,¹⁰⁰ the Court held each of the two defendants guilty of one rape, by direct participation, and another rape by cooperation and direct participation. Each of them had twice ravished the complainant and each could have been convicted of four rapes, but for the lack of the necessary allegations.

G. CRIMES AGAINST HONOR

Libel—effect of good faith and retraction

*Lopez v. Court of Appeals*¹⁰¹ presents an interesting libel case. It involves the liability of a publisher and his editor in whose magazine the picture of a man whose name is similar to that of the person actually referred to in the stories published therein was inadvertently placed instead of the picture of the real subject of the stories. Could the publisher and editor shield themselves from liability behind the mantle of freedom of the press? What is the effect of their admitted good faith and the retraction and apology they published immediately upon learning of their mistake? These were the questions presented.

The factual background is stated by the Court as follows:

In the early part of January, 1956, there appeared on the front page of the Manila Chronicle, of which petitioner Eugenio Lopez was the publisher, as well as on other dailies, a news story of a sanitary inspector assigned to the Babuyan Islands, Fidel Cruz by name, sending a distress signal to a passing United States Airforce plane which in turn relayed the message to Manila. He was not ignored, an American Army plane dropping on the beach of an island an emergency-sustenance kit containing,

⁹⁶ U.S. v. Bautista, 40 Phil. 735 (1921); U.S. v. Herrera, 10 Phil. 752 (1908).

⁹⁷ *Supra*, note 63.

⁹⁸ *People v. Toledo*, 83 Phil. 777 (1949).

⁹⁹ *People v. Villa*, 81 Phil. 193 (1948); *People v. Alfaro*, 91 Phil. 404 (1952).

¹⁰⁰ *Supra*, note 63.

¹⁰¹ G.R. No. 26549, July 31, 1970, 34 SCRA 116 (1970).

among others things, a two-way radio set. He utilized it to inform authorities in Manila that the people in the place were living in terror, due to a series of killings committed since Christmas of 1955. Losing no time, the Philippines defense establishment rushed to the island a platoon of scout rangers led by Major Wilfredo Encarnacion. Upon arriving at the reported killer-menaced Babuyan Claro, however, Major Encarnacion and his men found, instead of the alleged killers, a man, the same Fidel Cruz, who merely wanted transportation home to Manila. In view of this finding, Major Wilfredo Encarnacion branded as a "hoax," to use his own descriptive word, the report of Fidel Cruz. That was the term employed by the other newspapers when referring to the above-mentioned incident.

This Week Magazine of the Manila Chronicle, then edited by petitioner Juan T. Gatbonton, devoted a pictorial article to it in its issue of January 15, 1956. Mention was made that while Fidel Cruz's story turned out to be false, it brought to light the misery of the people living in that place, with almost everybody sick, only two individuals able to read and write, food and clothing being scarce. Then in the January 29, 1956 issue of This Week Magazine, the "January News Quiz" included an item on the central figure in what was known as the Calayan Hoax, who nevertheless did the country a good turn by calling the government's attention to that forsaken and desolate corner of the Republic. Earlier in its Special Year End Quiz appearing in its issue of January 13, 1956, reference was made to a health inspector who suddenly felt "lonely" in his isolated post, cooked up a story about a murderer running loose on the island of Calayan so that he could be ferried back to civilization. He was given the appellation of "Hoax of the Year."

The magazine on both occasions carried photographs of the person purporting to be Fidel Cruz. Unfortunately, the pictures that were published on both occasions were that of private respondent Fidel G. Cruz, a businessman-contractor from Santa Maria, Bulacan. It turned out that the photographs of respondent Cruz and that of Fidel Cruz, sanitary inspector, were on file in the library of the Manila Chronicle in accordance with the standard procedure observed in other newspaper offices, but when the news quiz format was prepared, the two photographs were inadvertently switched.

As soon, however, as the inadvertent error was brought to the attention of petitioners, the following correction was immediately published in This Week Magazine on January 27, 1957: "While we were rushing to meet the deadline for January 13th issue of This Week, we inadvertently published the picture of former Mayor Fidel G. Cruz of Sta. Maria, Bulacan, businessman and contractor, in 'Our Own Who's Who feature in the Year End Quiz' of This Week in lieu of the health inspector Fidel Cruz, who was connected with a story about a murderer running loose on Calayan Island. We here express our profound regrets that such an error occurred." Together with the foregoing correction, petitioners published the picture of Fidel Cruz; the photographs and the correction moreover were enclosed by four lines, the type used was bolder than ordinary, and the item was placed in a conspicuous place in order to call the attention of the readers to such amends being made.

On the basis of the above facts, criminal liability was obviously considered out of the question because, the publication of the wrong picture being the result of an honest mistake, there was no actual malice,^{101a} which is a requisite for a successful criminal prosecution. Absence of criminal liability, however, does not necessarily mean that no action for recovery of damages could lie, particularly one based on quasi-delict, which is what the complainant in this case instituted. But even in actions of this nature the matter, in the view of the Court, should be weighed in the light of the principle of freedom of the press so as not to unduly suppress the publication of matters of public interest, which is regarded as essential in our society. So viewed, due consideration must be accorded to the fact that newspapers and other publications have to race continually with deadlines, as a consequence of which they are oftentimes unable to avoid the commission of inaccuracies and honest mistakes. Because of this inherent occupational hazard, newspapers are treated with leniency even in libel damage suits and are usually absolved, given the requirements of time pressure and good faith in the commission of errors or inaccuracies. The Court, however, took note of the fact that, in this particular case, there was no pressure of a daily deadline and no occasion to act with haste since the picture of the complainant was published in a weekly magazine. Besides, the Court noted further, the reasonable care required for absolution was lacking. The Court accordingly held the two defendants-petitioners liable for damages arising from quasi-delict. But although the Court could not likewise agree to absolve them on the basis of their retraction and apology, it considered this gesture of theirs as mitigating their liability, and ordered them to pay jointly and severally only the sum of ₱500 as moral damages, the additional amount of ₱500 for attorney's fees, and the costs.

Jurisdiction over criminal and civil libel suits—has Article 360 been repealed or modified by Section 87(c) of the Judiciary Act, as amended?

On June 15, 1955, Article 360 of the Revised Penal Code was amended by Republic Act No. 1289 to provide, among others, (1) that the criminal action and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense; (2) that the civil action shall be filed in the same court where the criminal action is filed and vice-versa; (3) that the court where the criminal action or civil action for damages is first filed shall acquire jurisdiction to the exclusion of other courts. Subsequently, on June 22, 1963, Republic Act No. 3828 amended Section 87(c) of the Judiciary Act by vesting municipal courts

^{101a}*Quaere*: May there not — and may this not — be a case of libel committed through imprudence?

of provincial and sub-provincial capitals as well as city courts concurrent jurisdiction with the Court of First Instance over all offenses committed within their respective jurisdiction in which the penalty does not exceed *prision correccional* or 6 years imprisonment and/or ₱6,000 fine.

Since the penalty for libel is *prision correccional* in its minimum and medium periods or a fine ranging from ₱200 to ₱6,000, the question, presented in *Laquian v. Baltazar*,¹⁰² is whether Republic 3828 has repealed or modified Article 360 of the Revised Penal Code, as amended by Republic Act No. 1289, so that it would now be perfectly legal for a municipal court to take cognizance of a charge of libel even where the civil action for damages arising from the libel charged had previously been filed in the Court of First Instance.

The Supreme Court, reversing the two lower courts, held that no such repeal or modification has been effected. It reasoned out that although Article 360, as amended by Republic Act No. 1289, uses the term jurisdiction, it actually refers to the venue or place where actions for libel shall be filed since Courts of First Instance already had jurisdiction over libel cases even before Republic Act No. 1289 was enacted. Besides, granting that said Act does regulate jurisdiction, it refers exclusively to that pertaining to civil and criminal actions for written defamations, which makes it a special law which could not be repealed or modified by a general law, such as that amending Section 87(c) of the Judiciary Act.

CRIMES UNDER SPECIAL LAWS

Illegal possession of firearm

The case of *Cuenca v. People*¹⁰³ dealt with the novel question of the criminal liability of a security guard found in possession of an unlicensed firearm which the security agency in whose employ he worked provided for his use during his tour of duty. The security agency was duly licensed to operate as such, and in the course of its regular operation, provides its security guards who are discharging their duties as such with the usual firearms and ammunitions which, at the end of their respective shifts, are either kept in the proper locker or returned to the agency and then delivered by the latter to the security guard assigned to the next shift. When the firearm and ammunitions in question were found in the defendant's possession, he was at the place where he was actually discharging his duties, wearing the corresponding uniform, arm band and badge. Asked by the arresting officer to produce the requisite license, defendant stated, what he all the time believed to be true, that it was in the possession of the owner of the

¹⁰² G.R. No. 27514, February 18, 1970, 31 SCRA 552 (1970).

¹⁰³ G.R. No. 27586, June 26, 1970, 33 SCRA 522 (1970).

agency who had told him that the firearm and ammunition were duly licensed. It turned out that the agency owner had not yet secured the license. Is the defendant guilty of illegal possession of firearm?

In resolving the question in the negative, the Court first observed that a security agency duly licensed to operate as such may legally engage the services of competent persons to discharge the duties of security guards and provide them with corresponding firearms and ammunitions. The agency is thus supposed to obtain the necessary license. May the defendant then be held answerable for the failure of the agency owner to comply with his duty to obtain the license? The Court held that the appellant was entitled to assume that his employer had the requisite license to possess the firearm and ammunition and to turn them over to him while he was on duty as one of the agency's regular security guards. He was entitled to presume that the agency owner had complied with pertinent laws, rules and regulations. Besides, added the Court, the agency owner had told the defendant that the firearm and ammunition in question were duly licensed and, as an employee, the defendant could not be expected to demand from his employer proof of his statement.¹⁰⁴

¹⁰⁴ The Court recommended the prosecution of the agency owner.