CRIMINAL LAW

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"All law," Holmes wrote to Laski, "means I will kill you if necessary to make you conform to my requirements." The epigram, if indeed true of all law, applies with particular force to criminal law. And the output of criminal jurisprudence in 1971 lends it literal substance by the number of death sentences imposed by the Supreme Court within that year, an indication that, even as some quarters are making moves for the abolition of the penalty, the Court, reversing a trend in its decisions, noted over five years ago,[1] will not hesitate to mete it where called for by the law and the facts. The most notable of these sentences are the multiple ones that gave imprimatur to the celebrated triple beheading that transpired in the beginning of the second quarter of 1972, an event the consummation of which, though devoutly desired by obviously the overwhelming majority of the populace, was yet awaited with general skepticism owing to the social position and supposed political influence of the doomed men's families, but which, when it finally happened, no doubt dampened this skepticism and, for the moment at least, revivified in no small measure the already sagging faith in the authority of the law and the utility of its processes.

But 1971 has significance also in another respect. In a region of decisional law where the yearly change in the scenery had generally consisted only in the addition of new silts of fact deposited along the same time-worn riverbeds of principle and doctrine, new tributaries loomed during the year which, though minor and less in count than the fingers of a hand, yet constitute fresh landmarks in the landscape.[2]

CONSPIRACY

EXISTENCE

The essence of conspiracy lies in the existence between two or more persons of a joint and common criminal purpose and a concerted determination to execute it.[3] To prove it, direct evidence of a previous agreement to commit a particular offense is not necessary.[4] It may be deduced from

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1 See *Criminal Law, 1966,* 42 PHIL. L.J. 227 (1967).

2 See topics on price or reward, robbery with rape, offer to compromise in rape cases, and libel, *infra.*

3 REV. PEN. CODE, Art. 8; People v. Capito, G.R. No. L-24466, March 19, 1968, 22 SCRA 1130(1968), People v. Alcantara, G.R. No. L 26867, June 30, 1970, 33 SCRA 812 (1970).

4 People v. Capito, *supra,* note 3; People v. Pudpud, G.R. No. L-26731, June 30, 1971, 39 SCRA 619 (1971) 625; People v. Cadag, G.R. No. L13830, May 31, 1961, 2 SCRA 388(1961).

the mode and manner in which the offense was perpetrated and other attendant circumstances.[5]

In consonance with these doctrines, conspiracy was held adequately established in *People v. Pudpud*[6] in view of (1) the existence of ill-feeling between one of the victims and (2) the fact that all the appellants, one of them armed with a shotgun and a bolo and each of the three others with a bolo, were present at the place and time of the commission of the criminal acts, before which time all hid together behind a clump of cogon grass while waiting in ambush for the victims.

Conspiracy was also held, in *People v. Obtinalia*,[7] sufficiently inferable from the fact that the three accused, with three other unidentified companions, entered together the house of the victims (husband and wife) and, after robbing them, took turns in raping the wife, each time two of them holding her hands and feet, while the third had carnal knowledge of her.

In *People v. Peralta*,[8] the appellant and the other accused fired their guns almost simultaneously at the principal victim, resulting in his death and the wounding of his driver. Under the circumstances, according to the Supreme Court, it was not even necessary, for the purpose of holding them co-conspirators, to show that the two gunshooters had previously agreed to carry out the offense. For by their concerted acts of aiming and actually firing at the deceased and/or the other occupants of the jeep, the two showed oneness of purpose and unity in the execution of the criminal act.[9]

Mere concerted action, however, does not necessarily point to the existence of conspiracy. Thus where, as happened in *People v. Bartolay*,[10] the fracas which resulted in three deaths arose spontaneously among the participants of a baptismal party, conspiracy could not be justly inferred because of the apparent absence of a united criminal purpose animating the assailants, although the attack was joint and simultaneous. Neither was it found to exist in *People v. Pastores*,[11] a rape case, in view of the uncontradicted fact that the three appellants met the complainant and her boyfriend purely by chance.

EFFECT

Once conspiracy is established, the act of one conspirator is attributable to all and each is equally liable for the act regardless of the extent and character of his participation in its commission and the nature and

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[5] People v. Pudpud, *supra*, note 4; People v. Datu Dima Binasing, 98 PHIL. 902 (1956); People v. Garduque, G.R. No. L-10133, July 31, 1958.

[6] *Supra*, note 4.

[7] G.R. No. L-30190, April 30, 1971, 38 SCRA 651, 661 (1971).

[8] G.R. No. L-30304, June 7, 1971, 39 SCRA 396 (1971).

[9] For a case wherein conspiracy was proved by direct evidence, see People v. Alincastre, G.R. No. L-29891, August 30, 1971, 40 SCRA 391 (1971).

[10] G.R. No. L-30610, October 22, 1971, 42 SCRA 1 (1971).

[11] G.R. No. L-29800, August 31, 1971, 40 SCRA 498 (1971).

severity of the appropriate penalties prescribed by law.[12] It is thus held immaterial who of the conspirators actually fired the fatal shot.[13] Even those of the participants of a conspiracy who did no more than menacingly approach with their bolos two companions of the object of an ambush are responsible for the acts of murder and attempted murder committed by one participant.[14] And in a case where the defendants took turns in raping the victim, each is liable not only for the rape he himself committed but also for all the rapes committed by the others.[15]

PROOF REQUIRED

Because of its far-reaching consequences, conspiracy must be shown to exist as clearly and convincingly as the crime itself.[16] This means that the proof required must be beyond reasonable doubt.[17]

EFFECT IN CASE OF ABSENCE OF CLEAR PROOF

In view of the absence of clear and convincing proof of conspiracy, the benefit of reasonable doubt was accorded two of the accused in *People v. Bartolay*,[18] and they were held individually and separately responsible for the injuries inflicted by them.

In another case — *People v. Tolentino*[19] — where one of two accused merely took hold of the deceased's collar and at that instant the other thrust the fatal stab, the Court also resolved the doubt as to the existence of conspiracy in favor of the former and fixed the limit of his criminal liability to that of a mere accomplice.

JUSTIFYING CIRCUMSTANCES

1. SELF-DEFENSE

To be entitled to acquittal on the ground of self-defense, an accused must prove, by clear and convincing evidence, the co-existence of three requisites: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to repel the aggression; and (3) lack of sufficient provocation on the part of the accused.[20]

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[12] People v. Jose, G.R. No. L-28232, February 6, 1971, 37 SCRA 450 (1971); People v. Pudpud, *supra*, note 4; People v. Peralta, *supra*, note 8; People v. Obtinalia, *supra*, note 7; People v. Alcantara, *supra*, note 3.

[13] People v. Peralta, *supra*, note 8.

[14] People v. Pudpud, *supra*, note 4.

[15] People v. Obtinalia, *supra*, note 7; People v. Jose, *supra*, note 12.

[16] People v. Bartolay, *supra*, note 10, citing People v. Caballero, 53 PHIL. 585, 596 (1929); People v. Tividad, G.R. No. L-21469, June 30, 1967, 20 SCRA 549, (1971); People v. Vicente, G.R. No. L 26141, May 21, 1969, 28 SCRA 247 (1969).

[17] People v. Tividad, *supra*, note 16.

[18] *Supra*, note 10.

[19] G.R. No. L-29419, August 31, 1971, 40 SCRA 514 (1971).

[20] People v. Ordiales, G.R. No. L-30956, November 23, 1971, 42 SCRA 238 (1971).

Unlawful aggression on the victim's part was held unlikely in *People v. Ordiales*[21] because he was seated and unarmed when the accused suddenly entered the restaurant where the former and his two companions were drinking gin and pepsi-cola and then, immediately upon asking *"Sino ba ang minumura mo?"*, fired his carbine at him (the victim) in rapid succession. The Court found it hard to believe the accused's claim that the victim suddenly stood up with his hands at his waist, an act which allegedly led the accused to think that the victim would draw a gun. The victim, the Court said, would not bluff at so great a risk, fully aware that he was not armed and knowing that his adversary carried a carbine. The Court found it still harder to believe, what the accused also claimed, that the victim arose and rushed at him and suddenly held the barrel of the latter's carbine without first being shot at. For the table at which he was seated obstructed the victim's way; the accused was at least 2-1/2 yards away, which distance could not have been easily and quickly traversed from where the alleged aggressor was seated, considering the obstruction; and, according to his own version, the accused had already warned that he would shoot if the victim approached him. In the Court's view, it would have been foolhardy and suicidal for the victim to act as alleged by the accused.

Reasonable necessity of the means employed to repel the aggression was also found wanting in *People v. De Leon*.[22] In this case, the defendant predicated his claim of self-defense on his and his witnesses' story that a boxing bout started by the deceased, Simeon, ensued between him and the latter; that Simeon drew his pistol and, to avoid being hit, the appellant tried to wrest the gun; that the gun fired without hitting the defendant who, remembering that he had in his pocket implements for butchering pigs (consisting of 3 butcher knives, a small iron bar and a whetstone), pulled out a knife and stabbed Simeon who fell and fired again, missing for the second time; that Simeon's brother, Guillermo, held the defendant by his pants, whereupon he made a backswing with his knife, hitting Guillermo; and that Guillermo thereby lost hold of him and he (defendant) ran away. Holding the defendant's claim of self-defense as insufficiently proved, the Court said that while it is true that Simeon was armed with a pistol, the evidence showed that he drew the same and fired two shots only after he had been stabbed and the defendant had run away. Hence, even assuming that Simeon was then boxing him, the defendant's use of the knife may not be considered as a reasonably necessary means of repelling the attack. Neither was the stabbing of Guillermo reasonably necessary since he was not even shown to have been armed.[23]

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[21] *Supra*, Note 20.

[22] G.R. Nos. L-28480-1, September 30, 1971, 41 SCRA 120 (1971).

[23] The De Leon case had a precedent in People v. Montalbo, 56 PHIL. 443 (1931), holding that, though the deseased struck the appellant with his fists, the appellant was not justified in mortally stabbing his assailant with a penknife.

2. FULFILLMENT OF DUTY OR LAWFUL EXERCISE OF A RIGHT OR OFFICE

A person who acts in the fulfillment of a duty or in the lawful exercise of a right or office incurs no criminal liability.[24] This assumes, however, the concurrence of two requisites: (1) that the offender acts in the performance of a duty or in the lawful exercise of a right or office; and (2) that the injury or offense committed be a necessary consequence of the due performance of such duty or the lawful exercise of such right or office.[25] These requisites are not present when, as held in *People v. Sabandal*[26] defendant, a police officer, figures and commits the offense in a brawl arising from an incident in no wise connected with the performance of a function vested in him by law.

AGGRAVATING CIRCUMSTANCES

1. TAKING ADVANTAGE OF PUBLIC POSITION[27]

The essence of this aggravating circumstance has been said to be presented in the inquiry, "Did the accused abuse his office in order to commit the crime?" Two things are, therefore, necessary to constitute it: (1) that the person committing the crime be a public official; and (2) that he used the influence, prestige or ascendancy which his office gives him as a means for realizing that purpose.[28] In the *Ordiales* case,[29] the defendant, who shot the victim with a carbine while the latter and his two companions were drinking pepsi-cola and gin in a restaurant, was admittedly a confidential agent of Mayor Jovito Claudio of Pasay City. But there was no showing that he took advantage of such position or that he used his influence, prestige or ascendancy in killing the victim, whom he could have shot without having occupied said position. In view of this, the Supreme Court held it improper for the trial court to take this aggravating circumstance against him.

2. DISREGARD OF RESPECT DUE TO RANK OR OFFICE

This circumstance was taken into account in *People v. Alincastre,*[30] wherein the defendants conspired to liquidate, and did liquidate, a mayor.

3. DISREGARD OF SEX

The disregard of respect due to the offended party on account of her sex was held in *People v. Mercado*[31] to be absorbed by the qualifying circumstance of abuse of superior strength.

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24 REV. PEN. CODE, Art. 11, No. 5.
25 People v. Oanis, 74 Phil. 257 [1943].
26 G.R. No. L-31129, September 30, 1971, 41 SCRA 179 (1971).
27 REV. PEN. CODE, Art. 14, No. 1.
28 People v. Ordiales, *supra*, note 20.
29 *Supra*, note 20.
30 G.R. No. L-29891, August 30, 1971, 40 SCRA 391 (1971).
31 G.R. No. L-30298, March 30, 1971, 38 SCRA 168, 175 (1971).

4. DWELLING

People v. Brioso[32] restates two doctrines about this aggravating circumstance: *first,* that it is not absorbed by or included in the qualifying circumstance of treachery,[33] *second,* that it is present where the victim was shot inside his house although the triggerman was outside.[34]

5. NIGHTTIME

The mere fact that the crime was committed at night does not by itself aggravate responsibility for the crime. It does so only where the shroud of night is especially or purposely sought by the offender to facilitate the commission of the crime or to insure impunity by minimizing the risk of recognition, discovery, and capture.[35] For lack of sufficient evidence or showing to this effect, nighttime was ruled out as aggravating in *People v. Mercado.*[36]

And even where such evidence amply exists, nighttime would still not serve to aggravate the offender's criminal liability if it may be considered absorbed in treachery. This doctrine, of old standing,[37] was reiterated in *People v. Brioso.*[38] Exception is, however, taken from the statement in this new decision that this aggravating circumstance, as well as that of abuse of superior strength, is "*always* included in the qualifying circumstance of treachery."[39] For there are cases when nighttime may be taken as aggravating independently of treachery, the one being separable from or independent of the other.[40] Thus where the hands of the victims were tied at the time they were beaten, the circumstance that this was done at night is not absorbed in treachery. For in this instance it can be perceived distinctly from treachery, which rests on an independent factual basis.[41]

6. PRICE, REWARD OR PROMISE

The case of *People v. Alincastre*[42] settles a question as to which there had previously been no clear-cut statement of a rule. This is, whether

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[32] G.R. No. L-28482, January 30, 1971, 37 SCRA 336 (1971).

[33] People v. Ruzol, 100 Phil. 537 [1956]; People v. Manobo, G.R. No. L-19798, September 20, 1966, 18 SCRA 30 (1966).

[34] People v. Ompad, G.R. No. L-23513, January 31, 1969, 26 SCRA 750 (1969).

[35] People v. Flores, G.R. No. L-32692, July 30, 1971, 40 SCRA 230, 232 (1971); People v. Mercado, *supra,* note 31.

[36] *Supra,* note 31. Appreciated in People v. Jose, *supra,* note 12, and People v. Cornelio, G.R. No. L-1289, June 10, 1971, 39 SCRA 435 (1971).

[37] People v. Sigayan, G.R. Nos. L-18523-26, April 30, 1966, 16 SCRA 839 (1966).; People v. Manobo, G.R. No. L-19798, September 20, 1966, 18 SCRA 30 (1966); People v. De Gracia, G.R. No. L-21419, September 29, 1966, 18 SCRA 197 (1966); U.S. v. Empeinado, 9 Phil. 613 (1908); U.S. v. Buncad, 25 Phil. 530 (1913); People v. Balagtas, 68 Phil. 675 (1939); People v. Pardo, 79 Phil. 568 (1947); People v. Alfaro, 83 Phil. 85 (1949).

[38] *Supra,* note 32.

[39] Emphasis supplied.

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

[41] People v. Berdida, G.R. No. L-20183, June 30, 1966, 17 SCRA 520 (1966).

[42] *Supra,* note 9.

the qualifying or aggravating circumstance of price, reward or promise may be taken against the offeror as well as against the acceptor. As early as 1918, there was, of course, the case of *U.S. v. Maharaja Alim*,[43] wherein one of the defendants offered a price or reward to the others and the Court held that "(a)s *all* the defendants contributed towards the attendance of this circumstance, it should affect each and *all* of them."[44] But then in 1950 came *People v. Talledo*,[45] in which the decision, in discussing the varying opinions of the justices as to the attendance of price or reward and other aggravating circumstances, states in part: "Neither may the supposed aggravating circumstance of price on reward be considered against Leonora[46] for the reason that it was not she who committed the crime in consideration of said price or reward." This passage was relied upon in the recent case of *People v. Alincastre*[47] to exclude one of the appellants from the effects of the reward or price he offered another defendant who gunned down Mayor James Gordon in consideration thereof. The Supreme Court brushed the plea aside, stating that the *Talledo* decision is not an authority on the matter since the passage thereof relied upon was merely one of the reasons given why *some* members — not the majority — of the Court believed that the evidence was not sufficiently strong to warrant the imposition of the death penalty. And, citing Spanish jurisprudence in addition to the *Maharaja Alim* case, it ruled in no uncertain terms that the aggravating or qualifying circumstance of price, reward or promise thereof affects *equally* the offeror and the acceptor.

7. Evident Premeditation

A crime is qualified or aggravated by evident premeditation if it was deliberately planned and the perpetrator had persistently and tenaciously clung to his plan despite sufficient time or ample opportunity for reflection and meditation to enable him to reconsider and overcome his determination, if he had so desired.[48]

In *People v. De Leon*,[49] the appellant and the deceased met each other only some 7 or 8 minutes after the appellant had been forced out of the beauty parlor of the deceased's sister. The stabbing of the deceased and his brother occurred within 30 minutes after the forcible ejectment. It was held that in the circumstances there could be no evident premeditation since there was no sufficient time for meditation and reflection.

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[43] 38 Phil. 1, 7 (1918).
[44] Emphasis supplied.
[45] 85 Phil. 533, 539 (1950).
[46] The one who offered the price or reward.
[47] *Supra*, note 9.
[48] People v. Gonzales, 76 Phil. 473 (1946); People v. Carillo, 77 Phil. 572 (1946); People v. Custodio, 97 Phil. 698 (1955); People v. Mendova, 100 Phil. 811 (1957).
[49] *Supra*, note 22.

Evident premeditation was also ruled out in *People v. Ordiales*[50] because there was no direct evidence of the planning or preparation of the killing, much less a showing of opportunity for reflection and persistence in the accused's criminal intent.

8. ABUSE OF SUPEROR STRENGTH

The rule that abuse of superior strength, like nocturnity, is absorbed, being inherent, in treachery where the last circumstance is present was applied in *People v. Brioso*.[51]

Abuse of superior strength is a relative factor, and its existence may depend upon other circumstances than mere numerical superiority of the aggressors.[52] Superiority in number does not necessarily mean superiority in strength.[53] Consequently, the fact that the victim had two companions while the appellant was alone does not exclude abuse of superior strength on the part of the appellant where, as in *People v. Ordiales*,[54] the three men were all seated and unarmed, and their movement was impeded by the table at which they sat and the appellant was standing, carrying two firearms, a carbine and a revolver.

There is even more reason to recognize its attendance where the crime is rape committed by four men who acted in conspiracy with one another.[55]

9. TREACHERY

This aggravating circumstance contemplates the presence of two conditions: (1) the employment by the offender of means, method or manner of execution which would insure his safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to do so;[56] (2) that such means, method or manner of execution was deliberately or consciously chosen.[57]

SUDDEN AND UNEXPECTED ATTACK

Treachery is generally deemed to be attendant where the attack is sudden and unexpected so that the victim is incapacitated to repel or escape

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[50] *Supra*, note 20.
[51] *Supra*, note 32.
[52] People v. Flores, *supra*, note 35.
[53] People v. Ordiales, *supra*, note 20.
[54] *Supra*, note 20.
[55] People v. Jose, supra, note 12.
[56] People v. Casalme, G.R. No. L-18033, July 26, 1966, 17 SCRA 717 (1966); Bernabe v. Bolinas, G.R. No. L-22000, November 29, 1966, 18 SCRA 812 (1966); People v. Ramos, G.R. No. L-22348, August 23, 1967, 20 SCRA 1109 (1967); People v. Pengzon, 44 Phil. 224 (1922); People v. Sagayno, G.R. Nos. L-15961-62, October 31, 1963, 9 SCRA 360 (1963); People v. Glore, G.R. No. L-2928, December 21, 1950, 87 Phil. 739 (1950).
[57] People v. Leal, G.R. No. L-28379, August 31, 1971, 40 SCRA 550 (1971); People v. Dadis, G.R. No. L-21270, November 22, 1966, 18 SCRA 669 (1966); People v. Tumaob, 83 Phil. 738 (1949); People v. Clemente, G.R. No. L 23463, September 28, 1967, 21 SCRA 261 (1961).

it.[58] In such case, it does not matter that it was made face to face.[59] This was held to be the case where, while the victim and his two companions were starting to drink pepsi-cola and gin at a restaurant, the accused entered and, upon asking the victim, "Sino ba and minumura mo?", immediately fired at him a U.S. carbine in rapid succession and the victim, who was hit, was not even able to answer.[60] The same ruling was made where the accused forced the jeep where the principal victim, a mayoralty candidate, was riding to stop and, immediately after one of them, a chief of police, had asked the jeep's occupants whether they were carrying arms, both the accused almost simultaneously fired their guns at the mayoralty candidate, resulting in the latter's death and the wounding of his driver.[61] Similarly, the killing was considered qualified by treachery where the victim was quietly making rope in his house, and thus caught off-guard and defenseless, when the two accused suddenly and unexpectedly shot him.[62]

Treacherous means or method must be deliberately chosen—Rules when commission of crime starts without treachery but is consummated in a treacherous manner

The requirement that the treacherous means must be deliberately chosen or availed of is at the basis of the two rules obtaining when the execution of the crime is commenced without treachery but is consummated in a treacherous manner. The first of these rules is to the affect that where the the attack is continuous and unbroken, in the sense that the acts constituting it were all done and followed in rapid succession, treachery cannot be deemed to aggravate or qualify a crime if at its inception such attack is not attended by the employment of treacherous means or methods, even if means or methods of that character were employed at or before its termination. In such a case, it is not permissible to break up the attack into two or more parts and make each part constitute a separate, distinct, and independent attack in order to permit the injection of treachery.[63]

The reverse holds true—and this is the second and corollary rule — where the aggression is not of a continuous character, either because between its beginning and its termination a material change took place in the conditions or circumstances attending it[64] or because an appreciable period

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[58] People v. Noble, 77 Phil. 93 (1946); People v. Felipe, G.R. No. L-4616, February 25, 1952; U.S. v. Cornejo, 28 Phil. 457 (1914).

[59] People v. Ordiales, *supra,* note 20.

[60] *Id.*

[61] People v. Peralta, *supra,* note 8.

[62] People v. Brioso, *supra,* note 32. See also People v. Kipte, G.R. No. L-26662, October 30, 1971, 42 SCRA 198 (1971), attributing the attendance of treachery to the fact that the victim was shot four times at the back as he was running away from his aggressor.

[63] U.S. v. Balagtas, 19 Phil. 164 (1911); People v. Durante, 53 Phil. 363 (1929).

[64] People v. Cañete, 44 Phil. 478, 480 (1923).

of time separated the fatal act in which it culminates from the act or series of acts initiating it.[65] In such event, treachery will be taken into account as a qualifying or aggravating circumstance even if it did not exist at the beginning of the attack, if at the time the fatal injuries were inflicted the offended party was not in a position to defend himself.[66]

The first of these rules was applied in *People v. Leal.*[67] In that case, Jose Cajeton, Jr., who had suffered a humiliating manhandling by Nari Nicolas one hour earlier, and the appellant David Leal, a very intimate friend of Cajeton, drove up in a jeep to a sari-sari store where Nari Nicolas then was with his brother Godofredo Cajeton and Leal beckoned the two brothers from the store. When the latter reached the jeep, Cajeton, without any warning, boxed Nari, while Leal pulled out his dagger. Sensing that Leal was going to use his dagger on him, Godofredo fled. Leal chased him. When already about 40 to 50 meters from the jeep, Godofredo slipped and fell to the ground, with face and body up, both hands supporting his body, and his buttocks about eight inches high from the ground. In this position Leal caught up with him and lunged his foot-long dagger into his left chest, causing a perforation of the heart with consequent massive bleeding, and as a result he died.

Prosecuted for and convicted of murder attended by treachery, Leal contended on appeal that treachery was erroneously appreciated by the trial court. He was sustained by the Supreme Court, which restated the doctrine that a continuous attack cannot be broken up into two or more parts and made to constitute separate, distinct and independent attacks, so that the element of treachery may be injected therein and considered as a qualifying or aggravating circumstance. In this particular case, treachery was not present when the chase was begun. Godofredo had negotiated only a distance of about 40 to 50 meters in his flight when he slipped. There was thus no interruption in the continuity of the chase which would allow the injection of treachery.

Effect on other aggravating circumstances

Treachery absorbs, if they concur with it, both nocturnity and abuse of superior strength.[68] But dwelling, even if concurrent, stands independently thereof and thus separately appreciable as an aggravating circumstance.[69] These rulings were reiterated in *People v. Briόso.*[70]

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[65] People v. Peje, G.R. No. L-8245, July 19, 1956.

[66] U.S. v. Elicanal, 35 Phil. 209 (1916); U.S. v. Baluyot, 40 Phil. 385 (1919); People v. Mobe, 81 Phil. 58 (1948); People v. Somera, 83 Phil. 548 (1949).

[67] *Supra,* note 57.

[68] *Supra,* note 37, G.R. No. L-21419, September 29, 1966, 18 SCRA 197 (1966), citing U.S. v. Estopia, 28 Phil. 97 (1914).

[69] *Supra,* note 33, People v. Manobo *supra,* note 33.

[70] *Supra,* note 32.

Proof required to establish treachery

Treachery must be as convincingly and conclusively proved as the act which it qualifies.[71]

In *People v, De Leon*,[72] there was, on the question of treachery, great variance between the testimonies of the prosecution witnesses and those of the defense witnesses. The prosecution witnesses declared that the defendant's attack came all of a sudden while the deceased and the defendant were talking with each other, while those of the defense testified that the attacks came during a fist-fight. In view of this conflict in the evidence and the circumstances immediately preceding the incident as well as of the fact that multiple abrasions on the defendant's body tended to support the testimony of the defense witnesses, it was held that, altogether, there was no convincing evidence that treachery attended the killing of one of the victims and the wounding of the other.

10. USE OF MOTOR VEHICLE

Taken into account in the Maggie de la Riva case where the accused used a car to forcibly abduct her and take her to a hotel where she was successively raped by the four of them.[73]

11. IGNOMINY

This circumstance was also found to have attended the crimes committed against Maggie de la Riva because, before raping her, the appellants ordered her to exhibit to them her complete nakedness for about ten minutes, an act which tended to make the effects of the offenses more humiliating.[74] It was also held present where the rapes were done in the presence of the woman's husband.[75]

CATEGORIES OF PARTICIPATION

Persons who are liable for a crime fall under three principal categories: (1) principals, (2) accomplices, and (3) accessories.

PRINCIPAL AND ACCOMPLICE

Three ways whereby one may become a principal are enumerated in the Code: (1) taking a direct part in the execution of the act (direct participation); (2) directly forcing or inducing another or others to commit it (inducement); (3) cooperating in the commission of the offense by another act without which it would not have been accomplished (indispensable cooperation).[76]

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71 People v. Abril, 51 Phil. 670 (1928).
72 *Supra*, note 22.
73 People v. Jose, *supra*, note 12.
74 *Id.*
75 People v. Obtinalia, *supra*, note 7.
76 REV. PEN. CODE, Art. 17.

A principal by indispensable cooperation must be distinguished from an accomplice, who also cooperates in the execution of the offense by previous or simultaneous acts which, however, are not indispensable to the commission of the offense.[77]

In the rape case of *People v. Pastores*,[78] one of the questions presented was the category of participation of the other two accused whose part in the execution of the offense consisted in separating the offended woman's boyfriend and preventing him from rendering aid to her. It was held that, while this act was undoubtedly one of help and cooperation, it could not be accorded the character of indispensability in the sense that without the sequestration of the girl's boyfriend the rape could not have been committed. In coming to this conclusion, the Court pointed out the fact that earlier, when the girl's boyfriend tried to come to her aid, he had proved no match to Pastores, who twice boxed and effectively weakened him. Furthermore, Pastores was then armed with a knife while the girl's boyfriend had no weapon, Pastores' co-accused were, therefore, merely held responsible as accomplices.

There is a case, however, where one can be held a principal even if his participation is not indispensable or in no way falls under any of the other ways stated by the Code which make a participant a principal. This is the case where, as was true of the defendants in *People v. Alincastre*,[79] the person concerned participated in the conspiracy to commit the crime.

But where the evidence of conspiracy is not complete or clear, the doubt is resolved in favor of the accused concerned and, as held in *People v. Tolentino*,[80] he must be found guilty merely as an accomplice, not as a principal.[81]

PENALTIES

1. CONFISCATION AND FORFEITURE OF INSTRUMENTS OF CRIME

One of the accessory penalties carried by every penalty is the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the government, unless they are the property of a third person not liable for the defense. But in any case such articles, if not subject of lawful commerce, shall be destroyed.[82]

In *People v. Jose*,[83] the car used in the forcible abduction of Maggie de la Riva was ordered confiscated by the trial court. The court based its

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77 REV. PEN. CODE, Arts 18.
78 *Supra*, note 11.
79 *Supra*, note 9.
80 *Supra*, note 19.
81 See also People v. Pastores, *supra*, note 11.
82 REV. PEN. CODE, Art. 45.
83 *Supra*, note 12.

order on appellant Jose's statement during the trial that it belonged to him. The record showed, however, that the car was registered in the name of appellant Jose's mother, Mrs. Dolores Gomez, who, several months before the commission of the crime, had bought it from the Malayan Motors Corporation on installment basis and executed the chattel mortgage over the same to secure the payment of the unpaid balance of the price. In view of these circumstances and its finding that appellant Jose's statements were not intended to be, nor could constitute, a claim of ownership adverse to his mother, but were simply made in answer to questions propounded for the sole purpose of establishing the identity of the defendant who furnished the car used in the forcible abduction, the Supreme Court held Mrs. Dolores Gomez to be the lawful owner thereof and accordingly set aside the order of confiscation since Mrs. Gomez was not liable for the crime.

2. Death Penalty

Legality and practicability of imposing multiple death penalties

Also in *People v. Jose*,[84] the trial court refused to impose as many death penalties as there were offenses committed. In so refusing, the trial court applied by analogy Article 70 of the Revised Penal Code under which the maximum duration of the convict's sentence in case of multiple offenses shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposable upon him and shall in no case exceed forty years. The court further opined that since a man has only one life to pay for a wrong, the ends of justice would be served and society and the victim would be vindicated just as well, if only one death penalty were imposed on each of the appellants.

The Supreme Court did not find these reasons well taken. According to the High Court, Article 70 of the Revised Penal Code can only be taken into account in connection with the *service* of the sentence imposed, not in the imposition of the penalty.[85] It then went on to reiterate what it said in *People v. Peralta*[86] on the practicability and importance of imposing multiple death sentences when proper. *First,* it is not impossible to serve all such penalties because they can be served simultaneously under Article 70. *Second,* since the imposition of several such penalties is an index of the extreme criminal perversity of the convict, the possibility of an improvident grant of executive clemency is reduced, the penitentiary authorities being more likely to exercise judicious restraint in recommending clemency or leniency to the convict. *Third,* even if the Chief Executive commutes the multiple death penalties to life imprisonments, the practical effect is that the convict has to serve a maximum of forty years of imprison-

[84] *Id.*

[85] The Court cited People v. Escares, G.R. Nos. L-11128-33, December 23, 1957; 55 O.G. 623 (Jan., 1957).

[86] G.R. No. L-19069, October 29, 1968, 25 SCRA 759 (1968).

ment and not merely thirty years, as would result if only one death sentence were imposed and commuted to life imprisonment.

EXTINCTION OF CRIMINAL LIABILITY

ACCEPTANCE OF PROMISSORY NOTE BY OFFENDED PARTY

Criminal liability is the concern of the State and, except in crimes against chastity,[87] may not, by compromise, pardon or otherwise, be waived or extinguished by the offended party.[88] As such, acceptance by the offended party of full or partial reparation from the offender has been held not to preclude the State from enforcing the criminal liability already incurred.[89] *A fortiori,* contrary to the claim of the petitioner in *Torres v. People,*[90] acceptance by the offended party of a mere promissory note executed by the offender to secure payment of the value of earrings converted or misappropriated by her cannot extinguish her criminal liability and reduce it to a mere civil liability.

CIVIL LIABILITY

1. CIVIL LIABILITY FOR CRIME COMMITTED BY MINOR OF FIFTEEN OR OVER

A minor offender over nine years of age and under fifteen is, if he did not act with discernment, exempt from criminal liability.[91] But this exemption does not mean exemption from civil liability. For, under the Revised Penal Code, civil liability is enforceable against those having such minor under their legal authority and control, unless they prove that there was no fault or negligence on their part. If there are no such persons, the minor himself shall respond with his own property to the extent not exempt from execution.[92]

But what about if the minor offender is fifteen or more years old, say he was nineteen when he committed the offense, as in *Paleyan v. Bangkili*:[93] who shall bear the liability, and how? The Revised Penal Code is silent on this score, and for the reason that such a minor is not exempt from criminal liability.[94] Does it mean that the civil liability for the offense cannot be enforced against the minor's parents or whoever has him under his legal authority and control? *Paleyan v. Bangkili,*[95] reiterating *Salen v.*

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

[88] People v. Gervacio, G.R. No. L-7705, December 24, 1957; 102 Phil. 687 (1957).

[89] U.S. v. Mendezona, 2 Phil. 353 (1903); U.S. v. Ongtengco, 4 Phil. 144 (1905); U.S. v. Rodriguez, 9 Phil. 153 (1907); People v. Leachon, 56 Phil. 737 (1932); Javier v. People, 70 Phil. 550 (1940); People v. Benitez, G.R. No. L-15923, June 30, 1960, 58 O.G. 1407 (March, 1963).

[90] G.R. No. L-21751, May 29, 1971, 39 SCRA 28, 33 (1971).

[91] REV. PEN. CODE, Art. 12, No. 2.

[92] REV. PEN. CODE, Art. 101.

[93] G.R. No. L-22253, July 30, 1971, 40 SCRA 132 (1971).

[94] Salen v. Balce, G.R. No. L-14414, April 27, 1960; 107 Phil. 748 (1960).

[95] *Supra,* note 93.

Balce[96] and other cases,[97] holds that it can be, not under the Revised Penal Code but under Article 2180 of the New Civil Code. "To hold," as the trial courts in the *Bangkili* and *Balce* cases did—said the Supreme Court—"that this provision [Article 2180] does not apply to the instant case because it only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily (*sic*)[98] liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. Verily, the void that apparently exists in the Revised Penal Code is subserved by this particular provision of our Civil Code."

2. SUBSIDIARY LIABILITY

Effect of Judgment of conviction on employer's liability

A judgment of conviction rendered against an employee for a crime committed in the discharge of his duties conclusively binds the employer to answer for the damages awarded. This ruling, first enunciated in *Martinez v. Barredo*,[99] is reaffirmed in *Fernando v. Franco*.[100]

Prescription of action to enforce subsidiary liability

Fernando v. Franco[101] also states as a new formulation of a rule what was only implicitly held in *Manalo v. Robles Transportation Company, Inc.*,[102] namely, that the codal provision requiring that the action based on quasi-delict be instituted within four years is not applicable to an action to enforce subsidiary liability where a criminal action has been filed and a judgment of conviction has been rendered therein for the crime which is made the basis of the suit to enforce subsidiary liability.

SPECIFIC CRIMES UNDER THE CODE

1. ROBBERY WITH HOMICIDE AND PHYSICAL INJURIES

In *People v. Cornelio*,[103] the six accused, all armed except one, entered the house of Narciso Galicia while he, his brothers, sister and other relatives who were living with him were sleeping. Once inside the house, one of the accused tied Narciso and, with the help of another, took him away. Another one of the accused opened the trunk of Tranquilina Galicia, sister of Narciso, and took away clothes, jewels and money; a fourth opened the trunk of Narciso and also away clothes and money; and a fifth opened

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[96] *Supra*, note 94.

[97] Exconde v. Capuno, G.R. No. L-10134, June 29, 1957, 101 Phil. 843 (1957); Araneta v. Arreglado, G.R. No. L-11394, September 9, 1958, 104 Phil. 529 (1958); Fuelles v. Cadaño, G.R. No. L-14409, October 31, 1961, 3 SCRA 361 (1961).

[98] In quasi-delict, the obligation of the father or mother is primary, not subsidiary.

[99] 81 Phil. 1 (1948).

[100] G.R. No. L-27786, January 30, 1971, 37 SCRA 311 (1971).

[101] *Id.*

[102] G.R. No. L-8171, August 16, 1956, 99 Phil. 729 (1956).

[103] G.R. No. L-1289, June 10, 1971, 39 SCRA 435 (1971).

the trunk of Paula Galicia, a niece of Narciso, and took away clothes and money. This last accused, after asking Tranquilina for more money and on being answered that she did not have any more, maltreated her. The sixth of the accused, after having been told by Paula that she did not have any other valuables except those that were contained in her trunk, shot her on the right knee causing a wound which took thirty days to heal. A short while after the robbers had left the house, Narciso was shot dead some 200 meters therefrom. There was no evidence that the band of robbers was formed "for the purpose of committing robbery on the highway, or kidnapping persons for the purpose of extortion or to obtain ransom, or for any other purpose to be attained by force and violence", as defined by Article 306 of the Revised Penal Code. *Held:* The trial court correctly ruled that the crime committed was the complex one of robbery with homicide and physical injuries under Article 294 of the Revised Penal Code. With the attendance of five aggravating circumstances — band, nighttime, dwelling, treachery, and uninhabited place — and the absence of any offsetting mitigating circumstances, the supreme penalty of death was properly imposed.

2. ROBBERY WITH RAPE

Article 294 (No. 2) of the Revised Penal Code penalizes robbery accompanied by rape with *reclusion temporal* in its medium period to *reclusion perpetua.* On the other hand, Article 335 of the same Code, as amended by Republic Act No. 4111, imposes the penalty of *reclusion perpetua* to death when the crime is rape committed by two or more persons. If the charge is robbery in band with rape committed on the same woman by three of the robbers, which penalty shall be imposed: that provided by Article 294 (No. 2) or that fixed by Article 335, as amended? This was the novel question resolved in *People v. Obtinalia.*[104] Upholding the death penalty imposed by the lower court in view of the presence of unoffset aggravating circumstances, the Supreme Court stated: "If rape alone, when committed by two or more persons, is penalized with death, it would be highly illogical and irrational to hold that when such rape is committed with the addition of robbery, the offense should only be punishable with life imprisonment. Thus the *reclusion perpetua* prescribed by Article 294(2) of the Revised Penal Code, *for robbery with rape, must be understood as limited to cases where there is a single rapist, and that in those cases where the rape on the occasion of the robbery is committed by two or more persons, the death penalty provided by Republic Act No. 4111 must apply.*"[105]

3. ESTAFA

See the discussion on Extinction of Criminal Liability, *supra.*

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[104] G.R. No. L-30190, April 30, 1971, 38 SCRA 651, 661-662 (1971).
[105] Emphasis supplied.

4. RAPE

a. *Consummation*

Laceration of hymen not indispensable.

In *People v. Pastores*,[106] one of the appellants contended that the trial court erred in convicting him of rape in view of the fact that the physician who physically examined the complainant after the incident found her hymen to be intact. The Supreme Court found this argument inadequate ground for reversing the trial court's decision. It held that the fact that a woman's hymen has no sign of laceration does not preclude a finding of rape. Citing earlier decisions,[107] the Court said that rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape,[108] it being enough that there is proof of entrance of the male organ within the labia of the pudendum.[109] Such proof existed in the case at bar. Aside from the positive declaration of the complainant regarding the consummation of the rape on her person, the examining physician himself testified that when he conducted the physical examination on the morning following the evening of the incident, he found contusions in the vulva, congested condition and discoloration of the hymen, and fresh laceration—injuries which, according to him, indicated that the object that inflicted them had penetrated past the labia majora of the pudendum The non-rupture of the complainant's hymen was also explained by the doctor. He stated that there is a type of hymen, the elastic kind, that recovers its original virginal appearance even after sexual intercourse, and complainant's was of this type.

Absence of spermatozoa — effect

In the celebrated case instituted by Maggie de la Riva against *Jose et al.*,[110] it was argued by the appellants that the absence of semen on the complainant's vagina disproved the fact of rape. This argument was ruled out as untenable. The absence of spermatozoa, it was held, does not disprove the consummation of rape, for the important consideration is not the emission of semen but penetration.[111] Besides, an NBI expert had declared in his testimony that semen is not usually found in the vagina after three days from the last intercourse, especially if the subject had douched herself within that period. And in Miss De la Riva's case, the physical examination was conducted on the fourth day after the incident and she had douched herself to avoid infection and pregnancy.

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[106] *Supra*, note 11.

[107] People v. Canastre, 82 Phil. 480 (1948); People v. Hernandez, 49 Phil. 980 (1925).

[108] People v. Canastre, *supra*, note 107.

[109] People v. Hernandez, *supra*, note 107. See also People v. Oscar, 48 Phil. 527 (1925); People v. To Chiao, 61 Phil. 1060 (1935); People v. Cantero, 58 Phil. 963 (1933).

[110] People v. Jose, *supra*, note 12.

[111] The Court cited People v. Hernandez, *supra*, note 107.

A similar ruling was made in *People v. Obtinalia*[112] where the defense made capital of a certificate of the doctor who examined the complaint on the third day after the rape which stated that there was no evidence of spermatozoa in her vagina. In this case, the doctor also declared that if the woman washed her organ or if her natural secretion was strong, the spermatozoa could be washed out in two days' time. On the basis of this declaration, the Supreme Court concluded that, as the rape had occurred on the 5th of June, "the absence of sperm on June 8 was not incompatible with the rape three days previously."

b. *Liability of persons merely aiding in consummation*

As already stated,[113] where one of three accused held the offended party's legs apart while the second held her shoulders, and as a result thereof, the third succeeded in having carnal knowledge of her, the first two are liable, not just as accomplices, but as co-principals of the third.

c. *Penalty where committed by two or more persons*

See the discussion on Robbery with Rape, *supra.*

d. *Effect of offer to compromise for monetary consideration*

It is settled that in criminal cases an offer of compromise constitutes an implied admission of guilt.[114] That the rule could, by way of exception, be different in rape cases was intimated in the case of *People v. Amiscua*[115] because, according to the Court, said offense may be compromised under Article 344 of the Revised Penal Code. However, in that particular case the compromise offer, made when the criminal action was already pending in court, was for a monetary consideration and not to marry the offended party. For this reason, it was treated as an admission of guilt. In effect it was held, though not stated directly, that in order to be exempt from the operation of the general rule regarding compromise in criminal cases, the offer must be to marry the offended party.

5. FORCIBLE ABDUCTION

See *People v. Jose, supra,* note 12.

6. LIBEL

Venue of action

As amended by Republic Act No. 4363,[116] Article 360 of the Revised Penal Code provides that where one of the offended parties is a public

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112 *Supra,* note 7.
113 See the discussion on effect of conspiracy; People v. Obtinalia, *supra,* note 7.
114 People v. Sope, 75 Phil. 810 (1946).
115 G.R. No. L-31238, February 27, 1971, 37 SCRA 813 (1971).
116 Approved June 19, 1965.

officer whose office is in the City of Manila at the time of the commission of the offense, the criminal and civil action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published. In case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.

This provision was applied in *Time, Inc. v. Reyes.*[117] In that case the publisher of "Time" Magazine was sued by then Mayor Antonio Villegas and then Secretary of Finance Juan Ponce Enrile for recovery of damages arising from an alleged libel contained in an essay entitled "Corruption in Asia" published in an issue of the magazine. When the article was published, both plaintiffs were holding office in Manila. The action was, however, filed in the Court of First Instance of Rizal. As there was no allegation in the complaint that the libelous article was printed *and* first published in the province of Rizal, it was held that the only place left to the plaintiffs for filing their action is the Court of First Instance of Manila within whose territorial jurisdiction they both had their offices as public officials. The Rizal court was, therefore, declared without jurisdiction to take cognizance of the case.

The opinion in this case explains the limitation fixed by the provision on the choices of venue. It was intended, it says, to minimize the filing of out-of-town libel suits to protect an alleged offender from hardship, harassment, and inconveniences. Equally, it seeks to protect the interest of the public service where one of the offended parties is a public officer. A libelled public official must sue in the locality where he holds office in order that the prosecution of the action would interfere as little as possible with the discharge of his official duties.

The opinion also resolves in the affirmative the question whether the provisions of Article 360, as amended, may be availed of by non-resident defendants. Nothing in the text of the law, it states, warrants unequal protection to some of those who may be charged with libel.

7. Malicious Prosecution and Incrimination Machination

That malicious prosecution is no longer a crime and the proper scope of incriminatory machination as defined in Article 363 of the Code are explained in *Ventura v. Bernabe*[118] as follows:

> *People v. Rivera*, 59 Phil. 326, settled definitely that Article 326 of the Spanish Penal Code "does not appear in the Revised Penal Code, which contains no offense denominated 'acusacion o denuncia falsa' or its equivalent." The only provision of the Revised Penal Code which may

[117] G.R. No. L-28882, May 31, 1971, 39 SCRA 303 (1971).
[118] G.R. No. L 26760, April 30, 1971, 38 SCRA 587 (1971).

be said to refer to the same subject is Article 363 on Incriminatory Machination providing thus:

> "Art. 363. Incriminating innocent person.—Any person who, by any act not constituting perjury, shall directly incriminate or impute to an innocent person the commission of a crime shall be punished by arresto mayor."

As has already been held in Rivera, this article does not contemplate the idea of malicious prosecution in the sense of someone prosecuting or investigating a criminal charge in court:

> "Comparing now article 363 of the Revised Penal Code with article 326 of the old Penal Code, it will be observed that under article 326 of the former Penal Code, the gravamen of the offense is the imputation itself when made before an administrative or judicial officer, whereas in article 363 of the Revised Penal Code the gravement (sic) of the offense is performing an act which 'tends directly' to such an imputation. Article 326 of the old Penal Code punishes false prosecutions whereas article 363 of the Revised Penal Code punishes any act which may tend directly to cause a false prosecution.
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> "It is well settled law that where the text of a statute is clear, it is improper to resort to a caption or title to make it obscure. Such secondary sources may be resorted to in order to remove, not to create doubt. (Cf. *People v. Yabut*, 58 Phil. 499). In the present case we think it proper to call attention to the title immediately preceding article 363 of the Revised Penal Code which is as follows: 'Asechanzas Inculpatarias', as throwing some light on the class of acts which tend directly to lead to false prosecutions. The word *asechanza*, as defined in standard dictionaries, means as follows:
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> " 'Intriga, lazo, red, zancadilla, tranquilla, amaño, engaño, artificio, trama, treta especie de maquinación urdida, de celada dispuesta contra alguno, bien sea para perderlo enteramente, bien para jugarle (sin hundirlo) alguno mala pasada. Engaño o artificio para hacer daño a otro. Usase, por lo común, en el plural, *asechanzas*. Accion y efecto de asechar.' It seems to us a forced extension of the term *asechanza* to bring a formal criminal complaint within the conception of *intriga, engaño, artificio*, etc. It seems the more reasonable and sensible interpretation to limit article 363 of the Revised Penal Code to acts of 'planting' evidence and the like, which do not in themselves constitute false prosecutions but tend directly to cause prosecutions."

CRIMES UNDER SPECIAL LAWS

BRINGING, LANDING, CONCEALING OR HARBORING ALIENS

Under Section 46 of Commonwealth Act No. 613 (otherwise known as the Philippine Immigration Act), as amended by Republic Act No. 144 and Republic Act No. 827:

> "Any individual who shall bring into or land in the Philippines or conceal or harbor any alien not duly admitted by any immigration officer or not lawfully entitled to enter or reside within the Philippines under

the terms of the immigration laws, or attempts, conspires with, or aids another to commit any such act, and any alien who enters the Philippines without inspection and admission by the immigration officials, or obtains entry into the Philippines by wilful, false, or misleading representation or wilful concealment of a material fact, shall be guilty of an offense and upon conviction thereof, shall be fined not more than ten thousand pesos, imprisoned for not more than ten years, and deported if he is an alien.

"If the individual who brings into or lands in the Philippines or conceals or harbors any alien not duly admitted by any immigation officer or not lawfully entitled to enter or reside herein, or who attempts, conspires with or aids another to commit any such act, is the pilot, master, agent, owner, consignee, or any person in charge of the vessel or aircraft which brought the alien into the Philippines from any place outside thereof, the fine imposed under the first paragraph hereof shall constitute a lien against the vessel or aircraft and may be enforced in the same manner as fines are collected and enforced against vessels under the customs laws: *Provided, however,* That if the court shall in its discretion consider forfeiture to be justified by the circumstances of the case, it shall order, in lieu of the fine imposed, the forfeiture of the vessel or aircraft in favor of the Government, without prejudice to the imposition of the penalty of imprisonment provided in the preceding paragraph."

This provision was the subject of interpretation by the Supreme Court in *People v. Martin.*[119] The precise question tackled by the Court was whether the acts proscribed therein—namely, the act of *bringing into,* the act of *landing,* the act of *concealing,* and the act of *harboring—constitute* a single or several offenses. The Court ruled that these are four separate acts, each of which possesses its own distinctive, different and disparate meaning. "Bring into" has reference to the act of placing an alien within the territorial waters of the Philippines; "land", to the act of putting ashore an alien; "conceal", to the act of hiding an alien; and "harbor", to the act of giving shelter and aid to an alien. Commission of any of these acts is, therefore, sufficient to constitute a crime. And all of them are committed, they could be prosecuted independently of, since they are separate from, each other.

[119] G.R. No. L-33487, May 31, 1971, 39 SCRA 340 (1971).