

# REMEDIAL LAW — PART TWO

## CRIMINAL PROCEDURE AND EVIDENCE

ARTURO E. BALBASTRO \*

### CRIMINAL PROCEDURE

#### I. PROSECUTION OF OFFENSES

The Rules of Court expressly provided that “all criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefore.”<sup>1</sup>

Reiterating this rule, *People v. Zurbano*<sup>2</sup> elaborates on the subject to the effect that the filing with the proper court of a complaint or an information is sufficient to commence a criminal action. In this case, it was recognized as true, as contended by the respondent Judge, that a complaint need not be filed with the court, unlike an information which is required by Section 3 of Rule 110 to be “filed with the court”.<sup>3</sup> But it was also noted that nothing in Section 2 of said rule bars the filing of a complaint with the court. This is especially so in the instant case where the crime of rape being one which is required by Article 344 of the Revised Penal Code and by Section 4, Rule 110 of the Rules of Court, to be prosecuted “upon a complaint filed by the offended party x x x”, the filing with the court of first instance of a sworn complaint charging such offense is sufficient to initiate criminal prosecution. As was held in *U.S. v. Narvas*,<sup>4</sup> “the action can not be prosecuted upon the information of the fiscal”. *A fortiori*, to require the fiscal to file an information would be to call for the doing of an act which the law and the rule themselves consider unnecessary, superfluous and ineffectual.

In the case at bar, the respondent Judge leaned on Section 2 of Republic Act No. 732 to buttress his position that even if the crime charged in the complaint which is lodged with the fiscal’s office is semi-public offense, an information should still be filed with the court. The Supreme Court observed that, incidentally, the aforementioned section must be deemed amended by Republic Act No. 5180 (An Act Prescribing a Uniform System of Investigation by Provincial and City Fiscals and their Assistants, and by State Attorneys of their Assistants), which took effect on September 8, 1967. It

---

\* *Professorial Lecturer in Law*, University of the Philippines.

<sup>1</sup> Rule 110, sec. 1.

<sup>2</sup> G.R. No. 32673, February 22, 1971, 37 SCRA 565 (1971).

<sup>3</sup> Cf. *Espiritu v. De la Rosa*, 78 Phil. 827 (1947).

<sup>4</sup> 14 Phil. 410 (1909).

was observed further that the particular provision relied upon by the respondent Judge has, however, been substantially retained in Section 1 of Republic Act No. 5180, which in part provides that "no information for an offense recognizable by the Court of First Instance shall be filed by the provincial fiscal or city fiscal x x x, without first giving the accused a chance to be heard in a preliminary investigation conducted by him x x x." The Supreme Court found unmeritorious the respondent Judge's argument that under this provision the fiscal is in duty bound to file an information with the court of first instance after finding a prima facie case against the respondents in a preliminary investigation, the reason given by the Supreme Court being that "the provision in question in no way precludes the filing of a complaint directly with the court after a preliminary investigation thereon has been conducted by the fiscal or by the state attorney".

The Supreme Court specifically pointed out that, considering that a complaint for rape sufficient in form was filed with the proper court by the injured party thru the investigating fiscal after the latter had found a prima facie case against the respondents in a preliminary investigation, there was no reason why the filing of said complaint unaccompanied by an information, would not be sufficient to start the criminal proceedings. Of course, no law or rule prevents the fiscal from filing an information for rape if he elects to do so. However, since the filing of a complaint for rape or for any of the other offense enumerated in Article 344 of the Revised Penal Code, by the person or persons mentioned therein, is jurisdictional,<sup>5</sup> it was held that the filing thereof is sufficient to initiate a valid prosecution, and no information need be filed any longer by the fiscal.<sup>6</sup>

The above ruling has been amplified in *Sanidad v. Bermudez*<sup>7</sup> where in the Supreme Court is of the considered view that, based upon the facts and circumstances appearing in the record, the proceedings in the Court of First Instance of Ilocos Sur and in the Municipal Court of Vigan were not based on the provisions of Section 13 of Rule 112 of the Rules of Court, but on the provisions of Sections 1, 2, 4, 5 and 6 of Rule 112 of the Rules of Court.

<sup>5</sup> Cf. *People v. Santos*, 101 Phil. 798 (1957).

<sup>6</sup> *People v. Zurbano*, *supra*, note 2, the Supreme Court parenthetically observed, to wit:

"In the present case, the fiscal chose not to file an information. While we certainly do not begrudge him his right to exercise his option in this manner, the thought comes to Us that much delay could have been avoided, nay, the interest of a speedy administration of justice would have been greatly subserved, had the fiscal simply complied with respondent Judge's order instead of taking the matter to this Court. Since the case is before Us anyway, We are left with no alternative but to assess its merits, and, perforce, grant the petition."

But, certainly, if the fiscal acceded to the respondent Judge's order, jurisprudence would be the poorer.

<sup>7</sup> G.R. No. 25223, May 19, 1971, 39 SCRA 1 (1971).

Observing in the instant case that, under Section 1, Rule 110 of the Rules of Court, "all criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor", the Supreme Court found that a criminal action was commenced in the Court of First Instance of Ilocos Sur by the filing of an information by respondent Fiscal Redoble charging the persons named in said information of having committed the crime of multiple murder and multiple frustrated murder. It has, however, been pointed out that the information filed by Fiscal Redoble in the Court of First Instance is not an information contemplated in section 14 of Rule 112 of the Rules of Court which requires that "no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal, or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conducted by him or by his assistant by issuing a corresponding subpoena," and that "the fiscal or state attorney shall certify under oath in the information to be filed by him that the defendant was given a chance to appear in person or by counsel at said examination and investigation." Rather it was an information, defined in section 3 of Rule 110 which is "an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the Court."

It has been further observed that the information filed by Fiscal Redoble was not intended to secure from the judge of the Court of First Instance of Ilocos Sur an immediate order for the arrest of the accused and to proceed with the arraignment and trial of the accused based simply on the information and without any previous preliminary examination and investigation by the fiscal or the judge, as would be the case if the information was filed by the fiscal in accordance with section 14 of Rule 112 of the Rules of Court. Rather, the information filed by Fiscal Redoble was for the purpose only of commencing the criminal action and laying the basis for the conduct of the preliminary examination and investigation before the accused is brought to trial, as required by law and the Rules of Court. Such an information, it has also been noted, can, under the law, also be filed with the municipal or city court.<sup>8</sup>

The Supreme Court took pains in making a distinction of the information that may be filed by the fiscal under different circumstances, to wit: (1) an information filed by the fiscal pursuant to the provisions of section 14 of the Rule 112 of the Rules of Court; (2) an information filed by the fiscal after the preliminary examination and investigation conducted by the Judge of the court of first instance pursuant to the provision of section 13 of Rule 112; (3) an information filed by the fiscal after the preliminary examination and investigation had been conducted by an inferior court and

<sup>8</sup> Rep. Act No. 3828 (1963), sec. 6, amending sec. 87 of Rep. Act No. 296 (1948), as amended.

the record of the case had been forwarded to the clerk of the court of first instance, pursuant to the provision of section 12 of Rule 112; and (4) an information filed by the fiscal for the purpose only of commencing a criminal action and laying the basis for the proceedings relative to the conduct of the preliminary examination and preliminary investigation as provided by law and sections 1, 2, 3, 4, 5, 6 and 10 of Rule 112 of the Rules of Court.

In the first case, the information is filed by the fiscal before the court of first instance after he had conducted the necessary preliminary investigation, and he should certify under oath in the information that he had conducted the required preliminary examination and investigation and that the accused was given a chance to be present in person or by counsel at said examination and investigation. This information must necessarily be filed in the court of first instance because the subject matter is an offense cognizable by the court of first instance. Once this information is filed the judge of the court of first instance may proceed to issue the warrant of arrest, and once the accused is arrested and brought to court he may thus be arraigned and tried.

In the second case, and information is filed by the fiscal before the court of first instance by direction of the judge of the said court after the judge himself has acted pursuant to the provisions of section 13 of Rule 112 of the Rules of Court. This information is filed by the fiscal after the judge has issued the warrant for the arrest of the accused. Once this information is filed, the accused may be arraigned and tried if he had already been arrested and brought to court.

In the third case, an information is filed by the fiscal in the court of first instance after the preliminary examination and preliminary investigation had been conducted by the municipal judge or city judge, as the case may be, and the record of the preliminary examination and preliminary investigation had been transmitted to the clerk of the court of first instance by the municipal judge or city judge who had conducted the examination and investigation, pursuant to the provision of section 12 of Rule 112. The accused is already under arrest when this information is filed by the fiscal before the court of first instance. Upon the filing of this information, the accused may be arraigned and tried if he is already arrested and brought to court.

In the fourth case, the information is filed by the fiscal without his having previously conducted any preliminary investigation. This information, like the information in the other three cases, has for its subject matter an offense cognizable by the court of first instance. This information may be filed either in the court of first instance, or in the municipal court, or in the city court, as the case may be. This kind of information is filed by the fiscal for the purpose only of commencing the criminal action and laying the

basis for the conduct of the preliminary examination and the preliminary investigation. If filed with the court of first instance, the judge of said court may direct the municipal judge of the provincial capital, or the municipality where the provincial jail is located, to conduct the preliminary examination or (and) investigation in accordance with the second paragraph of section 2 of Rule 112. If the information is filed directly with the municipal court or city court, the municipal judge, or the city judge, as the case may be, proceeds to conduct the preliminary examination in accordance with sections 4, 5, and 6 of Rule 112 of the Rules of Court. If the accused is ordered arrested and is delivered to the court, then the municipal judge, or the city judge, will proceed to conduct the preliminary investigation in accordance with section 10 of Rule 112. Upon the conclusion of the preliminary examination and investigation, the municipal judge, or the city judge, shall transmit without delay to the clerk of the court of first instance having jurisdiction of the offense the record of the case, in accordance with the provisions of section 12 of Rule 112. Once the record is received by the clerk of court, the case shall proceed on the basis of the original information, unless as a result of the preliminary investigation the fiscal may find it necessary to amend the old information or file a new one. The accused may then be arraigned and tried if he is already arrested and brought to court.<sup>9</sup>

According to the Rules of Court, a complaint or information is sufficient if it states the name of the defendant; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.<sup>10</sup>

It was observed in *People v. Martin*<sup>11</sup> that it is crystal-clear that the words "the above-named accused, conspiring and confederating together and mutually helping one another," can refer only and exclusively to the three persons accused in this case, namely, Maximo Martin, Candido Martin and Rodolfo Higashi. While the unfortunate insertion in the information of the clause reading, "and in active aid with Filipino nationals who are presently charged before the CFI of Bulacan in Criminal Case No. 6258-M", may yield the implication that the three defendants-appellees and the six accused in criminal case 6258-M before the CFI of Bulacan, may have agreed on the sequence of the precise steps to be taken in the smuggling of the Chinese aliens and on the identities of the persons charged with consummating each step, still there seems to be no question that the three defendants-appellees are charged only with bringing in and landing on Philippine soil the thirty-nine aliens, whereas the six accused in criminal case 6258-M are charged only with concealing and harboring the said aliens. It is technically absurd to

<sup>9</sup> *Supra*, note 7.

<sup>10</sup> Rule 110, sec. 5.

<sup>11</sup> G.R. No. 33487, May 31, 1971, 39 SCRA 340 (1971).

draw a conclusion of conspiracy among the three defendants-appellees and the six accused in the criminal case 6258-M before the CFI of Bulacan who are not named defendants in this case.

The Supreme Court therefore held that, at all events, the words, "and in active aid with Filipino nationals who are presently charged before the CFI of Bulacan in Criminal Case No. 6258-M," can and should be considered as a surplusage, and may be omitted from the information without doing violence to or detracting from the intendment of the said indictment. These words should therefore be disregarded.<sup>12</sup>

## II. PRELIMINARY INVESTIGATION

Preliminary examination is a previous inquiry or examination made before the arrest of the accused by a judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.<sup>13</sup>

The issue in *Somera v. Solis*<sup>14</sup> is whether or not the respondent Municipal Judge had lawful authority to conduct the preliminary examination, or previous inquiry, which was the basis of his order for the issuance of the warrants of arrest in question. In holding that the proceedings in the lower courts and the warrants of arrest issued by them valid, the Supreme Court said:

"x x x The second paragraph of Section 2 of Rule 112 of the Rules of Court provides as follows:

'SEC. 2. *Offices authorized to conduct preliminary examination.*

x x x x x x

'The justice of the peace (municipal judge) of the provincial capital or of the municipality in which the provincial jail is located, *when directed by an order of the Court of First Instance*, shall have authority to conduct such preliminary examination or investigation of any offense committed anywhere within his province at the expense of the municipality wherein the same was committed.'

Under the provisions of the aforementioned second paragraph of Section 2 of Rule 112 of the Rules of Court, the municipal judge of the provincial capital may conduct the preliminary examination and investigation of any offense committed anywhere within his province when directed by an order of the Court of First Instance. All that is necessary, therefore, for the municipal judge of the provincial capital to have authority or jurisdiction to conduct the said preliminary examination and investigation is an order from the Court of First Instance directing him to conduct

<sup>12</sup> *Id.* at 348.

<sup>13</sup> RULES OF COURT, Rule 112, sec. 1.

<sup>14</sup> G.R. No. 25857, June 30, 1971, 39 SCRA 605 (1971).

the preliminary examination and investigation. This authority may be given *motu proprio* by the Court of First Instance, or it may be secured at the instance of the prosecuting offer or of the complainant, upon such grounds as would subserve the interest of justice. The authority may be secured by filing a petition or motion in the Court of First Instance, or by letter addressed to the Judge of the Court of First Instance, or even upon a verbal petition or request with said Judge. What matters is that the Court of First Instance finds that it is in the interest of justice that the municipal judge of the provincial capital be authorized to conduct the preliminary examination and investigation, and he issues a written order to that effect. It is within the discretion of the Judge of the Court of First Instance to grant, or not to grant, such authority. Of course, the order of the Court of First Instance must be predicated upon the existence of an information or criminal complaint charging the commission of an offense that had taken place within the province and cognizable by the Court of First Instance. It is not necessary that a criminal complaint or an information had been previously filed before the Court of First Instance. It may happen, for instance, that the offense was committed in a municipality where there is no incumbent municipal judge (and there is no auxiliary municipal judge), or for some valid reason the municipal judge can not act on the case and the municipal mayor does not want to conduct the preliminary examination himself; or the circumstance may be that the witnesses for the prosecution are afraid, or refuse, to testify if the preliminary examination and investigation is held in the municipal court of the municipality where the offense was committed. Under those circumstances the complaint or information may be filed in the municipal court of the municipality where the offense was committed, but the preliminary investigation may be conducted by the municipal judge of the provincial capital; or the complaint or information may be filed with the municipal court of the provincial capital after an order has been secured from the Court of First Instance directing the municipal judge of the provincial capital to conduct the preliminary examination and investigation."

Of the same tenor is the ruling on the subject made by the Supreme Court in *Sanidad v. Bermudez*.<sup>15</sup>

In *De Asis v. Romero*,<sup>16</sup> the petitioner stressed that it was the intention of the respondent fiscal to amend the original information in connection with which the questioned warrant of arrest was issued. But, even if this intention of the fiscal is conceded, it is not controverted that he filed in the court *a quo*, as the Rules of Court require, a motion to effectuate the amendment desired. Naturally, there will be a hearing on this motion, and in the course of such proceeding, in which the petitioner will be present, oral testimony and other evidence will be adduced concerning the fact of death and identity of the alleged kidnapped victim and other related circumstances. The hearing on the said motion, in the opinion of the Supreme Court, serves and fulfills the essential purpose and requirements of a full-blown preliminary investigation for the alleged crime of murder intended to be added to the

<sup>15</sup> *Supra*, note 7.

<sup>16</sup> G.R. No. 33125, September 30, 1971, 41 SCRA 235 (1971).

original basic charge of kidnapping as an inextricable part thereof. Thus, if the court *a quo* finds and is convinced at the hearing on the motion to amend the information, that there is *prima facie* evidence of murder indisputably connected with the alleged kidnapping, then it is but natural, nay, logical, to expect that it will grant the said motion. In such event, it is clearly wishful thinking and unavailing technicality to require the court *a quo* to order the release of the petitioner and then (or then and there) issue another warrant for his arrest. Upon the other hand, if the said court believes that the original information should stand as it is, then for the more reason that the petitioner should not be ordered released. Consequently, the Supreme Court denied the prayer of petitioner Roman de Asis that he be released and discharged from custody.

The Supreme Court ruled in *People v. Golez*<sup>17</sup> that to be sure, the ruling of the respondent judge that only his court, to the exclusion of the City Fiscal, had authority to conduct preliminary investigation is unassailable.<sup>18</sup> Under the circumstances, however, it was an abusive resort to technicality for the said respondent judge to have dismissed the criminal case outright merely because, before it was filed with him, the fiscal had, perhaps in an excess of caution, conducted a preliminary investigation of his own, which was unnecessary since, anyway, such preliminary investigation could not have, in law, finally terminated the matter either way. As suggested by the fiscal in his motion for reconsideration filed with the respondent judge, the simple remedy was for the court to have conducted its own preliminary investigation without regard to the one undertaken by the fiscal. Had the respondent judge acceded, as he should have done, to said suggestion, the valuable time and effort of everyone concerned, including the Supreme Court, could have been saved and the merits of the complainant's charge, affecting as it does an alleged violation of the Election Law which public interest requires to be settled as soon as possible, could have been determined and the public interest as well as the interests of justice would have been best served. No question, the Supreme Court granted the petition and ordered the respondent court to proceed consistently with the above opinion.<sup>19</sup>

The issue presented in *Wylengco v. Vda. de Cabigting*<sup>20</sup> is whether or not the respondent special counsel acted with grave abuse of discretion or in excess of her jurisdiction when she denied petitioner's motion to dismiss and directed the preliminary investigation to proceed. The record shows that in denying the motion to dismiss and the motion for reconsideration, the

<sup>17</sup> G.R. No. 26420, May 31, 1971, 39 SCRA 248 (1971).

<sup>18</sup> *Tagayuma v. Lastrilla*, G.R. No. 17801, August 30, 1962, 5 SCRA 937, 940-942 (1962) sec. 187, Rep. Act No. 180 (1947), REV. ELECTION CODE, as amended.

<sup>19</sup> *Supra*, note 17.

<sup>20</sup> G.R. No. 24199, November 29, 1971, 42 SCRA 318 (1971).

respondent special counsel who conducted the preliminary investigation did not rule squarely on the question of prescription raised by Wylengco, but directed him to present his evidence, if he so desired, so as to enable her to appreciate more clearly the facts of the case based on the testimony of both parties. The denial of the motion to dismiss was in effect a ruling that in the opinion of the investigating counsel the evidence before her at that stage of the case did not justify the dismissal, or at least the grounds relied upon in the motion were not indubitable, for which reason she wanted to hear the evidence for the petitioner. Hence, the Supreme Court held that such ruling cannot be considered as an abuse of discretion or in excess of jurisdiction and that it was neither arbitrary nor oppressive.

In ordering the lower court to proceed without further delay with the trial of the accused-appellees, after setting aside the order of dismissal appealed from, in *People v. La Caste*,<sup>21</sup> the Supreme Court observed that the gross error of the factual premise of the lower court's dismissal order that no preliminary investigation of the cases was conducted is shown by the records themselves. In Criminal Cases Nos. 3068 and 3072, the lower court itself in its order of April 17, 1962, ordering the arrest of the accused and fixing their bail made of record that it had "conducted the required preliminary investigation" and that it found the existence of reasonable cause against the accused. In Criminal Case No. 3086, the prosecutors had certified in the information under their oath before then vacation Judge Alvendia to the fact of their having conducted a preliminary investigation in accordance with law. The accused Francisco Castro himself, in his motion of March 30, 1966 for reinvestigation, while claiming not to have had notice of the preliminary investigation, conceded in effect the fact of such preliminary investigation having been held and merely asked for a *re-investigation*.

Even assuming *arguendo* that the above facts of records were absent, still the lower court had no factual basis for relying on the *unverified* assertion of the said accused as to the alleged lack of preliminary investigation. As held by the Supreme Court in *People v. Figueroa*,<sup>22</sup> the trial court should not disregard the presumption that official duty has been regularly performed and the well-settled rule that when nothing appears affirmatively on the record that a preliminary investigation was not in fact held, an objection on the ground of denial or deprivation thereof deserves scant consideration by virtue of the presumption that both the court as well as the prosecution proceeded in accordance with law. Certainly, defense counsel must first overcome the presumption of regularity in the performance of official duty and present strong *prima facie* evidence of irregularity or falsification of the investigating fiscal's certification and record of the investigation for the Court to deny them the faith and credence properly due them.

<sup>21</sup> G.R. No. 29083, February 27, 1971, 37 SCRA 767 (1971).

<sup>22</sup> G.R. No. 24273, April 30, 1969, 27 SCRA 1239 (1969); citing *People v. Sefaison*, G.R. No. 14732, January 28, 1961, 1 SCRA 235 (1961) and other cases.

On legal premises, the Supreme Court also noted that the lower court's action was likewise patently erroneous. As has been time and again ruled by the Supreme Court, the posting of bail by the accused and their entry of plea constituted a waiver of their right to preliminary investigation and any irregularity that attended it. Furthermore, aside from the fact that all objections available to the accused were taken to be waived upon failure to move to quash at the time of their plea, as provided by Rule 117, section 10, (subject to the specific exceptions provided therein), failure to hold preliminary investigation cannot be made the basis of a motion to quash. As in the case of *People v. Figueroa*<sup>23</sup> and *Bandiala v. Court of First Instance of Misamis Occidental*<sup>24</sup> where the absence of a proper preliminary investigation has been timely raised and has not been waived, the trial court is called upon "not to dismiss the information but hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation."<sup>25</sup> Moreover, as held by the Supreme Court, speaking thru Mr. Chief Justice Concepcion, in *People v. Casiano*,<sup>26</sup> the absence of such investigation did not impair the validity of the information or otherwise render it defective. Much less did it affect the jurisdiction of the Court of First Instance over the case.

In the cases of *Estrella v. Orendain*<sup>27</sup> and *Isip v. Gonzales*,<sup>28</sup> it has been ruled that the matter of prejudicial questions cannot be resolved by the fiscals during the preliminary investigation stage but by the courts after the corresponding information has already been filed.

Petitioners in *Isip v. Gonzales*<sup>29</sup> contend that the construction given by the Supreme Court in Section 5 of Rule 111 in the *Dasalla* case makes the same inconsistent with Article 36 of the Civil Code. The point of the petitioners is that the phrase "before any criminal prosecution may be instituted or may proceed" in said Article 36 contemplates that the prejudicial question must be decided before the preliminary investigation, considering that in *People v. Olarte*<sup>30</sup> it has been held that the period of prescription for a criminal action is tolled by the filing of the criminal complaint in court, even if said filing of the criminal complaint is only for purposes of preliminary investigation, hence, the preliminary investigation is already part of the criminal prosecution. Petitioners are in error. While Article 36 does provide logically that a prejudicial question should be decided before the cri-

---

<sup>23</sup> *Id.*

<sup>24</sup> G.R. No. 24652, September 30, 1970, 35 SCRA 237 (1970).

<sup>25</sup> The above ruling on legal premises reiterates the previous rulings in *People v. Figueroa*, *supra*, note 22, and *People v. Marquez*, G.R. No. 23654, March 28, 1969, 27 SCRA 809 (1969), both of which were reviewed in the survey for Remedial Law, 45 PHIL.L.J., 211-212 (April, 1970).

<sup>26</sup> G.R. No. 15309, February 16, 1961, 1 SCRA 478 (1961).

<sup>27</sup> G.R. No. 19611, February 27, 1971, 37 SCRA 640 (1971).

<sup>28</sup> G.R. No. 27277, May 31, 1971, 39 SCRA 255 (1971).

<sup>29</sup> *Id.*

<sup>30</sup> G.R. No. 22465, February 28, 1967, 19 SCRA 494 (1967).

minal case proceeds, it does not fix at what precise stage the criminal prosecution should be suspended to await the resolution of the prejudicial questions. Precisely, Article 36 leaves the procedure for involving, considering and deciding prejudicial question to the rules of court promulgated by the Supreme Court. Inasmuch as in Section 5, Rule 111 and *Dasalla and Estrella*, the Supreme Court has provided and ruled that the question of whether or not a criminal action shall be suspended because of a prejudicial question may not be raised during the stage of preliminary investigation but only after a finding of probable cause and the case is already in the court of proper jurisdiction for trial, the contention of petitioners was held clearly untenable.

### III BAIL

Bail has been denied as the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail and or recognizance.<sup>31</sup>

In *Siazon v. The Presiding Judge of the Circuit Criminal Court, 16th Judicial District, Davao City*<sup>32</sup> the petitioner submitted that the nature of the hearing on a petition for bail has been changed and that it is now no longer summary in view of the addition to the former Section 7, Rule 110, which now appears as Section 7, Rule 114, of the following provision:

*SEC. 7. Capital offense — Burden of proof. —*

x        x        x        x

‘The evidence presented during such hearing in the Court of First Instance shall be considered automatically reproduced at the trial, without need of retaking the same; but, upon motion of either party, the court may recall any witness for additional examination unless the witness is dead, outside of the Philippines or otherwise unable to testify.’

Faced with such submission, the Supreme Court stated that it does not see that the addition of the aforementioned provision has materially changed the nature of the hearing on a petition for bail to the extent of depriving the Court of its discretion to confine the evidence to the extent necessary for the proper determination of the question of whether or not the evidence of guilt is strong. It was noted that the only change that has been introduced is that such evidence shall be considered automatically reproduced at the trial in order to avoid unnecessary repetition. The proviso that any witness may be recalled at the trial for additional examination underscores, if anything, the difference between the hearing for purposes of the petition for bail and the trial on the merits. This is as it should be, because one has for its purpose, from the stand-point of the prosecution, to show that strong of evidence of guilt exists while the other contemplates proof beyond reasonable doubt.<sup>33</sup>

<sup>31</sup> RULES OF COURT, Rule 114, sec. 1.

<sup>32</sup> G.R. Nos. 34156-58, October 29, 1971, 42 SCRA 184 (1971).

<sup>33</sup> *Id.*

## IV. PLEAS

Reiterating the ruling in *People v. Apduhan*<sup>34</sup> and *People v. Solacito*,<sup>35</sup> the Supreme Court held in *People v. Estebia*<sup>36</sup> that there is need for a categorical declaration by the accused that he is guilty of the crime charged, one made with full knowledge of the consequences that such an admission would entail. The plea entered in the instant case was not impressed with such an attribute. To so construe the statements of the accused, characterized by inconsistencies and express disclaimers of guilt, as amounting to an acknowledgment of criminal liability, would be to disregard what has so long and so constantly been adhered to. There is force in the observation that the Constitution cannot be satisfied with anything less. It presumes that innocence of the accused; it is imperative then that the fact of guilt be demonstrated by competent and credible evidence beyond reasonable doubt. The accused could, of course, dispense with the need of proof by the express admission at his arraignment that he is guilty of the offense charge. There must be a clear and categorical showing, though, that such indeed was his intention. The plea of guilt must be unequivocal. It must not give rise to contrary interpretations. Unfortunately, that is what happened in the instant case. Concluding that the accused's judgment of conviction cannot stand, the Supreme Court stated that the lower court should not have been satisfied that the accused did in fact plead guilty.

Along the same line is the ruling in *People v. Alincastre*.<sup>37</sup> The Supreme Court stated that too well-settled is the rule that, even when the defendant pleads guilty to a capital offense, the court must assure itself that he is fully aware of the implications of said plea and that, to this end, it may or should take some evidence to be reasonably certain that no injustice is done to him. Since the trial court had discretion to take said evidence and to assume the initiative in doing so, it obviously did not err in granting the accused the opportunity he sought—even prior to the commencement of the trial—to give his side of the case, before judgment was passed upon him.

## V. TRIAL

In remanding the case of *People v. Abuda*<sup>38</sup> to the lower court for further proceedings, the Supreme Court said:

"Considering that defendant herein is charged with a capital offense; that the notice setting this case for trial on December 5, 1968 was not seasonably received by his counsel of record, Atty. Mario A. Aguinaldo;

<sup>34</sup> G.R. No. 19491, August 30, 1968, 24 SCRA 798 (1968).

<sup>35</sup> G.R. No. 29209, August 25, 1969, 29 SCRA 61 (1969).

<sup>36</sup> G.R. No. 26868, July 29, 1971, 40 SCRA 90 (1971).

<sup>37</sup> G.R. No. 29891, August 30, 1971, 40 SCRA 391 (1971).

<sup>38</sup> G.R. No. 30009, February 27, 1971, 37 SCRA 789 (1971).

and that the accused was assisted in said trial by a counsel *de officio*, who, having been designated as such, on the same date, shortly before the trial, had every limited time to prepare therefor, the Court feels that, in the interest of justice, it would be best to remand this case to lower court for the reception of such additional evidence as the parties may have, and the rendition of another decision based upon such evidence and those introduced on December 5, 1968 which need not be retaken."

Pointed out in *Santos v. Kayanan*<sup>39</sup> is the error of the respondents in the procedure adopted: in terminating the case upon motion to dismiss instead of through a judgment on the merits, considering that the evidence-in-chief for the prosecution was already in and the evidence for the defense could soon be completed. The turnabout of the two principal witnesses for the prosecution in their affidavits was not made on the witness stand in the course of the trial, and merely referred to their unwillingness to testify further in the case (presumably as rebuttal witnesses). It was at best dubious sufficiency to overcome the testimony they had already given. Their protestations of belief in the innocence of the accused, as voiced by them to respondents, were not made of record; and if respondents were convinced of the truth thereof that conviction was strictly *in pectore*, which accounts for the fact that it is nowhere mentioned in the motion to dismiss and in the order of dismissal. The respondents Judge and Assistant Provincial Fiscal, respectively, were strongly admonished to be more careful in the performance of their duties.

In *People v. Alincastre*,<sup>40</sup> the Supreme Court upheld the action taken by the trial court in allowing one of the accused to testify toward the end of the trial for fear that his testimony would provoke his co-accused's animosity. In this case, the trial ended with the reception of his testimony, so that, thereafter, he no longer had to meet the appellants, as he used to, from his arraignment until the case was submitted for decision.

Noted in *Baesa v. Provincial Fiscal of Camarines Sur*,<sup>41</sup> is the fact that the second criminal case was already pending trial before the lower court, and any and all grounds for dismissal or defenses of the accused as to the information against them, could be raised only in the said case before the court in which it was pending, which had exclusive jurisdiction over the subject-matter thereof, i.e., the offense charged in the information. The accused could not properly split, as it were, their defenses, as they have done in the instant case—just as a party cannot split his cause of action—and file a separate civil action of mandamus on the ground of their being interfered with in the proper conduct and governance of the criminal case.

<sup>39</sup> G.R. Adm. Case No. 115, August 31, 1971, 40 SCRA 654 (1971).

<sup>40</sup> *Supra*, note 37.

<sup>41</sup> G.R. No. 30363, January 30, 1971, 37 SCRA 437 (1971).

Petitioner claims in *Galvez v. Court of Appeals*<sup>42</sup> that he was deprived of the opportunity to prepare his defense thru the denial of his motion for postponement. In finding this claim unfounded and in agreeing with the Court of Appeals, the Supreme Court said that two years were more than enough time for this purpose. It was further observed that an accused is not bound to testify on his own behalf and his silence may not be taken against him, but in this case, the petitioner's belated attempt at this very late day to have his version admitted makes him vulnerable to the charge that his application for continuance was not founded on good faith. In denying petitioner's motion for new trial, the Supreme Court said that, as a rule, it is only in cases of clear arbitrariness that it will interfere with the trial court's exercise of discretion in granting or denying a motion for postponement, and it does not find such arbitrariness in the present case.

## VI. JUDGMENT

In *People v. Amit*,<sup>43</sup> the appellant contended that the appealed decision is void because, in violation of the provisions of Articles VIII, section 12 the Constitution of the Philippines and of section 2, Rule 120 of the Rules of Court, it does not contain "an analysis and/or make a finding upon all the evidence adduced by both parties" and does not state (a) the legal qualification of the offense charged, the aggravating or mitigating circumstances attending the alleged commission thereof, and (b) the participation of each of the appellants in the commission of the crime.

Finding such contention untenable, the Supreme Court said:

"Perusal of the appealed decision readily shows, however, that it satisfies the above-mentioned legal provisions as it clearly gives the proper qualification - Rape - for the offense charged; it makes a sufficiently clear statement of the evidence presented by the prosecution and the defense and of the facts which, in the opinion of the trial judge, were established beyond doubt.

That the appealed decision does not contain a detailed narration of all the facts testified to by each and everyone of the witnesses for the defense but instead considered their testimonies as a whole as tending to establish the defense of alibi - which was, in fact, appellants' main defense - does not make said decision fatally defective. In fact, we believe that the alleged defect constitutes no irregularity at all."

## VII. APPEAL

*People v. Esmael*<sup>44</sup> reiterates the rule that when an appeal has been perfected from a judgment in a criminal case, the court from which the appeal is made loses jurisdiction over the case, and this (case) means both

<sup>42</sup> G.R. No. 22760, November 29, 1971, 42 SCRA 278 (1971).

<sup>43</sup> G.R. No. 30102, February 27, 1971, 37 SCRA 793 (1971).

<sup>44</sup> G.R. No. 28533, February 24, 1971, 37 SCRA 601 (1971).

jurisdiction over the record and the person of the accused-appellant. In the same manner that after the judgment has become final, the trial court loses jurisdiction to amend the same, so also upon the perfection of the appeal which brings about the finality of the judgment or order of the court, the sentencing court must also lose jurisdiction or power to do anything or any matter in relation to the person of the accused-appellant.

The Supreme Court added that although courts may allow the withdrawal of an appeal, for the purpose of allowing the filing of a motion or reconsideration and passing upon the same, the exercise of such authority is discretionary in nature, and the records do not show that the trial judge had abused his discretion or otherwise erred in acting as he did. In fact, appellants' motion for reconsideration does not state that they were withdrawing their notice of appeal.<sup>45</sup>

In *People v. Cornelio*,<sup>46</sup> it was specifically noted that the escape of the accused does not relieve the Court of the burden of automatically reviewing the case, in the same manner that a withdrawal of appeal by a death convict would not remove the case from the jurisdiction of the Court. Hence, the Supreme Court did not longer permit the case to remain further in its docket and proceeded to discharge its task of passing upon the cause *en consulta* and reviewing the facts and the law as applied thereto by the trial court, and determining the propriety of its imposition of the death penalty.

## EVIDENCE

### I. ADMISSIBILITY

Evidence is the means, sanctioned by the rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact.<sup>47</sup> Evidence is admissible when it is relevant to the issue and is not excluded by the rules.<sup>48</sup>

#### A. Secondary evidence

Construing the provisions of Section 51 of the old Rule 123, Rules of Court (now Rule 130, sec. 4), in *Director of Lands v. Court of Appeals*,<sup>49</sup> the Supreme Court sustained petitioners' contention that the unsigned copy of the supposed deed (Exhibit "O") was incorrectly admitted in evidence. According to the Supreme Court, from the enactment of Act No. 190 to the present Rules of Court, the rule governing the sale of real property has remained unchanged: it can be proved only by the very instrument reciting the transaction, duly subscribed by the proper party or his authorized agent, or else by secondary evidence of the contents of such document. However,

<sup>45</sup> *Id.*

<sup>46</sup> G.R. No. 1289, June 10, 1971, 39 SCRA 435 (1971).

<sup>47</sup> RULES OF COURT, Rule 128, sec. 1.

<sup>48</sup> RULES OF COURT, Rule 128, sec. 3.

<sup>49</sup> G.R. No. 29575, April 30, 1971, 38 SCRA 634 (1971).

before the terms of a transaction in realty may be established by secondary evidence, it is necessary that the due execution and subsequent loss of the original instrument evidencing the transaction be proved. For it is the due execution, and loss thereafter, of the document that would warrant or constitute basis for the introduction of secondary evidence to prove the contents of such document. And the due execution of the document should be proved through the testimony of (1) the person or persons who executed it; (2) the person before whom its execution was acknowledged; or (3) any person who was present and saw it executed and delivered, or who, after its execution and delivery, saw it and recognized the signatures, or by a person to whom the parties to the instruments had previously confessed the execution thereof. Thus, in one case,<sup>50</sup> the admission of the certified copy of the record of a deed in a public registry as secondary evidence of the terms of the deed of sale, was declared improper and invalid, the Court pointing to the party's failure to present the notary and those persons who must have seen the signing of the document as witnesses to testify on its due execution.

#### B. *Parol evidence*

Rule 130, sec. 7, Rules of Court expressly provides as follows:

"SEC. 7. *Evidence of written agreements.*—When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;

(b) When there is an intrinsic ambiguity in the writing.

The term 'agreement' includes wills."

An opportunity to interpret the above provision presented itself in *Constantino v. Espiritu*.<sup>51</sup> In a concurring opinion, Mr. Justice Barredo said:

"To my mind, the obligation of the appellee to execute the conveyance in favor of their child was part and parcel of one single verbal agreement, in partial implementation of which the said property was conveyed to her. In other words, appellant's action is simply one for the enforcement of an implied trust under Article 1453 of the Civil Code which provides thus:

"ART. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated."

<sup>50</sup> *Government v. Martinez*, 44 Phil. 817 (1918).

<sup>51</sup> G.R. No. 22404, May 31, 1971, 39 SCRA 206 (1971).

Accordingly, the only rule, that can possibly have any relevance to appellee's situation, instead of the Statute of Frauds, would be the parol evidence rule which, in any event, is not one of the grounds for dismissal of a complaint, since it is a rule exclusively of admissibility of evidence and not of any other branch of procedure. As a matter of fact, under the known circumstances of this case, I even doubt very much if the appellee will be able to successfully invoke the parol evidence rule when the trial is eventually held, for the simple reason that appellant has in effect specifically alleged in his complaint that the deed of sale in favor of the appellee was subject to the condition already mentioned that their illegitimate child would be the real beneficiary thereof. The general rule of admissibility which excludes evidence *aliunde* tending to vary the terms of a written agreement is subject to the exception, among others, that the same does not apply when the party wishing to prove the real agreement or the additional terms specifically alleges such agreement or terms in his pleading. Otherwise stated, the matter of whether or not there is really an obligation on the part of the appellee to convey the land in question to her child with appellee is only the one of proof, there being no technical bar to the evidence, much less to appellant's action. Withal, like the Statute of Frauds, the parol evidence rule may not be used as a shield to commit fraud with impunity, particularly, when, as in this case, it is alleged that an implied trust is involved. I would even go further. I venture to add that even if this case were considered as one involving an express trust under Article 1443 of the Civil Code which provides that an express trust affecting realty may not be proved by parol evidence, I would still hold that appellant's case is subject to this exception. It is a fundamental principle underlying all rules of proof that never may the same be utilized as instruments to conceal or shield fraud."

### C. Confession

Confession is the declaration of an accused expressly acknowledging his guilt of the offense charged, and this may be given in evidence against him.<sup>52</sup>

In *People v. Bagasala*,<sup>53</sup> the Supreme Court stated that the Constitution in its Bill of Rights explicitly guarantees: "No person shall be compelled to be a witness against himself."<sup>54</sup> This safeguard against compulsory disclosure of incriminating facts does not bar the conviction of an accused "on a voluntary extrajudicial statement x x x."<sup>55</sup> Certainly, however, where the confession is involuntary, being due to maltreatment or induced by fear or intimidation, there is a violation of this constitutional provision. Any form of coercion whether physical, mental or emotional thus stamps it with inadmissibility. What is essential for its validity is that it proceeds from the free will of the person confessing.

In the instant case, the Supreme Court stated that it is unfortunate that the lower court failed to abide by the authoritative doctrines that ban the

<sup>52</sup> RULES OF COURT, Rule 130, sec. 29.

<sup>53</sup> G.R. No. 26182, May 31, 1971, 39 SCRA 236 (1971).

<sup>54</sup> Art. III, sec. 1, par. 18.

<sup>55</sup> *People v. Carillo*, 77 Phil. 572, 576 (1946).

use of involuntary confessions in accordance with the constitutional provision against self-incrimination which should be mandatory, being "a valuable and substantive right".<sup>56</sup> Appellant testified that on June 10, 1961, while he was being investigated at the constabulary barracks, he was boxed repeatedly in different parts of the body, at one time made to lie down after being blind-folded and then water poured on his face. He repeated that before signing the confession on June 13, 1961, he was likewise subjected to physical maltreatment, having been boxed many times on the breast and stomach. His testimony received confirmation from a competent and neutral source, Dr. Pedro Villafuerte, the city health officer of Naga, who examined appellant on June 27, 1961 in the provincial jail of Camarines Sur seventeen days after his being apprehended and taken to the constabulary barracks. The Supreme Court added that it would be to render nugatory a valuable constitutional right if judges of courts of first instance display less than full sensitivity to its command. A conviction resting on such proof, and such proof alone, certainly cannot be allowed to stand.<sup>67</sup>

But in the sensational case of *People v. Jose*,<sup>58</sup> the Supreme Court was not convinced that, as the accused contended, the statements were involuntarily given and the details recited therein concocted by the authorities. Moreover, as to the contention of one accused that his extrajudicial statements are inadmissible on the ground that he was not assisted by counsel during the custodial interrogations, the Supreme Court said:

"The provision of the Constitution of the Philippines in point is Article III (Bill of Rights), Section 1, par. 17 of which provides: 'In all criminal prosecutions was interpreted by this CSourt, in U.S. v. Beecham, by himself and counsel x x x.'" While the said provision is identical to that in the Constitution of the United States, in this jurisdiction the term *criminal prosecutions* was interpreted by this Court, in U.S. v. Beecham, 23 Phil. 258 (1912), in connection with a similar provision in the Philippine Bill of Rights (Section 5 of Act of Congress of July 1, 1902) to mean proceedings before the trial court from arraignment to rendition of the judgment. Implementing the said constitutional provision, we have provided in Section 1, Rule 115 of the Rules of Court that 'In all criminal prosecutions the defendant shall be entitled x x x (b) to be present and defend in person and by attorney at every stage of the proceedings, *that is, from the arraignment to the promulgation of the judgment.*' The only instances where an accused is entitled to counsel before arraignment, if he so requests, are during the second stage of the preliminary investigation (Rule 112, Section 11) and after the arrest (Rule 113, Section 18). The rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached thereto at the time of the adoption thereof should be considered. And even there

<sup>56</sup> *Chavez v. Court of Appeals*, G.R. No. 29169, August 19, 1968, 24 SCRA 663, 679 (1968).

<sup>57</sup> *Supra*, note 53.

<sup>58</sup> G.R. No. 28232, February 6, 1971, 37 SCRA 450 (1971).

the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above-cited cases."<sup>59</sup>

Regarding the question whether or not the confession is admissible in evidence only against those who made the same, the Supreme Court had occasion to answer the same in *People v. Provo*.<sup>60</sup> It reiterated the rule enunciated in a previous case that although extrajudicial confessions are in general admissible only against those who made the same, this rule is subject to exception.

"Extra-judicial confessions independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime."<sup>61</sup>

#### D. Dying declaration

Reiterating the previous rulings on the subject are the decisions in *People v. Devaras*<sup>62</sup> and *People v. Beraces*.<sup>63</sup>

In the case of *People v. Devaras*,<sup>64</sup> while not accepting the statement of the victim as part of the *res gestae*, the Supreme Court was of the view that what was contained in Exhibit "A" as a result of the questioning of the victim by Patrolman Ramulte amounts to a dying declaration, as it is a statement coming from "a seriously wounded person" even if death occurs "hours or days after it was inflicted" if there be showing that it was due to the wound whose gravity did not diminish from the time he made his declaration "until the end came." The principle is well-settled that there is no need for proof that the declarant state "that he has given up the hope of life." It is enough if, from the circumstances, it can be inferred with certainty that such must have been his state of mind. Thus, it is sufficient that the circumstances are such as to lead inevitably to the conclusion that at the time (of such statement) the declarant did not expect to survive the injury from which he actually died.

Stressed in the appeal in *People v. Beraces*<sup>65</sup> is that the lower court should not have considered the identification of appellants as coming within the concept of dying declaration. The Supreme Court noted that it is not denied, as it could be denied, that immediately after the victim

<sup>59</sup> *Massiah v. U.S.*, 377 U.S. 201, 84 S.Ct., 1199, 13 L.Ed. 2d. 246 (1964); *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct., 1758, 12 L.Ed. 2d. 977 (1964); and *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d. 694, 10 A.L.R. 3rd 974 (1966).

<sup>60</sup> G.R. No. 28347, January 20, 1971, 37 SCRA 19 (1971).

<sup>61</sup> *People v. Condemena*, G.R. No. 22426, May 29, 1968, 23 SCRA 910 (1968).

<sup>62</sup> G.R. No. 25165, February 27, 1971, 37 SCRA 697 (1971).

<sup>63</sup> G.R. No. 25016, March 27, 1971, 38 SCRA 127 (1971).

<sup>64</sup> *Supra*, note 62.

<sup>65</sup> *Supra*, note 63.

had pointed to the appellants as the perpetrators of the crime, he died. When his mother and his wife were called back from a mission to get a motor-boat so that the deceased could be taken to Catbalogan, he was lying at death's door. What was uttered then did come from a man who was mortally wounded and who was least likely to pervert the truth, conscious as he was that he was about to join his Maker. It would be to flout the well-accepted doctrines announced by the Supreme Court time and time again as to what is a dying declaration, if under such circumstances the lower court would be held as having committed an error in giving credence to the statement made by the deceased. Accordingly, the Supreme Court said that it was not disposed to do so.

#### E. *Part of res gestae*

Another exception to the hearsay rule consists of statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, which statements may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as a part of the *res gestae*.<sup>66</sup>

In *People v. Cornelio*,<sup>67</sup> the identities of the accused given by the two victims-witnesses were received as part of the *res gestae*. According to the Supreme Court, that the two women were cringing in mortal fear and could not even talk right after the crime was testified to as part of the *res gestae* furthermore by the chief of police who recounted that when he went early in the morning of January 13, 1946, to the house of the deceased, "Paula Galicia could not talk because she was groaning" and "Tranquilina Galicia was trembling like a mad woman and I could not talk to her."

The declaration given by the victim in *People v. Devaras*<sup>68</sup> was not admitted as part of the *res gestae*, considering the lapse of time that occurred between the commission of the offense and the taking of the statement, namely, eleven hours or so. However, as stated earlier, such statement was received in evidence as a dying declaration.

## II. PRESENTATION OF EVIDENCE

The testimony of witnesses shall be given orally in open court and under oath or affirmation.<sup>69</sup> The court shall consider no evidence which has not been formally offered.<sup>70</sup>

<sup>66</sup> RULES OF COURT, Rule 130, sec. 36.

<sup>67</sup> *Supra*, note 46.

<sup>68</sup> *Supra*, note 62.

<sup>69</sup> RULES OF COURT, Rule 132, sec. 1.

<sup>70</sup> RULES OF COURT, Rule 132, sec. 35.

In *Sison v. Commissioner of Internal Revenue*,<sup>71</sup> it is not denied that in the Court of Tax Appeals the appellants questioned the validity of the deficiency tax imposed upon them. During the hearing of the case, the court informed that parties that "the whole case on question of prescription and on the merits" was the subject of the hearing. The government submitted evidence to sustain the validity of the questioned deficiency tax, while appellants refrained from doing the same "in the meantime while waiting for the resolution" of the court—presumably on the question of prescription. Thereupon one of the judges presiding the court gave appellants' counsel this warning: "It is up to you if you want to take that chance." Thereafter, the court dismissed the claim of the government on the ground that it had already prescribed. It is clear from the foregoing that the "chance" that the appellants took was this: that if, on appeal, the decision of the Court of Tax Appeals was reversed—as it was in fact reversed—they would be deemed to have waived their right to present additional evidence on the question of the correctness of the deficiency tax. Stated otherwise, upon reversal, they would not be entitled to have the case set for hearing all over again in the Court of Tax Appeals in relation to the question aforesaid. This, indeed, must be necessary consequence of their refusal or failure to present additional evidence during the original hearing. It was specifically noted that the practice of courts is to try a case as a whole and not piece by piece, in order to avoid unnecessary delays.

*Lamagan v. De la Cruz*<sup>72</sup> reiterates two long established rules of evidence. Firstly, in the case the trial court rejects the evidence being offered or presented, the party's recourse is to make a formal offer of the evidence under Rule 132, section 35, stating on the record what a party or witness would have testified to were his testimony not excluded, as well as attaching to the record any and all rejected exhibits. The purpose is to enable the appellate courts, in the event of appeals, to examine the evidence and to judge whether or not their rejection was erroneous. Secondly, where there is no indication of bad faith on the part of the party offering the evidence or of a design to unduly prolong the trial, trial courts should be liberal in accepting offered evidence, and even if they were to refuse to accept the evidence, the affected party should nevertheless be allowed to spread the excluded evidence on the record, for review on appeal. Furthermore, as to the liberality in the admission of evidence, the Supreme Court observed that "the admission of proof in a court of first instance, even if the question as to its form, materiality, or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final consideration of the case, to distinguish

---

<sup>71</sup> G.R. No. 22480, June 30, 1971, 39 SCRA 593 (1971).

<sup>72</sup> G.R. No. 27950, July 29, 1971, 40 SCRA 101 (1971).

the relevant and material from the irrelevant and immaterial." The Supreme Court added that "if this course is followed and the cause is prosecuted to the Supreme Court on appeal, this court then has all the material before it necessary to make a correct judgment."

### III. WEIGHT AND SUFFICIENCY OF EVIDENCE

#### A. *Weight of evidence in appellate courts*

*People v. Kipte*<sup>73</sup> reiterates the well-settled rule in this jurisdiction that where the issue to be resolved involves a question regarding the credibility of witnesses, the appellate court generally does not disturb the findings of fact of the trial court—the trial judge being in a much better position to decide the matter, having seen and heard the witnesses testify, and had observed their demeanor and their manner of testifying during the trial—unless there is a showing that the trial court had overlooked certain facts of substance and weight that, if considered, might affect the result of the case. Where there is an irreconcilable conflict in the testimonies of witnesses for the prosecution and for the defense, as in the instant case, the appellate court will not disturb the findings of fact of the trial court when the evidence of the prevailing party is adequate to sustain the judgment appealed from.

Of the same tenor are the rulings on the subject in *People v. Brioso*,<sup>74</sup> *People v. Beraces*,<sup>75</sup> *People v. Pastores*,<sup>76</sup> *People v. V. Guba*,<sup>77</sup> *People v. Ordiales*,<sup>78</sup> and *People v. Yap*.<sup>79</sup>

It is significant to consider that when the circumstances of the case required it, the Supreme Court applied the exception to the above rule. In *Maravilla v. Maravilla*,<sup>80</sup> the Supreme Court found that "the trial court's conclusion is far-fetched, fanciful and unwarranted," and "difficult to understand the trial court's distrust of a lawyer who did no more than discharge his professional duty, or its readiness to attribute improper motives to proponent's witnesses." And in *Bunyi v. Reyes*,<sup>81</sup> where the Court of Appeals concluded on the basis of assumption, without reference to the evidence on record, that petitioner's consolidation of her ownership over a parcel of land was done in a "surreptitious manner", the Supreme Court held that findings must not be followed.

<sup>73</sup> G.R. No. 26662, October 30, 1971, 42 SCRA 198 (1971).

<sup>74</sup> G.R. No. 28482, January 30, 1971, 37 SCRA 336 (1971).

<sup>75</sup> *Supra*, note 63.

<sup>76</sup> G.R. No. 29800, August 31, 1971, 40 SCRA 498 (1971).

<sup>77</sup> G.R. No. 29190, October 29, 1971, 42 SCRA 109 (1971).

<sup>78</sup> G.R. No. 30956, November 23, 1971, 42 SCRA 238 (1971).

<sup>79</sup> G.R. No. 28664, December 22, 1971, 42 SCRA 567 (1971).

<sup>80</sup> G.R. No. 23225, February 27, 1971, 37 SCRA 672 (1971).

<sup>81</sup> G.R. No. 28845, June 10, 1971, 39 SCRA 504 (1971).

### B. Credibility

*People v. Provo*<sup>82</sup> reiterates the rule that inconsistencies and contradictions incurred by an illiterate witness in the course of a lengthy examination will not affect the credibility of her testimony.

In the famous case of *People v. Jose*,<sup>83</sup> the Supreme Court found it difficult to imagine that any sane woman, who is single and earning as much as Miss De la Riva did, would inflict injuries on her genital organ by puncturing the same with a sharply-pointed instrument in order to strike back at four strangers who allegedly would not pay her the sum of ₱900.00 due her of a striptease act. Equally important is the complainant's public disclosure of her tragedy, which led to an examination of her private parts and lay her open to risks of future public ridicule and diminution of popularity and earnings as a movie actress. These are some of the considerations which the Supreme Court took into account in finding that the commission of rape by each of the appellants has been clearly established.

The defense in *People v. Esmael*<sup>84</sup> tried to impeach the testimony of witness Capilitan identifying the culprits. In sustaining the credibility of said testimony, the Supreme Court said:

"Considering that Capilitan was barely 16 years old when he testified in court; that he had not even finished fourth grade elementary school; that, like Usman Moro, he was, also, scared when the peace officers first interrogated him; that, soon after, he confided to Captain Bangcola that he (Capilitan) was not certain that Usman Moro was one of those who had participated in the commission of the crime; that he has no motive whatsoever to falsely incriminate appellants herein; and that he had seen them several times before the occurrence, they being neighbors of the Mendozas, for whom he had been working for one (1) year, we find no reason to doubt either his veracity or the accuracy of his testimony regarding the identity of the culprits."

The ruling in *Maravilla v. Maravilla*<sup>85</sup> is to the effect that the variation in the expressions used by the witness is the best evidence that he was being candid and careful, and it is a clear badge of truthfulness rather than the reverse.

Then, again, minor variations, and even discrepancies, in the testimony of witnesses — particularly unenlightened and simple country folks — are often indicative of their good faith and veracity.<sup>86</sup>

In *People v. Amit*,<sup>87</sup> it was ruled that whatever variations or contradictions may be found in their respective testimony is merely on details that

<sup>82</sup> *Supra*, note 60.

<sup>83</sup> *Supra*, note 58.

<sup>84</sup> G.R. No. 28533, February 24, 1971, 37 SCRA 601 (1971).

<sup>85</sup> *Supra*, note 80.

<sup>86</sup> *People v. Mercado*, G.R. No. 30298, March 30, 1971, 38 SCRA 168 (1971).

<sup>87</sup> G.R. No. 30102, February 27, 1971, 37 SCRA 793 (1971).

do not affect their credibility and the substance of their statements in open court.

The ruling in *People v. Amiscua*<sup>88</sup> is that the absence of evidence as to an improper motive actuating the offended party and the principal prosecution witnesses tends to sustain the conclusion that no such improper motive existed and that their testimonies are worthy of full faith and credit.

In *People v. Cornelio*,<sup>89</sup> it was held that the initial fears of the two victims-witnesses in divulging the identities of the accused until they were able to overcome them and gather enough courage from the assurance of police protection by the authorities were understandable and could not in any way detract from their straight-forward testimony.

The Supreme Court held in *People v. Pudpud*<sup>90</sup> that there was competent and credible testimony of threats being made against Postrero. Mention was likewise made therein that Icasiano Pudpud was found guilty of the offense of grave threats and that on or about the time the decision in this case was rendered, another one was expected from another sala regarding the case of arson filed not only against him but against appellant Cubelo. In the face of such incontrovertible testimony, it thus clearly appears that a denial that no ill-feeling existed between the parties involved is absolutely bereft of credence.

It was held in *People v. Cuaton*<sup>91</sup> that the variance existing in the testimony of both witnesses as to the period of time during which the deceased survived the gunshot wound, even if true, would not be of sufficient importance to make their testimony entirely unreliable.

Sustaining the trial court's ruling giving more credence to the complainant's testimony, the Supreme Court said that complainant's not offering resistance to appellant's imposition, that she would go with him after her violation, was a ruse resorted to in order to escape from further harm and enabled her later to go directly to the police authorities to report and charge the proper author of the criminal act. The Supreme Court concluded in this case of *People v. Pastores*<sup>92</sup> that complainant's conduct indicates an admirable presence of mind that bespeaks well of her character and intelligence.

In *People v. Kipte*,<sup>93</sup> the Supreme Court ruled that the relationship of the witnesses to the victim does not render the clear and positive testimonies of said witnesses less worthy of full faith and credit. The reason is that the declarations of interested witnesses are not necessarily biased and incredible.

---

<sup>88</sup> G.R. No. 31238, February 27, 1971, 37 SCRA 813 (1971).

<sup>89</sup> *Supra*, note 46.

<sup>90</sup> G.R. No. 26731, June 30, 1971, 39 SCRA 618 (1971).

<sup>91</sup> G.R. No. 31570, August 30, 1971, 40 SCRA 386 (1971).

<sup>92</sup> *Supra*, note 76.

<sup>93</sup> *Supra*, note 73.

The Supreme Court noted in *People v. Yap*<sup>94</sup> that despite cross-examination by counsel for the defense, the witnesses stuck to their declarations that the appellant was one of the strangers who stayed in their yard and shot Santos Boca, and no motive was shown why these witnesses—simple folks as they are—would testify the way they did and impute on the appellant the commission of such serious a crime as robbery with homicide other than the desire to bring the culprit to justice. Furthermore, their relationship would not necessarily disqualify them from testifying in the case, nor render their clear and positive testimonies less worthy of faith and credit. The question here is whether or not the witnesses could have seen the incident and narrated it as they saw it happen.

### C. Preponderance of evidence

It is axiomatic that the party having the burden of proof must establish his case by preponderance of evidence.<sup>95</sup>

It was observed in *Beltran v. Garcia*<sup>96</sup> that “the petitioners by their testimonies, have markedly toned down their accusation from one of positive assertion to merely one of suspicion.” But mere suspicion that the respondents are partial to the accused is not enough. There should be evidence to prove the charge.

The ruling in *Austria v. Court of Appeals*<sup>97</sup> is that to avail of the exemption granted under Article 1174, Civil Code, it is not necessary that the persons responsible for the occurrence should be found or punished; it would only be sufficient to establish that the unforeseeable event, the robbery in this case, did take place without any concurrent fault on the debtor's part, and this can be done by preponderant evidence. To require in the present action for recovery the prior conviction of the culprits in the criminal case, in order to establish the robbery as a fact, would be to demand proof beyond reasonable doubt to prove a fact in a civil case.

### D. Proof beyond reasonable doubt

In *People v. Jose*,<sup>98</sup> the Supreme Court held that the commission of the crime of rape was clearly established beyond reasonable doubt. In the face of accused's contention that the absence of semen in complainant's vagina disproves the fact of rape, the Supreme Court relied on the testimony of the NBI experts who testified that semen is not usually found in the vagina three days from the last intercourse, especially if the subject had douched herself within that period. Furthermore, the absence of spermatozoa

<sup>94</sup> *Supra*, note 79.

<sup>95</sup> RULES OF COURT, Rule 133, sec. 1.

<sup>96</sup> G.R. No. 30868, September 30, 1971, 41 SCRA 158 (1971).

<sup>97</sup> G.R. No. 29640, June 10, 1971, 39 SCRA 527 (1971).

<sup>98</sup> *Supra*, note 58.

does not disprove the consummation of rape, the important consideration being, not the emission of semen, but penetration.<sup>99</sup>

Significantly, other evidence and considerations existed in the case which indubitably established the commission of successive rapes by the four appellants. It was specifically noted that upon Miss De la Riva's arrival at her house in the morning of June 26, 1967, she immediately told her mother, "Mommy, Mommy, I have been raped. All four of them raped me." This utterance, which is part of the *res gestae*, commands strong probative value, considering that it was made by the complainant to her mother, who in cases of this nature, was the most logical person in whom a daughter would confide the truth.<sup>100</sup>

But in *People v. Ramos*,<sup>101</sup> the Supreme Court held that its review of the evidence shows that the state failed to establish the guilt of the accused beyond reasonable doubt. The lone witness for the prosecution is not only contradicted by defense witness, but the former's testimony in court as to the manner in which the murder was committed is seriously infirmed by the varying descriptions given by her at the fiscal's investigation. According to the transcripts, the said prosecution witness gave no less than three versions of how the victim was killed. Considering that the presence of the defense witness at the *locus criminis* was admitted by the prosecution's sole witness; that the latter is without corroborative support and that there is nothing to contradict appellant's own sworn assertion that he was at the Cartimar Market in Pasay City, from morning to midnight on June 15, 1968, while the victim was killed in Tondo early that evening, the Supreme Court concluded that on the meager evidence on record the accused-appellant is entitled to acquittal.<sup>102</sup>

#### *E. Evidence of conspiracy*

*People v. Pudpud*<sup>103</sup> restates the definition and concept of conspiracy. A conspiracy in the statutory language "exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. There is need in the language of Justice Mapa in the early leading case of *United States v. Magcomot*, a 1909 decision, for "concurrence of wills" or "unity of action and purpose". The usual phraseology employed in many of the later cases is "common and joint purpose and design." At times, reference

<sup>99</sup> *People v. Hernandez*, 49 Phil. 980 (1925).

<sup>100</sup> *Supra*, note 58.

<sup>101</sup> G.R. No. 30420, September 22, 1971, 41 SCRA 10 (1971).

<sup>102</sup> *People v. Dramayo*, G.R. No. 21325, October 29, 1971, 43 SCRA 56 (1971) reiterates the ruling on the subject of proof beyond reasonable doubt.

<sup>103</sup> *Supra*, note 90.

is made to "previous concert of criminal design." Its manifestation could be shown by "united and concerted action." Thus, a conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of a common design to accomplish a criminal purpose and objective. If, to use the apt words of Chief Justice Bengzon, there is "a chain of circumstances" to that effect, then conspiracy has been established.<sup>104</sup> If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others.<sup>106</sup>

Tested against the above principles, the Supreme Court found conspiracy to exist in *People v. Peralta*.<sup>106</sup> As the Court observed, the fact remains that the evidence on record has sufficiently established that appellant and Rosal almost simultaneously fired their guns at Daquioag, resulting in the latter's death and the wounding of driver Macatiag. Under the circumstances, it is not even necessary to show that appellant and Rosal had previously agreed to carry out the offense. By their concerted acts of aiming and actually firing at Daquioag and/or the occupants of the jeep, appellant Pillos and Rosal showed oneness of purpose and unity in the execution of the criminal act, thereby making them co-conspirators in its accomplishment, equally for all the consequences thereof, it being immaterial who actually fired the fatal shot.

But in the case of *People v. Pastores*,<sup>107</sup> the Supreme Court agreed with the defense that the details of commission of the offense do not satisfactorily support the finding of conspiracy, particularly in view of the uncontradicted fact that the herein appellants met the complainant and her companion purely by chance. Whatever the responsibility of Magat and Villar, it must be predicated on their action in separating Brillantes, complainant's companion, from the complainant when all five reached the river dike, and thereafter, preventing Brillantes from rendering aid to the complainant. The Court observed that while this act was undoubtedly one of help and cooperation, it is not indispensable, so that the rape could not have been committed without the sequestration of Brillantes.

The Supreme Court also found unacceptable the finding of conspiracy by the trial court in *People v. Bartolay*,<sup>108</sup> where the fracas arose spontaneously, the details are confused and the participation of each assailant uncertain. In the absence of clear proof, the Court decided to give the assailants the benefit of reasonable doubt, and held them individually responsible for the injuries inflicted by them.

<sup>104</sup> *People v. Villanueva*, G.R. No. 12687, July 31, 1962, 5 SCRA 672 (1962).

<sup>105</sup> *U.S. v. Maza*, 5 Phil. 346 (1950).

<sup>106</sup> G.R. No. 20304, June 7, 1971, 39 SCRA 396 (1971).

<sup>107</sup> *Supra*, note 76.

<sup>108</sup> G.R. No. 30610, October 22, 1971, 42 SCRA 1 (1971).

#### F. Evidence to prove fraud

In *Bautista v. Fernandez*,<sup>109</sup> the petitioner claimed that the respondent obtained registration of the land by fraud, thus obligating the latter to convey to the petitioner the disputed portion. However, the Supreme Court found no clear and sufficient evidence in the records preponderating in favor of the petitioner's contention of awareness on the part of the respondent of the said petitioner's purchase of the disputed portion of land. It was pointed out that the alleged fraud on the part of the respondent in obtaining the registration of the whole land in her name cannot be presumed. The same must be established by preponderance of clear and sufficient evidence.

#### G. Alibi

*People v. Kipte*<sup>110</sup> reiterates the rule that the defense of alibi, to be successful, must be proved by clear, positive, and satisfactory evidence, and unless this requirement is met alibi cannot prevail over the clear and positive identification of the accused by the witnesses for the prosecution.

The Supreme Court stated in *People v. Bartolay*<sup>111</sup> that while weak in themselves, yet when coupled with the improbabilities and uncertainties of the prosecution evidence and the absence of adequate proof of conspiracy, the alibi suffices to raise reasonable doubts as to the responsibility of the accused-appellants.

But between the positive declarations of eye-witnesses to the incident and the testimony tending to support the alibi of the accused, the former deserve more weight; particularly since the defense evidence leaves a period of several hours, from 10 a.m. to 8 p.m. of the murder day, 28 January, during which the whereabouts of the accused are not accounted for satisfactorily.<sup>112</sup>

In *People v. Amit*,<sup>113</sup> it was held that appellants' defense of alibi cannot overcome the testimony of the offended party, who knew them personally, identifying them as the persons who had subjected her to a tragic experience. Moreover, as appellants admitted their presence in Mambog on the night of the commission of the crime, drinking beer in different stalls, it was not physically impossible for them to have left those places to go to the house of Humapao and commit the rape they were subsequently charged with.

<sup>109</sup> G.R. No. 24062, April 30, 1971, 38 SCRA 548 (1971).

<sup>110</sup> *Supra*, note 73.

<sup>111</sup> *Supra*, note 108.

<sup>112</sup> *Supra*, note 79.

<sup>113</sup> *Supra*, note 87.

Of the same tendency are the rulings in *People v. Provo*,<sup>114</sup> *People v. Esmael*,<sup>115</sup> *People v. Amiscua*,<sup>116</sup> *People v. Beraces*,<sup>117</sup> *People v. Bagasala*,<sup>118</sup> *People v. Cornelio*,<sup>119</sup> and *People v. Cuaton*.<sup>120</sup>

To the circumstances taken into account in the above cases on the subject of alibi, it was added in *People v. Briosó*<sup>121</sup> that it had been repeatedly a weak defense and becomes more so if uncorroborated, and it is worse if the alibi could have been corroborated by other persons mentioned by the accused but not presented.

#### H. Circumstantial evidence

In *People v. Cornelio*,<sup>122</sup> it was held that the escape and flight on February 19, 1947 of the accused from the provincial jail, after their conviction by the trial court's judgment of December 11, 1946, strongly indicate their consciousness of guilt, as established by the evidence of record.

Admitting in *People v. Provo*<sup>123</sup> Exhibits "C" and "E" as circumstantial evidence tending to show the probability of the participation of appellant in the commission of said offense, as testified to by said witnesses for the prosecution, the Supreme Court stated that the statements contained in said Exhibits "C" and "E" were made—obviously without collusion and independently of each other—for the purpose of establishing the guilt of Federico David and Pan Provo, respectively, and that they corroborate one another and the testimony of Benita Mayuyu, Anastacio Serrano and Kudiaru Laxamana with respect to the fact that Matignas Serrano was drugged away from his guard post in the evening of October 9, 1958, by Mesina and several other persons—apparently for not allowing them to steal and take away electric cables from Clark Field Air base—and then killed.

---

<sup>114</sup> *Supra*, note 60.

<sup>115</sup> *Supra*, note 84.

<sup>116</sup> *Supra*, note 88.

<sup>117</sup> *Supra*, note 63.

<sup>118</sup> *Supra*, note 53.

<sup>119</sup> *Supra*, note 46.

<sup>120</sup> *Supra*, note 91.

<sup>121</sup> *Supra*, note 74.

<sup>122</sup> *Supra*, note 46.

<sup>123</sup> *Supra*, note 60.