CRIMINAL LAW

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CRIMINAL LIABILITY

DIRECT AND NATURAL CONSEQUENCE OF UNLAWFUL ACT

Under Article 4 of the Revised Penal Code, a person committing a felony incurs criminal liability although the wrongful act done be different from that which he intended. This rule is founded on the principle which presumes every person to contemplate and foresee the direct and natural consequences of his acts and, accordingly, holds him responsible therefor.[1] In consonance with this principle, it has been enunciated that "(i)f a person inflicts a wound with a deadly weapon in such a manner as to put life in jeopardy, and death follows as a consequence of this felonious and wicked act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the fatal result. Indeed, it may be said that neglect of the wound or its unskillful and improper treatment, which are themselves consequences of the criminal act, which might naturally follow in any case, must in law be deemed to have been among those which were in contemplation of the guilty party, and for which he is to be held responsible."[2] It was upon this basis that the Supreme Court overruled the contention of the appellant in *People v. Reloj*[3] that he should not have been held responsible for the death of the victim because, according to him, though he stabbed the latter with a five-inch-bladed ice pick in the abdomen, the immediate cause of death was a paralysis of the ileum that supervened five days after the stabbing, when he appeared on the way to full recovery. That such was the case was indeed established as a fact. Nonetheless, it was likewise established that exposure of the internal organs in consequence of a surgical operation

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[1] People v. Quianzon, 62 Phil. 162 (1935).

[2] *Id.*, quoted in People v. Reloj, G.R. No. L-31335, February 29, 1972, 43 SCRA 526: ". . . the rule surely seems to have its foundation in a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties attendant upon treatment of bodily ailments and injuries, it would be easy in many cases of homicide to raise a doubt as to the immediate cause of death, and thereby open a wide door by which persons guilty of the highest crime might escape conviction and punishments."

[3] G.R. No. L-31335, February 29, 1972, 43 SCRA 536 (1972).

in the abdomen sometimes results in a paralysis of the ileum and that said operation had to be performed on the victim on account of the abdominal injury inflicted by the appellant. Both the operation and the paralysis of the ileum were thus held natural consequences of the appellant's act for which he was responsible.

CONSPIRACY

EXISTENCE

Conspiracy draws its existence from an agreement between two or more persons concerning the commission of a felony and their decision to commit it.[4] Its essence, therefore, consists in a joint and common criminal purpose and a concerted determination to execute it.[5] Accordingly, it is not necessary for the purpose of establishing its existence that there be direct evidence of a previous agreement to commit a particular offense.[6] It is sufficient that at the time of the commission of the offense the perpetrators had the same objective and were united in its accomplishment, as shown by their concerted action and other attendant circumstances.[7]

In *People v. Largo*[8] conspiracy was deduced from the following facts: (a) all the accused met at a certain crossing and from there proceeded to a place near a waiting shed where they stopped the bus where the victim was then a passenger; (b) while two of the accused were inside the bus grabbing and pulling down the victim, the others stood guard near the bus at their respective assigned positions in order to assure the captivity of the victim; (c) when the victim had been brought down from the bus, he was clubbed and all the accused participated in bringing him to the seashore, where one of them cut off the victim's head.

In *People v. Tanjalali Gajali*[9] conspiracy was held to be inferable from the following acts of the malefactors: (a) they hired together a jeep which would bring them close to the place of their intended victim; (b) one of them attempted to hide from the driver their true destination by telling him that they would go to a show but asked him, while already on the way, to bring them to another place upon paying additional transportation

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[4] REVISED PENAL CODE, Art. 8.

[5] People v. Capito, L-24466, March 19, 1968, 22 SCRA 1130 (1968); People v. Alcantara, G.R. No. L-28867, June 30, 1970, 33 SCRA 812 (1970).

[6] People v. Largo, G.R. No. L-28106, August 18, 1972, 46 SCRA 597 (1972), citing People v. Alcantara, *supra*, note 5. See also People v. Capito, *supra*, note 5.

[7] People v. Tingson, L-29569, October 30, 1972, 47 SCRA 279 (1972), citing People v. Pudpud, G.R. No. L-26731, June 30, 1971, 39 SCRA 618 (1971). See also People v. Bagatsing, 98 Phil. 902 (1956); People v. Garduque, G.R. No. L-10153, July 31, 1958.

[8] *Supra*, note 6.

[9] G.R. No. L-28534, July 31, 1972, 46 SCRA 130 (1972).

without objection on the part of his companions as to the change of destination; (c) they took the same jeep and alighted from it in the same place; (d) their acts while in the store and house of the deceased showed concerted action, the defendant Tanjalali's companions following his command that they go upstairs while he held the deceased and the victim Maguilan at bay and another of his companions slashed Maguilan into unconsciousness.

But where the incident arose out of a chance and unexpected encounter between the offenders and the victims, conspiracy cannot be inferred.[10]

PROOF REQUIRED

While conspiracy need not be established by direct proof and may be inferred from the circumstances attending the commission of the offense, the evidence to prove it must nonetheless be positive and convincing,[11] as clear and convincing as that required to prove the crime itself.[12] In other words, conspiracy must itself be established beyond reasonable doubt.[13] This is as it should be, considering its far-reaching consequences.[14]

Such degree of proof was held to be lacking in *People v. Tingson*.[15] In that case the evidence showed that defendants Tingson and Hapitan were looking for deceased Briones, an agent of International Harvester Company who was seizing the tractor Tingson had bought from the company. Told that Briones was repairing the road to Lakag (South Cotabato) with some natives, the two defendants proceeded to the place in Hapitan's jeep where Hapitan's wife and two children were also riding. After parking the jeep some 100 meters away from the place where Briones was sitting, the two defendants approached him. Hapitan asked Briones angrily why he was fixing the road when it did not belong to him and told him to go to another place. Briones answered that he was fixing the road "so that your tractor could pass." Hapitan then went four meters behind the deceased and ordered the men to stop working. At this moment Tingson approached Briones from his left side and when he was 1½ meters from him, he suddenly drew and fired his pistol at Briones while simultaneously saying, "Why are you doing this, Pare?" Briones was hit on his left neck and while he was in the act of covering his face, Tingson shot him a second time. Briones fell down on his back. Hapitan immediately ran back, followed by Tingson, to his jeep, started it

[10] People v. Canial, G.R. L-31042-43, August 18, 1972, 46 SCRA 635 (1972).
[11] People v. Tividad, G.R. L-21469, June 30, 1967, 20 SCRA 549 (1967); People v. Aplegido, 43 O.G. 114, 117 (1946).
[12] People v. Custodio, G.R. L-30463, October 30, 1972, 47 SCRA 289 (1972); People v. Bartolay, L-30610, October 22, 1971, 42 SCRA 1 (1971).
[13] People v. Tividad, *supra*, note 11.
[14] People v. Custodio, *supra*, note 12.
[15] G.R. No. L-31228, October 24, 1972, 47 SCRA 243.

and they rode away. Concurring with the Solicitor General's observation that this evidence was insufficient to establish beyond reasonable doubt that Hapitan had conspired with Tingson in killing Briones, especially because he had not in any manner participated in wounding Briones but instead ran away soon after the shooting. The Court further stated that it finds it improbable that Hapitan would have brought, as he did, his own wife and two children to the site had he entered into a conspiracy with Tingson to kill the deceased.

EFFECT — EXCEPTIONS

If conspiracy is sufficiently proved, the act of any of the conspirators is attributable to all and each of them will bear equal responsibility for the act regardless of the extent and character of his participation in its commission and the nature and severities of the appropriate penalties provided by law.[16] In accordance with this rule, it was held in *People v. Tanjalali Gajali*[17] that, conspiracy having been established, even if there was no direct evidence as to who of the accused killed one of the victims and his widow did not recognize the person who forcibly took from her the money and articles mentioned in the information, the killing and the robbery was as chargeable to the appellants as to those who actually committed them.

This doctrine of collective responsibility is, however, subject to certain qualifications. Firstly, it is limited to acts which are contemplated in the conspiracy or, at least, necessary consequences of the intended crime. Acts done outside the common agreement or design, which are neither necessary for its execution nor unavoidable incidents thereof, are the sole and separate responsibility of those actually committing them.[18]

Secondly, one may only be held to share in the collective responsibility springing from conspiracy if it is established that he performed an overt act in pursuance of the conspiracy. Such overt act may consist (1) in actively participating in the actual commission of the crime, (2) in lending moral assistance to his co-conspirators by being present at the scene of the crime, or (3) in exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.[19] Without showing that a person has contributed to the achievement of the common evil design in any of these ways, his mere presence at the discussion

[16] People v. Jose, G.R. No. L-28232, February 6, 1971, 37 SCRA 450; People v. Pudpud, *supra*, note 7.

[17] *Supra*, note 9.

[18] People v. De la Cerna, G.R. No. L-20911, October 30, 1967, 21 SCRA 569.

[19] People v. Peralta, G.R. No. L-19069, October 29, 1968, 25 SCRA 759.

of the conspiracy, or even his approval of it, will not suffice for his conviction.[20]

Something akin to these limitations of the doctrine of collective responsibility must have been in the mind of the Supreme Court when, in *People v. Gatmen*,[21] it refrained from imposing upon one of the four proven conspirators, Arsenio Tolentino, the three death penalties that it imposed upon each of the three others for the three murders. It appears that after the killing of one of the three victims, in which he actually participated, defendant Arsenio Tolentino separated from the group and hence was not present when the other two victims were killed. For this reason the Court held that, although technically Arsenio may be held responsible for the death of all the victims since conspiracy was established, the fact is that he had a change of heart and desisted from taking part in the killing of two of them. It, therefore, convicted him only for the first killing and, in view of his voluntary surrender, imposed upon him only the single penalty of *reclusion perpetua*.

JUSTIFYING CIRCUMSTANCES

SELF-DEFENSE

Requisites

Absolution from criminal liability on the ground of self-defense requires the concurrence of three requisites: *first*, unlawful aggression; *second*, reasonable necessity of the means employed to prevent or repel such aggression; and *third*, lack of sufficient provocation on the part of the accused.[22]

Unlawful aggression consists in a real or imminent attack clearly manifesting the aggressor's intention to inflict harm.[23] It is equivalent to assault or at least a threatened assault of immediate and imminent kind.[24]

Reasonable necessity of the means employed does not require "material commensurability between the means of attack and defense." It is sufficient that there be "rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which

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[20] People v. Izon, 104 Phil. 690 (1958); People v. Pelagio, G.R. No. L-16177, May 24, 1967, 20 SCRA 153, both cited in People v. Peralta, *supra*, note 19.

[21] G.R. L-25368, August 18, 1972, 46 SCRA 368.

[22] REVISED PENAL CODE, Art. 11, Subdivision 1.

[23] People v. Alconga, 78 Phil. 366 (1947); U.S. v. Guysayco, 13 Phil. 292 (1909); U.S. v. Santos, 17 Phil. 292 (1910); U.S. v. Banzuela, 31 Phil. 564 (1915).

[24] People v. Encomienda, G.R. No. L-26750, August 18, 1972, 46 SCRA 552, citing People v. Alconga, *supra*, note 23.

the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury."[25] For "in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and hold the act irresponsible in law for the consequences."[26]

Lack of sufficient provocation on the part of the accused means that he has not given sufficient cause for the unlawful aggression on the part of the victim. The provocation is sufficient if it is proportionate to the unlawful aggression and adequate to stir one to its commission.[27]

All these requisites were found present in *People v. Encomienda*.[28] Unlawful aggression consisted in the fact that the deceased drew his gun and resisted the appellant's several attempts to prevent him from using it on the latter. When the appellant grabbed with his free left hand the deceased's right hand holding the revolver and pinned the deceased's right hand on the stairs and then hacked his right forearm with his bolo as the revolver fired four times continuously, the deceased tried to get the gun with his left arm. When because of this appellant boloed the deceased's left arm and then caused the gun to fall to the ground by shaking the deceased's right arm downward, the deceased tried to pick up the gun, but the appellant stepped backward and hacked the deceased's forehead, after which he himself picked up the gun so as to prevent the deceased from retrieving it. Under the circumstances, according to the Court, there was real danger to the life or personal safety of the appellant.

In holding that there was reasonable necessity of the means employed by the appellant in defending himself, the Court took into account the fact that he did not immediately hack the deceased to disable him, much less to kill him. When the deceased drew his gun with his right hand, the appellant merely grabbed said hand of the deceased and pinned it on the stairs without striking the deceased with his bolo in his right hand. It was only after the gun had fired four times continuously as they struggled that the appellant struck the deceased's right forearm with his bolo. According to the Court, the appellant could have continued hacking the deceased right then and there, but he did not. He boloed the left forearm of the deceased because the latter tried to get the gun from his right

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[25] People v. Lara, 48 Phil. 153 (1925).
[26] *Id.*
[27] People v. Alconga, *supra*, note 23.
[28] People v. Encomienda, *supra*, note 24.

hand, and then he just shook the right arm of the deceased downward, forcing the latter to release the gun which fell on the ground. It was only when the deceased tried to pick up the gun that the appellant boloed him on the forehead. The situation was such that the appellant had no time to coolly deliberate on whether he could save himself by just kicking the gun away or by just pushing or boxing the deceased or stepping on the latter's hand to prevent him from getting the gun and firing it at him.

To support its finding that there was lack of sufficient provocation on the part of the appellant, the Court pointed out that he was in his own yard cutting wood when the deceased arrived and ordered him to vacate the land he was then tilling. Appellant merely told the deceased that the latter had no right to eject him because he was also a tenant like him in the hacienda. This retort, said the Court, was certainly no justification, much less a sufficient one, for the deceased to draw his gun.

Evidence required to prove self-defense

When a defendant admits having inflicted the injury but claims to have done so in self-defense, the burden lies on him to establish all the requisites of self-defense by credible, clear and convincing evidence.[29]

This burden was not deemed successfully discharged by testimony of the two appellants that one of them was forced to fight back when they could not elude the victim and his companions who were chasing them with unsheathed bolos and stones, which testimony is not only uncorroborated by separate competent evidence but in itself extremely doubtful because, with two bolo-wielding opponents supposedly attacking him, the appellant who fought back sustained only a cut on the base of his left thumb and another on his right arm, as to which injuries he introduced no corroborative evidence.[30]

The plea of self-defense was also rejected where it consisted in the claim that, angered by the appellant's plea to be allowed to retain possession of the tractor until he had finished his planting the deceased had countered that he was tired of being fooled and asked "What do you want?" and at the same time allegedly drew a pistol from his left waist with his right hand, compelling the accused to shoot him on the breast in self-defense while they were facing each other—this claim being inconsistent with the medical findings as to where the bullet entered and exited.[31]

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[29] People v. Canial, *supra*, note 10; People v. Tingson, G.R. No. L-31228, October 24, 1972.

[30] People v. Flores, G.R. No. L-24526, February 29, 1972, 43 SCRA 342.

[31] People v. Tingson, *supra*, note 29.

Self-defense was also found inadequately established in *People v. Canial*,[32] where none of the accused suffered any wounds, although they were allegedly surrounded by the victims and the allegedly armed companions of the latter and, furthermore, the hands of the deceased were found by police forensic experts to be negative for powder burns, and so were the bullet holes in the garment of one of them, indicating that he must have been shot at a distance of one yard or more by his assailants.

EXEMPTING CIRCUMSTANCES

DURESS OR UNCONTROLLABLE FEAR

Exemption of one who acts under the compulsion of an irresistible force[33] or under the impulse of an uncontrollable fear of an equal or greater injury[34] is a consequence of the principle that, to merit punishment, the commission of an offense must have sprung from the perpetrator's own free will, i.e., he must have done it voluntarily.[35] A force is irresistible and hence exempting if, coming from a third person, it reduces the person on whom it operates to a mere instrument, compelling his mind and body to obey in spite of any resistance he may put up.[36] Impulse of an uncontrollable fear of an equal or greater injury is present where the threat which inspired such fear relates to a crime so grave and imminent that it would have controlled the will of an ordinary man.[37] In either case, the duress or fear, to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb, not one which is merely imaginary, speculative, fanciful, flimsy or remote.[38]

Four of the defendants in *People v. Gatmen*[39] sought to take refuge under these exempting circumstances. They tried to pin responsibility on the two state witnesses whom they pictured as the masterminds who, they claimed, forced them at gunpoint to join in the perpetration of the crimes. They also stated that they were only passive witnesses to the killings. The Supreme Court found this factual basis of the appellants' defense as hardly credible. It was illogical, it said, that the alleged masterminds would coerce the appellants to join only to make them stand by as eyewitnesses to the crimes. Besides, if they joined out of fear because the alleged masterminds were armed, they had several op-

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[32] *Supra*, note 10.
[33] REV. PENAL CODE, Art. 12, subdivision 5.
[34] REV. PENAL CODE, Art. 12, subdivision 6.
[35] People v. Ah Chong, 15 Phil. 488 (1910); People v. Taneo, 58 Phil. 255 (1933).
[36] People v. Elicaval, 35 Phil. 209 (1916).
[37] *Id.*
[38] People v. Gervacio, G.R. No. L-21965, August 30, 1968, 24 SCRA 960.
[39] *Supra*, Note 21.

portunities, according to their own version, to escape from the scene and thus avoid implication. They testified, for instance, that they were left in the yard of the victims when the alleged masterminds pursued one of the victims and boloed her to death. Thus left unguarded they could have easily fled under cover of darkness. And when the alleged masterminds were carrying the body of another victim back to his house, the four appellants could have escaped or overpowered them. Instead they chose to go along and even managed, without lifting a finger, to witness the third slaying.

MITIGATING CIRCUMSTANCES

VOLUNTARY SURRENDER

This circumstance was taken into account in *People v. Torejas*[40] and in *People v. Reloj*.[41]

Citing previous decisions,[42] *People v. Torejas*[43] states that the benefit of this mitigating circumstance is granted as an incentive for an accused or wanted person to allow the law to take its course rather than take flight, and thus save the authorities the trouble and expenses which his search and capture would necessarily entail. And to underscore the "attitude of liberality" which the Supreme Court has consistently adhered to on the matter, the decision in this case cited other cases wherein the Court held that there was voluntary surrender even if the accused gave himself up to the authorities several days after the commission of the offense and the issuance of the warrant of arrest.

In one of these cases,[44] the accused presented himself at the municipal building to post the bond for his temporary release five days after the commission of the crime and two days after the issuance of the order for his arrest. The Court held his surrender voluntary and mitigating. In another case,[45] the warrant for the defendant's arrest was issued on March 7, 1967 and the police authorities were able to take custody of him only on March 31, 1967, when he voluntarily presented himself to them. It did not, however, appear that the warrant of arrest had actually been served on him, or that it had been returned unserved for failure of the server to locate him. The defendant's surrender was held to entitle

[40] G.R. No. L-29935, January 31, 1972, 43 SCRA 158.
[41] G.R. No. L-31335, February 29, 1972, 43 SCRA 342.
[42] People v. Saturnino, 96 Phil. 868 (1955); People v. Sakan, 61 Phil. 27 (1934).
[43] People v. Torejas, *supra*, note 40.
[44] People v. Yecla, 68 Phil. 740 (1939).
[45] People v. Braña, G.R. No. L-29210, October 31, 1969, 30 SCRA 307.

him to mitigation of liability, the Court saying that the fact that the surrender was effected sometime after the warrant of arrest had been issued did not in the least detract from its voluntary character, there being no proof to the contrary. In support of this holding, the Court pointed to another case[46] wherein it considered voluntary surrender in favor of the accused notwithstanding that he showed up sixteen days after the issuance of the order for his arrest.

In sum, all these cases establish the rule that for the surrender to be considered voluntary and mitigating, the law does not require that it should take place before the issuance of the order of arrest.

AGGRAVATING CIRCUMSTANCES

1. Nighttime

People v. Fernandez[47] reiterates the well established rule that, to be aggravating, nocturnity must have been sought or taken advantage of to improve the chances of success in the commission of the crime or to provide impunity for the offenders. The bare statement in the information "that the crime was committed in the darkness of the night"—such as was made in the *Fernandez* case—fails to satisfy this criterion.

2. Evident Premeditation

Requisites and degree of proof required

For this circumstance to be properly taken into account, proof as clear and convincing as the proof of the crime itself[48] must establish each of the following requisites: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and the execution to afford him full opportunity to meditate and reflect so that his conscience may overcome his resolution if he desires to harken to its warnings.[49] In other words, there must have been a cold and deep meditation and planning and a tenacious persistence in the accomplishment of the criminal act.[50]

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[46] People v. Diva, G.R. No. L-22946, April 29, 1968, 23 SCRA 332.

[47] G.R. No. L-32623, June 29, 1972, 45 SCRA 535, 537-538.

[48] People v. Torejas, *supra*, note 40.

[49] People v. Tingson, G.R. No. L-31228, October 24, 1972, 47 SCRA 243-253; People v. Torejas, *supra*, note 40.

[50] People v. Torejas, supra, note 40, citing People v. Gonzales, 76 Phil. 473 (1946).

No evident premeditation

The evidence falls far below such exacting requirements, and forms the basis of a mere conjecture, where it consists merely of a statement elicited from the accused himself that two years before the tragic event there was an altercation between him and the deceased which was amicably settled. This is especially so where during all the time previous to the stabbing there was no misunderstanding at all between the two.[51]

It would also be inconsistent with the idea of planning and reflection required to establish evident premeditation for the accused to have carried out his resolution alone against numerically superior and equally armed adversaries. This is more so where the initial stabbing attempt was directed, not at any one of the adversaries with whom the accused had strained relations, but at their companion who managed to dodge the blow and immediately before the actual stabbing the accused uttered, either as a challenge or warning, that the adversaries had nothing more to complain about since they were four and he was only one.[52]

There is even stronger reason to rule out evident premeditation where no proof was adduced that appellants expected to meet the victims on the occasion of the incident or that the latter would approach the car they were in.[53]

Evident premeditation present

In *People v. Lunar*[54] one of the accused revealed, in an extrajudicial statement which he voluntarily affirmed during the trial, that long before the morning (1:00 past midnight) jailbreak which resulted in the killing of a prison guard Cpl. Alfredo Pablo, a plan had been reached to stage the jailbreak complete with details of how the escapees would be met by a courier from a certain Commander Romy and taken in a vehicle to the mountains and of how four of the jailbreakers, among whom were the two accused, would dispose of Cpl. Pablo. The details of the escape plan revealed in this statement tallied with what actually happened at the time of the incident, with the two accused making good their escape from jail after killing Cpl. Pablo who tried to foil their plot, and proceeding to barrio Tipas to board the bus there to effect their escape and get their scheduled rendezvous with Commander Romy. This planned rendezvous with specific outsiders, according to the Court, could certainly not have been arranged and carried out if there had been no contacts and

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[51] People v. Torejas, *supra*, note 40.
[52] People v. Flores, *supra*, note 30.
[53] People v. Canial, G.R. No. L-31042-43, August 18, 1972, 46 SCRA 634.
[54] G.R. No. L-15579, May 29, 1972, 45 SCRA 119.

planning which by their nature required a considerable length of time for sufficient reflection on the part of the accused. Evident premeditation was, accordingly, established.

3. DISGUISE

Taken into account in *People v. Ragas,*[55] where the appellant used a mask to hide his identity in the perpetration of the crime of robbery with homicide.

4. ABUSE OF SUPERIOR STRENGTH

This aggravating circumstance was held properly considered where the two accused used firearms against the three victims who were approaching unarmed, such use being said to have given the former that element of superiority which they took advantage of to prevent any retaliation or defense from their adversaries.[56] It was held erroneously appreciated where the accused, though armed with a bolo, was only one against four adversaries each of whom was equally armed.[57]

5. TREACHERY

When present

There is treachery, according to the Code, "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[58]

The killing was considered treacherous, and hence constituted murder, where the appellant suddenly stabbed the victim's abdomen from behind with an ice pick wrapped in paper, so that the victim, who was then watching someone arming a fighting cock, had no opportunity to defend himself.[59]

The same holding was made in *People v. Lunar*[60] where one of the accused, who were all detainees in the provincial jail wanting to escape, approached the victim (a guard) from behind, encircling his arm in a tight embrace around the victim's neck while another of the accused held the victim's two hands, and as the victim was thus rendered helpless and

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[55] G.R. No. L-29393, March 29, 1972, 44 SCRA 152.
[56] People v. Canial, *supra,* note 10.
[57] People v. Flores, *supra,* note 30.
[58] REV. PENAL CODE, Art. 14, subdivision 16.
[59] People v. Reloj, *supra,* note 3.
[60] *Supra,* note 54.

unable to defend himself the accused who encircled the victim's neck and a third one stabbed the victim with scissor blades inflicting upon him four stab wounds, any one of which could have caused his death, and then the first accused shot him with the gun which they had easily wrested from him.

Treachery was also found to have attended the killing in *People v. Tingson*.[61] In this case, while the victim turned his face to his right side to face the accused Hapitan, appellant Tingson approached him from his left side and then suddenly and without warning shot the victim, who was unarmed and in a squatting position and totally unprepared to defend himself. While the victim was in the act of instinctively covering his face (on the right side of which the bullet, which entered the left side of his neck, exited), appellant Tingson fired his second shot as the victim fell on his back. The suddenness of the attack, according to the Court, eliminated any possibility of defense on the part of the victim, while the firing of the second shot when the victim was already helpless and prostrate evinced the assailant's conscious choice of the means and manner of execution employed by him to directly and specially insure the killing of the victim without risk to himself.

Suddenness of attack not conclusive

But while the suddenness with which the attack was made is a factor to be considered in determining the attendance of treachery, it is not in itself conclusive proof of its existence.[62] The attack may be sudden but if there is a showing that the victim was not completely denied an opportunity to prepare and repel or avoid the attack or to retreat,[63] it would be erroneous to make a finding that the offense was committed in a treacherous manner. Besides, the treacherous means must have been deliberately chosen with a view to accomplishing the offender's purpose without danger to himself.[64]

Such conditions were held absent, and hence treachery was discounted, in *People v. Flores*,[65] where the assailant made known his presence and even uttered some warning before stabbing the deceased, saying that his opponents had nothing more to complain about since they were four and he was only one, and then directed his first blows not at the deceased but at another. In the view of the Court, under these circumstances the

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[61] People v. Tingson, *supra*, note 15.

[62] People v. Torejas, *supra*, note 40; Perez v. Court of Appeals, G.R. No. 13719, March 31, 1965.

[63] People v. Pengzon, 44 Phil. 224 (1922); People v. Sagayano, G.R. No. L-15961-62, October 31, 1963; People v. Glore, 87 Phil. 739 (1950).

[64] People v. Torejas, *supra*, note 40.

[65] *Supra*, note 52.

victim was neither caught by surprise nor totally unprepared when he received the wound in the right abdominal region.

Treachery was also found improperly appreciated in *People v. Torejas*[66] because of the probability that there must have been some exchange of words between one of the defendants and the deceased before the two of them hit the latter with a bottle.

Proof required to establish treachery

Treachery must be as convincingly proved as the act itself which it qualifies.[67] Its existence cannot be based on suppositions, hypothetical facts, or inferences.[68]

In *People v. Torejas*[69] the only evidence introduced was the testimony of the lone eyewitness that he saw one of the brother defendants hit the head of the deceased with a bottle. The witness, however, admitted that at the time he was lifting a sack of palay at an adjacent store, where he was a laborer. There was, therefore, no certainty that all the while he was fully aware of what transpired. It was held that the evidence of treachery was "indeed tenuous."

6. USE OF MOTOR VEHICLE

That the accused had a motor vehicle at the time of the commission of the offense does not of itself establish this circumstance. It must be conclusively shown that the motor vehicle was purposely used to facilitate the commission of the offense or that without it the offense could not have been committed. Neither requirement was found present in *People v. Canial*,[70] and *People v. Tingson*[71] where, though in each case the accused arrived at and departed from the place of the incident in a motor vehicle, the shooting incident appeared to have arisen merely from a chance encounter.

CATEGORIES OF PARTICIPATION

There are three categories of persons who are liable for a crime: (1) principal, (2) accomplice, and (3) accessories.

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[66] *Supra*, note 40.
[67] People v. Abril, 51 Phil. 670 (1928).
[68] People v. Torejas, *supra*, note 40.
[69] *Id.*
[70] *Supra*, note 10.
[71] *Supra*, note 15.

1. PRINCIPAL

Who may be principals

The Code enumerates three ways whereby a person may become liable as principal in a crime: (1) by direct participation in its execution; (2) by inducement, *i.e.*, directly forcing or inducing others to commit it; or (3) by indispensable cooperation, *i.e.*, cooperation through the performance of another act indispensable to the commission of the offense.[72] There is another mode by which a person may become a principal: by being a conspirator.[73]

Principal by inducement

A principal by inducement becomes such either through acts done or words uttered before the commission of the offense. To have this effect, however, the words must be of such nature and uttered in such a manner as to become the direct and determining cause of the crime and must have been precisely intended for that purpose.[74] Otherwise stated, the inciting words must exercise "great dominance and influence over the person who acts; they ought to be direct and as efficacious or powerful as physical or moral coercion or violence itself."[75] If they were no longer necessary to incite the assailant, the utterer cannot be held to have induced the perpetration of the crime and accountable therefor as a principal.[76]

In *People v. Canial*[77] defendants Canial and Edwards had already gunned down two of the approaching victims when the other defendant Janet Clemente, saying *"Iyan pa ang isa dumarating"*, pointed to Edwards the victim Felarca, who rushed to the aid of his fallen friends, despite the gunfire, from behind the car of the defendants and Edwards promptly shot him. The Supreme Court did not regard Janet's utterance as having induced Edwards and accordingly absolved her from responsibility. According to the Court, "considering the situation that Edwards had already hit Navasca, and Canial on the other side of the car was using and firing a carbine, it is unlikely that Janet's statement x x x was taken and obeyed by Edwards as an order to shoot. From all indications, Edwards then did not need prodding or instigation from anybody to fire at anyone who would rush towards him, as Felarca had imprudently done. Janet's state-

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[72] REV. PENAL CODE, Art. 17.

[73] See People v. Alcantara, G.R. No. L-26867, June 30, 1970, 33 SCRA 812; People v. Patricio, 79 Phil. 227 (1947); People v. Davan, 83 Phil. 252 (1949); People v. Bersamin, 88 Phil. 292 (1951); People v. Abrina, 102 Phil. 695 (1957).

[74] People v. Canial, *supra*, note 10, citing People v. Castillo, G.R. No. L-19238, July 26, 1966, 17 SCRA 721, and People v. Gensota, G.R. No. L-24491, September 30, 1969, 29 SCRA 483.

[75] *Id.*, citing U.S. v. Indanan, 24 Phil. 203 (1913).

[76] *Id.*, citing People v. Castillo, *supra*, note 74.

[77] *Supra*, note 10.

ment partook more of a warning to Edwards of an impending threat than of an inducement to shoot."

2. ACCOMPLICE

Principal or accomplice?—rule in case of doubt

It is sometimes difficult to decide on the basis of the evidence available whether a defendant's participation in a particular crime is that of a principal or an accomplice. This is so for two reasons. One is that, like a principal by indispensable cooperation, an accomplice cooperates in the commission of the offense by previous or simultaneous acts which, however, are not indispensable to the commission of the offense.[78] The difficulty then lies in determining whether or not the participation of the defendant was indispensable. Another source of the difficulty is the rule of collective responsibility in case of conspiracy which makes each and every one of the conspirators liable for the act of any of them regardless of the degree and nature of their participation.

When confronted with cases of this kind, the Supreme Court has resorted to the rule, as it did in *People v. Torejas*[79] and in *People v. Custodio*,[80] of resolving the doubt in favor of the accused and thus assigning to him the milder form of responsibility, that of a mere accomplice.

Conditions for responsibility as accomplice

For one to incur liability as an accomplice, it is necessary that he must have been possessed with knowledge of the criminal intent of the principal and that his acts were intended to afford material or moral aid in the execution of the crime.[81] Neither of these requisites was found to exist with respect to the appellant in *People v. Custodio*.[82] It appeared that the meeting between him and his co-accused, on the one hand, and the victim, on the other hand, was purely accidental, and it could not be assumed from the fact that he arrived at the scene of the incident with his co-accused that he knew of their criminal intention. As the Supreme Court observed, he may have accompanied them only out of a sense of good fellowship. It further appeared that he just passively stood by when his companions inflicted the injuries which caused the victim's death. This sort of evidence, according to the Court, does not convincingly establish that the appellant "cooperated in the commission of the offense, either morally, through advice, encouragement or agreement, or materially through

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[78] REV. PENAL CODE, Art. 18.
[79] *Supra*, note 40.
[80] L-30463, October 30, 1972, 47 SCRA 289.
[81] People v. Tamayo, 44 Phil. 38 (1922).
[82] *Supra*, note 80.

external acts indicating a manifest intent of supplying aid in the perpetration of the crime in an efficacious way." He, therefore, could not be held liable either as a principal or an accomplice.

PENALTIES

1. Application of Penalties

Penalty composed of two indivisible penalties

Under Article 63 of the Code, when the penalty prescribed by law is composed of two indivisible penalties and there are neither aggravating nor mitigating circumstances, the lesser of the component penalties shall be applied.[83]

This rule was held in *People v. Fernandez*,[84] and in *People v. Tanjalali Gajali*,[85] applicable to a case where an aggravating circumstance and a mitigating circumstance are present but each is offset by the other.

2. Complex Crime

What constitutes a complex crime

See discussion on robbery, *infra*.

Penalty for complex crime

If the offense committed is a complex one under Article 48, the penalty for the most serious component offense shall be imposed in its maximum period. If, as in *People v. Lunar*,[86] the offenders are guilty of the complex crime of murder with assault upon an agent of a person in authority, the penalty of death shall be imposed, regardless of the attendance of mitigating or aggravating circumstances.

3. Service of Sentences

Penalties which may served simultaneously

According to Article 70, when the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; if not, then they have to be executed successively or as nearly as may be possible in the order of their respective severity, should a pardon have been granted as to the penalty or penalties first imposed or should they have been served out.

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[83] Subparagraph 2.
[84] G.R. No. L-32623, June 29, 1972, 45 SCRA 535.
[85] *Supra*, note 9.
[86] *Supra*, note 54.

The petitioner in *Rodriguez v. Director of Prisons*,[87] a prisoner serving thirteen sentences of imprisonment for as many separate crimes of estafa, advanced in support of his petition for habeas corpus the novel theory that, having served the most severe penalty imposed upon him, he should be deemed to have served all his sentences because he was entitled to "simultaneous service" of all the thirteen sentences, and hence should already be released. The Supreme Court found this theory inconsistent with what it called the "system of juridical accumulation of penalties" provided in paragraph 4 of Article 70, under which the maximum duration of a culprit's confinement shall not exceed three times the most severe of the penalties imposed upon him, the same in no case to exceed forty years. Pointing out that Article 70 is a reproduction of Article 88 of the Spanish Penal Code of 1870 and accordingly adopting the view of commentators on said Article of the Spanish Code, the Court stated that the penalties which could be served simultaneously with other penalties, pursuant to Article 70 are perpetual or temporary absolute disqualification, perpetual or temporary special disqualification, public censure, suspension from public office and other accessory penalties. By implication, the Court excluded from such penalties the penalty of imprisonment.

EXTINCTION OF CRIMINAL LIABILITY

DEATH OF CONVICT

Death of the convict is enumerated in Article 89 as one of the ways by which criminal liability is totally extinguished. With respect to this cause of extinction, the article distinguishes between two kinds of criminal liability: the personal, which in any case is totally extinguished by the convict's death, and the pecuniary, which is "extinguished only when the death of the offender occurs before final judgment."

In *People v. Alison*,[88] the defendant died while his appeal was pending in the Supreme Court. Applying Article 89, the court said that "the criminal and *civil* liability" of the defendant was extinguished by his death. For this reason, it dismissed the case.

It is not clear from the Court's resolution whether in using the phrase "criminal and civil liability" the Court meant to include in the term "criminal" the "pecuniary penalties" referred to in Article 89 or it meant to refer to or include such penalties (*i.e.*, "pecuniary penalties") in the term "civil liability." If the first of these was intended, then the Court

[87] G.R. No. L-35386, Sept. 28, 1972, 47 SCRA 153.
[88] G.R. No. L-30612, April 27, 1972, 44 SCRA 523.

has clearly added to Article 89 something which is not expressly stated therein to be likewise extinguished by the death of the convict prior to final judgment. It must be stated, though, that there is nothing objectionable to considering extinction of civil liability as also resulting from the death of the convict at such time; for the civil liability is just an incident of his criminal liability, which has not as yet been finally determined. On the other hand, if the Court meant to refer to "pecuniary penalties" when it used the term "civil liability," the Court would have run into a juridical inaccuracy. For when Article 89 speaks of "pecuniary penalties" it does not refer to civil liability in the sense that this term is used in Title Five, Book I of the Code. It refers to the penalties of fine, bond to keep the peace, and payment of costs enumerated in Article 25. Certainly, fine, bond to keep the peace, and payment of costs are not comprehended in the concept of civil liability, which under Article 104 of the Code is specifically intended to include only restitution, reparation of the damage caused, and indemnification for consequential damages.

SPECIFIC CRIMES UNDER THE CODE

1. MURDER

Intent to kill

The appellant in *People v. Reloj*[89] complained that the lower court erred in not finding that he had no intent to kill. But the evidence was replete with indicia of such intent. First, he had made a statement in a store five hours before the killing that "I will first *kill* him (the victim) and then go to Muntinlupa," which he repeated in a truck two hours before the incident. Then there is the manifestly deadly nature of the weapon he used, an ice pick with a blade almost five inches long. This deadly weapon he thrust in a treacherous manner—from behind and wrapped in paper—at a vital part of the victim's body, the abdomen. All of these, the Supreme Court said, leave no room for doubt about his intent to slay the victim.

2. ROBBERY

Penalty when elements of both robbery with violence against or intimidation of persons under Art. 294(5) and robbery by use of force upon things under Art. 299(a) are present

When robbery is committed under subdivision 5 of Article 294—that is, with violence against or intimidation of persons but without any killing,

[89] *Supra*, note 3.

rape, mutilation, or physical injuries penalized under subdivisions 1, 2, 3, and 4 of Article 263 being committed by reason of or on the occasion thereof—the penalty prescribed is *prision correccional* in its maximum period to *prision mayor* in its medium period regardless of the value of the property taken. But when it is committed under 299(a) in an inhabited house, public building or edifice devoted to religious worship by an armed person who enters the house, public building or edifice devoted to religious worship by breaking any wall, roof, door or window or by any of the means enumerated in Article 299(a) *but without using violence or intimidation on any person,* the penalty is the more serious one of *reclusion temporal* if the value of property taken exceed ₱250 and the penalty next lower in degree, *prision mayor* to its full extent, if the value of such property is not more than ₱250.00.

It sometimes happens that the offenders commit the robbery under both the circumstances mentioned in subdivision 5 of Article 294 and in Article 299(a). In *Napolis v. Court of Appeals*,[90] for example, the armed robbers entered the house and store inhabited by the victims by breaking a wall of the store. Once inside the store one of them dealt a stunning blow on the head of the master of the house who fell but pretended to be dead. The robbers hogtied him and then went up the house where by intimidation they got from the mistress of the house ₱2,000 in cash and two rings worth ₱350.00. After opening and ransacking the wardrobe, they tied the hands of the woman and those of her two sons. In a case like this, what penalty shall be imposed: that prescribed in subdivision 5 of Article 294 or that fixed in Article 299?

In previous cases involving similar circumstances,[91] the Supreme Court had ruled that the violence or intimidation "supplies the controlling consideration" so that the applicable law is Article 294 and not Article 299. The Court based this ruling on the theory that "robbery which is characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things, because where violence or intimidation against the person is present there is greater disturbance of the order of society and security of the individual." While thus recognizing the graver nature of the offense when attended by violence or intimidation, yet the Court, under this ruling, would impose the lighter penalty provided in subdivision 5 of Article 294.

The absurdity of this result is finally recognized by the Court in *Napolis* case. Expressly abandoning the doctrine above stated and thus

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[90] L-28865, February 28, 1972, 43 SCRA 301.

[91] U.S. v. Turla, 38 Phil. 346 (1918); People v. Baluyot, 40 Phil. 89 (1919); People v. Sebastian, 85 Phil. 601, 603 (1950); U.S. v. Manansala, 9 Phil. 529, 530 (1908); U.S. v. De los Santos, 6 Phil. 411, 412, (1906); Manahan v. People, 73 Phil. 691 (1942).

overruling *U.S. v. De los Santos*,[92] *U.S. v. Manansala*,[93] *U.S. v. Turla*,[94] *People v. Baluyot*,[95] *Manahan v. People*,[96] and *People v. Sebastian*,[97] the Court set forth its reasons and enunciated its new ruling as follows:

> The argument to the effect that the violence against or intimidation of a person supplies the controlling qualification" (*sic*), is far from sufficient to justify said result. We agree with the proposition that robbery with "violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things," *but precisely for this reason*, we cannot accept the conclusion deduced therefrom in the cases aboved cited — *reduction* of the penalty for the latter offense owing to the concurrence of violence or intimidation which made it a *more serious* one. It is, to our mind, more plausible to believe that Article 294 applies only where robbery with violence against or intimidation of person takes place *without* entering an inhabited house, under the conditions set forth in Article 299 of the Revised Penal Code.
>
> We deem it more logical and reasonable to hold, as we do, when the elements of *both* provisions are present, that the crime is a *complex* one, calling for the imposition — as provided in Article 48 of said Code — of the penalty for the most serious offense in its maximum period, which, in the case at bar, is *reclusion temporal* in in its maximum period x x x.

3. RAPE

How committed—degree of force or intimidation necessary

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

The degree and character of force or intimidation necessary for the commission of rape is discussed in *People v. Gan*.[98] According to the decision in this case, the force employed in rape need not be so great nor of such character as could not be resisted. It need only be sufficient to enable the perpetrator to consummate his purpose.[99] It goes on to say that "(f)orce or violence threatened for the purpose of preventing or overcoming resistance, if of such character as to create real apprehension

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[92] *Supra*, note 91.
[93] *Supra*, note 91.
[94] *Supra*, note 91.
[95] *Supra*, note 91.
[96] *Supra*, note 91.
[97] *Supra*, note 91.
[98] L-33446, August 18, 1972, 46 SCRA 667.
[99] *Id.*, citing U.S. v. Villaroza, 4 Phil. 434; People v. Monro, 56 Phil. 86 (1931); People v. Rivera, 93 Phil. 137 (1953).

of dangerous consequences or serious bodily harm or such as in any manner to overpower the mind of the victim so that she dares not resist, is in all respects equivalent to physical force actually exerted for the same purpose."[100]

Both force and intimidation were used by the accused in *People v. Gan*.[101] At 10:00 o'clock in the evening the accused went up the isolated house where the victim (a 14-year old girl) and her younger brothers and sisters were sound asleep without their parents who were away in another town of Mindoro. He embraced her and held both her hands thereby awakening her. She then struggled to free herself, but he threatened to kill her with a knife if she made an outcry, at the same time pressing the point of the knife against her neck. Thus overpowering the girl with his superior physical strength and cowing her with fear for her life, the accused succeeded in forcibly tearing her panties and in consummating sexual intercourse with her.

In *People v. Olden*[102] the culprits had a more submissive or less recalcitrant victim. While two of the robbers ransacked the store and gathered the goods contained therein, another went upstairs and after getting the money kept there he approached the woman Edwina, held her by the neck and took her to the kitchen. There he showed her his bolo and his revolver ordered her to lie down on the floor, undressed her, spread her legs apart and had carnal intercourse with her. After he had finished, one of his companions took his turn with her. After this, four other men subjected her to the same carnal treatment. In their appeal before the Supreme Court, the convicted culprits claimed absence of evidence that they employed force or intimidation upon Edwina. The Court dismissed this claim, saying: "It is true that she could have shown greater physical resistance to their advances than she actually did. Another woman would probably have tried to fight them off, even to the jeopardy

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[100] *Id.*, citing *U.S. v. Versoza*, 3 Phil. 444 (1904). The decision also made a footnote of the following passage from 44 Am. Jur. 904: "The term 'by force' does not necessarily imply the positive exertion of actual physical force in the act of compelling submission of the female to the sexual connection; but force or violence threatened as the result of noncompliance, and for the purpose of preventing resistance, or extorting consent, if it is such as to create a real apprehension of dangerous consequences, or great bodily harm, or such as in any manner to overpower the mind of the victim so that she dares not resist, is, and upon all sound principles must be, regarded, for this purpose, as in all respects equivalent to force actually exerted for the same purpose. Nor need the threats be of force to be used in accomplishing the act. In fact, it would seem that the requirement in reference to force is satisfied by any sexual intercourse to which the woman may have been induced to yield, only through the constraint produced by the fear of great bodily harm or danger to life or limb, which the defendant, for the purpose of overcoming her will, caused her to apprehend, as a consequence of her refusal, and without which she would not have yielded."

[101] *Supra*, note 98.

[102] L-27570-71, September 20, 1972, 47 SCRA 45.

of life limb. But not all women are of the same mettle. What is clear and indubitable here was that Edwina was for from being a willing victim; and if her protestations lacked vigor and vehemence it was obviously because of the fact that some of the men who took turns with her were armed with guns and others with bolos which they displayed to cow her into submission. If there was no appreciable force employed, there was definitely intimidation."

Consummation—laceration of vagina not necessary

In *People v. Cañete*[103] the appellants, to support their defense that the complainant was a harlot who consented to having carnal intercourse with them for a fee, stressed the absence of any laceration in the complainant's vagina at the time of her medical examination. The doctor who examined her, however, explained that she had either had previous sexual intercourse or an elastic vagina, although he was inclined to the latter alternative. In sustaining the doctor's finding, the Court referred to the case, cited by Wharton and Stille[104] of an eighteen-year old girl whose vagina was notably enlarged by coition, although the hymen was uninjured, the same being crescentic, thick, and fleshy, but as elastic as india rubber. In the case of the complainant, her vagina admitted two fingers, but very tightly and with some pain. These factors, the Court pointed out, added to the fact that the complainant belongs to a family of more than modest means, clearly refute the appellants' theory that she was a harlot.

Rape of a prostitute

At any rate, according to the Court, rape may be committed even on a prostitute.[105]

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[103] G.R. No. L-30491, January 21, 1972, 43 SCRA 14.
[104] MEDICAL JURISPRUDENCE 134, Jn. (5th ed.) 5.
[105] People v. Cañete, *supra*, note 103.