CRIMINAL LAW

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The decisions of the Supreme Court in 1973 indicate no significant change in criminal law jurisprudence. However, the increasing number of reversals[1] made by the Supreme Court of convictions for capital offenses upon a plea of guilt underscores the constant and solicitous concern of the Court for a strict adherence to the guidelines on the manner a trial court should discharge its functions in such cases.[2] In one case,[3] as hereafter to be reviewed, a dissenting opinion which would call for the application of Article 48 elicited a very strong separate opinion from another member of the Court. The rest of the 1973 decisions reiterated established jurisprudence.

MOTIVE AND INTENT

The law presumes that there was motive for the crime if the accused himself admitted having committed it. Thus, in *People v. Herila,*[4] while no motive was shown for the killing of the victim, the Supreme Court reiterated previous rulings[5] that motive is pertinent only when there is doubt as to the identity of the culprit, something which did not obtain in the case at bar as the accused was positively identified by credible witnesses. In the very early case of *U.S. v. Ricafor,*[6] the Supreme Court observed that in almost every crime apparently without motive, the motives which

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[1] People v. Daeng, G.R. No. L-34091, January 30, 1973, 49 SCRA 221 (1973); People v. Ricalde, G.R. No. L-34673, January 30, 1973, 49 SCRA 228 (1973); People v. Martinez, G.R. No. L-35353, April 30, 1973, 50 SCRA 509 (1973); People v. Silvestre, G.R. No. L-33821, June 22, 1973, 51 SCRA 286 (1973); People v. Busa, G.R. No. L-32047, June 25, 1973, 51 SCRA 317 (1973); People v. Alamada, G.R. Nos. L-34594-95, July 13, 1973, 52 SCRA 103 (1973); People v. Andaya, G.R. No. L-29644, July 25, 1973, 52 SCRA 137 (1973); People v. Villafuerte, G.R. No. L-32036, July 31, 1973, 52 SCRA 204 (1973); People v. Pohong, G.R. No. L-32332, August 15, 1973, 52 SCRA 287 (1973); People v. Saligan, G.R. No. L-35792, November 29, 1973, 54 SCRA 190 (1973); People v. Bacong, G.R. No. L-36161, December 19, 1973, 54 SCRA 288 (1973);

[2] See People v. Apduhan, G.R. No. L-19491, August 30, 1968, 24 SCRA 798 (1968). For the early cases, see U.S. v. Talbanos, 6 Phil. 541 (1906); U.S. v. Rota, 9 Phil. 426 (1907); and U.S. v. Agcaoili, 31 Phil. 91 (1915).

[3] People v. Carandang, G.R. No. L-31012, August 15, 1973, 52 SCRA 259 (1973).

[4] G.R. No. L-32785, May 21, 1973, 51 SCRA 31 (1973).

[5] People v. Buyco, 80 Phil. 58 (1948); People v. Bautista, G.R. No. L-27638, November 28, 1969, 30 SCRA 558 (1969); People v. Largo, G.R. No. L-28106, August 18, 1972, 46 SCRA 597 (1972).

[6] 1 Phil. 173 (1902).

might exist are innumerable, motives unknown perhaps to the witnesses for the deceased. In a later case,[7] the Supreme Court stated in very apt language: "[T]he apparent lack of a motive for committing a criminal act does not necessarily mean that there are none, but that simply they are not known to us, for we cannot probe into the depths of one's conscience where they may be found, hidden away and inaccessible to our observation. We are also conscious of the fact that an extreme moral perversion may lead a man to commit a crime without a real motive but just for the sake of committing it."

To be distinguished, however, is the case of *People v. Resayaga*,[8] where the Supreme Court brushed aside the alleged lack of motive claimed by the accused, as the Court found that the felonious act was motivated by a desire on the part of the accused to help his brother-in-law.

CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY

JUSTIFYING CIRCUMSTANCES

Self-Defense

In *People v. Llamera*,[9] the Supreme Court reiterated the well-settled rule that one who admits the infliction of injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence.[10] The Court did not give credence to the claim of self-defense by the several accused in the case at bar as being contrary to the physical evidence. Thus, while the accused claimed to have stabbed the victims with a spear used initially to parry the bolo thrusts of the victim, it was fully established that the victim died of gunshot wounds. The several accused having admitted to have *stabbed* the victim, it was incumbent upon the former to prove the justifying circumstance claimed by them without relying on the weakness of the evidence of the prosecution.

Similar to the *Llamera* case is *People v. Dorico*[11] where the accused claimed self-defense by alleging that he stabbed the victim twice when the

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[7] People v. Taneo, 58 Phil. 255, 256-257 (1933).

[8] G.R. No. L-23234, December 26, 1973, 54 SCRA 350 (1973)

[9] G.R. Nos. L-21604-5-6, May 25, 1973, 51 SCRA 48 (1973).

[10] People v. Ansoyon, 75 Phil. 772 (1946); People v. Talaboc, G.R. No. L-25004, October 31, 1969, 30 SCRA 87 (1969); People v. Berio, 59 Phil. 533 (1934); People v. Bauden, 77 Phil. 105 (1946); People v. Cruz, 53 Phil. 635 (1929); People v. Gutierrez, 53 Phil. 609 (1929); People v. Alviar, 56 Phil. 98 (1931); People v. Espenilla, 62 Phil. 265 (1935); People v. Apolinario, 58 Phil. 586 (1933); People v. Gimena, 59 Phil. 509 (1934); People v. Jorge, 71 Phil. 451 (1941); People v. Jumauan, 98 Phil. 1 (1955).

[11] G.R. No. L-31568, November 29, 1973, 54 SCRA 172 (1973). The Court cited the 1968 cases of People v. Wong, G.R. Nos. L-22130-32, April 25, 1968, 23 SCRA 146 (1968); and People v. Navarra, G.R. No. L-25607, October 14, 1968, 25 SCRA 491 (1968).

latter lunged at the accused to grab the bolo of the accused. The Supreme Court observed that if this were true, the victim would have been hit in front. The evidence showed, however, that the wounds were inflicted from behind.

On the other hand, *People v. Aquino*,[12] the Supreme Court sustained the plea of self-defense by the accused and reversed the lower court's conviction. There were conflicting versions as to how the victim was shot but the Court sustained the version of the accused as being in accord with the physical evidence. The prosecution tried to prove that the victim was standing about two or three meters away from the truck where the accused was seated as driver and that the accused, without any exchange of words, shot the victim. The accused, on the other hand, claimed that the victim went up the running board of the truck, after pulling out a *"balisong,"* and held on to the windshield frame. When the victim lunged with his knife, the accused leaned far right, at the same time parrying the hand of the victim who switched to a stabbing position and, at that moment, the accused, who was already leaning almost prone on the driver's seat, got his gun from the tool box and shot the victim. The Court considered the physical objective facts as not only consistent with, but confirming strongly, the plea of self-defense. The *direction* and *trajectory* of the bullets would have been different had the victim been standing upright two or three meters to the left of the truck.

In the same case of *Aquino*, the Court found to be present all the elements of self-defense, to wit: unlawful aggression on the part of the deceased when he attacked the accused with a deadly weapon (*"Balisong"*); lack of sufficient provocation; and, reasonableness of the means employed.[13] Speaking on the means used by the accused, the Court, citing previous rulings,[14] observed that "in emergencies of this kind, human nature does not act upon process of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon his instinct, it is the duty of the courts to sanction the act and hold the act irresponsible in law for the consequences."

MITIGATING CIRCUMSTANCES

Lack of Intent to Commit So Grave a Wrong[15]

In *People v. Geronimo*,[16] it was established that the accused J. G. hacked the victim at the left ankle joint, posterior, which was almost severed.

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[12] G.R. No. L-32390, December 28, 1973, 54 SCRA 409 (1973).

[13] See Article 11 (1), REVISED PENAL CODE.

[14] People v. Encomienda, G.R. No. L-26750, August 18, 1972, 46 SCRA 522 (1972); People v. Lara, 48 Phil. 153 (1925).

[15] See Article 13 (3), REVISED PENAL CODE.

[16] G.R. No. L-35700, October 15, 1973, 53 SCRA 246 (1973).

The Supreme Court upheld the claim for the benefit of the mitigating circumstance of lack of intent to commit so grave a wrong as that committed as the location of the wounds showed that the intention was not to kill or else the blows would have been aimed against the vital parts of the body.

On the other hand, *People v. Herila*,[17] lack of intent to commit so grave a wrong was not appreciated by the Supreme Court although the trial court gave the benefit thereof to the accused. As explained by the Court, considering that the victim had already fallen helpless and was in a lying position when he was hacked by the appellant, there was no doubt that the appellant intended to kill the victim. Besides, the nature of the weapons that were used (*boloes*) and the fact that the attack was characterized by treachery, since the assailants waited in ambush for their victim, were likewise demonstrative of such intention.

Voluntary Surrender

This mitigating circumstance was appreciated in *People v. Llamera*[18] where the several accused, immediately after the incident, proceeded to the *poblacion* where they surrendered to the Chief of Police.

Illiteracy[19]

In *People v. Geronimo*,[20] while the evidence showed that the accused J.G. was unschooled, the Supreme Court held, citing an earlier case,[21] that such circumstance alone was not enough to entitle him to the benefits of the alternative circumstance of lack of education. Reiterating previous rulings, the Court stated that it must be accompanied by lack of sufficient intelligence and knowledge of the full significance of one's act. These, according to the Court, were things only the trial court could properly appreciate.[22]

AGGRAVATING CIRCUMSTANCES

Dwelling

Dwelling was considered aggravating in *People v. Otto*,[23] involving robbery with rape (of a housemaid) and in *People v. Carandang*,[24] likewise one of robbery with rape (of a housewife).

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[17] See note 4.

[18] See note 9.

[19] Although the degree of instruction and education of the offender is an alternative circumstance, illiteracy or lack of instruction has always been a mitigating circumstance.

[20] See note 16.

[21] People v. Ripas, G.R. No. L-6246, March 26, 1956.

[22] People v. Sari, G.R. No. L-7169, May 30, 1956; U.S. v. Estorico, 35 Phil. 410 (1916); People v. Josep, 52 Phil. 206 (1928); People v. Bangug, 52 Phil. 87 (1928); People v. Sedenio, G.R. No. L-6372, April 29, 1954.

[23] G.R. No. L-29631, January 31, 1973, 49 SCRA 306 (1973).

[24] See note 3; also, *infra*.

Band

In the *Otto* case, although the Supreme Court considered the offenders as constituting a band,[25] it was considered merely generic and not a special aggravating circumstance under Article 296 which, as held in *People v. Apduhan,*[26] applies only to crimes of robbery falling under "subdivisions three, four, and five" of Article 294, whereas the case at bar was one that fell under subdivision two (robbery with rape).

Abuse of Superior Strength

Numerical superiority of the offenders is normally considered aggravating as it constitutes abuse of superior strength. But in *People v. Cajandab,*[27] although there were three offenders as against the lone victim, abuse of superior strength was not considered aggravating as the accused acted independently of each other.

Treachery

There is treachery (*alevosia*) 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.[28]

Thus, in the *Cajandab*[29] case, there was treachery as the third accused, although acting independently of the other two accused, attacked the victim while the latter was in a defenseless kneeling position, pleading for his life. In *People v. Llamera,*[30] the three victims were suddenly and without warning shot one after another and, when they were already lying prostrate and helpless on the ground, were stabbed by the other two accused — there was treachery. In the *Geronimo*[31] case, there was hardly any doubt as to the helpless condition of the victim when he received the injuries which caused his death. Moreover, the serious wounds were in the back part of the body of the victim — indicating that the assailants were behind the victim when they hacked the latter. Treachery was, therefore, present. In *People v. Abboc,*[32] there was treachery where the victim was shot while

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[25] Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band. Article 14 (6).

[26] See note 2.

[27] People v. Cajandab, G.R. No. L-29598, July 26, 1973, 52 SCRA 161 (1973). See discussion of this case on conspiracy, *infra.*

[28] REVISED PENAL CODE, Article 14 (16).

[29] *Supra,* note 27.

[30] See note 9.

[31] *Supra,* note 16. The victim in this case was already unconscious when he was boloed

[32] G.R. No. L-28327, September 14, 1973, 53 SCRA 54 (1973).

being held by the two other accused. In *People v. Resayaga*,[33] the Supreme Court did not hesitate to characterize as treacherous the act of the accused in unexpectedly stabbing the victim from behind while the latter was in a stooping position, rendering succor to his drunken companions.

In the *Palacpac*[34] case, however, the Supreme Court doubted whether the accused, on an occasion of deep significance, that of the ninth day of prayer being offered for the soul of his daughter, could have entertained the thought of "employing means, methods, or forms in the execution [of a crime] which tend directly and specially to insure its execution . . ." With all due respect, the statement of the Court should not, perhaps, be taken as including a subjective element in the aggravating circumstance of *alevosia*. As the law itself points to the *manner* of perpetration of the criminal act, the state of mind of the accused becomes irrelevant.[35]

Cruelty

In the *Llamera*[36] case, although there was treachery as the victims were already lying prostrate and helpless on the ground, the stabbing could not be characterized by cruelty.[37] As stated by the Supreme Court: "For cruelty to be considered an aggravating circumstance, it is essential that the wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain." The stabbing, as found by the trial court and upheld by the Supreme Court, was to ensure the death of the victims and to tamper with the bullet wounds to make them appear as bolo wounds in order to conceal the fact that a gun was used in the killing.

COLLECTIVE AND INDIVIDUAL CRIMINAL RESPONSIBILITY

Conspiracy[38]

When there are two or more offenders who participate in the commission of a crime, their criminal responsibility may either be individual or collective, depending upon whether there was a conspiracy, express or

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[33] See note 8.

[34] People v. Palacpac, G.R. No. L-27822, February 28, 1973, 49 SCRA 440 (1973).

[35] See People v. Enriquez, 58 Phil. 536 (1933); People v. Cagoco, 58 Phil. 524 (1933); see, also People v. Parana, 64 Phil. 331 (1937).

[36] *Supra*, note 9.

[37] Article 14 (21) provides: "That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission." As held in People v. Dayug, 49 Phil. 423 (1926), cruelty requires deliberate prolongation of the physical suffering of the victim.

[38] "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Article 8, REVISED PENAL CODE.

implied. Absent such a conspiracy, the several offenders would be criminally liable only to the extent of their participation and for their individual acts.[39] It is not surprising, therefore, that where there are several offenders, the claim most often put forward is that there is no conspiracy, express or implied; otherwise, collective responsibility attaches, resulting in the imposition of a penalty most disproportionate to the act actually committed.[40]

Established jurisprudence, to the effect that conspiracy may be implied from the acts of the offenders indicating a unity of criminal design or purpose, does not necessarily mean that the task of the prosecution is an easy one. In the 1973 decisions of the Supreme Court touching on the issue of conspiracy, the Court surprisingly upheld in all but one case the claim of lack of conspiracy.

Thus, in *People v. Enomar*,[41] the Supreme Court denied the existence of a conspiracy solely on the basis of the following facts: that shortly before the occurrence, the five defendants were seen together under two trees by the side of the road leading to the house of the deceased; that before the self-confessed killer stabbed the deceased, one of the defendants focused the beam of his floodlight at the face of the deceased; that a third accused was seen, immediately thereafter, a few paces in front of the deceased with a gun aimed at the latter; that when the son of the deceased grappled with the gun-wielder to disarm him, two other accused tried to stab said son. The Court explained that the presence of the defendants at the foot of the tree, if true,[42] did not necessarily established conspiracy, for it is not unusual for Filipinos — if not customary among them, when attending social gatherings — to stay together. Moreover, the Court observed that had the defendants really conspired, they would have seen to it that the female members of their family left the place before the occurrence, and that the defendants would not have sought sanctuary in a house, indicating fear against possible reprisals, something they would have anticipated had they planned or conspired to kill the deceased who, after all, was their uncle.

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[39] When a crime is committed by many, without being equally shared by all, the degree of responsibility may depend on whether the offenders are principals, accomplices, or accessories. See Articles 16 to 20, REVISED PENAL CODE.

[40] This is based on the maxim that the act of one is the act of all. People v. Mendoza, 91 Phil. 58 (1952); People v. Paredes, G.R. No. L-19149, August 16, 1968, 24 SCRA 635 (1968); People v. Bautista, G.R. No. L-23303, May 20, 1969, 28 SCRA 184 (1969). In People v. Peralta, G.R. No. L-19069, October 29, 1968, 25 SCRA 759 (1968), the Supreme Court aptly noted that the convergence of the wills of the conspirators in the scheming and execution of the crime amply justifies the imputation to all of them of the act of any one of them, and that it is in this light that conspiracy is generally viewed, not as a separate indictable offense but as a rule for collectivizing criminal liability.

[41] G.R. No. L-26898, January 16, 1973, 49 SCRA 55 (1973).

[42] There was a question as to whether the witnesses for the prosecution could have seen or identified the defendants under the trees.

In *People v. Palacpac*,[43] the Supreme Court found the primordial requirement of "previous concert of criminal design"[44] to be wanting and held the appellant guilty only of homicide for the death of one of the victims as the evidence showed that the appellant fired his gun only once, hitting the victim Cpl. Bassig. The Court observed that conspiracy could not have existed when clearly and indisputably appellant had no inkling whatsoever that two days before, in a far-off barrio, the victims met appellant's father and two brothers and that on the fateful morning the victims would pass by his house at a time when his attention was centered on the ninth day of prayer being offered for the soul of his daughter.

In *People v. Cajandab*,[45] the accused M.O. and P.M. pursued the victim who tripped and stumbled to a kneeling position. M.O. aimed a revolver at the victim, while P.M. stepped on the victim's left hand and pressed the victim down, with the victim pleading for his life. At this moment, the third accused arrived, went to the victim, drew a bolo and stabbed the victim. Accused M.O. and P.M., apparently caught unawares by the sudden turn of events, released the victim and fled. On these facts, the Supreme Court held that there could be no conspiracy.

In the *Geronimo* case,[46] all of the accused (two brothers and their uncle) and the victim were drinking *tuba* in a store on the day of the incident. The Supreme Court found that there was no conspiracy as no *other* evidence was presented to show the same. The Court reiterated an old rule that conspiracy must be proved as clearly and convincingly as the commission of the crime itself.[47] Citing the case of *People v. Portugueza*,[48] the court observed that although the defendants were relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone did not prove conspiracy.

In *People v. Zamora*,[49] as the evidence for the prosecution linking appellant to the crime was only a theory, speculative and insinuatory, conviction of the appellant was reversed.

In *People v. Dorico*,[50] the words uttered by the accused father to his two sons for the latter to kill the victim, after which the sons allegedly

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[43] *Supra*, note 34.

[44] See People v. Pudpud, G.R. No. L-26731, June 30, 1971, 39 SCRA 618 (1971); U.S. v. Magcomot, 13 Phil. 386 (1909); People v. Tiongson, G.R. Nos. L-9866-7, November 28, 1964, 12 SCRA 402 (1964); People v. Villanueva, G.R. No. L-12687, July 31, 1962, 5 SCRA 672 (1962).

[45] See note 27.

[46] See note 16

[47] People v. Chaw Yaw Shun, G.R. No. L-19590, April 25, 1968, 23 SCRA 127 (1968). See also, People v. Tatlonghari, G.R. No. L-22094, March 28, 1969, 27 SCRA 726 (1969).

[48] G.R. No. L-22604, July 31, 1967, 20 SCRA 901 (1967), citing People v. Caayao, C.A.-G.R. No. 4035-R, December 16, 1949, 48 O.G. 637 (Feb., 1952).

[49] G.R. No. L-34090, November 26, 1973, 54 SCRA 47 (1973).

[50] See note 11.

assaulted the victim, were construed by the Supreme Court as a command indicating that there was no *previous* concert of criminal design. The Court observed that obedience to a command does not necessarily show concert of design, for at any rate it is the acts of the conspirators that show their common design. The Court noted that the circumstance that the sons joined the killing, taken alone, did not justify the requirements of conspiracy because the rule is that neither joint nor simultaneous action is *per se* sufficient proof of conspiracy.

On the other hand, in *People v. Otto*,[51] the Supreme Court found it manifest that the appellants acted in concert with each other and found conspiracy to exist not only in the commission of the crime of robbery but also in that of rape, for one of the accused, after having carnal knowledge of the housemaid, called his co-defendants, two of whom ravished her.

Individual Criminal Responsibility

As discussed above, absent a conspiracy, the criminal responsibility becomes individual and to the extent only of the actual participation of the accused. In the *Geronimo* case,[52] after holding that there was no conspiracy, the Supreme Court had to determine the criminal responsibility of the accused Romeo Geronimo. True, Romeo's holding or embracing the victim and hitting the latter with a piece of stone indicated that Romeo was very much involved in the fight. However, the Court held that whatever responsibility was incurred by Romeo, absent a conspiracy, must be predicated on his act of holding the victim. While this act was undoubtedly one of help and cooperation, observed the Court, it was not indispensable for the commission of the offense as the hacking could have been committed just the same without his holding the victim. The Court concluded that his cooperation not being essential to the commission of the crime, but merely to facilitate the same, his liability was that of an accomplice.[53]

COMPLEX CRIMES

The case of *People v. Carandang*,[54] one of robbery with rape, would not have merited more than passing attention, as the only issue appears to be one of credibility (in the language of the Court, "the appeal....raises no significant legal question"), were it not for a dissenting opinion and a strong separate opinion in reply thereto. The four defendants were charged

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[51] See note 23.

[52] *Supra*, see note 16.

[53] "Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts." (Article 18, REVISED PENAL CODE). To be distinguished from principals by indispensable cooperation under Article 17 (3).

[54] See note 3.

before the lower court with the crime of robbery with rape under Article 294 (2) of the Revised Penal Code;[55] two of them were convicted of the crime charged while the other two for robbery only. The judgment of conviction was affirmed *in toto* by the Supreme Court. Mr. Justice Teehankee, however, wrote a separate concurring and dissenting opinion. He concurred in the result but dissented in so far as the penalty imposed on the defendants convicted of robbery with rape was concerned. The opinion of Mr. Justice Teehankee would consider the crime as robbery with rape *complexed* with qualified rape, calling for the imposition, under Article 48,[56] of the penalty for the more serious offense, qualified rape, in its maximum period. The penalty for robbery with rape under Article 294 (2) is *reclusión temporal* medium to *reclusión perpetua,* while that for qualified rape (rape committed by two or more persons) under Article 335 is *reclusión perpetua* to death.

The opinion of Mr. Justice Teehankee would apply, by analogy, the ruling in *Napolis v. Court of Appeals*[57] which involved robbery in an inhabited house under Article 299 (a) where, at the same time, the accused used violence against or intimidation of persons which, in turn, is covered by Article 294 (5). Considering the disparity in the penalties imposable under Articles 294, (5) *prisión correccional* maximum to *prisión mayor* medium, and Article 299 (a), *reclusión temporal* (where the value of the property taken exceeds ₱250.00), and the then established jurisprudence making the intimidation under Article 294 (5) as the *controlling* qualification,[58] the Supreme Court deemed it "more logical and reasonable" to hold, as it did hold, that when the elements of both provisions are present, the crime is a complex one.[59]

Mr. Justice Castro, in a strong reply to the dissenting opinion of Mr. Justice Teehankee, believes that the latter's opinion would seek to introduce into the corpus of jurisprudence "completely strange (albeit tantalizing) doctrines," which would be an exercise of legislative power.

With all due respect, there is really something illogical and unreasonable about a situation where the crime of robbery accompanied by rape is

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[55] ART. 294. *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x

2. The penalty of *reclusión temporal* in its medium period to *reclusión perpetua,* when the robbery shall have been accompanied by rape x x x".

[56] Article 48 provides: "When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

[57] G.R. No. L-28865, February 28, 1972, 43 SCRA 301 (1972).

[58] U.S. v. Turla, 38 Phil. 346 (1918); U.S. v. Baluyot, 40 Phil. 89 (1919).

[59] See 48 PHIL. L.J. (Nos. 1 and 2) 201-203.

punishable only by *reclusión temporal* while rape, alone, where committed by two persons, is punishable by *reclusión perpetua* to death. But to consider a crime as complex *under Article 48* simply because the elements of two distinct offenses punishable under the Revised Penal Code are present seems to be going too far. For one thing, such a process of reasoning, although prompted by salutary objectives, would do away with both the statutory and jurisprudential principles underlying Article 48.[60] Even established jurisprudence on Articles 294 (2) and 335 would be very much affected. Robbery with rape is considered a special complex crime carrying a single penalty independent of Article 48;[61] moreover, the crime is one which may be prosecuted *de oficio*, without the complaint of the offended woman, to distinguish it from the crime of rape, *whether simple or qualified* under the last four paragraphs of Article 335, which is considered a private crime under Article 344 requiring, as a jurisdictional matter, a complaint by the offended party.[62]

While courts may *construe* statutes in a manner that will satisfy logic and reason, it is humbly submitted that the problems posed by the *Napolis* and *Carandang* cases are really beyond what Justice Castro calls "legislation in the interstices."[63] There is something to the observation made by Mr. Justice Castro regarding the omission by Congress, due to negligence or otherwise, in failing to harmonize penalties when amendatory measures are enacted respecting a particular offense. However, as the remedy lies in legislation, even the opinion of Mr. Justice Castro that to "harmonize" Articles 294 (2) and 335, the penalties for the former "must be deemed to have been supplanted" by the penalties for the latter, is not entirely free from criticism. For one thing, such amendment by "implication" runs counter to the *pro reo* principle and the principle of legality characterizing penal laws. Considering the present state of the law, pending remedial legislation, it would appear that a heavy burden falls on the prosecuting arm of the government to prepare carefully the appropriate charge which, under the foregoing discussion, would be for the offense with the higher penalty.

PENALTIES

The correct computation and application of penalties have always been the bane of trial courts. Although the rules are all found in the Code,[64] illustrations are, perhaps, more enlightening.

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[60] See note 56.

[61] People v. Mandia, 60 Phil. 372 (1934); People v. Carillo, 85 Phil. 611 (1950). See 2 (1961 ed.,) Aquino, Revised Penal Code, 1362-1363.

[62] People v. De Guzman, 70 Phil. 23 (1940); People v. Orcullo, 83 Phil. 787 (1949); People v. Buama, 95 Phil. 435 (1954).

[63] *Supra*, note 3 at 282.

[64] Articles 46 to 77.

Thus, in the *Geronimo* case,[65] the penalty for murder, *reclusión temporal* maximum to death, there being one mitigating circumstance, was fixed in the minimum which is *reclusión temporal* maximum. The Supreme Court, applying the Indeterminate Sentence Law (ISL), fixed the penalty imposable to be within the range of *prisión mayor* maximum (10 years and one day to 12 years) to *reclusión temporal* medium (14 years, 8 months, 1 day to 17 years and 4 months). The penalty actually imposed was 10 years and 1 day of *prisión mayor* as minimum to 14 years, 8 months and 1 day of *reclusión temporal,* as maximum. The accomplice was imposed a penalty lower by one degree[66] which was fixed, applying the ISL, to be within the range of *prisión correccional* maximum (4 years, 2 months and 1 day to 6 years) to *prisión mayor* medium (8 years and 1 day to 10 years). The penalty actually imposed on the accomplice was 4 years, 2 months and 1 day of *prisión correccional,* as minimum, to 8 years and 1 day of *prisión mayor,* as maximum.

In the *Cajandab* case,[67] likewise a conviction for murder (there being treachery), there being no aggravating (treachery being qualifying), and one mitigating circumstance (voluntary surrender), the penalty of *reclusión perpetua* imposed by the trial court was modified to a penalty of 10 years and 1 day of *prisión mayor* as minimum, to 17 years, 4 months and 1 day of *reclusión temporal,* as maximum, by applying the ISL. In the *Resayaga* case, there being no mitigating nor aggravating circumstances, the correct penalty applied was *reclusión perpetua.*

Robbery with rape being punishable by *reclusión temporal* medium to *reclusión perpetua,*[68] there being aggravating and no mitigating circumstances, the penalty imposed in the *Otto* case[69] was *reclusión perpetua.*

In the *Dorico* case,[70] as the Supreme Court found no conspiracy, one of the accused was held responsible only for *boxing* the victim and the penalty of 15 days of *arresto menor* was imposed on him. However, considering the period of preventive imprisonment suffered by the accused,[71] the Supreme Court ordered his release.

SPECIFIC CRIMES UNDER THE PENAL CODE

Murder

Understandably, the bulk of the cases decided by the Supreme Court in 1973, as in previous years, deals with murder. Murder being a capital

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[65] *Supra,* note 16.
[66] See Article 52.
[67] *Supra,* note 27.
[68] See note 55.
[69] *Supra,* note 23.
[70] *Supra,* note 11.
[71] See Article 29, REVISED PENAL CODE, as amended by Rep. Act No. 6127 (1970).

offense, convictions in the lower court invariably end up in automatic appeals. The Supreme Court, in these automatic reviews, has to decide, in the main, whether there is present a circumstance which would qualify the killing as murder[72] and, secondly, as discussed earlier, whether there is a conspiracy in order to determine the respective liabilities of the several offenders.

In the *Palacpac* case,[73] the Supreme Court ruled that the accused A.P. could not have been guilty of murder, absent the element of either *alevosia* or of evident premeditation. However, in the *Resayaga, Cajandab, Geronimo,* and *Llamera* cases,[74] the killing having been attended with treachery, the crimes committed were murder.

Kidnapping and Serious Illegal Detention

People v. Manzanero,[75] is an interesting case that would surely appeal to the romantics. Florecita Sy, also known as "Linda," barely 18 years of age at the time the alleged crime was committed, was the daughter of a well-to-do and influential businessman of Lucena City. The prosecution tried to prove that she was kidnapped at Lucena City and was detained in a house in Tiaong, Quezon, from August 12 to 14, 1965, for the purpose of extorting a ₱50,000.00 ransom. The principal accused was (he was gunned down in the national penitentiary during the pendency of the appeal) was a philandering mechanic who turned out to be the alleged victim's lover. The evidence for the prosecution, upon a very careful scrutiny by the Supreme Court, failed to convince the Court that the crime of kidnapping was in fact committed. The alleged kidnappers, known for many years to the alleged victim and her family, did not take any precaution, or use any means, to hide their identity, as kidnappers would do. The prosecution tried to prove that the alleged victim was pulled against her will into a car being then driven by the principal accused, taken to a house in a coconut plantation, forced and locked into a room with two guards allegedly at the door; that she was forced to write a ransom note (which was never produced), two love letters, and dedications at the back of two pictures of hers. The Supreme Court found it hard to believe that the alleged victim was pulled her will, considering the time, place and circumstances. The fact that the principal accused so easily and without apparent reason gave up his alleged criminal enterprise, when he could have pursued it to a successful end, was carefully noted by the Court The Supreme Court unanimously voted for reversal of the judgment of conviction.

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[72] See Article 248, REVISED PENAL CODE, for the qualifying circumstances.
[73] *Supra*, note 34.
[74] See earlier discussion on the aggravating circumstance of treachery.
[75] G.R. No. L-33698, December 20, 1973, 54 SCRA 335 (1973).

Rape

In the *Carandang* case,[76] a prosecution for robbery with rape as discussed earlier, the appellants questioned the conclusion by the lower court regarding the perpetration of the rape. Appellants raised the issue on the basis of the statement of the doctor, who examined the victim about 7 hours after the alleged sexual assault, to the effect that "in a true case of rape, the presence of spermatozoa should be positive" as against the doctor's only finding, which tallied with the complaint of the offended party, of "erythematous abrasion of the *labia menora.*" The appellants thus, capitalized on the absence of spermatozoa. The Supreme Court, however, brushed aside the defense for being without merit. In the language of the Court:

> x x x The absence of such spermatozoa, however, does not necessarily mean that the complainants had not in fact been raped. The very authority cited states that such absence does not necessarily mean that the girl subject of the examination has not had any sexual intercourse. It need hardly be said here that in crime of rape, the slightest penetration is enough. In the case of the complainants, we agree with the trial court that the recent laceration in the hymen and the contusions on the walls of the *labia minora,* of their genitals — together with the evidence adduced during the trial — sufficiently show that the copulative act had been performed by means of force and violence. * * * In fact, it is not even necessary that there be a medical examination of the victim in cases of rape. Whether or not the charge will prosper depends upon the evidence offered and so long as such evidence convinces the court, a conviction for rape is proper. At any rate, it is not improbable that the complainants washed or flushed themselves not only for the sake of cleanliness but more particularly in order to avoid possible conception. x x x[77]

Moreover, the Supreme Court, reiterating the ruling in *People v. Canastre,*[78] restated the Court's commitment to "the principle in accord with the traditional psychology of our people inhibiting a woman from exposing herself to the obloquy that would follow an admission that she had been thus victimized if the truth were otherwise, unless there be proof of a motive weighty enough to make her bear with equanimity the pillory to which she would be thus subjected."

In *People v. Molina,*[79] the defense raised, although equally based on credibility, was somewhat different. The case involved the alleged rape of a 13-year old, but the accused claimed that there was no force used as he

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[76] *Supra,* note 3; see, also, earlier discussion on complex crimes.

[77] See People v. Selfaison, G.R. No. L-14732, January 28, 1961, 1 SCRA 235 (1961).

[78] 82 Phil. 480 (1948). See, also, People v. Gan, G.R. No. L-33446, August 18, 1972, 46 SCRA 667 (1972).

[79] G.R. No. L-30191, October 27, 1973, 53 SCRA 495 (1973).

and the alleged victim were lovers. Again, the Supreme Court, in upholding the conviction, stated that it was apparent from past decisions on rape cases,[80] with the offended parties being young and immature girls, that "there is considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to." There was, to be sure, a caveat that uncritical acceptance is not the rule; it is only to emphasize "that skepticsm should be kept under control."

[80] See People v. Olden, G.R. Nos. L-27570-71, September 20, 1972, 47 SCRA 45 (1972).