CRIMINAL LAW

Criminal Law, defined.

Criminal law is that branch or division of law which defines crimes, treats of their nature, and provides for their punishment. (12 Cyc. 129)

Crime, defined.

Crime is an act committed or omitted in violation of a public law forbidding or commanding it. (I Bouvier's Law Dictionary, Rawle's Third Revision, 729)

Sources of Philippine Criminal Law.

1. The Revised Penal Code (Act No. 3815) and its amendments.
2. Special Penal Laws passed by the Philippine Commission, Philippine Assembly, Philippine Legislature, National Assembly, the Congress of the Philippines, and the Batasang Pambansa.
3. Penal Presidential Decrees issued during Martial Law.

No common law crimes in the Philippines.

The so-called common law crimes, known in the United States and England as the body of principles, usages and rules of action, which do not rest for their authority upon any express and positive declaration of the will of the legislature, are not recognized in this country. Unless there be a particular provision in the penal code or special penal law that defines and punishes the act, even if it be socially or morally wrong, no criminal liability is incurred by its commission. (See U.S. vs. Taylor, 28 Phil. 599, 604)

Court decisions are not sources of criminal law, because they merely explain the meaning of, and apply, the law as enacted by the legislative branch of the government.

Power to define and punish crimes.

The State has the authority, under its police power, to define and punish crimes and to lay down the rules of criminal procedure. States, as a part of their police power, have a large measure of discretion in creating and defining criminal offenses. (People vs. Santiago, 43 Phil. 120, 124)

The right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights. (U.S. vs. Pablo, 35 Phil. 94, 100)

Limitations on the power of the lawmaking body to enact penal legislation.

The Bill of Rights of the 1987 Constitution imposes the following limitations:

1. No *ex post facto* law or bill of attainder shall be enacted. (Art. III, Sec. 22)

2. No person shall be held to answer for a criminal offense without due process of law. (Art. III, Sec. 14[1])

The first limitation prohibits the passage of retroactive laws which are prejudicial to the accused.

An *ex post facto* law is one which:

(1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;

(2) aggravates a crime, or makes it greater than it was, when committed;

(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;

(4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;

(5) assumes to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and

(6) deprives a person accused of a crime some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty. *(In re:* Kay Villegas Kami, Inc., 35 SCRA 429, 431)

Congress is also prohibited from passing an act which would inflict punishment without judicial trial, for that would constitute a bill of attainder.

> A bill of attainder is a legislative act which inflicts punishment without trial. Its essence is the substitution of a legislative act for a judicial determination of guilt. (People vs. Ferrer, 48 SCRA 382, 395)
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> *Example:*
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> Congress passes a law which authorizes the arrest and imprisonment of communists without the benefit of a judicial trial.

To give a law retroactive application to the prejudice of the accused is to make it an *ex post facto* law.

> The penalty of *prisión mayor* medium, or eight years and one day to ten years, imposed by Presidential Decree No. 818, applies only to swindling by means of issuing bouncing checks committed on or after October 22, 1985. That increased penalty does not apply to estafa committed on October 16, 1974 because it would make the decree an *ex post facto* law. Its retroactive application is prohibited by Articles 21 and 22 of the Revised Penal Code and Section 12, Article IV (now Sec. 22, Art. III, of the 1987 Constitution). (People vs. Villaraza, 81 SCRA 95, 97)

The second limitation requires that criminal laws must be of general application and must clearly define the acts and omissions punished as crimes.

Constitutional rights of the accused.

Article III, Bill of Rights, of the 1987 Constitution provides for the following rights:

1. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. (Sec. 16)

2. No person shall be held to answer for a criminal offense without due process of law. (Sec. 14[1])

3. All persons, except those charged with offenses punishable by *reclusión perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law.

   The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended.

   Excessive bail shall not be required. (Sec. 13)

4. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Sec. 14[2])

5. No person shall be compelled to be a witness against himself. (Sec. 17)

   Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice.

   If the person cannot afford the services of counsel, he must be provided with one.

   These rights cannot be waived except in writing and in the presence of counsel. (Sec. 12[1])

   No torture, force, violence; threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*,

or other similar forms of detention are prohibited. (Sec 12[2])

Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. (Sec. 12[3])

6. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. (Sec. 19[1])

7. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. (Sec. 21)

8. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. (Sec. 11)

Statutory rights of the accused.

Section 1, Rule 115, of the Revised Rules on Criminal Procedure provides that in all criminal prosecutions, the accused shall be entitled:

1. To be presumed innocent until the contrary is proved beyond reasonable doubt.

2. To be informed of the nature and cause of the accusation against him.

3. To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. x x x

4. To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.

5. To be exempt from being compelled to be a witness against himself.

6. To confront and cross-examine the witnesses against him at the trial. x x x

7. To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

8. To have a speedy, impartial and public trial.

9. To appeal in all cases allowed and in the manner prescribed by law.

Rights of the accused which may be waived and rights which may not be waived.

A right which may be waived is the right of the accused to confrontation and cross-examination. A right which may not be waived is the right of the accused to be informed of the nature and cause of the accusation against him.

The reason or principle underlying the difference between rights which may be waived and rights which may not be waived is that those rights which may be waived are personal, while those rights which may not be waived involve public interest which may be affected. (2 Moran, Rules of Court, 1952 Edition, 748)

Characteristics of criminal law.

Criminal law has three main characteristics: (1) general, (2) territorial, and (3) prospective.

I. GENERAL, in that criminal law is binding on all persons who live or sojourn in Philippine territory. (Art. 14, new Civil Code)

In a case where the accused contended that being an American citizen, he cannot be prosecuted for, much less convicted of, the crime of illegal possession of firearms, because it is a constitutional right of the citizens of the United States of America "to keep and bear arms" without any need of applying and securing a government license therefor, the Court of Appeals held:

> "The Philippines is a sovereign state with the obligation and the right of every government to uphold its laws and maintain order within its domain, and with the general jurisdiction to punish persons for offenses committed within its territory, regardless of the nationality

of the offender. (Salonga and Yap, Public International Law, p. 169) No foreigner enjoys in this country extra-territorial right to be exempted from its laws and jurisdiction, with the exception of heads of states and diplomatic representatives who, by virtue of the customary law of nations, are not subject to the Philippine territorial jurisdiction." (People vs. Galacgac, C.A., 54 O.G. 1027)

As a general rule, the jurisdiction of the civil courts is not affected by the military character of the accused.

U.S. vs. Sweet
(1 Phil. 18)

Facts: Sweet was an employee of the U.S. Army in the Philippines. He assaulted a prisoner of war for which he was charged with the crime of physical injuries. Sweet interposed the defense that the fact that he was an employee of the U.S. military authorities deprived the court of the jurisdiction to try and punish him.

Held: The case is open to the application of the general principle that the jurisdiction of the civil tribunals is unaffected by the military or other special character of the person brought before them for trial, unless controlled by express legislation to the contrary.

Civil courts have concurrent jurisdiction with general courts-martial over soldiers of the Armed Forces of the Philippines.

Civil courts have jurisdiction over murder cases committed by persons subject to military law. The civil courts have concurrent jurisdiction with the military courts or general courts-martial over soldiers of the Armed Forces of the Philippines.

Civil courts have jurisdiction over the offense of malversation (Art. 217) committed by an army finance officer. (People vs. Livara, G.R. No. L-6021, April 20, 1954)

Even in *times of war,* the civil courts have concurrent jurisdiction with the military courts or general courts-martial over soldiers of the Philippine Army, provided that in the place of the commission of the crime no hostilities are in progress and civil courts are functioning. (Valdez vs. Lucero, 76 Phil. 356)

The Revised Penal Code or other penal law is not applicable when the military court takes cognizance of the case.

When the military court takes cognizance of the case involving a person subject to military law, the Articles of War apply, not the Revised Penal Code or other penal law.

"By their acceptance of appointments as officers in the Bolo Area from the General Headquarters of the 6th Military District, the accused, who were civilians at the outbreak of the war, became members of the Philippine Army amenable to the Articles of War." (Ruffy, *et al.* vs. Chief of Staff, *et al.*, 75 Phil. 875)

Jurisdiction of military courts.

Section 1 of Rep. Act No. 7055 reads in full:

> "Section 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: *Provided,* That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.
>
> "As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.
>
> "In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances."

The second paragraph of the above provision explicitly specifies what are considered "service-connected crimes or offenses" under Commonwealth Act No. 408 (CA 408), as amended, also known as the

Articles of War, to wit: those under Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.

Rep. Act No. 7055 did not divest the military courts of jurisdiction to try cases involving violations of Articles 54 to 70, Articles 72 to 92 and Articles 95 to 97 of the Articles of War as these are considered "service-connected crimes or offenses." In fact, it mandates that these shall be tried by the court-martial.

In view of the clear mandate of Rep. Act No. 7055, the Regional Trial Court cannot divest the General Court-Martial of its jurisdiction over those charged with violations of Articles 63 (Disrespect Toward the President etc.), 64 (Disrespect Toward Superior Officer), 67 (Mutiny or Sedition), 96 (Conduct Unbecoming an Officer and a Gentleman) and 97 (General Article) of the Articles of War, as these are specifically included as "service-connected offenses or crimes" under Section 1 thereof. Pursuant to the same provision of law, the military courts have jurisdiction over these crimes or offenses. (Navales, *et. al.* vs. Abaya, *et. al.*,G.R. Nos. 162318-162341, Oct. 25, 2004)

The prosecution of an accused before a court-martial is a bar to another prosecution of the accused for the same offense.

A court-martial is a court, and the prosecution of an accused before it is a criminal, not an administrative case, and therefore it would be, under certain conditions, a bar to another prosecution of the accused for the same offense, because the latter would place the accused in double jeopardy. (Marcos and Concordia vs. Chief of Staff, AFP, 89 Phil. 246)

Offenders accused of war crimes are triable by military commission.

The petitioner is a Filipino citizen though of a Japanese father, and associating himself with Japan in the war against the United States of America and the Philippines, committed atrocities against unarmed and non-combatant Filipino civilians and looted Filipino property. He is, indeed, a war criminal subject to the jurisdiction of the military commission. (Cantos vs. Styer, 76 Phil. 748)

Executive Order No. 68 of the President of the Philippines establishing a National War Crimes Office and prescribing rules

and regulations governing the trial of war criminals is valid and constitutional, the President of the Philippines having acted in conformity with the generally accepted principles and policies of international law which are part of our Constitution. The promulgation of said executive order is an exercise by the President of his powers as Commander-in-Chief of all our armed forces.

"War is not ended simply because hostilities have ceased. After cessation of armed hostilities, incidents of war may remain pending which should be disposed of as in time of war." A military commission "has jurisdiction so long as a technical state of war continues." This includes the period of an armistice, or military occupation, up to the effective date of a treaty of peace. (Kuroda vs. Jalandoni, *et al.*, 83 Phil. 171; Cowles, Trial of War Criminals by Military Tribunals, American Bar Association, June, 1944)

Exceptions to the general application of Criminal Law.

There are cases where our Criminal Law does not apply even if the crime is committed by a person residing or sojourning in the Philippines. These constitute the exceptions.

The opening sentence of Article 2 of the Revised Penal Code says that the provisions of this Code shall be enforced within the Philippine Archipelago, "except as provided in the *treaties* and *laws of preferential application.*"

Article 14 of the new Civil Code provides that penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in Philippine territory, *subject to the principles of public international law* and *to treaty stipulations.*

Treaties or treaty stipulations.

An example of a treaty or treaty stipulation, as an exception to the general application of our criminal law, is the Bases Agreement entered into by and between the Republic of the Philippines and the United States of America on March 14, 1947 (which expired on 16 September 1991), stipulating that "(t)he Philippines consents that the United States have the right to exercise jurisdiction over the following offenses:

(a) Any offense committed by any person within any base, except where the offender and the offended party are both

Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines;

(b) Any offense committed outside the bases by any member of the armed forces of the United States in which the offended party is also a member of the armed forces of the United States; and

(c) Any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States."

Under the Agreement between the United States of America and the Republic of the Philippines Regarding the Treatment of United States Armed Forces Visiting the Philippines which was signed on 10 February 1998 ("RP-US Visiting Forces Accord"), the Philippines agreed that:

(a) US military authorities shall have the right to exercise within the Philippines all criminal and disciplinary jurisdiction conferred on them by the military law of the US over US personnel in RP;

(b) US authorities exercise exclusive jurisdiction over US personnel with respect to offenses, including offenses relating to the security of the US punishable under the law of the US, but not under the laws of RP;

(c) US military authorities shall have the primary right to exercise jurisdiction over US personnel subject to the military law of the US in relation to: (1) offenses solely against the property or security of the US or offenses solely against the property or person of US personnel; and (2) offenses arising out of any act or omission done in performance of official duty.

Law of preferential application.

Example of a law of preferential application.

Rep. Act No. 75 may be considered a law of preferential application in favor of diplomatic representatives and their domestic servants.

It is a law to penalize acts which would impair the proper observance by the Republic and inhabitants of the Philippines of the immunities, rights, and privileges of duly accredited foreign diplomatic representatives in the Philippines. Its pertinent provisions are:

"SEC. 4. Any writ or process issued out or prosecuted by any person in any court of the Republic of the Philippines, or by any judge or justice, whereby the person of *any ambassador* or *public minister* of any foreign State, authorized and received as such by the President, or *any domestic* or *domestic servant* of any such ambassador or minister is arrested or imprisoned, or his goods or chattels are distrained, seized or attached, shall be deemed void, and every person by whom the same is obtained or prosecuted, whether as party or as attorney, and every officer concerned in executing it, shall, upon conviction, be punished by imprisonment for not more than three years and a fine of not exceeding two hundred pesos in the discretion of the court."

Exceptions:

"SEC. 5. The provisions of Section four hereof shall not apply to any case where the person against whom the process is issued is a citizen or inhabitant of the Republic of the Philippines, in the service of an ambassador or a public minister, and the process is founded upon a debt contracted before he entered upon such service; nor shall the said section apply to any case where the person against whom the process is issued is a domestic servant of an ambassador or a public minister, unless the name of the servant has, before the issuing thereof, been registered in the Department of Foreign Affairs, and transmitted by the Secretary of Foreign Affairs to the Chief of Police of the City of Manila, who shall upon receipt thereof post the same in some public place in his office. All persons shall have resort to the list of names so posted in the office of the Chief of Police, and may take copies without fee."

Not applicable when the foreign country adversely affected does not provide similar protection to our diplomatic representatives.

"SEC. 7. The provisions of this Act shall be applicable only in cases where the country of the diplomatic or consular repre-

sentative adversely affected has provided for similar protection to duly accredited diplomatic or consular representatives of the Republic of the Philippines by prescribing like or similar penalties for like or similar offenses herein contained."

Persons exempt from the operation of our criminal laws by virtue of the principles of public international law.

The following are not subject to the operation of our criminal laws:

(1) Sovereigns and other chiefs of state.

(2) Ambassadors, ministers plenipotentiary, ministers resident, and charges d'affaires.

It is a well-established principle of international law that diplomatic representatives, such as ambassadors or public ministers and their official retinue, possess immunity from the criminal jurisdiction of the country of their sojourn and cannot be sued, arrested or punished by the law of that country. (II Hyde, International Law, 2nd Ed., 1266)

A consul is not entitled to the privileges and immunities of an ambassador or minister.

It is well-settled that a consul is not entitled to the privileges and immunities of an ambassador or minister, but is subject to the laws and regulations of the country to which he is accredited. (Schneckenburger vs. Moran, 63 Phil. 250)

In the absence of a treaty to the contrary, a consul is not exempt from criminal prosecution for violations of the laws of the country where he resides.

Consuls, vice-consuls and other commercial representatives of foreign nations do not possess the status of, and cannot claim the privileges and immunities accorded to ambassadors and ministers. (Wheaton, International Law, Sec. 249)

II. TERRITORIAL, in that criminal laws undertake to punish crimes committed within Philippine territory.

The principle of territoriality means that as a rule, penal laws of the Philippines are enforceable only within its territory.

Extent of Philippine territory for purposes of criminal law.

Article 2 of the Revised Penal Code provides that the provisions of said code shall be enforced within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone.

Article I of the 1987 Constitution provides that the national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

Exceptions to the territorial application of criminal law.

The same Article 2 of the Revised Penal Code provides that its provisions shall be enforced outside of the jurisdiction of the Philippines against those who:

1. **Should commit an offense while on a Philippine ship or airship;**
2. **Should forge or counterfeit any coin or currency note of the Philippines or obligations and securities issued by the Government of the Philippines;**
3. **Should be liable for acts connected with the introduction into the Philippines of the obligations and securities mentioned in the preceding number;**
4. **While being public officers or employees, should commit an offense in the exercise of their functions; or**
5. **Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of the Revised Penal Code.**

III. **PROSPECTIVE, in that a penal law cannot make an act punishable in a manner in which it was not punishable when committed. As provided in Article 366 of the Revised Penal Code, crimes are punished under the laws in force at the time of their commission.**

Exceptions to the prospective application of criminal laws.

Whenever a new statute dealing with crime establishes conditions *more lenient or favorable* to the accused, it can be given a retroactive effect.

But this exception has *no application:*

1. **Where the new law is expressly made inapplicable to pending actions or existing causes of action. (Tavera vs. Valdez, 1 Phil. 463, 470-471)**
2. **Where the offender is a habitual criminal under Rule 5, Article 62, Revised Penal Code. (Art. 22, RPC)**

Different effects of repeal of penal law.

1. **If the repeal makes the *penalty lighter* in the new law, the new law shall be applied, except when the offender is a habitual delinquent or when the new law is made not applicable to pending action or existing causes of action.**
2. **If the new law imposes a *heavier penalty,* the law in force at the time of the commission of the offense shall be applied.**
3. **If the new law totally repeals the existing law so that the act which was penalized under the old law is no longer punishable, the crime is obliterated.**

When the repeal is absolute the offense ceases to be criminal.

People vs. Tamayo
(61 Phil. 225)

Facts: **The accused was prosecuted for and convicted of a violation of an ordinance. While the case was pending appeal, the ordinance was repealed by eliminating the section under which the accused was being prosecuted.**

Ruling: **The repeal is absolute. Where the repeal is absolute, and *not a reenactment or repeal by implication,* the offense ceases to be criminal. The accused must be acquitted.**

But repeal of a penal law by its reenactment, even without a saving clause, would not destroy criminal liability. (U.S. vs. Cuna, 12 Phil. 241)

When the new law and the old law penalize the same offense, the offender can be tried under the old law.

U.S. vs. Cuna
(12 Phil. 241)

Facts: **The accused was charged with selling opium in violation of Act No. 1461 of the Philippine Commission. During the pendency of the case, Act No. 1761 took effect repealing the former law, but both Act No. 1461 and Act No. 1761 penalize offenses against the opium laws.**

Ruling: **Where an Act of the Legislature which penalizes an offense repeals a former Act which penalized the same offense, such repeal does not have the effect of thereafter depriving the courts of jurisdiction to try, convict, and sentence offenders charged with violations of the old law prior to its repeal.**

The penalty prescribed by Act No. 1761 is *not more favorable* to the accused than that prescribed in Act No. 1461, the penalty in both Acts being the same.

When the repealing law fails to penalize the offense under the old law, the accused cannot be convicted under the new law.

People vs. Sindiong and Pastor
(77 Phil. 1000)

Facts: **The accused was prosecuted for neglecting to make a return of the sales of newspapers and magazines within the time prescribed by certain sections of the Revised Administrative Code. Said sections of the Revised Administrative Code were repealed by the National Internal Revenue Code which does not require the making of return of sales of newspapers and magazines.**

Ruling: **The court loses jurisdiction where the *repealing law wholly fails to penalize* the act defined and penalized as an offense in the old law. The accused, charged with violations of the old law prior to the repeal, cannot be legally prosecuted after such repeal.**

The provisions of said sections of the Revised Administrative Code were not reenacted, even substantially, in the National Internal Revenue Code.

A person erroneously accused and convicted under a repealed statute may be punished under the repealing statute.

The accused was charged with having failed to pay the salary of Cabasares whom he employed as master fisherman in his motor launch from June 26 to October 12, 1952. He was convicted under Com. Act No. 303, which was repealed by Rep. Act No. 602, approved on April 16, 1951, and became effective 120 days thereafter. The subject-matter of Com. Act No. 303 is entirely covered by Rep. Act No. 602 with which its provisions are inconsistent. It was held that the fact that the offender was erroneously accused and convicted under a statute which had already been repealed and therefore no longer existed at the time the act complained of was committed does not prevent conviction under the repealing statute which punishes the same act, provided the accused had an opportunity to defend himself against the charge brought against him. (People vs. Baesa, C.A., 56 O.G. 5466)

A new law which omits anything contained in the old law dealing on the same subject, operates as a repeal of anything not so included in the amendatory act.

The Agricultural Land Reform Code superseded the Agricultural Tenancy Law (except as qualified in Sections 4 and 35 of the Code). The Code instituted the leasehold system and abolished share tenancy subject to certain conditions indicated in Section 4 thereof. It is significant that Section 39 is not reproduced in the Agricultural Land Reform Code whose Section 172 repeals "all laws or part of any law inconsistent with" its provisions. Under the leasehold system, the prohibition against pre-threshing has no more *raisond' etre* because the lessee is obligated to pay a fixed rental as prescribed in Section 34 of the Agricultural Land Reform Code, or the Code of Agrarian Reforms, as redesignated in R.A. No. 6389 which took effect on September 10, 1971. Thus, the legal maxim, *cessante ratione legis cessat ipsa lex* (the reason for the law ceasing, the law itself also ceases), applies to this case. (People vs. Almuete, 69 SCRA 410)

Self-repealing law.

The anomalous act attributed to Pedro de los Reyes as described in the information is undoubtedly a violation of Republic Act No. 650 being a "material misrepresentation in any document required" by said Act "or the rules and regulations issued thereunder" and was committed while said Act was in force. It was punishable under Section 18 of said Act with fine or imprisonment, or both, and with forfeiture of the goods or commodities imported in violation thereof. (Sec. 18, R.A. No. 650) But since Rep. Act No. 650 expired by its own limitation on June 30, 1953, the forfeiture therein provided could no longer be subsequently enforced. And, as correctly stated by the Undersecretary of Justice in his Opinion No. 138, dated July 22, 1953, "the jurisdiction of the Commissioner of Customs to proceed with the forfeiture of goods and commodities imported in violation of the Import Control Law was lost and that all proceedings of forfeiture, as well as criminal actions pending on June 30, 1953, abated with the expiration of Republic Act No. 650."

The falsification or misrepresentation allegedly committed on the import license could no longer be a basis for the penalty of forfeiture at the time of the release of goods. Where an act expires by its own limitation, the effect is the same as though it had been repealed at the time of its expiration; and it is a recognized rule in this jurisdiction that the repeal of a law carries with it the deprivation of the courts of jurisdiction to try, convict and sentence persons charged with violation of the old law prior to the repeal. (People vs. Jacinto, C.A., 54 O.G. 7587)

Construction of penal laws.

1. **Penal laws are strictly construed against the Government and liberally in favor of the accused. (U.S. vs. Abad Santos, 36 Phil. 243; People vs. Yu Hai, 99 Phil. 728) The rule that penal statutes should be strictly construed against the State may be invoked only where the law is ambiguous and there is doubt as to its interpretation. Where the law is clear and unambiguous, there is no room for the application of the rule. (People vs. Gatchalian, 104 Phil. 664)**

2. **In the construction or interpretation of the provisions of the Revised Penal Code, the Spanish text is controlling,**

because it was approved by the Philippine Legislature in its Spanish text. (People vs. Manaba, 58 Phil. 665, 668)

People vs. Garcia
(94 Phil. 814, 815)

Facts: **Accused Garcia was prosecuted for having sold tickets for "Have" races of the Philippine Charity Sweepstakes, in violation of Act 4130, as amended by Commonwealth Act No. 301, which penalizes any person who, without being a duly authorized agent of the Philippine Charity Sweepstakes, sold tickets of said corporation. The tickets sold by the accused were different from, and not, the tickets issued by said corporation. The law relied upon does not include "llave" tickets for Sweepstakes races.**

Held: **The accused must be acquitted, the act imputed to him not being punished by Act 4130, as amended.**

No person should be brought within the terms of criminal statutes who is not clearly within them, nor should any act be pronounced criminal which is not clearly made so by the statute. (U.S. vs. Abad Santos, 36 Phil. 243, 246)

People vs. Mangulabnan
(99 Phil. 992, 998)

Facts: **During the robbery in a dwelling house, one of the culprits fired his gun upward in the ceiling, not knowing that there was a person in the ceiling of the house. The owner of the house who was up in the ceiling was hit by the slug that passed through it and was killed.**

Art. 294, par. 1, of the Revised Penal Code provides, according to its English text, that the crime is robbery with homicide "when by reason or on occasion of the robbery the crime of homicide *shall have been committed."*

The Spanish text of the same provision reads, as follows: *"Cuando con motivo o con ocasion del robo resultare homicidio."*

Held: **In view of the Spanish text which must prevail, the crime committed is robbery with homicide, even if the homicide supervened by mere accident.**

While the English text of Art. 294, par. 1, of the Revised Penal Code seems to convey the meaning that the homicide should be

intentionally committed, the Spanish text means that it is sufficient that the homicide shall have resulted, even if by mere accident.

Other cases of incorrect translation of the Spanish text into the English text.

1. *"sosteniendo combate"* **into "engaging in war" in Art. 135. (People vs. Geronimo, 100 Phil. 90, 95-96)**
2. *"sufriendo privacion de libertad"* **into "imprisonment" in Art. 157. (People vs. Abilong, 82 Phil. 172, 174)**
3. *"nuevo delito"* **into "another crime" in the headnote of Art. 160. (People vs. Yabut, 58 Phil. 499, 504)**
4. *"semilla alimenticia"* **into "cereal" in Art. 303. (People vs. Mesias, 65 Phil. 267, 268)**
5. **"filed" in the third paragraph of Art. 344 which is not found in the Spanish text. (People vs. Manaba, 58 Phil. 665, 668)**

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THE REVISED PENAL CODE

(Act No. 3815, as amended)

AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same.

PRELIMINARY ARTICLE - This law shall be known as The Revised Penal Code."

BOOK ONE

General Provisions Regarding the Date of Enforcement and the Application of the Provisions of this Code, and Regarding the Offenses, the Persons Liable and the Penalties

Preliminary Title

DATE OF EFFECTIVENESS AND APPLICATION OF THE PROVISIONS OF THIS CODE

History of the Revised Penal Code.

This Code is called "Revised Penal Code," because the Committee which was created by Administrative Order No. 94 of the Department

of Justice, dated October 18, 1927, composed of Anacleto Diaz, as chairman, and Quintin Paredes, Guillermo Guevara, Alex Reyes and Mariano H. de Joya, as members, was instructed to revise the old Penal Code, taking into consideration the existing conditions, the special penal laws and the rulings laid down by the Supreme Court.

The Committee did not undertake the codification of all penal laws in the Philippines. What the Committee did was merely to revise the old Penal Code and to include in the draft the other penal laws related to it.

The Revised Penal Code does not embody the latest progress of criminal science, as the results of the application of advanced and radical theories "still remain to be seen."

The old Penal Code, which was revised by the Committee, took effect in the Philippines on July 14, 1887, and was in force up to December 31, 1931.

In the case of *U.S. vs. Tamparong*, 31 Phil. 321, 323, the Supreme Court traced the history of the old Penal Code, as follows:

> "The royal order dated December 17, 1886, directed the execution of the royal decree of September 4, 1884, wherein it was ordered that the Penal Code in force in the Peninsula, as amended in accordance with the recommendations of the code committee, be published and applied in the Philippine Islands x x x. (This law) having been published in the Official Gazette of Manila on March 13 and 14, 1887, became effective four months thereafter."

The Revised Penal Code, as enacted by the Philippine Legislature, was approved on December 8, 1930. It took effect on January 1, 1932. Felonies and misdemeanors, committed prior to January 1, 1932, were punished in accordance with the Code or Acts in force at the time of their commission, as directed by Art. 366 of the Revised Penal Code.

The Revised Penal Code consists of two books.

The Revised Penal Code consists of two books, namely: (1) Book One, and (2) Book Two.

Book One consists of two parts: (a) basic principles affecting criminal liability (Arts. 1-20), and (b) the provisions on penalties including criminal and civil liability (Arts. 21-113).

In Book Two are defined felonies with the corresponding penalties, classified and grouped under fourteen different titles (Arts. 114-365).

Date of Effectiveness.

Article 1. *Time when Act takes effect.* — This Code shall take effect on the first day of January, nineteen hundred and thirty-two.

The Revised Penal Code is based mainly on principles of the classical school.

This Revised Penal Code continues, like the old Penal Code, to be based on the principles of the old or classical school, although some provisions of eminently positivistic tendencies (those having reference to the punishment of impossible crimes, juvenile delinquency, etc.) were incorporated in the present Code.

Two theories in Criminal Law.

There are two important theories in criminal law: (1) the classical theory, and (2) the positivist theory.

Characteristics of the classical theory.

1. The *basis of criminal liability* is human *free will* and the *purpose of the penalty is retribution.*
2. That man is essentially a moral creature with an absolutely free will to choose between good and evil, thereby placing more stress upon the *effect* or *result* of the felonious act than upon the man, the criminal himself.
3. It has endeavored to establish a *mechanical* and *direct proportion* between crime and penalty.

4. There is a *scant regard* to the human element. (Basic Principles, Rationale, p. 2, by the Code Commission on Code of Crimes)

Characteristics of the positivist theory.

1. That man is subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong, in spite of or contrary to his volition.

2. That crime is essentially a social and natural phenomenon, and as such, it cannot be treated and checked by the application of abstract principles of law and jurisprudence nor by the imposition of a punishment, fixed and determined *a priori*; but rather through the enforcement of individual measures in each particular case after a thorough, personal and individual investigation conducted by a competent body of psychiatrists and social scientists.

(Basic Principles, Rationale, pp. 2 and 3, by the Code Commission on Code of Crimes)

Art. 2. *Application of its provisions.* — Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship;

2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;

3. Should be liable for acts connected with the introduction into these Islands of the obligations and securities mentioned in the preceding number;

4. While being public officers or employees, should commit an offense in the exercise of their functions; or

5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

Scope of the application of the provisions of the Revised Penal Code.

The provisions of the Revised Penal Code shall be enforced *not only within* the Philippine Archipelago, but *also outside* of its jurisdiction in *certain cases*.

The five paragraphs of Art. 2 treat of the application of the Revised Penal Code to acts committed in the air, at sea, and even in a foreign country when such acts affect the political or economic life of the nation.

In what cases are the provisions of the Revised Penal Code applicable even if the felony is committed outside of the Philippines?

They are applicable in the following cases:

1. When the offender should commit an offense while on a Philippine ship or airship.

The Philippine vessel, although beyond three miles from the seashore, is considered part of the national territory.

Thus, any person who committed a crime on board a Philippine ship or airship while the same is outside of the Philippine territory can be tried before our civil courts for violation of the Penal Code.

But when the Philippine vessel or aircraft is *in the territory of a foreign country,* the crime committed on said vessel or aircraft is subject to the laws of that foreign country.

A Philippine vessel or aircraft must be understood as that which is registered in the Philippine Bureau of Customs.

It is the registration of the vessel or aircraft in accordance with the laws of the Philippines, not the citizenship of its owner, which makes it a Philippine ship or airship. A vessel or aircraft

which is unregistered or unlicensed does not come within the purview of paragraph No. 1 of Art. 2.

Thus, if a crime is committed ten miles from the shores of the Philippines on board a vessel belonging to a Filipino, but the same is not registered or licensed in accordance with the laws of the Philippines, paragraph No. 1 of Art. 2 is not applicable.

The Philippine court has no jurisdiction over the crime of theft committed *on the high seas* on board a vessel *not registered or licensed* in the Philippines. (U.S. vs. Fowler, 1 Phil. 614)

2. When the offender should forge or counterfeit any coin or currency note of the Philippines or obligations and securities issued by the Government.

Thus, any person who makes false or counterfeit coins (Art. 163) or forges treasury or bank notes or other obligations and securities (Art. 166) *in a foreign country* may be prosecuted before our civil courts for violation of Art. 163 or Art. 166 of the Revised Penal Code.

3. When the offender should be liable for acts connected with the introduction into the Philippines of the *obligations and securities* mentioned in the *preceding number.*

The reason for this provision is that the introduction of forged or counterfeited obligations and securities into the Philippines is as dangerous as the forging or counterfeiting of the same, to the economical interest of the country.

4. When the offender, while being a public officer or employee, should commit an offense in the exercise of his functions.

The crimes that may be committed in the exercise of public functions are direct bribery (Art. 210), indirect bribery (Art. 211), frauds against the public treasury (Art. 213), possession of prohibited interest (Art. 216), malversation of public funds or property (Art. 217), failure of accountable officer to render accounts (Art. 218), illegal use of public funds or property (Art. 220), failure to make delivery of public funds or property (Art. 221), and falsification by a public officer or employee committed with abuse of his official position. (Art. 171)

When any of these felonies is committed *abroad* by any of our public officers or employees while in the exercise of his functions, he can be prosecuted here.

5. When the offender should commit any of the crimes against the national security and the law of nations.

The crimes against the national security and the law of nations are treason (Art. 114), conspiracy and proposal to commit treason (Art. 115), espionage (Art. 117), inciting to war and giving motives for reprisals (Art. 118), violation of neutrality (Art. 119), correspondence with hostile country (Art. 120), flight to enemy's country (Art. 121), and piracy and mutiny on the high seas. (Art. 122)

The crimes punishable in the Philippines under Art. 2 are cognizable by the Regional Trial Court in which the charge is filed.

The crimes committed outside of the Philippines but punishable therein under Article 2 of the Revised Penal Code shall be cognizable by the Regional Trial Court in which the charge is first filed. (Rule 110, Sec. 15[d], Revised Rules of Criminal Procedure)

Regional Trial Courts (formerly CFI) have original jurisdiction over all crimes and offenses commited on the high seas or beyond the jurisdiction of any country on board a ship or warcraft of any kind registered or licensed in the Philippines in accordance with its laws. (Sec. 44[g], Judiciary Act of 1948, Rep. Act No. 296)

IMPORTANT WORDS AND PHRASES IN ART. 2

1. *"Except as provided in the treaties and laws of preferential application."*

This phrase means that while the general rule is that the provisions of the Revised Penal Code shall be enforced against any person who violates any of its provisions while living or sojourning in the Philippines, the exceptions to that rule may be provided by the *treaties and laws of preferential applications,* like the RP-US Visiting Forces Accord, the Military Bases Agreement between the Republic

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of the Philippines and the United States of America, and the provisions of Rep. Act No. 75.

2. *"its atmosphere."*

The sovereignty of the subjacent State, and therefore its penal laws extend to all the air space which covers its territory, subject to the right of way or easement in favor of foreign aircrafts.

3. *"interior waters."*

The phrase "interior waters" includes creeks, rivers, lakes and bays, gulfs, straits, coves, inlets and roadsteads lying wholly within the three-mile limit.

4. *"maritime zone."*

The States by means of treaties have fixed its length to three miles from the coastline, starting from the low water mark.

It includes those bays, gulfs, adjacent parts of the sea or recesses in the coastline whose width at their entrance is not more than twelve miles measured in a straight line from headland to headland, and all straits of *less than* six miles wide.

For those straits having *more than* that width, the space in the center outside of the marine league limits is considered as open sea. (Opinion of Attorney General, Jan. 18, 1912)

Crimes committed on board foreign merchant ship or airship.

Just as our merchant ship is an extension of our territory, foreign merchant ship is considered an extension of the territory of the country to which it belongs. For this reason, an offense commited *on the high seas* on board a *foreign merchant vessel* is not triable by our courts. (U.S. vs. Fowler, 1 Phil. 614)

Continuing offense on board a foreign vessel.

But a continuing crime committed on board a Norwegian merchant vessel sailing from Formosa to the Philippines, by failing

to provide stalls for animals in transit in violation of Act No. 55, is triable in the Philippines.

The offense of failing to provide suitable means for securing animals while transporting them on a (foreign) ship from a foreign port to a port of the Philippines is within the jurisdiction of the courts of the Philippines when the forbidden conditions existed during the time the ship was within territorial waters, regardless of the fact that the same conditions existed when the ship sailed from the foreign port and while it was on the high seas. (U.S. vs. Bull, 15 Phil. 7)

Offense committed on board a foreign merchant vessel while on Philippine waters is triable before our court.

Since the Philippine territory extends to three miles from the headlands, when a *foreign merchant vessel* enters this three-mile limit, the ship's officers and crew become subject to the jurisdiction of our courts. The space within 3 miles of a line drawn from the headlands which embrace the entrance to Manila Bay is within territorial waters. (U.S. vs. Bull, 15 Phil. 7, 17-18)

Rules as to jurisdiction over crimes committed aboard foreign merchant vessels.

There are two rules as to jurisdiction over crimes committed aboard merchant vessels while in the territorial waters of another country.

French Rule. — Such crimes are not triable in the courts of that country, unless their commission affects the peace and security of the territory or the safety of the state is endangered.

English Rule. — Such crimes are triable in that country, unless they merely affect things within the vessel or they refer to the internal management thereof.

In this country, we observe the English Rule.

According to the French theory and practice, matters happening on board a merchant ship which do not concern the tranquility of the port or persons foreign to the crew, are justiceable only by the courts of the country to which the vessel belongs. The French courts therefore claim exclusive jurisdiction over crimes committed on board French merchant vessels in foreign ports by one member of the crew against

another. Such jurisdiction has never been admitted or claimed by Great Britain as a right, although she has frequently conceded it by treaties. (U.S. vs. Bull, 15 Phil. 7, 14)

Do the Philippine courts have jurisdiction over the crime of homicide committed on board a foreign merchant vessel by a member of the crew against another?

Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished by the proper authorities of the local jurisdiction.

It may not be easy at all times to determine to which of the two jurisdictions a particular act of disorder belongs. Much will undoubtedly depend on the attending circumstances of the particular case, but all must concede that felonious homicide is a subject for the local jurisdiction, and that if the proper authorities are proceeding with the case in the regular way, the consul has no right to interfere to prevent it. (Mali and Wildenhus vs. Keeper of the Common Jail, 120 U.S. 1, cited in People vs. Wong Cheng, 46 Phil. 729, 731-732)

Crimes not involving a breach of public order committed on board a foreign merchant vessel in transit not triable by our courts.

Mere possession of opium aboard a foreign merchant vessel in transit is not triable in Philippine courts, because that fact alone does not constitute a breach of public order. The reason for this ruling is that mere possession of opium on such a ship, without being used in our territory, does not bring about in this country those disastrous effects that our law contemplates avoiding. But said courts acquire jurisdiction when the tins of opium are *landed* from the vessel on Philippine soil. Landing or using opium is an open violation of the laws of the Philippines. (U.S. vs. Look Chaw, 18 Phil. 573, 577-578)

When the foreign merchant vessel is *not in transit* because the Philippines is its terminal port, the person in possession of opium on board that vessel is liable, because he may be held guilty of illegal importation of opium. (U.S. vs. Ah Sing, 36 Phil. 978, 981-982)

Smoking opium constitutes a breach of public order.

Smoking opium aboard an English vessel while anchored two and one-half miles in Manila Bay constitutes a breach of public order, because the primary object of the law in punishing the use of opium is to protect the inhabitants of this country against the disastrous effects entailed by the use of such drug. And to smoke opium within our territorial limits, even though aboard a foreign merchant ship, is certainly a breach of the public order here established, because it causes such drug to produce its pernicious effects within our territory. Philippine courts have jurisdiction over crimes constituting a breach of public order aboard merchant vessels anchored in Philippine jurisdictional waters. (People vs. Wong Cheng, 46 Phil. 729, 733)

Philippine courts have no jurisdiction over offenses committed on board foreign warships in territorial waters.

In case vessels are in the ports or territorial waters of a foreign country, a distinction must be made between *merchant ships* and *warships;* the former are more or less subjected to the territorial laws. (See U.S. vs. Bull, 15 Phil. 7; U.S. vs. Look Chaw, 18 Phil. 573; and People vs. Wong Cheng, 46 Phil. 729)

Warships are always reputed to be the territory of the country to which they belong and cannot be subjected to the laws of another state. A United States Army transport is considered a warship. (U.S. vs. Fowler, 1 Phil. 614)

Extra-territorial application of Republic Act No. 9372.

Rep. Act No. 9372, otherwise known as the "Human Security Act of 2007" which was passed into law on 6 March 2007 has extra-territorial application.

Section 58 of Rep. Act No. 9372 provides that subject to the provision of an existing treaty of which the Philippines is a signatory and to any contrary provision of any law of preferential application, the provisions of the Act shall apply:

(1) to individual persons who commit any of the crimes defined and punished in the Act within the terrestrial domain, interior waters, maritime zone and airspace of the Philippines;

(2) to individual persons who, although physically outside the territorial limits of the Philippines, commit, conspire of plot any of the crimes defined and punished in the Act inside the territorial limits of the Philippines;

(3) to individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes on board Philippine ship or airship;

(4) to individual persons who commit any of said crimes within any embassy, consulate or diplomatic premises belonging to or occupied by the Philippine government in an official capacity;

(5) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes against Philippine citizens or persons of Philippine descent, where their citizenship or ethnicity was a factor in the commission of the crime; and

(6) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes directly against the Philippine government.

Title One

FELONIES AND CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

Chapter One

FELONIES

Art. 3. ***Definition.*** **— Acts and omissions punishable by law are felonies** ***(delitos).***

Felonies are committed not only by means of deceit ***(dolo)*** **but also by means of fault** ***(culpa).***

There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

Felonies, defined.

Felonies are acts and omissions punishable by the Revised Penal Code.

Elements of felonies.

The elements of felonies in general are:

1. **That there must be an act or omission.**
2. **That the act or omission must be punishable by the Revised Penal Code.**
3. **That the act is performed or the omission incurred by means of** ***dolo*** **or** ***culpa.*** **(People vs. Gonzales, G.R. No. 80762, March 19, 1990, 183 SCRA 309, 324)**

IMPORTANT WORDS AND PHRASES IN ART. 3.

Meaning of the word "act."

By act must be understood any bodily movement tending to produce some effect in the external world, it being unnecessary that the same be actually produced, as the *possibility* of its production is sufficient. (See People vs. Gonzales, *supra)*

But the act must be one which is defined by the Revised Penal Code as constituting a felony; or, at least, an overt act of that felony, that is, an external act which has direct connection with the felony intended to be committed. (See Art. 6)

Example of felony by performing an act.

A took the watch of B with intent to gain and without the consent of the latter. The *act of taking* the watch of B, with intent to gain, constitutes the crime of theft.

Only external act is punished.

The act must be *external,* because internal acts are beyond the sphere of penal law. Hence, a criminal thought or a mere intention, no matter how immoral or improper it may be, will never constitute a felony.

Thus, even if A entertains the idea of killing B, as long as he does not commence the commission of the crime directly by overt act, A is not criminally liable.

Meaning of the word "omission."

By omission is meant *inaction,* the failure to perform a positive duty which one is bound to do. There must be a law requiring the doing or performance of an act.

Examples of felony by omission:

1. **Anyone who *fails* to render assistance to any person whom he finds in an uninhabited place wounded or in danger of dying, is liable for abandonment of persons in danger. (Art. 275, par. 1)**

2. An officer entrusted with collection of taxes who voluntarily *fails* to issue a receipt as provided by law, is guilty of illegal exaction. (Art. 213, par. 2[b])

3. Every person owing allegiance to the Philippines, without being a foreigner, and having knowledge of any conspiracy against the government, who *does not disclose* and make known the same to the proper authority, is liable for misprision of treason. (Art. 116)

It will be noted that in felonies by omission, there is a law requiring a certain act to be performed and the person required to do the act fails to perform it.

The omission must be punishable by law.

Because *there is no law* that punishes a person who does not report to the authorities the commission of a crime which he witnessed, the *omission* to do so *is not a felony.*

People vs. Silvestre and Atienza
(56 Phil. 353)

Facts: Martin Atienza was convicted as principal by direct participation and Romana Silvestre as accomplice of the crime of arson by the Court of First Instance.

On the night of November 25, 1930, while Nicolas de la Cruz and his wife, Antonia de la Cruz, were gathered together with the appellants herein after supper, Martin Atienza told said couple to take their furniture out of the house because he was going to set fire to it. Upon being asked by Nicolas and Antonia why he wanted to set fire to the house, he answered that it was the only way he could be revenged upon the people of Masocol, who, he said, had instigated the charge of adultery against him and his co-defendant, Romana Silvestre. As Martin Atienza was at that time armed with a pistol, no one dared say anything to him, not even Romana Silvestre, who was about a meter away from her co-defendant. Alarmed at what Martin Atienza had said, the couple left the house at once to communicate with the barrio lieutenant, Buenaventura Ania, as to what they had just heard Martin Atienza say; but they had hardly gone a hundred arms' length when they heard cries of "Fire! Fire!" Turning back they saw their home in flames. The fire destroyed about forty-eight houses.

Romana listened to her co-defendant's threat without raising a protest, and did not give the alarm when the latter set fire to the house.

Held: **Mere passive presence at the scene of another's crime, mere silence and failure to give the alarm, without evidence of agreement or conspiracy, is not punishable.**

Romana Silvestre was acquitted.

"Punishable by law."

This is the other element of a felony. This is based upon the maxim, *"nullum crimen, nulla poena sine lege,"* that is, there is no crime where there is no law punishing it.

The phrase "punished by law" should be understood to mean "punished by the Revised Penal Code" and not by a special law. That is to say, the term "felony" means acts and omissions punished in the Revised Penal Code, to distinguish it from the words "crime" and "offense" which are applied to infractions of the law punished by special statutes.

Classification of felonies according to the means by which they are committed.

Art. 3 classifies felonies, according to the means by which they are committed, into (1) intentional felonies, and (2) culpable felonies.

Thus, the second paragraph of Art. 3 states that felonies are committed not only by *means* of deceit *(dolo)* but also by *means* of fault *(culpa).*

Intentional felonies and culpable felonies distinguished.

In intentional felonies, the act or omission of the offender is *malicious.* In the language of Art. 3, the act is performed with deliberate intent (with malice). The offender, in performing the act or in incurring the omission, *has the intention to cause an injury* to another. In culpable felonies, the act or omission of the offender is *not malicious.* The injury caused by the offender to another person is "unintentional, it being simply the incident of another act performed *without malice."* (People vs. Sara, 55 Phil. 939) As stated in Art. 3, the

wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

Felonies committed by means of *dolo* or with malice.

The word "deceit" in the second paragraph of Art. 3 is not the proper translation of the word *"dolo." Dolus* is equivalent to malice, which is the *intent to do an injury* to another. (I Wharton's Criminal Law 180)

When the offender, in performing an act or in incurring an omission, has the intention to do an injury to the *person, property, or right* of another, such offender acts with malice. If the act or omission is punished by the Revised Penal Code, he is liable for intentional felony.

Most of the felonies defined and penalized in Book II of the Revised Penal Code are committed by means of *dolo* or with malice. There are few felonies committed by means of fault or *culpa.* Art. 217 punishes malversation through negligence. Art. 224 punishes evasion through negligence. Art. 365 punishes acts by imprudence or negligence, which, had they been intentional, would constitute grave, less grave or light felonies.

There are crimes which cannot be committed through imprudence or negligence, such as, murder, treason, robbery, and malicious mischief.

Felonies committed by means of fault or *culpa.*

Between an act performed voluntarily and intentionally, and another committed unconsciously and quite unintentionally, there exists another, *performed without malice,* but at the same time punishable, though in a lesser degree and with an equal result, an intermediate act which the Penal Code qualifies as imprudence or negligence.

A person who caused an injury, without intention to cause an evil, may be held liable for culpable felony.

The defendant, who was not a medical practitioner, tied a girl, wrapped her feet with rags saturated with petroleum and thereafter set them on fire, causing injuries. His defense was that he undertook

to render medical assistance in good faith and to the best of his ability to cure her of ulcer. It was held that while there was no intention to cause an evil but to provide a remedy, the defendant was liable for physical injuries through imprudence. (U.S. vs. Divino, 12 Phil. 175, 190)

Imprudence, negligence, lack of foresight or lack of skill.

Imprudence indicates a *deficiency of action.* Negligence indicates a *deficiency of perception.* If a person fails to take the necessary precaution to avoid injury to person or damage to property, there is imprudence. If a person *fails* to pay proper attention and to use due diligence in foreseeing the injury or damage impending to be caused, there is negligence. Negligence usually involves lack of foresight. Imprudence usually involves lack of skill.

Reason for punishing acts of negligence *(culpa).*

A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for his acts which no one would have performed except through culpable abandon. Otherwise, his own person, rights and property, and those of his fellow beings, would ever be exposed to all manner of danger and injury. (U.S. vs. Maleza, 14 Phil. 468, 470)

In felonies committed by means of *dolo* or with malice and in felonies committed by means of fault or *culpa,* the acts or omissions are voluntary.

The adjective *voluntary* used in the old Penal Code is suppressed in the definition of felonies in Art. 3 of the Revised Penal Code. This omission does not mean that an involuntary act may constitute a felony. As in the old Penal Code, the act or omission *must be voluntary* and punishable by law to constitute a felony. Art. 3 classifies felonies into (1) *intentional felonies,* and (2) *culpable felonies.* An intentional felony is committed when the act is performed with *deliberate intent,* which must necessarily be voluntary.

On the other hand, in culpable felony, which is committed when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill, the act is also *voluntary.*

The only difference between intentional felonies and culpable felonies is that, in the first, the offender acts *with* malice; whereas, in the second, the offender acts *without* malice.

The definition of reckless imprudence in Art. 365 says "reckless imprudence consists in *voluntarily,* but without malice, doing or failing to do an act from which material damage results."

Thus, a hunter who seemed to have seen with his lantern something like the eyes of a deer about fifty meters from him and then shot it, but much to his surprise, on approaching what he thought was a deer, it proved to be his companion, performed a *voluntary* act in discharging his gun, although the resulting homicide is *without malice,* because he did not have the intent to kill the deceased. But the hunter, knowing that he had two companions, should have exercised all the necessary diligence to avoid every undesirable accident, such as the one that unfortunately occurred on the person of one of his companions. The hunter was guilty of the crime of homicide through reckless imprudence (People vs. Ramirez, 48 Phil. 206)

A criminal act is presumed to be voluntary. Fact prevails over assumption, and in the absence of indubitable explanation, the act must be declared voluntary and punishable. (People vs. Macalisang, 22 SCRA 699)

Acts executed negligently are voluntary.

People vs. Lopez
(C.A. 44 O.G. 584)

Facts: **Lopez was driving a truck. A girl was crossing the street during a torrential rain. The girl was struck down by the truck. During the trial, Lopez claimed that he had no intention of causing injury to the girl.**

Held: **Lopez was not accused of intentional homicide, but of having caused her death by reckless imprudence, which implies lack of malice and criminal intent. Acts executed negligently are voluntary, although done without malice or criminal design. In this case, Lopez was *not compelled* to refrain or *prevented* from taking the precaution necessary to avoid injury to persons.**

When there is compulsion or prevention by force or intimidation, there is no voluntariness in the act.

Three reasons why the act or omission in felonies must be voluntary.

1. The Revised Penal Code continues to be based on the Classical Theory, according to which the basis of criminal liability is human *free will.*

2. Acts or omissions punished by law are always deemed voluntary, since man is a rational being. One must prove that his case falls under Art. 12 to show that his act or omission is not voluntary.

3. In felonies by *dolo,* the act is performed with deliberate intent which must necessarily be voluntary; and in felonies by *culpa,* the imprudence consists in *voluntarily* but without malice, doing or failing to do an act from which material injury results.

Therefore, in felonies committed by means of *dolo,* as well as in those committed by means of *culpa,* the act performed or the omission incurred by the offender is voluntary, but the intent or malice in intentional felonies is replaced by imprudence, negligence, lack of foresight or lack of skill in culpable felonies.

Requisites of *dolo* or malice.

In order that an *act or omission* may be considered as having been *performed* or *incurred with deliberate intent,* the following requisites must concur:

(1) He must have FREEDOM while doing an act or omitting to do an act;

(2) He must have INTELLIGENCE while doing the act or omitting to do the act;

(3) He must have INTENT while doing the act or omitting to do the act.

1. *Freedom.* When a person acts without freedom, he is no longer a human being but a tool; his liability is as much as that of the knife that wounds, or of the torch that sets fire, or of the key that opens a door, or of the ladder that is placed against the wall of a house in committing robbery.

Thus, a person who acts under the compulsion of an irresistible force is exempt from criminal liability. (Art. 12, par. 5)

So also, a person who acts under the impulse of an uncontrollable fear of an equal or greater injury is exempt from criminal liability (Art. 12, par. 6)

2. *Intelligence.* Without this power, necessary to *determine the morality of human acts,* no crime can exist. Thus, the imbecile or the insane, and the infant under nine years of age as, well as the minor over nine but less than fifteen years old and acting without discernment, have no criminal liability, because they act without intelligence. (Art. 12, pars. 1, 2 and 3)

3. *Intent.* Intent to commit the act with malice, being purely a mental process, is presumed and the presumption arises from the proof of the *commission of an unlawful act.*

All the three requisites of voluntariness in intentional felony must be present, because "a voluntary act is a *free, intelligent,* and *intentional act.*" (U.S. vs. Ah Chong, 15 Phil. 488, 495)

Intent presupposes the exercise of freedom and the use of intelligence.

One who acts without freedom necessarily has no intent to do an injury to another. One who acts without intelligence has no such intent.

But a person who acts with freedom and with intelligence may not have the intent to do an injury to another. Thus, a person who caused an injury by mere accident had freedom and intelligence, but since he had no fault or intention of causing it, he is not criminally liable. (Art. 12, par. 4, Revised Penal Code)

The existence of intent is shown by the overt acts of a person.

Where the defendant carried away articles belonging to another and concealed them from the owner and from the police authorities, denying having them in his possession, in the absence of a satisfactory explanation, it may be inferred that he acted with intent of gain. Intent is a mental state, the existence of which is shown by the overt acts of a person. (Soriano vs. People, 88 Phil. 368, 374)

Intent to kill is difficult to prove, it being a mental act. But it can be deduced from the external acts performed by a person. When the acts naturally produce a definite result, courts are slow in concluding that some other result was intended. (U.S. vs. Mendoza, 38 Phil. 691-693; People vs. Mabug-at, 51 Phil. 967, cited in People vs. Lao, 11 C.A. Rep. 829)

Criminal intent is presumed from the commission of an unlawful act.

People vs. Sia Teb Ban
(54 Phil. 52, 53)

Facts: The accused took a watch without the owner's consent. He was prosecuted for theft. The accused alleged as a defense that the prosecution failed to prove the intent to gain on his part, an element of the crime of theft.

Held: From the felonious act (taking another's property) of the accused, *freely* and *deliberately* executed, the moral and legal presumption of a criminal and injurious intent arises conclusively and indisputably, in the absence of evidence to the contrary.

(See: People vs. Renegado, No. L-27031, May 31, 1974, 57 SCRA 275, 286)

Criminal intent and the will to commit a crime are always presumed to exist on the part of the person who executes an act which the law punishes, unless the contrary shall appear. (U.S. vs. Apostol, 14 Phil. 92, 93)

But the presumption of criminal intent does not arise from the proof of the commission of an act which is not unlawful.

U.S. vs. Catolico
(18 Phil. 504, 508)

Facts: The accused was a justice of the peace. He rendered decisions in certain cases, each one for damages resulting from a breach of contract, from which the defendants appealed. As required by law, the defendants deposited ₱16.00 and a bond of ₱50.00 for each case. It appeared that the sureties on the said bonds were insolvent and that the defendants did not present new bonds within the time fixed

by the accused as justice of the peace. Upon petition of the plaintiffs, the accused dismissed the appeals and ordered said sums attached and delivered to the plaintiffs in satisfaction of the judgment. The accused was prosecuted for malversation (a felony punishable now under Art. 217).

Held: **The act of the accused, in permitting the sums deposited with him to be attached in satisfaction of the judgment rendered by him, was *not unlawful.* Everything he did was done in good faith under the belief that he was acting judiciously and correctly. The act of a person does not make him a criminal, unless his mind be criminal.**

The maxim is: *actus non facit reum, nisi mens sit rea* — a crime is not committed if the mind of the person performing to act complained be innocent. It is true that a presumption of criminal intent may arise from proof of the commission of a criminal act; and the general rule is that if it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention and that it is for the accused to rebut this presumption. But it must be borne in mind that the act from which such presumption springs must be a criminal act. In the case at bar, the act was not criminal.

Where the facts proven are accompanied by other facts which show that the act complained of was not unlawful, the presumption of criminal intent does not arise.

There is no felony by dolo if there is no intent.

The presumption of criminal intent from the commission of an unlawful act may be rebutted by proof of lack of such intent.

Thus, a minor who married without parental consent, in violation of Art. 475 of the old Penal Code which punished "any minor who shall contract marriage without the consent of his or her parents," was not liable criminally, because she proved that she acted without malice. The defendant minor testified that she believed that she was born in 1879; that so her parents gave her to understand ever since her tenderest age; and that she did not ask them concerning her age, because they had already given her to so understand since her childhood. The presumption of malice was rebutted by her testimony. One cannot be convicted under Article 475 (similar to Art. 350 of the Revised Penal Code) when by reason of a *mistake of fact* there does

not exist the intention to commit the crime. (U.S. vs. Peñalosa, 1 Phil. 109)

Also, a person who suddenly got up in his sleep, left the room with a bolo in his hand, and upon meeting his wife who tried to stop him, wounded her in the abdomen and attacked others, is not criminally liable, because his acts were not voluntary, for having acted in a dream; he had no criminal intent. (People vs. Taneo, 58 Phil. 255)

People vs. Beronilla
(96 Phil. 566)

Facts: The accused was a military major of La Paz, Abra, in 1944. He received an order from the regional commander of an infantry, Philippine Army, operating as a guerrilla unit, to prosecute Arsenio Borjal for treason and to appoint a jury of 12 bolomen. The jury found Borjal guilty of the charge and the recommendation of the jury was approved by the Headquarters of the guerrilla unit. For the execution of Borjal, the accused was prosecuted for murder.

The accused acted upon orders of superior officers which turned out to be illegal. As a military subordinate, he could not question the orders of his superior officers. He obeyed the orders in good faith, without being aware of their illegality, without any fault or negligence on his part.

Held: Criminal intent was not established. To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a *criminal intent,* or by such *negligence* or *indifference to duty* or *to consequences,* as in law, is *equivalent to criminal intent.* (U.S. vs. Catolico, 18 Phil. 507) The accused was acquitted.

Mistake of fact.

While ignorance of the law excuses no one from compliance therewith *(ignorantia legis non excusat),* ignorance or mistake of fact relieves the accused from criminal liability *(ignorantia facti excusat).*

Mistake of fact is a misapprehension of fact on the part of the person who caused injury to another. He is not, however, criminally liable, because he did not act with criminal intent.

An honest mistake of fact destroys the presumption of criminal intent which arises upon the commission of a felonious act. (People

vs. Coching, *et al.*, C.A., 52 O.G. 293, citing People vs. Oanis, 74 Phil. 257)

Requisites of mistake of fact as a defense:

1. That the act done would have been lawful had the facts been as the accused believed them to be.
2. That the intention of the accused in performing the act should be lawful.
3. That the mistake must be without fault or carelessness on the part of the accused.

Lack of intent to commit a crime may be inferred from the facts of the case.

The defendant swore to Civil Service Form No. 1 before a notary public that he was never accused of a violation of any law before any court or tribunal, when in truth and in fact he had been charged with the offense of unjust vexation in a criminal case before the Justice of the Peace Court. He was prosecuted for the crime of perjury, for having falsely sworn that he was never accused of any offense. When he testified in his defense, the defendant claimed that he answered "No" to the question whether he had been accused of a violation of any law, because he relied on the opinion of the provincial fiscal that unjust vexation does not involve moral turpitude and he thought it was not necessary to mention it in Civil Service Form No. 1. It appeared that he had been previously prosecuted twice for perjury for having answered "No" to the same question, and he was acquitted in one case and the information in the other was dismissed. It was held that in view of the factual background of the case, the act of the defendant in answering "No" to the question can be considered only as an error of judgment and did not indicate an intention to commit the crime of perjury. The defendant was not liable for the crime of perjury, because he had no intent to commit the crime. (People vs. Formaran, C.A., 70 O.G. 3786)

In mistake of fact, the act done would have been lawful, had the facts been as the accused believed them to be.

In other words, the act done would *not* constitute a *felony* had the facts been as the accused believed them to be.

Thus, in the cases of *U.S. vs. Peñalosa* and *People vs. Beronilla, supra,* the accused in the first case believed that she was already of age when she contracted marriage and the accused in the second case believed that the orders of his superior officer were legal. Had they been the real facts, there would not be any felony committed. But even if they were not the real facts, since the accused acted in good faith, they acted without intent. Hence, their acts were involuntary.

In mistake of fact, the act done by the accused would have constituted (1) a justifying circumstance under Art. 11, (2) an absolutory cause, such as that contemplated in Art. 247, par. 2, or (3) an involuntary act.

U.S. vs. Ah Chong
(15 Phil. 488)

Facts: Ah Chong was a cook in Ft. McKinley. He was afraid of bad elements. One evening, before going to bed, he locked himself in his room by placing a chair against the door. After having gone to bed, he was awakened by someone trying to open the door. He called out twice, "Who is there," but received no answer. Fearing that the intruder was a robber, he leaped from his bed and called out again, "If you enter the room I will kill you." But at that precise moment, he was struck by the chair that had been placed against the door, and believing that he was being attacked he seized a kitchen knife and struck and fatally wounded the intruder who turned out to be his roommate.

Held: Ah Chong must be acquitted because of mistake of fact.

Had the facts been as Ah Chong believed them to be, he would have been justified in killing the intruder under Article 11, paragraph 1, of the Revised Penal Code, which requires, to justify the act, that there be —

(1) unlawful aggression on the part of the person killed, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself. If the intruder was really a robber, forcing his way into the room of Ah Chong, there would have been unlawful aggression on the part of the intruder. There would have been a necessity on the part of Ah Chong to defend himself and/or his home. The knife would have been a reasonable means to prevent or repel such aggression. And Ah

Chong gave no provocation at all. Under Article 11 of the Revised Penal Code, there is nothing unlawful in the intention as well as in the act of the person making the defense.

(See: People vs. Mamasalaya, No. L-4911, Feb. 10, 1953, 92 Phil. 639, 654)

People vs. Oanis
(74 Phil. 257)

Facts: **Chief of Police Oanis and his co-accused Corporal Galanta were under instructions to arrest one Balagtas, a notorious criminal and escaped convict, and if overpowered, to get him dead or alive. Proceeding to the suspected house, they went into a room and on seeing a man sleeping with his back towards the door, simultaneously fired at him with their revolvers, without first making any reasonable inquiry as to his identity. The victim turned out to be an innocent man, Tecson, and not the wanted criminal.**

Held: **Both accused are guilty of murder.**

Even if it were true that the victim was the notorious criminal, the accused would not be justified in killing him while the latter was sleeping.

In apprehending even the most notorious criminal, the law does not permit the captor to kill him. It is only when the fugitive from justice is determined to fight the officers of the law who are trying to capture him that killing him would be justified.

The mistake must be without fault or carelessness on the part of the accused.

Ah Chong case and Oanis case distinguished.

In the *Ah Chong* case, there is an innocent mistake of fact without any fault or carelessness on the part of the accused, because, having no time or opportunity to make any further inquiry, and being pressed by circumstances to act immediately, the accused had no alternative but to take the facts as they then appeared to him, and such facts justified his act of killing the deceased.

In the *Oanis* case, the accused found no circumstances whatever which would press them to immediate action. The person in the room

being then asleep, the accused had ample time and opportunity to ascertain his identity without hazard to themselves, and could even effect a bloodless arrest if any reasonable effort to that end had been made, as the victim was unarmed. This, indeed, is the only legitimate course of action for the accused to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight, but to arrest, and to get him dead or alive only if resistance or aggression is offered by him.

Hence, the accused in the *Oanis* case were at fault when they shot the victim in violation of the instructions given to them. They were also careless in not verifying first the identity of the victim.

Lack of intent to kill the deceased, because his intention was to kill another, does not relieve the accused from criminal responsibility.

That the accused made a mistake in killing one man instead of another cannot relieve him from criminal responsibility, he having acted maliciously and wilfully. (People vs. Gona, 54 Phil. 605)

In mistake of fact, the intention of the accused in performing the act should be lawful.

Thus, in *error in personae* or mistake in the identity of the victim, the principle of mistake of fact does not apply.

Example: A wanted to kill B by shooting him with a pistol. Thinking that the person walking in dark alley was B, A shot the person. It turned out that the person killed was C, the brother of A. A had no intention to kill C. Since the act and intention of A in firing his pistol are *unlawful,* A cannot properly invoke the principle of mistake of fact in his defense.

No crime of resistance when there is a mistake of fact.

One who resists an arrest, believing that the peace officer is a bandit, but who submits to the arrest immediately upon being informed by the peace officer that he is a policeman, is not guilty of the crime of resistance to an agent of the authorities under Art. 151 of the Revised Penal Code, because of mistake of fact. (See U.S. vs. Bautista, 31 Phil. 308)

When the accused is negligent, mistake of fact is not a defense.

People vs. De Fernando
(49 Phil. 75)

Facts: **The accused, a policeman, was informed that three convicts had escaped. In the dark, he saw a person going up the stairs of a house, carrying a bolo and calling for someone inside. The daughter of the owner of the house was at that time with the accused who fired a shot in the air. As the unknown person continued to ascend the stairs and believing that he was one of the escaped convicts, the accused fired directly at the man who turned out to be the nephew of the owner of the house.**

Held: **He is guilty of homicide through reckless negligence. The victim called for someone in the house. That fact indicated that he was known to the owner of the house. The accused should have inquired from the daughter of the owner of the house as to who the unknown person might be.**

The defense of mistake of fact is untenable when the accused is charged with a culpable felony. In mistake of fact, what is involved is lack of intent on the part of the accused. In felonies committed through negligence, there is no intent to consider, as it is replaced by imprudence, negligence, lack of foresight or lack of skill.

Criminal intent is necessary in felonies committed by means of *dolo.*

Criminal intent **is necessary in felonies committed by means of *dolo* because of the legal maxims —**

Actus non facit reum nisi mens sit rea, **"the act itself does not make a man guilty unless his intention were so."**

Actus me invito factus non est meus actus, **"an act done by me against my will is not my act." (U.S. vs. Ah Chong, 15 Phil. 499)**

Distinction between general intent and specific intent.

In felonies committed by *dolus*, the third element of voluntariness is a general intent; whereas, in some particular felonies, proof of *particular specific intent* is required. Thus, in certain crimes against

property, there must be the intent to gain (Art. 293 — robbery; Art. 308 — theft). Intent to kill is essential in frustrated or attempted homicide (Art. 6 in relation to Art. 249); in forcible abduction (Art. 342), the specific intent of lewd designs must be proved.

When the accused is charged with intentional felony, absence of criminal intent is a defense.

In the absence of criminal intent, there is no liability for intentional felony. All reasonable doubt intended to demonstrate *error* and *not crime* should be indulged in for the benefit of the accused. (People vs. Pacana, 47 Phil. 48)

If there is only error on the part of the person doing the act, he does not act with malice, and for that reason he is not criminally liable for intentional felony.

Criminal intent is replaced by negligence and imprudence in felonies committed by means of *culpa.*

In felonies committed by means of *culpa,* since the doing of or failing to do an act must also be voluntary, there must be freedom and intelligence on the part of the offender, but the requisite of criminal intent, which is required in felonies by *dolo,* is replaced by the requisite of imprudence, negligence, lack of foresight, or lack of skill.

Such negligence or indifference to duty or to consequence is, in law, equivalent to criminal intent. (U.S. vs. Catolico, 18 Phil. 507)

But in felonies committed by means of *culpa,* the mind of the accused is not criminal. However, his act is wrongful, because the injury or damage caused to the injured party results from the imprudence, negligence, lack of foresight or lack of skill of the accused.

Therefore, in order that the act or omission in felonies committed by means of fault or *culpa* may be considered voluntary, the following requisites must concur:

(1) He must have FREEDOM while doing an act or omitting to do an act;

(2) He must have INTELLIGENCE while doing the act or omitting to do the act;

(3) He is IMPRUDENT, NEGLIGENT or LACKS FORESIGHT or SKILL while doing the act or omitting to do the act.

In culpable felonies, the injury caused to another should be unintentional, it being simply the incident of another act performed without malice.

People vs. Guillen
(85 Phil. 307)

Facts: Guillen, testifying in his own behalf, stated that he performed the act voluntarily; that his purpose was to kill the President, but that it did not make any difference to him if there were some people around the President when he hurled that bomb, because the killing of those who surrounded the President was tantamount to killing the President, in view of the fact that those persons, being loyal to the President, were identified with the latter. In other words, although it was not his main intention to kill the persons surrounding the President, he felt no compunction in killing them also in order to attain his main purpose of killing the President.

Held: The facts do not support the contention of counsel for appellant that the latter is guilty only of homicide through reckless imprudence in regard to the death of Simeon Varela and of less serious physical injuries in regard to Alfredo Eva, Jose Fabio, Pedro Carillo and Emilio Maglalang.

In throwing the hand grenade at the President with the intention of killing him, the appellant acted with malice. He is therefore liable for all the consequences of his wrongful act; for in accordance with Art. 4 of the Revised Penal Code, criminal liability is incurred by any person committing a felony *(delito)* although the wrongful act done be different from that which he intended. In criminal negligence, the injury caused to another should be unintentional, it being simply the incident of another act performed without malice. (People vs. Sara, 55 Phil. 939) In the words of Viada, "in order that an act may be qualified as imprudence it is necessary that neither malice nor intention to cause injury should intervene; where such intention exists, the act should be qualified by the felony it has produced even though it may not have been the intention of the actor to cause an evil of such gravity as that produced." (Viada's comment on the Penal Code, Vol. 7, 5th ed., p. 7) And, as was held by this court, deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. (People vs. Nanquil, 43 Phil. 232)

Mistake in the identity of the intended victim is not reckless imprudence.

A deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. Where such an unlawful act is willfully done, a mistake in the identity of the intended victim cannot be considered as reckless imprudence. (People vs. Guillen, 85 Phil. 307, citing People vs. Nanquil, 43 Phil. 232, and People vs. Guia, 54 Phil. 605)

A person causing damage or injury to another, without malice or fault, is not criminally liable under the Revised Penal Code.

Since felonies are committed either by means of deceit *(dolo)* or by means of fault *(culpa),* if there is neither malice nor negligence on the part of the person causing damage or injury to another, he is not criminally liable under the Revised Penal Code.

In such case, he is exempt from criminal liability, because he causes an injury by mere accident, without fault or intention of causing it. (Art. 12, par. 4, Revised Penal Code)

Illustration:

Three men, Ramos, Abandia and Catangay, were hunting deer at night. Ramos carried a lantern fastened to his forehead. Abandia and Catangay were following him. They saw a deer. Catangay whose gun was already cocked and aimed at the deer stumbled against an embankment which lay between him and Ramos. His gun was accidentally discharged, hitting and killing Ramos. It was held that Catangay was not criminally liable because he had *no criminal intent and was not negligent.* (U.S. vs. Catangay, 28 Phil. 490)

The act performed must be lawful.

In the foregoing illustration, the act of aiming the gun at the deer while hunting is lawful, it not being prohibited by any law.

But the act of discharging a gun in a *public place* is unlawful. (Art. 155, Revised Penal Code) In such case, if a person is injured as a result of the discharge of the gun, the one discharging it in a public place is criminally liable for the injury caused.

The third class of crimes are those punished by special laws.

There are three classes of crimes. The Revised Penal Code defines and penalizes the first two classes of crimes, (1) the intentional felonies, and (2) the culpable felonies. The third class of crimes are those defined and penalized by special laws which include crimes punished by municipal or city ordinances.

Dolo is not required in crimes punished by special laws.

When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law.

Intent to *commit* the crime and intent to *perpetrate* the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. (U.S. vs. Go Chico, 14 Phil. 128)

In the *first* (intent to commit the crime), there must be criminal intent; in the *second* (intent to perpetrate the act), it is enough that the *prohibited act* is done *freely* and *consciously.*

People vs. Bayona
(61 Phil. 181)

Facts: **Defendant was driving his automobile on a road in front of electoral precinct No. 4 in Barrio de Aranguel, Pilar, Capiz. He had a revolver with him. He was called by his friend, Jose D. Benliro. He alighted from his automobile and approached him to find out what he wanted. He did not leave his revolver in the automobile, because there were many people in the road in front of the polling place and he might lose it. He was within the fence surrounding the polling place when Jose E. Desiderio, a representative of the Department of the Interior, took possession of the revolver defendant was carrying.**

The Solicitor-General was for his acquittal.

Held: **The law which defendant violated is a statutory provision, and the intent with which he violated is immaterial. It may be conceded that defendant did not intend to intimidate any elector or to violate the law in any other way, but when he got out of his automobile and carried his revolver inside of the fence surrounding the polling place,**

he committed the act complained of, and he committed it wilfully. The Election Law does not require for its violation that the offender has the intention to intimidate the voters or to interfere otherwise with the election.

The rule is that in acts *mala in se*, there must be a criminal intent; but in those *mala prohibita,* it is sufficient if the prohibited act was intentionally done.

Since the Election Code prohibits and punishes the carrying of a firearm inside the polling place, and that person did the prohibited act freely and consciously, he had the intent to perpetrate the act.

No intent to perpetrate the act prohibited.

If a man with a revolver merely passes along a public road on election day, within fifty meters of a polling place, he does not violate the provision of the law in question, because he had no *intent to perpetrate the act* prohibited, and the same thing would be true of a peace officer in pursuing a criminal; nor would the prohibition extend to persons living within fifty meters of a polling place, who merely clean or handle their firearms within their own residences on election day, as they would not be carrying firearms within the contemplation of the law. (People vs. Bayona, *supra)*

In those crimes punished by special laws, the act alone, irrespective of its motives, constitutes the offense.

U.S. us. Siy Cong Bieng, et al.
(30 Phil. 577)

Facts: Co Kong, while in charge of appellant's store and acting as his agent and employee, sold, in the ordinary course of business, coffee which had been adulterated by the admixture of peanuts and other extraneous substances.

Question: Whether a conviction under the Pure Food and Drugs Act (No. 1655 of the Philippine Commission) can be sustained where it appears that the sale of adulterated food products was made without guilty knowledge of the fact of adulteration.

Held: While it is true that, as a rule and on principles of abstract justice, men are not and should not be held criminally responsible for

acts committed by them without guilty knowledge and criminal or at least evil intent, the courts have always recognized the power of the legislature, on grounds of public policy and compelled by necessity, "the greater master of things," to forbid in a limited class of cases the doing of certain acts, and to make their commission criminal without regard to the intent of the doer.

It is notorious that the adulteration of food products has grown to proportions so enormous as to menace the health and safety of the people. Ingenuity keeps pace with greed, and the careless and heedless consumers are exposed to increasing perils. To redress such evils is a plain duty but a difficult task. Experience has taught the lesson that repressive measures which depend for their efficiency upon proof of the dealer's knowledge or of his intent to deceive and defraud are of little use and rarely accomplish their purposes. Such an emergency may justify legislation which throws upon the seller the entire responsibility of the purity and soundness of what he sells and compels him to know and to be certain. (People vs. Kibler, 106 N.Y., 321, cited in the case of U.S. vs. Go Chico, 14 Phil. 133)

Reasons why criminal intent is not necessary in crimes made such by statutory enactment.

The accused was charged with a violation of Section 1 of Act No. 1696 of the Philippine Commission, which punishes any person who shall expose to public view any flag, banner, emblem or device used during the late insurrection in the Philippines. Even if the accused acted without criminal intent, the lower court convicted him. In affirming the judgment of conviction of the lower court, the Supreme Court said —

"The display of a flag or emblem used, particularly within a recent period, by the enemies of the Government tends to incite resistance of governmental functions and insurrection against governmental authority just as effectively if made in the best of good faith as if made with the most corrupt intent. The display itself, without the intervention of any other fact, is the evil. It is quite different from that large class of crimes, made such by the common law or by statute, in which the injurious effect upon the public depends upon the corrupt intention of the person perpetrating the act. If A discharges a loaded gun and kills B, the interest which society has in the act depends, not upon B's death, but upon the intention with which A consummated the

act. If the gun was discharged intentionally, with the purpose of accomplishing the death of B, then society has been injured and its security violated; but if the gun was discharged accidentally on the part of A, then society, strictly speaking, has no concern in the matter, even though the death of B results. The reason for this is that A does not become a danger to society and its institutions until he becomes a person with a corrupt mind. The mere discharge of the gun and the death of B do not of themselves make him so. With those two facts must go the corrupt intent to kill. In the case at bar, however, the evil to society and to the Government does not depend upon the state of mind of the one who displays the banner, but upon the effect which that display has upon the public mind. In the one case the public is affected by the intention of the actor; in the other by the act itself." (U.S. vs. Go Chico, 14 Phil. 129)

When the doing of an act is prohibited by a special law, it is considered that the act is injurious to public welfare and the doing of the prohibited act is the crime itself.

Good faith and absence of criminal intent not valid defenses in crimes punished by special laws.

It does not matter, for the validity of the conviction of Ongsod, that he is the owner or borrower, as the proprietary concept of the possession can have no bearing whatsoever on his guilt, within the intendment and purview of Republic Act 4 (which amended Section 2692 of the Revised Administrative Code and Commonwealth Act 56). And it is now beyond question that mere unlicensed possession is sufficient to sustain a conviction of illegal possession of firearms, regardless of the intent of the unlicensed holder, since the offense is *malum prohibitum* punished by special law, and good faith and absence of criminal intent are not valid defenses. (People vs. Orquijo, [C.A.] 60 O.G. 836)

(See: Lacson, Jr. vs. Posadas, Adm. Matter No. 74-MJ, July 30, 1976, 72 SCRA 168, 171)

Exceptions:

1. Several PC soldiers went to the house of the defendant and asked him if he had in his possession any unlicensed

firearm. The defendant readily answered that he had one but that said unlicensed firearm was in his possession prior to his turning it over to the Mayor of Taal in connection with the drive of the government in the collection of loose firearms. Defendant told the PC soldiers that he bought the firearm from a stranger with the purpose of selling it to the PC who were paying for loose firearms. He even showed to the PC soldiers a letter of the town mayor authorizing him to collect loose firearms in his barrio.

Held: **To implement the policy of the government on loose firearms, it is imperative that the persons collecting and surrendering loose firearms should have temporary and incidental possession thereof, for how can one collect and deliver without temporarily laying his hands on the firearms? It is for this reason that we believe that the doctrine of the immateriality of *animus possidendi* should be relaxed in a certain way. Otherwise, the avowed purpose of the government's policy cannot be realized. Of course, it would be a different story if it is shown that the possessor has held on to the firearm for an undue length of time when he had all the chances to surrender it to the proper authorities. (People vs. Landicho, [C.A.] 55 O.G. 842)**

2. **When neither of the accused had ever intended to commit the offense of illegal possession of firearms (U.S. vs. Samson, 16 Phil. 323); when both believed in good faith that as civilian guards under Councilor Asa, an MIS agent and a superior officer in the Civilian Guard Organization, and under the circumstances and facts of this case, they cannot be held liable for the offense charged because they never had any intent of violating the law. (People vs. Asa and Balbastro, [C.A.] 50 O.G. 5853, citing 68 Corpus Juris 39)**

3. **Where the accused had a pending application for permanent permit to possess a firearm, and whose possession was not unknown to an agent of the law who advised the former to keep it in the meantime, any doubt as to his claim should be resolved in his favor. (People vs. Mallari, [C.A.] 55 O.G. 1394)**

4. Where appellant was duly appointed as civilian confidential agent entrusted with a mission to make surveillance and effect the killing or capture of a wanted person, and was authorized to carry a revolver to carry out his mission, he is not criminally liable for illegal possession of firearms. (People vs. Lucero, 103 Phil. 500)

Note: In these cases, the accused had no license to possess the firearms, but in view of the facts and circumstances, the absence of intent to violate the law was considered in favor of the accused.

Mala in se and *mala prohibita,* distinguished.

There is a distinction between crimes which are *mala in se,* or wrongful from their nature, such as theft, rape, homicide, etc., and those that are *mala prohibita,* or wrong merely because prohibited by statute, such as illegal possession of firearms.

Crimes *mala in se* are those so serious in their effects on society as to call for almost unanimous condemnation of its members; while crimes *mala prohibita* are violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society. (Bouvier's Law Dictionary, Rawle's 3rd Revision)

(1) In acts *mala in se,* the intent governs; but in those *mala prohibita,* the only inquiry is, has the law been violated? (People vs. Kibler, 106 N.Y., 321, cited in the case of U.S. vs. Go Chico, 14 Phil. 132)

Criminal intent is not necessary where the acts are prohibited for reasons of public policy, as in illegal possession of firearms. (People vs. Conosa, C.A., 45 O.G. 3953)

(2) The term *mala in se* refers generally to felonies defined and penalized by the Revised Penal Code. When the acts are inherently immoral, they are *mala in se,* even if punished by special laws. On the other hand, there are crimes in the Revised Penal Code which were originally defined and penalized by special laws. Among them are possession and use of opium, malversation, brigandage, and libel.

The term *mala prohibita* refers generally to acts made criminal by special laws.

When the acts are inherently immoral, they are *mala in se,* even if punished under special law.

People vs. Sunico, et al.
(C.A., 50 O.G. 5880)

Facts: **The accused were election inspectors and poll clerks whose duty among others was to transfer the names of excess voters in other precincts to the list of a newly created precinct. Several voters were omitted in the list. Because their names were not in the list, some of them were not allowed to vote. The accused were prosecuted for violation of Secs. 101 and 103 of the Revised Election Code. The accused claimed that they made the omission in good faith.**

The trial court seemed to believe that notwithstanding the fact that the accused committed in good faith the serious offense charged, the latter are criminally responsible therefor, because such offense is *malum prohibitum,* and, consequently, the act constituting the same need not be committed with malice or criminal intent to be punishable.

Held: **The acts of the accused cannot be merely *mala prohibita* — they are *mala per se.* The omission or failure to include a voter's name in the registry list of voters is not only wrong because it is prohibited; it is wrong *per se* because it disenfranchises a voter and violates one of his fundamental rights. Hence, for such act to be punishable, it must be shown that it has been committed with malice. There is no clear showing in the instant case that the accused *intentionally, willfully* and *maliciously* omitted or failed to include in the registry list of voters the names of those voters. They cannot be punished criminally.**

The Revised Election Code, as far as its penal provisions are concerned, is a *special law,* it being not a part of the Revised Penal Code or its amendments.

Intent distinguished from motive.

Motive is the moving power which impels one to action for a definite result. Intent is the purpose to use a particular means to effect such result.

Motive is not an essential element of a crime, and, hence, need not be proved for purposes of conviction. (People vs. Aposaga, No. L-32477, Oct. 30, 1981, 108 SCRA 574, 595)

An extreme moral perversion may lead a man to commit a crime without a real motive but just for the sake of committing it. Or, the

apparent lack of a motive for committing a criminal act does not necessarily mean that there is none, but that simply it is not known to us, for we cannot probe into the depths of one's conscience where it may be found, hidden away and inaccessible to our observation. (People vs. Taneo, 58 Phil. 255, 256)

One may be convicted of a crime whether his motive appears to be good or bad or even though no motive is proven. A good motive does not prevent an act from being a crime. In mercy killing, the painless killing of a patient who has no chance of recovery, the motive may be good, but it is nevertheless punished by law.

Motive, when relevant and when need not be established.

Where the identity of a person accused of having committed a crime is in dispute, the motive that may have impelled its commission is very relevant. (People vs. Murray, 105 Phil. 591, 598; People vs. Feliciano, No. L-30307, Aug. 15, 1974, 58 SCRA 383, 393)

Generally, proof of motive is not necessary to pin a crime on the accused if the commission of the crime has been proven and the evidence of identification is convincing. (People vs. Alviar, No. L-32276, Sept. 12, 1974, 59 SCRA 136, 160)

Motive is essential only when there is doubt as to the identity of the assailant. It is immaterial when the accused has been positively identified. (People vs. Gadiana, G.R. No. 92509, March 13, 1991, 195 SCRA 211, 214-215; People vs. Mandapat, G.R. No. 76953, April 22, 1991, 196 SCRA 157, 165)

Where the defendant admits the killing, it is no longer necessary to inquire into his motive for doing the act. (People vs. Arcilla, G.R. No. L-11792, June 30, 1959)

Motive is important in ascertaining the truth between two antagonistic theories or versions of the killing. (People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 191; People vs. Lim, G.R. No. 86454, Oct. 18, 1990, 190 SCRA 706, 714-715; People vs. Tabije, No. L-36099, 113 SCRA 191, 197)

Where the identification of the accused proceeds from an unreliable source and the testimony is inconclusive and not free from doubt, evidence of motive is necessary. (People vs. Beltran, No. L-31860, Nov. 29, 1974, 61 SCRA 246, 254-255)

Where there are no eyewitnesses to the crime, and where suspicion is likely to fall upon a number of persons, motive is relevant and significant. (People vs. Melgar, No. L-75268, Jan. 29, 1988, 157 SCRA 718, 725)

If the evidence is merely circumstantial, proof of motive is essential. (People vs. Oquiño, No. L-37483, June 24, 1983, 122 SCRA 797, 808)

Proof of motive is not indispensable where guilt is otherwise established by sufficient evidence. (People vs. Corpuz, 107 Phil. 44, 49)

While the question of motive is important to the person who committed the criminal act, yet when there is no longer any doubt that the defendant was the culprit, it becomes unimportant to know the exact reason or purpose for the commission of the crime. (People vs. Feliciano, No. L-30307, Aug. 15, 1974, 58 SCRA 383, 393)

How motive is proved.

Generally, the motive is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense. Such deeds or words may indicate the motive. (Barrioquinto vs. Fernandez, 82 Phil. 642, 649)

Motive proved by the evidence.

Appellant stabbed the deceased. It was established that there were two suffocating smokes noticed during the progress of the religious service of the Iglesia ni Cristo, which made appellant to go around. Certainly, the causing of those smokes, presumably by non-members, which disturbed and interrupted the service, particularly at the time when the Minister was preaching, is enough motive for any member of the sect to be offended thereby, particularly appellant who was a member of some importance. (People vs. Ramirez, 104 Phil. 720, 726)

Disclosure of the motive is an aid in completing the proof of the commission of the crime.

Thus, the fact that the accused had been losing in their business operations indicated the motive and therefore the intent to commit arson for the purpose of collecting the insurance on their stock of merchandise. (U.S. vs. Go Foo Suy, 25 Phil. 187, 204)

But proof of motive alone is not sufficient to support a conviction.

The existence of a motive, though perhaps an important consideration, is not sufficient proof of guilt. (People vs. Marcos, 70 Phil. 468; People vs. Martinez y Godinez, 106 Phil. 597) Mere proof of motive, no matter how strong, is not sufficient to support a conviction if there is no reliable evidence from which it may be reasonably deduced that the accused was the malefactor. (People vs. Macatañgay, 107 Phil. 188, 194)

Even a strong motive to commit the crime cannot take the place of proof beyond reasonable doubt, sufficient to overthrow the presumption of innocence. Proof beyond reasonable doubt is the mainstay of our accusatorial system of criminal justice. (People vs. Pisalvo, No. L-32886, Oct. 23, 1981, 108 SCRA 211, 226)

Lack of motive may be an aid in showing the innocence of the accused.

In a case, the Supreme Court concluded that the defendant acted while in a dream and his acts, with which he was charged, were not voluntary in the sense of entailing criminal liability.

Under the special circumstances of the case, in which the victim was the defendant's own wife whom he dearly loved, and taking into consideration the fact that the defendant tried to attack also his father, in whose house and under whose protection he lived, besides attacking Tanner and Malinao, his guests, whom he himself invited as may be inferred from the evidence presented, we find not only lack of motives for the defendant to voluntarily commit the acts complained of, but also motives for not committing said acts. (People vs. Taneo, 58 Phil. 255, 257)

Lack of motive to kill the deceased has been held as further basis for acquitting the accused, where the lone testimony of the prosecution witness is contrary to common experience and, therefore, incredible. (People vs. Padirayon, No. L-39207, Sept. 25, 1975, 67 SCRA 135)

Art. 4. ***Criminal liability.*** **— Criminal liability shall be incurred:**

1. By any person committing a felony ***(delito)*** **although the wrongful act done be different from that which he intended.**

2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

Application of Article 4.

Criminal liability is incurred by any person in the cases mentioned in the two paragraphs of Article 4. This article has no reference to the manner criminal liability is incurred. The manner of incurring criminal liability under the Revised Penal Code is stated in Article 3, that is, performing or failing to do an act, when either is punished by law, by means of deceit (with malice) or fault (through negligence or imprudence).

One who commits an intentional felony is responsible for all the consequences which may naturally and logically result therefrom, whether foreseen or intended or not.

Ordinarily, when a person commits a felony ***with malice,*** **he intends the consequences of his felonious act. But there are cases where the consequences of the felonious act of the offender are** ***not intended*** **by him. In those cases, "the wrongful act done" is "different from that which he intended."**

In view of paragraph 1 of Art. 4, a person committing a felony is ***criminally liable*** **although the consequences of his felonious act are not intended by him.**

Thus, where the death of the 6 year-old victim was brought about by the rape committed by the accused, it is of no moment that she died by accident when she hit her head on the pavement while struggling, because, having performed an act constituting a felony, he is responsible for all the consequences of said act, regardless of his intention. (People vs. Mario Mariano, 75 O.G. 4802, No. 24, June 11, 1979)

One is not relieved from criminal liability for the natural consequences of one's illegal acts, merely because one does not intend to produce such consequences. (U.S. vs. Brobst, 14 Phil. 310)

Thus, one who fired his gun at B, but missed and hit C instead, is liable for the injury caused to C, although the one who fired the gun had no intention to injure C.

One who gave a fist blow on the head of D, causing the latter to fall with the latter's head striking a hard pavement, is liable for the death of D, which resulted although the one who gave the fist blow had no intention to kill D.

And one who stabbed another in the dark, believing that the latter was E, when in fact he was G, is liable for the injury caused to G, although the one who stabbed him had no intention to injure G.

Rationale of rule in paragraph 1 of Article 4.

The rationale of the rule in Article 4 is found in the doctrine that *"el que es causa de la causa es causa del mal causado"* (he who is the cause of the cause is the cause of the evil caused). (People vs. Ural, No. L-30801, March 27, 1974, 56 SCRA 138, 144)

IMPORTANT WORDS AND PHRASES IN PARAGRAPH 1 OF ART. 4.

1. *"Committing a felony."*

Paragraph 1 of Art. 4 says that criminal liability shall be incurred by any person *"committing a felony,"* not merely performing an act. A felony is an act or omission punishable by the Revised Penal Code. If the act is not punishable by the Code, it is not a felony. But the felony committed by the offender should be one committed by means of *dolo,* that is, with malice, because paragraph 1 of Art. 4 speaks of wrongful act done "different from that which he *intended.*"

If the wrongful act results from the imprudence, negligence, lack of foresight or lack of skill of the offender, his liability should be determined under Art. 365, which defines and penalizes criminal negligence.

The act or omission should not be punished by a special law, because the offender violating a special law may not have the intent to do an injury to another. In such case, the wrongful

act done could not be different, as the offender did not intend to do any other injury.

Article 4, paragraph 1, is not applicable in this case.

Defendant, who was not a regular medical practitioner, tied a girl, wrapped her feet with rags saturated with petroleum and thereafter set them on fire causing injuries. His defense was that he undertook to render medical assistance in good faith and to the best of his ability to cure her of ulcer. He admitted applying petroleum but denied causing the burns. *Held:* While there was no intention to cause an evil but to provide a remedy, accused was liable for injuries thru imprudence. (U.S. vs. Divino, 12 Phil. 175)

Note: Defendant did not commit an intentional felony. If at all, he committed illegal practice of medicine, which is punished by a special law. Violation of a statute is proof of negligence or imprudence. Defendant is liable for two offenses: (1) physical injuries through imprudence; and (2) illegal practice of medicine.

When a person has not committed a felony, he is not criminally liable for the result which is not intended.

(a) Thus, one who, because of curiosity, snatched the bolo carried by the offended party at his belt, and the latter instinctively caught the blade of said bolo in trying to retain it, is not criminally liable for the physical injuries caused, because there is no provision in the Revised Penal Code which punishes that act of snatching the property of another just to satisfy curiosity. (See U.S. vs. Villanueva, 31 Phil. 412)

(b) Thus, also, one who tries to retain the possession of his bolo which was being taken by another and because of the struggle, the tip of the bolo struck and pierced the breast of a bystander, is not criminally liable therefor, because the law allows a person to use the necessary force to retain what belongs to him. (See People vs. Bindoy, 56 Phil. 15)

People vs. Bindoy
(56 Phil. 15)

Facts: In a *tuba* wineshop in the barrio market, the accused offered *tuba* to Pacas' wife; and as she refused to drink having already

done so, the accused threatened to injure her if she would not accept. There ensued an interchange of words between her and the accused, and Pacas stepped in to defend his wife, attempting to take away from the accused the bolo he carried. This occasioned a disturbance which attracted the attention of Emigdio Omamdam who lived near the market. Emigdio left his house to see what was happening, while the accused and Pacas were struggling for the bolo. In the course of this struggle, the accused succeeded in disengaging himself from Pacas, wrenching the *bolo* from the latter's hand towards the left behind the accused, with such violence that the point of the bolo reached Emigdio Omamdam's chest, who was then behind the accused. The accused was not aware of Omamdam's presence in the place.

Held: **There is no evidence to show that the accused injured the deceased deliberately and with the intention of committing a crime. He was only defending his possession of the bolo, which Pacas was trying to wrench away from him, and his conduct was perfectly legal. The accused should be acquitted.**

Had the accused attempted to wound Pacas during the struggle, but instead of doing so, he wounded Omamdam, he would have been liable for the death of Omamdam, because in attempting to wound another, the accused would be committing a felony, which is attempted homicide, if there is intent to kill, under Art. 249 in relation to Art. 6.

2. ***"Although the wrongful act done be different from that which he intended."***

The causes which may produce a result different from that which the offender intended are: (1) mistake in the identity of the victim; (2) mistake in the blow, that is, when the offender intending to do an injury to one person actually inflicts it on another; and (3) the act exceeds the intent, that is, the injurious result is greater than that intended.

Under paragraph 1, Art. 4, a person committing a felony is *still criminally liable even if* —

a. There is a mistake in the identity of the victim — *error in personae.* (See the case of People vs. Oanis, 74 Phil. 257)

In a case, defendant went out of the house with the intention of assaulting Dunca, but in the darkness of the evening, defendant mistook Mapudul for Dunca and inflicted upon him

a mortal wound with a bolo. In this case, the defendant is criminally liable for the death of Mapudul. (People vs. Gona, 54 Phil. 605)

b. There is a mistake in the blow — *aberratio ictus.*

Example: People vs. Mabugat, 51 Phil. 967, where the accused, having discharged his firearm at Juana Buralo but because of lack of precision, hit and seriously wounded Perfecta Buralo, it was held that the accused was liable for the injury caused to the latter.

c. The injurious result is greater than that intended — *praeter intentionem.*

Example: People vs. Cagoco, 58 Phil. 524, where the accused, without intent to kill, struck the victim with his fist on the back part of the head from behind, causing the victim to fall down with his head hitting the asphalt pavement and resulting in the fracture of his head, it was held that the accused was liable for the death of the victim, although he had no intent to kill said victim.

People vs. Mabugat
(51 Phil. 967)

Facts: The accused and Juana Buralo were sweethearts. One day, the accused invited Juana to take a walk with him, but the latter refused him on account of the accused having frequently visited the house of another woman. Later on, the accused went to the house of Cirilo Bayan where Juana had gone to take part in some devotion. There the accused, revolver in hand, waited until Juana and her niece, Perfecta, came downstairs. When they went in the direction of their house, the accused followed them. As the two girls were going upstairs, the accused, while standing at the foot of the stairway, fired a shot from his revolver at Juana but which wounded Perfecta, the slug passing through a part of her neck, having entered the posterior region thereof and coming out through the left eye. Perfecta did not die due to proper medical attention.

Held: The accused is guilty of frustrated murder, qualified by treachery, committed on the person of Perfecta Buralo.

In *People vs. Tomotorgo,* No. L-47941, April 30, 1985, 136 SCRA 238, the conduct of the wife of the accused aroused his ire and

incensed with wrath and his anger beyond control, he picked up a piece of wood and started hitting his wife with it until she fell to the ground complaining of severe chest pains. Realizing what he had done, he picked her up in his arms and brought her home. Despite his efforts to alleviate her pains, the wife died. Prosecuted for parricide, he pleaded guilty and was allowed to establish mitigating circumstances. Passing on his contentions, the Supreme Court held that the fact that the appellant intended to maltreat his wife only or inflict physical injuries does not exempt him from liability for the resulting and more serious crime of parricide. (pp. 242, 246)

To the same effect is *People vs. Monleon,* No. L-36282, Dec. 10, 1976, 74 SCRA 263, where it was held that the case is covered by Article 4 of the Revised Penal Code which provides that criminal liability is incurred by any person committing a felony although the wrongful act done be different from that which he intended, because the maltreatment inflicted by the accused on his wife was the proximate cause of her death. The accused in his inebriated state had no intent to kill her. He was infuriated because his son did not feed his carabao. He was provoked to castigate his wife because she prevented him from whipping his negligent son. He could have easily killed his wife had he really intended to take her life. He did not kill her outright. (p. 269)

Requisites of paragraph 1 of Art. 4.

In order that a person may be held criminally liable for a felony *different* from that which he intended to commit, the following requisites must be present:

a. That an *intentional felony* has been committed; and

b. That the *wrong done* to the aggrieved party be the *direct, natural* and *logical* consequence of the *felony* committed by the offender. (U.S. vs. Brobst, 14 Phil. 310, 319; U.S. vs. Mallari, 29 Phil. 14, 19)

That a felony has been committed.

Thus, in the cases of *U.S. vs. Villanueva* and *People vs. Bindoy, supra,* the accused were not held criminally liable, because they *were not committing a felony* when they caused the injury to another.

No felony is committed (1) when the act or omission is not punishable by the Revised Penal Code, or (2) when the act is covered by any of the justifying circumstances enumerated in Art. 11.

An act which is not punishable by the Revised Penal Code is attempting to commit suicide. (Art. 253)

Therefore, if A, in attempting a suicide, jumped out of the window to kill himself, but when he dropped to the ground he fell on an old woman who died as a consequence, A is not criminally liable for intentional homicide. A was not committing a felony when he attempted a suicide.

One who shoots at another in self-defense, defense of relative, defense of a stranger, or in the fulfillment of duty is not committing a felony, the act being justified. (Art. 11, Revised Penal Code)

Hence, if B, who was being fired at with a gun by C to kill him, fired his pistol at the latter in self-defense, but missed him and instead hit and killed D, a bystander, B is not criminally liable for the death of D. One acting in self-defense is not committing a felony.

A policeman, who was pursuing to arrest an armed prisoner who had just escaped from jail, fired his service pistol at the latter when he refused to be captured. The slug fired from the pistol of the policeman, after hitting the prisoner on his right leg, hit and seriously injured a passer-by. The policeman is not criminally liable for the injury caused to the passer-by, because being in the fulfillment of a duty he was not committing a felony.

Of course, the act of defense or fulfillment of duty must be exercised with due care; otherwise, the accused will be liable for culpable felony.

People vs. Salinas
(C.A., 62 O.G. 3186)

Facts: **In the afternoon of February 14, 1958, the three accused, namely: Saturnino Salinas, Crisanto Salinas and Francisco Salinas, together with two small boys by the name of Tony and Omong, went to the place of Severino Aquino to get their horses which the latter caught for having destroyed his corn plants. When Crisanto and the two boys were already inside the house of Severino Aquino, Crisanto asked, with signs of respect and in a nice way, Severino Aquino what had the horses**

destroyed. Thereafter, Saturnino Salinas who was at that time in front of the house of Severino Aquino in the yard told Severino Aquino to come down from the house and he (Saturnino) will bolo him to pieces. Upon hearing the words of Saturnino Salinas, Severino Aquino was about to go downstairs but Crisanto held him on his waist. In his struggle to free himself from the hold of Crisanto, he (Severino) moved his body downwards thus Crisanto subsequently held Severino's neck. At the moment Crisanto was holding Severino's neck, Mercuria Aquino who was then sitting on a mat inside the said house stood up and, carrying her one month old child Jaime Tibule with her left hand and against her breast, approached Severino and Crisanto. Upon reaching by the left side of Crisanto, Mercuria tried, with her right hand, to remove the hand of Crisanto which held the neck of Severino but Crisanto pulled Mercuria's right hand causing said Mercuria to fall down over her child Jaime Tibule on the floor of the house and Jaime Tibule was pinned on the floor by Mercuria's body.

The cause of death (of Jaime Tibule) was "internal hemorrhage within the skull due to injury of the blood vessels in the parietal side of the head due to an impact with a hard object."

Held: **The accepted rule is that an offender is always liable for the consequences of his criminal act even though the result be different from what he intended. (Art. 4, Revised Penal Code) For such liability to exist, two requisites are necessary, namely, (1) that a crime be committed, and (2) that the wrong suffered by the injured party be a direct consequence of the crime committed by the offender. Under the circumstances, it cannot be said that Crisanto Salinas, in his efforts to prevent Severino from going down the house to have bloody encounter with his father who was in the yard, by taking hold of Severino and pulling or jerking the right hand of Mercuria who tried to free her father from his hold, committed or was committing a crime. Consequently, it cannot likewise be said that the death of the child was the direct result of a crime which Crisanto committed or was in the act of committing.**

Any person who creates in another's mind an immediate sense of danger, which causes the latter to do something resulting in the latter's injuries, is liable for the resulting injuries.

During a robbery in a passenger jeepney, one of the culprits told the women passengers "to bring out their money and not to shout 'or else there will be shots.'" One of the women jumped out of the jeepney. Her head struck the pavement. She died as a consequence.

It was held that "if a man creates in another person's mind an immediate sense of danger, which causes such person to try to escape, and, in so doing, the latter injures himself, the man who creates such a state of mind is responsible for the resulting injuries." (People vs. Page, 77 SCRA 348, 355, citing People vs. Toling, L-27097, Jan. 17, 1975, 62 SCRA 17, 33)

The reason for the ruling is that when the culprit demanded money from the women, threatening to shoot if they would not bring out their money, a felony was being committed *(i.e.,* at that stage of execution, attempted robbery with intimidation which is punishable under Article 294, in relation to Article 6 and Article 51 of the Code).

The *Toling* case, *supra,* relying on *U.S. vs. Valdez,* 41 Phil. 497, quoted the syllabus, thus: "if a person against whom a criminal assault is directed reasonably believes himself to be in danger of death or great bodily harm and in order to escape jumps into the water, impelled by the instinct of self-preservation, the assailant is responsible for homicide in case death results by drowning."

Wrong done must be the direct, natural and logical consequence of felonious act.

It is an established rule that a person is criminally responsible for acts committed by him in violation of the law and for *all the natural* and *logical* consequences resulting therefrom. (U.S. vs. Sornito, 4 Phil. 357, 360; U.S. vs. Zamora, 32 Phil. 218, 226; People vs. Cornel, 78 Phil. 458, 261)

In the following cases, the wrong done is considered the *direct, natural* and *logical* consequence of the felony committed, although

a. The victim who was *threatened* or *chased* by the accused with a *knife,* jumped into the water and because of the strong current or because he did not know how to swim he sank down and died of drowning. (U.S. vs. Valdez, 41 Phil. 497; People vs. Buhay, 79 Phil. 372)

b. The victim *removed the drainage from the wound* which resulted in the development of peritonitis which in turn caused his death, it appearing that the wound caused by the accused produced extreme pain and restlessness which

made the victim remove it. (People vs. Quianson, 62 Phil. 162)

c. *Other causes cooperated* in producing the fatal result, *as long as the wound inflicted is dangerous,* that is, calculated to destroy or endanger life. This is true even though the immediate cause of the death was *erroneous* or *unskillful medical* or *surgical treatment.* This 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 the 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 to open wide the door by which persons guilty of the highest crime might escape conviction and punishment. (13 R.C.L., 751, 752; 22 L.R.A., New Series, 841, cited in People vs. Moldes, 61 Phil. 4)

But where it clearly appears that the injury *would not have caused death,* in the ordinary course of events, but would have healed in so many days and where it is shown beyond all doubt that the death was due to the malicious or careless acts of the injured person or a third person, the accused is not liable for homicide. One is accountable only for his own acts and their *natural* or *logical* consequences, and not for those *which bear no relation* to the initial cause and are due, for instance, to the mistakes committed by the doctor in the surgical operation and the treatment of the victim's wound. (Decision of the Supreme Court of Spain, April 2, 1903, cited by Viada)

d. The victim was suffering from internal malady.

Blow was efficient cause of death.

The deceased had a delicate constitution and was suffering from *tuberculosis.* The accused gave fist blows on the deceased's right hypochondrium, bruising the liver and producing internal hemorrhage, resulting in the death of the victim. The accused was liable for homicide. (People vs. Illustre, 54 Phil. 594)

Blow accelerated death.

The deceased was suffering from internal malady. The accused gave fist blows in the back and abdomen, producing inflammation of the spleen and peritonitis, and causing death. The accused was liable for homicide, because by his fist blows he produced the *cause* for the *acceleration* of the death of the deceased. (People vs. Rodriquez, 23 Phil. 22)

Blow was proximate cause of death.

The deceased was suffering from heart disease. The accused stabbed the deceased with a knife, but as the blade of the knife hit a bone, it did not penetrate the thoracic cavity, but it produced shock, resulting in the death of the victim. The accused was liable for homicide, because the stabbing was the proximate cause of the death of the deceased. (People vs. Reyes, 61 Phil. 341)

e. The offended party refused to submit to surgical operation.

The offended party is not obliged to submit to a surgical operation to relieve the accused from the natural and ordinary results of his crime. (U.S. vs. Marasigan, 27 Phil. 504)

f. The resulting injury was aggravated by infection.

(1) The accused wounded the offended party with a bolo. When the offended party entered the hospital, no anti-tetanus injection was given to him and the wounds became infected when he went out of the hospital. *Held:* The accused is responsible for the duration of the treatment and disability prolonged by the infection. (People vs. Red, C.A., 43 O.G. 5072)

An accused is liable for all the consequences of his acts, and the infection of a wound he has caused is one of the consequences for which he is answerable. (People vs. Martir, 9 C.A. Rep. 204)

But the infection should not be due to the malicious act of the offended party. (U.S. vs. De los Santos, G.R. No. L-13309)

(2) Although the wounds might have been cured sooner than 58 days had the offended party not been addicted to *tuba* drinking, this fact does not mitigate the liability of the accused. (U.S. vs. Bayutas, 31 Phil. 584)

(3) The accused attacked the deceased with a bolo. After the deceased had fallen, the accused threw a stone which hit him on the right clavicle. The wounds inflicted could not have caused the death of the deceased. A week later, the deceased died of tetanus secondary to the infected wound. *Held:* The accused is responsible for the death of the deceased. (People vs. Cornel, 78 Phil. 418)

People vs. Quianson
(62 Phil. 162)

Facts: The accused took hold of a fireband and applied it to the neck of the person who was pestering him. The victim also received from the hand of the accused a wound in his abdomen below the navel. While undergoing medical treatment, the victim took out the drainage from his wound and as a result of the peritonitis that developed, he died. The accused claimed as a defense that had not the deceased taken out the drainage, he would not have died.

Held: Death was the *natural consequence* of the mortal wound inflicted. The victim, in removing the drainage from his wound, *did not do so voluntarily* and with knowledge that it was prejudicial to his health. The act of the victim (removing the drainage from his wound) was attributed to his pathological condition and state of nervousness and restlessness on account of physical pain caused by the wound, aggravated by the contact of the drainage tube with the inflamed peritoneum.

U.S. vs. Marasigan
(27 Phil. 504, 506)

Facts: The accused drew his knife and struck at Mendoza. In attempting to ward off the blow, Mendoza was cut in the left hand. The extensor tendon in one of the fingers was severed. As a result, the middle finger of the left hand was rendered useless.

Held: Nor do we attach any importance to the contention of the accused that the original condition of the finger could be restored by

a surgical operation. Mendoza is not obliged to submit to a surgical operation to relieve the accused from the *natural* and *ordinary* results of his crime. It was his voluntary act which disabled Mendoza and he must abide by the consequences resulting therefrom without aid from Mendoza.

People vs. Reloj
(L-31335, Feb. 29, 1972, 43 SCRA 526, 532)

Facts: The accused stabbed the victim with an ice pick. The victim was brought to the hospital where a surgical operation was performed upon him. Although the operation was successful and the victim seemed to be in the process of recovery, he developed, five (5) days later, a paralytic ileum — which takes place, sometimes, in consequence of the exposure of the internal organs during the operation — and then died.

Held: It is contended that the immediate cause of the death of the victim was a paralysis of the ileum that supervened five (5) days after the stabbing, when he appeared to be on the way to full recovery. It has been established, however, that the exposure of the internal organs in consequence of a surgical operation in the abdomen sometimes results in a paralysis of the ileum and that said operation had to be performed on account of the abdominal injury inflicted by the accused. The accused is responsible for the natural consequences of his own acts.

The felony committed must be the proximate cause of the resulting injury.

Proximate cause is "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." (Bataclan vs. Medina, 102 Phil. 181, 186, quoting 38 Am. Jur. 695)

Moreover, a person committing a felony is criminally liable for all the natural and logical consequences resulting therefrom although the wrongful act done be different from that which he intended. "Natural" refers to an occurrence in the ordinary course of human life or events, while "logical" means that there is a rational connection between the act of the accused and the resulting injury or damage. The felony committed must be the proximate cause of the resulting injury. Proximate cause is that cause which in natural and continuous sequence, unbroken by an efficient intervening cause, produces the injury, and without which the result would not have occured. The proximate legal cause is that acting first and producing

the injury, either immediately, or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate prodecessor.

There must be a relation of "cause and effect," the cause being the felonious act of the offended, the effect being the resultant injuries and/or death of the victim. The "cause and effect" relationship is not altered or changed because of the pre-existing conditions, such as the pathological condition of the victim *(las condicionespatologica del lesionado)*;the predisposition of the offended party *(la constitucion fisica del herido)*;or the concomitant or concurrent conditions, such as the negligence or fault of the doctors *(la falta de medicos para sister al herido);* or the conditions supervening the felonies act such as tetanus, pulmonary infection or gangrene.

The felony committed is not the proximate cause of the resulting injury when:

a) there is an active force that intervened between the felony committed and the resulting injury, and the active force is a distinct act or fact absolutely foreign from the felonious act of the accused; or

b) the resulting injury is due to the intentional act of the victim.

If 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 their felonious act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the factual result. The offender is criminally liable for the death of the victim if his delictual act caused, accelerated or contributed to the death of the victim. A different doctrine would tend to give immunity to crime and take away from human life a salutary and essential safeguard. (Quinto vs. Andres, G.R. No. 155791, March 16, 2005)

How to determine the proximate cause.

At about 2:00 o'clock in the morning while the bus was running very fast on a highway, one of the front tires burst and the vehicle began to zigzag until it fell into a canal and turned turtle. Four of its passengers could not get out of the overturned bus. It appeared that as the bus overturned, gasoline began to leak from the tank on the

side of the chassis, spreading over and permeating the body of the bus and the ground under and around it. About ten men, one of them carrying a lighted torch, approached the overturned bus to help those left therein, and almost immediately a fierce fire started, burning the four passengers trapped inside it.

What is the proximate cause of the death of the four passengers, the negligence of the driver resulting in the fall into the canal and overturning of the bus, or the fire that burned the bus?

"x x x. It may be that ordinarily, when a passenger bus overturns, and pins down a passenger, merely causing him physical injuries, if through some event, unexpected and extraordinary, the overturned bus is set on fire, say, by lightning, or if some highwaymen after looting the vehicle set it on fire, and the passenger is burned to death, one might still contend that the proximate cause of his death was the fire and not the overturning of the vehicle. But in the present case and under the circumstances obtaining in the same, we do not hesitate to hold that *the proximate cause of the death* of x x x (the four passengers) *was the overturning of the bus*, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was very dark (about 2:30 in the morning), the rescuers had to carry a light with them; and coming as they did from a rural area where lanterns and flashlights were not available, they had to use a torch, the most handy and available; and what was more natural than that said rescuers should innocently approach the overturned vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with the torch was to be expected and was a natural sequence of the overturning of the bus, the trapping of some of its passengers and the call for outside help. What is more, the burning of the bus can also in part be attributed to the negligence of the carrier, through its driver and its conductor. According to the witnesses, the driver and the conductor were on the road walking back and forth. They, or at least, the driver should and must have known that in the position in which the overturned bus was, gasoline could and must have leaked from the gasoline tank and soaked the area in and around the bus, this aside from the fact that gasoline when

spilled, specially over a large area, can be smelt and detected even from a distance, and yet neither the driver nor the conductor would appear to have cautioned or taken steps to warn the rescuers not to bring the lighted torch too near the bus." That is negligence on the part of the agents of the carrier. (Vda. de Bataclan, *et al.* vs. Medina, 102 Phil. 181, 186, 187)

People vs. Luces
(C.A.-G.R. No. 13011-R, July 15, 1955)

Facts: Accused Ramon Luces gave a fist blow on the stomach of Feliciana, causing her to fall unconscious. She never regained consciousness and a few minutes thereafter she died. In the autopsy report, it was found that the probable cause of death was cardiac failure. The accused contended that the fist blow was not the proximate cause of Feliciana's death.

Held: Whether Feliciana died as a direct effect of the fist blow, or as an outcome of the fall that followed the blow, or as a consequence of the blow and the fall that caused her to lose consciousness, or of heart failure due to shock caused by the blow and her fall to the ground, the result would be the same — that the blow was the primary and proximate cause of her death.

The gravity of the crime does not depend on the more or less violent means used, but on the result and consequence of the same and if the accused had not *ill-treated* the deceased she would not have died. Known is the Latin maxim that "he who is the cause of the cause, is the cause of the evil caused."

Note: Ill-treating another by deed without causing any injury, is a felony under Art. 266 of this Code.

In the case of *People vs. Martin,* 89 Phil. 18, the accused, who strangled his wife then suffering from heart disease, was found guilty of parricide even if the death of his wife was the result of heart failure, because the heart failure was due to the fright or shock caused by the strangling, which is a felony.

The following are not efficient intervening causes:

1. The weak or diseased physical condition of the victim, as when one is suffering from tuberculosis or heart disease. (People vs. Illustre and People vs. Reyes, *supra)*

2. The nervousness or temperament of the victim, as when a person dies in consequence of an internal hemorrhage brought on by moving about against the doctor's orders, because of his nervous condition due to the wound inflicted by the accused. (People vs. Almonte, 56 Phil. 54; See also People vs. Quianson, 62 Phil. 162)

3. Causes which are inherent in the victim, such as (a) the victim not knowing how to swim, and (b) the victim being addicted to *tuba* drinking. (People vs. Buhay and U.S. vs. Valdez, *supra;* U.S. vs. Bayutas, *supra)*

4. Neglect of the victim or third person, such as the refusal by the injured party of medical attendance or surgical operation, or the failure of the doctor to give anti-tetanus injection to the injured person. (U.S. vs. Marasigan and People vs. Red, *supra)*

5. Erroneous or unskillful medical or surgical treatment, as when the assault took place in an outlying barrio where proper modern surgical service was not available. (People vs. Moldes, 61 Phil. 1)

Those causes, *not* being *efficient intervening causes,* do not break the relation of cause and effect — the felony committed and the resulting injury.

People vs. Piamonte, et al.
(94 Phil. 293)

Facts: One of the accused stabbed the injured party with a hunting knife on October 28, 1951. The injured party was taken to the hospital and was operated on. The operation did him well, but on December 19, 1951, he contracted a sickness known as *mucous colitis* which developed because of his weak condition. He died on December 28, 1951.

Is the accused who stabbed the injured party liable for the latter's death?

Held: The doctors who attended the injured party agreed that his weakened condition which caused disturbance in the functions of his intestines made it possible for him to contract *mucous colitis,* which shows that while the wounds inflicted were not the immediate cause, they were however the proximate cause of death. This is enough to make the accused responsible for the crime charged.

Note: **The charge was robbery with homicide. The homicide was committed with malice.**

When death is presumed to be the natural consequence of physical injuries inflicted.

The death of the victim is presumed to be the natural consequence of the physical injuries inflicted, when the following facts are established:

1. **That the victim at the time the physical injuries were inflicted was in normal health.**
2. **That death may be expected from the physical injuries inflicted.**
3. **That death ensued within a reasonable time. (People vs. Datu Baginda, C.A., 44 O.G. 2287)**

It having been established that the boy Jundam was in good health on the morning of the incident; that he was whipped, spanked and thrown against the post by his teacher, his breast hitting it; that he complained to his mother about the oppressive pain, crying and massaging his breast all the time; that he was found to have two suspicious bluish spots — a big one on the breast and another one on the upper left arm; and that he vomitted blood until he died three days afterwards; and there being *no proof of any intervening cause,* the liability of the teacher for homicide necessarily follows from the premises stated. (People vs. Tammang, 5 C.A. Rep. 145)

Note: **Had it been proved, as claimed by the defense, that the boy died of hydrophobia, that would have constituted an intervening cause, and the accused would have been acquitted.**

Not direct, natural and logical consequence of the felony committed.

If the consequences produced have resulted from a distinct *act or fact absolutely foreign* from the criminal act, the offender is not responsible for such consequences. (People vs. Rellin, 77 Phil. 1038)

A person is not liable criminally for all possible consequences which may immediately follow his felonious act, but only for such as are proximate.

Thus, where a person struck another with his fist and knocked him down and a horse near them jumped upon him and killed him, the assailant was not responsible for the death of that other person. (People vs. Rockwell, 39 Mich. 503)

This case should be distinguished from the case of *People vs. Cagoco,* 58 Phil. 524, *supra.*

In the *Cagoco* case, there was no *active* force that intervened between the felonious act and the result. In the *Rockwell* case, there was an active force (the jumping of the horse upon the deceased) which produced the result.

In the following cases, the injury caused is not the direct, logical and necessary consequence of the felony committed, because the felony committed is not the proximate cause of the resulting injury:

a. If slight physical injuries be inflicted by A upon B, and the latter *deliberately immerses* his body in a contaminated cesspool, thereby causing his injuries to become infected and serious, A *cannot* be held liable for the crime of serious physical injuries. (U.S. vs. De los Santos, G.R. No. 13309)

The act of B in deliberately immersing his body in a contaminated cesspool, not the slight physical injuries inflicted by A, is the proximate cause of the serious physical injuries.

b. The accused struck a boy on the mouth with the back of his hand. Later, the boy died. Death *might have been caused* by fever prevalent in the locality, not by the blow on the mouth. The accused who gave the blow was not liable for the death of the deceased. (People vs. Palalon, 49 Phil. 177)

c. The accused struck a child, who was seriously ill with fever for three weeks, upon the thighs with a slipper, pushed and dragged him, throwing him heavily on the mat spread on the floor. The child died two days later.

As the *true cause* of the child's death was *not proved,* the accused was convicted of physical injuries only. (U.S. vs. Embate, 3 Phil. 640)

d. Where medical findings lead to a distinct possibility that the infection of the wound by tetanus was an efficient intervening cause later or between the time the deceased was wounded to the time of his death, the accused must be acquitted of the crime of homicide. (Urbano vs. IAC, 157 SCRA 10)

The felony committed is not the proximate cause of the resulting injury when —

1. There is an *active force* that intervened between the felony committed and the resulting injury, and the active force is a *distinct act* or fact *absolutely foreign* from the felonious act of the accused; or

2. The resulting injury is due to the *intentional act of* the victim.

Is the accused responsible for the result, if there is a neglect of the wound or there is an improper treatment of the wound?

The neglect of the wound or its unskillful and improper treatment, which are of themselves consequences of the criminal act and which might naturally follow in any case, must in law be deemed to have been among those consequences which were in contemplation of the guilty party and for which he is to be held responsible. (26 Am. Jur., 193, cited in People vs. Morallos, C.A., 50 O.G. 179)

Unskillful and improper treatment may be an active force, but it is not a distinct act or fact absolutely foreign from the criminal act.

7s the accused criminally liable for the consequences which originate through the fault or carelessness of the injured person ?

In the case of *U.S. vs. Monasterial,* 14 Phil. 391, it was held that "persons who are responsible for an act constituting a crime are also liable for all the consequences arising therefrom and inherent therein, *other than those* due to incidents entirely foreign to the act executed, or which originate through the *fault or carelessness* of the

injured person, which are exceptions to the rule not arising in the present case."

In the case of *People us. Quianson*, 62 Phil. 162, it is stated that one who inflicts injury on another is deemed guilty of homicide if the injury contributes to the death of the latter, "even if the deceased might have recovered if he had taken proper care of himself, or submitted to surgical operation."

It would seem that the *fault* or *carelessness* of the injured party, which would break the relation of the felony committed and the resulting injury, must have its origin from his *malicious* act or omission (U.S. vs. Navarro, 7 Phil. 713), as when the injured party had a desire to increase the criminal liability of his assailant.

A supervening event may be the subject of amendment of original information or of a new charge without double jeopardy.

Where the charge contained in the original information was for slight physical injuries because at that time the fiscal believed that the wound suffered by the offended party would require medical attendance for a period of only 8 days, but when the preliminary investigation was conducted, the justice of the peace found that the wound would heal after a period of 30 days, the act which converted the crime into a more serious one had supervened after the filing of the original information and this supervening event can still be the subject of amendment or of a new charge without necessarily placing the accused in double jeopardy. (People vs. Petilla, 92 Phil. 395)

Impossible crimes.

The commission of an impossible crime is indicative of criminal propensity or criminal tendency on the part of the actor. Such person is a potential criminal. According to positivist thinking, the community must be protected from anti-social activities, whether actual or *potential*, of the morbid type of man called "socially dangerous person."

The penalty for impossible crime is provided in Article 59 of this Code.

Impossible Crimes

The *2nd paragraph* of Art. 4 defines the so-called impossible crimes (impossible attempts).

Requisites of impossible crime:

1. **That the act *performed* would be an offense against *persons* or *property.***
2. **That the act was done with *evil intent.***
3. **That its accomplishment is inherently impossible, or that the *means* employed is either *inadequate* or *ineffectual.***
4. **That the act performed should not constitute a violation of another provision of the Revised Penal Code.**

IMPORTANT WORDS AND PHRASES IN PARAGRAPH 2 OF ART. 4.

1. ***"Performing an act which would be an offense against persons or property."***

   In committing an impossible crime, the offender *intends* to commit a felony against persons or a felony against property, and the *act performed* would have been an offense against persons or property. But a felony against persons or property *should not* be actually committed, for, otherwise, he would be liable for that felony. There would be no impossible crime to speak of.

Felonies against persons are:

a. **Parricide (Art. 246)**
b. **Murder (Art. 248)**
c. **Homicide (Art. 249)**
d. **Infanticide (Art. 255)**
e. **Abortion (Arts. 256, 257, 258 and 259)**
f. **Duel (Arts. 260 and 261)**
g. **Physical injuries (Arts. 262, 263, 264, 265 and 266)**
h. **Rape (Art. 266-A)**

Felonies against property are:

a. **Robbery (Arts. 294, 297, 298, 299, 300, 302 and 303)**

b. **Brigandage (Arts. 306 and 307)**

c. **Theft (Arts. 308, 310 and 311)**

d. **Usurpation (Arts. 312 and 313)**

e. **Culpable insolvency (Art. 314)**

f. **Swindling and other deceits (Arts. 315, 316, 317 and 318)**

g. **Chattel mortgage (Art. 319)**

h. **Arson and other crimes involving destruction (Arts. 320, 321, 322, 323, 324, 325 and 326)**

i. **Malicious mischief (Arts. 327, 328, 329, 330 and 331)**

If the act performed would be an offense other than a felony against persons or against property, *there is no impossible crime.*

That the act was done with evil intent.

Since the offender in impossible crime intended to commit an offense against persons or against property, it must be shown that the actor performed the act with evil intent, that is, he must have the intent to do an injury to another.

A, who wanted to kill B, looked for him. When A saw B, he found out that B was already dead. To satisfy his grudge, A stabbed B in his breast three times with a knife. Is this an impossible crime?

No, because A knew that B was already dead when he stabbed the lifeless body. There was no evil intent on the part of A, because he knew that he could not cause an injury to B. Even subjectively, he was not a criminal.

2. ***"Were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means."***

In impossible crime, the act performed by the offender cannot produce an offense against persons or property,

because: (1) the commission of the offense (against persons or against property) is inherently impossible of accomplishment; or (2) the means employed is either (a) inadequate; or (b) ineffectual.

a. *"Inherent impossibility of its accomplishment."*

This phrase means that the act intended by the offender is by *its nature* one of impossible accomplishment. (See Art. 59, Revised Penal Code)

There must be either (1) *legal impossibility* or (2) *physical impossibility* of accomplishing the intended act.

Examples of impossible crimes which are punishable under the Revised Penal Code are: (1) When one tries to kill another by putting in his soup a substance which he believes to be arsenic when in fact it is common salt; and (2) when one tries to murder a corpse. (People vs. Balmores, 85 Phil. 493, 496)

(1) *"Would be an offense against persons."*

Example: A fired at B, who was lying on bed, *not knowing* that B was dead hours before. In crime against persons, as would have been in this case, it is necessary that the victim could be injured or killed. A dead person cannot be injured or killed. Had B been alive when he was shot, and as a consequence he died, the crime committed by A would have been murder, a crime against persons.

There is *physical* and *legal impossibility* in this example.

(2) *"Would be an offense against property."*

A, with intent to gain, took a watch from the pocket of B. When A had the watch in his possession, he found out that it was the watch which he had lost a week before. In other words, the watch belonged to A. Is this an impossible crime?

It is believed that it may be an impossible crime. The act performed would have been theft had the watch been the property of B. But there is a *legal impossibility* of accomplishing it, because in theft, the personal property taken must belong to another.

An employee who, having known the safe combination, opens the safe in the office for the purpose of stealing money, but who finds the safe empty, is guilty of an impossible crime. The act performed would have been a crime of theft were it not for the inherent impossibility of its accomplishment. If there is no personal property that could be taken, it is inherently impossible to commit theft.

b. *"Employment of inadequate" means.*

Example: A, determined to poison B, uses a small quantity of arsenic by mixing it with the food given to B, believing that the quantity employed by him is sufficient. But since in fact it is not sufficient, B is not killed. The means employed (small quantity of poison) is inadequate to kill a person.

Where the means employed is adequate.

But where the means employed is *adequate* and the result expected is not produced, it is not an impossible crime, but a frustrated felony.

Thus, if the quantity of poison used is sufficient to kill an ordinary person, but the intended victim has developed strong resistance to poison because he has been working in a mine, the crime committed is frustrated murder.

c. *Employment of "ineffectual means."*

A tried to kill B by putting in his soup a substance which he thought was arsenic when in fact it was sugar. B could not have been killed, because the means employed was ineffectual. But A showed criminal tendency and,

hence, he should be punished for it in accordance with Art. 4, par. 2, in relation to Art. 59.

A, with intent to kill B, aimed his revolver at the back of the latter, A, not knowing that it was empty. When he pressed the trigger it did not fire. The means used by A is ineffectual.

In impossible crime the act performed should not constitute a violation of another provision of the Code.

A, who knew that B owned and always carried a watch, decided to rob B of said watch. When A met B for that purpose, B did not have the watch because he forgot to carry it with him. Thinking that B had the watch with him, A pointed his gun at him and asked for the watch. Finding that B did not have the watch, A allowed B to go without further molestation. Is this an impossible crime? It is believed that A committed attempted robbery, not impossible crime. There was intent to gain on the part of A when he decided to take the watch of B at the point of gun. The crime of robbery with intimidation of person is not produced, not because of the inherent impossibility of its accomplishment, but because of a cause or accident (that B forgot to carry the watch with him) other than A's own spontaneous desistance. (Art. 6, par. 3) Note also that A's pointing his gun at B already constituted at least the crime of grave threats under Art. 282, subdivision 2, of the Revised Penal Code. This is another reason why it is not an impossible crime.

Purpose of the law in punishing the impossible crime.

To *suppress* criminal propensity or criminal tendencies. *Objectively,* the offender has not committed a felony, but *subjectively, he is a criminal.*

Art. 5. ***Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.*** **— Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision and shall report to the Chief Executive, through the Department**

of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

"In connection with acts which should be repressed but which are not covered by the law."

The 1st paragraph of this article which contemplates a *trial of a criminal case* requires the following:

1. The act committed by the accused appears not punishable by any law;
2. But the court deems it proper to repress such act;
3. In that case, the court must render the proper decision by dismissing the case and acquitting the accused;
4. The judge must then make a report to the Chief Executive, through the Secretary of Justice, stating the reasons which induce him to believe that the said act should be made the subject of penal legislation.

Basis of par. 1, Art. 5.

The provision contained in paragraph 1 of Art. 5 is based on the legal maxim *"nullum crimen, nulla poena sine lege,"* that is, that there is *no crime* if there is *no law* that punishes the act.

"In cases of excessive penalties."

The 2nd paragraph of Art. 5 requires that —

1. The court after trial finds the accused guilty;
2. The penalty provided by law and which the court imposes for the crime committed appears to be clearly excessive, because —

a. the accused acted with lesser degree of malice, and/or;

b. there is no injury or the injury caused is of lesser gravity.

3. The court should not suspend the execution of the sentence.

4. The judge should submit a statement to the Chief Executive, through the Secretary of Justice, recommending executive clemency.

Examples of the accused acting with lesser degree of malice:

In a case where the accused maltreated his wife in his inebriated state, because she prevented him from whipping their negligent son, and the maltreatment inflicted by the accused was the proximate cause of her death, the Supreme Court applied Article 5 of the Revised Penal Code, "considering that the accused had no intent to kill his wife and that her death might have been hastened by lack of appropriate medical attendance or her weak constitution." The penalty of *reclusión perpetua,* prescribed by law for the crime committed, appears to be excessive. (People vs. Monleon, No. L-36282, Dec. 10, 1976, 74 SCRA 263, 269)

Father and son were convicted of qualified theft for stealing ten tender coconut fruits from two coconut trees in a coconut plantation, for the family's consumption. The court sentenced each of them to an indeterminate penalty of from four (4) months and one (1) day of *arresto mayor* to three (3) years, six (6) months and twenty-one (21) days of *prisión correccional,* according to Art. 310 of the Revised Penal Code. The Court of Appeals held: In the light of the circumstances surrounding the case, we are of the belief that the degree of malice behind the appellants' felonious act does not warrant the imposition of so stiff a penalty as we are now constrained to mete out under the law. We recommend, therefore, that they be pardoned after they shall have served four (4) months of the penalty so imposed. Let a copy of this decision be forwarded to His Excellency,

the President of the Philippines, through the Honorable, the Secretary of Justice. (People vs. Espino, *et al.*, CA-G.R. No. 14029-R, Feb. 20, 1956)

Example of total absence of injury:

The defendant chief of police altered and falsified the municipal police blotter and the book of records of arrests and the return of the warrant of arrest and the bail bond of a person charged with qualified seduction so as to make them show that the said person was arrested and gave bond on the 13th day of September, 1930, whereas, in truth and in fact, as said records showed before said falsification, that person was arrested and released on bond on the 6th day of September, 1930; and that defendant justice of the peace conspired and cooperated with his codefendant in making said falsification in order to meet the administrative charges then pending against him. In other words, those falsifications were committed to make it appear that there was no delay in the preliminary investigation conducted by the justice of the peace for qualified seduction. In this case, there is *apparent lack of malice* and *total absence of injury.* (People vs. Cabagsan and Montano, 57 Phil. 598)

Executive clemency recommended for the wife who killed her cruel husband.

Her deceased husband not content with squandering away the family substance, and not satisfied with keeping a mistress upon whom he must have spent some of the money that properly belonged to his own family including his wife, got into the habit of drinking until he became a habitual drunkard. * * * On the very day that she killed her husband, according to her own confession on which her conviction was based, he came home drunk, forthwith laid hands on her, striking her on the stomach until she fainted, and when she recovered consciousness and asked for the reason for the unprovoked attack, he threatened to renew the beating. At the supper table instead of eating the meal set before him, he threw the rice from his plate, thus adding insult to injury. Then he left the house and when he returned he again boxed his wife, the herein appellant. The violence with which appellant killed her husband

reveals the pent-up righteous anger and rebellion against years of abuse, insult, and tyranny seldom heard of. Considering all these circumstances and provocations including the fact as already stated that her conviction was based on her own confession, the appellant is deserving of executive clemency, not of full pardon but of a substantial if not a radical reduction or commutation of her life sentence. (Montemayor, *J.*, concurring in People vs. Canja, 86 Phil. 518, 522-523)

Executive clemency recommended because of the severity of the penalty for rape.

The crime committed by the accused is simple rape. Before Article 335 of the Revised Penal Code was amended, simple rape was penalized by *reclusion temporal* or twelve years and one day to twenty years. Republic Act No. 4111 raised the penalty for simple rape to *reclusion perpetua* and made qualified rape a capital offense. Taking notice of the rampancy of sexual assaults, ensuing from the lawlessness and deterioration of morals occasioned by the war, the lawmaking body sought to deter rapists by increasing the penalty for rape. It is believed that in this case, after the accused shall have served a term of imprisonment consistent with retributive justice, executive clemency may be extended to him. (People vs. Manlapaz, No. L-41819, Feb. 28, 1979, 88 SCRA 704, 719)

The penalties are not excessive when intended to enforce a public policy.

1. The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify imprisonment which in normal circumstances might appear excessive. (People vs. Estoista, 93 Phil. 647, 654)

2. With regard to the fine of P5,000.00 imposed by the court for selling a can of powdered Klim milk for ₱2.20 when the selling price for it was ₱1.80, it should be considered that Congress thought it necessary to repress profiteering with a heavy fine so that dealers would not take advantage of the critical condition to make unusual profits. (People vs. Tiu Ua, 96 Phil. 738, 741)

Courts have the duty to apply the penalty provided by law.

A trial judge expressed in his decision his view against the wisdom of the death penalty and refused to impose it. *Held:* It is the duty of judicial officers to respect and apply the law, regardless of their private opinions.

It is a well-settled rule that the courts are not concerned with the wisdom, efficacy or morality of laws. That question falls exclusively within the province of the Legislature which enacts them and the Chief Executive who approves or vetoes them. The only function of the judiciary is to interpret the laws and, if not in disharmony with the Constitution, to apply them. (People vs. Limaco, 88 Phil. 35)

A trial judge sentenced the accused to life imprisonment, although the commission of the crime of robbery with homicide was attended by the aggravating circumstances of nocturnity and in band, "in view of the attitude of the Chief Executive on death penalty." *Held:* The courts should interpret and apply the laws as they find them on the statute books, regardless of the manner their judgments are executed and implemented by the executive department. (People vs. Olaes, 105 Phil. 502)

Judge has the duty to apply the law as interpreted by the Supreme Court.

If a Judge of a lower court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by the Supreme Court is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal view, he must first think that it is his duty to apply the law as interpreted by the Highest Court of the land, and that any deviation from a principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants. (People vs. Santos, *et al.*,104 Phil. 560)

Accused-appellant claims that the penalty of *reclusion perpetua* is too cruel and harsh a penalty and pleads for sympathy. Courts are not the forum to plead for sympathy. The duty of courts is to apply the law, disregarding their feeling of sympathy or pity for an accused. DURA LEX SED LEX. The remedy is elsewhere — clemency from the executive or an amendment of the law by the legislative, but surely,

at this point, this Court can but apply the law. (People vs. Amigo, G.R. No. 116719, Jan. 18, 1996)

"When a strict enforcement of the provisions of this Code."

The second paragraph of Art. 5 of the Revised Penal Code has no application to the offense defined and penalized by a special law. (People vs. Salazar, 102 Phil. 1184)

The reason for this ruling is that second paragraph of Art. 5 specifically mentions "the provisions of this Code."

Art. 5 of the Revised Penal Code may not be invoked in cases involving acts *mala prohibita,* because said article applies only to acts *mala in se,* or crimes committed with malice or criminal intent. (People vs. Quebral, C.A., 58 O.G. 7399) The ruling is based on the phrase, "taking into consideration the degree of *malice.*"

Before the case of *People vs. Salazar, supra,* was decided by the Supreme Court, it applied the second paragraph of Art. 5 in cases involving illegal possession of firearms, a crime punishable by a special law (People vs. Estoesta, 93 Phil. 654; People vs. Lubo, 101 Phil. 179), and to the offenses punished by the Price Control Law. (Ayuda vs. People, G.R. No. L-6149, April 12, 1954)

Art. 6. *Consummated, frustrated, and attempted felonies.* — Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Consummated felony, defined.

A felony is consummated when all the elements necessary for its execution and accomplishment are present.

Frustrated felony, defined.

It is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

Attempted felony, defined.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Development of crime.

From the moment the culprit conceives the idea of committing a crime up to the realization of the same, his act passes through certain stages.

These stages are: (1) internal acts; and (2) external acts.

1. ***Internal acts*, such as mere ideas in the mind of a person, are *not punishable* even if, had they been carried out, they would constitute a crime.**

   Intention and effect must concur.

   Mere intention producing no effect is no more a crime than a mere effect without the intention is a crime.

   Thus, if A intended to commit treason and joined a body of armed men in the belief that they were *Makapilis* when in fact they were *Guerrilleros*, A was not liable for treason, despite his intent. (Albert)

2. ***External acts* cover (a) preparatory acts; and (b) acts of execution.**

   a. ***Preparatory acts — ordinarily they are not punishable.***

Ordinarily, preparatory acts are not punishable. Hence, proposal and conspiracy to commit a felony, which are only preparatory acts, are not punishable, except when the law provides for their punishment in certain felonies. (Art. 8)

But preparatory acts which are considered in themselves, by law, as independent crimes are punishable. *Example:* Possession of picklocks under Art. 304. The possession of picklocks is a preparatory act to the commission of robbery. (Arts. 299 and 302)

The other examples of preparatory acts are: (1) buying poison or carrying a weapon with which to kill the intended victim; (2) carrying inflammable materials to the place where a house is to be burned, etc.

For merely doing any of these acts, a person is not liable for attempted homicide or attempted arson, because they do not constitute even the first stage of the acts of execution of those crimes.

b. *Acts of execution — they are punishable under the Revised Penal Code.*

The stages of acts of execution — *attempted, frustrated,* and *consummated* — are punishable. (Art. 6)

The first stage of the acts of execution of a felony is the attempted; the second stage, the frustrated; and the last stage, the consummated.

In performing the acts of execution of a felony, the offender may reach only the first stage or the second stage. In either case, he does not produce the felony he intends to commit. But he is liable for attempted felony or frustrated felony, as the case may be.

Attempted felony.

There is an attempt when the offender begins the commission of a felony directly by overt acts. He has not performed all the acts of execution which should produce the felony.

Elements of attempted felony:

1. The offender *commences* the commission of the felony directly by overt acts;

2. He *does not perform* all the acts of execution which *should produce* the felony;

3. The offender's act is *not stopped by his own spontaneous desistance*;

4. The *non-performance of all acts of execution* was due to *cause* or *accident* other than his spontaneous desistance.

IMPORTANT WORDS AND PHRASES IN ART. 6.

1. *"Commences the commission of a felony directly by overt acts."*

When is the commission of a felony deemed commenced directly by overt acts? When the following two requisites are present:

(1) That there be *external acts;*

(2) Such external acts have direct connection with the crime *intended to be committed.*

The external acts must be related to the overt acts of the crime the offender intended to commit.

The external acts referred to in the first requisite must be related to the overt acts of the crime the offender intended to commit. They should not be mere preparatory acts, for preparatory acts do not have direct connection with the crime which the offender intends to commit.

"Overt acts," defined.

An overt act is some *physical activity* or *deed,* indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will *logically* and *necessarily* ripen into a concrete offense.

Preparatory acts and overt acts, distinguished.

If A bought poison from a drugstore, in preparation for the killing of B by means of poison, such act is only a preparatory act. It is not

an overt act, because it has no direct connection with the crime of murder which A intended to commit. The poison purchased may be used by A to kill rats or insects. Hence, the act of buying poison did not disclose necessarily an intention to kill a person with it.

But if A mixed the poison with the food intended for B, and the latter, not knowing that it contained poison, put into his mouth a spoonful thereof, the act of A was more than a mere planning or preparation for the commission of murder. The buying of poison and mixing it with the food of B who later put into his mouth part thereof to eat it, taken together, constituted the overt acts of murder. The nature of the external act thus performed by A clearly indicated that he intended to commit the crime of murder. If for some reason or another, B threw away the food with poison from his mouth, A is liable for attempted murder.

Note: Killing a person by means of poison is murder. (Art. 248, R.P.C.)

Drawing or trying to draw a pistol is not an overt act of homicide.

In a case, the evidence of the prosecution established the following facts:

While Tabago was talking with the Chief of Police, he made a motion to draw his pistol, but the latter embraced him and prevented him from drawing his pistol. Tabago then told his two companions to fire at the Chief of Police, but they could not do so, because the Chief of Police was embracing Tabago. One of his companions, Avelino Valle, fired a shot but the same was not aimed at anybody.

Held: The accused cannot be convicted of the crime of attempted homicide. The action of the accused in placing his hand on his revolver, which was then on his waist, is indeed very equivocal and susceptible of different interpretations. For example, it cannot be definitely concluded that the attempt of the accused to draw out his revolver would have, if allowed to develop or be carried to its complete termination following its natural course, logically and necessarily ripened into a concrete offense, because it is entirely possible that at any time during the subjective stage of the felony, the accused could have voluntarily desisted from performing all the acts of execution and which, had it happened, would completely exempt him from

criminal responsibility for the offense he intended to commit. (People vs. Tabago, *et al.*,C.A., 48 O.G. 3419)

To constitute attempted homicide the person using a firearm must fire the same, with intent to kill, at the offended party, without however inflicting a mortal wound on the latter.

Raising a bolo as if to strike the offended party with it is not an overt act of homicide.

In the case of *U.S. vs. Simeon,* 3 Phil. 688, it was held that the crime committed was only that of threatening another with a weapon (Art. 285, par. 1), because all that the accused did was to *raise his bolo as if to strike or stab* the offended party with it. The latter shouted for help and ran away. No blow was struck; nor was there proof of threats to kill or to do bodily harm.

If a blow with the bolo was struck and there was intent to kill on the part of the accused, the act of striking the offended party with the bolo would be an overt act of the crime of homicide.

Overt act may not be by physical activity.

There are felonies where, because of their nature or the manner of committing them, the overt acts are not performed with bodily movement or by physical activity. Thus, a proposal consisting in making an offer of money to a public officer for the purpose of corrupting him is the overt act in the crime of corruption of public officer. (U.S. vs. Gloria, 4 Phil. 341)

The external acts must have a direct connection with the crime intended to be committed by the offender.

At an early dawn, A was surprised by a policeman while in the act of making an opening with an iron bar on the wall of a store of cheap goods. At that time the owner of the store was sleeping inside with another Chinaman. A had only succeeded in breaking one board and in unfastening another from the wall.

Is there an attempted robbery in this case?

No, because while it is true that the 1st requisite is present, that is, there were external acts of breaking one board and unfastening another from the wall of the store to make an opening through which

A could enter the store, yet the 2nd requisite is not present, for such acts had no direct connection with the crime of robbery by the use of force upon things.

In case of robbery by the use of force upon things, in order that the simple act of entering by means of force another person's dwelling may be considered an *attempt to commit* this offense, it must be shown that the offender clearly intended to *take possession,* for the purpose of gain, of some *personal property* belonging to another.

The crime committed was *attempted* trespass to dwelling, because the *intention* of the accused was obviously disclosed by his act of making an opening through the wall, and that was to enter the store against the will of its owner who was then living there. (People vs. Lamahang, 61 Phil. 703) It is only an attempt, because A was not able to perform all the acts of execution which should produce the felony of trespass to dwelling. Had A commenced entering the dwelling through the opening, he would have performed all the acts of execution.

What is an indeterminate offense?

It is one where the purpose of the offender in performing an act is not certain. Its nature in relation to its objective is ambiguous.

In the case of *People vs. Lamahang, supra,* the final objective of the offender, once he succeeded in entering the store, may be to rob, to cause physical injury to the inmates, or to commit any other offense. In such a case, there is no justification in finding the offender guilty of attempted robbery by the use of force upon things.

The intention of the accused must be viewed from the nature of the acts executed by him, and not from his admission.

The intention of the accused must be ascertained from the facts and, therefore, it is necessary that the mind be able to directly infer from them the intention of the perpetrator to cause a particular injury.

In the case of *People vs. Lizada,* G.R. Nos. 143468-71, Jan. 24, 2003, the Supreme Court held that:

> "...The Supreme Court of Spain, in its decision of March 21, 1892, declared that for overt acts to constitute an

attempted offense, it is necessary that their objective be known and established or such that acts be of such nature that they themselves should obviously disclose the criminal objective necessarily intended, said objective and finality to serve as ground for designation of the offense."

Acts susceptible of double interpretation, that is, in favor as well as against the accused, and which show an innocent as well as a punishable act, must not and cannot furnish grounds by themselves for attempted crime. (People vs. Lamahang, 61 Phil. 707)

In offenses not consummated, as the material damage is wanting, the nature of the action intended cannot exactly be ascertained, but the same must be inferred from the *nature of the acts executed.* (I Groizard, p. 99) The overt acts leading to the commission of the offense are not punishable except when they are aimed *directly* at its execution, and therefore they must have an *immediate* and *necessary* relation to the offense. (I Viada, p. 47)

1. *"Directly by overt acts."*

The law requires that "the offender commences the commission of the felony directly by overt acts."

Only offenders who *personally execute* the commission of a crime can be guilty of attempted felony. The word *"directly"* suggests that the offender must commence the commission of the felony by taking direct part in the execution of the act.

Thus, if A induced B to kill C, but B *refused to do it, A* cannot be held liable for attempted homicide, because, although there was an attempt on the part of A, such an attempt was not done directly with physical activity. The inducement made by A to B is in the nature of a proposal, not ordinarily punished by law.

But if B, pursuant to his agreement with A, commenced the commission of the crime by shooting C, with intent to kill, but missed and did not injure C, both A and B are guilty of attempted felony, because of conspiracy. When there is conspiracy, the rule is — the act of one is the act of all.

2. *"Does not perform all the acts of execution."*

If the offender has performed all the acts of execution — nothing more is left to be done — the stage of execution is that of a frustrated

felony, if the felony is not produced; or consummated, if the felony is produced.

If *anything yet remained for him to do,* he would be guilty of an attempted crime. (U.S. vs. Eduave, 36 Phil. 209)

Thus, as in the case *of People vs. Lamahang,* when the accused, *for the purpose* of entering the dwelling of another broke one board and unfastened another from the wall but *before he could start entering through the opening thus created* he was *arrested* by a policeman, the crime committed was only attempted trespass to dwelling, because there was something yet for him to do, that is, to *commence entering* the dwelling through that opening in order to perform all the acts of execution.

3. *"By reason of some cause or accident."*

In attempted felony, the offender fails to perform all the acts of execution which should produce the felony because of some *cause* or *accident.*

Examples:

Cause.

A picked the pocket of B, inside of which there was a wallet containing ₱50.00. Before A could remove it from the pocket of B, the latter grabbed A's hand and prevented him from taking it. In this case, A failed to perform all the acts of execution, that is, taking the wallet, because of a cause, that is, the timely discovery by B of the overt act of A.

Accident.

A aimed his pistol at B to kill the latter, but when he pressed the trigger it jammed and no bullet was fired from the pistol.

4. *"Other than his own spontaneous desistance."*

If the actor does not perform all the acts of execution *by reason* of his own *spontaneous desistance,* there is no attempted felony. The law does *not punish him.*

Reason:

It is a sort of reward granted by law to those who, having one foot on the verge of crime, heed the call of their conscience

and return to the path of righteousness. (Viada, Cod. Pen., 35-36)

One who takes part in planning a criminal act but desists in its actual commission is exempt from criminal liability. For after taking part in the planning, he could have desisted from taking part in the actual commission of the crime by listening to the call of his conscience. (People vs. Villacorte, No. L-21860, Feb. 28, 1974, 55 SCRA 640, 654)

The desistance may be through fear or remorse. (People vs. Pambaya, See 60 Phil. 1022) It is not necessary that it be actuated by a good motive. The Code requires only that the discontinuance of the crime comes from the person who has begun it, and that he stops of his own free will. (Albert)

The desistance should be made before all the acts of execution are performed.

A stole a chicken under the house of B one evening. Realizing that what he did was wrong, A returned the chicken to the place under the house of B. Since the crime of theft was already consummated, the return of the stolen property does not relieve A of criminal responsibility. A had already performed all the acts of execution which produced the crime of theft before he returned the chicken.

A attacked and wounded B in the abdomen with a sharp-edged weapon, causing a wound serious enough to have produced death. A was about to assault B again; but this time, A desisted and left B. B was taken to the hospital by another person. Because of the timely and skillful medical treatment by a physician, B did not die. It will be noted that when A desisted, he had already inflicted a mortal wound on B, which could have produced his death were it not for the timely intervention of a physician. A is liable for frustrated homicide.

The desistance which exempts from criminal liability has reference to the crime intended to be committed, and has no reference to the crime actually committed by the offender before his desistance.

A, with intent to kill, fired his pistol at B, but did not hit the latter. B cried and asked A not to shoot him. A desisted from firing his pistol again at B. Is A criminally liable?

Yes, not for attempted homicide because he desisted before he could perform all the acts of execution, but for grave threats which was already committed by him when he desisted.

It must be borne in mind that the spontaneous desistance of a malefactor exempts him from criminal liability for the intended crime but it does not exempt him from the crime committed by him before his desistance.(People vs. Lizada, G.R. Nos. 143468-72, Jan. 24, 2003)

Illustration of a case where the accused inflicted injury.

The issue before the court was: Should an accused who admittedly shot the victim but is shown to have inflicted only a slight wound be held accountable for the death of the victim due to a fatal wound caused by his co-accused? *Held:* The slight wound did not cause the death of the victim nor materially contribute to it. His liability should therefore be limited to the slight injury he caused. However, the fact that he inflicted a gunshot wound on the victim shows the intent to kill. The use of a gun fired at another certainly leads to no other conclusion than that there is intent to kill. He is therefore liable for the crime of attempted homicide and not merely for slight physical injury. (Araneta, Jr. vs. Court of Appeals, G.R. No. 43527, July 3, 1990, 187 SCRA 123, 126, 133-134)

Subjective phase of the offense.

In *attempted felony,* the offender *never passes* the subjective phase of the offense.

Definition of subjective phase of the offense.

It is that *portion of the acts constituting* the crime, starting from the point where the offender *begins* the commission of the crime to that point where he has still control over his *acts*, including their (acts') natural course.

If between these two points the offender is stopped by any cause *outside* of his own voluntary desistance, the subjective phase has not been passed and it is an attempt. If he is not so stopped but continues until he performs the *last act,* it is *frustrated,* provided the crime is not produced. The acts then of the offender reached the *objective phase* of the crime.

Thus, if A, with intent to kill, mixes poison in the soup intended for B, and B begins to take into his mouth a spoonful of it, *until this point,* A can still prevent the poisoning of B by voluntarily desisting and telling B to throw away the substance from his mouth as it contains poison. But from the moment B swallows it, A has no more control over his acts. The poison is now in B's stomach and it will require the intervention of a physician to prevent the poisoning of B.

If because of the intervention of the physician, B did not die, A will be liable for *frustrated* murder. The acts performed by A, *following their natural course,* passed from the subjective phase to the objective phase of the crime.

Frustrated felony.

Elements:

1. The offender *performs all the acts of execution;*
2. All the acts performed *would produce the felony as a consequence;*
3. But the *felony is not produced;*
4. By reason of causes *independent of the will of the perpetrator.*

The requisites of a frustrated felony are: (1) that the offender has performed all the acts of execution which would produce the felony; and (2) that the felony is not produced due to causes independent of the perpetrator's will. (People vs. Orita, G.R. No. 88724, April 3, 1990, 184 SCRA 105, 113)

IMPORTANT WORDS AND PHRASES.

1. *"Performsall the acts of execution."*

In frustrated felony, the offender must perform all the acts of execution. Nothing more is left to be done by the offender, because he has performed the *last act* necessary to produce the crime. This element distinguishes frustrated felony from attempted felony. In attempted felony, the offender does not perform all the acts of execution. He does not perform the last act necessary to produce the crime. He merely commences the commission of a felony directly by overt acts.

Thus, if A, with intent to kill, fires his gun at B, the discharge of the gun is only an overt act. If the slug fired from the gun misses B or the wound inflicted on B is not mortal, the last act necessary to produce the crime of homicide is not yet performed by A. But if the wound inflicted is mortal, that is, sufficient to cause death, A performs the last act. If no medical attendance is given, B would surely die. In homicide or murder, the crime is consummated if the victim dies. If the victim survives, the crime is frustrated. (See U.S. vs. Eduave, 36 Phil. 209)

The Supreme Court in certain cases has emphasized the belief of the accused.

People vs. Sy Pio
(94 Phil. 885)

Facts: **The accused entered a store and once inside, he fired his .45 caliber pistol at the Chinaman Sy who was hit fatally. Kiap who was in the store asked him why he fired the shot and without answering him, the accused fired at Kiap, hitting him on the right shoulder. Upon being hit, Kiap immediately ran behind the store to hide and he heard the accused fire at several other directions before he ran away. The wound of Kiap healed in 20 days and was inflicted on the part of his body which could not have produced his death. For shooting Kiap, the accused was prosecuted for and declared guilty of frustrated murder in the Court of First Instance.**

Held: **The fact that Kiap was able to escape, which the accused must have seen, *must have produced in the mind of the accused* the belief that he was not able to hit his victim at a vital part of the body. In other words, the accused *knew* that he had not actually performed all the acts of execution necessary to kill his victim.**

The accused is guilty of attempted murder, because he did not perform all the acts of execution, *actual* and *subjective,* in order that the purpose and intention that he had to kill his victim might be carried out.

In other cases, the Supreme Court stated —

Deadly weapons were used, blows were directed at the vital parts of the body, the aggressors stated their purpose to kill and *thought they had killed.* The subjective phase of the crime was entirely passed, and subjectively speaking, the crime was complete. The

felony is not produced by reason of causes independent of the will of the perpetrators; in this instance, the playing possum by the victim, that is, he escaped death from the aggressors by the ruse of feigning death. (People vs. Dagman, 47 Phil. 770)

The defendant *believed* that he had performed all of the acts necessary to consummate the crime of murder, and, therefore, of his own will, desisted from striking further blows. He *believed* that he had killed Keng Kin. Death did not result for reasons entirely apart from the will of the defendant. This surely stamps the crime as frustrated murder. If, after the first blow, someone had rushed to the assistance of Keng Kin and by his efforts had prevented the accused from proceeding further in the commission of the crime, the defendant *not believing* that he had performed all of the acts necessary to cause death, he would have been guilty of attempted murder. (U.S. vs. Lim San, cited in People vs. Dagman, 47 Phil. 771)

The aggressor stated his purpose to kill, *thought he had killed,* and threw the body into the bushes. When he gave himself up, he declared that he had killed the complainant. But as death did not result, the aggressor was guilty of frustrated murder. (U.S. vs. Eduave, 36 Phil. 210)

The belief of the accused need not be considered. What should be considered is whether all the acts of execution performed by the offender "would produce the felony *as a consequence*."

In crimes against persons, as homicide, which requires the victim's death to consummate the felony, it is necessary for the frustration of the same that a mortal wound be inflicted, because then the wound could produce the felony as a consequence. (People vs. Guihama, *et al.*, 13 C.A. Rep. 557)

In the following cases, the stage of execution was held to be frustrated, because the wound inflicted was mortal:

a. *People vs. Honrada,* 62 Phil. 112, where the accused stabbed the offended party in the abdomen, penetrating the liver, and in the chest. It was only the prompt and skillful medical treatment which the offended party received that saved his life.

b. *People vs. Mercado,* 51 Phil. 99, where the accused wounded the victim in the left abdomen with a sharp-edged weapon,

causing a wound in the peritonial cavity, serious enough to have produced death.

c. *People vs. David,* 60 Phil. 93, where the accused in firing his revolver at the offended party hit him in the upper side of the body, piercing it from side to side and perforating the lungs. The victim was saved due to adequate and timely intervention of medical science.

In the following cases, the stage of execution was held to be attempted, because there was no wound inflicted or the wound inflicted was not mortal.

a. *U.S. vs. Bien,* 20 Phil. 354, where the accused threw a Chinaman into the deep water, and as the Chinaman did not know how to swim, he made efforts to keep himself afloat and seized the gunwale of the boat, but the accused tried to loosen the hold of the victim with the oar. The accused was prevented from striking the latter by other persons. Since the accused had the intent to kill the offended party, the former actually committed attempted homicide against the latter.

b. *People vs. Kalalo, et al.*, 59 Phil. 715, where the accused fired four successive shots at the offended party while the latter was fleeing to escape from his assailants and save his own life. Not having hit the offended party, either because of his poor aim or because his intended victim succeeded in dodging the shots, the accused failed to perform all the acts of execution by reason of a cause other than his spontaneous desistance.

Even if no wound was inflicted, the assailant may be convicted of attempted homicide, provided he had the intent to kill the offended party. (People vs. Aban, CA-G.R. No. 10344-R, November 30, 1954)

c. *People vs. Domingo,* CA-G.R. No. 14222-R, April 11, 1956, where two physicians called to the witness stand by the prosecution *could not agree* that the wounds inflicted upon the complainant would cause death. One of them, Dr. Rotea, testified that the wounds were not serious enough to produce death even if no medical assistance had been given to the offended party.

d. *People vs. Somera, et al.*, 52 O.G. 3973, where the head of the offended party was merely grazed by the shot which hit him, the wound being far from fatal.

2. *"Would produce the felony as a consequence."*

All the acts of execution performed by the offender *could have produced the felony* as a consequence.

Thus, when A approached B stealthily from behind and made a movement with his right hand to strike B on the back with a deadly knife, but the blow, instead of reaching the spot intended, landed on the frame of the back of the chair on which B was sitting at the time and did not cause the slightest physical injury on B, the stage of execution should have been that of *attempted* murder only, because without inflicting a *deadly wound* upon a *vital* spot of which B should have died, the crime of murder *would not be produced as a consequence.*

The case of *People vs. Borinaga,* 55 Phil. 433, is now superseded by the case of *People vs. Kalalo,* 59 Phil. 715, which sustains the above opinion. In crimes against persons, such as murder, which require that the victim should die to consummate the felony, it is necessary for the frustration of the same that a *mortal wound* is inflicted.

Thus, in his dissenting opinion in the case of *People vs. Borinaga, supra,* Justice Villareal said: "It is true that the frame of the back of the chair stood between the deadly knife and the back of Mooney; but what it prevented was the wounding of said Mooney in the back and not his death, had he been wounded. It is the preventing of death by causes independent of the will of the perpetrator, after all the acts of execution had been performed, that constitutes frustrated felony (of murder), and not the preventing of the performance of all the acts of execution which constitute the felony."

3. *"Do not produce it."*

In frustrated felony, the acts performed by the offender do not produce the felony, because if the felony is produced it would be consummated.

4. *"Independent of the will of the perpetrator."*

Even if all the acts of execution have been performed, the crime may not be consummated, because *certain causes* may prevent its

consummation. These certain causes may be the intervention of third persons who prevented the consummation of the offense or may be due to the *perpetrator's own will.*

If the crime is not produced because of the timely intervention of a *third person,* it is frustrated.

If the crime is not produced because the *offender himself prevented its consummation,* there is no *frustrated felony,* for the 4th element is not present.

Note that the 4th element says that the felony is not produced *"by reason of causes independent of the will of the perpetrator."* Hence, if the cause which prevented the consummation of the offense was the perpetrator's own and exclusive will, the 4th element does not exist.

Problem:

A doctor conceived the idea of killing his wife, and to carry out his plan, he mixed arsenic with the soup of his victim. Immediately after the victim took the poisonous food, the offender suddenly felt such a twinge of conscience that he himself washed out the stomach of the victim and administered to her the adequate antidote. Would this be a frustrated parricide? Certainly not, for even though the subjective phase of the crime had already been passed, the most important requisite of a frustrated crime, *i.e.,* that the *cause* which prevented the consummation of the offense be independent of the will of the perpetrator, was lacking. (Guevara)

The crime cannot be considered attempted parricide, because the doctor already performed *all the* acts of execution. At most, the crime committed would be physical injuries, as the poison thus administered, being an injurious substance, could cause the same. The intent to kill which the doctor entertained in the beginning disappeared when he prevented the poison from producing the death of his wife.

Is there frustration due to inadequate or ineffectual means?

Such a frustration is placed on the same footing as an *impossible attempt.* (Albert)

Frustrated felony distinguished from attempted felony.

1. **In both, the offender has not accomplished his criminal purpose.**

2. **While in frustrated felony, the offender has performed all the acts of execution which would produce the felony as a consequence, in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.**

   In other words, in frustrated felony, the offender has reached the *objective phase;* in attempted felony, the offender has not passed the *subjective phase.*

The essential element which distinguishes attempted from frustrated felony is that, in the latter, there is no intervention of a foreign or extraneous cause or agency between the beginning of the consummation of the crime and the moment when all of the acts have been performed which should result in the consummated crime; while in the former there is such intervention and the offender does not arrive at the point of performing all of the acts which should produce the crime. He is stopped short of that point by some cause apart from his own voluntary desistance. (People vs. Orita, G.R. No. 88724, April 3, 1990, 184 SCRA 105, 113, quoting U.S. vs. Eduave, 36 Phil. 209, 212)

Attempted or frustrated felony distinguished from impossible crime.

(1) In attempted or frustrated felony and impossible crime, the evil intent of the offender is *not accomplished.*

(2) But while in impossible crime, the evil intent of the offender *cannot be accomplished,* in attempted or frustrated felony the evil intent of the offender is *possible of accomplishment.*

(3) In impossible crime, the evil intent of the offender cannot be accomplished because it is inherently impossible of accomplishment or because the means employed by the offender is inadequate or ineffectual; in attempted or frustrated felony, what prevented its accomplishment is

the intervention of certain cause or accident in which the offender had no part.

Consummated felony.

A felony is consummated when all the elements necessary for its execution and accomplishment are present.

IMPORTANT WORDS AND PHRASES.

"All the elements" necessary for its execution and accomplishment "are present."

In consummated felony, *all* the *elements* necessary for its execution and *accomplishment* must be present. Every crime has its *own elements* which must *all he present* to constitute a culpable violation of a precept of law.

When not all the elements of a felony are proved.

When a felony has two or more elements and one of them is not proved by the prosecution during the trial, either (1) the felony is not shown to have been consummated, or (2) the felony is not shown to have been committed, or (3) another felony is shown to have been committed.

Thus, in the prosecution for homicide where the death of the victim is an element of the offense, if that element is absent, because the victim does not die, the crime is *not consummated.* It is either attempted or frustrated.

In taking personal property from another, when the element of intent to gain is lacking on the part of the person taking it, the crime of theft is *not committed.*

In the prosecution for estafa (Art. 315), if the element of deceit or abuse of confidence is not proved, there is no crime. There is only civil liability.

But if the element of damage only is not proved, the accused may be found guilty of attempted or frustrated estafa.

In the prosecution for robbery with violence against persons (Art. 294), if the element of intent to gain is not proved, the accused can be found guilty of *grave coercion* (Art. 286), *another felony.*

In the prosecution for forcible abduction (Art. 342), if the element of lewd designs is not proved, the accused may be held liable for kidnapping and serious illegal detention (Art. 267), *another felony*.

Hence, *all the elements* of the felony for which the accused is prosecuted *must be present* in order to hold him liable therefor in its consummated stage.

How to determine whether the crime is only attempted or frustrated or it is consummated.

In determining whether the felony is only attempted or frustrated or it is consummated, (1) the *nature* of the offense, (2) the *elements* constituting the felony, as well as (3) the *manner* of committing the same, must be considered.

Nature of crime.

Arson (Arts. 320-326). — In arson, it is not necessary that the property is totally destroyed by fire. The crime of arson is therefore, consummated even if only a portion of the wall or any other part of the house is burned. The consummation of the crime of arson does not depend upon the extent of the damage caused. (People vs. Hernandez, 54 Phil. 122) The fact of having set fire to some rags and jute sacks, soaked in kerosene oil, and placing them near the wooden partition of the house, should not be qualified as consummated arson, inasmuch as no part of the house began to burn. It is only *frustrated arson.* (U.S. vs. Valdes, 39 Phil. 240)

When a person had poured gasoline under the house of another and was about to strike a match to set the house on fire when he was apprehended, he was guilty of attempted arson. The acts performed by him are directly connected with the crime of arson, the offense he intended to commit. The pouring of the gasoline under the house and the striking of the match could not be for any other purpose.

If there was blaze, but no part of the house is burned, the crime of arson is *frustrated.* If any part of the house, no matter how small, is burned, the crime of arson is *consummated.*

Elements constituting the felony.

In theft, the crime is consummated when the thief is able *to take or get hold* of the thing belonging to another, even if he is not

able to carry it away. In estafa, the crime is consummated when the offended party is *actually damaged or prejudiced.*

Theft. — A Customs inspector abstracted a leather belt from the baggage of a Japanese and secreted it in the drawer of his desk in the Customs House, where it was found by other Customs employees. The Court of First Instance convicted him of frustrated theft. The Supreme Court considered it consummated theft, because all the elements necessary for its execution and accomplishment were present. (U.S. vs. Adiao, 38 Phil. 754)

Actual taking with intent to gain of personal property, belonging to another, without the latter's consent, is sufficient to constitute consummated theft. It is not *necessary* that the offender carries away or appropriates the property taken.

Estafa. — Defendant was a salesman of the Philippine Education Company. After he had received ₱7.50 for the sale of books, which he should have given to the cashier, he put it in his pocket with intent to misappropriate the amount. *Held:* This is frustrated estafa. (U.S. vs. Dominguez, 41 Phil. 408)

The accused performed all the acts of execution. However, the crime was not consummated as there was *no damage caused* in view of the timely discovery of the felonious act. In this kind of estafa the elements of (1) *abuse of confidence,* and (2) *damage* to the offended party must concur.

Is there a conflict in the rulings of the Adiao case and Dominguez case?

In the *Adiao* case, the theft was consummated although the belt was only secreted in defendant's desk. In the *Dominguez* case, the estafa was only frustrated even if the sales money was already in defendant's pocket. Apparently, they should both be either consummated or frustrated. The difference lies in the elements of the two crimes. In estafa, the offended party must be actually prejudiced or damaged. This element is lacking in the *Dominguez* case. In theft, the mere removal of the personal property belonging to another with intent to gain is sufficient. The act of removing the personal property constitutes the element of taking in theft. In the *Adiao* case, only the element of taking is in question. And that element is considered present because he abstracted (removed) the leather belt from the

baggage where it was kept and secreted it in the drawer of his desk. The taking was complete.

Frustrated theft.

A truck loaded with stolen boxes of rifles was on the way out of the check point in South Harbor surrounded by a tall fence when an MP guard discovered the boxes on the truck. It was held that the crime committed was frustrated theft, because of the timely discovery of the boxes on the truck before it could pass out of the check point. (People vs. Dino, C.A., 45 O.G. 3446)

In the Supply Depot at Quezon City, the accused removed from the pile nine pieces of hospital linen and took them to their truck where they were found by a corporal of the MP guards when they tried to pass through the check point. It was held that the crime committed was consummated theft. (People vs. Espiritu, *et al.*, CA-G.R. No. 2107-R, May 31, 1949)

Distinguished from the Diño case.

In the *Espiritu* case, it was held that the crime of theft was consummated because the thieves were able *to take* or *get hold of* the hospital linen and that the only thing that was frustrated, which does not constitute any element of theft, is the use or benefit that the thieves expected to derive from the commission of the offense.

In the *Diño* case, it was held that the crime committed is that of frustrated theft, because the fact determinative of consummation in the crime of theft is the *ability of the offender to dispose freely* of the articles stolen, even if it were more or less momentarily. The Court of Appeals followed the opinion of Viada in this case. (See 5 Viada, 103)

When the meaning of an element of a felony is controversial, there is bound to arise different rulings as to the stage of execution of that felony.

Example of attempted theft.

The accused was found inside a parked jeep of Captain Parker by an American MP. The jeep's padlock had been forced open and lying between the front seats and the gearshift was an iron bar. Captain Parker was then inside a theater. It was held that the accused already

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commenced to carry out his felonious intention, and that if he did not perform all the acts of execution which should have produced the crime of theft, it was because of the timely arrival of the MP. The overt acts of the accused consisted in forcing open the padlock locking the gearshift to a ring attached to the dashboard which was placed there to avoid the jeep from being stolen. (People vs. De la Cruz, C.A., 43 O.G. 3202)

Example of attempted estafa by means of deceit.

The accused fraudulently assumed authority to demand fees for the Bureau of Forestry, when he noticed that a timber was cut in the forest by the complainant without permit and used it in building his house. The accused tried to collect ₱6.00 from the complainant ostensibly to save him from paying a fine and to prepare for him a petition to obtain a permit to cut timber. The complainant refused or was unable to give ₱6.00 to the accused. (U.S. vs. Villanueva, 1 Phil. 370)

The fraudulent and false representations of the accused that he was authorized to collect ₱6.00 is the overt act. The refusal or inability of the complainant to give ₱6.00 to the accused is a cause which prevented the latter from performing all the acts of execution.

Examples of frustrated estafa by means of deceit.

The accused offered to give complainant a job as office boy in Ft. McKinley with a salary of P25.00, but he asked ₱3.80 for X-ray examination. The representation of the accused that the amount of ₱3.80 was for X-ray examination was false. Complainant handed to him ₱3.75 and while taking the remaining five centavos from his pocket, a policeman placed the accused under arrest. (People vs. Gutierrez, C.A., 40 O.G., Supp. 4, 125)

Where the accused, who made false pretenses, is apprehended immediately after receiving the money from the complainant inside the compound of the latter's employer, pursuant to a pre-arranged plan with the authorities, the crime committed is frustrated, and not consummated, *estafa.* (People vs. Castillo, C.A., 65 O.G. 1065)

Mere removal of personal property, not sufficient to consummate the crime of robbery by the use of force upon things.

The culprits, after breaking the floor of the bodega through which they entered the same, removed a sack of sugar from the pile;

but were caught in the act of taking it out through the opening on the floor. *Held:* Frustrated robbery. (People vs. Del Rosario, C.A., 46 O.G. 4332)

In robbery by the use of force upon things (Arts. 299 and 302), since the offender must enter the building to commit the crime, he must be able to carry out of the building the thing taken to consummate the crime.

In robbery with violence against or intimidation of persons (Art. 294), the crime is consummated the moment the offender *gets hold* of the thing taken *and/or is in a position to dispose of it freely.*

Element of intent to kill, when present in inflicting physical injuries.

If any of the physical injuries described in Articles 263, 264, 265 and 266 is inflicted *with intent to kill* on any of the persons mentioned in Article 246, or with the attendance of any of the circumstances enumerated in Article 248, the crime would be either attempted or frustrated parricide or murder as the case may be.

Defendant with a pocket knife inflicted several wounds on the victim. The words "until I can kill you" were uttered by the assailant. *Held:* Attempted homicide, not physical injuries, because the intention to kill is evident. (U.S. vs. Joven, 44 Phil. 796)

The accused inflicted bolo wounds on the shoulder and across the lips of the victim and then withdrew. *Held:* Not frustrated homicide, but serious physical injuries as the accused probably knew that the injuries were not such as should produce death. Intent to kill was not present. (U.S. vs. Maghirang, 28 Phil. 655)

The facts indicate that the petitioner had no intention to kill the offended party. Thus, petitioner started the assault on the offended party by just giving him fist blows; the wounds inflicted on the offended party were of slight nature; the petitioner retreated and went away when the offended party started hitting him with a bolo, thereby indicating that if the petitioner had intended to kill the offended party, he would have held his ground and kept on hitting the offended party with his bolo to kill him. The element of intent to kill not having been fully established, and considering that the injuries suffered by the offended party were not necessarily fatal and could be healed in less than 30 days, the offense committed by the petitioner

is only that of less serious physical injuries. (Mondragon vs. People, 17 SCRA 476)

Where the accused voluntarily left their victim after giving him a sound thrashing, without inflicting any fatal injury, although they could have easily killed their said victim, considering their superior number and the weapons with which they were provided, the intent to kill on the part of the accused is wanting and the crime committed is merely physical injuries and not attempted murder. (People vs. Malinao, [CA] 57 O.G. 2328)

Manner of committing the crime.

1. ***Formal crimes — consummated in one instant, no attempt.***

There are crimes, like *slander* and *false testimony,* which are consummated in *one instant,* by a *single act.* These are *formal crimes.*

As a rule, there can be no attempt at a formal crime, because between the thought and the deed there is no chain of acts that can be severed in any link. Thus, in slander, there is either a crime or no crime at all, depending upon whether or not defamatory words were spoken publicly. (Albert)

In the *sale of marijuana and other prohibited drugs,* the mere act of selling or even acting as broker consummates the crime. (People vs. Marcos, G.R. No. 83325, May 8, 1990, 185 SCRA 154, 166)

2. ***Crimes consummated by mere attempt or proposal or by overt act.***

***Flight to enemy's country* (Art. 121). — In this crime the mere attempt to flee to an enemy country is a consummated felony.**

***Corruption of minors* (Art. 340). — A mere proposal to the minor to satisfy the lust of another will consummate the offense.**

There is no *attempted* crime of treason, because the overt act in itself consummates the crime. (63 C.J., Sec. 5, p. 814)

3. ***Felony by omission.***

There can be no attempted stage when the felony is by *omission,* because in this kind of felony the offender does not

execute acts. He omits to perform an act which the law requires him to do.

But killing a child by starving him, although apparently by omission, is in fact by commission. (Albert)

4. *Crimes requiring the intervention of two persons to commit them are consummated by mere agreement.*

In those crimes, like *betting in sport contests* and *corruption of public officer* (Art. 197 and Art. 212), which require the intervention of two persons to commit them, the same are consummated by mere agreement. The offer made by one of the parties to the other constitutes attempted felony, if the offer is rejected. (U.S. vs. Basa, 8 Phil. 89)

In view of the rule stated, it would seem that there is no frustrated bribery (corruption of public officer). But in the case *of People vs. Diego Quin,* G.R. No. L-42653, it was held by the Supreme Court that where the defendant fails to corrupt a public officer, because the latter *returned* the money given by the defendant, the crime committed is frustrated bribery (corruption of public officer) under Art. 212 in relation to Art. 6.

In the case of *U.S. vs. Te Tong,* 26 Phil. 453, where the roll of bills amounting to P500 was accepted by the police officer for the purpose of using the same as evidence in the prosecution of the accused for attempted bribery (attempted corruption of a public officer), it was held that the accused who delivered the money was guilty of attempted bribery.

5. *Material crimes* — There are three stages of execution.

Thus, homicide, rape, etc., are not consummated in one instant or by a single act. These are the *material* crimes.

(a) *Consummated rape.* — The accused lay on top of a girl nine years of age for over fifteen minutes. The girl testified that there was partial penetration of the male organ in her private parts and that she felt intense pain. *Held:* Entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina is generally held sufficient to warrant conviction of the accused for consummated crime of rape. (People vs. Hernandez, 49 Phil. 980, 982)

(b) *Frustrated rape.* — The accused endeavored to have sexual intercourse with a girl three years and eleven months old. There was doubt whether he succeeded in penetrating the vagina. *Held:* There being no conclusive evidence of penetration of the genital organ of the child, the accused is entitled to the benefit of the doubt and can only be found guilty of frustrated rape. (People vs. Eriña, 50 Phil. 998, 1000)

However, in the case of *People vs. Orita,* 184 SCRA 114, 115, the Supreme Court held that "x x x for the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction. x x x Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage in rape can be committed." The Supreme Court further held that the *Erifia* case appears to be a "stray" decision inasmuch as it has not been reiterated in the Court's subsequent decisions.

(c) *Attempted rape.* — The accused placed himself on top of a woman, and raising her skirt in an effort to get his knees between her legs while his hands held her arms firmly, *endeavoring to have sexual intercourse with her,* but not succeeding because the offended party was able to extricate herself and to run away. *Held:* Attempted rape. (People vs. Brocal, [CA] 36 O.G. 856)

(d) *Consummated homicide.* — Accused-appellant shot the victim in the left forearm. While he and the victim were grappling for the gun, his co-accused who has remained at large, stabbed the victim in the chest. The victim died and it was established that the cause of death was hemorrhage, secondary to stab wound. *Held:* Accused-appellant was found guilty of homicide there being no qualifying circumstance to make the killing murder. The fact that he did not inflict the mortal wound is of no moment, since the existence of conspiracy was satisfactorily shown by

the evidence. (People vs. Sazon, G.R. No. 89684, Sept. 18, 1990, 189 SCRA 700, 703, 711, 713)

(e) *Frustrated murder.* — The accused stabbed his two victims as they were about to close their store in the evening. One of the victims died while the other recovered. *Held:* The assault upon the surviving victim constituted frustrated murder, her relatively quick recovery being the result of prompt medical attention which prevented the infection in the wound from reaching fatal proportions which would otherwise have ensued. The attack was qualified by treachery (alevosia). (People vs. Mision, G.R. No. 63480, Feb. 26, 1991, 194 SCRA 432, 445-446)

(f) *Attempted homicide.* — The accused intended to kill his victim but he was not able to perform all the acts of execution necessary to consummate the killing. The wounds inflicted did not affect vital organs. They were not mortal. He first warned his victim before shooting him. *Held:* Attempted homicide. (People vs. Ramolete, No. L-28108, March 27, 1974, 56 SCRA 66, 82-83)

There is no attempted or frustrated impossible crime.

In impossible crime, the person intending to commit an offense has *already performed the acts for the execution of the same,* but nevertheless the crime is not produced by reason of the fact that the act intended is by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate or ineffectual to produce the result desired by him. (See Art. 59, Revised Penal Code)

Therefore, since the offender in impossible crime has already performed the acts for the execution of the same, there could be no attempted impossible crime. In attempted felony, the offender has not performed all the acts of execution which would produce the felony as a consequence.

There is no frustrated impossible crime, because the acts performed by the offender are considered as constituting a consummated offense.

Art. 7. ***When light felonies are punishable.*** **— Light felonies are punishable only when they have been consummated, with the exception of those committed against persons or property.**

What are light felonies?

Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos, or both, is provided. (Art. 9, par. 3)

The light felonies punished by the Revised Penal Code:

1. **Slight physical injuries. (Art. 266)**
2. **Theft. (Art. 309, pars. 7 and 8)**
3. **Alteration of boundary marks. (Art. 313)**
4. **Malicious mischief. (Art. 328, par. 3; Art. 329, par. 3)**
5. **Intriguing against honor. (Art. 364)**

The penalty for the above-mentioned crimes is *arresto menor* (imprisonment from one day to thirty days), or a fine not exceeding P200.

IMPORTANT WORDS AND PHRASES.

1. ***"With the exception of those committed against persons or property."***

General Rule:

Light felonies are punishable *only* when they have been *consummated.*

Exception:

Light felonies committed against *persons* or *property,* are punishable even if *attempted* or *frustrated.*

Reason for the general rule.

Light felonies produce such *light,* such *insignificant* moral and material injuries that public conscience is satisfied with providing a

light penalty for their consummation. If they are *not consummated,* the wrong done is so slight that there is *no need* of providing a penalty at all. (Albert)

Reason for the exception:

The commission of felonies against *persons* or *property* presupposes in the offender *moral depravity.* For that reason, even *attempted* or *frustrated* light felonies against persons or property are punishable.

Examples of light felonies against person:

Art. 266 — Slight physical injuries and maltreatment.

Examples of light felonies against property:

1. Art. 309, No. 7 — Theft by hunting or fishing or gathering fruits, cereals or other forest or farm products upon an inclosed estate or field where trespass is forbidden and the value of the thing stolen does not exceed ₱5.00.
2. Art. 309, No. 8 — Theft, where the value of the stolen property does not exceed ₱5.00 and the offender was prompted by hunger, poverty, or the difficulty of earning a livelihood.
3. Art. 313 — Alteration of boundary marks.
4. Art. 328, No. 3; Art. 329, No. 3 — Malicious mischief where the damage is not more than ₱200.00 or if it cannot be estimated.

Art. 8. ***Conspiracy and proposal to commit felony.*** **— Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.**

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

IMPORTANT WORDS AND PHRASES.

1. ***"Conspiracy and proposal to commit felony."***

Conspiracy and proposal to commit felony are two different acts or felonies: (1) conspiracy to commit a felony, and (2) proposal to commit a felony.

2. ***"Only in the cases in which the law specially provides a penalty therefor."***

Unless there is a specific provision in the Revised Penal Code providing a penalty for conspiracy or proposal to commit a felony, *mere conspiracy* or *proposal* is *not* a felony.

Conspiracy is not a crime except when the law specifically provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Art. 8) Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason (Art. 115), rebellion (Art. 136) and sedition (Art. 141). The crime of conspiracy known to the common law is not an indictable offense in the Philippines. (U.S. vs. Lim Buanco, 14 Phil. 472; U.S. vs. Remigio, 37 Phil. 599, 614; People vs. Asaad, 55 Phil. 697) An agreement to commit a crime is a reprehensible act from the viewpoint of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed. However, when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators. (People vs. Peralta, 25 SCRA 759)

General Rule:

Conspiracy and proposal to commit felony are not punishable.

Exception:

They are punishable only in the cases in which the law *specially provides a penalty therefor.*

Reason for the rule.

Conspiracy and proposal to commit a crime are only *preparatory acts,* and the law regards them as *innocent* or at least *permissible* except in rare and exceptional cases.

The Revised Penal Code specially provides a penalty for mere conspiracy in Arts. 115, 136, and 141.

Art. 115. *Conspiracy xxxto commit treason — Penalty.* — The conspiracy x x x to commit the crime of treason shall be punished x x x by *prision mayor* and a fine not exceeding 10,000 pesos x x x.

Art. 136. *Conspiracy x x x to commit coup d'etat, rebellion or insurrection.* — The conspiracy x x x to commit coup d'etat shall be punished by *prision mayor* in its minimum period and a fine which shall not exceed 8,000 pesos.

The conspiracy x x x to commit rebellion or insurrection shall be punished x x x by *prision correccional* in its maximum period and a fine which shall not exceed 5,000 pesos xxx. (As amended by Rep. Act No. 6968)

Art. 141. *Conspiracy to commit sedition.* — Persons conspiring to commit the crime of sedition shall be punished by *prision mayor* in its medium period and a fine not exceeding 2,000 pesos. (As amended by P.D. No. 942)

Treason, coup d'etat rebellion or sedition should not be actually committed.

The conspirators *should not actually commit* treason, coup d'etat rebellion or sedition. It is sufficient that two or more persons agree and decide to commit treason, rebellion or sedition.

If they commit, say, treason, they will be held liable for treason, and the conspiracy which they had before committing treason is only a manner of incurring criminal liability. It is not a separate offense.

Conspiracy as a felony, distinguished from conspiracy as a manner of incurring criminal liability.

When the conspiracy relates to a *crime actually committed,* it is not a felony but only a manner of incurring criminal liability, that is, when there is conspiracy, the act of one is the act of all.

Even if the conspiracy relates to any of the crimes of treason, rebellion and sedition, but any of them *is actually committed*, the conspiracy is not a separate offense; it is only a manner of incurring criminal liability, that is, all the conspirators who carried out their plan and personally took part in its execution are equally liable. The offenders are liable for treason, rebellion, or sedition, as the case may be, and the conspiracy is absorbed.

When conspiracy is only a manner of incurring criminal liability, it is not punishable as a separate offense.

Illustrations of conspiracy as felony and as a manner of incurring criminal liability.

1. **A and B agreed and decided to rise publicly and take arms against the government with the help of their followers. Even if they did not carry out their plan to overthrow the government, A and B are liable for conspiracy to commit rebellion under Art. 136 of the Revised Penal Code.**

   But if A and B and their followers did rise publicly and take arms against the government to overthrow it, thereby committing rebellion, their conspiracy is not a felony. They are liable for rebellion and their conspiracy is only a manner of incurring criminal liability for rebellion.

2. **A, B, and C, after having conceived a criminal plan, got together, agreed and decided to kill D. If A, B and C failed to carry out the plan for some reason or another, they are not liable for having conspired against D, because the crime they conspired to commit, which is murder, is not treason, rebellion or sedition.**

But if they carried out the plan and personally took part in its execution which resulted in the killing of D, they are all liable for murder, even if A merely acted as guard outside the house where D was killed and B merely held the arms of D when C stabbed him to death. Their conspiracy is only a manner of incurring criminal liability for murder. It is not an offense, not only because a crime was committed after the conspiracy, but also because conspiracy to commit murder is not punished in the Revised Penal Code.

Indications of conspiracy.

When the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy. (People vs. Geronimo, No. L-35700, Oct. 15, 1973, 53 SCRA 246, 254)

Thus, an accused has been held as a co-conspirator as the circumstances of his participation indubitably showed unity of purpose and unity in the execution of the unlawful acts, gleaned from that fact that he knew of the plot to assassinate the victim as he too had been ordered to scout for a man who could do the job; he also knew exactly the place where the killing was to take place and also the date and approximate time of the assault. (People vs. Cantuba, G.R. No. 79811, March 19, 1990, 183 SCRA 289, 298)

For a collective responsibility among the accused to be established, it is sufficient that at the time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill their victim, and although only one of them may have actually stabbed the victim, the act of that one is deemed to be the act of all. (People vs. Hernandez, G.R. No. 90641, Feb. 27, 1990, 182 SCRA 794, 798)

The acts of the defendants must show a common design.

It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective. Here, appellants did not act with a unity of purpose. Even assuming that appellants have joined together in the killing, such circumstances alone do not satisfy the requirement of a conspiracy because the rule is that neither joint nor simultaneous action is *per se* sufficient proof of conspiracy. It must be shown to exist as clearly and convincingly as the commission of the offense itself. 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.

Although the defendants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this

fact alone does not prove conspiracy. (People vs. Dorico, No. L-31568, Nov. 29, 1973, 54 SCRA 172, 186-188)

People vs. Pugay
(167 SCRA 439)

Facts: The deceased Miranda, a 25-year-old retardate, and the accused Pugay were friends. On the evening of May 19, 1982, while a town fiesta was being held in the public plaza, the group of accused Pugay and Samson saw the deceased walking nearby, and started making fun of him. Not content with what they were doing, accused Pugay suddenly took a can of gasoline from under the engine of a ferris wheel and poured its contents on the body of Miranda. Then, the accused Samson set Miranda on fire making a human torch out of him.

Held: Where there is nothing in the records showing that there was previous conspiracy or unity of criminal purpose between the two accused immediately before the commission of the crime, where there was no animosity between the deceased and the accused and it is clear that the accused merely wanted to make fun of the deceased, the respective criminal responsibility of the accused arising from different acts directed against the deceased is individual and not collective, and each of them is liable only for the act committed by him.

Period of time to afford opportunity for meditation and reflection, not required in conspiracy.

Unlike in evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his intended deed (U.S. vs. Gil, 13 Phil. 330), conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime, committed by anyone of them. (People vs. Monroy, *et al.*, 104 Phil. 759)

Art. 186 of the Revised Penal Code punishing conspiracy.

Art. 186. *Monopolies and combinations in restraint of trade.* — The penalty of *prision correccional* in its minimum period or a fine ranging from two hundred to six thousand pesos, or both, shall be imposed upon:

1. Any person who shall enter into any contract or agreement or shall take part in any *conspiracy* or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market.

2. x x x

3. Any person who, being a manufacturer, producer, x x x, shall combine, conspire or agree x x xwith any person x x x for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price x x x of any such merchandise x x x.

Requisites of conspiracy:

1. That *two* or more persons came to an agreement;

2. That the agreement concerned the *commission* of a felony; and

3. That the *execution* of the felony be *decided* upon.

1st element — agreement presupposes meeting of the minds of two or more persons.

Thus, the fact that a document is discovered purporting to be a commission appointing the defendant an officer of armed forces against the Government *does not prove* conspiracy, because it was not shown that defendant *received* or *accepted* that commission. (U.S. vs. Villarino, 5 Phil. 697)

2nd element — the agreement must refer to the commission of a crime. It must be an *agreement to act, to effect, to bring about* what has already been conceived and determined.

Thus, the mere fact that the defendant met and aired some complaints, showing discontent with the Government over some real or fancied evils, is not sufficient. (U.S. vs. Figueras, 2 Phil. 491)

3rd element — the conspirators have made up their minds to commit the crime. There must be a determination to commit the crime of treason, rebellion or sedition.

Direct proof is not essential to establish conspiracy.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. Direct proof is not essential to establish conspiracy, and may be inferred from the collective acts of the accused before, during and after the commission of the crime. Conspiracy can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose and design, concerted action and community of interests. It is not necessary to show that all the conspirators actually hit and killed the victim. Conspiracy renders all the conspirators as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one conspirator is the act of all. (People vs. Buntag, G.R. No. 123070, April 14, 2004)

Quantum of proof required to establish conspiracy.

Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Settled is the rule that to estabish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.

A conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the crime itself. Mere presence of a person at the scene of the crime does not make him a conspirator for conspiracy transcends companionship.

The evidence shows that George Comadre and Danilo Lozano did not have any participation in the commission of the crime and must therefore be set free. Their mere presence at the scene of the crime as well as their close relationship with Antonio are insufficient to establish conspiracy considering that they performed no positive act in furtherance of the crime.

Neither was it proven that their act of running away with Antonio was an act of giving moral assistance to his criminal act. The ratiocination of the trial court that "their presence provided encouragement and sense of security to Antonio," is devoid of any factual basis. Such finding is not supported by the evidence on record and cannot therefore be a valid basis of a finding of conspiracy. (People vs. Comadre, G.R. No. 153559, June 8, 2004)

The Revised Penal Code specially provides a penalty for mere proposal in Arts. 115 and 136.

Art. 115. x x x *proposal to commit treason — Penalty.* — The x x x proposal to commit the crime of treason shall be punished x x x by *prision correccional* and a fine not exceeding 5,000 pesos.

Art. 136. x x x *proposal to commit coup d'etat rebellion or insurrection.* — The x x x proposal to commit *coup d'etat* shall be punished by *prision mayor* in its minimum period and a fine which shall not exceed 8,000 pesos.

The x x x proposal to commit rebellion or insurrection shall be punished x x x by *prision correccional* in its medium period and a fine not exceeding 2,000 pesos. (As amended by Rep. Act. No. 6968)

Treason or rebellion should not be actually committed.

In proposal to commit treason or rebellion, the crime of treason or rebellion *should not be actually committed by reason of the proposal.*

If the crime of treason or rebellion was *actually committed* after and because of the proposal, then the proponent would be liable for treason or rebellion as a principal by inducement (Art. 17, par. 2), and in such case the proposal is not a felony.

Requisites of proposal:

1. **That a person *has decided to commit a felony;* and**
2. **That he *proposes its execution* to some other person or persons.**

There is no *criminal proposal* when —

1. ***The person who proposes is not determined to commit the felony.***

   ***Example:* A desires that the present government be overthrown. But A is afraid to do it himself with others. A then suggests the overthrowing of the government to some desperate people who will do it at the slightest provocation. In this case, A is not liable for proposal to commit rebellion, because A has not decided to commit it.**

2. *There is no decided, concrete and formal proposal.*

In the above example, note that there was merely a suggestion—not a decided, concrete and formal proposal.

3. *It is not the execution of a felony that is proposed.*

Example: A conceived the idea of overthrowing the present government. A called several of his trusted followers and instructed them to go around the country and secretly to organize groups and to convince them of the necessity of having a new government. Note that what A proposed in this case is not the execution of the crime of rebellion, but the performance of preparatory acts for the commission of rebellion. Therefore, there is *no criminal proposal.*

Problem:

If the proponents of rebellion *desist* before any rebellious act is actually performed by the would-be material executors, *inform the authorities and aid in the arrest* of their fellow plotters, should the proponents be exempt?

According to Albert, the proponents should be exempt from the penalties provided for criminal proposals and conspiracies, for the law would rather *prevent* than punish crimes and encouragement should be given to those who hearken to the voice of conscience.

But once a proposal to commit rebellion is made by the proponent to another person, the crime of proposal to commit rebellion *is consummated* and the desistance of the proponent cannot legally exempt him from criminal liability.

It is not necessary that the person to whom the proposal is made agrees to commit treason or rebellion.

Note that what constitutes the felony of proposal to commit treason or rebellion is the making of proposal. The law does not require that the proposal be accepted by the person to whom the proposal is made. If it is accepted, it may be conspiracy to commit treason or rebellion, because there would be an agreement and a decision to commit it.

Proposal as an overt act of corruption of public officer.

One who offers money to a public officer to *induce him not to perform his duties,* but the offer is rejected by the public officer, is

liable for *attempted bribery.* (U.S. vs. Gloria, 4 Phil. 341) Note that while it is true that the act performed by the offender is in the nature of a proposal, and is not punishable because it does not involve treason or rebellion, nevertheless, the proposal in this case is an *overt act* of the crime of corruption of public officer. (See Art. 212)

The crimes in which conspiracy and proposal are punishable are against the security of the State or economic security.

Treason is against the *external* security of the State. Coup d'etat, rebellion and sedition are against *internal* security. Monopolies and combinations in restraint of trade are against economic security.

Reason why conspiracy and proposal to commit a crime is punishable in crimes against external and internal security of the State.

In ordinary crimes, the State survives the victim, and the culprit cannot find in the success of his work any impunity. Whereas, in crimes against the *external* and *internal* security of the State, if the culprit succeeds in his criminal enterprise, he would obtain the power and therefore impunity for the crime committed. (Albert)

Art. 9. *Grave felonies, less grave felonies, and light felonies.* — Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Article 25 of this Code.

Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above-mentioned article.

Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos, or both, is provided.

Classification of felonies according to their gravity.

Art. 9 classifies felonies according to their gravity. The gravity of the felonies is determined by the penalties attached to them by law.

IMPORTANT WORDS AND PHRASES.

1. ***"To which the law attaches the capital punishment."***

Capital punishment is death penalty.

2. ***"Or penalties which in any of their periods are afflictive."***

Although the word *"any"* is used in the phrase, when the penalty prescribed for the offense is composed of two or more distinct penalties, the higher or highest of the penalties must be an afflictive penalty.

Example: **A felony punishable by *prision correccional* to *prision mayor* is a grave felony, because the higher of the two penalties prescribed, which is *prision mayor* (Art. 71), is an afflictive penalty.**

If the penalty prescribed is composed of two or more periods corresponding to different divisible penalties, the higher or maximum period must be that of an afflictive penalty.

Example: A **felony punishable by *prision correccional* in its maximum period to *prision mayor* in its minimum period is a grave felony, because the higher period, which is the minimum of *prision mayor,* is a period of an afflictive penalty.**

If the penalty is composed of two periods of an afflictive penalty or of two periods corresponding to different afflictive penalties, the offense for which it is prescribed is a grave felony.

Example: **A felony punishable by the medium and maximum periods of *prision mayor* or by *prision mayor* in its maximum period to *reclusion temporal* in its minimum period is a grave felony, because both *prision mayor* and *reclusion temporal* are afflictive penalties.**

The afflictive penalties in accordance with Art. 25 of this Code are:

Reclusion perpetua,

Reclusion temporal,

Perpetual or temporary absolute disqualification,

Perpetual or temporary special disqualification,

Prision mayor.

"Penalties which in their maximum period are correctional."

When the penalty prescribed for the offense is composed of two or more distinct penalties, the higher or highest of the penalties must be a correctional penalty.

Example: **A felony punishable by *arresto menor* to *destierro* is a less grave felony, because the higher of the two penalties prescribed, which is *destierro,* is a correctional penalty. *Arresto menor* is a light penalty.**

If the penalty prescribed is composed of two or more periods corresponding to different divisible penalties, the higher or maximum period must be that of correctional penalty.

Example: ***A*** **felony punishable by *arresto menor* in its maximum period to *destierro* in its minimum period is a less grave felony, because the higher is a period of a correctional penalty.**

If the penalty is composed of two periods of a correctional penalty or of two periods corresponding to different correctional penalties, like *destierro* and *arresto mayor,* the offense for which it is prescribed is a less grave felony.

The following are *correctional penalties:*

Prision correccional,

Arresto mayor,

Suspension,

Destierro.

"The penalty of arresto menor or a fine not exceeding 200 pesos, or both, is provided."

When the Code provides a fine of exactly ₱200.00 for the commission of a felony, it is a light felony. If the amount of the fine provided by the Code is *more than* P200.00, then it is a less grave felony, because according to Art. 26,

a fine *not exceeding* P6,000.00 is a correctional penalty. If the amount of the fine provided by the Code is more than ₱6,000.00, it is a grave felony, because according to Art. 26, a fine *exceeding* ₱6,000.00 is an afflictive penalty.

Although Art. 26 provides that a fine *not less* than ₱200.00 is a correctional penalty, Art. 9 which defines light felonies should prevail, because the latter classifies felonies according to their gravity, while the former classifies the fine according to the amount thereof.

Gambling punished with *arresto menor* or a fine not exceeding ₱200.00 is a light felony. (People vs. Canson, Jr., *et al.*, 101 Phil. 537)

A felony punishable by a fine not exceeding P200.00 and *censure* (Art. 365, paragraph 4) is a light felony, because public censure, like *arresto menor,* is a light penalty.

Art. 10. *Offenses not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

Are offenses punishable under special laws subject to the provisions of the Revised Penal Code?

Article 10 is composed of two clauses. In the first, it is provided that offenses under special laws are not subject to the provisions of the Code. The second makes the Code supplementary to such laws.

The two clauses of Art. 10, reconciled.

The first clause should be understood to mean only that the Penal Code is not intended to supersede special penal laws. The latter are controlling with regard to offenses therein specially punished. Said clause only restates the elemental rule of statutory construction that special legal provisions prevail over general ones.

The second clause contains the soul of the article. The main idea and purpose of the article is embodied in the provision that the "Code shall be supplementary" to special laws, unless the latter should specially provide the contrary. (Dissent of Justice Perfecto, People vs. Gonzales, 82 Phil. 307)

IMPORTANT WORDS AND PHRASES.

1. ***"Special laws."***

A "special law" is defined in *U.S. vs. Serapio,* 23 Phil. 584, as a penal law which punishes acts *not* defined and penalized by the Penal Code.

Special law is a statute enacted by the Legislative branch, penal in character, which is not an amendment to the Revised Penal Code. Special laws usually follow the form of American penal law. The penal clause, for example, provides a penalty of from five to ten years or a fine not exceeding P5,000.00, or both, in the discretion of the court.

The provisions of the Revised Penal Code on penalties cannot be applied to offenses punishable under special laws.

Art. 6 relative to attempted and frustrated stages of execution, Arts. 18 and 19 regarding accomplices and accessories, and Arts. 50 to 57 which provide that the penalty for the principal in an attempted felony is two degrees and in a frustrated felony one degree lower than the penalty for the consummated felony, that the penalty for the accomplice is one degree lower and for the accessory two degrees lower than that for the consummated felony, Arts. 13 and 14 which provide for mitigating and aggravating circumstances, respectively, and Art. 64 which provides for the rules for the application of penalties with three periods, cannot be applied to offenses punishable under special laws. The reasons are that the special laws do not provide for a scale of penalties, as that in Art. 71 of the Code, where a given penalty could be lowered by one or two degrees, and that the penalty provided by the special law does not contain three periods.

The term "imprisonment" and not *"prision correccional"* should be used in reference to the penalty for the crime of illegal possession of firearms and other crimes punished by special laws, because the

term *"prision correccional," "prision mayor,"* or *"arresto mayor"* is peculiar to penalties for crimes punished by the Revised Penal Code. (See People vs. Respecia, 107 Phil. 995)

Offenses under special laws, not subject to the provisions of this Code relating to attempted and frustrated crimes.

By virtue of the provision of the *first part* of this article, it was held that the attempted or the frustrated stage of the execution of an offense penalized by a special law is not punishable, unless the special law provides a penalty therefor. (U.S. vs. Lopez Basa, 8 Phil. 89)

The ruling in the case of *U.S. vs. Basa, supra,* is still good, notwithstanding the case of *Navarra vs. People,* 96 Phil. 851, where it is stated that the prohibition against the interest in municipal contracts includes all the steps taken to consummate the contract, that is, frustrated and attempted stages are included.

In the *Navarra* case, the exchange of the property of the husband of a woman councilor and that of the municipality was approved by the municipal council. The provisions of the Administrative Code charged to have been violated by the councilor do not require that the contract be approved by the provincial governor. In the *Basa* case, the written proposal of Councilor Basa, offering to furnish street lamps to the municipality, at the price named therein, was not accepted by the municipal council, it being a violation of the law, prohibiting public officers from becoming interested in any transaction in which it is their official duty to intervene.

In the *Navarra* case, the transaction in which the councilor became interested having been approved by the municipal council, the offense was consummated. In the *Basa* case, the proposal, not having been accepted by the municipal council, the offense was only in the attempted stage.

The special law has to fix penalties for attempted and frustrated crime.

The penalty for the consummated crime cannot be imposed when the stage of the acts of execution is either attempted or frustrated, because the penalty for the attempted and frustrated crime is two degrees or one degree lower, respectively. The special law does not

provide for a penalty one or two degrees lower than that provided for the consummated stage. The special law has to fix a penalty for the attempt and a penalty for the frustration of the crime defined by it, in order that the crime may be punished in case its commission reached only the attempted or frustrated stage of execution.

When a special law covers the mere attempt to commit the crime defined by it, the attempted stage is punishable by the same penalty provided by that law.

When the accused was about to board a plane of the Pan American World Airways, four pieces of gold bullion were found tied to his body. He was charged with a violation of Republic Act No. 265.

Held: Section 4 of Circular No. 21, issued in accordance with the provisions of Republic Act No. 265, provides that "any person desiring to export gold in any form x x x must obtain a license from the Central Bank x x x." This section explicitly applies to "any person desiring to export gold" and hence, it contemplates the situation existing prior to the consummation of the exportation. Indeed, its purpose would be defeated if the penal sanction were deferred until after the article in question had left the Philippines, for jurisdiction over it and over the guilty party would be lost thereby. (People vs. Jolliffe, 105 Phil. 677)

Art. 10, R.P.C. is not applicable to punish an accomplice under the special law.

The offense involved is punished by Com. Act No. 466, Sec. 174. The penalty imposed is clearly intended only for the "person who is found in possession" of the prohibited article. No punishment for a mere accomplice is provided. Although by Article 10 of the Revised Penal Code, its provisions may be applied to offenses punished by special laws in a supplementary manner, the pertinent provisions thereof on accomplices simply cannot be given effect in the case at bar. To be able to do so, the rules on graduation of penalties must be resorted to. Thus, Article 52 thereof prescribes for the accomplice in a consummated offense a penalty one degree lower than that prescribed for the principal therein. But, the penalty provided in Section 174 of the National Internal Revenue Code here involved, is a single penalty standing by itself without any provision therein as to degrees of penalties imposable. No room for the application of

the rule of graduation of penalties therefore exists. It would be a legal impossibility to determine what penalty is to be imposed upon a mere accomplice. The combined provisions of both the Revised Penal Code and the National Internal Revenue Code do not provide any such penalty or at least lay down the basis or the manner of its determination. The rule is and has always been *nullum crimen nulla poena sine lege.* Hence, even if appellant is conceded to have performed acts which would make of him an accomplice, it would nevertheless be impossible to impose any penalty upon him because of the demonstrated inapplicability of the principles of the Revised Penal Code on accomplices to the case at bar. (Dissenting opinion, People vs. Padaong, 10 C.A. Rep. 979)

Plea of guilty is not mitigating in illegal possession of firearms, punished by special law.

The plea of guilty as mitigating circumstance under the Revised Penal Code (Art. 13, par. 7) is not available to offenses punishable under special laws. (People vs. Noble, 77 Phil. 1086)

Offenses which are punishable under the special laws are not subject to the provisions of Art. 64 of the Revised Penal Code, and it has been held that the provisions of the Revised Penal Code, relative to the application of the circumstances modifying the criminal liability of the accused are not applicable to special laws. (People vs. Respecia, 107 Phil. 995)

Art. 64 of the Revised Penal Code prescribing the rules for the graduation of penalties containing three periods when mitigating and/or aggravating circumstances attended the commission of the crime, was held inapplicable to offenses penalized by special laws, because the penalty prescribed by special law is usually indeterminate and does not contain three periods. For this reason, the mitigating circumstance of voluntary plea of guilty is not considered to mitigate the liability of one accused of illegal possession of firearms. (People vs. Ramos, 44 O.G. 3288; People vs. Gonzales, 82 Phil. 307)

This Code considered supplementary to special laws.

2. *"Supplementary"*

The word "supplementary" means supplying what is lacking; additional.

Some provisions of the Penal Code (especially with the addition of the second sentence of Art. 10), are perfectly applicable to special laws. In fact, the Supreme Court has extended some provisions of the Penal Code to special penal laws, such as, the provisions of Article 22 with reference to the retroactive effect of penal laws if they favor the accused (People vs. Parel, 44 Phil. 437); those of Article 17 with reference to participation of principals in the commission of the crime (U.S. vs. Ponte, 20 Phil. 379); those of Article 39 with reference to subsidiary imprisonment in case of insolvency to pay the fine (People vs. Abedes, 268 SCRA 619); and those of Article 45 with reference to the *confiscation of* the *instruments* used in the commission of the crime. (U.S. vs. Bruhez, 28 Phil. 305)

Indemnity and subsidiary imprisonment in the Revised Penal Code applied to violation of Motor Vehicle Law.

People vs. Moreno
(60 Phil. 712)

Facts: **The accused drove a car in a reckless manner, and in going around a curve leading to a concrete bridge, he violently struck the railing of the bridge and crushed the left side of the car. The person who was seated on the left side of the car received injuries from which he died the same day. The accused was convicted of homicide thru reckless imprudence and violation of the Motor Vehicle Law (Act No. 3992). That special law has no provision regarding indemnity to heirs of the deceased and subsidiary imprisonment in case of insolvency. In Articles 39 and 100 of the Revised Penal Code, indemnity to heirs and subsidiary imprisonment are, respectively, provided.**

Held: **Articles 39 and 100 of the Revised Penal Code are supplementary to the Motor Vehicle Law.**

Art. 39 of the Code applied to Rep. Act No. 145.

The appellant who was found guilty of a violation of Rep. Act No. 145, penalizing unlawful solicitation of, or contract for, fees relative to claim for benefits under statutes of the U.S. being administered by the U.S. Veterans Administration, was sentenced to suffer subsidiary imprisonment (Art. 39) should he fail to pay to the offended party the indemnity awarded to the latter. (People vs. Lardizabal, CA-G.R. Nos. 11540-R to 11543, Aug. 22, 1955)

Art. 39 of the Code applied to Act No. 4003.

Appellant's contention that the trial court committed error in ordering him to serve subsidiary imprisonment in case of insolvency in the payment of fine for the reason that Act No. 4003, which prohibits fishing with the use of explosives, fails to provide for such subsidiary imprisonment and that being a special law, it is not subject to the provisions of the Revised Penal Code, is untenable. The second paragraph of Article 10 of the said Code provides that "this Code shall be supplementary to such laws, unless the latter should specially provide the contrary." Articles 100 (civil liability) and 39 (subsidiary penalty) are applicable to offenses under special laws (People vs. Dizon [unrep.], 97 Phil. 1007). (People vs. Cubelo, 106 Phil. 496)

No accessory penalty, unless the special law provides therefor.

In the case of *People vs. Santos,* 44 O.G. 1289, the Court of Appeals refused to impose accessory penalty upon the accused found guilty of a violation of Act 3992, because that law does not provide for any.

Article 12, paragraph 3, of the Revised Penal Code, applied to minor over nine but less than fifteen years old who violated a special law.

People vs. Navarro
(C.A., 51 O.G. 4062)

Facts: **A girl, 13 years, 11 months, and 3 days old, was prosecuted for selling cocoa P0.11 more than the selling price fixed by the government. The prosecution failed to establish that she acted with discernment.**

Held: **The state has the burden of proving that the minor acted with discernment, otherwise, such minor shall be adjudged to be criminally irresponsible solely by reason of her age showing lack of intelligence. Article 12, paragraph 3, of the Revised Penal Code applied.**

In the above-mentioned case, the accused was prosecuted under a special law. Intent is immaterial in crimes *mala prohibita.* But even in crimes *mala prohibita,* the prohibited act must be voluntarily

committed. The offender must act with intelligence. In said case, the accused acted without intelligence.

3. *"Unless the latter should specially provide the contrary."*

The fact that Commonwealth Act No. 465 punishes the falsification of residence certificates in the cases mentioned therein does not prevent the application of the general provisions of the Revised Penal Code on other acts of falsification *not covered by the special law,* since under Art. 10 of the Revised Penal Code it has supplementary application to all special laws, *unless the latter should specially provide the contrary,* and Commonwealth Act No. 465 makes no provision that it *exclusively* applies to all falsifications of residence certificates. (People vs. Po Giok To, 96 Phil. 913, 919-920)

Special laws amending the Revised Penal Code are subject to its provisions.

P.D. No. 533 is not a special law, entirely distinct from and unrelated to the Revised Penal Code. From the nature of the penalty imposed which is in terms of the classification and duration of penalties as prescribed in the Revised Penal Code, which is not for penalties as are ordinarily imposed in special laws, the intent seems clear that P.D. No. 533 shall be deemed as an amendment of the Revised Penal Code, with respect to the offense of theft of large cattle (Art. 310), or otherwise to be subject to applicable provisions thereof such as Article 104 of the Revised Penal Code on civil liability of the offender, a provision which is not found in the decree, but which could not have been intended to be discarded or eliminated by the decree. Article 64 of the same Code should, likewise, be applicable, under which the presence of two mitigating circumstances, that of plea of guilty and extreme poverty, without any aggravating circumstances to offset them, entitles the accused to a lowering by one degree of the penalty for the offense. (People vs. Macatanda, No. L-51368, Nov. 6, 1981, 109 SCRA 35, 40-41)

Chapter Two

JUSTIFYING CIRCUMSTANCES AND CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY

The circumstances affecting criminal liability are:

I. Justifying circumstances (Art. 11)

II. Exempting circumstances (Art. 12), and other absolutory causes (Arts. 20; 124, last par.; 280, last par.; 332; 344; etc.)

III. Mitigating circumstances (Art. 13)

IV. Aggravating circumstances (Art. 14)

V. Alternative circumstances (Art. 15)

Imputability, defined.

Imputability is the quality by which an act may be ascribed to a person as its author or owner. It implies that the act committed has been *freely* and *consciously* done and may, therefore, be put down to the doer as his very own. (Albert)

Responsibility, defined.

Responsibility is the obligation of *suffering* the *consequences* of crime. It is the obligation of taking the penal and civil consequences of the crime. (Albert)

Imputability, distinguished from responsibility.

While imputability implies that a deed may be imputed to a person, responsibility implies that the person must take the consequence of such a deed. (Albert)

Meaning of "guilt."

Guilt is an element of responsibility, for a man cannot be made to answer for the consequences of a crime unless he is guilty. (Albert)

I. Justifying Circumstances.

1. *Definition*

Justifying circumstances are those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability.

There is no civil liability, except in par. 4 of Art. 11, where the civil liability is borne by the persons benefited by the act.

2. *Basis of justifying circumstances.*

The law recognizes the non-existence of a crime by expressly stating in the opening sentence of Article 11 that the persons therein mentioned "do not incur any criminal liability."

Art. 11. *Justifying circumstances.*— The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites

mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment or other evil motive.

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it.

Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

There is no crime committed, the act being justified.

In stating that the persons mentioned therein "do not incur any criminal liability," Article 11 recognizes the acts of such persons as justified. Such persons are not criminals, as there is no crime committed.

Burden of proof.

The circumstances mentioned in Art. 11 are matters of defense and it is incumbent upon the accused, in order to avoid criminal liability, to prove the justifying circumstance claimed by him to the satisfaction of the court.

Self-defense.

Well-entrenched is the rule that where the accused invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. He must rely on the strength of his own evidence and not on the weakness of the prosecution. For, even if the prosecution evidence is weak, it could not be disbelieved after the accused himself had admitted the killing.

(People vs. Sazon, G.R. No. 89684, Sept. 18, 1990, 189 SCRA 700, 704; People vs. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149, 156; People vs. Ansoyon, 75 Phil. 772, 777)

Self-defense, must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it and it cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but, in itself, is extremely doubtful. (People vs. Mercado, No. L-33492, March 30, 1988, 159 SCRA 453, 458; People vs. Lebumfacil, Jr., No. L-32910, March 28, 1980, 96 SCRA 573, 584)

In self-defense, the burden of proof rests upon the accused. His duty is to establish self-defense by clear and convincing evidence, otherwise, conviction would follow from his admission that he killed the victim. He must rely on the strength of his own evidence and not on the weakness of that for the prosecution. (People vs. Clemente, G.R. No. L-23463, September 28, 1967, 21 SCRA 261; People vs. Talaboc, Jr., G.R. No. L-25004, October 31, 1969, 30 SCRA 87; People vs. Ardisa, G.R. No. L-29351, January 23, 1974, 55 SCRA 245; People vs. Montejo, No. L-68857, Nov. 21, 1988, 167 SCRA 506, 512; People vs. Corecor, No. L-63155, March 21, 1988, 159 SCRA 84, 87)

The plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but in itself is extremely doubtful. (People vs. Flores, L-24526, February 29, 1972, 43 SCRA 342; Ebajan vs. Court of Appeals, G.R. Nos. 77930-31, Feb. 9, 1989, 170 SCRA 178, 189; People vs. Orongan, No. L-32751, Dec. 21, 1988, 168 SCRA 586, 597-598; People vs. Mendoza, [CA] 52 O.G. 6233)

Par. 1. - SELF-DEFENSE.

Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Rights included in self-defense.

Self-defense includes not only the defense of the *person* or *body* of the one assaulted but also that of his *rights*, that is, those rights the enjoyment of which is protected by law.

"Aside from the right to life on which rests the legitimate defense of our person, we have the right to property acquired by us, and the right to honor which is not the least prized of man's patrimony." (1 Viada, 172, 173, 5th edition)

Reason why penal law makes self-defense lawful.

Because it would be quite impossible for the State in all cases to prevent aggression upon its citizens (and even foreigners, of course) and offer protection to the person unjustly attacked. On the other hand, it cannot be conceived that a person should succumb to an unlawful aggression without offering any resistance. (Guevara)

The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel, and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being. To the Classicists in penal law, lawful defense is grounded on the impossibility on the part of the State to avoid a present unjust aggression and protect a person unlawfully attacked, and therefore it is inconceivable for the State to require that the innocent succumb to an unlawful aggression without resistance, while to the Positivists, lawful defense is an exercise of a right, an act of social justice done to repel the attack of an aggression. (Castañares vs. Court of Appeals, Nos. L-41269-70, Aug. 6, 1979, 92 SCRA 567, 571-572; People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 185)

Requisites of self-defense.

There are three requisites to prove the claim of self-defense as stated in paragraph 1 of Article 11 of the Revised Penal Code, namely: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. (People vs. Uribe, G.R. Nos. 76493-94, Feb. 26, 1990, 182 SCRA 624, 630-631; People vs. Delgado, G.R. No. 79672, Feb. 15, 1990, 182 SCRA 343, 349-350; People vs.

Batas, G.R. Nos. 84277-78, Aug. 2, 1989, 176 SCRA 46, 53; People vs. Cañete, G.R. No. 82113, July 5, 1989, 175 SCRA 111, 116; People vs. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 291)

First requisite of self-defense.

The first requisite of self-defense is that there be unlawful aggression on the part of the person injured or killed by the accused.

Unlawful aggression is an indispensable requisite.

It is a statutory and doctrinal requirement that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition *sine qua non.* There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself. (People vs. Sazon, G.R. No. 89684, Sept. 18, 1990, 189 SCRA 700, 704; People vs. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 291, citing Ortega vs. Sandiganbayan, G.R. No. 57664, Feb. 8, 1989, 170 SCRA 38; Andres vs. CA, No. L-48957, June 23, 1987, 151 SCRA 268; People vs. Picardal, No. 72936, June 18, 1987, 151 SCRA 170; People vs. Apolinario, 58 Phil. 586)

For the right of defense to exist, it is necessary that we be assaulted or that we be attacked, or at least that we be threatened with an attack in an immediate and imminent manner, as, for example, brandishing a knife with which to stab us or pointing a gun to discharge against us. (1 Viada, 5 edicion, 173, p. 3275)

If there is no unlawful aggression, there is *nothing to prevent or repel.* The second requisite of defense will have no basis.

In the case of *People vs. Yuman,* 61 Phil. 786, this rule was explained, as follows:

> *"The act of mortally wounding the victim has not been preceded by aggression* on the part of the latter. There is *no occasion to speak of* 'reasonable necessity of the means employed' or of 'sufficient provocation' on the part of one invoking legitimate self-defense, because *both circumstances presuppose unlawful aggression* which was not present in the instant case." (p. 788)

Aggression must be unlawful.

The first requisite of defense says that the aggression must be unlawful.

There are two kinds of aggression: (1) lawful, and (2) unlawful.

The *fulfillment of a duty* or the *exercise of a right* in a more or less violent manner is an aggression, but it is lawful.

Thus, the act of a chief of police who used violence by throwing stones at the accused when the latter was running away from him to elude arrest for a crime committed in his presence, is not unlawful aggression, it appearing that the purpose of the peace officer was to capture the accused and place him under arrest. (People vs. Gayrama, 60 Phil. 796, 805)

So also, is the act of a policeman who, after firing five cautionary shots into the air, aimed directly at the escaping detainee when he had already reasons to fear that the latter would be able to elude him and his pursuing companions. (Valcorza vs. People, No. L-28129, Oct. 31, 1969, 30 SCRA 143, 149; See also Masipequiña vs. Court of Appeals, G.R. No. 51206, Aug. 25, 1989, 176 SCRA 699, 708)

Article 249 of the new Civil Code provides that "(t)he owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property."

Thus, under the new Civil Code a person may use force or violence to protect his property; and if in protecting his property such person uses force to prevent its being taken by another, the owner of the property is not an unlawful aggressor, because he is merely exercising a right.

Paramour surprised in the act of adultery cannot invoke self-defense if he killed the offended husband who was assaulting him.

In a case, the Supreme Court, in denying the paramour's plea of self-defense, said: "(E)ven though it were true and even if the

deceased did succeed in entering the room in which the accused (the paramour and the wife of the deceased) were lying, and did immediately thereupon assault (the paramour), giving him several blows with the bolo which (the deceased) carried, that assault was natural and lawful, for the reason that it was made by a deceived and offended husband in order to defend his honor and rights by punishing the offender of his honor, and if he had killed his wife and (the paramour), he would have exercised a lawful right and such acts would have fallen within the sanction of Article 423 (now Art. 247) of the Penal Code . . . The (paramour) well knew that by maintaining unlawful relations with (the deceased's wife), he was performing an unlawful and criminal act and exposed himself to the vengeance of the offended husband, and that, by their meeting each other in the said house, he was running the danger of the latter's surprising them there, as in fact it did occur." (U.S. vs. Merced, 39 Phil. 198, 202-203)

Meaning of unlawful aggression.

Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind. (People vs. Alconga, 78 Phil. 366) There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon. (People vs. Crisostomo, No. L-38180, Oct. 23, 1981, 108 SCRA 288, 298)

There must be an *actual physical* assault upon a person, or at least a *threat* to inflict real injury.

In case of threat, the same must be *offensive* and *positively* strong, showing the wrongful intent to cause an injury. (U.S. vs. Guysayco, 13 Phil. 292, 295)

Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. (People vs. Pasco, Jr., No. L-45715, June 24, 1985, 137 SCRA 137; People vs. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 292; People vs. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149, 156)

Unlawful aggression refers to an attack that has actually broken out or materialized or at the very least is clearly imminent; it cannot consist in oral threats or a merely threatening stance or posture.

(People vs. Lachica, 132 SCRA 230 [1984]; People vs. Tac-an, G.R. Nos. 76338-39, Feb. 26, 1990, 182 SCRA 601, 613) There must be a real danger to life or personal safety. (People vs. Cagalingan, G.R. No. 79168, Aug. 3, 1990, 188 SCRA 313, 318)

There is unlawful aggression when the peril to one's life, limb (People vs. Sumicad, 56 Phil. 643, 647), or *right* is either *actual* or *imminent.*

When there is no peril to one's life, limb or right, there is no unlawful aggression.

Thus, the act of the deceased in preventing the accused from inflicting a retaliatory blow on the person who had boxed the accused is not unlawful aggression. (People vs. Flores, C.A., 47 O.G. 2969)

Where the deceased, after kidding the accused, another Constabulary soldier acting as sentry and singing, told the latter that he had no voice for singing and, after words were exchanged and while still in a spirit of fun, the deceased seized the accused by the throat, whereupon the latter killed the deceased with his rifle, it was held that the fact that the deceased seized the accused by the throat and exerted pressure thereon in one of his frolics which he had persistently kept up with notorious imprudence, and in spite of the opposition of the accused, cannot be considered as an illegal aggression in the case of two companions in arms quartered in the same barracks. (U.S. vs. Padilla, 5 Phil. 396)

Where the deceased merely held the hands of the son of the accused to request him (the son) to release the knife in order that nothing untoward might happen, but he refused to do so, and in order to avoid bloodshed, the deceased tried to wrest the knife from him and in so doing pressed him against a coconut tree, without the least intention of harming him, the father was not justified in killing the deceased, because there was no unlawful aggression on the part of the latter. (People vs. Yncierto, C.A., 44 O.G. 2774)

Peril to one's life.

1. ***Actual*** **— that the danger must be present, that is, *actually* in existence.**

Example:

U.S. vs. Jose Laurel
(22 Phil. 252)

Facts: **On the night of December 26, 1909, while the girl Concepcion Lat was walking along the street, on her way from the house of Exequiel Castillo, situated in the *pueblo* of Tanauan, Province of Batangas, accompanied by several young people, she was approached by Jose Laurel who suddenly kissed her and immediately thereafter ran off in the direction of his house, pursued by the girl's companions, among whom was the master of the house above-mentioned, Exequiel Castillo, but they did not overtake him.**

Early in the evening of the 28th of December, Jose Laurel went to the parochial building, in company with several young people, for the purpose of attending an entertainment which was to be held there. While sitting in the front row of chairs, and while the director of the college was delivering a discourse, Jose Laurel was approached by Domingo Panganiban who told him that Exequiel Castillo wished to speak with him, to which Laurel replied that he should wait a while and thereupon Panganiban went away. A short time afterwards, he was also approached by Alfredo Yatco who gave him a similar message, and soon afterwards Felipe Almeda came up and told him that Exequiel Castillo was waiting for him on the groundfloor of the house. This being the third summons addressed to him, he arose and went down to ascertain what the said Exequiel wanted. When they met, Exequiel asked Laurel why he kissed his (Exequiel's) sweetheart, and on Laurel's replying that he had done so because she was very fickle and prodigal of her use of the word "yes" on all occasions, Exequiel said to him that he ought not to act that way and immediately struck him a blow on the head with a cane or club, which assault made Laurel dizzy and caused him to fall to the ground in a sitting posture and that, as Laurel feared that his aggressor would continue to assault him, he took hold of the pocketknife which he was carrying in his pocket and therewith stabbed Exequiel. Among the wounds inflicted on Exequiel, the wound in the left side of his breast was the most serious on account of its having fully penetrated the lungs and caused him to spit blood. He would have died, had it not been for the timely medical aid rendered him.

Held: **The defensive act executed by Jose Laurel was attended by the three requisites of illegal aggression on the part of Exequiel Castillo, there being lack of sufficient provocation on the part of Laurel, who did not provoke the occurrence complained of, nor did he direct that Exequiel Castillo be invited to come down from the parochial building**

and arrange the interview in which Castillo alone was interested, and, finally, because Laurel, in defending himself with a pocketknife against the assault made upon him with a cane, which may also be a deadly weapon, employed reasonable means to prevent or repel the same.

2. ***Imminent*** **— that the danger is on the point of happening. It is *not required* that the attack already begins, for it may be too late.**

Example:

People vs. Cabungcal
(51 Phil. 803)

Facts: **On March 21, 1926, the accused invited several persons to a picnic in a fishery on his property in the barrio of Misua, municipality of Infanta, Province of Tayabas. They spent the day at said fishery and in the afternoon returned in two boats, one steered by the accused and the other by an old woman named Anastacia Peñaojas. Nine persons were in the boat steered by the accused, the great majority of whom were women, and among them the accused's wife and son and a nursing child, son of a married couple, who had also gone in his boat. The deceased Juan Loquenario was another passenger in his boat. Upon reaching a place of great depth, the deceased rocked the boat which started it to take water, and the accused, fearing the boat might capsize asked the deceased not to do it. As the deceased paid no attention to this warning and continued rocking the boat, the accused struck him on the forehead with an oar. The deceased fell into the water and was submerged, but a little while after appeared on the surface having grasped the side of the boat, saying that he was going to capsize it and started to move it with this end in view, seeing which the women began to cry, whereupon the accused struck him on the neck with the same oar, which submerged the deceased again. The deceased died as a consequence.**

Held: **Due to the condition of the river at the point where the deceased started to rock the boat, if it had capsized, the passengers would have run the risk of losing their lives, the majority of whom were women, especially the nursing child. The conduct of the deceased in rocking the boat until the point of it having taken water and his insistence on this action in spite of the accused's warning, gave rise to the belief on the part of the accused that it would capsize if he did not separate the deceased from the boat in such a manner as to give him no time to accomplish his purpose. It was necessary to disable him momentarily. For this purpose, the blow given him by the accused on the forehead with an oar was the least that could reasonably have**

been done. And this consideration militates with greater weight with respect to the second blow given in his neck with the same oar, because then the danger was greater than the boat might upset, especially as the deceased had expressed his intention to upset it.

Although the case involves defense of relatives and at the same time defense of strangers, it is cited here because unlawful aggression is also a requisite in defense of relatives and in defense of strangers and has the same meaning.

Peril to one's limb.

When a person is attacked, he is in imminent danger of *death* or *bodily* harm.

The blow with a *deadly weapon* may be aimed at the *vital parts* of his body, in which case there is danger to his life; or with a less deadly weapon or any other weapon that can cause minor physical injuries only, aimed at other parts of the body, in which case, there is danger only to his limb.

The peril to one's limb may also be actual or only imminent.

Peril to one's limb includes peril to the safety of one's person from physical injuries.

An attack with *fist blows* may imperil one's safety from physical injuries. Such an attack is unlawful aggression. (People vs. Montalbo, 56 Phil. 443)

There must be actual physical force or actual use of weapon.

The person defending himself must have been attacked with *actual physical force* or *with actual use of weapon.*

Thus, *insulting words* addressed to the accused, no matter how objectionable they may have been, *without physical assault,* could not constitute *unlawful aggression.* (U.S. vs. Carrero, 9 Phil. 544)

A *light push* on the head *with the hand does not constitute* unlawful aggression. (People vs. Yuman, 61 Phil. 786) A mere push or a shove, not followed by other acts, does not constitute unlawful aggression. (People vs. Sabio, G.R. No. L-23734, April 27, 1967)

But a *slap on the face* is an unlawful aggression. Two persons met in the street. One slapped the face of the other and the latter repelled it by clubbing him and inflicting upon him less serious physical injury. *Held:* The act of slapping another constituted the use of force qualifying an unlawful aggression. (Decision of the Supreme Court of Spain of January 20, 1904; People vs. Roxas, 58 Phil. 733)

Reason why slap on the face constitutes unlawful aggression.

Since the face represents a person and his dignity, slapping it is a serious personal attack. It is a physical assault coupled with a willful disregard, nay, a defiance, of an individual's personality. It may, therefore, be frequently regarded as placing in real danger a person's dignity, rights and safety. (People vs. Sabio, G.R. No. L-23734, April 27, 1967)

Mere belief of an impending attack is not sufficient.

Mere belief of an impending attack is not sufficient. Neither is an intimidating or threatening attitude. Even a mere push or shove not followed by other acts placing in real peril the life or personal safety of the accused is not unlawful aggression. (People vs. Bautista, 254 SCRA 621)

"Foot-kick greeting" is not unlawful aggression.

Teodoro Sabio was squatting with a friend, Irving Jurilla, in a plaza. Romeo Bacobo and two others — Ruben Miñosa and Leonardo Garcia — approached them. All of them were close and old friends. Romeo Bacobo then asked Sabio where he spent the holy week. At the same time, he gave Sabio a "foot-kick greeting," touching Sabio's foot with his own left foot. Sabio thereupon stood up and dealt Romeo Bacobo a fist blow, inflicting upon him a lacerated wound, 3/4 inch long, at the upper lid of the left eye. It took from 11 to 12 days to heal and prevented Romeo Bacobo from working during said period as employee of Victorias Milling Co., Inc.

***Held:* A playful kick at the foot by way of greeting between friends may be a practical joke, and may even hurt; but it is not a serious or real attack on a person's safety. It may be a mere slight provocation. (People vs. Sabio, 19 SCRA 901)**

No unlawful aggression, because there was no imminent and real danger to the life or limb of the accused.

If, indeed, Rillamas did take hold of the barrel of appellant's rifle or even tried to grab it, we do not believe it was justified for appellant "to remove the safety lock and fire" his weapon. In their relative positions, appellant had more freedom of action than the deceased who was sandwiched among the three other passengers within the small area of the calesa in which they were. In other words, between the two of them, appellant had the better chance to win in the struggle for the rifle. (People vs. Riduca, No. L-26729, Jan. 21, 1974, 55 SCRA 190, 199)

True, the deceased acted rather belligerently, arrogantly, and menacingly at the accused-appellant, but such behavior did not give rise to a situation that actually posed a real threat to the life or safety of accused-appellant. The peril to the latter's life was not imminent and actual. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made. (People vs. Macaso, No. L-30489, June 30, 1975, 64 SCRA 659, 665-666)

A strong retaliation for an injury or threat may amount to an unlawful aggression.

When a person who was *insulted, slightly injured* or *threatened,* made a strong *retaliation* by attacking the one who gave the insult, caused the slight injury or made the threat, the former became the offender, and the insult, injury or threat should be considered only as a provocation mitigating his liability. (U.S. vs. Carrero, 9 Phil. 544) In this case, there is no self-defense.

Retaliation is not self-defense.

Retaliation is different from an act of self-defense. In retaliation, the *aggression* that was begun by the injured party *already ceased to exist* when the accused attacked him. In self-defense, the aggression *was still existing* when the aggressor was injured or disabled by the person making a defense.

Thus, when a person had inflicted slight physical injuries on another, without intention to inflict other injuries, and the latter

attacked the former, the one making the attack was an unlawful aggressor. The attack made was a *retaliation.* But where a person is *about to strike* another with fist blows and the latter, *to prevent or repel* the blows, stabs the former with a knife, the act of striking with fist blows is an unlawful aggression which may justify the use of the knife. If the knife is a reasonable means, there is self-defense.

The attack made by the deceased and the killing of the deceased by defendant should succeed each other without appreciable interval of time.

In order to justify homicide on the ground of self-defense, it is essential that the killing of the deceased by the defendant be *simultaneous* with the attack made by the deceased, or at least both acts succeeded each other *without appreciable interval of time.* (U.S. vs. Ferrer, 1 Phil. 56)

When the killing of the deceased by the accused was after the attack made by the deceased, the accused must have no time nor occasion for deliberation and cool thinking.

The deceased drew his revolver and levelled it at the accused who, sensing the danger to his life, sidestepped and caught the hand of the deceased with his left, thus causing the gun to drop to the floor. Immediately, the accused drew his knife, opened it and stabbed the deceased in the abdomen.

The fact that when the accused held the right hand of the deceased, which carried the gun, the weapon fell to the floor could not be taken to mean that the unlawful aggression on the part of the deceased had ceased. The incident took place at nighttime in the house of a relative of the deceased; among those present were a brother and a cousin of the deceased, said cousin having a criminal record; and the deceased himself had been indicted for illegal possession of firearm and for discharge of firearm. Under such circumstances, the accused could not be expected to have acted with all the coolness of a person under normal condition. Uppermost in his mind at the time must have been the fact that his life was in danger and that to save himself he had to do something to stop the aggression. He had no time nor occasion for deliberation and cool thinking because it was imperative for him to act on the spot. (People vs. Arellano, C.A., 54 O.G. 7252)

The unlawful aggression must come from the person who was attacked by the accused.

Although the accused was unlawfully attacked, nevertheless, the aggressor was not the deceased but another person. Consequently, this unlawful aggression cannot be considered in this case as an element of self-defense, because, in order to constitute an element of self-defense, the unlawful aggression must come, directly or indirectly, from the person who was subsequently attacked by the accused. It has been so held by the Supreme Court of Spain in its decision of May 6, 1907; nor can such element of unlawful aggression be considered present when the author thereof is unknown, as was held in the decision of February 27, 1895, of said Supreme Court. (People vs. Gutierrez, 53 Phil. 609, 611)

The alleged act of the victim in placing his hand in his pocket, as if he was going to draw out something, cannot be characterized as unlawful aggression. On the other hand, the accused was the aggressor. His act of arming himself with a bolo and following and overtaking the group of the victim shows that he had formed the resolution of liquidating the victim. There being no unlawful aggression, there could be no self-defense. (People vs. Calantoc, No. L-27892, Jan. 31, 1974, 55 SCRA 458, 461, 463-464)

A public officer exceeding his authority may become an unlawful aggressor.

Thus, a provincial sheriff who, in carrying out a writ of execution, exceeded his authority by taking against the will of the judgment debtor personal property with sentimental value to the latter, although other personal property sufficient to satisfy the claim of the plaintiff was made available to said sheriff, was an *unlawful aggressor* and the debtor had a right to repel the unlawful aggression. (People vs. Hernandez, 59 Phil. 343)

The *lawful* possessor of a fishing net was justified in using force to repel seizure by a peace officer who was making it without order from the court. (People vs. Tilos, [CA] 36 O.G. 54)

Nature, character, location, and extent of wound of the accused allegedly inflicted by the injured party may belie claim of self-defense.

1. The accused, claiming self-defense, exhibited a small

scar (1 1/2 inches long) caused by an instrument on his head. *Held:* The exhibition of a small wound shortly after the occurrence does not meet the requirement for — paraphrasing the Supreme Court — "if in order to be exempt from military service there are those who mutilate themselves or cause others to mutilate them, who would not wound himself slightly in order to escape" the penalty of *reclusion temporal* prescribed for the crime of homicide? (People vs. Mediavilla, 52 Phil. 94, 96)

2. The location, number and seriousness of the stab wounds inflicted on the victims belie the claim of self-defense. One of the victims alone sustained twenty-one (21) wounds. (People vs. Batas, G.R. Nos. 84277-78, Aug. 2, 1989, 176 SCRA 46, 53, 54)

3. The nature, character, location and extent of the wounds suffered by the deceased belie any supposition that it was the deceased who was the unlawful aggressor. "The nature and number of wounds inflicted by an assailant [are] constantly and unremittingly considered important *indicia* which disprove a plea of self-defense." (People vs. Ganut, G.R. No. L-34517, Nov. 2, 1982, 118 SCRA 35, 43) The deceased suffered three stab wounds, two of which were fatal, and one incised wound. (People vs. Marciales, No. L-61961, Oct. 18, 1988, 166 SCRA 436, 443)

4. Appellant's theory of self-defense is negatived by the nature and location of the victim's wounds which, having a right-to-left direction, could not have possibly been inflicted by a right-handed person in front of the victim with a two-feet long bolo. (People vs. Labis, No. L-22087, Nov. 15, 1967, 21 SCRA 875, 882)

5. In view of the number of wounds of the deceased, nineteen (19) in number, the plea of self-defense cannot be seriously entertained. So it has been constantly and uninterruptedly held by the Supreme Court from *U.S. vs. Gonzales* (8 Phil. 443 [1907]) to *People vs. Constantino* (L-23558, Aug. 10, 1967, 20 SCRA 940), a span of sixty (60) years. (People vs. Panganiban, No. L-22476, Feb. 27, 1968, 22 SCRA 817, 823)

6. The accused was the only eyewitness to the crime. He admitted that he killed the deceased, but advanced the claim that he acted in self-defense. *Held:* The actual, undisputed, physical facts flatly contradict the whole theory of self-defense. The nature, character, location and extent of the wound, as testified to by the doctor who had examined the wound, clearly show that the deceased was struck either from behind or while his body was in a reclining position, from which it follows that the accused did not act in self-defense. (People vs. Tolentino, 54 Phil. 77, 80)

Improbability of the deceased being the aggressor belies the claim of self-defense.

It was unlikely that a sexagenarian would have gone to the extent of assaulting the 24-year-old accused who was armed with a gun and a bolo, just because the latter refused to give him a pig. (People vs. Diaz, No. L-24002, Jan. 21, 1974, 55 SCRA 178, 184)

It is hard to believe that the deceased, an old man of 55 years sick with ulcer, would still press his attack and continue hacking the accused after having been seriously injured and had lost his right hand. (People vs. Ardisa, No. L-29351, Jan. 23, 1974, 55 SCRA 245, 253-254)

The fact that the accused declined to give any statement when he surrendered to a policeman is inconsistent with the plea of self-defense.

When the accused surrendered to the policemen, he declined to give any statement, which is the natural course of things he would have done if he had acted merely to defend himself. A protestation of innocence or justification is the logical and spontaneous reaction of a man who finds himself in such an inculpatory predicament as that in which the policemen came upon him still clutching the death weapon and his victim dying before him. (People vs. Manansala, No. L-23514, Feb. 17, 1970, 31 SCRA 401, 404)

The accused did not act in self-defense because, if he had done so, that circumstance would have been included in his confession. He never declared in his confession that he acted in self-defense. Had

he acted in self-defense, he should have reported the incident to the police of the three towns, the poblacion of which he passed when he fled from the scene of the incident. (People vs. De la Cruz, No. L-45485, Sept. 19, 1978, 85 SCRA 285, 291; See also People vs. Delgado, G.R. No. 79672, Feb. 15, 1990, 182 SCRA 343, 350)

Physical fact may determine whether or not the accused acted in self-defense.

In *People vs. Dorico* (No. L-31568, Nov. 29, 1973, 54 SCRA 172, 184), where the accused claimed self-defense by alleging that he stabbed the victim twice when the latter lunged at the accused to grab the latter's bolo, it was 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.

The physical fact belies the claim of self-defense. The revolver of the deceased was still tucked inside the waistband of his pants which is indicative of his unpreparedness when he was fired upon simultaneously by the accused with their high-calibered weapons. The fact that the deceased received a total of 13 gunshot wounds is inconsistent with the claim that the deceased was fired upon in self-defense. (People vs. Perez, No. L-28583, April 24, 1974, 56 SCRA 603, 610)

In *People vs. Aquino* (No. L-32390, Dec. 28, 1973, 54 SCRA 409), the plea of self-defense was sustained. There were conflicting versions as to how the victim was shot but the Supreme 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.

When the aggressor flees, unlawful aggression no longer exists.

When unlawful aggression which has begun *no longer exists,* because the aggressor runs away, the one *making a defense has no more right* to kill or even to wound the former aggressor.

People vs. Alconga, et al.
(78 Phil. 366)

Facts: The deceased was the banker in a game of black jack. The accused posted himself behind the deceased acting as a spotter of the latter's cards and communicating by signs to his partner. Upon discovering the trick, the deceased and the accused almost came to blows. Subsequently, while the accused was seated on a bench the deceased came and forthwith gave a blow with a "pingahan," but the accused avoided the blow by crawling under the bench. The deceased continued with second and third blows, and the accused in a crawling position fired with his revolver. A hand to hand fight ensued, the deceased with his dagger and the accused using his bolo. Having sustained several wounds, the deceased ran away, but was followed by the accused and another fight took place, during which a mortal blow was delivered by the accused, slashing the cranium of the deceased.

Held: There were two stages in the fight between the accused and the deceased. During the first stage of the fight, the accused in inflicting several wounds upon the deceased acted in self-defense, because then the deceased, who had attacked the accused with repeated blows, was the unlawful aggressor. But when the deceased after receiving several wounds, ran away, from that moment there was no longer any danger to the life of the accused who, being virtually unscathed, could have chosen to remain where he was and when he pursued the deceased, fatally wounding him upon overtaking him, Alconga was no longer acting in self-defense, because the aggression begun by the deceased ceased from the moment he took to his heels.

In a case where the deceased, who appeared to be the first aggressor, ran out of bullets and fled, and the accused pursued him and, after overtaking him, inflicted several wounds on the posterior side of his body, it was held that in such a situation the accused should have stayed his hand, and not having done so he was guilty of

homicide. (People vs. Del Rosario, C.A., 58 O.G. 7879, citing decisions of the Supreme Court)

Retreat to take more advantageous position.

If it is clear that the *purpose* of the *aggressor* in retreating is *to take a more advantageous* position to insure the success of the attack already begun by him, the *unlawful aggression* is considered still *continuing,* and the one making a defense has a right to pursue him in his retreat and to disable him.

No unlawful aggression when there is agreement to fight.

1. No unlawful aggression in *concerted fight,* as when the accused and the deceased, after an altercation in a bar, agreed to fight, went to a store and purchased two knives; that thereafter, the accused repeatedly expressed his desire and wish to the deceased not to fight, and that the former begged the latter that there be no fight between them, and that the deceased paid no heed to such request and attacked the accused; but the accused succeeded in killing the deceased. It was held that the aggression was reciprocal and legitimate as between two contending parties. (U.S. vs. Navarro, 7 Phil. 713; See also People vs. Marasigan, 51 Phil. 701 and People vs. Gondayao, 30 SCRA 226)

2. *There is agreement to fight in this case.*

   When the accused, pursued by the deceased, reached his house, he picked up a pestle and, turning towards the deceased, faced him, saying: "Come on if you are brave," and then attacking and killing him. It was held that the accused did not act in self-defense, for what he did after believing himself to be duly armed, was to agree to the fight. (People vs. Monteroso, 51 Phil. 815)

3. *The challenge to a fight must be accepted.*

   If the deceased challenged the accused to a fight and *forthwith* rushed towards the latter with a bolo in his hand, so that the accused had to defend himself by stabbing the deceased with a knife, the accused, *not having accepted the challenge,* acted in *self-defense.* (People vs. Del Pilar, C.A., 44 O.G. 596)

Reason for the rule.

Where the fight is agreed upon, each of the protagonists is *at once assailant* and *assaulted,* and neither can invoke the right of self-defense, because aggression which is an incident in the fight is bound to arise from one or the other of the combatants. (People vs. Quinto, 55 Phil. 116)

When parties mutually agree to fight, it is immaterial who attacks or receives the wound first, for the first act of force is an incident of the fight itself and in no wise is it an *unwarranted* and *unexpected* aggression which alone can legalize self-defense. (U.S. vs. Cortez, et al., 36 Phil. 837; People vs. Marasigan, 51 Phil. 701; People vs. Lumasag, 56 Phil. 19; People vs. Neri, 77 Phil. 1091)

Aggression which is ahead of the stipulated time and place is unlawful.

Where there was a mutual agreement to fight, an aggression ahead of the stipulated time and place would be unlawful. The acceptance of the challenge did not place on the offended party the burden of preparing to meet an assault at any time even before reaching the appointed time and place for the agreed encounter, and any such aggression was patently illegal. (Severino Justo vs. Court of Appeals, 53 O.G. 4083)

Illustration:

A and B were in the office of a division superintendent of schools. A and B had an altercation. A grabbed a lead paper weight from a table and challenged B to go out, to fight outside the building. A left the office, followed by B. When they were in front of the table of a clerk, B asked A to put down the paper weight but instead A grabbed the neck and collar of the polo shirt of B which was torn. B boxed A several times.

In this case, the aggression made by A which took place before he and B could go out of the building is unlawful, notwithstanding their agreement to fight.

One who voluntarily joined a fight cannot claim self-defense.

The court *a quo* rejected the claim of self-defense interposed by the appellant. We find that such plea cannot be availed of because no

unlawful aggression, so to speak, was committed by the deceased, Rodolfo Saldo, and Hernando Caunte against the appellant. Appellant's version of the incident was to the effect that he had come to the aid of Villafria at the latter's call when Villafria boxed Mariano Dioso and engaged the group of Dioso, Saldo and Caunte in a fight. In other words, he voluntarily joined the fight, when he did not have to. He voluntarily exposed himself to the consequences of a fight with his opponents. Granting *arguendo* that the first attack came from Dioso or Saldo or Caunte, yet same cannot be considered an unlawful or unexpected aggression. The first attack which came from either is but an incident of the fight. (People vs. Kruse, C.A., 64 O.G. 12632)

The rule now is "stand ground when in the right."

The ancient common law rule in homicide denominated "retreat to the wall," has now given way to the new rule "stand ground when in the right."

So, where the accused is *where he has the right to be,* the law does not require him to retreat when his assailant is rapidly advancing upon him with a deadly weapon. (U.S. vs. Domen, 37 Phil. 57)

The reason for the rule is that if one flees from an aggressor, he runs the risk of being attacked in the back by the aggressor.

How to determine the unlawful aggressor.

In the absence of direct evidence to determine who provoked the conflict, it has been held that it shall be presumed that, in the nature of the order of things, the person who was deeply offended by the insult was the one who believed he had a right to demand explanation of the perpetrator of that insult, and the one who also struck the first blow when he was not satisfied with the explanation offered. (U.S. vs. Laurel, 22 Phil. 252)

The circumstance that it was the accused, not the deceased, who had a greater motive for committing the crime on the ground that the deceased had already sufficiently punished the accused on account of his misbehavior and because he was publicly humiliated, having gotten the worst of the fight between the two inside the theater, leads the court to the conclusion that the claim of self-defense is really untenable. (People vs. Berio, 59 Phil. 533)

Unlawful aggression in defense of other rights.

Note that in the three classes of defense mentioned in paragraphs 1, 2 and 3 of Art. 11, the *defense of rights* requires also the first and second requisites, namely, (1) unlawful aggression, and (2) reasonable necessity of the means employed to prevent or repel it.

1. *Attempt to rape a woman — defense of right to chastity.*

   a. Embracing a woman, touching her private parts and her breasts, and throwing her to the ground *for the purpose of raping her* in an uninhabited place when it was twilight, *constitute an attack upon her honor* and, therefore, an unlawful aggression. (People vs. De la Cruz, 61 Phil. 344)

   b. Placing of hand by a man on the woman's upper thigh is unlawful aggression. (People vs. Jaurigue, 76 Phil. 174)

2. *Defense of property.*

   Defense of property can be invoked as a justifying circumstance *only when it is coupled with an attack on the person* of one entrusted with said property. (People vs. Apolinar, C.A., 38 O.G. 2870)

3. *Defense of home.*

   Violent entry to another's house at *nighttime,* by a person who is *armed with a bolo*, and *forcing his way into the house,* shows he was ready and looking for trouble, and the manner of his entry constitutes an act of aggression. The *owner* of the house *need not wait for a blow* before repelling the aggression, *as that blow may prove fatal.* (People vs. Mirabiles, 45 O.G., 5th Supp., 277)

   In this day and times when bold robberies and thieveries are committed even under the very noses of the members of the household and usually at night, courts must not hesitate to sustain the theory of self-defense of the victim of thievery or robbery when such thief or robber by overt acts shows aggression instead of fear or desire to escape upon apprehension for certainly such an intruder must be prepared not only to steal but to kill under the

circumstances. In the case at bar, even if the accused did not actually see the victim assault him with the *balisong*, the mere fact that the victim assaulted the accused under cover of darkness is such unlawful aggression as would justify the accused to defend himself. (People vs. Salatan, [CA] 69 O.G. 10134)

People vs. De la Cruz
(61 Phil. 344)

Facts: The accused, a woman, was walking home with a party including the deceased, Francisco Rivera. It was already dark and they were passing a narrow path. When the other people were far ahead, the deceased who was following the accused suddenly threw his arms around her from behind, caught hold of her breasts, kissed her, and touched her private parts. He started to throw her down. When the accused felt she could not do anything more against the strength of her aggressor, she got a knife from her pocket and stabbed him.

Held: She was justified in making use of the knife in repelling what she believed to be an attack upon her honor since she had no other means of defending herself.

An attempt to rape a woman constitutes an aggression sufficient to put her in a state of legitimate defense inasmuch as a woman's honor cannot but be esteemed as a right as precious, if not more than her very existence. The woman thus imperilled may kill her offender if that is the only means left for her to protect her honor from so grave an outrage. (People vs. Luague, *et al.*, 62 Phil. 504)

People vs. Jaurigue
(76 Phil. 174)

Facts: The deceased was courting the accused in vain. One day, the deceased approached her, spoke to her of his love which she flatly refused, and he thereupon suddenly embraced and kissed her on account of which the accused gave him fist blows and kicked him. Thereafter, she armed herself with a fan knife, whenever she went out. One week after the incident, the deceased entered a chapel, went to sit by the side of the accused, and placed his hand on the upper part of her right thigh. Accused pulled out her fan knife and with it stabbed the deceased at the base of the left side of the neck, inflicting a mortal wound.

Held: The means employed by the accused in the defense of her honor was evidently excessive. The chapel was lighted with electric

lights, and there were already several people, including her father and the barrio lieutenant, inside the chapel. Under the circumstances, there was and there could be no possibility of her being raped.

The Supreme Court apparently considered in this case the existence of unlawful aggression consisting in the deceased's placing his hand on the upper portion of her right thigh. The accused was not given the benefit of complete self-defense, because the means employed was not reasonable. If the accused only gave the deceased fist blows or kicked him, to prevent him from going further in his attempt to commit an outrage upon her honor, she would have been completely justified in doing so.

People vs. Apolinar
(C.A., 38 O.G. 2870)

Facts: The accused, armed with a shotgun, was looking over his land. He noticed a man carrying a bundle on his shoulder. Believing that the man had stolen his palay, the accused shouted for him to stop, and as he did not, the accused fired in the air and then at him, causing his death.

Held: Defense of property is not of such importance as right to life, and defense of property can be invoked as a justifying circumstance only when it is coupled with an attack on the person of one entrusted with said property.

Had the accused, who wanted to stop the thief then approaching him, been attacked, say with a bolo, by that thief, he would have been justified in shooting him, if the shotgun was the only available weapon for his defense.

In such case, there would be unlawful aggression on the part of the deceased, which is required even in defense of one's property. It will be noted that in paragraph 1 of Article 11, the opening clause, which is followed by the enumeration of the three requisites, states: "anyone who acts in defense of his person or *rights.*" The word "rights" includes right to property. Hence, all the three requisites of self-defense, particularly unlawful aggression, must also concur in defense of property.

In the case *of People vs. Goya,* CA-G.R. No. 16373-R, Sept. 29, 1956, the guard in a bodega surprised the injured party in the act

of going out through the door with a sack of palay. To prevent the latter from taking away a sack of palay, the guard fired a shot at the injured party, inflicting less serious physical injuries. *Held:* Since the injured party did not lay hands on the guard or make any attempt to attack the latter, the guard *cannot properly* and *legally* claim defense of property. There must be an attack by the one stealing the property on the person defending it.

The belief of the accused may be considered in determining the existence of unlawful aggression.

"A, in the peaceable pursuit of his affairs, sees B rushing rapidly toward him, with an outstretched arm and a pistol in his hand, and using violent menaces against his life as he advances. Having approached near enough in the same attitude, A, who has a club in his hand, strikes B over the head before or at the instant the pistol is discharged; and of the wound B dies. It turns out the pistol was loaded with *powder* only, and that the real design of B is only to *terrify* A. Will any reasonable man say that A is more criminal than he would have been if there had been a bullet in the pistol? Those who hold such doctrine must require that a man so attacked must, before he strikes the assailant, stop and ascertain how the pistol is loaded — a doctrine which would entirely take away the essential right of self-defense." (Lloyd's Report, p. 160, cited in U.S. vs. Ah Chong, 15 Phil. 502-503)

There is self-defense even if the aggressor used a toy pistol, provided the accused believed it was a real gun.

That Crispin Oscimina's gun turned out to be a toy pistol is inconsequential, considering its strikingly similar resemblance to a real one and defendant-appellant's belief that a real gun was being aimed at him. (People vs. Boral, 11 C.A. Rep. 914)

Forcibly pushing picketers to let company trucks enter the compound is not unlawful aggression against the rights of the picketers.

The act of the security officer of a strike-bound company in forcibly pushing the picketers after he had ordered them to give way and let the company trucks to enter the compound, but the picketers refused, does not constitute unlawful aggression against the legitimate rights of the picketers as would justify its repulsion

with equal and reasonable force such as inflicting physical injuries upon the officer, for what was under attack by said security officer was not the right of picketing, but the picketers' act of remaining in the passageway when the trucks wanted to get inside, which is not a part of the picketing protected by law. (People vs. Calip, *et al.*, 3 C.A. Rep. 808)

Threat to inflict real injury as unlawful aggression.

A mere *threatening* or *intimidating* attitude, *not preceded* by an *outward* and *material* aggression, is not unlawful aggression, because it is required that the act be *offensive* and *positively strong, showing the wrongful intent* of the aggressor to cause an injury.

Mere threatening attitude is not unlawful aggression.

U.S. vs. Guy-sayco
(13 Phil. 292)

Facts: As her husband had stayed away from home for more than two weeks, remaining in the barrio of Dujat, distant about two and one-half hours' walk from the town under the pretext that he was engaged in field work, on the 20th of March, 1907, at about 2 p.m., the accused decided to go to said barrio and join him. To this end she hired a carromata, and after getting some clothes and other things necessary for herself and husband, started out with her infant child and servant girl; but before reaching the barrio and the camarin where her husband ought to be, night came on, and at about 7 o'clock she alighted and dismissed the vehicle after paying the driver. They had yet to travel some distance. On seeing her husband's horse tied in front of a house, she suspected that he was inside; thereupon she went to the steps leading to the house, which was a low one, and then saw her husband sitting down with his back toward the steps. She immediately entered the house and encountered her husband, the deceased and the owners of the house taking supper together. Overcome and blinded by jealousy she rushed at Lorenza Estrada, attacked her with a pen knife that she carried and inflicted five wounds upon her in consequence of which Lorenza fell to the ground covered with blood and died a few moments afterwards.

The accused pleaded not guilty, and in exculpation she alleged that, when Lorenza Estrada saw her and heard her remonstrate with her husband, she being then upstairs, Lorenza at once asked what had brought her there and manifested her intention to attack her with a knife that she carried in her hand, whereupon the accused caught

the deceased by the right hand in which she held the weapon, and immediately grappled with her, and in the struggle that ensued she managed to get hold of a pen knife that she saw on the floor close by; she could not say whether she struck the deceased with it as she could not account for what followed.

Held: Even though it was true that when the accused Emilia, made her appearance, the deceased Lorenza *arose with a knife in her hand and in a threatening manner asked the accused what had brought her there,* such attitude, under the provisions of Article 8, No. 4, of the Penal Code (Art. 11, par. 1, of the Revised Penal Code), does not constitute the unlawful aggression, which, among others, is the first indispensable requisite upon which exemption (justification) by self-defense may be sustained.

In order to consider that unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable *per se,* and allow a claim of justification on the ground that it was committed in self-defense.

Examples of threats to inflict real injury:

1. When one aims a revolver at another with the intention of shooting him. (Dec. Sup. Ct. Spain, Sept. 29, 1905)

2. The act of a person in retreating two steps and placing his hand in his pocket with a motion indicating his purpose to commit an assault with a weapon. (Dec. Sup. Ct. Spain, June 26, 1891)

3. The act of opening a knife, and *making a motion* as if to make an attack. (Dec. Sup. Ct. Spain, Oct. 24, 1895)

Note that in the above cases, the threatening attitude of the aggressor is *offensive* and *positively* strong, showing the wrongful intent of the aggressor to cause an injury.

When intent to attack is manifest, picking up a weapon is sufficient unlawful aggression.

When the *picking up of a weapon* is preceded by circumstances indicating the intention of the deceased to use it in attacking the

defendant, such act is considered unlawful aggression. (People vs. Javier, 46 O.G. No. 7, July, 1950)

Aggression must be real, not merely imaginary.

Thus, when the accused, disliking the intervention of the deceased in a certain incident between the accused and a couple, armed himself with a gun and went to the house of the deceased, and upon seeing the latter holding a *kris* in his hand, shot him to death, there was no unlawful aggression, notwithstanding the claim of the accused that the deceased was a man of violent temper, quarrelsome and irritable, and that the latter might attack him with the *kris*, because *he merely imagined* a possible aggression. The aggression must be *real*, or, at least, *imminent*. (People vs. De la Cruz, 61 Phil. 422)

Aggression that is expected.

An aggression that is expected *is still real*, provided it is *imminent*.

It is well-known that the person who pursues another with the intent and purpose of assaulting him does not *raise* his hand to discharge the blow until he believes that his victim is within his reach.

In this case, it is not necessary to wait until the blow is about to be discharged, because in order that the assault may be prevented it is not necessary that it has been actually perpetrated. (U.S. vs. Batungbacal, 37 Phil. 382)

Second Requisite of Defense of Person or Right: Reasonable necessity of the means employed to prevent or repel it.

This second requisite of defense presupposes the existence of unlawful aggression, which is either *imminent* or *actual*. Hence, in stating the second requisite, two phrases are used, namely: (1) *"to prevent"* and (2) *"to repel."* When we are attacked, the danger to our life or limb is either imminent or actual. In making a defense, we prevent the aggression that places us in imminent danger or repel the aggression that places us in actual danger. A *threat to inflict real injury* places us in imminent danger. An *actual physical assault* places us in actual danger.

In the case of *U.S. us. Batungbacal,* 37 Phil. 382, the Supreme Court stated: "The law protects not only the person who *repels* an aggression (meaning actual), but even the person who tries to *prevent* an aggression that is *expected* (meaning imminent)."

The second requisite of defense means that (1) there be a necessity of the course of action taken by the person making a defense, and (2) there be a necessity of the means used. Both must be reasonable.

The reasonableness of either or both such necessity depends on the existence of unlawful aggression and upon the nature and extent of the aggression.

The necessity to take a course of action and to use a means of defense.

The person attacked is not duty-bound to expose himself to be wounded or killed, and while the danger to his person or life subsists, he has a perfect and indisputable right to repel such danger by wounding his adversary and, if necessary, to disable him completely so that he may not continue the assault. (U.S. vs. Molina, 19 Phil. 227)

The reasonableness of the necessity depends upon the circumstances.

In emergencies where the person or life of another is imperilled, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation. The reasonableness of the necessity to take a course of action and the reasonableness of the necessity of the means employed depend upon the circumstances of the case.

In a situation, like the one at bar, where the accused, who was then unarmed, was being mauled with fistic blows by the deceased and his companions for refusing their offer to drink wine, picked up a lead pipe within his reach and with it struck the deceased on the forehead resulting in the latter's death, the use by the accused of such lead pipe under the circumstances is reasonable. That the accused did not select a lesser vital portion of the body of the deceased to hit is reasonably to be expected, for in such a situation, the accused has to move fast, or in split seconds, otherwise, the aggression on his

person would have continued and his life endangered. (People vs. Ocaña, C.A., 67 O.G. 3313)

1. *Necessity of the course of action taken.*

The necessity of the course of action taken depends on the existence of unlawful aggression. If there was no unlawful aggression or, if there was, it has ceased to exist, there would be no necessity for any course of action to take as there is nothing to prevent or to repel.

In determining the existence of unlawful aggression that induced a person to take a course of action, the *place* and *occasion* of the assault and the other circumstances must be considered.

a. *Place and occasion of the assault considered.*

The command given to the accused by the deceased in a *dark* and an *uninhabited place,* for the purpose of playing a practical joke upon him, "Lie down and give me your money or else you die," made the accused act immediately by discharging his pistol against the deceased. It was held that a person under such circumstances cannot be expected to adopt a less violent means of repelling what he believed was an attack upon his life and property. (Dec. Sup. Ct. Spain, March 17, 1885)

Similar illustration is given in the case of *U.S. vs. Ah Chong,* 15 Phil. 501-502.

b. *The darkness of the night and the surprise which characterized the assault considered.*

When the accused, while walking along *in a dark street at night* with pistol in hand on the lookout for an individual who had been making an insulting demonstration in front of his house, was suddenly held from behind and an attempt was made to wrench the pistol from him, he was justified in *shooting* him to death, in view of the *darkness* and the *surprise* which characterized the assault. The deceased might be able to disarm the accused and to use the pistol against the latter. (People vs. Lara, 48 Phil. 153)

No necessity of the course of action taken.

When the deceased who had attacked Alconga ran away, there was no necessity for Alconga to pursue and kill the deceased. (People vs. Alconga, 78 Phil. 366)

The theory of self-defense is based on the *necessity on the part* of the *person attacked* to prevent or repel the unlawful aggression, and when the *danger* or *risk* on his part has *disappeared,* his stabbing the aggressor while defending himself should have stopped. (People vs. Calavagan, C.A. G.R. No. 12952-R, August 10, 1955)

The claim of self-defense is not credible as the accused narrated that he had succeeded in disarming the victim of the piece of wood the latter was allegedly carrying so that stabbing with such frequency, frenzy and force can no longer be considered as reasonably necessary. (People vs. Masangkay, No. L-73461, Oct. 27, 1987, 155 SCRA 113, 122)

When the deceased who endeavored to set fire to the house of the accused in which the two small children of the latter were sleeping was already out of the house and prostrate on the ground, having been boloed by the accused, there was no reasonable necessity of killing her. (U.S. vs. Rivera, 41 Phil. 472, 474)

While the accused might have been and doubtless was justified in picking up the bamboo pole to keep his adversary at bay, he was not justified in striking the head of the deceased with it, as he was not in any real danger of his life, for his adversary, although armed with a bolo, had not attempted to draw it, and limited his assault to an attempt to push the accused back to the shallow pool into which he had been thrown at the outset of the quarrel. (U.S. vs. Pasca, 28 Phil. 222, 226)

While there was an actual physical invasion of appellant's property when the deceased chiselled the walls of his house and closed appellant's entrance and exit to the highway, which he had the right to resist, the reasonableness of the resistance is also a requirement of the justifying circumstance of self-defense or defense of one's rights. When the appellant fired his shotgun from his window, killing his two Victims, his resistance was disproportionate to the attack. (People vs. Narvaez, 121 SCRA 402-403)

When aggressor is disarmed.

When the wife was *disarmed by her husband* after wounding him seriously *but she struggled to regain possession of the bolo, there was*

a reasonable necessity for him to use said bolo to disable her, because he was already losing strength due to loss of blood and to throw away the bolo would only give her a chance to pick it up and again use it against him. (People vs. Rabandaban, 85 Phil. 636, 637-638; People vs. Datinguinoo, 47 O.G. 765)

But when the defendant, who had been attacked by the deceased, succeeded in snatching the bolo away from the latter, and the deceased already manifested a refusal to fight, the defendant was not justified in killing him. (People vs. Alviar, 56 Phil. 98, 101)

When only minor physical injuries are inflicted after unlawful aggression has ceased to exist, there is still self-defense if mortal wounds were inflicted at the time the requisites of self-defense were present.

The fact that *minor physical injuries* were inflicted by the accused *after* the unlawful aggression had *ceased* and after he had stabbed the deceased with *two mortal* wounds, said mortal wounds having been inflicted at a time when the requisites of complete self-defense were still present, cannot and should not affect the benefit of said complete self-defense *in the absence of proof* that those relatively small wounds *contributed to or hastened* the *death* of the deceased. (People vs. Del Pilar, C.A., 44 O.G. 596)

This ruling should not be applied if the deceased, after receiving minor wounds, dropped his weapon and signified his refusal to fight any longer, but the accused hacked him to death. The reason is that the wound inflicted, after the aggression had ceased, was the cause of death.

The person defending is not expected to control his blow.

Defense of person or rights does not necessarily mean the killing of the unlawful aggressor. But the person defending himself cannot be expected to think clearly so as to control his blow. The killing of the unlawful aggressor may still be justified as long as the mortal wounds are inflicted at a time when the elements of complete self-defense are still present.

One is not required, when hard pressed, to draw fine distinctions as to the extent of the injury which a reckless and infuriated assailant

might probably inflict upon him. (Brownell vs. People, 38 Mich. 732, cited in the case of People vs. Sumicad, 56 Phil. 647)

The fact that the accused struck one blow more than was absolutely necessary to save his own life, or that he failed to hold his hand so as to avoid inflicting a fatal wound where a less severe stroke might have served the purpose, would not negative self-defense, because the accused, in the heat of an encounter at close quarters, was not in a position to reflect coolly or to wait after each blow to determine the effects thereof. (U.S. vs. Macasaet, 35 Phil. 229; People vs. Espina, C.A., 49 O.G. 983)

And if it was necessary for the accused to use his revolver, he could hardly, under the circumstances, be expected to take deliberate and careful aim so as to strike a point less vulnerable than the body of his assailant. (U.S. vs. Mack, 8 Phil. 701; U.S. vs. Domen, 37 Phil. 57)

When the aggression is so sudden that there is no time left to the one making a defense to determine what course of action to take.

At the moment the deceased was about to stab the superior officer of the accused, the latter hit the deceased with a *palmabrava.* The trial court believed that the accused should have only struck his hand to disable it, or only hit him in a less vulnerable part of the body. *Held:* The trial court demanded too much of the accused's wisdom, judgment and discretion during the *split second he had to think and act* to save his superior officer. (People vs. Pante, C.A., G.R. No. 5512, March 29, 1940)

In repelling or preventing an unlawful aggression, the one defending must aim at his assailant, and not indiscriminately fire his deadly weapon.

Even granting that while in a private discussion or quarrel with his wife, appellant Galacgac was suddenly beaten twice on his head with an iron bar by Pablo Soriano thus causing blood to ooze over his eyes, appellant Galacgac certainly had no right to fire at random his unlicensed revolver. He knew that there were many innocent persons in Soriano's house, namely, his (Galacgac's) wife, his sister and brother-in-law. Besides, there were many inhabited houses in the vicinity of house No. 1238 Anacleto Street. Of course, appellant

Galacgac had a perfect and lawful right to defend himself against the unjustified assault upon his person made by Pablo Soriano. However, because he did not aim at his assailant but instead indiscriminately fired his deadly weapon at the risk of the lives and limbs of the innocent persons he knew were in the place of occurrence, his act of defense was not exercised with due care.

However, there being no intent to kill, appellant Galacgac was held liable for physical injuries. (People vs. Galacgac, C.A., 54 O.G. 1027)

2. *Necessity of the means used.*

The means employed by the person making a defense must be rationally necessary to prevent or repel an unlawful aggression.

Thus in the following cases, there was *no rational necessity to employ the means* used.

a. A sleeping woman, who was awakened by her brother-in-law grasping her arm, was not *justified* in using a *knife* to kill him as the latter *did not perform* any other act which could be construed as an *attempt against her honor.* (U.S. vs. Apego, 23 Phil. 391)

b. When a person was attacked with fist blows only, there was no *reasonable necessity* to inflict upon the assailant a mortal wound *with a dagger.* (People vs. Montalbo, 56 Phil. 443)

There was in this case a reasonable necessity to *act* by using fist blows also. But there was no necessity to employ a *dagger* to repel such an aggression.

c. When a man placed his hand on the upper thigh of a woman seated on a bench in a chapel where there were many people and which was well-lighted, there was no *reasonable necessity to kill him with a knife* because there was no danger to her chastity or honor. (People vs. Jaurigue, 76 Phil. 174)

There was in this case a reasonable necessity to stop the deceased from further doing the same thing or more. But there was no necessity to use a knife.

It is otherwise where the husband of the accused was kneeling over her as she lay on her back on the ground and his hand choking her neck when she pulled out the knife inserted at the left side of her husband's belt and plunged it at his body hitting the left back portion just below the waist. There was reasonable necessity of the use of the knife. (People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 189)

The test of reasonableness of the means used.

Whether or not the *means employed* is reasonable, will depend upon the *nature* and *quality* of the weapon used by the aggressor, his *physical condition, character, size* and other *circumstances,* and those of the person defending himself, and also the place and occasion of the assault.

Perfect equality between the weapon used by the one defending himself and that of the aggressor *is not required,* because the person assaulted does not have sufficient tranquility of mind to think, to calculate and to choose which weapon to use. (People vs. Padua, C.A., 40 O.G. 998)

"Reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than 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." (People vs. Encomienda, No. L-26750, Aug. 18, 1972, 46 SCRA 522, 534, quoting People vs. Lara, 48 Phil. 153; People vs. Paras, 9 Phil. 367)

As was already mentioned, the reasonableness of the means employed will depend upon —

1. *The nature and quality of the weapons:*

   a. Although as a general rule a dagger or a knife is more dangerous than a club, the use of a knife or dagger, when attacked with a club, must be deemed reasonable if it cannot be shown that the person assaulted (1) *had other available means* or (2) *if there was other means, he could coolly choose* the less deadly weapon

to repel the assault. (People vs. Padua, C.A., 40 O.G. 998)

In the case of *U.S. vs. Laurel,* 22 Phil. 252, a similar ruling was applied.

The use of a bolo to repel the aggression by means of a stick, the use of a knife against a rod, or a knife against a stick was held to be reasonable under the circumstances. (People vs. Romero, C.A., 34 O.G. 2046)

But it was held that the use of a bayonet against a cane is not reasonable. The accused could have warded off the blows made by the deceased with his cane. If the accused had only drawn his bayonet in defense, that would have been enough to discourage and prevent the deceased from further continuing with his attack or sufficient to ward off the blows given by the deceased when he attacked the accused. In stabbing the deceased with his bayonet, the accused went beyond what was necessary to defend himself against the unlawful aggression made by the deceased. (People vs. Oñas, No. L-17771, Nov. 29, 1962, 6 SCRA 688, 692-693)

Since the deceased was a gangster with a reputation for violence, the use by the accused of a dagger to repel the persistent aggression by the deceased with a wooden pestle is reasonably necessary under the circumstances. (People vs. Ramilo, C.A., 44 O.G. 1255)

At a distance, stones hurled by the deceased, who was a known boxer, big and strong, may constitute a graver danger than a bolo. In such case, the use of a bolo was held reasonable. (People vs. Aguilario, C.A., 56 O.G. 757)

The use of a revolver against an aggressor armed with a bolo was held reasonable, it appearing that the deceased was advancing upon the accused and within a few feet of striking distance when the latter shot him. (U.S. vs. Mack, 8 Phil. 701)

In the case of *People vs. Maliwanag,* No. L-30302, Aug. 14, 1974, 58 SCRA 323, 331-332, it was held that

there was reasonable necessity of the means employed to repel the aggression from the deceased when the appellant's only recourse in defending himself was to use his service pistol against one who wielded a deadly balisong knife.

b. To use a *firearm* against a *dagger* or a *knife,* in the regular order of things, *does not imply any difference* between such weapons. (Dec. Sup. Ct. of Spain, Oct. 27, 1887)

This ruling is subject to the limitations mentioned in the case of *People vs. Padua, supra,* namely: (1) there was *no other available means;* or (2) if there was other means, the one making a defense *could not coolly* choose the less deadly weapon to repel the aggression.

c. But when a person is attacked with fist blows, he must repel the same with the weapon that nature gave him, meaning *with fists also.* (People vs. Montalbo, 56 Phil. 443)

This ruling applies only when the aggressor and the one defending himself are of the *same size* and *strength.*

2. *Physical condition, character and size.*

a. Thus, when the one defending himself who was of *middle age,* was cornered, had his back to the iron railing, and *three* or *four* men *bigger,* and *stronger* than he were striking him with fists, such person was justified in using a knife. (People vs. Ignacio, 58 Phil. 858)

b. The aggressor was a bully, a man *larger* and *stronger,* of known *violent character,* with previous *criminal records* for assault. He attacked with fist blows a smaller man who was then armed with a bolo. In spite of having received, as a warning, a cut with a bolo on the left shoulder, the aggressor *continued to attempt to possess himself of the bolo.* Killing him with a bolo was justified in this case. (People vs. Sumicad, 56 Phil. 643)

c. *The character of the aggressor is emphasized in this case:*

Considering that the aggressor *provoked* the incident and started the aggression; considering that he is of *violent temperament, troublesome, strong* and *aggressive* with three *criminal records, twice of slander by deed* and *once of threat to kill;* considering that he *wanted to impose his will* on the family of the accused for having rejected his nephew as a suitor of the sister of the accused, *boxing* them *one after another* and *in their own home* — the Court of Appeals held that the accused was justified in striking him with a bolo on the forehead and on the right eye. (People vs. Padua, C.A., 40 O.G. 998)

3. *Other circumstances considered.*

In view of the imminence of the danger, a shotgun is a reasonable means to prevent an aggression with a bolo.

M, being abruptly awakened by shouts that P was pursuing H and M's two children, and seeing, upon awakening, that in fact P was infuriated and pursuing H with a bolo in his hand and his arm raised in an attitude as if to strike, took up a shotgun lying within his reach and fired at P, killing him at once. *Held:* Under the circumstances, in view of the imminence of the danger, the only remedy which could be considered reasonably necessary to repel or prevent that aggression, was to render the aggressor harmless. As M had on hand a loaded *shotgun,* this weapon was *the most appropriate* one that could be used for the purpose, even at the risk of killing the aggressor, since the latter's aggression also gravely threatened the lives of the parties assaulted. (U.S. vs. Batungbacal, 37 Phil. 382, 387-388)

Reasonable necessity of means employed to prevent or repel unlawful aggression to be liberally construed in favor of law-abiding citizens.

These are dangerous times. There are many lawless elements who kill for the thrill of killing. There is no adequate protection for the

law abiding citizens. When a lawless person attacks on the streets or particularly in the victim's home, he should assume the risk of losing his life from the act of self-defense by firearm of his victim; otherwise, the law abiding citizens will be at the mercy of the lawless elements. Hence, the requisite of reasonable necessity of the means employed to prevent or repel the unlawful aggression should in these times of danger be interpreted liberally in favor of the law-abiding citizens. (People vs. So, 5 CAR [2s] 671, 674)

Rule regarding the reasonableness of the "necessity of the means employed" when the one defending himself is a peace officer.

The peace officer, in the performance of his duty, *represents the law which he must uphold.* While the law on self-defense allows a private individual to *prevent* or *repel* an aggression, the duty of a peace officer *requires* him to *overcome* his opponent.

Thus, the fact that a policeman, who was armed with a *revolver* and a *club,* might have used his club instead, does not alter the principle since a policeman's club is not a very effective weapon as against a drawn knife and a *police officer is not required to afford a person attacking him, the opportunity for* a fair and equal struggle. (U.S. vs. Mojica, 42 Phil. 784, 787)

But in the case of *U.S. vs. Mendoza,* 2 Phil. 109, 110, it was held that it is not reasonably necessary for a policeman to kill his assailant to repel an attack with a *calicut*.

The use by a police officer of his service revolver in repelling the aggression of the deceased who assaulted him with a kitchen knife and continued to give him thrusts in the confines of a small room measuring 6 feet by 6 feet is reasonable and necessary. Considering the imminent danger to which his life was exposed at the time, he could hardly be expected to choose coolly, as he would under normal conditions, the use of his club as a less deadly weapon to use against his assailant. As a police officer in the lawful performance of his official duty, he must stand his ground and cannot, like a private individual, take refuge in flight. His duty requires him to overcome his opponent. (People vs. Caina, 14 CAR [2s] 93, 99-100)

There is no evidence that the accused was also armed with a weapon less deadly than a pistol. But even if he had a club with him,

the pistol would still be a reasonable means to repel the aggression of the deceased, for a police officer is not required to afford a person attacking him with a drawn knife the opportunity for a fair and equal struggle. While the law on self-defense allows a private individual to prevent or repel an aggression, the duty of a peace officer requires him to overcome his opponent. The peace officer, in the performance of his duty, represents the law which he must uphold. (People vs. Uy, Jr., 20 CAR [2s] 850, 859-860)

First two requisites common to three kinds of legitimate defense.

The *first two requisites* thus far explained are common to *self-defense, defense of a relative, and defense of a stranger.* These three kinds of legitimate defense *differ only in the third requisite.*

Third requisite of self-defense.

"Lack of sufficient provocation on the part of the person defending himself."

Reason for the third requisite of self-defense.

When the person defending himself from the attack by another gave sufficient provocation to the latter, the former is also to be blamed for having given cause for the aggression.

Hence, to be entitled to the benefit of the justifying circumstance of self-defense, the one defending himself must not have given cause for the aggression by his *unjust conduct* or by inciting or provoking the assailant.

Cases in which third requisite of self-defense considered present.

The third requisite of self-defense is present —

1. When no *provocation at all* was given to the aggressor by the person defending himself; or
2. When, even if a *provocation* was given, it was *not sufficient;* or
3. When, even if the *provocation* was sufficient, it was *not given by the person defending himself;* or

4. When, even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression. (Decisions of the Supreme Court of Spain of March 5, 1902 and of April 20, 1906)

No provocation at all.

Thus, when A shot B to death, because B was running amuck and with a dagger was rushing towards A manifestly intending to stab A, there was no provocation whatsoever on the part of A. The third requisite of self-defense is present.

There was provocation, but not sufficient.

A, having discovered that B had built a part of his fence on A's land, asked B why he had done so. This question angered B who immediately attacked A. If A would kill B to defend himself, the *third requisite of self-defense would still be present,* because even if it is true that the question of A angered B, thereby making B attack A, such provocation is not sufficient. (U.S. vs. Pascua, 28 Phil. 222) A had a right to demand explanation why B had built the fence on A's property. *The exercise of a right cannot give rise to sufficient provocation.*

How to determine the sufficiency of provocation.

The provocation must be sufficient, which means that it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission. (People vs. Alconga, 78 Phil. 366)

Thus, to engage in a *verbal argument* cannot be considered sufficient provocation. (Decision of the Supreme Court of Spain of October 5, 1877)

Is it necessary for the provocation to be sufficient that the one who gave it must have been guilty of using *violence* and thus becoming an unlawful aggressor himself?

No, it is not necessary.

The provocation is sufficient —

1. When one challenges the deceased to come out of the house and engage in a fist-fight with him and prove who is the better man. (U.S. vs. McCray, 2 Phil. 545)

The version of the defense deserves no credit. Accused father and son challenged the deceased to fight and they killed him when he came out. One of the first requisites of self-defense is unlawful aggression. Accused father called out the deceased from his house and provoked him to fight. Coming out, said accused threw a stone at him. The deceased merely fought back but together both accused assaulted him until he fell wounded. (People vs. Valencia, No. L-58426, Oct. 31, 1984, 133 SCRA 82, 86-87)

2. When one hurls *insults* or imputes to another the utterance of vulgar language, as when the accused and his brothers imputed to the deceased, the utterance of vulgar language against them, which imputation provoked the deceased to attack them. (People vs. Sotelo, 55 Phil. 403)

But it is *not enough* that the provocative act be unreasonable or annoying. A petty question of pride does not justify the wounding or killing of an opponent. (People vs. Dolfo, C.A., 46 O.G. 1621)

3. When the accused *tried to forcibly kiss* the sister of the deceased. The accused thereby gave sufficient provocation to the deceased to attack him. There is no complete self-defense, because the third requisite is not present. (People vs. Getida, CA-G.R. No. 2181-R, Jan. 6, 1951)

Sufficient provocation not given by the person defending himself.

Note the phrase "on the part of the person defending himself" in the third requisite of self-defense. Thus, in the case of *People vs. Balansag*, 60 Phil. 266, it was held that the third requisite of self-defense was present, because the provocation proven at the trial was not given by the accused but by the brother-in-law of the deceased.

Requisite of "lack of sufficient provocation" refers exclusively to "the person defending himself."

Thus, if the accused appears to be the *aggressor*, it cannot be said that he was defending himself *from* the *effect* of another's aggression. (People vs. Espino, 43 O.G. 4705)

In the case of *People vs. Alconga,* 78 Phil. 366, the attack made by the deceased when Alconga was the one defending himself during the first stage of the fight, was not considered as a provocation to Alconga in the second stage of the fight, because then *he was the aggressor* and the third requisite of self-defense is limited to the person defending himself.

Provocation by the person defending himself not proximate and immediate to the aggression.

Thus, if A slapped the face of B one or two days before and B, upon meeting A, attacked the latter but was seriously injured when A defended himself, the provocation given by A should be disregarded, because it was not proximate and immediate to the aggression made by B. In this case, the third requisite of self-defense is still present.

In the case of *U.S. vs. Laurel, supra,* the kissing of the girlfriend of the aggressor was a sufficient provocation to the latter, but since the kissing of the girl took place on December 26 and the aggression was made on December 28, the provocation was disregarded by the Supreme Court.

Illustration of the three requisites of self-defense.

People vs. Dolfo
(C.A., 46 O.G. 1621)

A was an electrician while B was his assistant. A called B to him, who instead of approaching asked him, "Why are you calling me?" A considered the retort as a provocative answer and suddenly threw a 4 by 2 inches piece of wood at B. B retaliated by throwing at A the same piece of wood. A picked up the piece of wood, approached B and started to beat him with the piece of wood. B defended himself with a screwdriver and inflicted a mortal wound on A.

***Question: (1)* Was there sufficient provocation on the part of B when he retorted "Why are you calling me?" (2) Was there reasonable necessity in using the screwdriver to repel the attack?**

Answer:* (1) B's answer of "Why are you calling me?" when summoned by A might have mortified and annoyed the latter but it was not a sufficient provocation. The provocation must be sufficient or proportionate to the act committed and adequate to arouse one to its commission. *It is not sufficient that the provocative act be unreasonable

or annoying. A small question of self-pride does not justify hurting or killing an opponent.

(2) The act of A in hurling the piece of wood at B when his pride was hurt constituted unlawful aggression. Subsequent act of A in attacking B with the piece of wood, after B had hurled back the thrown piece of wood, was a continuation of the unlawful aggression already begun. The subsequent act of A placed B in his defense, justifying the use of a reasonable means to repel it.

(3) In determining whether or not a particular means employed to repel an aggression is reasonable, the person attacked should not be expected to judge things calmly and to act coolly or serenely as one not under stress or not facing a danger to life or limb. The test is: Considering the situation of the person defending himself, would a reasonable man placed in the same circumstance have acted in the same way? In this case, the screwdriver was a reasonable means to repel the unlawful aggression of A. B was justified in killing him with it. All the three requisites of self-defense were present. Hence, accused B must be, as he was, acquitted.

All the elements of self-defense are present in this case.

(1) The deceased husband of the accused was kneeling over her as she lay on her back on the ground and his hand choking her neck when she pulled out the knife tucked on the left side of her husband's belt and plunged it at his body.

(2) A woman being strangled and choked by a furious aggressor and rendered almost unconscious by the strong pressure on her throat, she had no other recourse but to get hold of any weapon within her reach to save herself from impending death. Reasonable necessity of the means employed in self-defense does not depend upon the harm done but rests upon the imminent danger of such injury.

(3) She did not give sufficient provocation to warrant the aggression or attack on her person by her husband. While it was understandable for the latter to be angry at his wife for finding her on the road in the middle of the night, he was not justified in inflicting bodily punishment with an intent to kill by choking his wife's throat. All that she did was to provoke an imaginary commission of a wrong in the mind of her husband, which is not a sufficient provocation under the law of self-defense. (People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 189, 195-196)

Battered Woman Syndrome as a defense.

Under Rep. Act No. 9262 otherwise known as Anti-Violence

Against Women and their Children Act of 2004, which took effect on March 27, 2004, it is provided that -

"Sec. 26. *Battered Women Syndrome as a Defense.* — Victim-survivors who are found by the courts to be suffering from battered women syndrome do not incur criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrist/ psychiatrists/psychologists."

The Battered Woman Syndrome, explained.

In claiming self-defense, appellant raises the novel theory of the battered woman syndrome (BWS). While new in Philippine jurisprudence, the concept has been recognized in foreign jurisdictions as a form of self-defense or, at the least, incomplete self-defense. By appreciating evidence that a victim or defendant is afflicted with the syndrome, foreign courts convey their "understanding of the justifiably fearful state of mind of a person who has been cyclically abused and controlled over a period of time."

A battered woman has been defined as a woman "who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman."

Battered women exhibit common personality traits, such as low self-esteem, traditional beliefs about the home, the family and the female sex role; emotional dependence upon the dominant male; the tendency to accept responsibility for the batterer's actions; and false hopes that the relationship will improve.

More graphically, the battered woman syndrome is characterized by the so-called "cycle of violence," which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the

tranquil, loving (or, at least, nonviolent) phase. During the tension-building phase, minor battering occurs — it could be verbal or slight physical abuse or another form of hostile behavior. The woman usually tries to pacify the batterer through a show of kind, nurturing behavior; or by simply staying out of his way. What actually happens is that she allows herself to be abused in ways that, to her, are comparatively minor. All she wants is to prevent the escalation of the violence exhibited by the batterer. This wish, however, proves to be double-edged, because her "placatory" and passive behavior legitimizes his belief that he has the right to abuse her in the first place.

However, the techniques adopted by the woman in her effort to placate him are not usually successful, and the verbal and/or physical abuse worsens. Each partner senses the imminent loss of control and the growing tension and despair. Exhausted from the persistent stress, the battered woman soon withdraws emotionally. But the more she becomes emotionally unavailable, the more the batterer becomes angry, oppressive and abusive. Often, at some unpredictable point, the violence "spirals out of control" and leads to an acute battering incident.

The acute battering incident is said to be characterized by brutality, destructiveness and, sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable. During this phase, she has no control; only the batterer may put an end to the violence. Its nature reasons for ending it. The battered woman usually realizes that she cannot reason with him, and that resistance would only exacerbate her condition.

At this stage, she has a sense of detachment from the attack and the terrible pain, although she may later clearly remember every detail. Her apparent passivity in the face of acute violence may be rationalized thus: the batterer is almost always much stronger physically, and she knows from her past painful experience that it is futile to fight back. Acute battering incidents are often very savage and out of control, such that innocent bystanders of intervenors are likely to get hurt.

The final phase of the cycle of violence begins when the acute battering incident ends. During this tranquil period, the couple experience profound relief. On the one hand, the batterer may show a tender and nurturing behavior towards his partner. He knows that he has been viciously cruel and tries to make up for it, begging for her forgiveness and promising never to beat her again. On the other hand,

the battered woman also tries to convince herself that the battery will never happen again; that her partner will change for the better; and that this "good, gentle and caring man" is the real person whom she loves.

A battered woman usually believes that she is the sole anchor of the emotional stability of the batterer. Sensing his isolation and despair, she feels responsible for his well-being.

The truth, though, is that the chances of his reforming, or seeking or receiving professional help, are very slim, especially if she remains with him. Generally, only after she leaves him does he seek professional help as a way of getting her back. Yet, it is in this phase of remorseful reconciliation that she is most thoroughly tormented psychologically.

The illusion of absolute interdependency is well-entrenched in a battered woman's psyche. In this phase, she and her batterer are indeed emotionally dependent on each other—she for his nurturant behavior, he for her forgiveness. Underneath this miserable cycle of "tension, violence and foregiveness," each partner may believe that it is better to die than to be separated. Neither one may really feel independent, capable of functioning without the other." (People vs. Genosa, G.R. No. 135981, January 15, 2004.)

Effect of Battery on Appellant

Because of the recurring cycles of violence experienced by the abused woman, her state of mind metamorphoses. In determining her state of mind, we cannot rely merely on the judgment of an ordinary, reasonable person who is evaluating the events immediately surrounding the incident. A Canadian court has aptly pointed out that expert evidence on the psychological effect of battering on wives and common law partners are both relevant and necessary. "How can the mental state of the appellant be appreciated without it? The average member of the public may ask: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called 'battered wife syndrome.'"

To understand the syndrome properly, however, one's viewpoint should not be drawn from that of an ordinary, reasonable person. What

goes on in the mind of a person who has been subjected to repeated, severe beating may not be consistent with—nay, comprehensible to—those who have not been through a similar experience. Expert opinion is essential to clarify and refute common myths and misconceptions about battered women.

The theory of BWS formulated by Lenore Walker, as well as her research on domestic violence, has had a significant impact in the United States and the United Kingdom on the treatment and prosecution of cases, in which a battered woman is charged with the killing of her violent partner. The psychologist explains that the cyclical nature of the violence inflicted upon the battered woman immobilizes the latter's "ability to act decisively in her own interests, making her feel trapped in the relationship with no means of escape." In her years of research, Dr. Walker found that "the abuse often escalates at the point of separation and battered women are in greater danger of dying then."

Corroborating these research findings, Dra. Dayan said that "the battered woman usually has a very low opinion of herself. She has x x x self-defeating and self-sacrificing characteristics. x x x [W]hen the violence would happen, they usually think that they provoke[d] it, that they were the one[s] who precipitated the violence [; that] they provoke[d] their spouse to be physically, verbally and even sexually abusive to them."

According to Dra. Dayan, there are a lot of reasons why a battered woman does not readily leave an abusive partner — poverty, self-blame and guilt arising from the latter's belief that she provoked the violence, that she has an obligation to keep the family intact at all cost for the sake of their children, and that she is the only hope for her spouse to change.

The testimony of another expert witness, Dr. Pajarillo, is also helpful. He had previously testified in suits involving violent family relations, having evaluated "probably ten to twenty thousand" violent family disputes within the Armed Forces of the Philippines, wherein such cases abounded. As a result of his experience with domestic violence cases, he became a consultant of the Battered Woman Office in Quezon City. As such, he got involved in about forty (40) cases of severe domestic violence, in which the physical abuse on the woman would sometimes even lead to her loss of consciousness.

Dr. Pajarillo explained that "overwhelming brutality, trauma" could result in post traumatic stress disorder, a from of "anxiety neurosis or neurologic anxietism." After being repeatedly and severely

abused, battered persons "may believe that they are essentially helpless, lacking power to change their situation. x x x [A]cute battering incidents can have the effect of stimulating the development of coping responses to the trauma at the expense of the victim's ability to muster an active response to try to escape further trauma. Furthermore, x x x the victim ceases to believe that anything she can do will have a predictable positive effect."

A study conducted by Martin Seligman, a psychologist at the University of Pennsylvania, found that "even if a person has control over a situation, but believes that she does not, she will be more likely to respond to that situation with coping responses rather than trying to escape." He said that it was the cognitive aspect—the individual's thoughts—that proved all-important. He referred to this phenomenon as—"learned helplessness." [T]he truth or facts of a situation turn out to be less important than the individual's set of beliefs or perceptions concerning the situation. Battered women don't attempt to leave the battering situation, even when it may seem to outsiders that escape is possible, because they cannot predict their own safety; they believe that nothing they or anyone else does will alter their terrible circumstances."

Thus, just as the battered woman believes that she is somehow responsible for the violent behavior of her partner, she also believes that he is capable of killing her, and that there is no escape. Battered women feel unsafe, suffer from pervasive anxiety, and usually fail to leave the relationship. Unless a shelter is available, she stays with her husband, not only because she typically lacks a means of self-support, but also because she fears that if she leaves she would be found and hurt even more. (People vs. Genosa, G.R. No. 135981, January 15, 2001).

Flight, incompatible with self-defense.

The appellant went into hiding after the hacking incident. Suffice it to state that flight after the commission of the crime is highly evidentiary of guilt, and incompatible with self-defense (People vs. Maranan, G.R. No. L-47228-32, citing People vs. Maruhom, 132 SCRA 116).

Par. 2 - DEFENSE OF RELATIVES.

Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by

consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

Relatives that can be defended.

1. Spouse.
2. Ascendants.
3. Descendants.
4. Legitimate, natural or adopted brothers and sisters, or relatives by affinity in the same degrees.
5. Relatives by consanguinity within the fourth civil degree.

Relatives by affinity, because of marriage, are parents-in-law, son or daughter-in-law, and brother or sister-in-law.

Death of the spouse terminates the relationship by affinity (Kelly v. Neely, 12 Ark. 667, 659, 56 AmD 288; Chase vs. Jennings, 38 Me. 44, 45); unless the *marriage has resulted in issue* who is *still living,* in which case the relationship of affinity continues. (Dearmond vs. Dearmond, 10 Ind. 191; Bigelow vs. Sprague, 140 Mass. 425, 5 NE 144)

Consanguinity refers to blood relatives. Brothers and sisters are within the second civil degree; uncle and niece or aunt and nephew are within the third civil degree; and *first cousins* are within the *fourth civil degree.*

Thus, if A acted in defense of the husband of A's sister-in-law, there is no defense of relative, because the relation between A and the husband of A's sister-in-law is not one of those mentioned in paragraph 2 of Article 11. (People vs. Cabellon, 51 Phil. 846) The husband of A's sister-in-law is a stranger to A for purpose of the law on defense of relatives.

Basis of justification.

The justification of defense of relatives by reason of which the defender is not criminally liable, is founded not only upon a *humanitarian sentiment,* but also upon the *impulse of blood* which impels men to rush, on the occasion of great perils, to the rescue of those close to them by ties of blood. (Albert)

Requisites of defense of relatives:

1. **Unlawful aggression;**
2. **Reasonable necessity of the means employed to prevent or repel it; and**
3. ***In case* the provocation was given by the person attacked, the *one making a defense had no part therein.* (See People vs. Eduarte, G.R. No. 72976, July 9, 1990, 187 SCRA 291, 295; People vs. Agapinay, G.R. No. 77776, June 27, 1990, 186 SCRA 812, 823)**

First two requisites are the same as those of self-defense.

The meaning of *"unlawful aggression"* and that of *"reasonable necessity of the means employed to prevent or repel it"* are already explained in the discussion of self-defense.

Defense of relatives also requires that there be unlawful aggression.

Of the three requisites of defense of relatives, unlawful aggression is the most essential and primary, without which any defense is not possible or justified. (People vs. Agapinay, *supra)*

Of the three (3) requisites of defense of relatives, unlawful aggression is a condition *sine qua non,* for without it any defense is not possible or justified. In order to consider that an unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of exemption from liability on the ground that it was committed in self-defense or defense of a relative. (Balunueco vs. Court of Appeals, G.R. No. 126968, April 9, 2003)

When two persons are getting ready to strike each other, there can be no unlawful aggression, and hence, a relative of either who butts in and administers a deadly blow on the other to prevent him from doing harm is not acting in defense of a relative, but is guilty of homicide. (People vs. Moro Munabe, C.A., 46 O.G. 4392)

In this case, when he saw the deceased and his brother facing each other in a fight, each holding a *taki taki,* an instrument for uprooting rubber seedlings, the accused hit the deceased on the head with his *taki taki,* causing the latter's death.

If the *accused appears* to be the *aggressor,* he cannot invoke the defense of having acted in defense of a relative. (People vs. Panuril, C.A., 40 O.G. 1477)

Must unlawful aggression exist as a matter of fact, or can it be made to depend upon the honest belief of the one making a defense?

Yes, it can be made to depend upon the honest belief of the one making a defense. (U.S. vs. Esmedia, 17 Phil. 260, 264)

Thus, when A attacked and wounded B with a dagger, causing the latter to fall down, but B immediately stood up and defended himself by striking A with a bolo and as a result, A was seriously wounded and fell in the mud with B standing in front of A in a position as if to strike again in case A would stand up, there is no doubt that A was the unlawful aggressor. But when the sons of A came, what they saw was that their father was lying in the mud wounded. They believed *in good faith* that their father was the victim of an unlawful aggression. If they killed B under such circumstances, they are justified.

In that case, there was a mistake of fact on the part of the sons of A.

Even in self-defense, the Supreme Court of Spain held that when a person while walking at night in an uninhabited place was ordered by someone to halt and give his money, such person was justified in shooting that someone, even if he turned out to be a friend, only playing a practical joke.

Gauge of reasonable necessity of the means employed to repel the aggression.

The gauge of reasonable necessity of the means employed to repel the aggression as against one's self or in defense of a relative is to be found in the situation as it appears to the person repelling the aggression. It has been held time and again that the reasonableness

of the means adopted is not one of mathematical calculation or "material commensurability between the means of attack and defense" but the imminent danger against the subject of the attack as perceived by the defender and the instinct more than reason that moves the defender to repel the attack. (Eslabon vs. People, No. L-66202, Feb. 24, 1984, 127 SCRA 785, 790-791)

Third requisite of defense of relative.

The clause, "in case the provocation was given by the person attacked," used in stating the third requisite of defense of relatives, does not mean that the relative defended should give provocation to the aggressor. The clause merely states an event which may or may not take place.

The phrase "in case" means "in the event that."

There is still a legitimate defense of relative even if the relative being defended has given provocation, provided that the one defending such relative has no part in the provocation.

Reason for the rule:

That although the provocation prejudices the person who gave it, *its effects do not reach the defender* who took no part therein, because the latter was prompted by some noble or generous sentiment in protecting and saving a relative.

When the third requisite is lacking.

The accused was previously shot by the brother of the victim. It cannot be said, therefore, that in attacking the victim, the accused was impelled by pure compassion or beneficence or the lawful desire to avenge the immediate wrong inflicted on his cousin. Rather, he was motivated by revenge, resentment or evil motive because of a running feud between them. (People vs. Toring, G.R. No. 56358, Oct. 26, 1990, 191 SCRA 38, 47)

The fact that the relative defended gave provocation is immaterial.

Thus, even if A had slapped the face of B who, as a consequence of the act of A, immediately commenced to retaliate by drawing a

knife and trying to stab A, and C, father of A, killed B in defense of his son, C is *completely justified,* notwithstanding the fact that the provocation was given by his son A.

But if C had induced his son A to injure B, *thereby taking part in the provocation made by* A, C would not be completely justified in killing B while the latter was about to stab A, because the third requisite of defense of relative is lacking.

Suppose, the person defending his relative was also induced by revenge or hatred, would there be a legitimate defense of relative? As long as the three requisites of defense of relatives are present, it will still be a legitimate defense.

Examples of defense of relatives.

1. The accused, at a distance of about 20 "brazas" from his house, heard his wife shouting for help. He rushed to the house and once inside saw the deceased on top of his wife. He drew his bolo and hacked the deceased at the base of his neck when the latter was forcibly abusing his wife. (People vs. Ammalun, C.A., 51 O.G. 6250)

2. Domingo Rivera challenged the deceased to prove who of them was the better man. When the deceased picked up a bolo and went after him, Domingo Rivera took to flight. The deceased pursued him and upon overtaking him inflicted two wounds. Antonio Rivera, father of Domingo, rushed to his son's assistance and struck with a cane the bolo from the hands of the deceased. Domingo Rivera inflicted fatal wounds upon the deceased. While the son was originally at fault for giving provocation to the deceased, yet the father was justified in disarming the deceased, having acted in lawful defense of his son. But Domingo Rivera was declared guilty of the crime of homicide. (U.S. vs. Rivera, 26 Phil. 138)

Par. 3 - DEFENSE OF STRANGER.

Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

Requisites:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. The person defending be *not induced by revenge, resentment,* or other *evil motive.* (See People vs. Moral, No. L-31139, Oct. 12, 1984, 132 SCRA 474, 485)

Note that the first two requisites are the same as those of self-defense and defense of relatives.

Basis of defense of stranger.

What one may do in his defense, another may do for him. Persons acting in defense of others are in the same condition and upon the same plane as those who act in defense of themselves. The ordinary man would not stand idly by and see his companion killed without attempting to save his life. (U.S. vs. Aviado, 38 Phil. 10, 13)

Third requisite of defense of stranger.

This Code requires that the defense of a stranger be actuated by a *disinterested or generous motive,* when it puts down "revenge, resentment, or other evil motive" as illegitimate. (Albert)

Who are deemed strangers?

Any person *not included in the enumeration of relatives mentioned in paragraph 2* of this article, is considered stranger for the purpose of paragraph 3. Hence, even a close friend or a distant relative is a stranger within the meaning of paragraph 3.

The person defending "be not induced."

Paragraph 3 of Art. 11 uses the phrase "be not induced." Hence, even if a person has a standing grudge against the assailant, if he enters upon the defense of a stranger out of generous motive to save the stranger from serious bodily harm or possible death, the third requisite of defense of stranger still exists. The third requisite *would be lacking if such person was prompted by his grudge* against the assailant, because the alleged defense of the stranger would be only a pretext.

If in defending his wife's brother-in-law, the accused *acted also from an impulse of resentment against the deceased,* the third requisite of defense of stranger is not present. (People vs. Cabellon and Gaviola, 51 Phil. 851)

Examples of defense of stranger:

1. A was able to deprive B, a constabulary lieutenant, of his pistol during the fray. B ordered C, a constabulary soldier under his command, to search A for the pistol. When C was about to approach A to search him, the latter stepped back and shot at C who was able to avoid the shot. When A was about to fire again at C, D, another constabulary soldier, fired at A with his rifle which killed him.

Held: D was justified in killing A, having acted in defense of stranger. (People vs. Ancheta, *et al.*, 66 Phil. 638)

2. A heard screams and cries for help. When A responded, he saw B attacking his (B's) wife with a dagger. A approached B and struggled for the possession of the weapon, in the course of which A inflicted wounds on B.

Held: A acted in defense of a stranger. (People vs. Valdez, 58 Phil. 31)

Furnishing a weapon to one in serious danger of being throttled is defense of stranger.

A Japanese hit an old man 78 years of age on the face, shoved him to the ground and attempted to choke him. The accused furnished the old man with a small gaff, used by game cocks, with which the old man killed his assailant. The accused was justified in furnishing the old man with the gaff, it being in defense of stranger. (U.S. vs. Subingsubing, 31 Phil. 376)

Par. 4 - AVOIDANCE OF GREATER EVIL OR INJURY.

Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

"Damage to another."

This term covers *injury to persons* and *damage to property.*

The Court of Appeals applied paragraph 4 of Art. 11 in a case of slander by deed, a crime *against honor,* where the accused (a woman) who was about to be married to the offended party eloped with another man, after the offended party had made preparations for the wedding, the Court holding that there was a necessity on the part of the accused of avoiding a loveless marriage with the offended party, and that her refusal to marry him and her eloping with the man whom she loved were justified and did not amount to the crime of slander by deed. (People vs. Norma Hernandez, C.A., 55 O.G. 8465)

"That the evil sought to be avoided actually exists."

The evil must actually exist. If the evil sought to be avoided is merely expected or anticipated or may happen in the future, paragraph 4 of Art. 11 is not applicable.

Example of injury to person under paragraph 4:

A person was driving his car on a narrow road with *due diligence* and care when suddenly he saw a "six by six" truck in front of his car. If he would swerve his car to the left he would fall into a precipice, or if he would swerve it to the right he would kill a passer-by. He was forced to choose between losing his life in the precipice or sacrificing the life of the innocent bystander. He chose the latter, swerved his car to the right, ran over and killed the passer-by. (Guevara)

In view of this example and the principle involved, the killing of the foetus to save the life of the mother may be held excusable.

"That the injury feared be greater than that done to avoid it."

Does the foregoing example violate the second condition required by the Code, that is, that the *injury feared be greater than that done to avoid it*?

No, because the instinct of self-preservation will always make one feel that his own safety is of greater importance than that of another.

The greater evil should not be brought about by the negligence or imprudence of the actor.

Thus, if in the example above, the driver drove his car at full speed, disregarding the condition of the place, and although he saw the "six by six" truck at a distance 500 meters away, he did not slacken his speed, he cannot invoke paragraph 4 of this article, because the state of necessity was brought about by his own reckless imprudence.

When the accused was not avoiding any evil, he cannot invoke the justifying circumstance of avoidance of a greater evil or injury.

Pio with a bolo and Severo with an axe attacked Geminiano who was wounded. Nearby, Juan embraced Marianito, Geminiano's son, who had a gun slung on his shoulder, and grappled with him. Geminiano died. Pio, Severo and Juan were prosecuted for murder. Juan invoked the justifying circumstance of avoidance of a greater evil or injury (Par. 4, Article 11, R.P.C.) in explaining his act of preventing Marianito from shooting Pio and Severo.

Held: **His reliance on that justifying circumstance is erroneous. The act of Juan Padernal in preventing Marianito de Leon from shooting Ricohermoso and Severo Padernal, who were the aggressors, was designed to insure the killing of Geminiano de Leon without any risk to his assailants. Juan Padernal was not avoiding any evil when he sought to disable Marianito. (People vs. Ricohermoso, *et al.*, 56 SCRA 431)**

Note: **Even if Marianito was about to shoot Pio and Severo, his act, being in defense of his father, is not an evil that could justifiably be avoided by disabling Marianito.**

Examples of damage to property under paragraph 4:

1. **Fire breaks out in a cluster of nipa houses, and in order to prevent its spread to adjacent houses of strong materials, the surrounding nipa houses are pulled down. (Albert)**
2. **Where a truck of the Standard Vacuum Oil Co. delivering gasoline at a gas station caught fire and, in order to prevent the burning of the station, the truck was driven to the middle of the street and there abandoned, but it continued to move and**

thereafter crashed against and burned a house on the other side of the street, the owner of the house had a cause of action against the owner of the gas station under paragraph 2 of Art. 101, in relation to paragraph 4 of Art. 11. (Tan vs. Standard Vacuum Oil Co., 91 Phil. 672)

3. During the storm, the ship which was heavily loaded with goods was in danger of sinking. The captain of the vessel ordered part of the goods thrown overboard. In this case, the captain is not criminally liable for causing part of the goods thrown overboard.

The evil which brought about the greater evil must not result from a violation of law by the actor.

Thus, an escaped convict who has to steal clothes in order to move about unrecognized, does not act from necessity. (Albert) He is liable for theft of the clothes.

There is civil liability under this paragraph.

Although, as a rule there is no civil liability in justifying circumstances, it is only in paragraph 4 of Art. 11 where there is civil liability, but the civil liability is *borne by the persons benefited.*

In cases falling within subdivision 4 of Article 11, the persons for whose benefit the harm has been prevented, shall be civilly liable in proportion to the benefit which they may have received. (Art. 101)

Par. 5. - FULFILLMENT OF DUTY OR LAWFUL EXERCISE OF RIGHT OR OFFICE.

Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

Requisites:

1. That the accused acted in the performance of a duty or in the lawful exercise of a right or office;
2. That the injury caused or the offense committed be the necessary consequence of the *due* performance of duty or the lawful exercise of such right or office. (People vs. Oanis, 74 Phil. 257, 259; People vs. Pajenado, No. L-26458, Jan. 30, 1976, 69 SCRA 172, 177)

In the case of *People vs. Oanis, supra,* the first requisite is present, because the accused peace officers, who were trying to get a wanted criminal, were acting in the performance of a duty.

The second requisite is not present, because through impatience, over-anxiety, or in their desire to take no chances, the accused *exceeded* in the fulfillment of their duty when they killed a sleeping person whom they believed to be the wanted criminal without making any previous inquiry as to his identity.

Fulfillment of duty.

People vs. Felipe Delima
(46 Phil. 738)

Facts: **Lorenzo Napilon escaped from the jail where he was serving sentence.**

Some days afterwards the policeman, Felipe Delima, who was looking for him, found him in the house of Jorge Alegria, armed with a pointed piece of bamboo in the shape of a lance, and demanded his surrender. The fugitive answered with a stroke of his lance. The policeman dodged it, and to impose his authority fired his revolver, but the bullet did not hit him. The criminal ran away, without parting with his weapon. The peace officer went after him and fired again his revolver, this time hitting and killing him.

The policeman was tried and convicted by the Court of First Instance of homicide and sentenced to *reclusión temporal* and the accessory penalties.

Held: **The killing was done in the performance of a duty. The deceased was under the obligation to surrender, and had no right, after evading service of his sentence, to commit assault and disobedience with a weapon in his hand, which compelled the policeman to resort to such an extreme means, which, although it proved to be fatal, was justified by the circumstances.**

Article 8, No. 11 of the Penal Code (Art. 11, par. 5, Revised Penal Code) being considered, Felipe Delima committed no crime, and he is hereby acquitted with costs *de oficio*.

Ruling in Delima case, applied to the case of a guard who killed a detained prisoner while escaping.

If a detained prisoner under the custody of the accused, a policeman detailed to guard him, by means of force and violence, was able

to leave the cell and actually attempted to escape, notwithstanding the warnings given by the accused not to do so, and was shot by the accused, the latter is entitled to acquittal in accordance with the ruling laid down in *People vs. Delima,* 46 Phil. 738. (People vs. Bisa, C.A., 51 O.G. 4091)

Ruling in the Delima case, applied to a case where an escaping detainee charged with a relatively minor offense of stealing a chicken was shot to death by a policeman.

In this case, four members of the police force went after him as soon as the detention prisoner had escaped. When the escaping detainee saw one of the policemen, he lunged at the latter, hitting him with a stone on the right cheek, as a consequence of which he fell down, and while in that position on the ground, he was again struck with a stone by the escaping detainee; thereafter, the latter ran away pursued by the policeman and his companions; in the course of the pursuit, the policeman fired a warning shot into the air, and as the escaping detainee paid no heed to this, the policeman fired into the air four times more and kept on pursuing him; as the latter was apparently widening the distance between them, and fearing that he might finally be able to elude arrest, the policeman fired directly at him while he was in the act of jumping again into another part of the creek, the shot having hit him on the back. (Valcorza vs. People, 30 SCRA 148-150)

People vs. Lagata
(83 Phil. 159)

Facts: **When the guard called his order to assemble, one of the prisoners was missing. So, he ordered the others to look for him. The other prisoners scampered. The guard fired at two of the prisoners, wounding one (Abria) and killing the other (Tipace). His reason was to prevent the attempt of the prisoners to escape.**

Held: **As regards the shooting of Abria and Tipace, we are convinced that the facts were as narrated by the witnesses for the prosecution. Abria was shot when he was only three meters away from the guard and the defense *has not even shown* that Abria attempted to escape. Tipace was also shot when he was about four or five meters away from the guard. The latter's allegation that Tipace was running, — conveying the idea that said prisoner was in the act of escaping,**

— appears to be inconsistent with his own testimony to the effect that Tipace was running sidewise, with his face looking towards him (the guard), and with the undisputed fact that Tipace was hit near one axilla, the bullet coming out from the opposite shoulder. If Tipace's purpose was to escape, the natural thing for him to do would have been to give his back to the guard.

It is clear that the guard had absolutely no reason to fire at Tipace. The guard could have fired at him in *self-defense* or if *absolutely necessary to avoid his escape.*

Five Justices believed that the prisoner who was killed was not escaping. The four Justices who dissented believed that the prisoner was escaping or running away when he was shot by the guard. All the Justices agreed that a guard is justified in shooting an escaping prisoner.

In the case of *U.S. vs. Magno, et al.,* 8 Phil. 314, where the prisoner attempted to escape, and the Constabulary soldiers, his custodians, shot him to death in view of the fact that the prisoner, disregarding the warning of his custodians, persisted in his attempt to escape, and there was no other remedy but to fire at him in order to prevent him from getting away, it was held that the Constabulary soldiers acted in the fulfillment of duty and, therefore, were not criminally liable.

Shooting an offender who refused to surrender is justified.

In the case of *People vs. Gayrama,* 60 Phil. 796, where the accused, who had slashed with a bolo the municipal president on his arm, ran away and refused to be arrested, it was stated that if the chief of police had been armed with a revolver and had used it against the accused, the act of the chief of police under those circumstances would have been fully justified.

The reason for this is that it is the duty of peace officers to arrest violators of the law not only when they are provided with the corresponding warrant of arrest but also when they are not provided with said warrant if the violation is committed in their own presence; and this duty extends even to cases the purpose of which is merely to prevent a crime about to be consummated. (U.S. vs. Bertucio, 1 Phil. 47; U.S. vs. Resaba, 1 Phil. 311; U.S. vs. Vallejo, 11 Phil. 193; U.S. vs. Santos, 36 Phil. 853)

But shooting a thief who refused to be arrested is not justified.

A security guard accosted a thief who had stolen ore in the tunnel of a mining company. The thief tried to flee. The security guard ordered him to stop, but the latter disregarded the order. The security guard fired four shots into the air with his carbine to scare the thief and to stop him. As the thief continued to flee, saying that he would not stop even if he died, the security guard fired a fifth shot directed at the leg of the thief, but the bullet hit him in the lumbar region. The thief died.

Held: The security guard acted in the performance of his duty, but he exceeded the fulfillment of his duty by shooting the deceased. He was adjudged guilty of homicide. (People vs. Bentres, C.A., 49 O.G. 4919)

In the case of *People vs. Oanis, supra,* it was held that although an officer in making a lawful arrest is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm, yet he is never justified in *using unnecessary force* or in treating him with *wanton violence,* or in resorting to *dangerous means* when the arrest could be effected otherwise. (6 C.J.S., par. 13, p. 612) The doctrine is restated in the Rules of Court thus: "No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention." (Rule 113, Sec. 2, par. 2)

Legitimate performance of duty.

When the victim without apparent reason, but probably due to drunkenness, fired his gun several times at the Alta Vista Club, the accused and his partner had to intervene for they were with the NBI. They would have been remiss in their duty if they did not. True, the deceased companion of the accused shot the victim who died as a result. But it would be doing injustice to a deceased agent of the law who cannot now defend himself to state that when he approached the trouble making victim he had a preconceived notion to kill. It must be presumed that he acted pursuant to law when he tried to discharge his duty as an NBI agent and that the killing of the victim was justified under the circumstances. The same is true for the accused. (People vs. Cabrera, No. L-31178, Oct. 28, 1980, 100 SCRA 424, 431)

Illegal performance of duty.

The defense of fulfillment of a duty does not avail. The attitude adopted by the deceased in putting his hands in his pocket is not sufficient to justify the accused to shoot him. The deceased was unarmed and the accused could have first warned him, as the latter was coming towards him, to stop where he was, raise his hands, or do the things a policeman is trained to do, instead of mercilessly shooting him upon a mere suspicion that the deceased was armed. (People vs. Tan, No. L-22697, Oct. 5, 1976, 73 SCRA 288, 292-293)

We find the requisites absent in the case at bar. Appellant was not in the performance of his duties at the time of the shooting for the reason that the girls he was attempting to arrest were not committing any act of prostitution in his presence. If at all, the only person he was authorized to arrest during that time was Roberto Reyes, who offered him the services of a prostitute, for acts of vagrancy. Even then, the fatal injuries that the appellant caused the victim were not a necessary consequence of appelant's performance of his duty as a police officer. The record shows that appellant shot the victim not once but twice after a heated confrontation ensued between them. His duty to arrest the female suspects did not include any right to shoot the victim to death. (People vs. Peralta, G.R. No. 128116, January 24, 2001)

Distinguished from self-defense and from consequence of felonious act.

Fulfillment of duty to prevent the escape of a prisoner is different from self-defense, because they are based on different principles.

In the case of *People us. Delima, supra,* the prisoner who attacked the policeman with "a stroke of his lance" was already running away when he was shot, and, hence, the unlawful aggression had already ceased to exist; but the killing was done in the performance of a duty. The rule of self-defense does not apply.

The public officer acting in the fulfillment of a duty may appear to be an aggressor but his aggression is not unlawful, it being necessary to fulfill his duty.

Thus, when the guard levelled his gun at the escaping prisoner and the prisoner grabbed the muzzle of the gun and, in the struggle for the possession of the gun, the guard jerked away the gun from the hold of the prisoner, causing the latter to be thrown halfway around, and because of the force of the pull, the guard's finger squeezed the

trigger, causing it to fire, hitting and killing the prisoner, the guard was acting in the fulfillment of duty. (People vs. Bisa, C.A., 51 O.G. 4091)

In either case, if the accused were a private person, not in the performance of a duty, the result would be different. In the first case, there would be no self-defense because there is no unlawful aggression. In the second case, the one pointing the gun at another would be committing a felony. (grave threat under Art. 282)

For instance, A levelled his gun at B, threatening the latter with death. B grabbed the muzzle of the gun and in the struggle for the possession of the gun, A squeezed the trigger causing it to fire, hitting and killing B. In this case, A is criminally liable under Art. 4, par. 1, in relation to Art. 282 and Art. 249.

Lawful exercise of right or office.

Of right.

Under the Civil Code (Art. 429), the owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be *reasonably necessary* to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

If in protecting his possession of the property he injured (not seriously) the one trying to get it from him, he is justified under this paragraph.

Under this paragraph (lawful exercise of a right), it is not necessary that there be unlawful aggression *against the person* charged with the protection of the property. If there is unlawful aggression against the person charged with the protection of the property, then paragraph 1 of Art. 11 applies, it being a defense of right to property.

Doctrine of "self-help" under Art. 429, Civil Code, applied in Criminal Law.

People vs. Depante
(C.A., 58 O.G. 926)

Facts: At about 9 o'clock in the morning of December 29, 1958, while Mariano Depante was in a Chinese store, Paciencia Iquiran, his

querida, saw him holding a five-peso bill in his left hand. Mariano had just bought a package of cigarettes and the five-peso bill he was holding was part of the change he had just received from the storekeeper. Paciencia, who was in a bad mood because Mariano had not given her support for sometime, approached him and after uttering insulting words, grabbed the five-peso bill from Mariano's hand. When he acted to recover the same, she grabbed his shirt, tearing the same. Mariano gave her fist blows on the forehead, on the right side of the head and on the middle part of her left arm, knocking her down. He was able to regain possession of the five-peso bill.

Was the act of Paciencia in grabbing the five-peso bill an actual or threatened unlawful physical invasion or usurpation of Mariano Depante's property? We find that it was. More than that, the act could be attempted robbery. The fact that Paciencia was a *querida* and that Mariano had not supported her for sometime was not an exempting or justifying circumstance. Robbery can even be committed by a wife against her husband. Only theft, swindling and malicious mishief cannot be committed by a wife against her husband. (Art. 332, Revised Penal Code)

Did Mariano use such force as was reasonably necessary to repel or prevent the actual or threatened unlawful physical invasion or usurpation of his property? On this point, we find that he cannot claim full justification, for the three fist blows which rendered Paciencia unconscious for sometime were not reasonable, considering the sex of the complainant. Hence, appellant is criminally liable. However, his criminal liability may be mitigated under Article 69 of the Revised Penal Code.

Held: The requisites mentioned in Art. 429, Civil Code, in relation to Art. 11, paragraph 5, Revised Penal Code, to justify the act not being all present, a penalty lower by one or two degrees than that prescribed by law may be imposed.

The actual invasion of property may consist of a mere disturbance of possession or of a real dispossession.

If it is mere disturbance of possession, force may be used against it at any time as long as it continues, even beyond the prescriptive period for an action of forcible entry. Thus, if a ditch is opened by Pedro in the land of Juan, the latter may close it or cover it by force at any time.

If the invasion, however, consists of a real dispossession, force to regain possession can be used only immediately after the dispos-

session. Thus, if Juan, without the permission of Pedro, picks up a book belonging to the latter and runs off with it, Pedro can pursue Juan and recover the book by force.

If the property is immovable, there should be no delay in the use of force to recover it; a delay, even if excusable, such as when due to the ignorance of the dispossession, will bar the right to the use of force. Once the usurper's possession has become firm by the lapse of time, the lawful possessor must resort to the competent authority to recover his property. (Tolentino's comment on Article 429 of the new Civil Code, Vol. II, p. 54, citing 3-1 Ennecerrus, Kipp and Wolff 92-93)

Of right

The exercise of a statutory right to suspend installment payments under Section 23 of P.D. 957 is a valid defense against the purported violations of B.P. Blg. 22 that petitioner is charged with. Petitioner's exercise of the right of a buyer under Article 23 of P.D. No. 957 is a valid defense to the charges against him. (Sycip vs. Court of Appeals, G.R. No. 125059, March 17, 2000)

Of office.

The executioner of the Bilibid Prison cannot be held liable for murder for the execution performed by him because he was merely acting in the lawful exercise of his office. (Guevara)

A surgeon who amputated the leg of a patient to save him from gangrene is not liable for the crime of mutilation, because he was acting in the lawful exercise of his office.

Par. 6. - OBEDIENCE TO AN ORDER ISSUED FOR SOME LAWFUL PURPOSE.

Any person who acts in obedience to an order issued by a superior for some lawful purpose.

Requisites:

1. That an *order* has been issued by a *superior.*
2. That such order must be for some *lawful purpose.*

3. That the means used by the subordinate to carry out said order is *lawful.*

Both the person who gives the order and the person who executes it, must be acting within the limitations prescribed by law. (People vs. Wilson and Dolores, 52 Phil. 919)

Example of absence of the third requisite.

The court ordered that the convict should be executed on a certain date. The executioner put him to death on a day earlier than the date fixed by the court.

The execution of the convict, although by virtue of a lawful order of the court, was carried out against the provision of Art. 82. The executioner is guilty of murder.

When the order is not for a lawful purpose, the subordinate who obeyed it is criminally liable.

(1) One who prepared a falsified document *with* full *knowledge* of its falsity is not excused even if he merely acted in obedience to the instruction of his superior, because the instruction was not for a lawful purpose. (People vs. Barroga, 54 Phil. 247)

(2) A soldier who, in obedience to the order of his sergeant, tortured to death the deceased for bringing a kind of fish different from that he had been asked to furnish a constabulary detachment, is criminally liable. Obedience to an order of a superior is justified only when the order is for some lawful purpose. The order to torture the deceased was *illegal,* and the accused was not bound to obey it. (People vs. Margen, *et al.*, 85 Phil. 839)

The subordinate is not liable for carrying out an illegal order of his superior, if he is not aware of the illegality of the order and he is not negligent.

When the accused acted upon orders of superior officers, which he, as military subordinate, could not question, and obeyed the orders in good faith, *without being aware of their illegality,* without any fault or negligence on his part, he is not liable because he had no criminal intent and he was not negligent. (People vs. Beronilla, 96 Phil. 566)

II. Exempting circumstances.

1. Definition

Exempting circumstances (non-imputability) are those grounds for exemption from punishment because there is wanting in the agent of the crime any of the conditions which make the act voluntary or negligent.

2. Basis

The exemption from punishment is based on the *complete absence* of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.

Under the Revised Penal Code, a person must act with malice or negligence to be criminally liable. One who acts without intelligence, freedom of action or intent does not act with malice. On the other hand, one who acts without intelligence, freedom of action or fault does not act with negligence.

Art. 12. ***Circumstances which exempt from criminal liability.*** **— The following are exempt from criminal liability:**

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony ***(delito),*** **the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.**

2. A person under nine years of age.*

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.

*A child fifteen years of age or under is exempt from criminal liability under Rep. Act No. 9344 (Juvenile Justice and Welfare Act of 2006).

When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said Article 80.**

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

5. Any person who acts under the compulsion of an irresistible force.

6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

7. Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.

In exempting circumstances, there is a crime committed but no criminal liability arises.

Technically, one who acts by virtue of any of the exempting circumstances commits a crime, although by the *complete absence of any of the conditions* which *constitute free will or voluntariness* of the act, no criminal liability arise. (Guevara)

Burden of proof.

Any of the circumstances mentioned in Art. 12 is a matter of defense and the same must be proved by the defendant to the satisfaction of the court.

Par. 1 — An imbecile or an insane person, unless the latter has acted during a lucid interval.

Imbecility distinguished from insanity.

This paragraph establishes the *distinction* between imbecility and insanity, because while the imbecile is *exempt in all cases* from

**Impliedly repealed by Rep. Act No. 9344 (Juvenile Justice and Welfare Act of 2006). See explanations, *infra*.

criminal liability, *the insane is not so exempt* if it can be shown that he *acted during a lucid interval.*

During lucid interval, the insane acts *with intelligence.*

An imbecile is one who, while advanced in age, has a mental development comparable to that of children between two and seven years of age.

An imbecile within the meaning of Art. 12 is one who is deprived completely of reason or discernment and freedom of the will at the time of committing the crime. (People vs. Ambal, No. L-52688, Oct. 17, 1980, 100 SCRA 325, 333, citing People vs. Formigones, 87 Phil. 658, 660)

To constitute insanity, there must be complete deprivation of intelligence or that there be a total deprivation of the freedom of the will.

The Supreme Court of Spain held that in order that the exempting circumstance of insanity may be taken into account, it is necessary that there be a *complete deprivation of intelligence* while committing the act, that is, that the accused be deprived of reason; that he acts *without the least discernment; or* that *there be a total deprivation* of freedom *of the will.* (People vs. Formigones, 87 Phil. 658, 661)

Insanity exists when there is a complete deprivation of intelligence in committing the act, that is, the accused is deprived of reason, he acts without the least discernment, because there is a complete absence of the power to discern, or that there is a total deprivation of freedom of the will. (People vs. Puno, No. L-33211, June 29, 1981, 105 SCRA 151, 158-159, citing earlier cases. Also, People vs. Magallano, No. L-32978, Oct, 30, 1980, 100 SCRA 570, 578-579)

Thus, *mere abnormality of mental faculties is not enough,* especially if the offender has *not lost consciousness of his acts.* At most, it is only a mitigating circumstance. (Art. 13, par. 9)

Procedure when the imbecile or the insane committed a felony.

The court shall order his confinement in one of the hospitals or asylums established for persons afflicted, which he shall not be

permitted to leave without first obtaining the permission of the court.

But the *court has no power* to permit the insane person to leave the ayslum without first obtaining the opinion of the Director of Health that he may be released without danger. (Chin Ah Foo vs. Concepcion, 54 Phil. 775)

Who has the burden of proof to show insanity?

The *defense* must prove that the accused was insane at the time of the commission of the crime, because the presumption is always in favor of sanity. (People vs. Bascos, 44 Phil. 204, 206)

Sanity being the normal condition of the human mind, the prosecution may proceed upon the presumption that the accused was sane and responsible when the act was committed. The presumption is always in favor of sanity and the burden of proof of insanity is on the defense. (People vs. Aquino, G.R. No. 87084, June 27, 1990, 186 SCRA 851, 858, citing cases)

How much evidence is necessary to overthrow the presumption of sanity?

The wife of the accused and his cousin testified that the accused had been more or less continuously out of his mind for many years. The assistant district health officer who, by order of the court, examined the accused found that the accused was a violent maniac. The physician expressed the opinion that the accused was probably insane when he killed the deceased. The total lack of motive on the part of the accused to kill the deceased bears out the assumption that the former was insane. (People vs. Bascos, *supra)*

In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of the condition of his mind during a reasonable period both *before* and *after* that time. Direct testimony is not required, nor are specific acts of derangement essential to establish insanity as a defense. Mind can be known only by outward acts. Thereby, we read the thoughts, the motives and emotions of a person and come to determine whether his acts conform to the practice of people of sound mind. To prove insanity, therefore, circumstantial evidence, if clear and convincing, will suffice. (People vs. Bonoan, 64 Phil. 93)

Insanity at the time of the commission of the felony distinguished from insanity at the time of the trial.

When a person was insane *at the time* of the commission of the felony, he is exempt from criminal liability.

When he was *sane* at the time of the commission of the crime, but he becomes *insane* at the time of the trial, he is liable criminally. The trial, however, will be suspended until the mental capacity of the accused be restored to afford him a fair trial.

Evidence of insanity.

The evidence of insanity *must refer to the time preceding the act* under prosecution or *to the very moment* of its execution. If the evidence points to insanity subsequent to the commission of the crime, the accused cannot be acquitted. He is presumed to be sane when he committed it. (U.S. vs. Guevara, 27 Phil. 547, 550; People vs. Fausto, No. L-16381, Dec. 30, 1961, 3 SCRA 863, 866-867; People vs. Puno, No. L-33211, June 29, 1981, 105 SCRA 151, 158)

If the *insanity* is only *occasional* or *intermittent* in its nature, the presumption of its continuance does not arise. He who relies on such insanity proved at another time must prove its existence also at the time of the commission of the offense. Where it is shown that the defendant *had lucid intervals,* it will be presumed that the offense was committed in one of them. But a person who has been adjudged insane, or who has been committed to a hospital or to an asylum for the insane, is presumed to continue to be insane. (People vs. Bonoan, 64 Phil. 87)

When defense of insanity is not credible.

1) Appellant himself testified that he was acting very sanely that Monday morning, as shown by the fact that he went to the canteen in a jovial mood "singing, whistling, and tossing a coin in his hand;" he saw persons inside the canteen x x x; he noticed the arrival of Lira who banged his folders on the table, elbowed him, and said in a loud voice: "ano ka;" he saw Lira put his right hand inside his pocket and with the other hand pushed a chair towards him; he became "confused" because he remembered that Lira threatened to kill him if he would see him again; at this point "he lost his senses" and regained it when he heard the voice of Mrs. Tan saying: "Loreto, don't do that;" and then he found

out that he had wounded Lira. If appellant was able to recall all those incidents, we cannot understand why his memory stood still at that very crucial moment when he stabbed Lira to return at the snap of the finger as it were, after he accomplished the act of stabbing his victim. The defense of insanity is incredible. (People vs. Renegado, No. L-27031, May 31, 1974, 57 SCRA 275, 286-287)

2) The accused knew that his wife was dead because he was informed of her death. He said that his wife quarrelled with him. She was irritable. He remembered that a week before the incident he got wet while plowing. He fell asleep without changing his clothes. He immediately surrendered after the incident. He remembered that he rode on a tricycle. During his confinement in jail he mopped the floor and cooked food for his fellow prisoners. Sometimes, he worked in the town plaza or was sent unescorted to buy food in the market. He is not insane. (People vs. Ambal, No. L-52688, Oct. 17, 1980, 100 SCRA 325, 330-331, 337)

3) Government psychiatric doctors who had closely observed the accused for a month and a half found him in good contact with his environment and that he did not manifest any odd behavior for in fact he could relate the circumstances that led to his confinement. He exhibited remorse for killing the victim, his wife, and he voluntarily surrendered to the police headquarters where he executed a statement confessing his misdeed. He was coherent and intelligent. Before the killing, he was working for a living through fishing three times a week and he himself fixed the prices for his catch. The presumption of sanity has not been overcome. (People vs. Magallano, No. L-32978, Oct. 30, 1980, 100 SCRA 570, 577-578)

4) The accused was afflicted with "schizophrenic reaction" but knew what he was doing; he had psychosis, a slight destruction of the ego; in spite of his "schizophrenic reaction," his symptoms were "not socially incapacitating" and he could adjust to his environment. He could distinguish between right and wrong. He had no delusions and he was not mentally deficient. The accused was not legally insane when he killed the hapless and helpless victim. (People vs. Puno, No. L-33211, June 29, 1981, 105 SCRA 151, 156, 159)

5) The mental illness of the accused was described as "organic mental disorder with psychosis" but the doctor said that a person suffering from insanity may know that what he is doing is wrong. He also observed that the mental illness of the accused came on and off. When interviewed upon his admission to the mental institution, he recalled having taken 120 cc of cough syrup and consumed about 3 sticks of marijuana before the commission of the crime, an admission confirming his prior extrajudicial confession. The presence of his reasoning faculties, which enabled him to exercise sound judgment and satisfactorily articulate the aforesaid matters, sufficiently discounts any intimation of insanity of the accused when he committed the dastardly felonies. (People vs. Aquino, G.R. No. 87084, June 27, 1990, 186 SCRA 851, 862-863)

Dementia praecox is covered by the term insanity.

Thus, when a person is suffering from a form of psychosis, a type of *dementia praecox,* homicidal attack is common, because of delusions that he is being interfered with sexually, or that his property is being taken. During the period of excitement, such person has no control whatever of his acts. (People vs. Bonoan, *supra)*

The unlawful act of the accused may be due to his mental disease or a mental defect, producing an "irresistible impulse," as when the accused has been deprived or has lost the power of his will which would enable him to prevent himself from doing the act.

In the *Bonoan* case, *supra,* an irresistible homicidal impulse was considered embraced in the term "insanity."

Schizophrenia, formerly called dementia praceox.

Medical books describe schizophrenia as a chronic mental disorder characterized by inability to distinguish between fantasy and reality and often accompanied by hallucinations and delusions. Formerly called *dementia pracecox,* it is the most common form of psychosis. (People vs. Aldemita, 145 SCRA 451 (1986) Symptomatically, schizophrenic reactions are recognizable through odd and bizarre behavior apparent in aloofness or periods of impulsive destructiveness and immature and exaggerated emotionality, often ambivalently directed. The interpersonal perceptions are distorted in the more serious states by delusions and hallucinations. In the most

disorganized form of schizophrenic living, withdrawal into a fantasy life takes place and is associated with serious thought disorder and profound habit deterioration in which the usual social customs are disregarded. During the initial stage, the common early symptom is aloofness, a withdrawal behind barriers of loneliness, hopelessness, hatred and fear. Frequently, the patient would seem preoccupied and dreamy and may appear "faraway." He does not empathize with the feelings of others and manifests little concern about the realities of life situations. The schizophrenic suffers from a feeling of rejection and an intolerable lack of self-respect. He withdraws from emotional involvement with other people to protect himself from painful relationships. There is shallowness of affect, a paucity of emotional responsiveness and a loss of spontaneity. Frequently, he becomes neglectful of personal care and cleanliness.A variety of subjective experiences, associated with or influenced by mounting anxiety and fears precede the earliest behavioral changes and oddities. He becomes aware of increasing tension and confusion and becomes distracted in conversation manifested by his inability to maintain a train of thought in his conversations. Outwardly, this will be noticed as blocks or breaks in conversations. The schizophrenic may not speak or respond appropriately to his companions. He may look fixedly away, or he may appear to stare, as he does not regularly blink his eyes in his attempt to hold his attention. (People vs. Madarang, G.R. No. 132319, May 12, 2000)

Kleptomania.

If the accused appears to have been suffering from kleptomania when he committed the crime of theft, how shall we regard his abnormal, persistent impulse or tendency to steal? Is it an exempting circumstance or only a mitigating circumstance?

The courts in the United States have conflicting opinions. Some believe that it is an exempting circumstance. Others believe that it is only a mitigating circumstance.

In this jurisdiction, the question has not been brought before the court for its determination.

The case of a person suffering from kleptomania must be investigated by competent alienist or psychiatrist to determine whether the impulse to steal is irresistible or not. If the unlawful act of the accused is due "to his mental disease or a mental defect, producing

an irresistible impulse, as when the accused has been deprived or has lost the power of his will which would enable him to prevent himself from doing the act," the irresistible impulse, even to take another's property, should be considered as covered by the term "insanity." In the case of *People vs. Bonoan,* 64 Phil. 87, an irresistible homicidal impulse was considered embraced in the term "insanity." It may be said that a person who has lost the power of his will, at the moment, also lost consciousness of his acts.

On the other hand, if the mental disease or mental defect of the accused only diminishes the exercise of his will-power, and did not deprive him of the consciousness of his acts, then kleptomania, if it be the result of his mental disease or mental defect, is only a mitigating circumstance.

Epilepsy may be covered by the term "insanity."

Epilepsy is a chronic nervous disease characterized by fits, occurring at intervals, attended by convulsive motions of the muscles and loss of consciousness. Where the accused claimed that he was an epileptic but it was *not shown* that he was under the influence of an epileptic fit when he committed the offense, he is not exempt from criminal liability. (People vs. Mancao and Aguilar, 49 Phil. 887)

Feeblemindedness is not imbecility.

In the case of *People vs. Formigones, supra,* it was held that feeblemindedness is not exempting, because the *offender could distinguish right from wrong.* An imbecile or an insane cannot distinguish right from wrong.

Pedophilia is not insanity.

The doctor's testimony, however, did not help accused's case because although he admitted having initially categorized accused as insane, the doctor eventually diagnosed accused to be afflicted with pedophilia, a mental disorder not synonymous with insanity. He explained that pedophilia is a sexual disorder wherein the subject has strong, recurrent and uncontrollable sexual and physical fantasies about children which he tries to fulfill, especially when there are no people around. He claimed, however, that despite his affliction, the subject could distinguish between right and wrong. In fact, he

maintained that pedophilia could be committed without necessarily killing the victim although injuries might be inflicted on the victim in an effort to repel any resistance. (People vs. Diaz, G.R. No. 130210, Dec. 8, 1999)

Amnesia is not proof of mental condition of the accused.

Amnesia, in and of itself, is no defense to a criminal charge unless it is shown by competent proof that the accused did not know the nature and quality of his action and that it was wrong. Failure to remember is in itself no proof of the mental condition of the accused when the crime was performed. (People vs. Tabugoca, G.R. No. 125334, Jan. 28, 1998)

Other cases of lack of intelligence.

1. *Committing a crime while in a dream.*

One who, while sleeping, suddenly got up, got a bolo, and upon meeting his wife who tried to stop him, wounded her and also attacked other persons, is not criminally liable, it appearing that the act was committed while in a dream. (People vs. Taneo, 58 Phil. 255) The act was done without criminal intent.

Somnambulism or sleepwalking, where the acts of the person afflicted are automatic, is embraced in the plea of insanity and must be clearly proven. (People vs. Gimena, 55 Phil. 604)

In the case of *U.S. us. Odicta,* 4 Phil. 309, it was held that the case of the somnambulist falls under the rule that a person is not criminally liable if his acts are not voluntary. The ruling in the case of *People vs. Gimena* and that in the case of *U.S. vs. Odicta* are not inconsistent. The act of a person is not voluntary when he does not have intelligence and intent while doing the act.

a. *Hypnotism.* Whether or not hypnotism is so effective as to make the subject act during artificial somnambulism, is still a debatable question. (Albert)

2. *Committing a crime while suffering from malignant malaria.*

Thus, one who was suffering from *malignant malaria* when she wounded her husband who died as a consequence is not criminally liable, because such illness affects the nervous system and causes among others such complication as acute melancholia and *insanity* at times. (People vs. Lacena, 69 Phil. 350)

Basis of paragraph 1.

The exempting circumstance of insanity or imbecility is based on the *complete absence* of intelligence, an element of voluntariness.

Par. 2. — A person under nine years of age.

"Under nine years" to be construed "nine years or less."

The phrase "under nine years" should be construed "nine years or less;" as may be inferred from the next subsequent paragraph which does not totally exempt a person "over nine years of age" if he acted with discernment. (Guevara; See Art. 189, P.D. No. 603)

Age of absolute irresponsibility raised to fifteen years of age.

Republic Act No. 9344 otherwise known as "Juvenile Justice and Welfare Act of 2006" raised the age of absolute irresponsibility from nine (9) to fifteen (15) years of age.

Under Section 6 of the said law, a child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subject to an intervention program as provided under Section 20 of the same law.

Basis of paragraph 2.

The exempting circumstance of minority is based also on the complete absence of *intelligence.*

Par. 3. — A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.

Paragraph 3, Article 12 RPC impliedly repealed by Republic Act No. 9344.

Paragraph 3, Article 12 of the Revised Penal Code is deemed repealed by the provision of Republic Act 9344 declaring a child fifteen years of age or under exempt from criminal liability. The law provides thus:

"Section 6. *Minimum Age of Criminal Responsibility.* — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subject to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subject to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforce in accordance with existing laws."

Children above fifteen (15) but below eighteen (18) years of age who acted without discernment exempt from criminal liability.

A minor under eighteen (18) but above fifteen (15) must have acted with discernment to incur criminal liability. The minor is presumed to have acted without discernment since the phrase "unless he/she acted with discernment" indicates an exception to the general rule that a minor under 18 but above 15 has acted without discernment.

Thus, it is incumbent upon the prosecution to prove that a minor who is over 15 but under 18 years of age has acted with discernment, in order for the minor not to be entitled to this exempting circumstance.

Periods of criminal responsibility

Thus, under the Code as amended by Republic Act No. 9344 (Juvenile Justice and Welfare Act of 2006), the life of a human being is divided into four periods:

(1) The age of *absolute irresponsibility* — 9 years and below (infancy).

(2) The age of *conditional responsibility* — between 9 and 15 years.

(3) The age of *full responsibility* — 18 or over (adolescence) to 70 (maturity).

(4) The age of *mitigated responsibility* — over 9 and under 15, offender acting with discernment; 15 or over but less than 18; over 70 years of age.

Hence, *senility* which is the age over 70 years, although said to be the second childhood, is only a mitigated responsibility. It cannot be considered as similar to infancy which is exempting.

Meaning of "discernment."

The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case, the very appearance, the very attitude, the very comportment and behaviour of said minor, not only before and during the commission of the act, but also after and even during the trial. (People vs. Doqueña, 68 Phil. 580, 583; Guevarra vs. Almodovar, G.R. No. 75256, Jan. 26, 1989, 169 SCRA 476, 481)

Discernment and Intent distinguished.

The terms "intent" and "discernment" convey two distinct thoughts. While both are products of the mental processes within a person, "intent" refers to the desired act of the person while "discernment" relates to the moral significance that a person ascribes to the said act. Hence, a person may not intend to shoot another but may be

aware of the consequences of his negligent act which may cause injury to the same person in negligently handling an air rifle. (Guevara vs. Almodovar, *supra,* at 481)

Discernment may be shown by (1) the manner the crime was committed, or (2) the conduct of the offender after its commission.

1. *Manner of committing the crime.*

Thus, when the minor committed the crime during nighttime to avoid detection or took the loot to another town to avoid discovery, he manifested discernment. (People vs. Magsino, G.R. No. 40176, May 3, 1934)

2. *Conduct of offender.*

The accused, 11 years old (disregard age: Case cited to illustrate discernment of a minor) shot the offended party, who had caught him shooting at the latter's mango fruits, with a slingshot hitting the latter in one of his eyes, and after having done so said: *"Putang ina mo, mabutimatikmanmo."* It was held that the first part of the remark clearly manifested the *perverted character* of the accused and the second part *reflected his satisfaction and elation upon the accomplishment of his criminal act.* These facts indicate discernment on the part of the minor. (People vs. Alcabao, C.A., 44 O.G. 5006)

Facts from which age is presumed must be stated for the record.

The officer or court called upon to make a finding as to the age of the accused should state in the record, not merely a general statement of the personal appearance of the accused, but the particular fact or facts concerning personal appearance which lead such officer or court to believe that his age was as stated by said officer or court.

It would seem that this provision presupposes that the minor committed the crime, but that the court finds that he acted without discernment.

Determination of Age.

The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law. (Sec. 7, Rep. Act No. 9344)

The allegation of "with intent to kill" in the information is sufficient allegation of discernment.

Where the information for homicide filed in the court of first instance alleges "that said accused, with the intent to kill, did then and there wilfully, criminally, and feloniously push one Lolita Padilla, a child 8 1/2 years of age, into a deep place x x x and as a consequence thereof Lolita got drowned and died right then and there," it is held that the requirement that there should be an allegation that she acted with discernment should be deemed amply met with the allegation in the information that the accused acted "with the intent to kill." The allegation clearly conveys the idea that she knew what would be the consequence of her unlawful act of pushing her victim into deep water and that she knew it to be wrong. (People vs. Neito, 103 Phil. 1133)

Basis of paragraph 3.

The exempting circumstance in paragraph 3 of Art. 12 is based also on the complete absence of intelligence.

Par. 4. — Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

Elements:

1. **A person is performing a lawful act;**
2. **With due care;**
3. **He causes an injury to another by mere accident;**
4. **Without fault or intention of causing it. (See People vs. Vitug, 8 CAR [2s] 905, 909)**

The person must be performing a lawful act.

While defending himself against the unjustified assault upon his person made by his assailant, appellant Galacgac fired his revolver at random, wounding two innocent persons.

Held: **The discharge of a firearm in such a thickly populated place in the City of Manila being prohibited and penalized by Article 155 of the Revised Penal Code, appellant Galacgac was not performing a lawful act when he accidentally hit and wounded Marina Ramos and Alfonso Ramos. Hence, the exempting circumstance provided for in Article 12, paragraph 4, of the Revised Penal Code, cannot be properly invoked by appellant Galacgac. (People vs. Galacgac, 54 O.G. 1027)**

Striking another with a gun in self-defense, even if it fired and seriously injured the assailant, is a lawful act.

When the defendant drew his gun and with it struck the deceased after the latter had given him a fist blow on the shoulder, the defendant was performing a lawful act. The striking with the gun was a legitimate act of self-defense. But we might ask—was the striking done with due care as required by the second element for exemption? We believe so, since the striking could not have been

done in any other manner except how it was done so by the appellant. Whether the gun was cocked or uncocked, the striking could not have been done in any other manner. The injury, therefore, that resulted from the firing of the gun was caused by accident and without any fault or intention on the part of defendant in causing it, in accordance with the 3rd and 4th requisites.

The trial court puts much stress on the fact that since the appellant allegedly had his finger on the trigger with the gun already cocked it was reckless and imprudent of him to have used the gun in striking the deceased. We do not agree. Under the circumstances, striking him, as was done here, and not shooting him, was the more prudent and reasonable thing to do, whether the gun was cocked or uncocked. (People vs. Vitug, 8 C.A. Rep. 905; People vs. Tiongco, C.A., 63 O.G. 3610)

But the act of drawing a weapon in the course of a quarrel, not being in self-defense, is unlawful—it is light threat (Art. 285, par. 1, Rev. Penal Code), and there is no room for the invocation of accident as a ground for exemption. (People vs. Reyta, Jr., 13 C.A. Rep. 1190)

The person performing a lawful act must do so with due care, without fault or negligence.

Appellant claims exemption from criminal liability under Article 12, paragraph 4, of the Revised Penal Code which provides that any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of doing it is exempted from criminal liability. But, this exempting circumstance cannot be applied to the appellant because its application presupposes that there is no fault or negligence on the part of the person performing the lawful act with due care, whereas, in this case, the prosecution had duly established that the appellant was guilty of negligence. (People vs. San Juan, C.A., 65 O.G. 11264)

Examples of accident.

U.S. vs. Tañedo
(15 Phil. 196)

Facts: The accused, while hunting, saw wild chickens and fired a shot. The slug, after hitting a wild chicken, *recoiled* and struck the

tenant who was a relative of the accused. The man who was injured died.

Held: **If life is taken by misfortune or accident while the actor is in the performance of a lawful act executed with due care and without intention of doing harm, there is no criminal liability.**

There is no question that the accused was engaged in the performance of a lawful act when the accident occurred. He was not negligent or at fault, because the deceased was not in the direction at which the accused fired his gun. It was not foreseeable that the slug would recoil after hitting the wild chicken.

A chauffeur, while driving his automobile on the *proper side of the road at a moderate speed and with due diligence, suddenly* and *unexpectedly* saw a man in front of his vehicle coming from the sidewalk and crossing the street without any warning that he would do so. Because it was not physically possible to avoid hitting him, the said chauffeur ran over the man with his car. It was held that he was not criminally liable, it being a mere accident. (U.S. vs. Tayongtong, 21 Phil. 476)

Just as the truck then being driven by the accused was passing the slow-moving road roller, a boy about 10 or 12 years of age jumped from the step of the side board of the road roller directly in front of the truck, and was knocked down, ran over and instantly killed. The accused was acquitted of all criminal liability arising out of the unfortunate accident which resulted in the death of the boy. (U.S. vs. Knight, 26 Phil. 216)

What is an accident?

An accident is something that happens *outside* the sway of our will, and although it comes about through some act of our will, *lies beyond* the bounds of humanly *foreseeable consequences.*

If the consequences are plainly foreseeable, it will be a case of negligence. (Albert)

Accident presupposes lack of intention to commit the wrong done.

The exempting circumstance of Art. 12(4) of the Revised Penal Code refers to purely accidental cases where there was absolutely

no intention to commit the wrong done. It contemplates a situation where a person is in the act of doing something legal, exercising due care, diligence and prudence but in the process, produces harm or injury to someone or something not in the least in the mind of the actor — an accidental result flowing out of a legal act. (People vs. Gatela, 17 CAE [2s] 1047, 1055)

Case of negligence, not accident.

As the two persons fighting paid him no attention, the defendant drew a .45 caliber pistol and shot twice in the air. The bout continued, however, so he fired another shot at the ground, but unfortunately the bullet ricocheted and hit Eugenio Francisco, an innocent bystander, who died thereafter. *Held:* The mishap should be classed as homicide through reckless imprudence. It is apparent the defendant *wilfully* discharged his gun, *without taking the precautions* demanded by the circumstances that the district was *populated,* and the *likelihood* that his bullet would glance over the hard pavement of the thoroughfare. (People vs. Nocum, 77 Phil. 1018)

Comment: The consequence here was clearly foreseeable.

Accident and negligence, intrinsically contradictory.

In *Jarco Marketing Corporation v. Court of Appeals,* 321 SCRA 375 (1999), the Supreme Court held that an accident is a fortuitive circumstance, event or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstance is unusual or unexpected by the person to whom it happens. Negligence, on the other hand, is the failure to observe, for the protection of the interest of another person, that degree of care, precaution and vigilance which the circumstances justly demand without which such other person suffers injury. Accident and negligence are intrinsically contradictory; one cannot exist with the other. (People vs. Fallorina, G.R. No. 137347, March 4, 2004)

The death of the deceased in this case was considered caused by mere accident.

The accused was prosecuted for having killed her husband. Explaining what took place, she said, in part: "When the door was ajar my son went in, and then my husband pushed it and as I saw

that he was about to crush my son's head, I jabbed my husband with the point of the umbrella downwards to prevent him from crushing my son's head." We find nothing improbable in this statement and if we add to this the absence of any reasonable motive to prompt said defendant to injure her husband, we are compelled to conclude that in thrusting her umbrella in the opening of the door in question, she did so to free her son from the imminent danger of having his head crushed or being strangled; and if she thus caused her husband's injury, it was by a mere accident, without any fault or intention to cause it. (People vs. Ayaya, 52 Phil. 354, 358)

When claim of accident not appreciated.

1) Repeated blows negate claim of wounding by mere accident. (People vs. Taylaran, No. L-49149, Oct. 23, 1981, 108 SCRA 373, 376)

2) Accidental shooting is negated by threatening words preceding it and still aiming the gun at the prostrate body of the victim, instead of immediately helping him. (People vs. Reyes, No. L-33154, Feb. 27, 1976, 69 SCRA 474, 478)

3) Husband and wife had an altercation. The deceased husband got a carbine and holding it by the muzzle raised it above his right shoulder in an attempt to strike accused wife. She side-stepped and grappled with him for the possession of the gun and in the scuffle the gun went off, the bullet hitting her husband in the neck. So went the version of the accused. *Held:* It was difficult, if not well-nigh impossible, for her who was frail and shorter than her husband, who was robust and taller, to have succeeded in taking hold of the carbine, for if her husband was to strike her with the butt of the carbine and she side-stepped, he would not have continued to hold the carbine in a raised position. Actual test during the trial showed that the carbine was not defective and could not fire without pressing the trigger. The absence of any powder burns at the entrance of the wound in the body of the deceased is convincing proof that he was shot from a distance, and not with the muzzle of the gun almost resting on his shoulder or the back of the neck. (People vs. Samson, No. L-14110, March 29, 1963, 7 SCRA 478, 482-483)

Basis of paragraph 4.

The exempting circumstance in paragraph 4 of Art. 12 is based on lack of negligence and intent. Under this circumstance, a person does not commit either an intentional felony or a culpable felony.

Par. 5. — Any person who acts under the compulsion of an irresistible force.

This exempting circumstance presupposes that a person is compelled by means of force or violence to commit a crime.

Elements:

1. **That the compulsion is by *means of physical force.***
2. **That the physical force must be *irresistible.***
3. **That the physical force must *come from a third person.***

Before a force can be considered to be an irresistible one, it must produce such an effect upon the individual that, in spite of all resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It must be such that, in spite of the resistance of the person on whom it operates, it compels his members to act and his mind to obey. Such a force can never consist in anything which springs primarily from the man himself; it must be a force which acts upon him from the outside and by a third person. (U.S. vs. Elicanal, 35 Phil. 209)

Example:

In the case of *U.S. vs. Caballeros, et al.*, 4 Phil. 350, it appears that Baculi, one of the accused who was not a member of the band which murdered some American school-teachers, was in a plantation gathering bananas. Upon hearing the shooting, he ran. However, Baculi was seen by the leaders of the band who called him, and *striking him with the butts of their guns,* they compelled him to bury the bodies.

***Held:* Baculi was not criminally liable as accessory for concealing the body of the crime (Art. 19) of murder committed**

by the band, because Baculi acted under the compulsion of an irresistible force.

No compulsion of irresistible force.

The pretension of an accused that he was threatened with a gun by his friend, the mastermind, is not credible where he himself was armed with a rifle. (People vs. Sarip, Nos. L-31481-31483, Feb. 28, 1979, 88 SCRA 666, 673-674)

Passion or obfuscation cannot be irresistible force.

The irresistible force *can never consist* in an *impulse* or *passion,* or *obfuscation* It must consist of an extraneous force coming from a third person. (Dec. of Sup. Ct. of Spain, March 15, 1876)

Basis of paragraph 5.

The exempting circumstance in paragraph 5 of Art. 12 is based on the *complete absence* of freedom, an element of voluntariness.

A person who acts under the compulsion of an irresistible force, like one who acts under the impulse of uncontrollable fear of equal or greater injury, is exempt from criminal liability because he does not act with freedom. (People vs. Loreno, No. L-54414, July 9, 1984, 130 SCRA 311, 321)

Nature of force required.

The force must be irresistible to reduce the actor to a mere instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity to the accused for escape or self-defense in equal combat. (People vs. Loreno, No. L-54414, July 9, 1984, 130 SCRA 311, 321-322, citing People vs. Villanueva, 104 Phil. 450)

Par. 6. — Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

This exempting circumstance also presupposes that a person is compelled to commit a crime by another, but the compulsion is by means of intimidation or threat, *not force* or violence.

Elements:

1. That the *threat which causes the fear is* of an evil *greater than* or *at least equal to,* that which he is required to commit;
2. That it promises an *evil* of such *gravity* and *imminence* that the ordinary man would have succumbed to it. (U.S. vs. Elicanal, 35 Phil. 209, 212, 213)

For the exempting circumstance of uncontrollable fear to be invoked successfully, the following requisites must concur: (a) existence of an uncontrollable fear; (b) the fear must be real and imminent; and (c) the fear of an injury is greater than or at least equal to that committed. (People vs. Petenia, No. L-51256, Aug. 12, 1986, 143 SCRA 361, 369)

Illustration:

Liberato Exaltacion and Buenaventura Tanchinco were compelled under *fear of death* to swear allegiance to the Katipunan whose purpose was to overthrow the government by force of arms.

In this case, the accused cannot be held criminally liable for rebellion, because they joined the rebels under the impulse of an uncontrollable fear of an equal or greater injury. (U.S. vs. Exaltacion, 3 Phil. 339)

The penalty for rebellion, the crime which Exaltacion was required to commit, is *prisiónmayor,* that is, imprisonment for a period of from 6 years and 1 day to 12 years, and fine. The act which he was asked to commit was to swear allegiance to the Katipunan and become one of those engaged in overthrowing the government by force of arms. If he did not commit it, he would be killed. Death is a much greater injury than imprisonment for 12 years and paying a fine.

But if A had threatened to burn the house of B should the latter not kill his (B's) father, and B killed his father for fear that A might burn his (B's) house, B is not exempt from criminal liability for the reason that the evil with which he was threatened was much less than that of killing his father.

Nature of duress as a valid defense.

Duress as a valid defense should be based on *real, imminent,* or *reasonable fear* for one's life or limb and should not be *speculative, fanciful,* or *remote fear.* (People vs. Borja, No. L-22947, July 12, 1979, 91 SCRA 340, 355, citing People vs. Quilloy, 88 Phil. 53)

The accused must not have opportunity for escape or self-defense.

A threat of *future* injury is not enough. The compulsion must be of such a character as to leave *no opportunity* to the accused *for escape* or *self-defense* in equal combat.

Duress is unavailing where the accused had every opportunity to run away if he had wanted to or to resist any possible aggression because he was also armed. (People vs. Palencia, No. L-38957, April 30, 1976, 71 SCRA 679, 690; People vs. Abanes, No. L-30609, Sept. 28, 1976, 73 SCRA 44, 47)

Where the accused, who testified that he was intimidated into committing the crime, had several *opportunities of leaving the gang* which had decided to kidnap the victim, his theory that he acted under intimidation is untenable. (People vs. Parulan, 88 Phil. 615, 623)

Where the accused testified that he joined the band because he was threatened by the leader thereof, but it appears that the leader was armed with a revolver only, while the accused was armed with a rifle, so that he could have resisted said leader, it was held that the accused did not act under the impulse of an uncontrollable fear of an equal or greater injury. (People vs. Vargas and Kamatoy, C.A., 45 O.G. 1332)

As regards accused Domingo Golfeo, the evidence is clear that it was he who first struck Areza with the butt of his gun hitting him on the side of his body, then gave him a fist blow on his stomach,

and after he had been taken to a secluded place, it was he who ordered Areza to lie down in the fashion adopted by the Kempetai during gloomy days of Japanese occupation and in that position gave him a blow on the back of his neck which almost severed his head from the body. His participation in the killing of Areza cannot therefore be doubted. His only defense is that he did so in obedience to the order of his commander, and because he acted under the influence of uncontrollable fear, he should be exempt from criminal responsibility.

This defense of Golfeo is clearly untenable not only because of the well-settled rule that obedience to an order of a superior will only justify an act which otherwise would be criminal when the order is for a lawful purpose, but also because the circumstances under which Golfeo participated in the torture and liquidation of Areza cannot in any way justify his claim that he acted under an uncontrollable fear of being punished by his superiors if he disobeyed their order. In the first place, at the time of the killing, Golfeo was armed with an automatic carbine such that he could have protected himself from any retaliation on the part of his superiors if they should threaten to punish him if he disobeyed their order to kill Areza. In the second place, the evidence shows that Areza was brought to a secluded place quite far from that where his superiors were at the time and in such a predicament, he and his companion Arsenal could have escaped with Areza to avoid the ire of their superiors. The fact that he carried out their order although his superiors were at some distance from him and that without pity and compunction he struck his victim in a Kempetai fashion shows that he acted on the matter not involuntarily or under the pressure of fear or force, as he claims, but out of his own free will and with the desire to collaborate with the criminal design of his superiors. (People vs. Rogado, *et al.*, 106 Phil. 816)

Command of Hukbalahap killers, as cause of uncontrollable fear.

Timoteo Montemayor was accused of murder, for having told his two companions to fetch shovels and to dig a grave and for having walked behind the Hukbalahap killers to the place of the execution of the victim. It appears that the two Hukbalahaps were ruthless killers and were then in a mood to inflict extreme and summary punishment for disobedience to the command. The place was isolated, escape was at least risky, and protection by lawfully constituted authorities was

out of reach. The accused was acquitted, for having acted under the impulse of uncontrollable fear of an equal or greater injury. (People vs. Regala, *et al.*,G.R. No. L-1751, May 28, 1951)

In treason.

In the eyes of the law, nothing will excuse that act of joining an enemy, but the *fear of immediate death.* (People vs. Bagalawis, 78 Phil. 174, citing the case of Republica vs. M'Carty, 2 Dall., 36, 1 Law, ed., 300, 301)

This ruling is similar to that in the *Exaltacion* case.

Speculative, fanciful and remote fear is not uncontrollable fear.

The defendant ordered the deceased whose both hands were tied at the back to kneel down with the head bent forward by the side of the grave already prepared for him by order of said defendant. Then, defendant hacked the head of the deceased with a Japanese sabre and immediately kicked the prostrate body of the victim into the grave.

When prosecuted for murder, the defendant claimed that he had been ordered by Major Sasaki to kill the deceased. He also claimed that he could not refuse to comply with that order, because the Japanese officer made a threat.

Held: If the only evidence relating to a sort of a threat is the testimony of the defendant: "As they insisted and I informed them that I could not do it, then Captain Susuki told me, 'You have to comply with that order of Major Sasaki; otherwise, you have to come along with us,'" that threat is not of such a serious character and imminence as to create in the mind of the defendant an uncontrollable fear that an equal or greater evil or injury would be inflicted upon him if he did not comply with the alleged order to kill the deceased. (People vs. Moreno, 77 Phil. 549)

Mere fear of a member of the Huk movement to disobey or refuse to carry out orders of the organization, *in the absence of proof of actual physical or moral compulsion to act,* is not sufficient to exempt the accused from criminal liability. (People vs. Fernando, No. L-24781, May 29, 1970, 33 SCRA 149, 157)

Real, imminent or reasonable fear.

The case of *U.S. vs. Exaltacion,* 3 Phil. 339, is the example. There is here fear of immediate death.

A threat of future injury is not enough.

To appreciate duress as a valid defense, a threat of future injury is not enough. It must be clearly shown that the compulsion must be of such character as to leave no opportunity for the accused to escape. (People vs. Palencia, No. L-38957, April 30, 1976, 71 SCRA 679, 690; People vs. Abanes, No. L-30609, Sept. 28, 1976, 73 SCRA 44, 47)

Distinction between irresistible force and uncontrollable fear.

In irresistible force (par. 5), the offender uses *violence* or *physical force to* compel another person to commit a crime; in uncontrollable fear (par. 6), the offender employs *intimidation* or *threat* in compelling another to commit a crime.

Basis of paragraph 6.

The exempting circumstance in paragraph 6 of Art. 12 is also based on the *complete* absence of freedom.

"Actus me invito factus non est meus actus." ("An act done by me against my will is not my act.")

Par. 7. — Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.

Elements:

1. That an act is required by law to be done;
2. That a person fails to perform such act;
3. That his failure to perform such act was due to some lawful or insuperable cause.

When prevented by some lawful cause.

Example:

A confessed to a Filipino priest that he and several other persons were in conspiracy against the Government. Under Art. 116, a Filipino

citizen who knows of such conspiracy must report the same to the governor or fiscal of the province where he resides. If the priest does not disclose and make known the same to the proper authority, he is exempt from criminal liability, because under the law, the priest cannot be compelled to reveal any information which he came to know by reason of the confession made to him in his professional capacity. (Vide, Sec. 24[d], Rule 130, Rules of Court)

When prevented by some insuperable cause.

Examples:

1. The municipal president detained the offended party for three days because to take him to the nearest justice of the peace required a journey for three days by boat as there was no other means of transportation. (U.S. vs. Vicentillo, 19 Phil. 118, 119)

   Under the law, the person arrested must be delivered to the nearest judicial authority at most within eighteen hours (now thirty-six hours, Art. 125, Rev. Penal Code, as amended); otherwise, the public officer will be liable for arbitrary detention. The distance which required a journey for three days was considered an insuperable cause. Hence, it was held that the accused was exempt from criminal liability.

2. A mother who at the time of childbirth was *overcome by severe dizziness and extreme debility,* and left the child in a thicket where said child died, is not liable for infanticide, because it was *physically impossible for her to take home* the child. (People vs. Bandian, 63 Phil. 530, 534-535)

   The severe dizziness and extreme debility of the woman constitute an insuperable cause.

Basis of paragraph 7.

The circumstance in paragraph 7 of Art. 12 exempts the accused from criminal liability, because he acts without *intent,* the third condition of voluntariness in intentional felony.

In all the exempting circumstances, intent is wanting in the agent of the crime.

Intent presupposes the exercise of freedom and the use of intelligence. Hence, in paragraphs 1, 2 and 3 of Art. 12, the imbecile, insane,

or minor, not having intelligence, does not act with intent. The person acting under any of the circumstances mentioned in paragraphs 5 and 6 of Art. 12, not having freedom of action, does not act with intent. In paragraph 4 of Art. 12, it is specifically stated that the actor causes an injury by mere accident without intention of causing it.

Distinction between justifying and exempting circumstances.

(1) A person who acts by virtue of a justifying circumstance does not transgress the law, that is, he does not commit any crime in the eyes of the law, because there is nothing *unlawful* in the act as well as in the intention of the actor. The act of such person is in itself both *just* and *lawful.*

In justifying circumstances, there is neither a crime nor a criminal. No civil liability, except in par. 4 (causing damage to another in state of necessity).

(2) In exempting circumstances, there is a crime but no criminal liability. The act is not *justified,* but the actor is not criminally liable. There is civil liability, except in pars. 4 and 7 (causing an injury by mere accident; failing to perform an act required by law when prevented by some lawful or insuperable cause) of Art. 12. (See Art. 101 which does not mention pars. 4 and 7 of Art. 12)

Absolutory causes, defined.

Absolutory causes are those where the act committed is a crime but for reasons of public policy and sentiment there is no penalty imposed.

Other absolutory causes.

In addition to the justifying circumstances (Art. 11) and the exempting circumstances (Art. 12), there are other absolutory causes in the following articles, to wit:

Art. 6. — The spontaneous desistance of the person who commenced the commission of a felony before he could perform all the acts of execution.

Art. 20. — *Accessories who are exempt from criminal liability.* — The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or

relatives by affinity within the same degrees, with the single exception of accessories falling with the provisions of paragraph 1 of the next preceding article.

The provisions of paragraph 1 of Art. 19 read, as follows:

"By profiting themselves or assisting the offenders to profit by the effects of the crime."

Art. 124, last paragraph. — The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

Art. 247, pars. 1 and 2. — *Death or physical injuries inflicted under exceptional circumstances.* — Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

Art. 280, par. 3. — The provisions of this article *(on trespass to dwelling)* shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inns and other public houses, while the same are open.

Art. 332. — *Persons exempt from criminal liability.* — No criminal, but only civil, liability shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

Art. 344, par. 4. — In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

Instigation is an absolutory cause.

Example:

> **An internal revenue agent, representing himself as a private individual engaged in gambling, approached the accused and induced the latter to look for an opium den where he said he could smoke opium. The agent went to the accused three times to convince the latter of his desire to smoke opium. Because of the insistence of the agent, the accused made efforts to look for a place where both of them could smoke opium until finally he found one. The agent and the accused went to the place which turned out to be the house of a Chinaman, and there the agent received an opium pipe and paid ₱2.00 for the service to both of them. After a while, the agent left. He returned later to arrest the accused allegedly for smoking opium.**
>
> ***Held:*** **The accused was not criminally liable. He was instigated to commit the crime of smoking opium. (U.S. vs. Phelps, 16 Phil. 440)**

Suppose that the agent in that case induced the accused to sell opium to him and the accused sold opium, could the accused be held liable for illegal possession of opium?

Yes, because the accused was then in possession of opium and the mere possession of opium is a violation of the law within itself.

Basis of exemption from criminal liability.

A sound public policy requires that the courts shall condemn this practice (instigation) by directing the acquittal of the accused.

Entrapment is not an absolutory cause.

Example:

> **The accused wrote to his correspondent in Hongkong to send to him a shipment of opium. This opium had been in**

Hongkong for sometime, awaiting a ship that would go direct to Cebu.

The Collector of Customs of Cebu received information that the accused was intending to land opium in the port. The Collector promised the accused that he would remove all the difficulties in the way, and for this purpose agreed to receive ₱2,000.00. Juan Samson, a secret serviceman, pretended to smooth the way for the introduction of the prohibited drug.

The accused started landing the opium. At this time, the agents of the law seized the opium and had the accused prosecuted.

Held: It is true that Juan Samson smoothed the way for the introduction of the prohibited drug, but that was *after the accused had already planned its importation* and *ordered* for said drug.

Juan Samson neither induced nor instigated the accused to import the opium in question, but pretended to have an understanding with the Collector of Customs, who had promised them that he would remove all the difficulties in the way of their enterprise so far as the customs house was concerned.

This is not a case where an innocent person is induced to commit a crime merely to prosecute him, but it is simply a trap set to catch a criminal. (People vs. Lua Chua and Uy Se Tieng, 56 Phil. 44)

Suppose, the accused had not yet ordered for opium in Hongkong when he talked with the Collector of Customs but that on the strength of the assurance of the Collector of Customs, he later ordered for opium in Hongkong, would it be instigation? Yes, it would be instigation, not entrapment, because the accused was instigated to import a prohibited drug, a crime punished by Art. 192.

The doctrines referring to the entrapment of offenders and instigation to commit crime, as laid down by the courts of the United States, are summarized in 16 *Corpus Juris*, page 88, Section 57, as follows:

"ENTRAPMENT AND INSTIGATION. - While it has been said that the practice of entrapping persons into crime for the purpose

of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where *the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct.* Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence or the instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, *provided the original design was formed independently of such agent;* and where a person approached by the thief as his confederate notifies the owner or the public authorities, and being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed." (Cited in People vs. Lua Chu and Uy Se Tieng, 56 Phil. 44)

A detective representing to be a private individual, jobless, and in need of money, befriended a well-known thief. The thief told him that there was easy money around if he would take a chance. The detective asked the thief what it was and the latter told him that he was going to break into the house of a rich man to steal some jewels and money. The detective pretended to have agreed with him and the two went to the house, entered it through the window, and once inside, the thief opened with a false key the wardrobe in the house and took jewels and money. Then and there the detective arrested the thief.

Is the thief criminally liable for the robbery committed?

Yes, it was entrapment. The fact that an agent of the law acted as a supposed confederate of a thief is no defense to the latter, provided that the *original design* was formed by the thief independently of such agent.

Entrapment and instigation distinguished.

There is a wide difference between entrapment and instigation, for while in the latter case the instigator practically induces the would-be accused into the commission of the offense and himself becomes a

co-principal, in entrapment, ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan. *Entrapment* is no bar to the prosecution and conviction of the lawbreaker. But when there is *instigation,* the accused *must be acquitted.* (People vs. Galicia, C.A., 40 O.G. 4476; People vs. Yutuc, G.R. No. 82590, July 26, 1990, 188 SCRA 1, 21; People vs. Payumo, G.R. No. 81761, July 2, 1990, 187 SCRA 64, 71; Araneta vs. Court of Appeals, No. L-46638, July 9, 1986, 142 SCRA 534, 540)

In entrapment, the entrapper resorts to ways and means to trap and capture a lawbreaker while executing his criminal plan. In instigation, the instigator practically induces the would-be defendant into committing the offense, and himself becomes a co-principal. In entrapment, the means originates from the mind of the criminal. The idea and the resolve to commit the crime come from him. In instigation, the law enforcer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution. The legal effects of entrapment do not exempt the criminal from liability. Instigation does. (People vs. Marcos, G.R. No. 83325, May 8, 1990, 185 SCRA 154, 164, citing earlier cases)

In instigation, a public officer or a private detective induces an *innocent person* to commit a crime and would arrest him upon or after the commission of the crime by the latter. It is an absolutory cause.

In entrapment, a person has planned, or is about to commit, a crime and ways and means are resorted to by a public officer to trap and catch the criminal. Entrapment is not a defense.

Instigation must be made by public officers or private detectives.

A criminal act may not be punishable if the accused was induced to commit it by active cooperation and instigation on the part of *public detectives.* (State vs. Hayes, 105 Mo. 76, 16 S.W. 514, 24 Am. St. Rep. 360)

A sound public policy requires that the courts shall condemn this practice by *directing an acquittal* whenever it appears that the *public authorities or private detectives,* with their cognizances, have taken *active steps to lead* the accused into the commission of the act. As was said in a Michigan case: "Human nature is frail enough at best, and requires no encouragement in wrongdoing. If we cannot

assist another, and prevent him from committing crime, we should at least abstain from any active efforts in the way of leading him into temptation." (Saunders vs. People, 38 Mich. 218, 222)

If the one who made the instigation is a *private individual,* not performing public function, both he and the one induced are criminally liable for the crime committed: the former, as principal by induction; and the latter, as principal by direct participation.

There is neither instigation nor entrapment when the violation of the law is simply discovered.

Charged with and prosecuted for a violation of Executive Order No. 62, series of 1945, the accused having sold a can of Mennen Talcum Powder for ₱1.00 when the ceiling price for said article was only P0.86, the defense contended that the government agent induced the accused to violate the law by purchasing from him the article and paying for it in an amount above the ceiling price.

Held: The agent did not induce the accused to violate the law. He simply discovered the violation committed by the accused when he (the agent) purchased the article from him. It was the accused who charged and collected the price. There was not even an entrapment. (People vs. Tan Tiong, C.A., 43 O.G. 1285)

Assurance of immunity by a public officer does not exempt a person from criminal liability.

Thus, the accused who delivered to the barrio lieutenant a gun and ammunition when the latter announced "that anyone who is concealing firearms should surrender them so that he will not be penalized" is not exempt from criminal responsibility arising from the possession of the unlicensed firearm and ammunition. In fact, not even the President could give such assurance of immunity to any violator of the firearm law. His constitutional power of clemency can be exercised only after conviction. (People vs. Alabas, C.A., 52 O.G. 3091)

Complete defenses in criminal cases.

1. Any of the essential elements of the crime charged is not proved by the prosecution and the elements proved do not constitute any crime.

2. The act of the accused falls under any of the justifying circumstances. (Art. 11)

3. The case of the accused falls under any of the exempting circumstances. (Art. 12)

4. The case is covered by any of the absolutory causes:

   a. Spontaneous desistance during attempted stage (Art. 6), and no crime under another provision of the Code or other penal law is committed.

   b. Light felony is only attempted or frustrated, and is not against persons or property. (Art. 7)

   c. The accessory is a relative of the principal. (Art. 20)

   d. Legal grounds for arbitrary detention. (Art. 124)

   e. Legal grounds for trespass. (Art. 280)

   f. The crime of theft, swindling or malicious mischief is committed against a relative. (Art. 332)

   g. When only slight or less serious physical injuries are inflicted by the person who surprised his spouse or daughter in the act of sexual intercourse with another person. (Art. 247)

   h. Marriage of the offender with the offended party when the crime committed is rape, abduction, seduction, or acts of lasciviousness. (Art. 344)

   i. Instigation.

5. Guilt of the accused not established beyond reasonable doubt.

6. Prescription of crimes. (Art. 89)

7. Pardon by the offended party before the institution of criminal action in crime against chastity. (Art. 344)

III. Mitigating circumstances.

1. Definition

Mitigating circumstances are those which, if present in

the commission of the crime, do not entirely free the actor from criminal liability, but serve only to *reduce* the penalty.

2. Basis

Mitigating circumstances are based on the *diminution* of either *freedom* of action, *intelligence,* or *intent,* or on the *lesser perversity* of the offender.

Classes of mitigating circumstances.

1. *Ordinary mitigating* — those enumerated in subsections 1 to 10 of Article 13.

Those mentioned in subsection 1 of Art. 13 are ordinary mitigating circumstances, if Art. 69, for instance, is not applicable.

2. *Privileged mitigating* —

a. Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* - When the offender is a minor under eighteen years of age and his case falls under the provisions of the Juvenile Justice and Welfare Act, the following rules shall be observed:

(1) A person under fifteen years of age, and a person over fifteen and under eighteen years of age who acted without discernment, are exempt from criminal liability;

(2) Upon a person over fifteen and under eighteen years of age who acted with discernment, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. (As amended by Rep. Act No. 9344)

b. Art. 69. *Penalty to be imposed when the crime committed is not wholly excusable.* — A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability x x x, provided that the *majority* of such conditions be present.

c. *Art. 64. Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x.

(5) When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

x x x.

Privileged mitigating circumstances applicable only to particular crimes.

1. Voluntary release of the person illegally detained within 3 days without the offender attaining his purpose and before the institution of criminal action. (Art. 268, par. 3) The penalty is one degree lower.

2. Abandonment without justification of the spouse who committed adultery. (Art. 333, par. 3) The penalty is one degree lower.

Distinctions.

1. *Ordinary mitigating* is susceptible of being offset by any aggravating circumstance; while *privileged* mitigating cannot be offset by aggravating circumstance.

2. *Ordinary mitigating,* if not offset by an aggravating circumstance, produces only the effect of applying the penalty provided by law for the crime in its *minimum period,* in case of divisible penalty; whereas, *privileged mitigating* produces the effect of imposing upon the

offender the penalty *lower by one or two degrees* than that provided by law for the crime.

People vs. Honradez
(C.A., 40 O.G., Supp. 4, 1)

Facts: The accused who was charged with robbery was less than 18 years old. He committed the crime during nighttime purposely sought, which is an aggravating circumstance.

Held: The aggravating circumstance of nighttime cannot offset the privileged mitigating circumstance of minority.

Note: As to whether the age 16 years or above but under 18 years is a privileged mitigating circumstance is not a settled question.

Mitigating circumstances only reduce the penalty, but do not change the nature of the crime.

Where the accused is charged with murder, as when treachery as a qualifying circumstance is alleged in the information, the fact that there is a generic or privileged mitigating circumstance does not change the felony to homicide.

If there is an ordinary or generic mitigating circumstance, not offset by any aggravating circumstance, the accused should be found guilty of the same crime of murder, but the penalty to be imposed is reduced to the minimum of the penalty for murder.

If there is a privileged mitigating circumstance, the penalty for murder will be reduced by one or two degrees lower.

In every case, the accused should be held guilty of murder.

The judgment of the trial court that the mitigating circumstance of non-habitual drunkenness changes the felony to homicide is erroneous, because treachery is alleged in the information and the crime committed by the appellant is that of murder. The mitigating circumstance reduces the penalty provided by law but does not change the nature of the crime. (People vs. Talam, C.A., 56 O.G. 3654)

Chapter Three

CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

Art. 13. ***Mitigating circumstances.*** **— The following are mitigating circumstances:**

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

2. That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Article 80.*

3. That the offender had no intention to commit so grave a wrong as that committed.

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony *(delito)*, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees.

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

***Impliedly repealed by Rep. Act. No. 9344. A child above 15 but below 18 who acted without discernment may be exempt from criminal liability.**

8. That the offender is deaf and dumb, blind, or otherwise suffering some physical defect which thus restricts his means of action, defense, or communication with his fellow beings.

9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.

10. And, finally, any other circumstances of a similar nature and analogous to those above-mentioned.

Par. 1. — Those mentioned in the preceding chapter when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

"Those mentioned in the preceding chapter."

This clause has reference to (1) *justifying circumstances* and (2) *exempting circumstances* which are covered by Chapter Two of Title One.

Circumstances of justification or exemption which may give place to mitigation.

The circumstances of *justification or exemption* which may give place to *mitigation*, because not all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are attendant, are the following:

(1) Self-defense (Art. 11, par. 1);

(2) Defense of relatives (Art. 11, par. 2);

(3) Defense of stranger (Art. 11, par. 3);

(4) State of necessity (Art. 11, par. 4);

(5) Performance of duty (Art. 11, par. 5);

(6) Obedience to order of superior (Art. 11, par. 6);

(7) Minority over 9 and under 15 years of age (Art. 12, par. 3);

(8) Causing injury by mere accident (Art. 12, par. 4); and

(9) Uncontrollable fear. (Art. 12, par. 6)

Paragraphs 1 and 2 of Article 12 cannot give place to mitigation, because, as stated by the Supreme Court of Spain, the mental condition of a person is indivisible; that is, there is no middle ground between sanity and insanity, between presence and absence of intelligence. (Decs. of Sup. Ct. of Spain of December 19, 1891 and of October 3, 1884)

But if the offender is suffering from some illness which would diminish the exercise of his will-power, without however depriving him of consciousness of his acts, such circumstance is considered a mitigation under paragraph 9 of Article 13. It would seem that one who is suffering from mental disease without however depriving one of consciousness of one's act may be given the benefit of that mitigating circumstance.

When all the requisites necessary to justify the act are not attendant.

1. *Incomplete self-defense, defense of relatives, and defense of stranger.*

Note that in these three classes of defense, *unlawful aggression must be present,* it being an indispensable requisite. What is absent is either one or both of the last two requisites.

Paragraph 1 of Art. 13 is applicable only when unlawful aggression is present but the other two requisites are not present in any of the cases referred to in circumstances Nos. 1, 2 and 3 of Art. 11.

Art. 13, par. 1, applies only when unlawful aggression is present, but the other two requisites are not present. (Guevara)

When *two* of the three requisites mentioned therein are present (for example, unlawful aggression and any one of the other two), the case must not be considered as one in which an ordinary or generic mitigating circumstance is present. Instead, it should be considered a privileged mitigating circumstance referred to in Art. 69 of this Code.

Thus, if in self-defense there was unlawful aggression on the part of the deceased, the means employed to prevent or repel it was reasonable, but the one making a defense gave sufficient provocation, he is entitled to a privileged mitigating circumstance, because the *majority* of the conditions required to justify the act is present. (Art. 69) Also, if in the defense of a relative there was unlawful aggression on the part of the deceased, but the one defending the relative used unreasonable means to prevent or repel it, he is entitled to a privileged mitigating circumstance.

When there is unlawful aggression on the part of the deceased without sufficient provocation by the defendant, but the latter uses means not reasonably necessary, for after having snatched the rope from the deceased, he should not have wound it around her neck and tightened it. *Held:* There is incomplete self-defense on the part of the defendant, which may be considered a privileged mitigating circumstance. (People vs. Martin, 89 Phil. 18, 24)

But if there is no unlawful aggression, there could be *no* self-defense or defense of a relative, whether complete or incomplete.

Example of incomplete defense.

The deceased was about to set on fire the house of the accused, where she was sleeping together with her two children. They grappled and the accused boloed to death the deceased. There was unlawful aggression consisting in trying to set on fire the house of the accused. There was the element of danger to the occupants of the house. But having already driven the aggressor out of the house, who was prostrate on the ground, the accused should not have persisted in wounding her no less than fourteen times. There is, therefore, absence of one circumstance to justify the act—reasonable necessity of killing the aggressor. The accused was entitled to a privileged mitigating circumstance of incomplete defense. Here, the accused acted in defense of her person, her home, and her children. (U.S. vs. Rivera, 41 Phil. 472, 473-474)

Example of incomplete self-defense.

The accused is entitled to only incomplete self-defense. The deceased was in a state of drunkenness, so he was not as dangerous as he would if he had been sober. His aim proved

faulty and easily evaded as shown by the fact that the person defending was not hit by the stab attempts-blows directed against him. The necessity of the means used to repel the aggression is not clearly reasonable. (People vs. De Jesus, No. L-58506, Nov. 19, 1982, 118 SCRA 616, 627)

Example of incomplete defense of relative.

The deceased hit the first cousin of the accused with the butt of a shotgun. The deceased also pointed the shotgun at the first cousin, took a bullet from his jacket pocket, showed it to him and asked him, "Do you like this, Dong?" to which the latter replied, "No, Noy, I do not like that." The deceased then placed the bullet in the shotgun and was thus pointing it at the first cousin when the accused came from behind the deceased and stabbed him. There was unlawful aggression on the part of the deceased and there was no provocation on the part of the accused. However, because of a running feud between the deceased and his brother on one side and the accused and his brother on the other side, the accused could not have been impelled by pure compassion or beneficence or the lawful desire to avenge the immediate wrong inflicted on his cousin. He was motivated by revenge, resentment or evil motive. He is only entitled to the privileged mitigating circumstance of incomplete defense of relative. (People vs. Toring, G.R. No. 56358, Oct. 26, 1990, 191 SCRA 38, 45-48)

2. *Incomplete justifying circumstance of avoidance of greater evil or injury.*

Avoidance of greater evil or injury is a justifying circumstance if all the three requisites mentioned in paragraph 4 of Article 11 are present. But if any of the last two requisites is absent, there is only a mitigating circumstance.

3. *Incomplete justifying circumstance of performance of duty.*

As has been discussed under Article 11, there are two requisites that must be present in order that the circumstance in Article 11, No. 5, may be taken as a justifying one, namely:

a. That the accused acted in the performance of a duty or in the lawful exercise of a right or office; and

b. That the injury caused or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office.

In the case of *People vs. Oanis, supra,* where only one of the requisites of circumstance No. 5 of Art. 11 was present, Art. 69 was applied. The Supreme Court said —

> **"As the deceased was killed while asleep, the crime committed is murder with the qualifying circumstance of *alevosia*. There is, however, a mitigating circumstance of weight consisting in the incomplete justifying circumstance defined in Art. 11, No. 5, of the Revised Penal Code. According to such legal provision, a person incurs no criminal liability when he acts in the fulfillment of a duty or in the lawful exercise of a right or office. There are two requisites in order that the circumstance may be taken as a justifying one: (a) that the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (b) that the injury caused or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office. In the instant case, only the first requisite is present—appellants have acted in the performance of a duty. The second requisite is wanting for the crime committed by them is not the necessary consequence of a due performance of their duty. Their duty was to arrest Balagtas, or to get him dead or alive if resistance is offered by him and they are overpowered. But through impatience or over anxiety or in their desire to take no chances, they have exceeded in the fulfillment of such duty by killing the person whom they believed to be Balagtas without any resistance from him and without making any previous inquiry as to his identity. According to Art. 69 of the Revised Penal Code, the penalty lower by one or two degrees than that prescribed by law shall, in such case, be imposed.**
>
> **"For all the foregoing, the judgment is modified and appellants are hereby declared guilty of murder with the mitigating circumstance above mentioned, and accordingly sentenced to an indeterminate penalty of from five (5) years of *prisión correccional* to fifteen (15) years of *reclusión temporal,* with the accessories of the law, and to pay the heirs of the deceased Serapio Tecson, jointly and severally, an indemnity of P2,000, with costs."**

Since the Supreme Court considered one of the two requisites as constituting the majority, it seems that there is no ordinary mitigating circumstance under Art. 13, par. 1, when the justifying or exempting circumstance has two requisites only.

4. ***Incomplete justifying circumstance of obedience to an order.***

Roleda fired at Pilones, following the order of Sergeant Benting, Roleda's superior. It appears that on their way to the camp, Roleda learned that Pilones had killed not only a barrio lieutenant but also a member of the military police, and this may have aroused in Roleda a feeling of resentment that may have impelled him to readily and without questioning follow the order of Sgt. Benting. To this may be added the fact of his being a subordinate of Sgt. Benting who gave the order, and while out on patrol when the soldiers were supposed to be under the immediate command and control of the patrol leader, Sgt. Benting. (People vs. Bernal, *et al.*, 91 Phil. 619)

When all the requisites necessary to exempt from criminal liability are not attendant.

1. ***Incomplete exempting circumstance of minority over 9 and under 15 years of age.***

To be exempt from criminal liability under paragraph 3 of Article 12, two conditions must be present:

a. That the offender is over 9 and under 15 years old; and

b. That he does *not* act with discernment.

Therefore, if the minor over 9 and under 15 years of age acted with discernment, he is entitled only to a mitigating circumstance, because not all the requisites necessary to exempt from criminal liability are present.

The case of such minor is specifically covered by Art. 68.

2. ***Incomplete exempting circumstance of accident.***

Under paragraph 4 of Article 12, there are four requisites that must be present in order to exempt one from criminal liability, namely:

a. A person is performing a lawful act;

b. With due care;

c. He causes an injury to another by mere accident; and

d. Without fault or intention of causing it.

If the second requisite and the 1st part of the fourth requisite are *absent,* the case will fall under Art. 365 which punishes a felony by negligence or imprudence.

In effect, there is a mitigating circumstance, because the penalty is lower than that provided for intentional felony.

If the first requisite and the 2nd part of the fourth requisite are *absent,* because the person committed an unlawful act and had the intention of causing the injury, it will be an *intentional felony.* The 2nd and 3rd requisites will not be present either.

In this case, there is not even a mitigating circumstance.

3. *Incomplete exempting circumstance of uncontrollable fear.*

Under paragraph 6 of Article 12, uncontrollable fear is an exempting circumstance if the following requisites are present:

a. That the threat which caused the fear was of an evil *greater* than, or at least *equal to,* that which he was required to commit;

b. That it promised an evil of *such gravity* and *imminence* that an ordinary person would have succumbed to it (uncontrollable).

If only one of these requisites is present, there is only a mitigating circumstance.

Illustration:

People vs. Magpantay
(C.A., 46 O.G. 1655)

Facts: In the night of May 8, 1947, Felix and Pedro took turns to guard, so that when one was asleep the other was awake. At about nine o'clock when Pedro was asleep, the silhouette of a man passed in

front of their house without any light. The night was dark and it was drizzling. The coconut trees and the bushes on the sides of the road increased the darkness. When Felix saw the silhouette, he asked it who it was, but it walked hurriedly, which made Felix suspicious as it might be a scouting guard of the Dilim gang. Felix fired into the air, yet the figure continued its way.

When Pedro heard the shot, he suddenly grabbed the rifle at his side and fired at the figure on the road, causing the death of the man. This man was afterward found to be Pedro Pinion, who was returning home unarmed after fishing in a river.

The accused voluntarily surrendered to the barrio-lieutenant and then to the chief of police.

Held: **The accused acted under the influence of the fear of being attacked. Having already in his mind the idea that they might be raided at any moment by the Dilim gang and suddenly awakened by the shot fired by Felix, he grabbed his gun and fired before he could be fired upon. The fear, however, was not entirely uncontrollable, for had he not been so hasty and had he stopped a few seconds to think, he would have ascertained that there was no imminent danger.**

He is entitled to the mitigating circumstance of grave fear, not entirely uncontrollable, under paragraph 1 of Article 13 in connection with paragraph 6 of Article 12 of the Revised Penal Code. That said two provisions may be taken together to constitute a mitigating circumstance has been declared by the Supreme Court of Spain in its decision of February 24, 1897 and by Groizard. (Codigo Penal, Vol. I, pp. 370-372, Third Edition)

Consequently, there are two marked mitigating circumstances in favor of the accused. Article 64, in paragraph 5, of the Revised Penal Code provides that: "When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances." The penalty for homicide is *reclusión temporal.* The next lower penalty is *prision mayor,* which may be imposed in the period that the court may deem applicable according to the number and nature of such circumstance.

In view of the foregoing, this Court finds the accused Pedro Magpantay guilty of homicide, with two very marked mitigating circumstances, and modifies the judgment appealed from by imposing upon him the penalty of from six (6) months and one (1) day of *prision correccional* to six (6) years and one (1) day of *prision mayor.*

With due respect, it is believed that Art. 69, in connection with paragraph 6 of Article 12, not Article 13, paragraph 1, in relation to paragraph 6 of Article 12, should be applied.

When it considered grave fear, not entirely uncontrollable, as ordinary mitigating circumstance under Article 13, paragraph 1, together with voluntary surrender, and applied Article 64, the Court of Appeals should have fixed the maximum term of the indeterminate penalty *(prision mayor)* in its medium period. The two mitigating circumstances having been considered already for the purpose of lowering the penalty for homicide by one degree, pursuant to paragraph 5 of Article 64, there is no mitigating circumstance that will justify the imposition of *prision mayor* in its minimum period.

Had Article 69 in connection with paragraph 6 of Article 12 been applied, the penalty imposed would have a correct basis. Under Article 69, the penalty one or two degrees lower than that provided for the offense may be imposed. The mitigating circumstance of voluntary surrender need not be considered in lowering the penalty by one degree. Therefore, the voluntary surrender of the accused, which is a generic mitigating circumstance, may be considered for the purpose of fixing *prision mayor* in its minimum period. (Art. 64, par. 2)

Par. 2. — That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Article 80 (now Art. 192, P.D. No. 603).

Paragraph 2, Article 13 RPC impliedly repealed by Republic Act No. 9344.

Paragraph 2, Article 13 of the Revised Penal Code providing that offender under eighteen years of age is entitled to a mitigating circumstance of minority is deemed repealed by the provision of Republic Act 9344 declaring a child above fifteen (15) years but below eighteen years (18) or age shall be exempt from criminal liability unless he/she has acted with discernment. (Sec. 6, Rep. Act No. 9344)

In other words, whereas before, an offender fifteen (15) or over but under eighteen (18) years of age is entitled only to the benefits provided under Article 68 of the Revised Penal Code, under Republic

Act No. 9344 or the "Juvenile Justice and Welfare Act of 2006," such offender may be exempt from criminal liability should he/she acted without discernment.

On the other hand, if such offender acted with discernment, such child in conflict with the law shall undergo diversion programs provided under Chapter 2 of Republic Act No. 9344.

Meaning of Diversion and Diversion Program under Republic Act No. 9344

"Diversion" refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological, or educational background without resulting to formal court proceedings. (Section 4[j], Rep. Act No. 9344)

"Diversion Program" refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings. (Section 4[j], Rep. Act No. 9344)

System of Diversion.

Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the following conditions:

(a) Where the imposable penalty for the crime committed is not more than six (6) years imprisonment, the law enforcement office or Punong Barangay with the assistance of the local social welfare and development officer or other members of the Local Councils for the Protection of Children (LCPC) established in all levels of local government pursuant to Rep. Act No. 9344, shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.

(b) In victimless crimes where the imposable penalty is not more than six (6) years of imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and

rehabilitation program, in coordination with the Barangay Council for the Protection of Children (BCPC) created pursuant to Rep. Act No. 9344.

(c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court. (See Section 23, Republic Act No. 9344)

Conferencing, Mediation and Conciliation.

A child in conflict with the law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings. (Sec. 25, Rep. Act No. 9344)

Contract of Diversion.

If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within forty-five (45) days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed forty-five (45) days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two (2) years. (Sec. 26, Rep. Act No. 9344)

Where diversion may be conducted.

Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level. (Section 24, Republic Act No. 9344)

Duty of the Punong Barangay or the Law Enforcement Officer when there is no diversion.

If the offense does not fall under the category where the imposable penalty for the crime committed is not more than six (6) years of imprisonment or in cases of victimless crimes where the imposable penalty is also not more than six years imprisonment, or if the child, his/her parents or guardians does not consent to a diversion, the Punong Barangay handling the case shall, within three (3) days from determination of the absence of jurisdiction over the case or termination of the diversion proceeding as the case may be, forward the records of the case to the law enforcement officer, prosecutor or the appropriate court, as the case may be. (See Section 27, Republic Act No. 9344)

In case a Law Enforcement Officer is the one handling the case, within same period, the Law Enforcement Officer shall forward the records of the case to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation. The document transmitting said records shall display the word "CHILD" in bold letters. (Sec. 28, Rep. Act No. 9344)

Determination of age of child in conflict with the law.

The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file

a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law. (Section 7, Republic Act No. 9344)

That the offender is over 70 years of age is only a generic mitigating circumstance.

While paragraph 2 of Article 13 covers offenders under 18 years of age and those over 70 years, Article 68, providing for privileged mitigating circumstances, does not include the case of offenders over 70 years old.

Prior to the enactment of Rep. Act No. 9346 prohibiting the imposition of the death penalty, there were two cases where the fact that the offender is over 70 years of age had the effect of a privileged mitigating circumstance, namely: (1) when he committed an offense punishable by death, that penalty shall not be imposed (Art. 47, par. 1) and (2) when the death sentence is already imposed, it shall be suspended and commuted. (Art. 83)

In any of the above-mentioned two cases, the penalty of death will have to be lowered to life imprisonment *(reclusión perpetua)*.

Basis of paragraph 2.

The mitigating circumstances in paragraph 2 of Art. 13 are based on the *diminution of intelligence*, a condition of voluntariness.

Par. 3. — That the offender had no intention to commit so grave a wrong as that committed.

Rule for the application of this paragraph.

This circumstance can be taken into account only when the facts proven show that there is a *notable* and *evident disproportion* between the means employed to execute the criminal act and its consequences. (U.S. vs. Reyes, 36 Phil. 904, 907)

Illustrations:

1. **The husband who was quarreling with his wife punched her in the abdomen, causing the rupture of her hypertrophied spleen, from which she died. (People vs. Rabao, 67 Phil. 255, 257, 259)**

2. **The accused confined himself to giving a single blow with a bolo on the right arm of the victim and did not repeat the blow. The death of the victim was due to neglect and the lack of medical treatment, his death having resulted from hemorrhage which those who attended to him did not know how to stop or control in time. (U.S. vs. Bertucio, 1 Phil. 47, 49)**

3. **The accused, a policeman, boxed the deceased, a detention prisoner, inside the jail. As a consequence of the fistic blows, the deceased collapsed on the floor. The accused stepped on the prostrate body and left. After a while, he returned with a bottle, poured its contents on the recumbent body of the deceased, ignited it with a match and left the cell again. As a consequence, the victim later on died. *Held:* The accused is entitled to the mitigating circumstance of "no intention to commit so grave a wrong as that committed." (People vs. Ural, No. L-30801, March 27, 1974, 56 SCRA 138, 140-141, 146)**

Intention, being an internal state, must be judged by external acts.

The intention, as an *internal act,* is judged not only by the proportion of the means employed by him to the evil produced by his act, but also by the fact that the blow was or was not aimed at a vital part of the body.

Thus, it may be deduced from the proven facts that the accused had no intent to kill the victim, his design being only to maltreat him, such that when he realized the fearful consequences of his felonious act, he allowed the victim to secure medical treatment at the municipal dispensary. (People vs. Ural, No. L-30801, March 27, 1974, 56 SCRA 138, 146)

Thus, where the accused fired a loaded revolver at the deceased and killed him, it must be presumed, taking into consideration the means employed as being sufficient to produce the evil which resulted, that he intended the natural consequence of his act and he is, therefore, not entitled to the benefit of the mitigating circumstance of lack of intention to commit a wrong as that committed. (U.S. vs. Fitzgerald, 2 Phil. 419, 422)

Thus, where at the time of the commission of the crime, the accused was 32 years of age, while his victim was 25 years his senior, and when the latter resisted his attempt to rape her by biting and scratching him, to subdue her, the accused boxed her and then held her on the neck and pressed it down, while she was lying on her back and he was on top of her, these acts were reasonably sufficient to produce the result that they actually produced—the death of the victim. (People vs. Amit, No. L-29066, March 25, 1970, 32 SCRA 95, 98)

So also, when the assailant, armed with a bolo, inflicted upon his victim a serious and fatal wound in the abdomen, it is not to be believed that he had no intention of killing his victim, having clearly shown, by the location of the wound, that he had a definite and perverse intention of producing the injury which resulted. (U.S. vs. Mendac, 31 Phil. 240, 244-245)

Defendant alleged as mitigating circumstance that he did not intend to commit so grave an injury. *Held:* The plea is groundless; he used a knife six inches long. The fatal injury was the natural and almost inevitable consequence. Moreover, he attempted to stab a second time but was prevented from doing so. (People vs. Orongan, *et al.*,58 Phil. 426, 429)

The weapon used, the part of the body injured, the injury inflicted, and the manner it is inflicted may show that the accused intended the wrong committed.

1. Intention must be judged by considering the *weapon* used, the *injury* inflicted, and his *attitude of the mind* when the

accused attacked the deceased. Thus, when the accused used a *heavy club* in attacking the deceased whom he *followed some distance, without giving him an opportunity to defend himself,* it is to be believed that he intended to do exactly what he did and must be held responsible for the result, without the benefit of this mitigating circumstance. (People vs. Flores, 50 Phil. 548, 551)

2. When a person stabs another with a *lethal weapon* such as a *fan knife* (and the same could be said of the *butt of a rifle),* upon a part of the body, for example, the *head, chest, or stomach,* death could reasonably be anticipated and the accused must be presumed to have intended the natural consequence of his wrongful act. (People vs. Reyes, 61 Phil. 341, 343; People vs. Datu Baguinda, 44 O.G. 2287)

3. The weapon used, the *force of the blow,* the *spot where the blow was directed and landed,* and the cold blood in which it was inflicted, all tend to negative any notion that the plan was anything less than to finish the intended victim. The accused in this case struck the victim with a *hammer* on the right forehead. (People vs. Banlos, G.R. No. L-3412, Dec. 29, 1950)

4. As to the alleged lack of intent to commit so grave a wrong as that committed, the same cannot be appreciated. The clear intention of the accused to kill the deceased may be inferred from the fact that he used a deadly weapon and fired at the deceased almost point blank, thereby hitting him in the abdomen and causing death. (People vs. Reyes, No. L-33154, Feb. 27, 1976, 69 SCRA 474, 482)

5. Where the evidence shows that, if not all the persons who attacked the deceased, at least some of them, intended to cause his death by throwing at him stones of such size and weight as to cause, as in fact they caused, a fracture of his skull, and as the act of one or some of them is deemed to be the act of the others there being sufficient proof of conspiracy, the mitigating circumstance of lack of intent to commit so grave a wrong as the one actually committed cannot favorably be considered. (People vs. Bautista, Nos. L-23303-04, May 20, 1969, 28 SCRA 184, 190-191; People

vs. Espejo, No. L-27708, Dec. 19, 1970, 36 SCRA 400, 424)

Inflicting of five stab wounds in rapid succession negates pretense of lack of intention to cause so serious an injury.

The inflicting by the accused of five (5) stab wounds caused in rapid succession brings forth in bold relief the intention of the accused to snuff out the life of the deceased, and definitely negates any pretense of lack of intention to cause so serious an injury. (People vs. Braña, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 316)

Art. 13, par. 3, is not applicable when the offender employed brute force.

To prove this circumstance, the accused testified that "my only intention was to abuse her, but when she tried to shout, I covered her mouth and choked her and later I found out that because of that she died." The Supreme Court said: "It is easy enough for the accused to say that he had no intention to do great harm. But he knew the girl was very tender in age (6 years old), weak in body, helpless and defenseless. He knew or ought to have known the natural and inevitable result of the act of strangulation, committed by men of superior strength, specially on an occasion when she was resisting the onslaught upon her honor. The brute force employed by the appellant, completely contradicts the claim that he had no intention to kill the victim." (People vs. Yu, No. L-13780, Jan. 28, 1961, 1 SCRA 199, 204)

It is the intention of the offender at the moment when he is committing the crime which is considered.

The point is raised that the trial court should have considered the mitigating circumstance of lack of intent to commit so grave a wrong as that committed. The argument is that the accused planned only to rob; they never meant to kill. *Held:* Art. 13, par. 3, of the Revised Penal Code addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage. Therefore, when, as in the case under review, the original plan was only to rob, but which plan, on account of the resistance offered by the victim, was compounded into the more serious crime of robbery with homicide,

the plea of lack of intention to commit so grave a wrong cannot be rightly granted. The irrefutable fact remains that when they ganged up on their victim, they employed deadly weapons and inflicted on him mortal wounds in his neck. At that precise moment, they did intend to kill their victim, and that was the moment to which Art. 13, par. 3, refers. (People vs. Boyles, No. L-15308, May 29, 1964, 11 SCRA 88, 95-96; People vs. Arpa, No. L-26789, April 25, 1969, 27 SCRA 1037, 1045-1046)

Art. 13, par. 3 of the Revised Penal Code "addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage." Therefore, if the original plan, as alleged by the accused, was merely to ask for forgiveness from the victim's wife who scolded them and threatened to report them to the authorities, which led to her killing, the plea of lack of intention to commit so grave a wrong cannot be appreciated as a mitigating circumstance. The records show that the accused held the victim's wife until she fell to the floor, whereupon they strangled her by means of a piece of rope tied around her neck till she died. The brute force employed by the accused completely contradicts the claim that they had no intention to kill the victim. (People vs. Garachico, No. L-30849, March 29, 1982, 113 SCRA 131, 152)

Lack of intention to commit so grave a wrong mitigating in robbery with homicide.

The mitigating circumstance of lack of intent to commit so grave a wrong may be appreciated favorably in robbery with homicide, where it has not been satisfactorily established that in forcing entrance through the door which was then closed, with the use of pieces of wood, the accused were aware that the deceased was behind the door and would be hurt, and there is no clear showing that they ever desired to kill the deceased as they sought to enter the house to retaliate against the male occupants or commit robbery. (People vs. Abueg, No. L-54901, Nov. 24, 1986, 145 SCRA 622, 634)

Appreciated in murder qualified by circumstances based on manner of commission, not on state of mind of accused.

Several accused decided to have a foreman beaten up. The deed was accomplished. But the victim died as a result of hemorrhage. It

was not the intention of the accused to kill the victim. *Held:* Murder results from the presence of qualifying circumstances (in this case with premeditation and treachery) based upon the *manner* in which the crime was committed and not upon the *state of mind* of the accused. The mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed is based on the state of mind of the offender. Hence, there is no incompatibility between evident premeditation or treachery, which refers to the manner of committing the crime, and this mitigating circumstance. (People vs. Enriquez, 58 Phil. 536, 544-545)

Not appreciated in murder qualified by treachery.

Lack of intention to commit so grave a wrong is not appreciated where the offense committed is characterized by treachery. The five accused claim that the weapons used are mere pieces of wood, and the fact that only seven blows were dealt the deceased by the five of them, only two of which turned out to be fatal, shows that the tragic and grievous result was far from their minds. The record shows, however, that the offense committed was characterized by treachery and the accused left the scene of the crime only after the victim had fallen down. Hence, the mitigating circumstance of lack of intention cannot be appreciated in their favor. (People vs. Pajenado, No. L-26458, Jan. 30, 1976, 69 SCRA 172, 180)

Lack of intent to kill not mitigating in physical injuries.

In crimes against persons who do not die as a result of the assault, the absence of the intent to kill reduces the felony to mere physical injuries, but it does not constitute a mitigating circumstance under Art. 13, par. 3. (People vs. Galacgac, C.A., 54 O.G. 1207)

Mitigating when the victim dies.

As part of their fun-making, the accused merely intended to set the deceased's clothes on fire. Burning the clothes of the victim would cause at the very least some kind of physical injuries on this person. The accused is guilty of the resulting death of the victim but he is entitled to the mitigating circumstance of no intention to commit so grave a wrong as that committed. (People vs. Pugay, No. L-74324, Nov. 17, 1988, 167 SCRA 439, 449)

Not applicable to felonies by negligence.

In the case of infidelity in the custody of prisoners through negligence (Art. 224), this circumstance was not considered. (People vs. Medina, C.A., 40 O.G. 4196)

The reason is that in felonies through negligence, the offender acts without intent. The intent in intentional felonies is replaced by negligence, imprudence, lack of foresight or lack of skill in culpable felonies. Hence, in felonies through negligence, there is no intent on the part of the offender which may be considered as diminished.

Is Art. 13, par. 3, applicable to felonies where the intention of the offender is immaterial?

In unintentional abortion, where the abortion that resulted is not intended by the offender, the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed is not applicable. (People vs. Cristobal, C.A., G.R. No. 8739, Oct. 31, 1942)

But in another case, where the accused pulled the hair of the complainant who was three months pregnant causing her to fall on her buttocks on the cement floor, with the result that after experiencing vaginal hemorrhage the foetus fell from her womb, it was held that the accused having intended at the most to maltreat the complainant only, the mitigating circumstance in Art. 13, par. 3, should be considered in his favor. (People vs. Flameño, C.A., 58 O.G. 4060)

Unintentional abortion is committed by any person who, by violence, shall cause the killing of the foetus in the uterus or the violent expulsion of the foetus from the maternal womb, causing its death, but unintentionally. (Art. 257)

Applicable only to offenses resulting in physical injuries or material harm.

Thus, the mitigating circumstance that the offender did not intend to commit so grave a wrong as that committed was not appreciated in cases of defamation or slander. (People vs. Galang de Bautista, C.A., 40 O.G. 4473)

Basis of paragraph 3.

In this circumstance, intent, an element of voluntariness in intentional felony, is diminished.

Par. 4. — That sufficient provocation or threat on the part of the offended party immediately preceded the act.

What is provocation?

By provocation is understood any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating any one.

Requisites:

1. That the provocation must be *sufficient.*
2. That it must *originate from the offended party.*
3. That the provocation must be *immediate* to the act, *i.e.,* to the commission of the crime by the person who is provoked.

The provocation must be sufficient.

Provocation in order to be mitigating must be sufficient and immediately preceding the act. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 79 SCRA 570, 575-576)

The word "sufficient" means adequate to excite a person to commit the wrong and must accordingly be proportionate to its gravity. (People vs. Nabora, 73 Phil. 434, 435)

As to whether or not a provocation is sufficient depends upon the act constituting the provocation, the social standing of the person provoked, the place and the time when the provocation is made.

Examples of sufficient provocation.

1. The accused was a foreman in charge of the preservation of order and for which purpose he provided himself with a

pick handle. The deceased, one of the laborers in the line to receive their wages, left his place and forced his way into the file. The accused ordered him out, *but he persisted,* and the accused gave him a blow with the stick on the right side of the head above the ear. *Held:* When the aggression is in retaliation for an *insult, injury,* or threat, the offender cannot successfully claim self-defense, but at most he can be given the benefit of the mitigating circumstance under the provisions of paragraph 4 of Article 13. (U.S. vs. Carrero, 9 Phil. 544, 545-546)

2. When the deceased abused and ill-treated the accused by kicking and cursing the latter, the accused who killed him committed the crime with this mitigating circumstance. (U.S. vs. Firmo, 37 Phil. 133, 135)

3. When in his house the accused saw an unknown person jump out of the window and his wife begged for his pardon on her knees, he killed her. Such conduct on the part of his wife constitutes a sufficient provocation to the accused. (People vs. Marquez, 53 Phil. 260, 262-263)

4. Although there was no unlawful aggression, because the challenge was accepted by the accused, and therefore there was no self-defense, there was however the mitigating circumstance of immediate provocation. In this case, the deceased insulted the accused and then challenged the latter. (U.S. vs. Cortes, 36 Phil. 837)

When the defendant sought the deceased, the challenge to fight by the latter is not provocation.

Thus, if the defendant appeared in front of the house of the deceased, after they had been separated by other persons who prevented a fight between them, even if the deceased challenged him to a fight upon seeing him near his house, the defendant cannot be given the benefit of the mitigating circumstance of provocation, because when the defendant sought the deceased, the former was ready and willing to fight. (U.S. vs. Mendac, 31 Phil. 240)

5. There was sufficient provocation on the part of the victim where the latter hit the accused with his fist on the eye of

the accused before the fight. (People vs. Manansala, Jr., 31 SCRA 401)

6. The deceased, while intoxicated, found the accused lying down without having prepared the evening meal. This angered the deceased and he abused the accused by kicking and cursing him. A struggle followed and the accused stabbed him with a pen knife. The accused was entitled to the mitigating circumstance that sufficient provocation or threat immediately preceded the act. (U.S. vs. Firmo, 37 Phil. 133)

7. The victim's act of kicking the accused on the chest prior to the stabbing does not constitute unlawful aggression for purposes of self-defense, but the act may be considered as sufficient provocation on the victim's part, a mitigating circumstance that may be considered in favor of the accused. (People vs. Macariola, No. L-40757, Jan. 24, 1983, 120 SCRA 92, 102)

8. Thrusting his bolo at petitioner, threatening to kill him, and hacking the bamboo walls of his house are, in our view, sufficient provocation to enrage any man, or stir his rage and obfuscate his thinking, more so when the lives of his wife and children are in danger. Petitioner stabbed the victim as a result of those provocations, and while petitioner was still in a fit of rage. In our view, there was sufficient provocation and the circumstance of passion or obfuscation attended the commission of the offense. (Romera vs. People, G.R. No. 151978, July 14, 2004)

Provocation held not sufficient.

(a) When the injured party asked the accused for an explanation for the latter's derogatory remarks against certain ladies, the accused cannot properly claim that he was provoked to kill. (People vs. Laude, 58 Phil. 933)

(b) While the accused was taking a walk at the New Luneta one evening, the deceased met him and pointing his finger at the accused asked the latter what he was doing there and then said: "Don't you know we are watching for honeymooners here?" The accused drew out his knife and

stabbed the deceased who died as a consequence. *Held:* The provocation made by the deceased was not sufficient. (People vs. Nabora, 73 Phil. 434)

(c) The fact that the deceased (a public officer) had ordered the arrest of the accused for misdemeanor is not such a provocation within the meaning of this paragraph that will be considered in mitigation of the penalty for the crime of homicide committed by the accused who killed the officer giving such order. (U.S. vs. Abijan, 1 Phil. 83) The performance of a duty is not a source of provocation.

(d) Assuming for the sake of argument that the blowing of horns, cutting of lanes or overtaking can be considered as acts of provocation, the same were not sufficient. The word 'sufficient' means adequate to excite a person to commit a wrong and must accordingly be proportionate to its gravity. Moreover, the deceased's act of asking for the accused to claim that he was provoked to kill or injure the deceased. (People vs. Court of Appeals, *et. al.*,G.R. No. 103613, Feb. 23, 2001)

Provocation must originate from the offended party.

Where the alleged provocation did not come from the deceased but from the latter's mother, the same may not be appreciated in favor of the accused. (People vs. Reyes, No. L-33154, Feb. 27, 1976, 69 SCRA 474, 481)

A and B were together. A hit C on the head with a piece of stone from his sling-shot and ran away. As he could not overtake A, C faced B and assaulted the latter. In this case, C is not entitled to this mitigating circumstance, because B never gave the provocation or took part in it.

The reason for the requirement is that the law says that the provocation is "on the part of the offended party."

If during the fight between the accused and another person who provoked the affair, the deceased merely approached to separate them and did not give the accused any reason for attacking him, and in attacking the other person the accused killed the deceased, the provocation given by the other person cannot be taken as a mitigating circumstance. (U.S. vs. Malabanan, 9 Phil. 262, 264)

Difference between sufficient provocation as requisite of incomplete self-defense and as a mitigating circumstance.

Sufficient provocation as a requisite of incomplete self-defense is different from sufficient provocation as a mitigating circumstance. As an element of self-defense, it pertains to its absence on the part of the person defending himself; while as a mitigating circumstance, it pertains to its presence on the part of the offended party. (People vs. Court of Appeals, *et. al.*, G.R. No. 103613, Feb. 23, 2001)

The provocation by the deceased in the first stage of the fight is not a mitigating circumstance when the accused killed him after he had fled.

The provocation given by the deceased at the commencement of the fight is not a mitigating circumstance, where the deceased ran away and the accused killed him while fleeing, because the deceased from the moment he fled did not give any provocation for the accused to pursue and to attack him. (People vs. Alconga, 78 Phil. 366, 370)

Provocation must be immediate to the commission of the crime.

Between the provocation by the offended party and the commission of the crime by the person provoked, there should not be any interval of time.

The reason for this requirement is that the law states that the provocation "immediately preceded the act." When there is an interval of time between the provocation and the commission of the crime, the conduct of the offended party could not have excited the accused to the commission of the crime, he having had time to regain his reason and to exercise self-control.

Provocation given by an adversary at the commencement and during the first stage of a fight cannot be considered as mitigating where the accused pursued and killed the former while fleeing, and the deceased, from the moment he had fled after the first stage of the fight to the moment he died, did not give any provocation for the accused to pursue, much less further attack him. (People vs. Tan, No. L-22697, Oct. 5, 1976, 73 SCRA 288, 294)

The provocation did not immediately precede the shooting. The accused had almost a day to mull over the alleged provocation before

he reacted by shooting the victim. The inevitable conclusion is that he did not feel sufficiently provoked at the time the alleged provocation was made, and when he shot the victim the next day, it was a deliberate act of vengeance and not the natural reaction of a human being to immediately retaliate when provoked. (People vs. Benito, No. L-32042, Feb. 13, 1975, 62 SCRA 351, 357)

But see the case *of People vs. Deguia, et al.*, G.R. No. L-3731, April 20, 1951, where one of the accused, after the provocation by the deceased consisting in accusing him of having stolen two jack fruits from his tree and summarily taking them from the sled of the accused, *went home and later returned* fully armed and killed the deceased. Yet, it was held that the provocation should be considered in favor of the accused.

There seems to be a misapplication of the rule in this case. This ruling would be correct if the accusation that the accused stole the jack fruits be considered as a grave offense instead of provocation, because an interval of time between the grave offense and the commission of the crime is allowed in such a case.

Threat immediately preceded the act.

Thus, if A was threatened by B with bodily harm and because of the threat, A immediately attacked and injured B, there was a mitigating circumstance of threat immediately preceding the act.

The threat should not be offensive and positively strong, because, if it is, the threat to inflict real injury is an unlawful aggression which may give rise to self-defense. (U.S. vs. Guysayco, 13 Phil. 292, 295-296)

Vague threats not sufficient.

The victim's mere utterance, "If you do not agree, beware," without further proof that he was bent upon translating his vague threats into immediate action, is not sufficient.

But where the victims shouted at the accused, "Follow us if you dare and we will kill you," there is sufficient threat.

Basis of paragraph 4.

The mitigating circumstance in paragraph 4 of Art. 13 is based on the diminution of intelligence and intent.

Par. 5. — That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees.

Requisites:

1. That there be a *grave offense* done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees;

2. That the felony is committed in vindication of such grave offense. A *lapse of time* is allowed between the vindication and the doing of the grave offense.

Illustrations:

1. Being accused by the victim that the accused stole the former's rooster which made the latter feel deeply embarrassed, and the encounter took place in about half an hour's time. (People vs. Pongol, C.A., 66 O.G. 5617, citing People vs. Libria, 95 Phil. 398)

2. Stabbing to death the son of the accused which most naturally and logically must have enraged and obfuscated him that, seized by that feeling of hatred and rancour, he stabbed indiscriminately the people around. (People vs. Doniego, No. L-17321, Nov. 29, 1963, 9 SCRA 541, 546, 547)

A lapse of time is allowed between the grave offense and the vindication.

The word "immediate" used in the English text is not the correct translation. The Spanish text uses *"proxima."* The fact that the accused *was slapped by the deceased in the presence of many persons a few hours before* the former killed the latter, was considered a mitigating circumstance that the act was committed in the immediate vindication of a grave offense. Although the grave offense (slapping of the accused by the deceased), which engendered perturbation of mind, was not so immediate, it was held that the *influence thereof,*

by reason of its gravity and the circumstances under which it was inflicted, lasted until the moment the crime was committed. (People vs. Parana, 64 Phil. 331, 337)

In the case of *People vs. Palaan,* G.R. No. 34976, Aug. 15, 1931, unpublished, the killing of the paramour by the offended husband *one day* after the adultery was considered still proximate.

In the case of *People vs. Diokno,* 63 Phil. 601, the lapse of time between the grave offense (abducting the daughter of the accused by the deceased) and the vindication (killing of the deceased) was *two* or *three* days.

In this case, the Supreme Court said —

> "The presence of the fifth mitigating circumstance of Article 13 of the Revised Penal Code, that is, immediate vindication of a grave offense . . . may be taken into consideration in favor of the two accused, because although the elopement took place on January 4, 1935, and the aggression on the 7th of said month and year, the offense did not cease while (the abducted daughter's) whereabouts remained unknown and her marriage to the deceased unlegalized. Therefore, there was no interruption from the time the offense was committed to the vindication thereof. (The) accused belongs to a family of old customs to whom the elopement of a daughter with a man constitutes a grave offense to their honor and causes disturbance of the peace and tranquility of the home and at the same time spreads uneasiness and anxiety in the minds of the members thereof." (p. 608)

Interval of time negating vindication.

1. Approximately nine (9) months before the killing, the deceased boxed the accused several times in the face resulting in the conviction of the deceased for less serious physical injuries. He appealed, pending which the accused killed him. It cannot be said that the second incident was an immediate or a proximate vindication of the first. (People vs. Lumayag, No. L-19142, March 31, 1965, 13 SCRA 502, 507-508)

2. The deceased uttered the following remark at eleven o'clock in the morning in the presence of the accused and his officemates: "Nag-iistambay pala dito ang magnanakaw." or "Hindi ko alam

na itong Civil Service pala ay istambayan ng magnanakaw." At five o'clock in the afternoon of the same day, the accused killed the deceased. The mitigating circumstance of vindication of a grave offense does not avail. (People vs. Benito, No. L-32042, Dec. 17, 1976, 74 SCRA 271, 279, 282-283)

3. Where the accused heard the deceased say that the accused's daughter is a flirt, and the accused stabbed the victim two months later, the mitigating circumstance of immediate vindication of a grave offense cannot be considered in favor of accused because he had sufficient time to recover his serenity. The supposed vindication did not immediately or proximately follow the alleged insulting and provocative remarks. (People vs. Lopez, G.R. No. 136861, November 15, 2000)

Distinguish provocation from vindication.

1. In the case of provocation, it is made directly only to the person committing the felony; in vindication, the grave offense may be committed also against the offender's relatives mentioned by the law.

2. In vindication, the offended party must have done a *grave offense* to the offender or his relatives mentioned by the law; in provocation, the cause that brought about the provocation *need not* be a grave offense.

3. In provocation, it is necessary that the provocation or threat *immediately* preceded the act, *i.e.,* that there be no interval of time between the provocation and the commission of the crime; while in vindication, the vindication of the grave offense may be *proximate,* which admits of an interval of time between the grave offense done by the offended party and the commission of the crime by the accused.

Reason for the difference.

This greater leniency in the case of vindication is due undoubtedly to the fact that it *concerns the honor of a person,* an offense which is more worthy of consideration than mere *spite* against the one giving the provocation or threat.

Killing a relative is a grave offense.

It was most natural and logical for the appellant to have been enraged and obfuscated at the sight of his dead son and seized by

that feeling of hatred and rancour, to have stabbed indiscriminately the people around x x x.

On the other hand, the attenuating circumstance of immediate vindication of a grave offense—the stabbing of his son to death, or of having committed the crime upon an impulse so powerful as naturally to have produced passion or obfuscation, may be deemed to have attended the commission of the crime *alternatively*, because both mitigating circumstances cannot co-exist. (People vs. Doniego, 9 SCRA 541)

Basis to determine the gravity of offense in vindication.

The question whether or not a certain personal offense is grave must be decided by the court, having in mind the *social standing* of the person, the *place*, and the *time* when the insult was made. (See People vs. Ruiz, 93 SCRA 739, where the rule was applied.)

During a fiesta, an old man 70 years of age asked the deceased for some roast pig. In the presence of many guests, the deceased insulted the old man, saying: "There is no more. Come here and I will make roast pig of you." A little later, while the deceased was squatting down, the old man came up behind him and struck him on the head with an ax. *Held:* While it may be mere trifle to an average person, it evidently was a serious matter to an old man, to be made the butt of a joke in the presence of so many guests. The accused was given the benefit of the mitigating circumstance of vindication of a grave offense. (U.S. vs. Ampar, 37 Phil. 201)

In that case, the *age* of the accused and the *place* were considered in determining the gravity of the offense.

Considered grave offense:

1. Sarcastic remark implying that the accused was a petty tyrant.

   The offended party, a volunteer worker to repair an abandoned road, arrived in the afternoon when the work should have started in the morning. Inquired by the accused, the man in charge of the work, why he came late, the offended party retorted sarcastically: "Perhaps during the Spanish regime when one comes late, he is punished."

Infuriated at the reply, the accused fired his gun but did not hit the offended party. (People vs. Batiquin, C.A., 40 O.G. 987)

2. Remark of the injured party *before the guests* that accused lived at the expense of his wife. (People vs. Rosel, 66 Phil. 323) The place was taken into consideration in that case.

3. Taking into account that the American forces had just occupied Manila, it is not strange that the accused should have considered it then as a grave offense when the offended party said: "You are a Japanese spy." (People vs. Luna, 76 Phil. 101, 105)

The *time* was taken into consideration in that case.

4. If a person kills another for having found him in the act of committing an *attempt against his* (accused's) wife, he is entitled to the benefits of this circumstance of having acted in vindication of a grave offense against his and his wife's honor. (U.S. vs. Alcasid, 1 Phil. 86; See also U.S. vs. Davis, 11 Phil. 96, 99)

5. Where the injured party had insulted the father of the accused by contemptuously telling him: "Phse, ichura mong lalake" (Pshaw, you are but a shrimp), the accused who attacked the injured party acted in vindication of a grave offense to his father. (People vs. David, 60 Phil. 93, 97, 103)

The provocation should be proportionate to the damage caused by the act and adequate to stir one to its commission.

Aside from the fact that the provocation should immediately precede the commission of the offense, it should also be proportionate to the damage caused by the act and adequate to stir one to its commission. The remark attributed to the deceased that the daughter of the accused is a flirt does not warrant and justify the act of accused in slaying the victim. (People vs. Lopez, G.R. No. 136861, November 15, 2000)

Basis of paragraph 5.

The mitigating circumstance in paragraph 5 of Art. 13 is based on the diminution of the conditions of voluntariness.

Grave offense must be directed to the accused.

The supposed grave offense done by the victim was an alleged remark made in the presence of the accused that the Civil Service Commission is a hangout of thieves. The accused felt alluded to because he was facing then criminal and administrative charges on several counts involving his honesty and integrity.

The remark itself was general in nature and not specifically directed to the accused. If he felt alluded to by a remark which he personally considered insulting to him, that was his own individual reaction thereto. Other people in the vicinity who might have heard the remark could not have possibly known that the victim was insulting the accused unless they were aware of the background of the criminal and administrative charges involving moral turpitude pending against the accused. The remark cannot be considered a grave offense against the accused. (People vs. Benito, No. L-32042, Feb. 13, 1975, 62 SCRA 351, 355-356)

Vindication of a grave offense incompatible with passion or obfuscation.

Vindication of a grave offense and passion or obfuscation cannot be counted separately and independently. (People vs. Dagatan, 106 Phil. 88, 98)

Par. 6. — That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

This paragraph requires that —

1. **The accused acted upon an *impulse.***
2. **The impulse must be so *powerful* that it naturally produced passion or obfuscation in him.**

Why passion or obfuscation is mitigating.

When there are causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power. (U.S. vs. Salandanan, 1 Phil. 464, 465)

Rule for the application of this paragraph.

Passion or obfuscation may constitute a mitigating circumstance only when the same arose from *lawful sentiments.*

For this reason, even if there is actually passion or obfuscation on the part of the offender, there is no mitigating circumstance, when:

(1) The act is committed in a spirit of *lawlessness;* or

(2) The act is committed in a spirit of *revenge.*

Requisites of the mitigating circumstance of passion or obfuscation:

1. **That there be an act, both *unlawful* and *sufficient to produce* such a condition of mind; and**

2. **That said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity. (People vs. Alanguilang, 52 Phil. 663, 665, citing earlier cases; People vs. Ulita, 108 Phil. 730, 743; People vs. Gravino, Nos. L-31327-29, May 16, 1983, 122 SCRA 123, 134)**

The act of the offended party must be unlawful or unjust.

The crime committed by the accused must be provoked by *prior unjust* or *improper* acts of the injured party. (U.S. vs. Taylor, 6 Phil. 162, 163)

Thus, a *common-law wife,* who, having left the common home, refused to go home with the accused, *was acting within her rights,* and the accused (the common-law husband) had no legitimate right to compel her to go with him. The act of the deceased in refusing to go home with the accused, *while provocative,* nevertheless *was insufficient* to produce the passion and obfuscation that the law contemplates. (People vs. Quijano, C.A., 50 O.G. 5819)

But where the accused killed his *wife* on the occasion when she visited her aunt's husband, this mitigating circumstance was held to be applicable, having in mind the jealousy of the accused and her refusal to return to his house until after the arrival of her uncle. (U.S. vs. Ortencio, 38 Phil. 341, 344-345)

The mitigating circumstance of having acted under an impulse so powerful as to have produced passion and obfuscation should be considered in favor of the owner who, upon seeing the person who stole his carabao, shoots the supposed thief. (People vs. Ancheta, *et al,* C.A., 39 O.G. 1288)

The act of the deceased in creating trouble during the wake of the departed father of defendant-appellant scandalizes the mourners and offends the sensibilities of the grieving family. Considering that the trouble created by the deceased was both unlawful and sufficient to infuriate accused-appellant, his guilt is mitigated by passion or obfuscation. (People vs. Samonte, Jr., No. L-31225, June 11, 1975, 64 SCRA 319, 329-330)

The accused is entitled to the mitigating circumstance of passion or obfuscation where he hit the deceased upon seeing the latter box his 4-year-old son. The actuation of the accused arose from a natural instinct that impels a father to rush to the rescue of a beleaguered son, regardless of whether the latter be right or wrong. (People vs. Castro, No. L-38989, Oct. 29, 1982, 117 SCRA 1014, 1020)

Exercise of a right or fulfillment of duty is not proper source of passion or obfuscation.

The accused killed the deceased when the latter was about to take the carabao of the accused to the barrio lieutenant. *Held:* The action of the deceased in taking the carabao of the accused to him and demanding payment for the sugar cane destroyed by that carabao and in taking the carabao to the barrio lieutenant when the accused refused to pay, was perfectly legal and proper and constituted no reasonable cause for provocation to the accused. The finding that the accused acted upon an impulse so powerful as naturally to have produced passion or obfuscation was not justified, because the deceased was clearly *within his rights* in what he did. (People vs. Noynay, *et al.*,58 Phil. 393)

Since the mother of the child, killed by the accused, had the *perfect right* to reprimand the said accused for indecently converting the family's bedroom into a rendezvous of herself and her lover, the said accused cannot properly invoke the mitigating circumstance of passion or obfuscation to minimize her liability for the murder of the child. (People vs. Caliso, 58 Phil. 283)

Where the accused was making a disturbance on a public street and a policeman came to arrest him, the anger and indignation of the accused resulting from the arrest cannot be considered passion or obfuscation, because the policeman was performing a *lawful act.* (U.S. vs. Taylor, 6 Phil. 162)

The act must be sufficient to produce such a condition of mind.

If the cause of the loss of self-control was *trivial* and *slight,* as when the victim failed to work on the hacienda of which the accused was the overseer, or where the accused saw the injured party picking fruits from the tree claimed by the former, the obfuscation is not mitigating. (U.S. vs. Diaz, 15 Phil. 123; People vs. Bakil, C.A., 44 O.G. 102)

No passion or obfuscation after 24 hours, or several hours or half an hour.

There could have been no mitigating circumstance of passion or obfuscation when more than 24 hours elapsed between the alleged insult and the commission of the felony (People vs. Sarikala, 37 Phil. 486, 490), or if several hours passed between the cause of passion or obfuscation and the commission of the crime (People vs. Aguinaldo, 92 Phil. 583, 588), or where at least *halfan hour* intervened between the previous fight and subsequent killing of the deceased by the accused. (People vs. Matbagon, 60 Phil. 887, 890)

Although the fact that accused was subjected by the deceased to a treatment (being slapped and asked to kneel down) offensive to his dignity could give rise to the feeling of passion or obfuscation, the same cannot be treated as a mitigating circumstance where the killing took place one month and five days later. (People vs. Mojica, No. L-30742, April 30, 1976, 70 SCRA 502, 509)

It is error to consider for the accused, passion or obfuscation, where the newspaper articles written by the victim assailing the former's official integrity have been published for an appreciable period long enough for pause and reflection. (People vs. Pareja, No. L-21937, Nov. 29, 1969, 30 SCRA 693, 716-717)

The circumstance is unavailing where the killing took place four days after the stabbing of the accused's kin. (People vs. Constantino, No. L-23558, Aug. 10, 1967, 20 SCRA 940, 949)

The reason for these rulings is that the act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have recovered his normal equanimity.

The defense must prove that the act which produced passion or obfuscation took place at a time not far removed from the commission of the crime.

The accused claimed that he had not been regularly paid his wages by the victims who, he claimed further, used to scold him and beat him; but he failed to prove that those acts which produced passion and obfuscation in him took place at a time not far removed from the commission of the crime which would justify an inference that after his passion had been aroused, he had no time to reflect and cool off. Mitigation does not avail him. (People vs. Gervacio, No. L-21965, August 30, 1968, 24 SCRA 960, 977)

For the circumstance to exist, it is necessary that the act which gave rise to the obfuscation be not removed from the commission of the offense by a considerable length of time, during which period the perpetrator might recover his normal equanimity. (People vs. Layson, No. L-25177, Oct. 31, 1969, 30 SCRA 92, 95-96)

The crime committed must be the result of a sudden impulse of natural and uncontrollable fury.

Obfuscation cannot be mitigating in a crime which was *planned* and *calmly* meditated or if the impulse upon which the accused acted was *deliberately fomented* by him for a considerable period of time. (People vs. Daos, 60 Phil. 143, 155; People vs. Hernandez, 43 Phil. 104, 111)

The circumstance of passion and obfuscation cannot be mitigating in a crime which is planned and calmly meditated before its execution. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 79 SCRA 570, 575)

There is neither passion and obfuscation nor proximate vindication of a grave offense where the killing of the decedent was made *four days* after the stabbing of the appellant's kin. Moreover, vengeance is not a lawful sentiment. (People vs. Constantino, *et al.*, G.R. No. L-23558, August 10, 1967)

Passion or obfuscation must arise from lawful sentiments.

1. *The case of U.S. vs. Hicks, 14 Phil. 217.*

Facts: For about 5 years, the accused and the deceased lived *illicitly* in the manner of husband and wife. Afterwards, the deceased separated from the accused and lived with another man. The accused enraged by such conduct, killed the deceased.

Held: Even if it is true that the accused acted with obfuscation because of jealousy, the mitigating circumstance cannot be considered in his favor because the causes which mitigate criminal responsibility for the loss of self-control are such which originate from *legitimate feelings,* and not those which arise from *vicious, unworthy* and *immoral passions.*

2. But the ruling in the case of *Hicks* should be distinguished from the case where the accused, in the heat of passion, killed his common-law wife upon discovering her *in flagrante* in carnal communication with a common acquaintance. It was held in such a case that the accused was entitled to the mitigating circumstance of passion or obfuscation, because the impulse was caused by the sudden revelation that she was untrue to him, and his discovery of her *in flagrante* in the arms of another. (U.S. vs. De la Cruz, 22 Phil. 429) In *U.S. vs. Hicks,* the cause of passion and obfuscation of the accused was his vexation, disappointment and anger engendered by the refusal of the woman to continue to live in illicit relations with him, which she had a perfect right to do.

The act of the deceased in refusing to go home with the appellant, while provocative, nevertheless was insufficient to produce such passion or obfuscation in the latter as would entitle him to the benefits of that mitigating circumstance. Not being a legitimate husband of the deceased, the appellant had no legitimate right to compel her to go with him. The deceased was acting within her rights. The obfuscation which the appellant allegedly possessed him, granting that he in fact had that feeling, did not originate from a legitimate cause. (People vs. Quijano, C.A., 50 O.G. 5819)

3. *The case of People vs. Engay, (C.A.) 47 O.G. 4306.*

Facts: The accused, as common-law wife, lived with the deceased for 15 years, whose house she helped support. Later, the deceased married another woman. The accused killed him.

Held: Although it was held in the *Hicks* case that "the causes which produce in the mind loss of reason and self-control and which lessen criminal responsibility are those which originate from lawful sentiments, not those which arise from vicious, unworthy and immoral passions," yet such is not the case here where the fact that the accused lived for 15 long years as the real wife of the deceased, whose house she helped to support, could not but arouse that *natural feeling of despair* in the woman *who saw her life broken and found herself abandoned* by the very man whom she considered for so long a time as her husband and *for whom she had made so many sacrifices*.The mitigating circumstance of passion or obfuscation was considered in favor of the accused.

4. Marciano Martin and Beatriz Yuman, without being joined in lawful wedlock, lived as husband and wife for three or four years until Marciano left their common dwelling. Beatriz stabbed him with a pen-knife. When asked why she wounded Marciano, she replied that Marciano "after having taken advantage of her" abandoned her. It was held that the mitigating circumstance of obfuscation should be taken into consideration in favor of the accused, in view of the peculiar circumstances of the case and the harsh treatment which the deceased gave her a short time before she stabbed him. (People vs. Yuman, 61 Phil. 786)

5. The defense submits that the accused is entitled to the mitigating circumstance of having acted on a provocation sufficiently strong to cause passion and obfuscation, because the deceased's flat rejection of the entreaties of the accused for her to quit her calling as a hostess and return to their former relation, aggravated by her sneering statement that the accused was penniless and invalid, provoked the

accused into losing his head and stabbing the deceased. It appears that the accused had previously reproved the deceased for allowing herself to be caressed by a stranger. Her loose conduct was forcibly driven home to the accused by the remark of one Marasigan on the very day of the crime that the accused was the husband "whose wife was being used by one Maring for purposes of prostitution," a remark that so deeply wounded the feelings of the accused that he was driven to consume a large amount of wine before visiting Alicia (deceased) to plead with her to leave her work. Alicia's insulting refusal to renew her liaison with the accused, therefore, was not motivated by any desire to lead a chaste life henceforth, but showed her determination to pursue a lucrative profession that permitted her to distribute her favors indiscriminately. It was held that the accused's insistence that she live with him again, and his rage at her rejection of the proposal cannot be properly qualified as arising from immoral and unworthy passions. Even without benefit of wedlock, a monogamous liaison appears morally of a higher level than gainful promiscuity. (People vs. Bello, No. L-18792, Feb. 28, 1964, 10 SCRA 298, 302-303)

6. Passion or obfuscation must originate from lawful sentiments, not from the fact that, for example, the girl's sweetheart killed the girl's father and brother because the girl's parents objected to their getting married and the girl consequently broke off their relationship. Such an act is actuated more by a spirit of lawlessness and revenge rather than any sudden and legitimate impulse of natural and uncontrollable fury. (People vs. Gravino, Nos. L-31327-29, May 16, 1983, 122 SCRA 123, 133, 134)

In spirit of lawlessness.

The accused who raped a woman is not entitled to the mitigating circumstance of "having acted upon an impulse so powerful as naturally to have produced passion" just because he finds himself in a secluded place with that young ravishing woman, almost naked, and therefore, "liable to succumb to the uncontrollable passion of his bestial instinct." (People vs. Sanico, C.A., 46 O.G. 98)

In a spirit of revenge.

A woman taking care of a 9-month-old child, poisoned the child with acid. She did it, because sometime before the killing of the child, the mother of the child, having surprised her (accused) with a man on the bed of the master, had scolded her. She invoked the mitigating circumstance of passion or obfuscation resulting from that scolding by the mother of the child. *Held:* She cannot be credited with such mitigating circumstance. She was actuated more by spirit of lawlessness and revenge than by any sudden impulse of natural and uncontrollable fury. (People vs. Caliso, 58 Phil. 283, 295)

Passion and obfuscation may not be properly appreciated in favor of appellant. To be considered as a mitigating circumstance, passion or obfuscation must arise from lawful sentiments and not from a spirit of lawlessness or revenge or from anger and resentment. In the present case, clearly, Marcelo was infuriated upon seeing his brother, Carlito, shot by Jose. However, a distinction must be made between the first time that Marcelo hacked Jose and the second time that the former hacked the latter. When Marcelo hacked Jose right after seeing the latter shoot at Carlito, and if appellant refrained from doing anything else after than, he could have validly invoked the mitigating circumstance of passion and obfuscation. But when, upon seeing his brother Carlito dead, Marcelo went back to Jose, who by then was already prostrate on the ground and hardly moving, hacking Jose again was a clear case of someone acting out of anger in the spirit of revenge. (People vs. Bates, G.R. No. 139907, March 28, 2003)

The offender must act under the impulse of special motives.

Excitement is the natural feeling of all persons *engaged in a fight,* especially those who had received a beating, and the impulse in that state is not considered in law so powerful as to produce obfuscation sufficient to mitigate liability. (People vs. De Guia, C.A., 36 O.G. 1151)

Two individuals had been wrestling together and after being separated, one of them followed up the other and wounded him with a knife as he was entering a vehicle. *Held:* The aggressor cannot claim in his favor that the previous struggle produced in him entire loss of reason or self-control, for the existence of such excitement as

is inherent in all who quarrel and come to blows does not constitute a mitigating circumstance. The guilty party must have acted under the impulse of special motives. (U.S. vs. Herrera, 13 Phil. 583; U.S. vs. Fitzgerald, 2 Phil. 419)

But the ruling is different in the following case:

While the Attorney-General hesitates to accept the conclusion of the lower court with reference to the attenuating circumstances of unjust provocation and *arrebato y obcecacion,* we are inclined to accept that theory. The record discloses that each used very insulting language concerning the other and that they must have been very greatly excited as a result of the quarrel, or otherwise the other people present would not have intervened. The acts complained of were committed by the defendant soon after the quarrel had taken place. (People vs. Flores, 50 Phil. 548)

Illustration of impulse of special motives.

The accused killed P, because the latter did not deliver the letter of F to A, on which (letter) the accused had pinned his hopes of settling the case against him amicably. The failure of P to deliver the letter is a prior *unjust* and *improper* act sufficient to produce great excitement and passion in the accused as to confuse his reason and impel him to kill P. It was a legitimate and natural cause of indignation and anger. (People vs. Mil, 92 SCRA 89)

Obfuscation arising from jealousy.

The mitigating circumstance of obfuscation arising from jealousy cannot be invoked in favor of the accused whose relationship with the woman (his common-law wife) was illegitimate. (People vs. Salazar, 105 Phil. 1058, citing U.S. vs. Hicks, 14 Phil. 217; People vs. Olgado, *et al.*, L-4406, March 31, 1952)

Where the killing of the deceased by the accused arose out of rivalry for the hand of a woman, passion or obfuscation is mitigating.

The feeling of resentment resulting from rivalry in amorous relations with a woman is a powerful instigator of jealousy and prone to produce anger and obfuscation. (People vs. Marasigan, 70 Phil. 583; People vs. Macabangon, 63 Phil. 1062)

In an early case, it was held that the loss of reason and self-control due to jealousy between rival lovers was not mitigating. (U.S. vs. De la Peña, 12 Phil. 698)

Obfuscation — when relationship is illegitimate — not mitigating.

The relations of the accused with Rosario Rianzales were illegitimate. The injured party made indecent propositions to her which provoked the accused. The accused attacked the injured party. The obfuscation of the accused is not mitigating, because his relations with Rosario Rianzales were illegitimate. (People vs. Olgado, *et al.*, G.R. No. L-4406, March 31, 1952)

The cause producing passion or obfuscation must come from the offended party.

The two sons, believing that S would inflict other wounds upon their father, who was already wounded, in defense of their father, immediately killed S. Under this great excitement, the two sons also proceeded to attack and did kill C who was near the scene at the time.

Held: Since C had taken no part in the quarrel and had not in any manner provoked the sons, passion or obfuscation cannot mitigate their liability with respect to the killing of C. This extenuating circumstance is applied to reduce the penalty in cases where the *provocation which caused the heated passion* was made by the *injured party.* (U.S. vs. Esmedia, *et al.*,17 Phil. 260)

Where passion or obfuscation of the accused is not caused by the offended party but by the latter's relatives who mauled the wife of the accused, the same may not be considered as a mitigating circumstance in his favor. (People vs. Lao, C.A., 64 O.G. 7873)

May passion or obfuscation lawfully arise from causes existing only in the honest belief of the offender?

Yes.

(1) Thus, the *belief of* the defendant that the deceased had caused his dismissal from his employment is sufficient to confuse his reason and impel him to commit the crime. (U.S. vs. Ferrer, 1 Phil. 56, 62)

(2) It has also been held that the *belief* entertained *in good faith* by the defendants that the deceased cast upon their mother a spell of witchcraft which was the cause of her serious illness, is so powerful a motive as to naturally produce passion or obfuscation. (U.S. vs. Macalintal, 2 Phil. 448, 451; People vs. Zapata, 107 Phil. 103, 109)

(3) One of the accused, a self-anointed representative of God who claims supernatural powers, demanded of the deceased to kiss and awake her dead sister who, she said, was merely asleep. The deceased, an old lady, refused. The accused thought that the deceased had become a devil. Then she commanded her companions to surround the deceased and pray to drive the evil spirits away, but, allegedly without success. The accused barked an order to beat the victim to death as she had turned into Satan or Lucifer. *Held:* The accused and her sisters are entitled to the mitigating circumstance of passion or obfuscation. Her order to kiss and awake her sister was challenged by the victim. This generated a false belief in the minds of the three sisters that in the victim's person resided the evil spirit — Satan or Lucifer. And this triggered "an impulse so powerful as naturally to have produced passion or obfuscation." (People vs. Torres, 3 CAR [2s] 43, 56, 57)

Basis of paragraph 6.

Passion or obfuscation is a mitigating circumstance because the offender who acts with passion or obfuscation suffers a *diminution* of his intelligence and intent.

Provocation and obfuscation arising from one and the same cause should be treated as only one mitigating circumstance.

Since the alleged provocation which caused the obfuscation of the appellants arose from the same incident, that is, the alleged maltreatment and/or ill-treatment of the appellants by the deceased, those two mitigating circumstances cannot be considered as two distinct and separate circumstances but should be treated as one. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 79 SCRA 570, 575)

Thus, where the accused killed his wife during a quarrel, because he, who had no work, resented her suggestion to join her brother in

the business of cutting logs, the court erred in considering in favor of the accused the two mitigating circumstances of provocation and obfuscation.

Vindication of grave offense cannot co-exist with passion and obfuscation.

In the case of *People vs. Yaon,* C.A., 43 O.G. 4142, it was held that if the accused assailed his victim in the proximate vindication of a grave offense, he cannot successfully allege that he was also, in the same breath, blinded by passion and obfuscation, because these two mitigating circumstances cannot both exist and be based on one and the same fact or motive. At most, only one of them could be considered in favor of the appellant, but not both simultaneously. Viada, citing more than one dozen cases, says that it is the constant doctrine of the Spanish Supreme Court that *one single fact cannot be made the basis of different modifying circumstances.*

Exception — When there are other facts, although closely connected.

But where there are other facts, although closely connected with the fact upon which one circumstance is premised, the other circumstance may be appreciated as based on the other fact. (People vs. Diokno, 63 Phil. 601)

Thus, where the deceased, a Chinaman, had eloped with the daughter of the accused, and later when the deceased saw the accused coming, the deceased ran upstairs in his house, there are two facts which are closely connected, namely: (1) elopement, which is a grave offense to a family of old customs, and (2) refusal to deal with him, a stimulus strong enough to produce in his mind a fit of passion. Two mitigating circumstances of (1) vindication, and (2) passion were considered in favor of the accused. The mitigating circumstance of vindication of a grave offense was based on the fact of elopement and that of passion on the fact that the deceased, instead of meeting him and asking for forgiveness, ran away from the accused.

Passion or obfuscation compatible with lack of intention to commit so grave a wrong.

So, it has been held in *People vs. Cabel*,5 CAR [2s] 507, 515.

Passion or obfuscation incompatible with treachery.

Passion or obfuscation cannot co-exist with treachery, for while in the mitigating circumstance of passion or obfuscation the offender loses his reason and self-control, in the aggravating circumstance of treachery, the mode of attack must be consciously adopted. One who loses his reason and self-control cannot deliberately employ a particular means, method or form of attack in the execution of a crime. (People vs. Wong, 18 CAR [2s] 934, 940-941)

Vindication or obfuscation cannot be considered when the person attacked is not the one who gave cause therefor.

Vindication and obfuscation cannot be considered, not only because the elopement of Lucila Dagatan with Eleuterio Yara and her abandonment by the latter *took place long before the commission of the crime,* but also because the deceased *was not the one* who eloped with and abandoned her. (People vs. Dagatan, *et al.*, 106 Phil. 88)

Passion and obfuscation cannot co-exist with evident premeditation.

The aggravating circumstance of evident premeditation cannot co-exist with the circumstance of passion and obfuscation. The essence of premeditation is that the execution of the criminal act must be preceded by calm thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficent to arrive at a composed judgment. (People vs. Pagal, *et. al.*, G.R. No. L-32040, Oct. 25, 1977)

Passion or obfuscation distinguished from irresistible force.

1. **While passion or obfuscation is a mitigating circumstance, irresistible force is an exempting circumstance.**
2. **Passion or obfuscation cannot give rise to an irresistible force because irresistible force requires physical force.**
3. **Passion or obfuscation, is in the offender himself, while irresistible force must come from a third person.**
4. **Passion or obfuscation must arise from lawful sentiments; whereas, the irresistible force is unlawful.**

Passion or obfuscation distinguished from provocation.

1. Provocation comes from the injured party; passion or obfuscation is produced by an impulse which may be caused by provocation.
2. Provocation must immediately precede the commission of the crime; in passion or obfuscation, the offense which engenders perturbation of mind need not be immediate. It is only required that the influence thereof lasts until the moment the crime is committed.
3. In both, the effect is the loss of reason and self-control on the part of the offender.

Par. 7. — That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

Two mitigating circumstances are provided in this paragraph.

1. Voluntary surrender to a person in authority or his agents.
2. Voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution.

Although these circumstances are considered mitigating in the same subsection of Article 13, when both are present, they should have the effect of mitigating as two independent circumstances. If any of them must mitigate the penalty to a certain extent, when both are present, they should produce this effect to a greater extent. (People vs. Fontabla, 61 Phil. 589, 590)

Requisites of voluntary surrender.

a. That the offender had *not been actually arrested.*
b. That the offender surrendered himself to a *person in authority or to the latter's agent.*
c. That the surrender was voluntary. (Estacio vs. Sandiganbayan, G.R. No. 75362, March 6, 1990, 183 SCRA 12, 24,

citing People vs. Canamo, 138 SCRA 141, 145 and People vs. Hanasan, No. L-25989, Sept. 30, 1969, 29 SCRA 534, 541-542)

Requisite of voluntariness.

For voluntary surrender to be appreciated, the same must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture. (People vs. Gervacio, No. L-21965, Aug. 30, 1968, 24 SCRA 960, 977, citing People vs. Sakam, 61 Phil. 27)

Merely requesting a policeman to accompany the accused to the police headquarters is not equivalent to the requirement that he "voluntarily surrendered himself to a person in authority or his agents." The accused must actually surrender his own person to the authorities, admitting complicity in the crime. His conduct, after the commission of the crime, must indicate a desire on his part to own the responsibility for the crime. (People vs. Flores, 21 CAR [2s] 417, 424-425)

Cases of voluntary surrender.

1. The accused, after plunging a bolo into the victim's chest, ran toward the municipal building. Upon seeing a patrolman, he immediately threw away his bolo, raised his two hands, offered no resistance and said to the patrolman "here is my bolo, I stabbed the victim." There was intent or desire to surrender voluntarily to the authorities. (People vs. Tenorio, No. L-15478, March 30, 1962, 4 SCRA 700, 703)

2. After the commission of the crime, the accused fled to a hotel to hide not from the police authorities but from the companions of the deceased who pursued him to the hotel but could not get to him because the door was closed after the accused had entered. Once in the hotel, the accused dropped his weapon at the door and when the policemen came to investigate, he readily admitted ownership of the weapon and then voluntarily went with them. He was

investigated by the fiscal the following day. No warrant had been issued for his arrest. The accused was granted the benefit of the mitigating circumstance of voluntary surrender. (People vs. Dayrit, 108 Phil. 100, 103)

3. Immediately after the shooting, the accused having all the opportunity to escape, did not do so but instead called up the police department. When the policemen went to the scene of the crime to investigate, he voluntarily approached them and without revealing his identity, told them that he would help in connection with the case as he knew the suspect and the latter's motive. When brought to the police station immediately thereafter as a possible witness, he confided to the investigators that he was voluntarily surrendering and also surrendering the fatal gun used in the shooting of the victim. These acts of the accused were held strongly indicative of his intent or desire to surrender voluntarily to the authorities. (People vs. Benito, No. L-32042, Feb. 13, 1975, 62 SCRA 351, 355)

4. The two accused left the scene of the crime but made several attempts to surrender to various local officials which somehow did not materialize for one reason or another. It was already a week after when they were finally able to surrender. Voluntary surrender avails. After committing the crime, the accused defied no law or agent of the authority, and when they surrendered, they did so with meekness and repentance. (People vs. Magpantay, No. L-19133, Nov. 27, 1964, 12 SCRA 389, 392, 393)

5. Tempered justice suggests that appellants be credited with voluntary surrender in mitigation. That they had no opportunity to surrender because the peace officers came, should not be charged against them. For one thing is certain—they yielded their weapons at the time. Not only that. They voluntarily went with the peace officers to the municipal building. These acts, in legal effect, amount to voluntary surrender. (People vs. Torres, 3 CAR [2s] 43, 57, citing earlier cases)

6. The accused did not offer any resistance nor try to hide when a policeman ordered him to come down his house.

He even brought his bolo used to commit the crime and voluntarily gave himself up to the authorities before he could be arrested. These circumstances are sufficient to consider the mitigating circumstance of voluntary surrender in his favor. (People vs. Radomes, No. L-68421, March 20, 1986, 141 SCRA 548, 562)

7. All that the records reveal is that the accused trooped to the police headquarters to surrender the firearm used in committing the crime. It is not clear whether or not he also sought to submit his very person to the authorities. The accused is given the benefit of the doubt and his arrival at the police station is considered as an act of surrender. (People vs. Jereza, G.R. No. 86230, Sept. 18, 1990, 189 SCRA 690, 698-699)

8. Where there is nothing on record to show that the warrant for the arrest of the accused had actually been served on him, or that it had been returned unserved for failure of the server to locate said accused, and there is direct evidence to show that he voluntarily presented himself to the police when he was taken into custody. (People vs. Braña, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 316-317)

Cases not constituting voluntary surrender.

1. The warrant of arrest showed that the accused was *in fact* arrested. (El Pueblo contra Conwi, 71 Phil. 595, 597)

2. The accused surrendered only after the warrant of arrest was served upon him. (People vs. Roldan, No. L-22030, May 29, 1968, 23 SCRA 907, 910)

3. Where the accused was actually arrested by his own admission or that he yielded because of the warrant of arrest, there is no voluntary surrender although the police blotter euphemistically used the word "surrender." (People vs. Velez, No. L-30038, July 18, 1974, 58 SCRA 21, 30)

4. The accused went into hiding and surrendered only when they realized that the forces of the law were closing in on them. (People vs. Mationg, No. L-33488, March 29, 1982, 113 SCRA 167, 178)

5. Where the accused were asked to surrender by the police and military authorities but they refused until only much later when they could no longer do otherwise by force of circumstances when they knew they were completely surrounded and there was no chance of escape. Their surrender was not spontaneous as it was motivated more by an intent to insure their safety. (People vs. Salvilla, G.R. No. 86163, April 26, 1990, 184 SCRA 671, 678-679; People vs. Sigayan, No. L-18308, April 30, 1966, 16 SCRA 834, 844)

6. Where the search for the accused had lasted four (4) years, which belies the spontaneity of the surrender. (People vs. De la Cruz, No. L-30059, Dec. 19, 1970, 36 SCRA 452, 455)

7. Where other than the accused's version in court that he went to a police officer in Dagupan City and asked the latter to accompany him to Olongapo City after he was told by someone that his picture was seen posted in the municipal building, no other evidence was presented to establish indubitably that he deliberately surrendered to the police. (People vs. Garcia, No. L-32071, July 9, 1981, 105 SCRA 325, 343)

8. Where the accused only went to the police station to report that his wife was stabbed by another person and to seek protection as he feared that the same assailant would also stab him. (People vs. Trigo, G.R. No. 74515, June 14, 1989, 174 SCRA 93, 99)

9. Where the accused went to the PC headquarters not to surrender but merely to report the incident which does not evince any desire to own the responsibility for the killing of the deceased. (People vs. Rogales, No. L-17531, Nov. 30, 1962, 6 SCRA 830, 835)

10. Where the Chief of Police placed the accused under arrest in his employer's home to which that officer was summoned and it does not appear that it was the idea of the accused to send for the police for the purpose of giving himself up. (People vs. Canoy, 90 Phil. 633, 643)

11. Where the accused accompanied the Chief of Police to the scene of the crimes and he was not yet charged with, or

suspected of having taken any part in, said crimes, and the authorities were not looking for him, and would not have looked for him if he had not been present at the investigation by the Chief of Police. (People vs. Canoy, 90 Phil. 633, 644)

Where the accused was arrested in his boarding house and upon being caught, pretended to say that he was on his way to the municipal building to surrender to the authorities, for that is not the nature of voluntary surrender that may serve to mitigate one's liability in contemplation of law. (People vs. Rubinal, 110 Phil. 119, 127)

Not mitigating when defendant was in fact arrested.

There was no voluntary surrender if the warrant of arrest showed that the defendant was *in fact* arrested. (People vs. Conwi, 71 Phil. 595)

But where a person, after committing the offense and having opportunity to escape, voluntarily waited for the agents of the authorities and voluntarily gave himself up, he is entitled to the benefit of this circumstance, even if he was placed under arrest by a policeman then and there. (People vs. Parana, 64 Phil. 331)

And when the accused *helped in carrying his victim to the hospital* where he was disarmed and arrested, it is tantamount to *voluntary surrender.* (People vs. Babiera, C.A., 45 O.G., Supp. 5, 311)

The facts of *Conwi* case, *supra,* should be distinguished from the facts of the cases of *People vs. Parana* and *People vs. Babiera, supra,* where the arrest of the offender was *after his* voluntary surrender or *after* his doing an act amounting to a voluntary surrender to the agent of a person in authority.

The accused who ran to the municipal building after the commission of the crime had the intention or desire to surrender.

If the accused wanted to run away or escape, he would not have run to the municipal building. The fact that on seeing a patrolman, the accused threw away his bolo, raised his two hands, and admitted having stabbed the injured party, is indicative of his intent or desire to surrender voluntarily to the authorities. (People vs. Tenorio, G.R. No. L-15478, March 30, 1962)

The accused who fled and hid himself to avoid reprisals from the companions of the deceased, but upon meeting a policeman voluntarily went with him to the jail, is entitled to the benefit of the mitigating circumstance of voluntary surrender.

Thus, when the accused, after the commission of the crime, fled to the Imperial Hotel for security purposes, as there was no policeman around and the companions of the deceased were pursuing him to that place, and once inside he hid himself there, his going voluntarily to the jail with the policeman who had gone to the hotel to investigate the incident, was held to be a mitigating circumstance. (People vs. Dayrit, G.R. No. L-14388, May 20, 1960)

When the accused surrendered only after the warrant of arrest had been served upon him, it is not mitigating.

It appears that appellant surrendered only after the warrant of arrest was served upon him, which cannot be considered as a "voluntary surrender." (People vs. Roldan, G.R. No. L-22030, May 29, 1968)

When the warrant of arrest had not been served or not returned unserved because the accused cannot be located, the surrender is mitigating.

While it is true that the warrant for the arrest of the accused was dated March 7, 1967, and the police authorities were able to take custody of the accused only on March 31, 1967, there is nothing in the record to show that the warrant had actually been served on him, or that it had been returned unserved for failure of the server to locate said accused. Upon the other hand, there is direct evidence that the accused voluntarily presented himself to the police on March 31, 1967. And the fact that it was effected sometime after the warrant of arrest had been issued does not in the least detract from the voluntary character of the surrender in the absence of proof to the contrary. (People vs. Braña, 30 SCRA 308)

The law does not require that the surrender be prior to the order of arrest.

In *People vs. Yeda,* 68 Phil. 740 [1939] and *People vs. Turalba,* G.R. No. L-29118, Feb. 28, 1974, it was held that when after the

commission of the crime and the issuance of the warrant of arrest, the accused presented himself in the municipal building to post the bond for his temporary release, voluntary surrender is mitigating. The fact that the order of arrest had already been issued is no bar to the consideration of the circumstance because the law does not require that the surrender be prior to the order of arrest. (Rivera vs. Court of Appeals, G.R. No. 125867, May 31, 2000)

"Voluntarily surrendered himself."

After the incident, the accused reported it to the councilor; that he stayed in the councilor's place for about an hour; and that thereafter he went to the chief of police to whom he related what had happened between him and the injured party and surrendered the bolo — not his person — to said chief of police.

Held: The foregoing facts do not constitute voluntary surrender. The law requires that the offender must have "voluntarily surrendered *himself* to a person in authority or his agents." (People vs. Jose de Ramos, CA-G.R. No. 15010-R, April 26, 1956)

Surrender of weapons cannot be equated with voluntary surrender. (People vs. Verges, No. L-36882-84, July 24, 1981, 105 SCRA 744, 756)

Where the accused merely surrendered the gun used in the killing, *without surrendering his own person* to the authorities, such act of the accused does not constitute voluntary surrender. (People vs. Palo, 101 Phil. 963, 968)

The fact that the accused did not escape or go into hiding after the commission of the murder and in fact he accompanied the chief of police to the scene of the crime without however *surrendering* to him and *admitting complicity* in the killing did not amount to voluntary surrender to the authorities and this circumstance would not be extenuating in that case. (People vs. Canoy, 90 Phil. 633; People vs. Rubinal, G.R. No. L-12275, Nov. 29, 1960)

Appellant did not go to the PC headquarters after the shooting to surrender but merely to report the incident. Indeed, he never evinced any desire to own the responsibility for the killing of the deceased. (People vs. Rogales, 6 SCRA 830)

The surrender must be made to a person in authority or his agent.

A "person in authority" is one directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws whether as an individual or as a member of some court or governmental corporation, board or commission. A barrio captain and a barangay chairman are also persons in authority. (Art. 152, RPC, as amended by P.D. No. 299)

An "agent of a person in authority" is a person, who, by direct provision of the law, or by election or by appointment by competent authority, is charged with the *maintenance of public order* and the *protection and security of life and property* and any person who comes to the aid of persons in authority. (Art. 152, as amended by Rep. Act No. 1978)

Voluntary surrender to commanding officer of the accused is mitigating, because the commanding officer is an agent of a person in authority.

Voluntary surrender to the chief clerk of a district engineer is not mitigating, because such chief clerk is neither a person in authority nor his agent.

An accused who surrendered first to the Justice of the Peace (now Municipal Court), with whom he posted a bond, and then to the Constabulary headquarters of the province, is entitled to the mitigation of voluntary surrender. (People vs. Casalme, No. L-18033, July 26, 1966, 17 SCRA 717, 720-721)

Voluntary surrender does not simply mean non-flight.

Voluntary surrender does not simply mean non-flight. As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of an accused before his arrest, showing either acknowledgment of his guilt or an intention to save the authorities from the trouble and expense that his search and capture would require. (Quial vs. Court of Appeals, No. L-63564, Nov. 28, 1983, 126 SCRA 28, 30; People vs. Radomes, No. L-68421, March 20, 1986, 141 SCRA 548, 560)

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of police to the scene of the crime without however *surrendering* to him and *admitting complicity* in the killing did not amount to voluntary surrender to the authorities and this circumstance would not be extenuating in that case. (People vs. Canoy and People vs. Rubinal, *supra)*

Time and place of surrender.

The Revised Penal Code does not make any distinction among the various moments when the surrender may occur.

Five days after the commission of the crime of homicide and two days after the issuance of the order for his arrest, the accused presented himself in the municipal building to post the bond for his temporary release.

Held: This is a voluntary surrender constituting a mitigating circumstance. The law does not require that the surrender be prior to the issuance of the order of arrest. Moreover, the surrender of the accused to post a bond for his temporary release was in obedience to the order of arrest and was tantamount to the delivery of his person to the authorities to answer for the crime for which his arrest was ordered. (People vs. Yecla, 68 Phil. 740, 741; People vs. Braña, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 316-317; People vs. Turalba, No. L-29118, Feb. 28, 1974, 55 SCRA 697, 704-705)

Note: In these cases, there is nothing in the record to show that the warrant had actually been served on the accused, or that it had been returned unserved for failure of the server to locate the accused. The implication is that if the accused cannot be located by the server of the warrant, the ruling should be different.

In the case of *People vs. Coronel,* G.R. No. L-19091, June 30, 1966, the accused committed robbery with homicide on September 7, 1947, and surrendered on June 2, 1954. It was held that the surrender was voluntary and a mitigating circumstance.

But if the appellants surrendered because, after having been fugitives from justice for more than 7 years, they found it impossible to live in hostility and resistance to the authorities, martial law having been declared, the surrender was not spontaneous. (People vs. Sabater, 81 SCRA 564)

Likewise, an accused was held entitled to the mitigating circumstance of voluntary surrender where it appeared that he posted the bond for his provisional liberty eighteen days after the commission of the crime and fourteen and sixteen days, respectively, after the first and second warrants for his arrest were issued, the court declaring that the fact that the warrant for his arrest had already been issued is no bar to the consideration of this mitigating circumstance because the law does not require that the surrender be prior to the order of arrest. (People vs. Valera, *et al.*, L-15662, Aug. 30, 1962) By parity of reasoning, therefore, appellant Maximo Diva's voluntary surrender to the chief of police of the municipality of Poro should be considered to mitigate his criminal liability because the law does not require him to surrender to the authorities of the municipality of San Francisco where the offense was committed. (People vs. Diva, *et al.*, 23 SCRA 332)

In a homicide case where after the killing of the deceased which took place in Janiuay, Iloilo, the two accused *fled*, took refuge in the house of a lawyer, and surrendered to the constabulary in Iloilo City, *after passing three municipalities*, it was held that there was voluntary surrender. (People vs. Cogulio, C.A., 54 O.G. 5516)

The surrender must be by reason of the commission of the crime for which defendant is prosecuted.

Defendant cannot claim the circumstance of voluntary surrender because he did not surrender to the authority or its agents *by reason of the commission of the crime for which he was prosecuted,* but for being a Huk who wanted to come within the pale of the law. (People vs. Semañada, etc., G.R. No. L-11361, May 26, 1958)

Thus, if the defendant surrendered as a Huk to take advantage of the amnesty, but the crime for which he was prosecuted was distinct and separate from rebellion, his surrender is not mitigating.

Surrender through an intermediary.

The accused surrendered through the mediation of his father before any warrant of arrest had been issued. His surrender was appreciated as mitigating. (People vs. De la Cruz, No. L-45485, Sept. 19, 1978, 85 SCRA 285, 292)

When is surrender voluntary?

A surrender to be voluntary must be *spontaneous,* showing the intent of the accused to submit himself unconditionally to the authorities, either (1) because he *acknowledges* his guilt, or (2) because *he wishes* to save them the trouble and expenses necessarily incurred in his search and capture. (Quoted in People vs. Lagrana, No. L-68790, Jan. 23, 1987, 147 SCRA 281, 285)

If none of these two reasons impelled the accused to surrender, because his surrender was obviously motivated more by an intention to insure his safety, his arrest being inevitable, the surrender is not spontaneous and therefore not voluntary. (People vs. Laurel, C.A., 59 O.G. 7618)

The surrender must be spontaneous.

The word "spontaneous" emphasizes the idea of an inner impulse, acting without external stimulus. The conduct of the accused, not his intention alone, after the commission of the offense, determines the spontaneity of the surrender.

The circumstances surrounding the surrender of Simplicio Gervacio do not meet this standard, because immediately after the commission of the robbery-slaying attributed to him and Atanacio Mocorro, they fled together to the province of Leyte which necessitated the authorities of Quezon City to go to the place and search for them. In fact, Simplicio Gervacio surrendered to the Mayor of Biliran twelve days after the commission of the crime, and only after Luzviminda had been discovered in a far away sitio which led to the arrest of Atanacio Mocorro. (People vs. Gervacio, No. L-21965, August 30, 1968, 24 SCRA 960, 977)

The circumstance that the accused did not resist arrest or struggle to free himself after he was taken to custody by the authorities cannot amount to voluntary surrender. (People vs. Siojo, 61 Phil. 307, 318; People vs. Yuman, 61 Phil. 786, 787, 791) And while it is claimed that the accused intended to surrender, the fact is that he did not, despite several opportunities to do so, and was in fact arrested. (People vs. Dimdiman, 106 Phil. 391, 397)

Voluntary surrender cannot be appreciated in favor of an accused who surrenders only after a warrant of arrest is issued and he finds it

futile to continue being a fugitive from justice. (People vs. Rodriguez, No. L-41263, Dec. 15, 1982, 119 SCRA 254, 258)

For voluntary surrender to be appreciated, it is necessary that the same be spontaneous in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture. (People vs. Lingatong, G.R. No. 34019, Jan. 29, 1990, 181 SCRA 424, 430, citing earlier cases)

The surrender is not spontaneous where the accused took almost nine months after the issuance of the warrant of arrest against him before he presented himself to the police authorities. (People vs. Mabuyo, No. L-29129, May 8, 1975, 63 SCRA 532, 542).

Neither is voluntary surrender spontaneous where the accused had gone into hiding for 2 1/2 years before surrendering. (People vs. Ablao, G.R. No. 69184, March 26, 1990, 183 SCRA 658, 669).

Intention to surrender, without actually surrendering, is not mitigating.

The mitigating circumstance of voluntary surrender cannot be appreciated in favor of the accused who claims to have intended to surrender but did not, despite several opportunities to do so, and was in fact arrested. (People vs. Dimdiman, *supra)*

Note: The law requires that the accused must surrender himself.

There is spontaneity even if the surrender is induced by fear of retaliation by the victim's relatives.

The fact that the accused gave himself up to the police immediately after the incident was not considered in his favor, because during the trial, he declared that he did so out of fear of retaliatory action from the relatives of the deceased. This, according to the trial Judge, is not the kind of surrender that entitles the accused to the benefit of voluntary surrender.

Held: That the surrender was induced by his fear of retaliation by the victim's relatives does not gainsay the spontaneity of the surrender,

nor alter the fact that by giving himself up, this accused saved the State the time and trouble of searching for him until arrested. (People vs. Clemente, No. L-23463, Sept. 28, 1967, 21 SCRA 261, 268-269)

When the offender imposed a condition or acted with external stimulus, his surrender is not voluntary.

There could have been no voluntary surrender because the accused went into hiding after having committed the crimes and refused to surrender without having first conferred with the town councilor. (People vs. Mutya, G.R. Nos. L-11255-56, Sept. 30, 1959)

A surrender is not voluntary when forced by circumstances, as when the culprits "considered it impossible to live in hostility and resistance to the constituted authorities and their agents in view of the fact that the said authorities had neither given them rest nor left them in peace for a moment." (People vs. Sakam, 61 Phil. 27, 34)

When they started negotiations for their surrender, the roads through which their escape could be attempted were blocked and the house where they were hiding was surrounded by the Constabulary forces. They surrendered, because of their belief that their escape was impossible under the circumstances. The surrender was not voluntary. (People vs. Timbol, G.R. Nos. L-47471-47473, Aug. 4, 1944)

Requisites of plea of guilty.

In order that the plea of guilty may be mitigating, the three requisites must be present:

1. That the offender *spontaneously confessed his guilt;*
2. That the confession of guilt was made *in open court,* that is, before the *competent court* that is to try the case; and
3. That the confession of guilt was made *prior* to the presentation of evidence for the prosecution. (See People vs. Crisostomo, No. L-32243, April 15, 1988, 160 SCRA 47, 56, citing earlier cases. Also, People vs. Bueza, G.R. No. 79619, Aug. 20, 1990, 188 SCRA 683, 689)

The plea must be made before trial begins.

The trial on the merits had commenced and the prosecution had already presented evidence proving the guilt of the accused when he manifested that he would change his plea of not guilty to a plea of

guilty. He was properly rearraigned. As ruled in People vs. Kayanan (83 SCRA 437), a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance. (People vs. Lungbos, No. L-57293, June 21, 1988, 162 SCRA 383, 388-389; People vs. Verano, Jr., No. L-45589, July 28, 1988, 163 SCRA 614, 621)

Plea of guilty on appeal, not mitigating.

Plea of guilty in the Court of First Instance (now RTC) in a case appealed from the Municipal Court is not mitigating, because the plea of guilty must be made at the first opportunity, that is, in the Municipal Court. (People vs. Hermino, 64 Phil. 403, 407-408; People vs. De la Peña, 66 Phil. 451, 453)

It cannot be properly stated that the appeal taken by the accused from the Municipal Court to the Court of First Instance again restored the case to its original state for the reason that the law requires a trial *de novo,* because a trial *de novo* necessarily implies the existence of a previous trial where evidence was presented by the prosecution.

Philosophy behind the rule.

If an accused, charged with an offense cognizable by the municipal court, pleads not guilty therein, and on appeal to the court of first instance, changes his plea to that of guilty upon rearraignment, he should not be entitled to the mitigating circumstance of confession of guilt. The philosophy behind this rule is obvious. For the spontaneous willingness of the accused to admit the commission of the offense charged, which is rewarded by the mitigating circumstance, is absent. (People vs. Fortuno, 73 Phil. 597) Indeed, if the rule were otherwise, an accused, who naturally nourishes the hope of acquittal, could deliberately plead not guilty in the municipal court, and upon conviction and on appeal to the court of first instance, plead guilty just so he can avail himself of the benefit of a mitigating circumstance. This cannot be countenanced. The accused should not be allowed to speculate. (People vs. Oandasan, 25 SCRA 277)

Plea of not guilty at the preliminary investigation is no plea at all.

If an accused is charged with an offense cognizable by the court of first instance, and pleads not guilty before the municipal court at

its preliminary investigation, and after the elevation of the case to the court of first instance—the court of competent jurisdiction—he pleads guilty upon arraignment before this latter court, the plea of not guilty upon arraignment at the preliminary investigation in the municipal court is no plea at all. Hence, the accused could claim his plea of guilty in the court of first instance as mitigating circumstance pursuant to Article 13(7) of the Revised Penal Code. (People vs. Oandasan, *supra)*

The confession of guilt must be made in open court.

The *extrajudicial* confession made by the accused is not the voluntary confession which the Code contemplates. Such confession was made outside of the court. The confession of guilt must be made in open court. (People vs. Pardo, *et al.*, 79 Phil. 568)

The confession of guilt must be made prior to the presentation of the evidence for the prosecution.

Plea of guilty *after* the fiscal had presented evidence is not mitigating because the third requisite is lacking. (People vs. Co Chang, 60 Phil. 293)

The benefit of plea of guilty is not deserved by the accused who submits to the law only after the presentation of some evidence for the prosecution, believing that in the end the trial will result in his conviction by virtue thereof. (People vs. De la Cruz, 63 Phil. 874; People vs. Lambino, 103 Phil. 504)

It is not necessary that all the evidence of the prosecution have been presented. Even if the first witness presented by the prosecution had not finished testifying during the direct examination when the accused withdrew his former plea of "not guilty" and substituted it with the plea of "guilty," the plea of guilty is not mitigating. (People vs. Lambino, 103 Phil. 504)

Withdrawal of plea of not guilty and pleading guilty before presentation of evidence by prosecution is still mitigating.

All that the law requires is voluntary plea of guilty *prior* to the presentation of the evidence by the prosecution. Thus, even if during the arraignment, the accused pleaded not guilty, he is entitled to this mitigating circumstance as long as he withdraws his plea of

not guilty and thereafter pleads guilty to the charge *before* the fiscal could present his evidence.

The change of plea should be made at the first opportunity.

But in a case where the accused committed the crime on March 22, 1956, and when arraigned on May 14, 1956, he pleaded not guilty, and it was only on August 11, 1957, or about 1 year, 3 months and 7 days that he felt contrite and repentant by changing his former plea of not guilty to that of guilty, his plea of guilty was obviously not spontaneous, and was apparently done not because of his sincere desire to repent but because of his fear of eventual conviction. If it was his desire to repent and reform, he could have pleaded guilty at the very first opportunity when his arraignment was first set. (People vs. Quesada, 58 O.G. 6112)

A conditional plea of guilty is not a mitigating circumstance.

The plea of guilty was conditioned upon the allegation that the killing was done when the appellant surprised his wife in the act of sexual intercourse with the deceased Moro Lario. We already pointed out that "an accused may not enter a conditional plea of guilty in the sense that he admits his guilt provided that a certain penalty be imposed upon him." We are, therefore, constrained to hold that the appellant in this case must be considered as having entered a plea of not guilty. (People vs. Moro Sabilul, 89 Phil. 283, 285)

Death penalty changed to life imprisonment because of plea of guilty, even if done during the presentation of evidence.

While the accused entered a plea of guilty, he did it only during the continuation of the trial so that this circumstance may not, under the law, be considered to mitigate the liability of the accused. However, such an admission of guilt indicates his submission to the law and a moral disposition on his part to reform, hence, the death penalty imposed is changed to life imprisonment. (People vs. Coronel, No. L-19091, June 30, 1966, 17 SCRA 509, 513)

Plea of guilty to amended information.

Trial had already begun on the original information for murder and frustrated murder. However, in view of the willingness of the

accused to plead guilty for a lesser offense, the prosecution, with leave of court, amended said information to make it one for homicide and frustrated homicide, and the accused pleaded guilty thereto. That was an entirely new information and no evidence was presented in connection with the charges made therein before the accused entered his plea of guilty. The accused is entitled to the mitigating circumstance of plea of guilty. (People vs. Ortiz, No. L-19585, Nov. 29, 1965, 15 SCRA 352, 354)

Plea of guilty to lesser offense than that charged, not mitigating.

Plea of guilty to a lesser offense is not a mitigating circumstance, because to be voluntary, the plea of guilty must be to the offense charged. (People vs. Noble, 77 Phil. 93)

For voluntary confession to be appreciated as an extenuating circumstance, the same must not only be made unconditionally but the accused must admit to the offense charged, *i.e.*, robbery with homicide in the present case, and not to either robbery or homicide only. Hence, if the voluntary confession is conditional or qualified, it is not mitigating. (People vs. Gano, *et al.*, G.R. No. 134373, February 28, 2001)

But when the defendant pleaded guilty, only manifesting that evident premeditation alleged in the information did not attend the commission of the crime, and when the court required the presentation of evidence on premeditation the prosecution failed to prove it, the plea of guilty is mitigating, because although the confession was qualified and introduction of evidence became necessary, the qualification did not deny the defendant's guilt and, what is more, was subsequently justified. It was not the defendant's fault that aggravating circumstances were erroneously alleged in the information. (People vs. Yturriaga, 86 Phil. 534, 539; People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 216)

Plea of guilty to the offense charged in the amended information, lesser than that charged in the original information, is mitigating.

Charged with double murder, the accused moved the Court to permit him to withdraw his former plea of not guilty to be substituted

with that of guilty to the lesser crime of double homicide. The prosecution moved to amend the information so as to change the crime from double murder to double homicide. Both motions were granted by the court.

Held: The plea of guilty to the lesser offense charged in the amended information is mitigating. (People vs. Intal, 101 Phil. 306, 307-308)

When the accused is charged with a grave offense, the court should take his testimony in spite of his plea of guilty.

The trial court should "determine whether the accused really and truly comprehended the meaning, full significance and consequences of his plea and that the same was voluntarily and intelligently entered or given by the accused." (People vs. Lacson, No. L-33060, Feb. 25, 1974, 55 SCRA 589, 593)

Because there is no law prohibiting the taking of testimony after a plea of guilty, where a grave offense is charged, this Court has deemed such taking of testimony the prudent and proper course to follow for the purpose of establishing the guilt and the precise degree of culpability of the defendant. (People vs. Saligan, No. L-35792, Nov. 29, 1973, 54 SCRA 190, 195; People vs. Domingo, Nos. L-30464-5, Jan. 21, 1974, 55 SCRA 237, 243-245)

Mandatory presentation of evidence in plea of guilty to capital offense.

The Revised Rules of Criminal Procedure (Rule 116, Sec. 3) provides that where the accused pleads guilty to a capital offense, that court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and *shall require the prosecution to prove his guilt and the precise degree of culpability.* The accused may present evidence in his behalf.

Searching Inquiry.

The guidelines in the conduct of a searching inquiry are as follows:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investiga-

tions; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.

(7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details. (People vs. Gumimba, G.R. No. 174056, Feb. 27, 2007)

Reasons why plea of guilty is mitigating.

It is an act of repentance and respect for the law; it indicates a

moral disposition in the accused, favorable to his reform. (People vs. De la Cruz, 63 Phil. 874, 876)

Basis of paragraph 7.

The basis of the mitigating circumstances of voluntary surrender and plea of guilty is the lesser perversity of the offender.

Plea of guilty is not mitigating in culpable felonies and in crimes punished by special laws.

Art. 365, par. 5, of the Revised Penal Code, which prescribes the penalties for culpable felonies, provides that "in the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in Art. 64." This last mentioned article states, among other rules, that when there is a mitigating circumstance without any aggravating circumstance, the penalty to be imposed is the minimum period of the divisible penalty. (People vs. Agito, 103 Phil. 526, 529)

When the crime is punished by a special law, the court shall also exercise its sound discretion, as Art. 64 is not applicable. The penalty prescribed by special laws is usually not divisible into three periods. Art. 64 is applicable only when the penalty has three periods.

Par. 8. — That the offender is deaf and dumb, blind or otherwise suffering from some physical defect which thus restricts his means of action, defense, or communication with his fellow beings.

Deaf and dumb.

In a criminal case charging robbery in an inhabited house, the accused is deaf and dumb. *Held:* He is entitled to the mitigating circumstance of being deaf and dumb under Article 13, paragraph 8. (People vs. Nazario, 97 Phil. 990)

Physical defect must restrict means of action, defense, or communication with fellow beings.

Physical defect referred to in this paragraph is such as being armless, cripple, or a stutterer, whereby his means to act, defend

himself or communicate with his fellow beings are limited. (Albert)

Question: Does this paragraph apply when the deaf-mute or the blind is educated?

This paragraph does not distinguish between educated and uneducated deaf-mute or blind persons.

The Code considers them as being on equal footing.

Basis of paragraph 8.

Paragraph 8 of Art. 13 considers the fact that one suffering from physical defect, which restricts one's means of action, defense, or communication with one's fellow beings, does not have complete *freedom* of action and, therefore, there is a *diminution* of that element of voluntariness.

Par. 9. — Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.

Requisites:

1. That the illness of the offender must diminish the exercise of his will-power.
2. That such illness should not deprive the offender of consciousness of his acts.

When the offender completely lost the exercise of will-power, it may be an exempting circumstance.

When a person becomes affected either by *dementia praecox* or by *manic depressive psychosis,* during the period of excitement, he has no control whatsoever of his acts. (Opinion of Dr. Elias Domingo, cited in the case of People vs. Bonoan, 64 Phil. 95)

In such case, the person affected, acted upon an irresistible homicidal impulse.

In the *Bonoan* case, the Supreme Court found the accused demented at the time he perpetrated the crime of murder and acquitted the accused.

Does this circumstance include illness of the mind?

Question: Does this paragraph refer to the mental condition more or less disturbed?

It is said that the foregoing legal provision refers only to diseases of *pathological state* that *trouble* the *conscience* or *will.* (Albert)

Thus, this paragraph was applied to a mother who, under the influence of a puerperal fever, killed her child the day following her delivery. (Dec. Sup. Ct. Spain, Sept. 28, 1897)

But in the case of *People vs. Francisco,* 78 Phil. 694, it was held that this paragraph applies to defendant who committed the crime while suffering from some illness (of the body, the *mind, the nerves,* or the *moral faculty).*

Note that in accordance with the ruling in the above-mentioned case, illness of the *mind* is included. It would seem that a diseased mind, not amounting to insanity, may give place to mitigation.

Illness of the offender considered mitigating.

1. The mistaken belief of the accused that the killing of a witch was for the public good may be considered a mitigating circumstance for the reason that those who have obsession that witches are to be eliminated are in the same condition as one who, attacked with a morbid infirmity but still retaining consciousness of his acts, does not have real control over his will. (People vs. Balneg, *et al.*, 79 Phil. 805)

2. *Example of illness of the nerves or moral faculty.*

"Although she is mentally sane, we, however, are inclined to extend our sympathy to the appellant because of her misfortunes and weak character. According to the report she is suffering from a *mild behaviour disorder* as a consequence of the illness she had in early life. We are willing to regard this as a mitigating circumstance under Art. 13, Revised Penal Code, either in paragraph 9 or in paragraph 10." (People vs. Amit, 82 Phil. 820)

3. One who was suffering from acute *neurosis* which made him ill-tempered and easily angered is entitled to this

mitigating circumstance, because such illness diminished his exercise of will power. (People vs. Carpenter, C.A., G.R. No. 4168, April 22, 1940)

4. The fact that the accused is *feebleminded* warrants the finding in his favor of the mitigating circumstance either under paragraph 8 or under paragraph 9 of Art. 13. (People vs. Formigones, 87 Phil. 658)

5. The evidence of accused-appellant shows that while there was some impairment of his mental faculties, since he was shown to suffer from the chronic mental disease called *schizo-affective* disorder or psychosis, such impairment was not so complete as to deprive him of his intelligence or the consciousness of his acts. The *schizo-affective* disorder or psychosis of accused-appellant may be classified as an illness which diminishes the exercise of his will-power but without depriving him of the consciousness of his acts. He may thus be credited with this mitigating circumstance but will not exempt him from his criminal liability. (People vs. Antonio, Jr., G.R. No. 144266, Nov. 27, 2002)

Basis of paragraph 9.

The circumstance in paragraph 9 of Art. 13 is mitigating because there is a diminution of intelligence and intent.

Par. 10. — And, finally, any other circumstance of a similar nature and analogous to those abovementioned.

Must be of similar nature and analogous to those mentioned in paragraphs 1 to 9 of Art. 13.

This paragraph authorizes the court to consider in favor of the accused "any other circumstance of a similar nature and analogous to those mentioned" in paragraphs 1 to 9 of Art. 13.

Over 60 years old with failing sight, similar to over 70 years of age mentioned in paragraph 2.

The fact that the defendant was *over 60 years old and with failing sight,* is analogous to circumstance No. 2 of Art. 13, as similar to

the case of one over 70 years of age. (People vs. Reantillo and Ruiz, C.A., G.R. No. 301, July 27, 1938)

Outraged feeling of owner of animal taken for ransom analogous to vindication of a grave offense.

The accused is entitled to the mitigating circumstance of analogous to, if not the same as, vindication of a grave offense committed by the deceased where the latter took away the carabao of the accused and held it for ransom, and thereafter failed to fulfill his promise to pay its value after the carabao had died. (People vs. Monaga, No. L-38528, Nov. 19, 1982, 118 SCRA 466, 476)

Outraged feeling of creditor, similar to passion and obfuscation mentioned in paragraph 6.

A person who killed his debtor who had tried to escape and refused to pay his debt is entitled to mitigating circumstance similar to passion and obfuscation. (People vs. Merenillo, C.A., 36 O.G. 2283)

Impulse of jealous feeling, similar to passion and obfuscation.

The fact that the accused committed slander by charging the offended party with being the concubine of the husband of the accused under the impulse of a jealous feeling apparently justified, though later discovered to be unfounded, because the complainant, as verified by physical examination, was a virgin, may be taken, under Article 13, paragraph 10, of the Revised Penal Code, as a mitigating circumstance similar to passion and obfuscation. (People vs. Ubengen, C.A., 36 O.G. 763)

It is not difficult to see that Idloy's boxing appellant during a dance and in the presence of so many people, and he, an ex-soldier and ex-member of a military organization and unit, well-known and respected, undoubtedly produced rancour in the breast of Libria who must have felt deeply insulted; and to vindicate himself and appease his self-respect, he committed the crime. The mitigation may well be found under paragraph 10 of the same article. (People vs. Libria, 95 Phil. 389)

Manifestations of Battered Wife Syndrome, analogous to an illness that diminishes the exercise of will power.

The cyclical nature and the severity of the violence inflicted upon appellant resulted in "cumulative provocation which broke down her

psychological resistance and natural self-control," "psychological paralysis," and "difficulty in concentrating or impairment of memory."

Based on the explanations of the expert witnesses, such manifestations were analogous to an illness that diminished the exercise by appellant of her will power without, however, depriving her of consciousness of her acts. There was, thus, a resulting diminution of her freedom of action, intelligence or intent. Pursuant to paragraphs 9 and 10 of Article 13 of the Revised Penal Code, this circumstance should be taken in her favor and considered as a mitigating factor. (People vs. Genosa, G.R. No. 135981, Jan. 14, 2004)

Esprit de corps, similar to passion and obfuscation.

Mass psychology and appeal to *esprit de corps* is similar to passion or obfuscation. In this case, many of the soldiers who took part in the killing of the deceased responded to the call and appeal of their lieutenant who urged them to avenge the outrage committed by the deceased who had summarily ejected certain soldiers from the dance hall. They considered the act of the deceased a grave insult against their organization. (People vs. Villamora, 86 Phil. 287)

Voluntary restitution of stolen property, similar to voluntary surrender mentioned in paragraph 7.

On the other hand, *voluntary restitution* of the property stolen by the accused or immediately reimbursing the amount malversed (People vs. Luntao, C.A., 50 O.G. 1182) is a mitigating circumstance as *analogous to voluntary surrender.*

The act of testifying for the prosecution, without previous discharge, by Lorenzo Soberano (one of the accused) should be considered in his favor as a mitigating circumstance analogous to a plea of guilty. (People vs. Navasca, 76 SCRA 72)

Extreme poverty and necessity, similar to incomplete justification based on state of necessity.

The accused, on account of extreme poverty and of the economic difficulties then prevailing, was forced to pilfer two sacks of paper valued at ₱10.00 from the Customhouse. He sold the two sacks of paper for ₱2.50. *Held:* The right to life is more sacred than a mere property right. That is not to encourage or even countenance theft,

but merely to dull somewhat the keen and pain-producing edges of the stark realities of life. (People vs. Macbul, 74 Phil. 436, 438-439)

State of necessity is a justifying circumstance under Art. 11, paragraph 4. Incomplete justification is a mitigating circumstance under paragraph 1 of Article 13.

Extreme poverty may mitigate a crime against property, such as theft, but not a crime of violence such as murder. (People vs. Agustin, No. L-18368, March 31, 1966, 16 SCRA 467, 474-475)

But it is not mitigating where the accused had impoverished himself and lost his gainful occupation by committing crimes and not driven to crime due to want and poverty. (People vs. Pujinio, No. L-21690, April 29, 1969, 27 SCRA 1185, 1189-1190)

Testifying for the prosecution, analogous to plea of guilty.

The act of the accused of testifying for the prosecution, without previous discharge, is a mitigating circumstance analogous to a plea of guilty. (People vs. Navasca, No. L-28107, March 15, 1977, 76 SCRA 70, 81)

Killing the wrong man is not mitigating.

Neither do we believe that the fact that he made a mistake in killing the wrong man should be considered as a mitigating circumstance. (People vs. Gona, 54 Phil. 605, 606-607)

Not analogous mitigating circumstance.

In parricide, the fact that the husband of the accused was unworthy or was a rascal and a bully and was bad (People vs. Canja, 86 Phil. 518, 521), or that the victim was a bad or quarrelsome person (People vs. Fajardo, C.A., 36 O.G. 2256) is not a circumstance of a similar nature and analogous to any of those mentioned in the preceding paragraphs of Art. 13.

The accused, who was charged with the crime of falsification, pleaded guilty and invoked as mitigating circumstance the lack of irreparable material damage. *Held:* This is not recognized as a mitigating circumstance in the Revised Penal Code. Neither is it among those which may be considered as similar in nature and

analogous to those expressly prescribed as mitigating circumstances. (People vs. Dy Pol, 64 Phil. 563, 565)

Not resisting arrest, not analogous to voluntary surrender.

Yielding to arrest without the slightest attempt to resist is not analogous to voluntary surrender. (People vs. Rabuya, No. L-30518, Nov. 7, 1979, 94 SCRA 123, 138)

The condition of running amuck is not mitigating.

The Revised Penal Code enumerates the circumstances which mitigate criminal liability, and the condition of running amuck is not one of them, or one by analogy. The defense contended that running amuck is a cult among the Moros that is age-old and deeply rooted. Insofar as they are applicable, mitigating circumstances must be applied alike to all criminals be they Christians, Moros or Pagans. (People vs. Salazar, 105 Phil. 1058)

Mitigating circumstances which are personal to the offenders.

Mitigating circumstances which arise (1) from the moral attributes of the offender, or (2) from his private relations with the offended party, or (3) from any other personal cause, shall only serve to mitigate the liability of the principals, accomplices, and accessories as to whom such circumstances are attendant. (Art. 62, par. 3)

Mitigating circumstances which arise from the moral attributes of the offender.

A and B killed C, A acting under an impulse which produced obfuscation. The circumstance of obfuscation arose from the moral attribute of A and it shall mitigate the liability of A only. It shall not mitigate the liability of B.

Mitigating circumstances which arise from the private relations of the offender with the offended party.

A, son of B, committed robbery against the latter, while C, a stranger, bought the property taken by A from B, knowing that the property was the effect of the crime of robbery. The circumstance of relationship (Art. 15) arose from the private relation of A with B and it shall mitigate the liability of A only. It shall not mitigate the liability of C, an accessory. (Art. 19)

Mitigating circumstances which arise from any other personal cause.

A, 14 years old and acting with discernment, inflicted serious physical injuries on C. B, seeing what A had done to C, kicked the latter, thereby concurring in the criminal purpose of A and cooperating with him by simultaneous act. (Art. 18) The circumstance of minority arose from other personal cause and it shall mitigate the liability of A only. It shall not mitigate the liability of B, an accomplice.

Note: **It seems that all mitigating circumstances are personal to the offenders.**

Circumstances which are neither exempting nor mitigating.

1. **Mistake in the blow or *aberratio ictus*, for under Art. 48, there is a complex crime committed. The penalty is even higher.**

2. **Mistake in the identity of the victim, for under Art. 4, par. 1, the accused is criminally liable even if the wrong done is different from that which is intended. See Art. 49 as to its effect on the penalty.**

3. **Entrapment of the accused.**

4. **The accused is over 18 years of age. If the offender is over 18 years old, his age is neither exempting nor mitigating. (People vs. Marasigan, 70 Phil. 583)**

5. **Performance of righteous action.**

   The performance of righteous action, no matter how meritorious it may be, is not justifying, exempting, or mitigating circumstance in the commission of wrongs, and although the accused had saved the lives of a thousand and one persons, if he caused the killing of a single human being, he is, nonetheless, criminally liable. (People vs. Victoria, 78 Phil. 122)

IV. Aggravating Circumstances.

1. Definition

Aggravating circumstances are those which, if attendant in the commission of the crime, serve to increase

the penalty without, however, exceeding the maximum of the penalty provided by law for the offense.

2. Basis

They are *based on the greater perversity* of the offender manifested in the commission of the felony as shown by: (1) the *motivating power* itself, (2) *the place* of commission, (3) the *means* and *ways employed,* (4) the *time,* or (5) the *personal circumstances of the offender,* or of the *offended party.*

Four kinds of aggravating circumstances.

1. *Generic* — Those that can generally apply to all crimes.

Example — Dwelling, nighttime, or recidivism.

In Art. 14, the circumstances in paragraphs Nos. 1, 2, 3 (dwelling), 4, 5, 6, 9, 10, 14, 18, 19, and 20, except "by means of motor vehicles," are generic aggravating circumstances.

2. *Specific* — Those that apply only to particular crimes.

Example — Ignominy in crimes against chastity or cruelty and treachery in crimes against persons.

In Art. 14, the circumstances in paragraphs Nos. 3 (except dwelling), 15, 16, 17 and 21 are specific aggravating circumstances.

3. *Qualifying* — Those that change the nature of the crime.

Example — Alevosia (treachery) or evident premeditation qualifies the killing of a person to murder.

Art. 248 enumerates the qualifying aggravating circumstances which qualify the killing of person to murder.

4. *Inherent* — Those that must of necessity accompany the commission of the crime. (Art. 62, par. 2)

Example — Evident premeditation is inherent in robbery, theft, estafa, adultery and concubinage.

Qualifying aggravating circumstance distinguished from generic aggravating circumstance.

1. **The effect of a generic aggravating circumstance, not offset by any mitigating circumstance, is to increase the penalty which should be imposed upon the accused to the maximum period, but without exceeding the limit prescribed by law; while that of a qualifying circumstance is not only to give the crime its proper and exclusive name but also to place the author thereof in such a situation as to deserve no other penalty than that specially prescribed by law for said crime. (People vs. Bayot, 64 Phil. 269, 273)**

2. **A *qualifying* aggravating circumstance cannot be offset by a mitigating circumstance; a generic aggravating circumstance may be compensated by a mitigating circumstance.**

3. **A qualifying aggravating circumstance to be such must be alleged in the information. If it is not alleged, it is a generic aggravating circumstance only.**

Aggravating circumstance not alleged.

An aggravating circumstance, even if not alleged in the information, may be proved over the objection of the defense. (People vs. Gabitanan, C.A., 43 O.G. 3209; People vs. Martinez Godinez, 106 Phil. 606-607) This is true only as regards a *generic* aggravating circumstance. As regards a *qualifying* aggravating circumstance, the *same must be alleged* in the information because it is an integral part of the offense.

Generic aggravating circumstances, even if not alleged in the information, may be proven during the trial over the objection of the defense and may be appreciated in imposing the sentence. Such evidence merely forms part of the proof of the actual commission of the offense and does not violate the constitutional right of the accused to be informed of the nature and cause of accusation against him. (People vs. Ang, 139 SCRA 115, 121, L-62833, Oct. 8, 1985, citing earlier cases)

Where, in an information for simple theft, the qualifying circumstance of grave abuse of confidence has not been alleged, said circumstance cannot qualify the crime committed but must be regarded

only as a generic aggravating circumstance. (People vs. Abella, C.A., 45 O.G. 1802)

If not alleged in the information, treachery is only generic aggravating circumstance.

What is not clear to us is, why the prosecuting attorney did not in this case charge the crime of murder, instead of mere homicide. Although this circumstance of treachery is proven, inasmuch as it was not expressly alleged in the information, it may be used only as an aggravating circumstance but not to qualify the killing as murder. (People vs. Alcantara, C.A., 45 O.G. 3451; People vs. Jovellano, No. L-32421, March 27, 1974, 56 SCRA 156, 163)

Treachery is merely a generic aggravating circumstance when not alleged in the information but just proven at the trial. (People vs. Estillore, No. L-68459, March 4, 1986, 141 SCRA 456, 461; People vs. Cantre, G.R. No. 70743, June 4, 1990, 186 SCRA 76, 79)

Aggravating circumstances which do not have the effect of increasing the penalty.

1. Aggravating circumstances (a) which in themselves constitute a crime specially punishable by law, or (b) which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty. (Art. 62, par. 1)

Examples:

a. "That the crime be committed *by means of* x x x *fire*, x x x *explosion"* (Art. 14, par. 12) is in itself a crime of arson (Art. 321) or crime involving destruction. (Art. 324) It is not to be considered to increase the penalty for the crime of arson or for the crime involving destruction.

b. "That the act x x x be committed in the dwelling of the offended party" (Art. 14, par. 3) or "that the crime be committed after an unlawful entry" (Art. 14, par. 18), or "that as a means to the commission of a crime a wall, roof, floor, door, or window be broken (Art. 14, par. 19) is included by Art. 299 in defining robbery in an inhabited house. It shall

not be taken into account for the purpose of increasing the penalty for that kind of robbery.

2. The same rule shall apply with respect to any aggravating circumstance inherent in the crime to such a degree that it must of necessity accompany the commission thereof. (Art. 62, par. 2)

Examples:

a. Evident premeditation is inherent in theft, robbery, estafa, adultery and concubinage.

b. Taking advantage of public position is inherent in crimes where the offenders, who are public officers, committed the crime in the exercise of their functions, such as in bribery, malversation, etc.

Aggravating circumstances which are personal to the offenders.

Aggravating circumstances which arise: (a) from the moral attributes of the offender, or (b) from his private relations with the offended party, or (c) from any other personal cause, shall only serve to aggravate the liability of the principals, accomplices, and accessories as to whom such circumstances are attendant. (Art. 62, par. 3)

Examples:

1. A, with evident premeditation, gave B ₱1,000 to kill C. B immediately killed C. Evident premeditation is an aggravating circumstance which arises from the moral attribute of A. It shall serve to aggravate only the liability of A, but not that of B.

2. A, stepson of B, killed the latter. C, knowing that A killed B without justification, buried the dead body of B to prevent the discovery of the crime. The private relation of A with B shall serve to aggravate only the liability of A. It shall not serve to aggravate the liability of C, the accessory. (Art. 19, par. 2)

3. A, who was previously convicted by final judgment of theft and served sentence therefor, and B committed robbery. Both were prosecuted and found guilty after trial. Upon his conviction for robbery, A was a recidivist. Recidivism

is an aggravating circumstance which arises from personal cause. It shall serve to aggravate only the liability of A, but not that of B.

Aggravating circumstances which depend for their application upon the knowledge of the offenders.

The circumstances which consist (1) in the material execution of the act, or (2) in the means employed to accomplish it, shall serve to aggravate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein. (Art. 62, par. 4)

Illustrations:

1. In his house, A ordered B to kill C. A and B did not talk about the manner C would be killed. B left the house of A and looked for C. B found C and killed the latter with treachery. (Art. 14, par. 16) The aggravating circumstance of treachery consists in the material execution of the act. Since A had no knowledge of it, treachery shall only aggravate the liability of B.

2. A ordered B and C to kill D, instructing them to wait until nighttime so that the crime could be committed with impunity. B and C killed D at nighttime. Although A did not take direct part in the commission of the crime, the aggravating circumstance of nighttime shall also aggravate his liability, because he had knowledge of it at the time of the execution of the act by B and C.

Aggravating circumstances not presumed.

An aggravating circumstance should be proved as fully as the crime itself in order to increase the penalty. (People vs. Barrios, No. L-34785, July 30, 1979, 92 SCRA 189, 196, citing People vs. Marcina, 77 SCRA 238, 246; People vs. Almario, G.R. No. 69374, March 16, 1989, 171 SCRA 291, 302)

Chapter Four

CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY

Art. 14. *Aggravating circumstances.* — The following are aggravating circumstances:

1. That advantage be taken by the offender of his public position.

2. That the crime be committed in contempt of or with insult to the public authorities.

3. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

4. That the act be committed with abuse of confidence or obvious ungratefulness.

5. That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties or in a place dedicated to religious worship.

6. That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

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.

7. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune.

8. That the crime be committed with the aid of armed men or persons who insure or afford impunity.

9. That the accused is a recidivist.

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

10. That the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

11. That the crime be committed in consideration of a price, reward, or promise.

12. That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.

13. That the act be committed with evident premeditation.

14. That craft, fraud, or disguise be employed.

15. That advantage be taken of superior strength, or means be employed to weaken the defense.

16. That the act be committed with treachery *(alevosia).*

There is treachery 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.

17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

18. That the crime be committed after an unlawful entry.

There is an unlawful entry when an entrance is effected by a way not intended for the purpose.

19. That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.

20. That the crime be committed with the aid of persons under fifteen years of age, or by means of motor vehicle, airships, or other similar means.

21. That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission.

To be appreciated, qualifying and aggravating circumstances must be alleged in the information.

Pursuant to the 2000 Revised Rules of Criminal Procedure, every Complaint or Information must state not only the qualifying but also the aggravating circumstances. This rule may be given retroactive effect in the light of the well-established rule that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. The aggravating circumstances of evident premeditation, dwelling and unlawful entry, not having been alleged in the Information, may not now be appreciated to enhance the liability of accused-appellant. (People vs. Antonio, G.R. No. 144266, November 27, 2002)

If not alleged, they may still be considered in the award of damages.

Although the aggravating circumstances in question cannot be appreciated for the purpose of fixing a heavier penalty in this case, they should, however, be considered as bases for the award of exemplary damages, conformably to current jurisprudence. (People vs. Evina, G.R. Nos. 124830-31, June 27, 2003)

Par. 1. — That advantage be taken by the offender of his public position.

Basis of this aggravating circumstance.

This is based on the greater perversity of the offender, as shown by the *personal circumstance* of the offender and also by the means used to secure the commission of the crime.

Applicable only when the offender is a public officer.

The aggravating circumstance that advantage be taken by the offender of his public position applies only when the person committing the crime is a *public officer* who *takes advantage* of his public position.

Meaning of "advantage be taken by the offender of his public position."

The public officer must use the influence, prestige or ascendancy which his office gives him as the means by which he realizes his purpose. The essence of the matter is presented in the inquiry, "Did the accused *abuse* his office in order to commit the crime?" (U.S. vs. Rodriguez, 19 Phil. 150, 156-157)

Examples:

a. The accused took advantage of his public position. He could not have maltreated the victim if he was not a policeman on guard duty. Because of his position, he had access to the cell where the victim was confined. The prisoner was under his custody. (People vs. Ural, No. L-30801, March 27, 1974, 56 SCRA 138, 145)

b. There is abuse of public position where a police officer in the course of investigation of a charge against him for grave threats shot the complainant in a treacherous manner. (People vs. Reyes, No. L-33154, Feb. 27, 1976, 69 SCRA 474, 480-481)

c. Advantage of public position is present where the accused used their authority as members of the police and constabulary to disarm the victim before shooting him. (People vs. Asuncion, G.R. No. 83870, Nov. 14, 1989, 179 SCRA 396, 402)

This aggravating circumstance is not present when a Congressman offered resistance to a peace officer.

In the case of a Congressman who offered resistance to his captor upon being surprised in a gambling house, this aggravating circumstance is not present. (People vs. Veloso, 48 Phil. 169, 183) The reason for this ruling is that the Congressman did not take advantage of the influence or reputation of his office.

This aggravating circumstance is present when a councilor collects fines and misappropriates them.

U.S. vs. Torrida
(23 Phil. 189)

Facts: **The accused, shortly after entering upon his duties as councilor of the town of Aparri, ordered that deaths of all large animals must be reported to him as councilman. As a result of this instruction, the owners of several such animals were induced to pay the accused supposed fines on the belief that such were required by a municipal ordinance. He spent the money paid to, and received by him as fines.**

Held: **The fact that the accused was councilor at the time placed him in a position to commit these crimes. If he were not a councilor he could not have induced the injured parties to pay these alleged fines. It was on account of his being councilor that the parties believed that he had the right to collect fines and it was for this reason that they made the payments. It is true that he had no right to either impose or collect any fine whatsoever and it is likewise true that a municipal councilor is not an official designated by law to collect public fines, but these facts do not destroy or disprove the important fact that the accused did, by taking advantage of his public position, deceive and defraud the injured parties out of the money they paid him.**

Note: **The crime committed by Torrida is estafa by means of deceit. (Art. 315, par. 2)**

When the public officer did not take advantage of the influence of his position, this aggravating circumstance is not present.

U.S. vs. Dacuycuy
(9 Phil. 84)

Facts: **Thirty-nine (39) persons requested the accused, then a councilor, to purchase cedulas for them giving him P39.00. He took only 16 *cedulas,* and spent the rest of the money.**

Held: **When a public officer commits a common crime independent of his official functions and does acts that are *not connected with the duties of his office,* he should be punished as a private individual without this aggravating circumstance.**

Note: **In this case, Dacuycuy did *not avail* himself of the influence, prestige or ascendancy which his position carried with it, when**

he committed the crime of estafa with abuse of confidence. (Art. 315, par. 1) He received the money in his private capacity. He was requested by the people to buy *cedula* certificates for them.

Likewise, the mere fact that the defendant, a justice of the peace, misappropriated the money he received from the debtor in an *extra-judicial* agreement under obligation to turn it over to the creditor, does not aggravate his liability, inasmuch as *no legal proceedings* were pending at the time of this agreement and the *debt* was not *reduced to judgment.* He did not take advantage of his official position in the commission of the crime of estafa. (U.S. vs. Estabaya, 36 Phil. 64, 67)

There must be proof that the accused took advantage of his public position.

It is not shown that accused-appellant took advantage of his position as confidential agent of Mayor Claudio in shooting the victim, or that he used his "influence, prestige or ascendancy" in killing the deceased. Accused-appellant could have been shot by Bayona without having occupied the said position. Thus, in the absence of proof that advantage was taken by accused-appellant of his being a confidential agent, the aggravating circumstance of abuse of public position could not be properly appreciated against him. (People vs. Ordiales, No. L-30956, Nov. 23, 1971, 42 SCRA 238, 245-246)

Peace officers taking advantage of their public positions.

A policeman in uniform who abducted a girl by availing himself of his position (U.S. vs. Yumul, 34 Phil. 169, 175), or the chief of police who, during the search of a boat by means of intimidation, obtained money from the crew (People vs. Cerdeña, 51 Phil. 393, 394-395), or a special agent of the military police who committed robbery with homicide with the gun which he had been authorized to carry as a peace officer (People vs. Madrid, 88 Phil. 1, 15), committed the crime by taking advantage of his public position.

In the case of *Fortuna vs. People,* G.R. No. 135784, Dec. 4, 2000, it was held that "[t]he mere fact that the three (3) accused were all police officers at the time of the robbery placed them in a position to perpetrate the offense. If they were not police officers, they could not have terrified the Montecillos into hording the mobile

patrol car and forced them to hand over their money. Precisely it was on account of their authority that the Montecillos believed that Mario had in fact committed a crime and would be brought to the police station for investigation unless they gave them what they demanded."

Wearing uniform is immaterial in certain cases.

Although he was off-duty and there is evidence that *he was in civilian clothes* at the time, it is nonetheless obvious that knowing that *the offended party was aware of his being a policeman,* and sought to impose, illegally, his authority as such, the penalty provided by law must be meted out in its maximum period. (People vs. Tongco, 3 C.A. Rep. 1071)

The mere fact that he was in fatigue uniform and had army rifle at the time is not sufficient to establish that he misused his public position in the commission of the crimes. (People vs. Pantoja, No. L-18793, Oct. 11, 1968, 25 SCRA 468, 471-472)

Failure in official duties is tantamount to abusing of office.

But even if defendant did not abuse his office, if it is proven that he has *failed in his duties* as such public officer, this circumstance would warrant the aggravation of his penalty.

Thus, the fact that defendant was the vice-president of a town at the time he *voluntarily* joined a band of brigands made his liability greater. (U.S. vs. Cagayan, 4 Phil. 424, 426)

Not aggravating when it is an integral element of, or inherent in, the offense.

This circumstance, taking advantage of public position, cannot be taken into consideration in offenses where taking advantage of *official-position* is made by law an *integral element* of the crime, such as in malversation under Art. 217, or in falsification of document committed by public officers under Art. 171. (People vs. Tevez, 44 Phil. 275, 277)

Taking advantage of public position is inherent in the case of accessories under Art. 19, par. 3, and in crimes committed by public officers. (Arts. 204 to 245)

Not aggravating if accused could have perpetrated the crime without occupying police position.

In this case, there was no showing that accused-appellant took advantage of his being a policeman to shoot Jelord Velez or that he used his "influence, prestige or ascendancy" in killing the victim. Accused-appellant could have shot Velez even without being a policeman. In other words, if the accused could have perpetrated the crime even without occupying his position, there is no abuse of public position. In *People vs. Herrera,* the Court emphatically said that the mere fact that accused-appellant is a policeman and used his government issued .38 caliber revolver to kill is not sufficient to establish that he misused his public position in the commission of the crime. (People vs. Villamor, G.R. Nos. 140407-08, January 15, 2002)

Par. 2. — That the crime be committed in contempt of or with insult to the public authorities.

Basis of this aggravating circumstance.

This is based on the greater perversity of the offender, as shown by his lack of respect for the public authorities.

Requisites of this circumstance:

1. **That the public authority is engaged in the exercise of his functions.**
2. **That he who is thus engaged in the exercise of said functions is not the person against whom the crime is committed. (U.S. vs. Rodriguez, 19 Phil. 150, 156; People vs. Siojo, 61 Phil. 307, 317)**
3. **The offender knows him to be a public authority.**
4. **His presence has not prevented the offender from committing the criminal act.**

Example of this aggravating circumstance:

A and B are quarreling on a street and the municipal mayor, upon passing by, attempts to separate them to stop the quarrel. Notwithstanding the intervention and the presence of the mayor, A and

B continued to quarrel until A succeeds in killing B. In this case, A commits the crime of homicide with the aggravating circumstance of a "in contempt of or with insult to the public authority."

Meaning of "public authority."

A public authority, sometimes also called a *person in authority,* is a public officer who is directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws. The councilor, the mayor, the governor, etc., are persons in authority. The barangay captain and barangay chairman are also persons in authority. (Art. 152, as amended by P.D. No. 1232, Nov. 7, 1977)

Not applicable when crime is committed in the presence of an agent only.

Paragraph 2 of Art. 14 was not applied in a case where the crime was committed in the presence of the chief of police of a town, because he *is not* a public authority, but an agent of the authorities. (People vs. Siojo, 61 Phil. 307, 311, 317; People vs. Verzo, No. L-22517, Dec. 26, 1967, 21 SCRA 1403, 1410)

An agent of a person in authority is "any person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barrio councilman, barrio policeman and barangay leader, and any person who comes to the aid of persons in authority." (Art. 152, as amended by BP Blg. 873)

The crime should not be committed against the public authority.

If the crime is committed against a public authority while he is in the performance of his official duty, the offender commits direct assault (Art. 148) without this aggravating circumstance, because it is not a crime committed "in contempt of or with insult" to him, but a crime directly committed against him.

This rule was not followed in the case of *People vs. Santok,* G.R. No. L-18226, May 30, 1963, where it was held that the crime committed was homicide with the aggravating circumstance of the commission of the offense in contempt of the public authority, since

the deceased was shot while in the performance of his official duty as barrio lieutenant.

The accused should have been prosecuted for and convicted of a complex crime of homicide with direct assault (Art. 249, in relation to Art. 48 and Art. 148, Revised Penal Code), *without* the aggravating circumstance.

Knowledge that a public authority is present is essential.

Lack of knowledge on the part of the offender that a public authority is present indicates lack of intention to insult the public authority.

Thus, if A killed B in the presence of the town mayor, but A did not know of the presence of the mayor, this aggravating circumstance should not be considered against A.

Presence of public authority has not prevented offender from committing the crime.

An offense may be said to have been committed in contempt of a public authority when his presence, *made known to the offender,* has not prevented the latter from committing the criminal act.

Par. 3. — That the act be committed (1) with insult or in disregard of the respect due the offended party on account of his (a) rank, (b) age, or (c) sex, or (2) that it be committed in the dwelling of the offended party, if the latter has not given provocation.

When all the four aggravating circumstances are present, must they be considered as one?

Four circumstances are enumerated in this paragraph, which can be considered *single* or *together.* If all the four circumstances are present, they have the weight of one aggravating circumstance only. (Albert) But see the case of *People vs. Santos,* 91 Phil. 320, cited under paragraph 6, Art. 14.

The aggravating circumstances of sex and age of the injured party as well as those of dwelling place and nighttime must also be taken into account. (People vs. Taga, 53 Phil. 273)

Basis of these aggravating circumstances.

These circumstances are based on the greater perversity of the offender, as shown by the personal circumstances of the offended party and the place of the commission of the crime.

Applicable only to crimes against persons or honor.

This circumstance (rank, age or sex) may be taken into account only in crimes against persons or honor.

Thus, in the case of the robbery of a thing belonging to the President, the aggravating circumstance of disregard of respect due the offended party cannot be taken into account, because the mere fact that the thing belongs to the President does not make it more valuable than the things belonging to a private person.

Disregard of the respect due the offended party on account of his rank, age or sex may be taken into account only in crimes against persons or honor, when in the commission of the crime, there is some insult or disrespect to rank, age or sex. It is not proper to consider this aggravating circumstance in crimes against property. Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 79 SCRA 570, 576-577)

Meaning of "with insult or in disregard."

It is necessary to prove the *specific fact* or *circumstance,* other than that the victim is a woman (or an old man or one of high rank), showing insult or disregard of *sex* (or *age* or *rank)* in order that it may be considered as aggravating circumstance. (People vs. Valencia, C.A., 43 O.G. 3740) There must be evidence that in the commission of the crime, the accused *deliberately intended* to offend or insult the sex or age of the offended party. (People vs. Mangsant, 65 Phil. 548, 550-551)

The circumstance of old age cannot be considered aggravating. There was no evidence that the accused deliberately intended to offend or insult the age of the victim. (People vs. Diaz, 70 O.G. 4173, citing People vs. Gervacio, 24 SCRA 960; People vs. Mangsant, 65 Phil. 548; People vs. Limaco, 88 Phil. 35, 44)

With insult or in disregard of the respect due the offended party on account —

1. ***of the rank of the offended party.***

There must be a difference in the social condition of the offender and the offended party.

For example, a private citizen who attacked and injured a person in authority, or a pupil who attacked and injured his teacher (U.S. vs. Cabiling, 7 Phil. 469, 474), the act *not* constituting direct assault under Art. 148 of the Revised Penal Code.

Also, killing a judge because he was strict or because of resentment which the accused harbored against him as a judge, constitutes the aggravating circumstance of disregard of the respect due the offended party on account of his rank. (People vs. Valeriano, 90 Phil. 15, 34-35)

Also, an attempt upon the life of a general of the Philippine Army is committed in disregard of his rank. (People vs. Torres, G.R. No. L-4642, May 29, 1953)

Rank was aggravating in the following cases: the killing of a staff sergeant by his corporal; the killing of the Assistant Chief of Personnel Transaction of the Civil Service Commission by a clerk therein; the murder by a pupil of his teacher; the murder of a municipal mayor; the murder of a city chief of police by the chief of the secret service division; assault upon a 66-year-old CFI (now RTC) judge by a justice of the peace (now municipal judge); the killing of a consul by a mere chancellor; and the killing of an army general. (People vs. Rodil, No. L-35156, Nov. 20, 1981, 109 SCRA 308, 330-331)

Meaning of rank.

"Rank" **refers to a high social position or standing as a grade in the armed forces; or to a graded official standing or social position or station; or to the order or place in which said officers are placed in the army and navy in relation to others; or to the designation or title of distinction conferred upon an officer in order to fix his relative position in refer-**

ence to other officers in matters of privileges, precedence, and sometimes of command or by which to determine his pay and emoluments as in the case of army staff officers; or to a grade or official standing, relative position in civil or social life, or in any scale of comparison, status, grade, including its grade, status or scale of comparison within a position. (People vs. Rodil, *supra,* at 330)

Proof of fact of disregard and deliberate intent to insult required.

Disregard of the rank of the victim who was a barangay captain cannot be appreciated as an aggravating circumstance there being no proof of the specific fact or circumstance that the accused disregarded the respect due to the offended party, nor does it appear that the accused deliberately intended to insult the rank of the victim as barrio captain. (People vs. Talay, No. L-24852, Nov. 28, 1980, 101 SCRA 332, 347)

2. *of the age of the offended party.*

This circumstance is present when the offended person, by reason of his age, could be the father of the offender. (Viada, 1 Cod. Pen. 326; U.S. vs. Esmedia, 17 Phil. 260, 264-265; U.S. vs. Reguera, 41 Phil. 506, 517-518)

This aggravating circumstance applies to an aggressor, 45 years old, while the victim was an octogenarian. (People vs. Orbillo, G.R. No. L-2444, April 29, 1950)

This aggravating circumstance was applied also in the case where the person killed was eighty years old and very weak. (People vs. Gummuac, 93 Phil. 657)

The aggravating circumstance of disregard of age attended the commission of the crime when the deceased was 65 while the offenders were 32 and 27 years of age, respectively. (People vs. Zapata, G.R. No. L-11074, Feb. 27, 1960, 107 Phil. 103, 108)

The crime was committed in disregard of the respect due to the victim on account of age and relationship,

the accused being a grandson of the deceased. (People vs. Curatchia, No. L-31771, May 16, 1980, 97 SCRA 549, 556)

The circumstance of lack of respect due to age applies in cases where the victim is of tender age as well as of old age. This circumstance was applied in a case where one of the victims in a murder case was a 12-year-old boy. Here, the victim was only 3 years old. (People vs. Lora, No. L-49430, March 30, 1982, 113 SCRA 366, 375, citing U.S. vs. Butag, 38 Phil. 746. Also, People vs. Enot, No. L-17530, Oct. 30, 1962, 6 SCRA 325, 329-330, where one of the victims was only five years old, another, a minor, and the third, a seven-month-old baby)

But when the injuries inflicted upon a 9-year-old girl were *"without any thought or intention* x x x of heaping contumely or insult upon the child because of her sex or her tender age," this circumstance was not considered aggravating. (U.S. vs. Dacquel, 781, 782-783)

Deliberate intent to offend or insult required.

The circumstance of old age cannot be considered aggravating in the absence of evidence that the accused deliberately intended to offend or insult the age of the victim. (People vs. Diaz, No. L-24002, Jan. 21, 1974, 55 SCRA 178, 187)

Disregard of old age not aggravating in robbery with homicide.

It is not proper to consider disregard of old age in crimes against property. Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal. (People vs. Nabaluna, No. L-60087, July 7, 1986, 142 SCRA 446, 458)

This circumstance applies to *tender age* as well as to old age. This circumstance was applied in a murder case where one of the victims was a boy twelve years of age. (U.S. vs. Butag, 38 Phil. 746)

3. *of the sex of the offended party.*

This refers to the female sex, not to the male sex.

Examples:

a. When a person compels a woman to go to his house against her will, the crime of coercion with the aggravating circumstance of disrespect to sex is committed. (U.S. vs. Quevengco, 2 Phil. 412, 413)

b. The accused who, upon knowing the death of their relative, and not being able to take revenge on the killers, because of their imprisonment, *selected* and killed a female relative of the killers in retaliation, committed the act with this aggravating circumstance. (People vs. Dayug, 49 Phil. 423, 427)

c. Direct assault upon a lady teacher. (Sarcepuedes vs. People, 90 Phil. 230; People vs. Manapat, C.A., 51 O.G. 894)

No disregard of respect due to sex.

A and B (a woman) were sweethearts. B told A that she no longer cared for him and that she loved another man. A stabbed B to death. *Held:* It was not proved or admitted by the accused that when he committed the crime, he had the *intention to offend or disregard the sex* of the victim. (People vs. Mangsant, 65 Phil. 548, 550)

Killing a woman is not attended by this aggravating circumstance if the offender did not manifest any specific insult or disrespect towards her sex.

Disregard of sex is not aggravating in the absence of evidence that the accused deliberately intended to offend or insult the sex of the victim or showed manifest disrespect to her womanhood. (People vs. Puno, No. L-33211, June 29, 1981, 105 SCRA 151, 160, citing People vs. Mangsant, 65 Phil. 548; People vs. Mori, L-23511-2, January 31, 1974, 55 SCRA 382; People vs. Jaula, 90 Phil. 379; U.S. vs. De Jesus, 14 Phil. 190)

Not applicable in certain cases.

This aggravating circumstance is not to be considered in the following cases:

When the offender acted with passion and obfuscation.

When a man is blinded with passion or obfuscation, this being the condition of the mind, he could not have been conscious that his act was done with disrespect to the offended party. (People vs. Ibahez, C.A.-G.R. No. 1137-R, March 20, 1948)

When there exists a relationship between the offended party and the offender.

Facts: After a decree of divorce, the wife was given the custody of their baby girl. Thereafter, the accused meeting his former wife, asked her to allow him to visit their daughter, but she turned down his request. The accused became infuriated and pointed his gun at her as she boarded a carretela. The gun went off and she was injured.

Held: Notwithstanding the divorce decree, there still existed some relationship between the accused and his divorced wife, which had direct bearing with their only child, for which reason, the accused was asking his former wife to allow him to visit their daughter entrusted to her by order of the court. The accused had to deal with no other person but with his former wife to visit his daughter. (People vs. Valencia, C.A., 43 O.G. 3740)

The record does not show that the commission of the crime in question was attended by any offense to or disregard of the age of the offended party, about 75 or 65 years old, taking into account the circumstances under which the act in question developed and the pre-existing relations between the accused and the deceased. (People vs. Akanatsu, 51 Phil. 963, 965)

There existed in this case a relation of employer and laborer, because the deceased was a laborer of the offender.

When the condition of being a woman is indispensable in the commission of the crime.

Thus, in (a) parricide, (b) rape, (c) abduction, or (d) seduction, sex is not aggravating.

Rape being a sex crime or one committed against a woman, the trial court erred in considering sex as an ag-

gravating circumstance in imposing the penalty, it being inherent in the crime of rape. (People vs. Lopez, 107 Phil. 1039, 1042)

Disregard of sex absorbed in treachery.

There was disregard of sex because the blouse of the victim was needlessly removed, but the circumstance is absorbed in treachery which is attendant. (People vs. Clementer, No. L-33490, Aug. 30, 1974, 58 SCRA 742, 749, citing People vs. Mangsant, 65 Phil. 548; People vs. Limaco, 88 Phil. 35)

But see *People vs. Lapaz,* G.R. No. 68898, March 31, 1989, 171 SCRA 539, at 550, where it was held that the aggravating circumstances of disregard of sex and age are not absorbed in treachery because treachery refers to the manner of the commission of the crime, while disregard of sex and age pertains to the relationship of the victim.

That the crime be committed in the dwelling of the offended party.

Dwelling must be a building or structure, *exclusively* used for rest and comfort. A "combination house and store" (People vs. Magnaye, 89 Phil. 233, 239), or a market stall where the victim slept is not a dwelling.

Basis of this aggravating circumstance.

This is based on the greater perversity of the offender, as shown by the *place of the commission* of the offense.

Dwelling is considered an aggravating circumstance primarily because of the sanctity of privacy the law accords to human abode. According to one commentator, one's dwelling place is a "sanctuary worthy of respect" and that one who slanders another in the latter's house is more guilty than he who offends him elsewhere. (People vs. Balansi, G.R. No. 77284, July 19, 1990, 187 SCRA 566, 575)

What aggravates the commission of the crime in one's dwelling:

1. The abuse of confidence which the offended party reposed in the offender by opening the door to him; or

2. The violation of the sanctity of the home by trespassing therein with violence or against the will of the owner. (Dissenting opinion of Justice Villareal, People vs. Ambis, 68 Phil. 635, 637)

"The home is a sort of sacred place for its owner. He who goes to another's house to slander him, hurt him or do him wrong, is more guilty than he who offends him elsewhere." (Viada, 5th edition, Vol. II, pp. 323-324)

The evidence must show clearly that the defendant entered the house of the deceased to attack him. (People vs. Lumasag, 56 Phil. 19, 22; People vs. Manuel, Nos. L-23786-7, Aug. 29, 1969, 29 SCRA 337, 345)

Offended party must not give provocation.

As may be seen, a condition *sine qua non* of this circumstance, is that the offended party "has not given provocation" to the offender. When it is the offended party who has provoked the incident, he loses his right to the respect and consideration due him in his own house. (People vs. Ambis, *supra)*

Meaning of provocation in the aggravating circumstance of dwelling.

The provocation must be:

(1) Given by the owner of the dwelling,

(2) Sufficient, and

(3) Immediate to the commission of the crime.

If all these conditions *are present,* the offended party is deemed to have given provocation, and the fact that the crime is committed in the dwelling of the offended party is *not* an aggravating circumstance.

On the other hand, if any of those conditions is not present, the offended party is deemed not to have given provocation, and the fact that the crime is committed in the dwelling of the offended party is an aggravating circumstance.

There must be close relation between provocation and commission of crime in the dwelling.

Although the Code provides that the aggravating circumstance of dwelling cannot be properly taken into account if the provocation was given by the offended party, this is true only when there exists a *close relation* between the provocation and the commission of the crime in the dwelling of the person from whom the provocation came. (People vs. Dequiña, 60 Phil. 279, 288)

Because the provocation is not immediate, dwelling is aggravating.

The defendant learned that the deceased and the former's wife were maintaining illicit relations. One night, he went to the house of the deceased and killed him then and there. During the trial of the case, the defense contended that the deceased provoked the crime by his illicit relations with the defendant's wife. *Held:* That the provocation (the illicit relations) was not given *immediately prior* to the commission of the crime. Dwelling is still aggravating. (People vs. Dequina, 60 Phil. 279, 288-289)

Even if the defendant came to know of the illicit relations immediately before he went to the house of the deceased, the aggravating circumstance of dwelling may still be considered against the defendant because the provocation (the illicit relations) did not take place in that house.

If the defendant surprised the deceased and the wife of the defendant in the act of adultery in the house of the deceased, the aggravating circumstance of dwelling would not exist. (People vs. Dequina, *supra)*

Owner of dwelling gave immediate provocation — dwelling is not aggravating.

Dwelling is not aggravating, although the incident happened in the house of the victim, where the stabbing was triggered off by his provocative and insulting acts, for having given sufficient provocation before the commission of the crime, he has lost his right to the respect and consideration due him in his own house. (People vs. Atienza, No. L-39777, Aug. 31, 1982, 116 SCRA 379, 385)

While in her house, the offended party began to abuse the daughter of the accused and to call her vile names. The accused heard the insulting words and appeared in front of the offended party's house and demanded an explanation. A quarrel ensued, and the accused, becoming very angry and excited, *entered* the house of the offended party and struck her with a bolo. In that case, the invasion of the privacy of the offended party's home was the direct and *immediate consequence* of the *provocation* given by her. No aggravating circumstance of dwelling. (U.S. vs. Licarte, 23 Phil. 10, 12)

Prosecution must prove that no provocation was given by the offended party.

That the offended party has not given provocation in his house is a fact that must be shown by the evidence of the prosecution, as it cannot be assumed. It is an essential element of the aggravating circumstance of dwelling. (People vs. Pakah, 81 Phil. 426, 429)

Even if the offender did not enter the dwelling, this circumstance applies.

The aggravating circumstance of dwelling should be taken into account. Although the triggerman fired the shot from *outside* the house, his victim was inside. For this circumstance to be considered, it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault from without. (People vs. Ompaid, No. L-23513, Jan. 31, 1969, 26 SCRA 750, 760, citing People vs. Albar, 86 Phil. 36) Thus, dwelling was held aggravating where the victim who was asleep in his house was shot as he opened the door of his house upon being called and awakened by the accused. (People vs. Talay, No. L-24852, Nov. 28, 1980, 101 SCRA 332, 346)

Dwelling is aggravating, even if the offender did not enter the upper part of the house where the victim was, but shot from under the house. (People vs. Bautista, 79 Phil. 652, 653, 657)

Even if the killing took place outside the dwelling, it is aggravating provided that the commission of the crime was begun in the dwelling.

Thus, where the accused began the aggression upon the person of the deceased in the latter's dwelling by binding his hands or by dragging him from his house and after taking him to a place near the house he killed him, dwelling is aggravating, since the act performed cannot be divided or the unity resulting from its details be broken up. (U.S. vs. Lastimosa, 27 Phil. 432, 438; People vs. Mendova, 100 Phil. 811, 818)

Dwelling is aggravating in abduction or illegal detention.

In abduction or illegal detention where the victim was taken from her or his house and carried away to another place, dwelling is aggravating. (U.S. vs. Banila, 19 Phil. 130, 133; U.S. vs. Velasquez, 8 Phil. 321, 324; People vs. Masilungan, 104 Phil. 621, 635)

But dwelling was not aggravating in a case where the deceased was *called down* from his house and he was murdered in the vicinity of the house. (U.S. vs. Ramos, 1 Phil. 192, 193; People vs. Lumasag, 56 Phil. 19, 22-23)

What dwelling includes.

Dwelling includes *dependencies, the foot of the staircase and enclosure under the house.* (U.S. vs. Tapan, 20 Phil. 211, 213; People vs. Alcala, 46 Phil. 739, 744)

But, in *People vs. Diamonon* L-38094, Nov. 7, 1979, 94 SCRA 227, 239, 240, where the victim was stabbed at the foot of their stairs, dwelling was not aggravating. Aquino, *J.*, concurring and dissenting, said that dwelling is aggravating because the killing took place at the foot of the stairs of the victim's house. (p. 241)

If the deceased *was only about to step on the first rung of the ladder* when he was assaulted, the aggravating circumstance of dwelling will not be applicable. (People vs. Sespeñe, 102 Phil. 199, 210)

When the deceased had two houses where he used to live, the commission of the crime in any of them is attended by the aggravating circumstance of dwelling.

In a case, it was held that the aggravating circumstance of

dwelling was present, because the deceased was murdered in the house at Franco Street in Tondo, which was one of the two houses (the other being at Constancia, Sampaloc) where the deceased used to live and have his place of abode during his stay in Manila. (People vs. Rodriguez, 103 Phil. 1015)

Dwelling is not aggravating in the following cases:

1. When *both* offender and offended party are occupants of the same house (U.S. vs. Rodriguez, 9 Phil. 136, 139-140), and this is true even if *offender* is a *servant* in the house. (People vs. Caliso, 58 Phil. 283, 294-295)

   Thus, dwelling is not aggravating in rape where the accused and the offended party are domiciled in the same house. (People vs. Morales, No. L-35413, Nov. 7, 1979, 94 SCRA 191, 201)

2. When the robbery is committed by the use of *force upon things,* dwelling is not aggravating because it is inherent. To commit robbery by the use of force upon things, the offender must enter the dwelling house, or other building, of the offended party. (U.S. vs. Cas, 14 Phil. 21, 22)

   But dwelling is aggravating in robbery with violence against or intimidation of persons because this class of robbery can be committed without the necessity of trespassing the sanctity of the offended party's house. Entrance into the dwelling house of the offended party is not an element of the offense. (People vs. Cabato, No. L-37400, April 15, 1988, 160 SCRA 98, 110; People vs. Apduhan, Jr., No. L-19491, Aug. 30, 1968, 24 SCRA 798, 815; People vs. Valdez, 64 Phil. 860, 867)

   Dwelling is not inherent, hence, aggravating, in robbery with homicide since the author thereof could have accomplished the heinous deed without having to violate the domicile of the victim. (People vs. Mesias, G.R. No. 67823, July 9, 1991, 199 SCRA 20, 27, citing earlier cases)

   Note: There are two kinds of robbery: (1) robbery with violence against or intimidation of persons; and (2)

robbery with force upon things in inhabited house. (Arts. 294 and 299)

3. In the crime of trespass to dwelling, it is inherent or included by law in defining the crime. This crime can be committed only in the dwelling of another.

4. When the owner of the dwelling gave *sufficient* and *immediate* provocation.

5. When the dwelling where the crime was committed did not belong to the offended party. Thus, when the accused, upon hearing that their sister was dead, went to *her house,* and then and there, upon seeing their sister lying on the floor with her head resting on the lap of her paramour, and thinking that the latter had killed her, attacked and killed him, the aggravating circumstance of dwelling cannot be considered against the accused. The dwelling did not belong to the paramour, the person whom they killed. (People vs. Guhiting, 88 Phil. 672, 675)

6. When the rape was committed in the ground floor of a two-story structure, the lower floor being used as a video rental store and not as a private place of abode or residence. (People vs. Taño, G.R. No. 133872, May 5, 2000)

Dwelling was found aggravating in the following cases although the crimes were committed not in the dwelling of the victims.

1. The victim was raped in the boarding house where she was a bedspacer. Her room constituted a "dwelling" as the term is used in Article 14(3) of the Revised Penal Code. (People vs. Daniel, No. L-40330, Nov. 20, 1978, 86 SCRA 511, 531)

2. The victims were raped in their paternal home where they were guests at the time and did not reside there. (2 CAR [2s] 675)

But in *People vs. Ramolete,* No. L-28108, March 27, 1974, 56 SCRA 66, 81, dwelling was not considered aggravating because the victim was a mere visitor in the house where he was killed.

3. The victim was killed in the house of her aunt where she was living with her niece. Dwelling was considered aggravating because dwelling may mean temporary dwelling. (People vs. Badilla, G.R. No. 69317, May 21, 1990, 185 SCRA 554, 570)

4. The victims, while sleeping as guests in the house of another person, were shot to death in that house. Dwelling was held aggravating. The Code speaks of "dwelling," not domicile. (People vs. Basa, 83 Phil. 622, 624)

Dwelling is aggravating when the husband killed his estranged wife in the house solely occupied by her.

The aggravating circumstance of dwelling is present when the husband killed his estranged wife in the house occupied by her, other than the conjugal home. (People vs. Galapia, Nos. L-39303-05, Aug. 1, 1978, 84 SCRA 526, 532)

In case of adultery.

When *adultery* is committed in the dwelling of the husband, even if it is also the dwelling of the unfaithful wife, it is aggravating because besides the latter's breach of the fidelity she owes her husband, she and her paramour violated the respect due to the conjugal home and they both thereby injured and commited a very grave offense against the head of the house. (U.S. vs. Ibañez, 33 Phil. 611, 613)

Note: Adultery is committed by a married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married. (Art. 333, Revised Penal Code)

Dwelling not aggravating in adultery when paramour also lives there.

But the rule is different if both the defendants (the wife and her paramour) and the offended party were living in the same house because the defendants had a right to be in the house.

The aggravating circumstance of abuse of confidence was properly applied, when the offended husband took the paramour into his home, furnished him with food and lodging without charge, and treated him like a son. (U.S. vs. Destrito, 23 Phil. 28, 33)

The aggravating circumstance present in such case is *abuse of confidence,* if the offender availed himself of the favorable position in which he was placed by the very act of the injured party, thus grossly abusing the confidence of the latter in admitting him into his dwelling. (U.S. vs. Barbicho, 13 Phil. 616, 620-621)

Dwelling is not included in treachery.

Although nocturnity and abuse of superior strength are always included in the qualifying circumstance of treachery, dwelling cannot be included therein. (People vs. Ruzol, 100 Phil. 537, 544)

Par. 4. — That the act be committed with (1) abuse of confidence, or (2) obvious ungratefulness.

There are two aggravating circumstances in this paragraph.

Basis of these aggravating circumstances.

They are based on the greater perversity of the offender, as shown by the *means* and *ways employed.*

Abuse of confidence.

This circumstance exists only when the offended party has *trusted* the *offender* who later *abuses* such trust by committing the crime. The abuse of confidence must be a means of facilitating the commission of the crime, the culprit taking advantage of the offended party's belief that the former would not abuse said confidence.

Requisites:

1. That the offended party *had trusted the offender.*
2. That the offender *abused* such trust by committing a crime against the offended party.
3. That the abuse of confidence *facilitated* the commission of the crime. (People vs. Luchico, 49 Phil. 689, 697; People vs. Zea, No. L-23109, June 29, 1984, 130 SCRA 77, 90)

Example:

A jealous lover, who had already determined to kill his sweetheart, invited her to a ride in the country. The girl, unsuspecting of his plans, went with him. While they were in the car, the jealous lover stabbed her. It was held that this aggravating circumstance was present. (People vs. Marasigan, 70 Phil. 583, 594)

Confidence does not exist.

Facts: **After preliminary advances of the master, the female servant refused and fled. The master followed and after catching up with her, threw her on the ground and committed the crime of rape. When the master raped the offended party, *she had already lost her confidence in him* from the moment he made an indecent proposal and offended her with a kiss.**

Held: ***The confidence must facilitate the commission of the crime,*** **the culprit *taking advantage* of offended party's belief that the former would not abuse said confidence. No aggravating circumstance in this case. (People vs. Luchico, 49 Phil. 689, 697)**

There is no abuse of confidence in attempted rape where on the day of the crime, the accused was in the company of the offended girl, not because of her confidence in him, but because they were partners in a certain business. (People vs. Brocal, C.A., 46 O.G. 6163)

Special relation of confidence between accused and victim.

There is no abuse of confidence where the deceased and the accused happened to be together because the former invited the latter nightclubbing and to bring with him the money the latter owed the former. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 213-214)

Betrayal of confidence is not aggravating.

Facts: **The offended party was living in the house of the accused, her parents having entrusted her to the care of said accused. One day, at about 6:30 in the evening, while the offended party was standing in front of a store watching some children who were playing, the accused approached her, took her by the arm and forcibly led her to an isolated toilet, hidden from public view by some tall**

grasses, and once in the spot, he intimidated her with a knife and through the use of force and violence succeeded in having sexual intercourse with her.

Held: There is no showing that the accused was able to commit the crime by abusing the confidence reposed in him by the offended party. The accused *betrayed* the *confidence* reposed in him by the parents of the girl. But this is not an aggravating circumstance. It must be an abuse of confidence that facilitated the commission of the crime which is aggravating. (People vs. Arthur Crumb, C.A., 46 O.G. 6163)

Killing of child by an amah is aggravated by abuse of confidence.

When the killer of the child is the domestic servant of the family and is sometimes the deceased child's amah, the aggravating circumstance of grave abuse of confidence is present. (People vs. Caliso, 58 Phil. 283, 294)

Compare this case with the *Crumb* case. In the *Crumb* case, the confidence reposed by the parents of the girl in the offender could not have facilitated the commission of the crime, because the offended girl could resist, although unsuccessfully, the commission of the crime.

In the *Caliso* case, the victim, being a nine-month-old child, could not resist the commission of the crime. The confidence reposed by the parents of the child in the offender facilitated the commission of the crime.

The confidence between the offender and the offended party must be immediate and personal.

In the case of *U.S. vs. Torrida,* 23 Phil. 189, 192, it was held that the mere fact that the voters had reposed confidence in the defendant by electing him to a public office does not mean that he abused their confidence when he committed estafa against them.

Abuse of confidence inherent in some felonies.

It is inherent in malversation (Art. 217), qualified theft (Art. 310), estafa by conversion or misappropriation (Art. 315), and qualified seduction. (Art. 337)

Ungratefulness must be obvious, i.e., manifest and clear.

The other aggravating circumstance in paragraph 4 of Art. 14 is that the act be committed with obvious ungratefulness.

This aggravating circumstance was present in the case of the accused who killed his father-in-law in whose house he lived and who partially supported him. (People vs. Floresca, G.R. Nos. L-8614-15, May 31, 1956, 99 Phil. 1044)

The circumstance was present where the accused was living in the house of the victim who employed him as an overseer and in charge of carpentry work, and had free access to the house of the victim who was very kind to him, his family, and who helped him solve his problems. (People vs. Lupango, No. L-32633, Nov. 12, 1981, 109 SCRA 109, 126)

The circumstance was present where a security guard killed a bank officer and robbed the bank. (People vs. Nismal, No. L-51257, June 25, 1982, 114 SCRA 487, 494-495)

The circumstance was present where the victim was suddenly attacked while in the act of giving the assailants their bread and coffee for breakfast. Instead of being grateful to the victim, at least by doing him no harm, they took advantage of his helplessness when his two arms were used for carrying their food, thus preventing him from defending himself from the sudden attack. (People vs. Bautista, No. L-38624, July 25, 1975, 65 SCRA 460, 470)

The circumstance exists when a visitor commits robbery or theft in the house of his host.

But in the case of *Mariano vs. People,* 68 Phil. 724, 726, the act of stealing the property of the host is considered as committed with abuse of confidence.

The mere fact, however, that the accused and the offended party live in the same house is not in itself enough to hold that there was present abuse of confidence where the house was not the property of the offended party. (People vs. Alqueza, 51 Phil. 817, 819-820)

Par. 5. — That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.

Basis of the aggravating circumstances.

They are based on the greater perversity of the offender, as shown by the place of the commission of the crime, which must be respected.

Place where public authorities are engaged in the discharge of their duties (par. 5), distinguished from contempt or insult to public authorities. (par. 2)

1. In both, the public authorities are in the performance of their duties.
2. Under par. 5, the public authorities who are in the performance of their duties must be in their office; while in par. 2, the public authorities are performing their duties outside of their office.
3. Under par. 2, the public authority should not be the offended party; while under par. 5, he may be the offended party. (U.S. vs. Baluyot, 40 Phil. 385, 395)

Official or religious functions, not necessary.

The place of the commission of the felony (par. 5), if it is Malacahang palace or a church, is aggravating, regardless of whether State or official or religious functions are being held.

The Chief Executive need not be in Malacañang palace. His *presence* alone in any place where the crime is committed is enough to constitute the aggravating circumstance. This aggravating circumstance is present even if he is not engaged in the discharge of his duties in the place where the crime is committed.

Other public authorities must be actually engaged in the performance of duty.

But as regards the place where the public authorities are *engaged* in the discharge of their duties, there must be some performance of public functions.

Thus, where the accused and the deceased who were respectively plaintiff and defendant in a civil case in the court of a justice of the peace, having gotten into some trouble, left the courtroom and went into an *adjoining room,* where the accused, without any warning, attacked the deceased with a knife and killed him on the spot, it has been held that it was error to consider the aggravating circumstance of having committed the offense in the place where the public authority was exercising his functions. (U.S. vs. Punsalan, 3 Phil. 260, 261)

Undoubtedly, the reason for not applying the circumstance was that the court had already adjourned when the crime was committed, and the attack was made in the adjoining room, not in the very place where the justice of the peace was engaged in the discharge of his duties.

An electoral precinct during election day is a place "where public authorities are engaged in the discharge of their duties."

Thus, the aggravating circumstance "that the crime be committed x x x where public authorities are engaged in the discharge of their duties" was appreciated in the murder of a person in an electoral precinct or polling place during election day. (People vs. Canoy, G.R. No. L-6037, Sept. 30, 1954 [unreported])

Place dedicated to religious worship.

Cemeteries are not such a place, however respectable they may be, as they are *not dedicated* to the worship of God. The church is a place dedicated to religious worship.

The aggravating circumstance "that the crime be committed x x x in a place dedicated to religious worship" was appreciated in a case where the accused shot the victims inside the church or in a case of unjust vexation where the accused kissed a girl inside a church when a religious service was being solemnized. (People vs. Añonuevo, C.A., 36 O.G. 2018; People vs. Dumol, CA-G.R. No. 5164-R, April 4, 1951)

Offender must have intention to commit a crime when he entered the place.

Facts: At the time of the commission of the crime, both the deceased and defendant were inside a chapel. The deceased placed

his hand on the right thigh of defendant girl, who pulled out with her right hand a fan knife and stabbed him.

Held: The aggravating circumstance that the killing was done in a place dedicated to religious worship cannot be legally considered, where there is no evidence to show that the defendant had *murder in her heart* when she entered the chapel on the fatal night. (People vs. Jaurigue, 76 Phil. 174, 182)

This ruling seems to be applicable also in case a crime is committed in Malacañang palace or where public authorities are engaged in the discharge of their duties.

Par. 6. — That the crime be committed (1) in the nighttime, or (2) in an uninhabited place, or (3) by a band, whenever such circumstance may facilitate the commission of the offense.

Basis of the aggravating circumstances.

They are based on the time and place of the commission of the crime and means and ways employed.

Should these circumstances be considered as one only or three separately?

In its decision of April 5, 1884, the Supreme Court of Spain held that they constitute only one aggravating circumstance if they concur in the commission of felony. But in its decision of April 27, 1897, the same court held that its former decision did not declare an absolute and general rule which would exclude the possibility of their being considered separately when their *elements are distinctly perceived* and *can subsist independently*, revealing a greater degree of perversity. (People vs. Santos, 91 Phil. 320, 327-328)

Thus, in *People vs. Cunanan,* 110 Phil. 313, 318, nighttime and band were considered separately.

When aggravating.

Nighttime, uninhabited place or band is aggravating —

(1) When it *facilitated* the commission of the crime; or

(2) When *especially sought* for by the offender to insure the commission of the crime or for the purpose of impunity (People vs. Pardo, 79 Phil. 568, 578); or

(3) When the offender *took advantage thereof for* the purpose of impunity. (U.S. vs. Billedo, 32 Phil. 574, 579; People vs. Matbagon, 60 Phil. 887, 893)

Although nocturnity should not be estimated as an aggravating circumstance, since the time for the commission of the crime *was not deliberately chosen* by the accused; yet, if it appears that the accused *took advantage* of the darkness for the more successful consummation of his plans, to prevent his being recognized, and that the crime might be perpetrated unmolested, the aggravating circumstance of nocturnity should be applied.

To take advantage of a fact or circumstance in committing a crime clearly implies an intention to do so, and one does not avail oneself of the darkness unless one intended to do so. (People vs. Matbagon, 60 Phil. 887, 893; People vs. Apduhan, Jr., No. L-19491, Aug. 30, 1968, 24 SCRA 798, 816)

Illustration of taking advantage of nighttime.

A, with intent to kill B, had hidden behind a tree and *availed* himself of the darkness to prevent his being recognized or to escape more readily. As soon as B came, A stabbed him to death.

"Whenever such circumstances may facilitate the commission of the offense."

Paragraph 6 of Article 14 requires only that nighttime, uninhabited place, or band "may facilitate the commission of the offense." The test fixed by the statute is an objective one. (Dissenting opinion in People vs. Matbagon, 60 Phil. 887, 894)

Nighttime may facilitate the commission of the crime, when because of the darkness of the night the crime can be perpetrated *unmolested,* or *interference* can be avoided, or there would be greater *certainty* in attaining the ends of the offender. (People vs. Matbagon, *supra)*

Nighttime *facilitated* the commission of the crime to such an extent that the defendant was able to consummate it with all its dastardly details without anyone of the persons living in the same premises becoming aware of what was going on. (People vs. Villas, No. L-20953, April 21, 1969, 27 SCRA 947, 952-953)

Meaning of "especially sought for," "for the purpose of impunity," and "took advantage thereof."

The Supreme Court considered other tests for the application of the aggravating circumstances under this paragraph. They are aggravating when they are "especially sought for" or when the offender "took advantage thereof."

The offender especially sought for nighttime, when he sought for it in order to realize the crime with more ease. (People vs. Aquino, 68 Phil. 615, 618)

Nighttime *is not* especially sought for, when the *notion to commit the crime* was conceived only *shortly* before its commission (People vs. Pardo, 79 Phil. 568, 578-579), or when the crime was committed at night upon a mere casual encounter. (People vs. Cayabyab, 274 SCRA 387)

But where the accused *waited for the night* before committing robbery with homicide, nighttime is especially sought for. (People vs. Barredo, 87 Phil. 800)

Nighttime was appreciated against the accused who was living only 150 meters away from the victim's house and evidently waited for nightfall to hide his identity and facilitate his escape, knowing that most barrio folks are already asleep, or getting ready to sleep, at 9:00 p.m. (People vs. Baring, G.R. No. 87017, July 20, 1990, 187 SCRA 629, 636)

Nighttime was sought for where the accused lingered for almost three hours in the evening at the restaurant before carrying out their plan to rob it. (People vs. Lungbos, No. L-57293, June 21, 1988, 162 SCRA 383, 388)

There is sufficient proof that the offenders purposely sought nighttime to commit the crime. Consider the facts that the accused tried to ascertain whether the occupants of the house were asleep, thereby indicating the desire to carry out the plot with the least

detection or to insure its consummation with a minimum of resistance from the inmates of the house. (People vs. Atencio, No. L-22518, January 17, 1968, 22 SCRA 88, 102-103)

The circumstance of nighttime was aggravating where it is self-evident that it was sought to facilitate the commission of the offense, when all the members of the household were asleep. (People vs. Berbal, G.R. No. 71527, Aug. 10, 1989, 176 SCRA 202, 216)

Nighttime need not be specifically sought for when (1) it facilitated the commission of the offense, or (2) the offender took advantage of the same to commit the crime.

It is the constant jurisprudence in this jurisdiction that the circumstance of nocturnity, although not specifically sought for by the culprit, shall aggravate his criminal liability if it facilitated the commission of the offense or the offender took advantage of the same to commit the crime. (People vs. Corpus, C.A., 43 O.G. 2249, citing U.S. vs. Perez, 32 Phil. 163; People vs. Pineda, 56 Phil. 688) .

Nocturnity, even though not specially sought, if it facilitated the commission of the crime and the accused took advantage thereof to commit it, may be considered as an aggravating circumstance. (People vs. Lungbos, *supra,* citing People vs. Galapia, 84 SCRA 530)

"For the purpose of impunity" means to prevent his (accused's) *being recognized,* or to secure himself against *detection* and *punishment.* (People vs. Matbagon, 60 Phil. 887, 891-892, 893)

Thus, it was held that the commission of the crime was attended by the aggravating circumstance of nighttime, because of the silence and darkness of the night which enabled the offender to take away the girl *with impunity*—a thing which undoubtedly the offender could not have done in the daytime and in sight of people. (U.S. vs. Yumul, 34 Phil. 169, 175)

The offender took advantage of any of the circumstances of nighttime, uninhabited place, or by a band when he *availed* himself thereof at the time of the commission of the crime for the purpose of impunity or for the more successful consummation of his plans.

(a) *Nighttime.*

By the word "nighttime" should be understood, according to Viada, that period of darkness *beginning at end of dusk and ending at dawn.* Nights are from sunset to sunrise. (Art. 13, Civil Code)

Nighttime by and of itself is not an aggravating circumstance.

The lower court appreciated nocturnity against appellants solely on the basis of the fact on record that the crime was committed at about 5 o'clock in the morning. This particular finding stands correction. By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender, or taken advantage of by him to facilitate the commission of the crime or to insure his immunity from capture. In the instant case, other than the time of the crime, nothing else whatsoever suggests that the aggravating circumstance of nighttime was deliberately availed of by appellants. In view of this deficiency, said circumstance should be disallowed even as, technically, it may have been accepted by them when they pleaded guilty on arraignment. (People vs. Boyles, No. L-15308, May 29, 1964, 11 SCRA 88, 94)

Where the darkness of the night was merely incidental to the collision between two vehicles which caused the heated argument and the eventual stabbing of the victim, nighttime is not aggravating. To be aggravating, the prosecution must show that the accused purposely sought to commit the crime at nighttime in order to facilitate the achievement of his objectives, prevent discovery or evade capture. (People vs. Velaga, Jr., G.R. No. 87202, July 23, 1991, 199 SCRA 518, 523-524)

The information must allege that nighttime was sought for or taken advantage of by the accused or that it facilitated the commission of the crime.

The jurisprudence on this subject is to the effect that 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 fails to satisfy the criterion. (People vs. Fernandez, No. L-32623, June 29, 1972, 45 SCRA 535, 537)

Not aggravating when crime began at daytime.

When the crime was the *result of a succession of acts* which took place within the period of two hours, commencing at 5:00 p.m. and ending at 7:00 p.m., without a moment's interruption in which it can be said that the thought of nighttime, being the most favorable occasion for committing the crime, occurred to the accused, there is no aggravating circumstance of nighttime. (People vs. Luchico, 49 Phil. 689, 697)

The commission of the crime must begin and be accomplished in the nighttime.

Thus, although the safe was thrown into the bay at night, but the money, the taking of which constituted the offense, was withdrawn from the treasury during the daytime, the crime of malversation was not attended by the aggravating circumstance of nighttime. (U.S. vs. Dowdell, 11 Phil. 4, 7)

The offense must be actually committed in the darkness of the night.

Thus, when the defendants *did not intentionally seek* the cover of darkness for the purpose of committing murder and they were carrying a *light of sufficient brilliance* which made it easy for the people nearby to *recognize them* (U.S. vs. Paraiso, 17 Phil. 142, 146-147), or when the crime of robbery with homicide was committed at daybreak when the defendants *could be recognized* (U.S. vs. Tampacan, 19 Phil. 185, 188), nighttime is not aggravating.

When the place of the crime is illuminated by light, nighttime is not aggravating.

The fact that the scene of the incident was illuminated by the light on the street as well as that inside the vehicle of which the victim was a passenger, negates the notion that accused had especially sought or had taken advantage of nighttime in order to facilitate the commission of the crime of theft or for purposes of impunity. (People vs. Joson, C.A., 62 O.G. 4604)

Although the offense was committed at nighttime, the record does not show that appellant had sought it purposely or taken advantage thereof to facilitate the perpetration of the offense. In fact, the place from which he fired at Laguna seemed to be sufficiently lighted

for him to be clearly visible to, as well as recognized by, all of those who happened to be nearby. (People vs. Bato, G.R. No. L-23405, Dec. 29, 1967, 21 SCRA 1445, 1448)

Nocturnity is not aggravating where there is no evidence that the accused had purposely sought the cover of the darkness of the night to commit the crime; nor is there evidence that nighttime facilitated the commission of the crime, aside from the fact that the scene of the crime was illuminated. (People vs. Moral, No. L-31139, Oct. 12, 1984, 132 SCRA 474, 487. Also, People vs. Toring, G.R. No. 56358, Oct. 26, 1990, 191 SCRA 38, 47; People vs. Aspili, G.R. Nos. 89418-19, Nov. 21, 1990, 191 SCRA 530, 543)

The lighting of a matchstick or use of flashlights does not negate the aggravating circumstance of nighttime.

It is self-evident that nighttime was sought by appellant to facilitate the commission of the offense, when all the members of the household were asleep. The fact that Restituto Juanita hit a matchstick does not negate the presence of said aggravating circumstance. Thus, in *People vs. Rogelio Soriano, et al.*, G.R. No. L-32244, June 24, 1983, 122 SCRA 740, this Court rejected the contention that nocturnity could not be appreciated because flashlights were used. (People vs. Berbal, *et.al.*, G.R. No. 71527, Aug. 10, 1989)

(b) *Uninhabited place.*

What is uninhabited place?

An uninhabited place is one where there are no houses at all, a place at a considerable distance from town, or where the houses are scattered at a great distance from each other.

This aggravating circumstance *should not be considered* when the *place* where the crime was committed could *be seen* and the *voice* of the deceased could be *heard* from a nearby house. (People vs. Laoto, 52 Phil. 401, 408)

Whether or not the crime committed is attended by this aggravating circumstance should be determined not by the distance of the nearest house from the scene of the crime, but *whether or not in the place of the commission of the offense there was a reasonable possibility of the victim receiving some help.*

That the place is uninhabited is determined, not by the distance of the nearest house to the scene of the crime, but whether or not in the place of its commission, there was reasonable possibility of the victim receiving some help. Thus, the crime is committed in an uninhabited place where the killing was done during nighttime, in a sugarcane plantation about a *hundred meters* from the nearest house, and the sugarcane in the field was tall enough to obstruct the view of neighbors and passersby. (People vs. Fausto Damaso, 75 O.G. 4979, No. 25, June 18, 1979)

The purely accidental circumstance that on the day in question another banca, namely, that of the witnesses for the prosecution, was also at sea, is not an argument against the consideration of such aggravating circumstance. It was difficult for the victim to receive any help and it was easy for the assailants to escape punishment. (People vs. Rubia, 52 Phil. 172, 175-176; People vs. Arpa, No. L-26789, April 25, 1969, 27 SCRA 1037, 1044)

Uninhabited place is aggravating where the felony was perpetrated in the open sea, where no help could be expected by the victim from other persons and the offenders could easily escape punishment. (People vs. Nulla, No. L-69346, Aug. 31, 1987, 153 SCRA 471, 483)

The fact that persons occasionally passed in the uninhabited place and that on the night of the murder another hunting party was not a great distance away, does not matter. It is the nature of the place which is decisive. (People vs. Bangug, 52 Phil. 87, 92)

A place about a kilometer from the nearest house or other inhabited place is considered an uninhabited place. (People vs. Aguinaldo, 55 Phil. 610, 616; People vs. Mendova, 100 Phil. 811, 818)

With the finding of the body of the victim in a solitary place off the road and hidden among the trees and tall grasses on a hill, some 500 meters away from the toll gate where help to the victim was difficult and the escape of the accused seemed easy, it is correct to appreciate the aggravating circumstance of uninhabited place. (People vs. Atitiw, C.A., 66 O.G. 4040)

The killing was done in Barrio Makatipo, Novaliches, Caloocan City, an isolated place that resembled that of an abandoned

subdivision. The place was ideal not merely for burying the victim but also for killing him for it was a place where the possibility of the victim receiving some help from third persons was completely absent. The accused sought the solitude of the place in order to better attain their purpose without interference, and to secure themselves against detection and punishment. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 212-213)

When the victims are the occupants of the only house in the place, the crime is committed in an uninhabited place.

In the case of *People vs. Piring,* 63 Phil. 546, where the accused attacked and killed a couple in their house, the circumstance of uninhabited place was not taken into consideration as aggravating circumstance, because it was not proven that there were no houses near the house of the deceased. The implication is that, if it was shown that there were no houses there, it would be considered an uninhabited place, even if there was a house there and the victims were living in that house.

Solitude must be sought to better attain the criminal purpose.

It must appear that the accused *sought the solitude* of the place where the crime was committed, in order to better attain his purpose. (People vs. Aguinaldo, 55 Phil. 610, 616) The offenders must choose the place as an aid either (1) to an easy and *uninterrupted accomplishment* of their criminal designs, or (2) to insure *concealment* of the offense, that he might thereby be better secured against detection and punishment. (U.S. vs. Vitug, 17 Phil. 1, 20; People vs. Andaya, No. L-63862, July 31, 1987, 152 SCRA 570, 578)

Hence, this aggravating circumstance is not present even if the crime was committed in an uninhabited place, if the offended party was casually encountered by the accused and the latter did not take advantage of the place or there is no showing that it facilitated the commission of the crime. (People vs. Luneta, 79 Phil. 815, 818)

The aggravating circumstance of uninhabited place cannot be considered against the defendants, although the house nearest to the dwelling of the victim was about a kilometer away, if the defendants did not select the place either to better attain their object without interference or to secure themselves against detection and punishment. (People vs. Deguia, 88 Phil. 520, 526)

(c) *By a band.*

What is a band?

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.

The armed men must act together in the commission of the crime.

The mere fact that there are more than three armed men at the scene of the crime does not prove the existence of a band, if only one of them committed the crime while the others were not aware of the commission of the crime. The definition of "by a band" says that the armed men "shall have *acted together* in the commission of the offense."

The band must be composed of *more than* three armed persons. Hence, even if there are 20 persons, but only 3 are armed, this aggravating circumstance by a band cannot be considered. (U.S. vs. Mendigoren, 1 Phil. 658, 659; See also U.S. vs. Melegrito, 11 Phil. 229, 231; People vs. Pakah, 81 Phil. 426, 429; People vs. Ga, G.R. No. 49831, June 27, 1990, 186 SCRA 790, 797; People vs. Lungbos, No. L-57293, June 21, 1988, 162 SCRA 383, 388)

"Stone" is included in the term "arms."

We held in the case *of People vs. Bautista* (28 SCRA 184) that there is an intention to cause death if the accused throws a stone at the victims, thus including stone under the term *arms* in the phrase "more than 3 armed malefactors acted together." (People vs. Manlolo, G.R. No. 40778, Jan. 26, 1989)

If one of the four armed persons is a principal by inducement, they do not form a band.

What is more, the supposed participation of the petitioner herein, Modesto Gamara, as defined in the same information, was that of principal by inducement, which undoubtedly connotes that he has no direct participation in the perpetration thereof. (Gamara vs. Valero, No. L-36210, June 25, 1973, 51 SCRA 322, 326)

Note: All the armed men, at least four in number, must take direct part in the execution of the act constituting the crime. (Art. 17, paragraph 1, Revised Penal Code)

When nighttime, uninhabited place, or by a band did not facilitate the commission of the crime, was not especially sought for, or was not taken advantage of.

When *four armed persons*, who *casually* met another group of three armed persons in an *uninhabited place* at *nighttime,* quarreled with the latter and, *in the heat of anger,* the two groups fought against each other, resulting in the death of one of the three which formed the other group, nighttime, uninhabited place, and by a band are not aggravating circumstances.

Reason: When the meeting between the offenders and the group of the deceased was casual, the offenders *could not have sought for* the circumstances of nighttime, uninhabited place and their forming a band. When the offenders attacked the group of the deceased in the heat of anger, they *could not have taken advantage of* such circumstances. And since they did not afford the offenders any advantage, such circumstances *could not have facilitated* the commission of the crime.

"By a band" is aggravating in crimes against property or against persons or in the crime of illegal detention or treason.

The aggravating circumstance of *by a band* is considered in crimes against property (People vs. Corpus, C.A., 43 O.G. 2249) and in *crimes against persons.* (People vs. Laoto, 52 Phil. 401, 408; People vs. Alcaraz, 103 Phil. 533, 549; People vs. Aspili, G.R. Nos. 89418-19, Nov. 21, 1990, 191 SCRA 530, 543) It was taken into account also in illegal detention (U.S. vs. Santiago, 2 Phil. 6, 8), and in treason. (People vs. Manayao, 44 O.G. 4868)

Not applicable to crimes against chastity.

Thus, in the crime of rape committed by four armed persons, this circumstance was not considered. (People vs. Corpus, C.A., 43 O.G. 2249)

Abuse of superior strength and use of firearms, absorbed in aggravating circumstance of "by a band."

The aggravating circumstance of taking advantage of their superior strength and with the use of firearms is absorbed by the generic aggravating circumstance of the commission of the offense by a band. (People vs. Escabarte, G.R. No. 42964, March 14, 1988)

"By a band" is inherent in brigandage.

In the crime of brigandage, which is committed by more than three armed persons forming a band of robbers (Art. 306), the circumstance that the crime was committed by a band should not be considered as aggravating, because it is *inherent* in or is necessarily included in defining the crime.

"By a band" is aggravating in robbery with homicide.

In the cases of *People vs. Sawajan,* 53 Phil. 689, 693, and *People vs. Uday*, 85 Phil. 498, 503, it was held that in the imposition of the penalty for the crime of robbery with homicide, the aggravating circumstance that the crime was committed by a band should be taken into consideration.

Par. 7. — That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

Basis of this aggravating circumstance.

The basis of this aggravating circumstance has reference to the *time of the commission of the crime.*

Reason for the aggravation.

The reason for the existence of this circumstance is found in the debased form of criminality met in one who, in the midst of a great calamity, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune to despoil them. (U.S. vs. Rodriguez, 19 Phil. 150, 157)

Example:

An example of this circumstance is the case of a fireman who commits robbery in a burned house, or that of a thief who immediately after a destructive typhoon steals personal property from the demolished houses.

The offender must take advantage of the calamity or misfortune.

Thus, if the accused was provoked by the offended party to commit the crime during the calamity or misfortune, this aggravating circumstance may not be taken into consideration for the purpose of increasing the penalty because the accused did not take advantage of it.

"Chaotic condition" as an aggravating circumstance.

The phrase "or other calamity or misfortune" refers to other conditions of distress similar to those precedingly enumerated, that is, "conflagration, shipwreck, earthquake or epidemic." Hence, chaotic conditions after liberation is not included under this paragraph. (People vs. Corpus, C.A., 43 O.G. 2249)

But in the case of *People vs. Penjan,* C.A., 44 O.G. 3349, the chaotic condition resulting from the liberation of San Pablo was considered a calamity.

The development of engine trouble at sea is a misfortune, but it does not come within the context of the phrase "other calamity or misfortune," as used in Art. 14, par. 7 of the Revised Penal Code, which refers to other conditions of distress similar to those precedingly enumerated therein, namely, "conflagration, shipwreck, earthquake or epidemic," such as the chaotic conditions resulting from war or the liberation of the Philippines during the last World War. Clearly, no condition of great calamity or misfortune existed when the motor banca developed engine trouble. (People vs. Arpa, No. L-26789, April 25, 1969, 27 SCRA 1037, 1045)

Par. 8. — That the crime be committed with the aid of(1) armed men, or (2) persons who insure or afford impunity.

Basis of this aggravating circumstance.

It is based on the *means* and *ways* of committing the crime.

Requisites of this aggravating circumstance.

1. That armed men or persons took part in the commission of the crime, *directly* or *indirectly.*

2. That the accused *availed* himself of their aid or *relied* upon them when the crime was committed.

Rule for the application of this circumstance.

The *casual presence* of armed men near the place where the crime was committed *does not constitute* an aggravating circumstance when it appears that the accused *did not avail* himself *of their aid or rely upon* them to commit the crime.

The armed men must take part directly or indirectly.

The accused stabbed the deceased to death.

"The testimony of the accused, corroborated by that of the witness for the prosecution, is that the crime was committed by him (accused) alone, without assistance from any one. It is true that in the house near the place where the crime was committed there were ten men armed with daggers, and five without arms, *but these men took no part, directly or indirectly, in the commission of the crime,* and it does not appear that they heard the conversation which caused the sudden determination on the part of the accused to kill the deceased. The accused, therefore, did not avail himself of their aid or rely upon them to commit the crime." (U.S. vs. Abaigar, 2 Phil. 417, 418)

Examples of "with the aid of armed men."

A, in order to get rid of her husband, secured the services of other Moros by promising them rewards and had them kill her husband. In accordance with the plan, they armed themselves with clubs, went to the house of the victim and clubbed him to death while A held a lighted lamp. A also supplied them with rope with which to tie her husband. In this case, A committed parricide "with the aid of armed men." (People vs. Ilane, G.R. No. L-45902, May 31, 1938)

O and L were prosecuted for robbery with rape. It appeared from their written confessions that they had companions *who were armed* when they committed the crime. It was held that they were guilty of robbery with rape with the aggravating circumstance of aid of armed men. (People vs. Ortiz, 103 Phil. 944, 949)

Exceptions:

(1) This aggravating circumstance shall not be considered when both the attacking party and the party attacked were equally armed. (Albert)

(2) This aggravating circumstance is not present when the accused as well as those who cooperated with him in the commission of the crime acted under the *same plan and for the same purpose.* (People vs. Piring, 63 Phil. 546, 553; People vs. Candado, No. L-34089, Aug. 1, 1978, 84 SCRA 508, 524)

"With the aid of armed men" (Par. 8), distinguished from "by a band." (Par. 6)

By a band requires that more than three armed malefactors shall have *acted together* in the commission of an offense. Aid of armed men is present even if one of the offenders merely relied on their aid, for actual aid is not necessary.

"Aid of armed men" is absorbed by "employment of a band."

Thus, it is improper *to separately* take into account against the accused the aggravating circumstances of (1) the aid of armed men, and (2) employment of a band in appraising the gravity of the offense, in view of the definition of band which includes any group of armed men, provided they are at least four in number. (People vs. Manayao, 78 Phil. 721, 728)

Note: If there are four armed men, aid of armed men is absorbed in employment of a band. If there are three armed men or less, aid of armed men may be the aggravating circumstance.

"Aid of armed men" includes "armed women."

Aid of armed women is aggravating in kidnapping and serious illegal detention. (People vs. Licop, 94 Phil. 839, 846)

But see *People vs. Villanueva,* 98 Phil. 327, where it was opined that some use of arms or show of armed strength is necessary to guard

a kidnap victim to prevent or discourage escape and so in a sense, it may be justly regarded as included in or absorbed by the offense itself. (p. 340)

Par. 9. — That the accused is a recidivist.

Basis of this aggravating circumstance.

This is based on the greater perversity of the offender, as shown by his inclination to crimes.

Who is a recidivist?

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code. (People vs. Lagarto, G.R. No. 65833, May 6, 1991, 196 SCRA 611, 619)

Requisites:

1. That the offender is on trial for an offense;
2. That he was *previously convicted* by *final judgment* of another crime;
3. That both the first and the second offenses are *embraced* in the *same title of the Code;*
4. That the offender is convicted of the new offense.

"At the time of his trial for one crime."

What is controlling is the *time of trial,* not the time of the commission of the crime. It is not required that at the time of the commission of the crime, the accused should have been previously convicted by final judgment of another crime.

Meaning of "at the time of his trial for one crime."

The phrase "at the time of his trial" should not be restrictively construed as to mean the date of arraignment. It is employed in its general sense, including the rendering of the judgment. It is meant to include everything that is done in the course of the trial, from

arraignment until after sentence is announced by the judge in open court. (People vs. Lagarto, *supra)*

Held: The accused was not a recidivist. (People vs. Baldera, 86 Phil. 189, 193)

No recidivism if the subsequent conviction is for an offense committed before the offense involved in the prior conviction.

The accused was convicted of robbery with homicide committed on December 23, 1947. He was *previously* convicted of theft committed on December 30, 1947.

Held: The accused was not a recidivist. (People vs. Baldera, 86 Phil. 189)

"Previously convicted by final judgment."

The accused was prosecuted and tried for theft, estafa and robbery. Judgments for three offenses were read on the same day. Is he a recidivist? No, because the judgment in any of the first two offenses was not yet final when he was tried for the third offense.

Sec. 7 of Rule 120 of the Revised Rules of Criminal Procedure provides that except where the death penalty is imposed, a judgment in a criminal case becomes final (1) after the lapse of the period for perfecting an appeal, or (2) when the sentence has been partially or totally satisfied or served, or (3) the accused has waived in writing his right to appeal, or (4) the accused has applied for probation. Sec. 6 of Rule 122 of the Revised Rules of Criminal Procedure provides that "[a]n appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from."

The present crime and the previous crime must be "embraced in the same title of this Code."

Thus, if the accused had been twice convicted of violation of section 824 of the Revised Ordinances of the City of Manila and subsequently he was prosecuted for violation of Article 195 of the Revised Penal Code concerning gambling, he is not a recidivist. (People vs. Lauleco, C.A., 36 O.G. 956) When one offense is punishable by an ordinance or special law and the other by the Revised Penal Code, the two offenses are not embraced in the same title of the Code.

But recidivism was considered aggravating in a usury case where the accused was previously convicted of the same offense. Under its Art. 10, the Revised Penal Code should be deemed as supplementing special laws of a penal character. (People vs. Hodges, 68 Phil. 178, 188)

Examples of crimes embraced in the same title of the Revised Penal Code.

Robbery and theft are embraced in Title Ten, referring to crimes against property. Homicide and physical injuries are embraced in Title Eight, referring to crimes against persons. The felonies defined and penalized in Book II of the Revised Penal Code are grouped in different titles. Title Ten and Title Eight are among them.

There is recidivism even if the lapse of time between two felonies is more than 10 years.

Recidivism must be taken into account as an aggravating circumstance no matter how many years have intervened between the first and second felonies. (People vs. Colocar, 60 Phil. 878, 884; See also People vs. Jaranilla, No. L-28547, Feb. 22, 1974, 55 SCRA 563, 575, where the accused admitted their previous convictions.)

Pardon does not obliterate the fact that the accused was a recidivist; but amnesty extinguishes the penalty and its effects.

This is the ruling in the case of *U.S. vs. Sotelo,* 28 Phil. 147, 160. According to Art. 89, amnesty extinguishes the penalty and all its *effects.* There is no such provision with respect to pardon.

Therefore, pardon does not prevent a former conviction from being considered as an aggravating circumstance.

The accused-appellant admitted during the trial that he was once convicted of the crime of homicide but he was granted an absolute pardon therefor. The lower court properly considered recidivism since a pardon for a preceding offense does not obliterate the fact that the accused is a recidivist upon his conviction of a second offense embraced in the same title of the Revised Penal Code. (People vs. Lacao, Sr., G.R. No. 95320, Sept. 4, 1991, 201 SCRA 317, 330)

Par. 10. — That the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

Basis of this aggravating circumstance.

The basis is the same as that of recidivism, *i.e.,* the greater perversity of the offender as shown by his inclination to crimes.

Requisites:

1. That the accused is on trial for an offense;
2. That he previously *served sentence* for another offense to which the law attaches an *equal* or *greater* penalty, or for *two* or *more* crimes to which it attaches *lighter* penalty than that for the new offense; and
3. That he is convicted of the new offense.

The accused was convicted of homicide, less serious physical injuries, and slight physical injuries, all committed on January 14. 1979. He was found by the trial court to have committed offenses prior to and after that date, as follows: (1) prior to January, 1979, he was arrested and accused of the crime of theft; (2) on May 15, 1973, he was likewise charged for physical injuries but said case was amicably settled; (3) on January 15, 1973, he was likewise charged for the crime of theft and was convicted of said offense; (4) he was likewise charged and convicted in another criminal case; (5) he was also charged for theft but said case was settled amicably; and (6) he was charged and convicted for theft on October 30, 1982. In *reiteracion* or habituality, it is essential that the offender be previously punished, that is, he has served sentence, for an offense in which the law attaches, or provides for an equal or greater penalty than that attached by law to the second offense, or for two or more offenses, in which the law attaches a lighter penalty. The records did not disclose that the accused has been so previously punished. *Reiteracion* or habituality is not attendant. (People vs. Villapando, G.R. No. 73656, Oct. 5, 1989, 178 SCRA 341, 355)

"Has been previously punished."

This phrase in paragraph 10 means that the accused previously *served* sentence for another offense or sentences for other

offenses before his trial for the new offense. (See People vs. Abella, No. L-32205, Aug. 31, 1979, 93 SCRA 25, 48, where the rule was applied.)

The second requisite is present: (1) when the *penalty provided by law* for the *previous offense* is *equal* to that for the new offense; or (2) when the *penalty provided by law* for the previous offense is *greater;* or (3) when the accused *served at least two sentences,* even if the penalties provided by law for the crimes are lighter.

"Punished for an offense to which the law attaches an equal x x x penalty."

A *served* sentence for forcible abduction (Art. 342) punishable by *reclusion temporal,* that is from 12 years and 1 day to 20 years. Later, after A was released from prison, he committed homicide (Art. 249) punishable also by *reclusion temporal.* In fixing the penalty for homicide, the court will have to consider the aggravating circumstance of habituality against A.

"Punished for an offense to which the law attaches x x x greater penalty."

The accused once *served* sentence for homicide punishable by a penalty ranging from 12 years and 1 day to 20 years. Now, he is convicted of falsification punishable by a penalty ranging from 6 years and 1 day to 12 years. Is there *reiteracion* or habituality in this case? Yes, because the penalty for homicide for which he served sentence is *greater* than that for the new offense (falsification).

Suppose it was falsification first and homicide now? Then, there is no habituality, because the penalty for the first offense is less than that for the second offense. The penalty for the first offense must *at least* be equal to that for the second offense.

Suppose it was homicide before and homicide now? Then, there is recidivism, because the first and the second offenses are embraced in the same title of the Code. Although the law requires only final judgment in recidivism, even if the convict served sentence for one offense, there is still recidivism, provided the first and the second offenses are embraced in the same title of the Code.

"Punished x x x for two or more crimes to which it attaches a lighter penalty."

A served 30 days imprisonment for theft; later, he served 2 months for estafa; now he is tried for homicide which is punishable with *reclusion temporal,* that is, 12 years and 1 day to 20 years. Note that for the previous two offenses, the law provides lesser penalties.

It is the penalty attached to the offense, not the penalty actually imposed.

Paragraph No. 10 of Art. 14 speaks of penalty attached to the offense, which may have several periods. Hence, even if the accused served the penalty of *prision mayor* in its minimum period and is now convicted of an offense for which the penalty of *prision mayor* maximum is imposed, there is still habituality, provided that the penalty attached to the two offenses is *prision mayor* in its full extent.

Reiteracion or habituality, not always aggravating.

If, as a result of taking this circumstance into account, the penalty for the crime of murder would be death and the offenses for which the offender has been previously convicted are against property and not directly against persons, the court should exercise its discretion in favor of the accused by not taking this aggravating circumstance into account. (1 Viada, 310)

Recidivism and *reiteracion,* distinguished.

The circumstance of *reiteracion* may be distinguished from that of recidivism as follows:

(a) In *reiteracion,* it is necessary that the offender shall have *served out* his sentence for the first offense; whereas, in recidivism, it is enough that a *final judgment* has been rendered in the first offense.

(b) In *reiteracion,* the previous and subsequent offenses *must not* be embraced in the same title of the Code; whereas, recidivism, requires that the offenses be included in the same title of the Code.

(c) *Reiteracion* is not always an aggravating circumstance; whereas, recidivism is always to be taken into consideration in fixing the penalty to be imposed upon the accused.

The four forms of repetition are:

1. Recidivism. (Paragraph 9, Art. 14)
2. *Reiteracion* or habituality. (Paragraph 10, Art. 14)
3. Multi-recidivism or habitual delinquency. (Art. 62, paragraph 5)
4. Quasi-recidivism. (Art. 160)

The first two are *generic* aggravating circumstances, while the third is an *extraordinary* aggravating circumstance. The fourth is a special aggravating circumstance.

Habitual delinquency.

There is habitual delinquency when a person, within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, is found guilty of any of said crimes a third time or oftener. (Art. 62, last paragraph) In habitual delinquency, the offender is either a recidivist or one who has been previously punished for two or more offenses (habituality). He shall suffer an additional penalty for being a habitual delinquent.

Quasi-recidivism.

Any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony. (Art. 160)

Defendant, while serving sentence in Bilibid for one crime, struck and stabbed the foreman of the brigade of prisoners. Under Article 160 of the Code, he shall be punished with the maximum period of the penalty prescribed by the law for the new felony. (People vs. Durante, 53 Phil. 363, 372)

Par. 11. — That the crime be committed in consideration of a price, reward or promise.

Basis:

This is based on the greater perversity of the offender, as shown by the motivating power itself.

This aggravating circumstance presupposes the concurrence of two or more offenders.

When this aggravating circumstance is present, there must be two or more principals, the one who gives or offers the price or promise and the one who accepts it, both of whom are principals—to the former, because he directly induces the latter to commit the crime, and the latter because he commits it. (1 Viada, 262)

Is this paragraph applicable to the one who gave the price or reward?

When this aggravating circumstance is present, it affects not only the person who received the price or the reward, but also the person who gave it. (U.S. vs. Parro, 36 Phil. 923, 924; U.S. vs. Maharaja Alim, 38 Phil. 1, 7)

The established rule in Spanish jurisprudence is to the effect that the aggravating circumstance of price, reward or promise thereof affects equally the offeror and the acceptor. (People vs. Alincastre, No. L-29891, Aug. 30, 1971, 40 SCRA 391, 408; People vs. Canete, No. L-37945, May 28, 1984, 129 SCRA 451, 459)

P procured an ignorant man to kill the brother and grandniece of P for a reward of P60. The ignorant man, following the instruction of P, killed them. *Held:* Murder by inducement of a price is committed. (U.S. vs. Parro, *supra)*

In the case of *U.S. vs. Parro,* price was a qualifying aggravating circumstance.

The aggravating circumstance that the crime was committed for hire or reward can be applied to the instigator of the crime. (U.S. vs. Gamao, 23 Phil. 81)

But in the case of *People vs. Talledo and Timbreza,* 85 Phil. 539, it was held that the aggravating circumstance of price or reward

cannot be considered against the other accused for the reason that it was not she who committed the crime in consideration of said price or reward.

If the price, reward or promise is alleged in the information as a qualifying aggravating circumstance, it shall be considered against all the accused, it being an element of the crime of murder. In the case of Talledo and Timbreza, price was considered as a generic aggravating circumstance only, because it was not alleged to qualify the crime to murder.

Price, reward or promise must be for the purpose of inducing another to perform the deed.

The evidence must show that one of the accused used money or other valuable consideration *for the purpose* of inducing another to perform the deed. (U.S. vs. Gamao, 23 Phil. 81)

If *without previous promise* it was given voluntarily after the crime had been committed as an expression of his appreciation for the sympathy and aid shown by other accused, it should not be taken into consideration for the purpose of increasing the penalty. (U.S. vs. Flores, 28 Phil. 29, 34)

The evidence shows that there was an offer of a reward by appellant Pascual Bartolome, and a promise by appellant Santos, but the evidence is not conclusive that appellant Ben Perlas participated in the commission of the robbery by reason of such reward or promise, it appearing that even before the other accused met with Pascual Bartolome and the other municipal officials who made the promise, the other accused had *already decided* to commit the robbery. No doubt, the reward and the promise aforementioned must have given the other accused, including appellant Ben Perlas, further encouragement in the commission of the robbery; however, in our opinion, for this aggravating circumstance to be considered against the person induced, the said inducement must be the primary consideration for the commission of the crime by him. (People vs. Paredes, Nos. L-19149-50, Aug. 16, 1968, 24 SCRA 635, 662)

Par. 12. — That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.

Basis of this aggravating circumstance.

The basis has reference to *means* and *ways employed.*

Unless used by the offender as a means to accomplish a criminal purpose, any of the circumstances in paragraph 12 cannot be considered to increase the penalty or to change the nature of the offense.

As generic aggravating circumstance.

A killed his wife by means of fire, as when he set their house on fire to kill her; or by means of explosion, as when he threw a hand grenade at her to kill her; or by means of poison which he mixed with the food of his wife. In any of these cases, there is only a generic aggravating circumstance, because they cannot qualify the crime. The crime committed is parricide which is already qualified by relationship.

When another aggravating circumstance already qualifies the crime, any of these aggravating circumstances shall be considered as generic aggravating circumstance only.

When there is no actual design to kill a person in burning a house, it is plain arson even if a person is killed.

When the *crime intended to be committed is arson* and somebody dies as a result thereof, the crime is simply arson and the act resulting in the death of that person is not even an independent crime of homicide, it being absorbed. (People vs. Paterno, *et al.*, 85 Phil. 722)

If death resulted as a consequence of arson committed on any of the properties and under any of the circumstances mentioned in Articles 320 to 326, the court shall impose the death penalty. (Art. 320, Revised Penal Code, as amended)

On the other hand, if the offender *had the intent to kill* the victim, burned the house where the latter was, and the victim died

as a consequence, the crime is murder, qualified by the circumstance that the crime was committed "by means of fire." (See Art. 248)

When used as a means to kill another person, the crime is murder.

The killing of the victim *by means* of such circumstances as inundation, fire, poison, or explosion qualifies it to murder. (Art. 248, Par. 3)

1. *"By means of fire"*

In a case, the accused had set fire to an automobile under a building, with the result that the edifice was consumed by fire. One of the inmates of the house perished in the conflagration.

Held: In order to constitute murder, there should be *an actual design to kill* and that the *use of fire should be purposely adopted as a means to that end.* (U.S. vs. Burns, 41 Phil. 418, 432)

Hence, if the *purpose* of the explosion, inundation, fire or poison is to *kill* a predetermined person, the crime committed is murder. Once any of these circumstances is alleged in the information to qualify the offense, it should not be considered as generic aggravating circumstance for the purpose of increasing the penalty, because it is an integral element of the offense.

But if a house was set on fire *after the killing* of the victim, there would be two separate crimes of arson and murder or homicide. (People vs. Bersabal, 48 Phil. 439, 441; People vs. Piring, 63 Phil. 546, 552) There would not be an aggravating circumstance of "by means of fire."

2. *"By means of explosion"*

What crime is committed if a hand grenade is thrown into the house where a family of seven persons live, and as a result of the *explosion,* the wall of the house is damaged, endangering the lives of the people there?

The offense is a crime involving destruction. (Art. 324) If one of the people there died, but there is no intent to kill on the part of the offender, it will be a crime involving destruction also, but the penalty will be death. But if there is *intent to kill* and *explosion is used by* the offender to accomplish his criminal purpose, it is murder *if the victim dies* as a direct consequence thereof.

3. *"By means of derailment of locomotive"*

Under Art. 330, which defines and penalizes the crime of damage to means of communication, derailment of cars, collision or accident must result from damage to a railway, telegraph or telephone lines.

But this is without prejudice to the criminal liability for other *consequences* of criminal act.

(1) What crime is committed if as a result of the derailment of cars only property is damaged? It is damage to means of communication under Art. 330.

(2) What is the crime if the death of a person also results *without intent to kill* on the part of the offender? It is a complex crime of damage to means of communication with homicide. (Arts. 330 and 249 in relation to Arts. 4 and 48)

(3) What is the crime committed, if the death of a person resulted and *there was intent* to kill on the part of the offender? It is murder, because the derailment of cars or locomotive was the means used to kill the victim. (Art. 248)

(4) Must this aggravating circumstance be considered to raise the penalty, if it already qualifies the crime to murder? No, because of Art. 62, par. 1, which provides that when the aggravating circumstance is included by the law in defining a crime, it shall not be taken into consideration for the purpose of increasing the penalty.

It will be noted that each of the circumstances of "fire," "explosion," and "derailment of a locomotive" may be a part of the definition of particular crime, such as, arson (Art. 320), crime involving destruction (Art. 324), and damages and obstruction to means of communication. (Art. 330)

In these cases, they do not serve to increase the penalty, because they are already included by the law in defining the crimes.

Par. 12 distinguished from Par. 7.

Under par. 12, the crime is committed by *means* of any of such acts involving great waste or ruin. Under par. 7, the crime is committed on the *occasion* of a calamity or misfortune.

Par. 13. — That the act be committed with evident premeditation.

Basis of this aggravating circumstance.

The basis has reference to the *ways* of committing the crime, because evident premeditation implies a *deliberate planning* of the act before executing it.

Illustration of deliberate planning of the act before executing it.

Pastor Labutin had planned to liquidate Simplicio Tapulado. The plan could be deduced from the outward circumstances shown from the time he walked with Vicente Ompad and Angel Libre (the triggermen) to the house of Lucio Samar where he caused his co-accused to be drunk, the breaking out of his plan to kill the victim to his co-accused at the time when he knew that they were already drunk, his remark that he had grudge against the victim in reply to the comment of Vicente Ompad that he had no ill-feeling against him (victim), his immediate action to supply the ammunition when Vicente Ompad remarked about the lack of it, and his being always near the triggermen at the critical moments when the crime was actually to take place. These circumstances were means which he considered adequate and effective to carry out the intended commission. He had sufficient time to reflect and allow his conscience to overcome his resolution to kill. That Pastor Labutin acted with known premeditation, is evident indeed. (People vs. Ompad, No. L-23513, Jan. 31, 1969, 26 SCRA 750, 759)

Evident premeditation may be considered as to principal by induction.

Thus, when Gil Gamao as far back as March 1907, attempted to induce Batolinao to kill the priest; in March 1909, two months prior to the murder, he offered Patpat ₱50 to kill the priest; some days prior to the murder, he said that an anarchistic society had been formed with the object of killing the friars; and on the afternoon of May 15, he presided at the meeting held in his own house, where it was agreed that the priest should be killed and he there deliberately selected his nephew to commit the crime, and directly induced him to do it; the crime, in so far as Gil Gamao was concerned, was

committed with known premeditation. (U.S. vs. Gamao, 23 Phil. 81, 96)

Essence of premeditation.

The essence of premeditation is that the execution of the criminal act *must be preceded by cool thought* and *reflection* upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a *calm judgment.* (People vs. Durante, 53 Phil. 363, 369)

Evident premeditation has been fully established. The commission of the crime was premeditated and reflected upon and was preceded by cool thought and a reflection with the resolution to carry out the criminal intent during a span of time sufficient to arrive at the hour of judgment. (People vs. Escabarte, No. L-42964, March 14, 1988, 158 SCRA 602, 612)

Thus, evident premeditation may not be appreciated absent any proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out. (People vs. Peñones, G.R. No. 71153, Aug. 16, 1991, 200 SCRA 624, 635)

Neither is it aggravating where the fracas was the result of rising tempers, not a deliberate plan (People vs. Padrones, G.R. No. 85823, Sept. 13, 1990, 189 SCRA 496, 511), nor when the attack was made in the heat of anger. (People vs. Anin, No. L-39046, June 30, 1975, 64 SCRA 729, 734)

It is not aggravating in the absence of evidence showing that the accused had, prior to the killing, resolved to commit the same, nor is there proof that the shooting of the victim was the result of meditation, calculation or resolution, and the deceased was unknown to the accused before the incident. (People vs. Samonte, Jr., No. L-31225, June 11, 1975, 64 SCRA 319, 326)

The premeditation must be "evident."

There must be evidence showing that the accused meditated and reflected on his intention between the time *when the crime was conceived by him* and the time *it was actually perpetrated.* (People vs. Carillo, 77 Phil. 579) The premeditation must be *evident* and *not merely suspected.* (People vs. Yturriaga, 86 Phil. 534, 538; People vs.

Manangan, No. L-32733, Sept. 11, 1974, 59 SCRA 31, 38-39; People vs. Lacao, No. L-32078, Sept. 30, 1974, 60 SCRA 89, 95)

Requisites of evident premeditation:

The prosecution must prove —

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. **A *sufficient lapse of time* between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. (People vs. Lagarto, G.R. No. 65883, May 6, 1991, 196 SCRA 611, 619-620; People vs. Clamor, G.R. No. 82708, 198 SCRA 642, 655; People vs. Pacris, G.R. No. 69986, March 5, 1991, 194 SCRA 654, 664; People vs. Iligan, G.R. No. 75369, Nov. 26, 1990, 191 SCRA 643, 653; People vs. Requipo, G.R. No. 90766, Aug. 13, 1990, 188 SCRA 571, 577 and legions of other cases)**

Example:

U.S. vs. Manalinde
(14 Phil. 77)

Facts: **The accused who pleaded guilty confessed that his wife died about one hundred days before; that he was directed by Datto Mupuck to *go huramentado* and to kill the two persons he would meet in the town; that if he was successful in the matter, Mupuck would give him a pretty woman on his return; that in order to carry out his intention to kill two persons in the town of Cotabato, he provided himself with a kris, which he concealed in banana leaves; that he travelled for a day and a night from his home; that upon reaching the town, he attacked from behind a Spaniard, and immediately after, he attacked a Chinaman who was close by; and that he had no quarrel with the assaulted persons.**

Held: **Those facts established the aggravating circumstance of evident premeditation.**

Manalinde illustrates the three requisites of evident premeditation.

First requisite —

On a certain *date,* Manalinde accepted the proposition that he would turn *huramentado* and *kill* the first two persons he would meet in the market place. On said date, the offender is said to have *determined* to commit the crime.

Second requisite —

He *undertook the journey* to comply therewith and *provided himself with a weapon.* The *journey* and the *carrying of the weapon* are acts manifestly indicating that the offender clung to his determination to commit the crime.

Third requisite —

After the journey for a *day and a night,* he killed the victims. One day and one night constitute a sufficient lapse of time for the offender to realize the consequences of his contemplated act.

Other illustrative cases.

The circumstance of evident premeditation is present because on that very Friday afternoon immediately after the incident at the canteen, appellant Renegado, giving vent to his anger, told his co-employee, Ramirez, and the security guard, Velasco, that he was going to kill Lira. That state of mind of appellant was evident once more when he went to the school dance that same Friday evening and he asked another security guard if Lira was at the dance. On the following day, Saturday, appellant met Mrs. Benita Tan to whom he confided that had he seen Lira the night before he would surely have killed him. And on Monday morning, knowing Lira's snack time, appellant armed himself with a knife, proceeded to the canteen at around 9:30 a.m. and seeing the teacher Lira with his back towards him, stabbed Lira from behind. (People vs. Renegado, No. L-27031, May 31, 1974, 57 SCRA 275, 290)

What else can better portray this circumstance that the frequent meetings of the four accused at the Barrio Fiesta Restaurant in order to discuss, lay out the plan, and secure the different paraphernalia consisting of the rope, icepick, flannel cloth, flashlight and shovel? Added to this is the careful selection of an "ideal" site for the grissly

happening. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 215)

The admission of the accused that he had with him a .22 caliber revolver on the afternoon of December 12, 1969; that when he saw the victim driving his car on P. Paredes Street he followed him up to the corner of P. Paredes and Lepanto Streets where he shot the victim eight times suddenly and without any warning, speaks eloquently of his plan generated by an all-consuming hatred, to kill the person whom he considered responsible for all his misfortunes. The lower court did not, therefore, err in considering the aggravating circumstance of evident premeditation against the appellant. (People vs. Benito, No. L-32042, Feb. 13, 1975, 62 SCRA 351, 359)

There is evident premeditation where on the night when deceased slapped the accused and asked him to kneel down, the latter made it clear that he would avenge his humiliation; when two days later accused looked inside a bus for the deceased and not finding him there said that if deceased were there, he had something for him. Accused found deceased seated in a jeep and stabbed him. (People vs. Mojica, No. L-30742, April 30, 1976, 70 SCRA 502, 508-509)

The date and time when the offender determined to commit the crime essential.

The date and, if possible, the time when the offender determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from that date and time.

Second requisite necessary.

The premeditation must be based upon *external acts* and not presumed from mere lapse of time. (U.S. vs. Ricafort, 1 Phil. 173, 176)

The criminal intent evident from outward acts must be notorious and manifest, and the purpose and determination must be plain and have been adopted after mature consideration on the part of the persons who conceived and resolved upon the perpetration of the crime, as a result of deliberation, meditation and reflection sometime before its commission. (People vs. Zapatero, No. L-31960, Aug. 15, 1974, 58 SCRA 450, 459; U.S. vs. Bañagale, 24 Phil. 69, 73)

Thus, although in offender's confession there is a statement that, on the morning of June 29, when he heard that Calma was at large, he proposed to kill him, there is an entire absence of evidence showing that he *meditated* and *reflected* on his intention between the time it was *conceived* and the time the crime was actually perpetrated. (People vs. Carillo, 77 Phil. 572)

Second requisite exists.

After the offenders *had* determined (conceived) to commit the crime, they manifestly indicated that they clung to their determination —

(a) When the crime was *carefully planned* by the offenders.

(b) When the offenders *previously prepared* the means which they considered adequate to carry it out. (U.S. vs. Cornejo, 28 Phil. 457)

(c) When a grave was prepared at an isolated place in the field for the reception of the body of the person whom the criminals intended to kill. (U.S. vs. Arreglado, 13 Phil. 660)

(d) When the defendants made repeated statements that the hour of reckoning of the victim would arrive and armed themselves with deadly weapons. (People vs. Lopez, 69 Phil. 298)

(e) When the defendant commenced to sharpen his *bolo* on the afternoon preceding the night of the crime. (U.S. vs. Liwakas, 17 Phil. 234)

(f) When the defendant, according to his own confession, three times attempted to take the life of the deceased in order to be able to marry his widow, with whom he was in love. (People vs. Ducusin, 53 Phil. 280)

(g) Where the accused repeatedly plotted the commission of the murder over a period of several weeks and, on at least two occasions, made preliminary efforts to carry it out. (People vs. Jaravata, G.R. No. L-22029, August 15, 1967, 20 SCRA 1014)

Mere threats without the second element does not show evident premeditation.

(1) A threat to kill, unsupported by other evidence which would *disclose* the *true* criminal *state of mind* of the accused, will only be construed as a casual remark naturally emanating from a feeling of rancor and not a resolution of the character involved in evident premeditation. (People vs. Fuentesuela, G.R. No. L-48273, April 22, 1942)

(2) The mere fact that the accused stated in his extrajudicial confession that as soon as he heard that the deceased had escaped from the army stockade he prepared to kill him, is not sufficient to establish evident premeditation. It is necessary to establish that the accused *meditated on his intention* between the time it was conceived and the time the crime was actually perpetrated. Defendant's proposition was nothing but an *expression of his own determination* to commit the crime which is entirely different from premeditation. (People vs. Carillo, 77 Phil. 572)

(3) Evident premeditation was not present in the case at bar. It is true that two days immediately preceding the shooting, appellant threatened to shoot the deceased and on the eve of the killing, appellant expressed his intention to finish him. However, there was no showing, that in between, appellant made plans or sought the deceased to accomplish the killing. In fact, the killing happened when appellant was plowing the field and the deceased unexpectedly appeared thereat. It is clear that appellant's act of shooting the deceased was not premeditated. The rule is that the qualifying circumstance of premeditation is satisfactorily established only if it is proved that the defendant had *deliberately planned* to commit the crime, and had *persistently* and *continuously* followed it, notwithstanding that he had ample time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection. x x x. This circumstance is not proven where there is no evidence as to the time when the defendant decided to kill the victim. (People vs. Sarmiento, No. L-19146, May 31, 1963, 8 SCRA 263, 267-268; People vs. Bautista, 79 Phil. 652, 657)

Existence of ill-feeling or grudge alone is not proof of evident premeditation.

While the appellant might have nursed a grudge or resentment against the victim, that circumstance is not a conclusive proof of evident premeditation. (People vs. Lacao, No. L-32078, Sept. 30, 1974 60 SCRA 89, 95)

It is true that about twelve days before the killing, the accused tried to injure the victim. He desisted after he was restrained by third persons who intervened during the altercation. The prosecution's evidence does not show the steps that the accused took thereafter in order that he could kill the victim on that fateful hour when the latter was answering a call of nature on the porch of his house. Possibly, the killing was actually premeditated but the prosecution's evidence is not conclusive on the presence of that aggravating circumstance. (People vs. Manangan, No. L-32733, Sept. 11, 1974, 59 SCRA 31, 39)

The mere fact that after lunch time the accused mauled and detained the victim and that at around four o'clock, while the latter was in their custody, he was killed, would not mean that there was evident premeditation. (People vs. Manzano, Nos. L-33643-44, July 31, 1974, 58 SCRA 250, 261-262)

What is sufficient lapse of time?

1. **Evident premeditation was held attendant where the accused had had three day's time to meditate upon the crime which he intended to commit, and was not prompted by the impulse of the moment. (People vs. Lasafin, 92 Phil. 668, 670)**

2. **The existence of evident premeditation is undeniable. From the incident that dated back one month previously when the deceased during a fight, slapped the appellant and ordered him to kneel down, the humiliation inflicted him caused him to persist in the thought that one day he would be avenged. So he made it clear on the very same evening of that encounter. Two days later, he stepped on the running board of a bus, peeped inside and inquired if the deceased was there. When he did not find him, he made the remark that if he were there, he had something**

for him. Under such a circumstance, the premeditation to inflict harm is quite evident. (People vs. Mojica, 70 Phil. 502, 508-509)

3. Evident premeditation was attendant where the accused had one whole day to make the necessary preparations from the time he conceived the idea of attacking the deceased. (People vs. Dosal, 92 Phil. 577, 881)

4. Evident premeditation was attendant where the accused had more than one-half day for meditation and reflection and to allow his conscience to overcome the resolution of his will *(vencerlas determinaciones de la voluntad)* had he desired to hearken to its warnings. (U.S. vs. Gil, 13 Phil. 530, 547; People vs. Diaz, No. L-24002, Jan. 21, 1974, 55 SCRA 178, 188)

5. *Four hours* that intervened between rage and aggression of the accused *is sufficient* time for desistance. (People vs. Lazada, 70 Phil. 525, 527)

6. When the accused came to know that the deceased delivered only 100 bundles of corn, he was enraged. That was 3:00 p.m. At 7:00 p.m. of same date, the accused armed himself with a bolo and lance, went to the house of the deceased, and killed the latter. The lapse of time of 3 1/2 hours between the plan and the commission of the crime is sufficient time for the offenders to reflect dispassionately upon the consequences of their contemplated act. (People vs. Mostoles, 85 Phil. 883, 892)

7. Evident premeditation was attendant where the accused apprehended the victims about 10 o'clock in the evening and the crime was consummated at about 1 o'clock early the following morning. The accused had sufficient time to meditate and reflect on the consequences of their act. (People vs. Berdida, No. L-20183, June 30, 1966, 17 SCRA 520, 530)

Three hours or less considered sufficient lapse of time.

Evident premeditation preceded the commission of the crime. The slaying was done about three hours from the time the scheme to kill was plotted. (People vs. Gausi, G.R. No. L-16498, June 29, 1963)

But where the defendant constabulary soldier was rebuked by his superior at around 7:00 a.m. and, *a quarter of an hour* later, he shot to death his superior, there was no premeditation because a sufficient time did not elapse to allow the conscience of the accused to overcome the resolution of his will if he desired to hearken to its warning. (U.S. vs. Blanco, 18 Phil. 206, 208)

The appellant had only about *half an hour* for meditation and reflection from the time he left the house, went to his camp, put on his fatigue uniform, got a garand rifle and returned to said house, followed the serenaders a short distance and then fired the two shots. The time was insufficient for full meditation and reflection. (People vs. Pantoja, No. L-18793, Oct. 11, 1968, 25 SCRA 468, 471)

But in *People vs. Dumdum, Jr.*, No. L-35279, July 30, 1979, 92 SCRA 198, 202, it was held that the killing of the deceased was aggravated by evident premeditation because the accused conceived of the assault at least *one hour* before its perpetration.

However, in the later case of *People vs. Crisostomo,* No. L-38180, Oct. 23, 1981, 108 SCRA 288, 297, evident premeditation was rejected because the accused planned to kill the deceased at 7 o'clock in the morning and the killing took place at 9 o'clock the same morning. The accused did not have sufficient time to reflect during the two hours that preceded the killing.

Why sufficient time is required.

The offender must have an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what he planned to do, an interval long enough for his conscience and better judgment to overcome his evil desire and scheme. (People vs. Mendoza, 91 Phil. 58, 64)

Evident premeditation contemplates cold and deep meditation, and tenacious persistence in the accomplishment of the criminal act. (People vs. Gonzales, 76 Phil. 473) Mere determination to commit the crime does not of itself establish evident premeditation for it must appear, not only that the accused made a decision to commit the crime prior to the moment of execution, but also that his decision was the result of meditation, calculation or reflection or persistent attempt. (People vs. Carillo, 77 Phil. 572; People vs. Sarmiento, No. L-19146, May 31, 1963, 8 SCRA 263, 268)

There must be sufficient time between the outward acts and the actual commission of the crime.

Thus, the mere fact that the accused was lying in wait for his victim just before the attack is not sufficient to sustain a finding of evident premeditation, in the absence of proof that he had been lying in wait for a *substantial period* of time. (U.S. vs. Buncad, 25 Phil. 530, 539)

But when it appears that the accused borrowed a bolo for the purpose of committing the crime *early in the morning* and was lying in wait *for some time before* he attacked his victim, evident premeditation is sufficiently established. (U.S. vs. Mercoleta, 17 Phil. 317, 320)

Conspiracy generally presupposes premeditation.

Where conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted. (U.S. vs. Cornejo, 28 Phil. 457, 461; People vs. Timbang, 74 Phil. 295, 297)

Exception:

But when conspiracy is only *implied,* evident premeditation may not be appreciated, in the absence of proof as to how and when the plan to kill the victim was hatched or what time had elapsed before it was carried out. (People vs. Custodio, 97 Phil. 698, 704; People vs. Upao Moro, G.R. No. L-6771, May 28, 1957)

Evident premeditation and price or reward can co-exist.

The aggravating circumstance of price, reward, or promise may be taken into consideration independently of the fact that premeditation has already been considered, inasmuch as there exists no incompatibility between these two circumstances, because if it is certain that as a general rule price or reward implies premeditation, it is no less certain that the latter may be present without the former. (U.S. vs. Robor, 7 Phil. 726, 728)

Premeditation is *absorbed* by reward or promise. (People vs. Napeñas, G.R. No. L-46314, December 24, 1938)

But this rule is applicable only to the inductor. The mere fact that another executed the act on the promise of reward does not necessarily mean that he had sufficient time to reflect on the consequences of his act. (U.S. vs. Manalinde, 14 Phil. 77, 82)

When victim is different from that intended, premeditation is not aggravating.

Evident premeditation *may not be properly* taken into account when the person whom the defendant proposed to kill was different from the one who became his victim. (People vs. Mabug-at, 51 Phil. 967, 970; People vs. Guillen, 85 Phil 307, 318; People vs. Hilario, *et al.*, G.R. No. 128083, March 16, 2001)

Distinguish the ruling in the Timbol case from that in the Guillen case.

It is true that in the case of *People vs. Guillen,* 85 Phil. 307, it was held that when the person killed is different from the one intended to be killed, the qualifying circumstance of evident premeditation may not be considered as present; however, in the case of *People vs. Timbol, et al.,* G.R. Nos. L-47471-47473, August 4, 1944, it was held that evident premeditation may be considered as present, even if a person other than the intended victim was killed, if it is shown that the conspirators were determined to kill not only the intended victim but also *any one who may help him* put a violent resistance. (People vs. Ubiña, 97 Phil. 515, 535)

It is not necessary that there is a plan to kill a particular person.

For premeditation to exist, it is *not necessary* that the accused planned to kill a *particular* person.

(1) The criminal intent which was carried out was to kill the *first two persons* whom the accused should meet at the place where he intended to commit the crime. Evident premeditation was considered against the accused. (U.S. vs. Manalinde, 14 Phil. 77, 82)

(2) After *careful* and *thoughtful* meditation, the accused decided to kill, at the first opportunity, *whatever individual* he should meet from the town of Macabebe,

on account of the previous illness of his son of cholera which he attributed to the persons from Macabebe. *Held:* Inasmuch as the accused intentionally sought out a native of the town of Macabebe, a *human being,* there is no doubt that, actuated by the impulse of his prejudice against any individual from Macabebe and obedient to his criminal resolution seriously conceived and selected to carry out vengeance, he perpetrated the crime with *premeditation.* (U.S. vs. Zalsos and Ragmac, 40 Phil. 96, 103)

(3) *A general attack upon a village* having been premeditated and planned, the killing of *any individual during the attack* is attended by the aggravating circumstance of evident premeditation. (U.S. vs. Rodriguez, 19 Phil. 150, 154; U.S. vs. Binayoh, 35 Phil. 23, 30; U.S. vs. Butag, 38 Phil. 746, 747)

Reason for the difference of the rulings.

When the offender decided to kill a particular person and premeditated on the killing of the latter, but when he carried out his plan he actually killed another person, it cannot properly be said that he premeditated on the killing of the actual victim.

But if the offender premeditated on the killing of *any person,* like the offender in the *Manalinde* case who decided to kill the first two persons he would meet in the market place, it is proper to consider against the offender the aggravating circumstance of premeditation, because whoever is killed by him is contemplated in his premeditation.

And where the victim *belonged to the class* designated by the accused, although the victim was not previously determined by him, premeditation is an aggravating circumstance.

In the case of *U.S. vs. Zalsos and Ragmac, supra,* the victim, a peddler from the town of Macabebe, belonged to the class designated by the accused, that is, "persons from Macabebe" to whom he attributed the existence of a cholera epidemic in his barrio. Such being the case, any individual from the town of Macabebe was contemplated in his premeditation.

Distinguished from the Caranto case.

In the *Caranto* case, it appears that the *victim was also undetermined,* and the threats made by defendant who had lost a fishing boat was that either he or the thief would be turned into ghost. The killing of the thief afterwards was held not to be murder qualified by evident premeditation, because there was merely a threat which was *not* of a direct and *specific character.* (U.S. vs. Caranto, 4 Phil. 256, 257)

Evident premeditation, while inherent in robbery, may be aggravating in robbery with homicide if the premeditation included the killing of the victim.

It is inherent in robbery, specially where it is committed by various persons, because they must have an agreement, they have to meditate and reflect on the manner of carrying out the crime and they have to act coordinately in order to succeed. But if there is evident premeditation not only to steal personal property in the house of Judge Bautista but also to kill him, it shall be considered to increase the penalty. (People vs. Valeriano, 90 Phil. 15, 34; People vs. Nabual, No. L-27758, July 14, 1969, 28 SCRA 747, 752)

If there is no evidence that the conspirators previously planned and agreed to kill the victims, evident premeditation is not aggravating in robbery with homicide. (People vs. Pulido, 85 Phil. 695, 709)

Where the *killing* of a person during the commission of robbery was only an *incident,* because their original plan was only to rob, and they killed the deceased when the latter refused to open the "kaha de yero" and fought with them, this aggravating circumstance should be disregarded. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 97 SCRA 570, 576)

Par. 14. - That (1) craft, (2) fraud, or (3) disguise be employed.

Basis of this aggravating circumstance.

The basis has reference to the means employed in the commission of the crime.

Application of this paragraph.

This circumstance is characterized by the intellectual or mental rather than the physical means to which the criminal resorts to carry out his design. This paragraph was intended to cover, for example, the case where a thief falsely represents that he is the lover of the servant of a house in order to gain entrance and rob the owner *(astucia)*; or where *(fraude)* A simulates the handwriting of B, who is a friend of C, inviting the latter, without the knowledge of B, by means of a note written in such simulated hand, to meet B at the designated place, in order to give A, who lies in wait at the place appointed, an opportunity to kill C; or where *(disfraz)* one uses a disguise to prevent being recognized. (U.S. vs. Rodriguez, 19 Phil. 150, 155)

Craft *(involves intellectual trickery and cunning on the part of the accused).*

Craft involves the use of intellectual trickery or cunning on the part of the accused. It is not attendant where the accused was practically in a stupor when the crime was committed. (People vs. Juliano, No. L-33053, Jan. 28, 1980, 95 SCRA 511, 526)

Craft is chicanery resorted to by the accused to aid in the execution of his criminal design. It is employed as a scheme in the execution of the crime. It is not attendant where the regular driver of the victim feigned illness to enable another driver to drive for the victim who drove the vehicle first to the house of the regular driver who said he was already well and so he boarded with his co-accused, took over the driver's seat, and during the trip shot the victim who was also on board the vehicle. (People vs. Zea, No. L-23109, June 29, 1984, 130 SCRA 77, 81, 90)

Where four men, having determined to kill a man in an uninhabited place so that the crime might be less easily discovered, invited him to go with them on a journey to a distant mountain on the pretense that they would find there a molave tree from which flowed a liquid supposed to have a peculiar virtue, and murdered him in a remote and uninhabited place, the aggravating circumstance of *craft* was present and should be taken into account for the purpose of increasing the penalty. (U.S. vs. Gampoña, 36 Phil. 817, 818, 820; People vs. Alcaraz, 103 Phil. 533, 549)

The act of the accused in pretending to be *bona fide* passengers in the taxicab driven by the deceased, when they were not so in fact,

in order not to arouse his suspicion, and then killing him, constituted *craft.* (People vs. Daos, 60 Phil. 143, 154)

The act of the accused in assuming position of authority, pretending to be a member of the CID when he was not, to gain entrance and be able to be with the offended party alone in the latter's house, thus enabling him to commit acts of lasciviousness against her, constituted craft. (People vs. Timbol, C.A., 47 O.G. 1869)

Where defendants pretended to be constabulary soldiers to gain entry into the place of the victims, *craft* is properly appreciated as an aggravating circumstance. (People vs. Saquing, No. L-27903, Dec. 26, 1969, 30 SCRA 834, 844)

The act of the accused in brushing the dirt on the pants of the offended party, which the accused himself had dirtied, and while the attention of the offended party was centered on the act of the accused, a confederate of the accused grabbed the wallet of the offended party from behind, constituted *craft.* (People vs. Bagtas, C.A., 47 O.G. 1251)

In a case where the defendants asked the offended party to change a P10-bill and, when the latter took out his wallet, the defendants snatched it from the hand of the offended party, it was held that the crime of robbery was attended by the aggravating circumstance of *craft.* (People vs. Mallari, 60 Phil. 400, 402, 405)

Craft was used by the accused in the commission of the offense of rape when the accused resorted to the use of innocent-looking chocolate candies which did not arouse the suspicion of the complainant that they contained deleterious drug, the purpose of the accused in giving them being to weaken her resistance so that she would not be able to repulse physically and mentally his sexual assault. (People vs. Guy, C.A., 64 O.G. 13557)

There is craft where the accused lures out the victim from his house in order to be killed. (People vs. Barbosa, No. L-39779, Nov. 7, 1978, 86 SCRA 217, 225)

Craft was attendant where all the accused with murder in their hearts pretended to accompany the victim in a friendly manner in going home and in order to lure him into a false sense of security and making him unmindful of the tragedy that would befall him, one of them even placed his hands on the shoulder of the victim while walking. (People vs. Molleda, No. L-34248, Nov. 21, 1978, 86 SCRA 667, 705)

The presence of craft cannot be disputed for the appellant had deceived the victim into coming to her apartment under the pretext of accompanying the victim to the bank, and played on the victim's seeming fondness for one Reynaldo Sioson to lure said victim to the third floor of the apartment where the appellant committed the crime. The unsuspecting victim found herself caught in the malevolent trickery practiced by the appellant, the consequence of which proved fatal. (People vs. Rodriguez, No. L-32512, March 31, 1980, 96 SCRA 722, 738-739)

But craft is not attendant where the unlawful scheme could have been carried out just the same even without the pretense. (People vs. Aspili, G.R. Nos. 89418-19, Nov. 21, 1990, 191 SCRA 530, 543)

Craft, when not an aggravating circumstance.

Where craft partakes of an element of the offense, the same may not be appreciated independently for the purpose of aggravation. *Vide,* Article 62, pars. 1 and 2, Revised Penal Code. Thus, when the offender *never intended to genuinely enter into the transaction of purchase and sale* with the owner of the jeep, to the offender the deed of sale being a sham, as he did not pay the price thereof, the fraud takes the place of trespass in the taking of the jeep involved in the crime of qualified theft committed by him. (People vs. Tiongson, C.A., 59 O.G. 4521)

Craft is not clearly established where the evidence shows that the accused and his companions, who came out from behind a patch of bamboo trees, did not camouflage their hostile intentions at the incipiency of the attack, as they announced their presence at the scene of the crime with shouts and gunshots. (People vs. Cunanan, No. L-30103, Jan. 20, 1977, 75 SCRA 15, 17, 23)

Fraud *(insidious words or machinations used to induce the victim to act in a manner which would enable the offender to carry out his design).*

Where the defendants induced their victims to give up their arms upon a promise that no harm should be done to them (U.S. vs. Abelinde, 1 Phil. 568, 574), and when the latter gave up their arms, the former attacked and killed them, it was held that there was *fraud*; and where the defendants, upon the pretext of wanting to buy a bot-

tle of wine, induced the victim to go down to the lower story of his dwelling where the wine was stored, entered it when the door was opened to him, and there commenced the assault which ended in his death, it was also held that there was *fraud.* (U.S. vs. Bundal, 3 Phil. 89, 90, 98)

Does gaining entrance by pretending to buy cigarettes or to drink water constitute craft?

To enter the house of Pedro Levantino, one of the accused shouted from the outside that they wanted to buy cigarettes, which induced the owner to open the kitchen for them, and one of them said that they wanted to drink some water which also paved the way for their intrusion in the house. Once inside, they committed robbery with rape. It was held that the aggravating circumstance of craft attended the commission of the crime. (People vs. Napili, 85 Phil. 521, 527, citing U.S. vs. Gampoña, 36 Phil. 817, and People vs. Daos, 60 Phil. 143)

The facts constituting the aggravating circumstance being similar to those in the case of *U.S. vs. Bundal, supra,* it should be fraud.

The accused, stepfather of the offended party, taking advantage of the absence of the girl's mother, went to the house and took the young girl away, telling the latter that she was to be taken to her godmother's house. The accused, however, took the girl to another house where he ravished her. *Held:* The accused committed rape, employing *fraud.* (People vs. De Leon, 50 Phil. 539, 545)

Hairline distinction between *craft* and *fraud.*

There is craft or fraud when by trickery, accused gained entrance in victim's house. By pretending they had pacific intentions (to buy chickens) in desiring to enter Argenio's home, they allayed his suspicions. They gained entrance into the house with his consent through trickery or deceit. (People vs. Saliling, No. L-27974, Feb. 27, 1976, 69 SCRA 427, 443)

How is craft distinguished from fraud?

When there is a *direct inducement* by insidious words or machinations, fraud is present; otherwise, the act of the accused done in order not *to arouse* the *suspicion* of the victim constitutes craft.

Disguise *(resorting to any device to conceal identity).*

The fact that the defendant had his face blackened in order that he should not be recognized at the time he committed the crime constitutes the aggravating circumstance of disguise. (U.S. vs. Cofrada, 4 Phil. 154, 157)

When the defendant covered his face with handkerchief before committing the crime, the aggravating circumstance of disguise is present. (People vs. Piring, 63 Phil. 546, 553)

But if in spite of the use of handkerchief to cover their faces, the culprits were recognized by the victim, disguise was not considered aggravating. (People vs. Sonsona, G.R. No. L-8966, May 25, 1956)

The accused with two others wore masks to cover their faces. There could have been no other purpose for this but to conceal their identities particularly for the one who was very much known to the offended parties. The fact that the mask subsequently fell down thus paving the way for this one's identification does not render the aggravating circumstance of disguise inapplicable. (People vs. Cabato, No. L-37400, April 15, 1988, 160 SCRA 98, 110)

In a case where the defendant illegally wore a Constabulary uniform, it was held that the aggravating circumstance of disguise was present. (People vs. Gonzalez, 56 Phil. 842 [unrep.])

The use of an assumed name in the publication of a libel constitutes disguise. (People vs. Adamos, C.A., G.R. No. 43808, Aug. 20, 1936)

Disguise, not considered.

It is also worth mentioning that while appellant reportedly had a sort of a mask and was using sunglasses, these clumsy accouterments could not constitute the aggravating circumstance of disguise. Legally, *disfraz* contemplates a superficial but somewhat effective dissembling to avoid identification. Here, even if it is true that he assumed that masquerade, appellant was readily recognizable because his face could easily be seen together with the identifying feature of his mustache. (People vs. Reyes, G.R. No. 118649, March 9, 1998)

The purpose of the offender in using any device must be to conceal his identity.

While it appears that some of the offenders had cloths wrapped about their heads, it does not appear that this was done as a disguise,

but was following rather the custom of the country in which they had been reared. (U.S. vs. Rodriguez, 19 Phil. 150, 156)

The act of the accused in disguising herself by using her husband's clothes and a hat given to her by her companion before they continued on their way to the place where she killed the deceased, was not considered aggravating circumstance of disguise, because she did it for fear of being attacked on the way. (U.S. vs. Guysayco, 13 Phil. 292, 293, 296)

The malefactors resorted to a disguise. That circumstance did not facilitate the consummation of the killing. Nor was it taken advantage of by the malefactors in the course of the assault. According to the prosecution's version, at the incipiency of the attack, the accused and his companions did not camouflage their hostile intentions. They announced their presence at the scene of the crime with shouts and gunshots. That mode of attack counteracted whatever deception might have arisen from their disguise. (People vs. Cunanan, No. L-30103, Jan. 20, 1977, 75 SCRA 15, 23)

Par. 15. — That (1) advantage be taken of superior strength, or (2) means be employed to weaken the defense.

Meaning of "advantage be taken."

Note the word "advantage" in this paragraph.

To take advantage of superior strength means to *use purposely excessive force* out of proportion to the means of defense available to the person attacked. (People vs. Cabiling, No. L-38091, Dec. 17, 1976, 74 SCRA 285, 303, citing Albert's Commentaries on the Revised Penal Code, pp. 126-127; People vs. Sarabia, No. L-31755, March 31, 1980, 96 SCRA 714, 719-720, citing *Cabiling;* People vs. Cabato, No. L-37400, April 15, 1988, 160 SCRA 98, 110, citing *Cabiling;* People vs. Carpio, G.R. Nos. 82815-16, Oct. 31, 1990, 191 SCRA 108, 119, citing *Cabato;* People vs. Moka, G.R. No. 88838, April 26, 1991, 196 SCRA 378, 387, citing *Cabato)*

Illustrations of no advantage of superior strength.

(1) One who attacks another with *passion* and *obfuscation* does not take advantage of his superior strength.

(2) This aggravating circumstance does not apply when a *quarrel arose unexpectedly* and the fatal blow was struck at a time when the aggressor and his *victim* were *engaged* against each other as man to man. (U.S. vs. Badines, 4 Phil. 594, 595)

In these two cases, the offenders may or might have superior strength, but they do not or did not take advantage of it.

Illustrations of abuse of superior strength.

(1) An illustration of the cases which fall within this provision is where, for example, a strong man has ill-treated a child, an old or decrepit person, or one weakened by disease, or where a person's physical strength has been overcome by the use of drugs or intoxicants. In each of these cases, there is a marked difference of physical strength between the offended party and the offender. (U.S. vs. Devela, 3 Phil. 625, 628)

(2) The deceased Tomas Martir was unarmed, under the influence of liquor. He was much smaller than Navarra. Navarra's attack came after he (Martir) was pushed to the wall by Antonio Santiago. Not content with this and after Martir tried to escape, Virgilio Cruz fired at him. Not only that, this was followed by two other shots from Navarra. Since the aggressors were police officers fully armed, and the deceased was defenseless and under the influence of liquor, a clear case of abuse of superiority is present. The two took advantage of these circumstances to consummate the offense. (People vs. Navarra, G.R. No. L-25607, October 14, 1968, 25 SCRA 491, 497)

(3) The aggravating circumstance of abuse of superior strength is attendant where the victim who died was an innocent and tender baby, barely six months old, and the wounded children were aged five (5) and twelve (12) years old, because of the marked difference of physical strength between the offended parties and the offender. (People vs. Gatcho, No. L-27251, Feb. 26, 1981, 103 SCRA 207, 220)

When the attack was made on the victim alternately, there is no abuse of superior strength.

Use of superior strength should not be considered even if all the accused delivered blows upon the victim, because the attack was made on the victim alternately, one after the other. (People vs. Narciso, No. L-24484, May 28, 1968, 23 SCRA 844, 865-866)

Abuse of superior strength when a man attacks a woman with a weapon.

An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his *sex* and the *weapon* used in the act afforded him, and from which the woman was unable to defend herself. (People vs. Guzman, 107 Phil. 1122, 1127, citing *U.S. vs. Camiloy*, 36 Phil. 757; U.S. vs. Consuelo, 13 Phil. 612; People vs. Quesada, 62 Phil. 446)

Illustrations:

a. **The accused attacked an unarmed 4 feet, 11-inch girl with a knife. He had abused the superiority which his sex and weapon employed afforded him, and from which the deceased would be unable to defend herself. (People vs. Braña, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 315)**

b. **The accused was armed while the victim, a married woman, was unarmed and she guilelessly approached the group of the accused, without the least inkling that any harm would befall her, when she was shot in the back after her hands were tied behind her. Abuse of superiority was employed in liquidating her. (People vs. Clementer, No. L-33490, Aug. 30, 1974, 58 SCRA 742, 744, 749)**

c. **The female victim was stabbed to death. Three men had earlier invaded her house. Her husband was away fishing with the husband of her sister who was her only companion and her sister's one-year-old son. Certainly, an attack by three men against a helpless and defenseless woman constitutes abuse of superior strength. (People vs. Patinga, No. L-37912, Jan. 18, 1982, 111 SCRA 52, 58, 62)**

No abuse of superior strength in parricide against the wife.

Abuse of superior strength is inherent in the crime of parricide where the husband kills the wife. It is generally accepted that the husband is physically stronger than the wife. (People vs. Galapia, Nos. L-39303-05, Aug. 1, 1978, 84 SCRA 526, 531)

That the victim is a woman is inherent in parricide.

Abuse of superior strength, however, should not be applied to the case of a husband who kills his wife, for the reason that sex is inherent in the crime of parricide. (Decision of the Supreme Court of Spain of April 28, 1873; People vs. Galapia, 84 SCRA 526)

Evidence of relative physical strength necessary.

But the mere fact that one person was attacked by two aggressors does not constitute this aggravating circumstance, if the relative physical strength of the parties does not appear. There must be evidence that the accused were physically stronger and that they abused such superiority. (People vs. Bustos, 51 Phil. 385, 392; People vs. Diokno, 63 Phil. 601, 607) The mere fact of there being a superiority of numbers is not sufficient to bring the case within aggravating circumstance. (U.S. vs. Devela, *supra;* People vs. Maloloy-on, G.R. No. 85246, Aug. 30, 1990, 189 SCRA 250, 258)

Illustrations:

a. **The records of the case are bereft of any information with respect to the physical conditions of both the accused and the victims. Thus, abuse of superior strength cannot be considered. (People vs. Cabato, No. L-37400, April 15, 1988, 160 SCRA 98, 110)**

b. **There was error in appreciating the circumstance of abuse of superior strength. There is no evidence of the respective or joint participation of the two accused in assaulting the victim, much less that they took advantage of their superior strength. (People vs. Maloloy-on, G.R. No. 85246, Aug. 30, 1990, 189 SCRA 250, 258)**

c. **The fact that there were two (2) male persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength there being no proof**

of the relative strength of the aggressors and the victim. (People vs. Carpio, G.R. Nos. 82815-16, Oct. 31, 1990, 191 SCRA 108, 119)

When abuse of superior strength is aggravating.

The aggravating circumstance of abuse of superior strength depends on the age, size and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of by him in the commission of the crime. (People vs. Carpio, *supra;* People vs. Cabato, *supra;* People vs. Moka, *supra)*

Number of aggressors, if armed, may point to abuse of superior strength.

In the cases of *U.S. vs. Tandoc,* 40 Phil. 954, 957-958, and *People vs. Caroz,* 68 Phil. 521, 527, the greater number of the assaulting party was considered by the Supreme Court in determining the circumstance of superior strength. But it will be noted that in those cases, the accused were armed.

It is manifest that defendants acted with abuse of superior strength, for whereas the three (3) of them were wielding bolos, the victim was unarmed and trying to flee. Hence, the crime committed was murder, qualified by abuse of superior strength. (People vs. Verzo, G.R. No. L-22517, Dec. 26, 1967, 21 SCRA 1403, 1410)

But in a case where three persons armed with bolos attacked another who was armed with a revolver, it was held that there was no abuse of superior strength, as their strength was almost balanced, a revolver being as effective, if not more so, than three bolos. (People vs. Antonio, 73 Phil. 421, 424-425)

Similarly, there is no abuse of superior strength where the accused did not cooperate in such a way as to secure advantage from their combined strength. The fact that the accused did not conspire to kill the victim implies that they did not jointly exploit their superior strength. Numerical superiority does not always mean abuse of superiority. (People vs. Ybañez, Jr., No. L-30421, March 28, 1974, 56 SCRA 210, 217)

Abuse of superior strength by numerical superiority.

1. The two accused jumped on the victim as he was wrestling with their companion who has remained at large. It was while they had him thus outnumbered that one of the accused delivered the fatal blow. There was abuse of superior strength. (People vs. Boyles, No. L-15308, May 29, 1964, 11 SCRA 88, 95)

2. The assailants were four in number and were armed with bladed instruments. The deceased was alone, unarmed, and taken by surprise. Abuse of superior strength was properly considered. (People vs. Casillar, No. L-28132, Nov. 25, 1969, 30 SCRA 352, 358)

3. The three assailants are brothers. Alejandro, who was armed with a bolo *(sondang)* lay in wait for the victim and his brother, and they encountered him as they were fleeing after Joaquin had threatened them. As the victim retreated, and his brother took refuge in a grassy place, Joaquin appeared from behind, holding a barbed harpoon *(gata-ao)* which he plunged into the victim's back and then tried to pull it out. While Joaquin was trying to extricate the harpoon which got stuck because of its hooks, Alejandro stabbed the victim with his *sondang.* The victim fell to the ground. Antonieto, also armed with a *sondang,* slashed the prostrate victim in the abdomen. Alejandro and Antonieto repeatedly stabbed him while Joaquin was pulling out the harpoon. The victim died in consequence of his numerous wounds. Abuse of superiority is aggravating. The three assailants took advantage of their combined strength to overpower the victim. (People vs. Velez, No. L-30038, July 18, 1974, 58 SCRA 21, 24, 31)

4. There were several assailants who literally ganged up on the victim. He had to flee because he could not cope with the successive and simultaneous assaults of his assailants. Even the armed policeman, who was present at the scene of the fight, could not break up the fight because the victim had several adversaries. All that the policeman could do was to fire his carbine into the air. There was marked disparity between the strength of the victim and the strength of the aggressors who, at the last stage of the

fight, surrounded their quarry, wounded him repeatedly and left him only when he was sprawled on the ground. Evidently, the assailants cooperated in such a way as to derive advantage from their combined strength and to insure the victim's death. Abuse of superiority was correctly appreciated.

5. Our jurisprudence is exemplified by the holding that where four persons attacked an unarmed victim but there was no proof as to how the attack commenced and treachery was not proven, the fact that there were four assailants would constitute abuse of superiority. (People vs. Garcia, No. L-30449, Oct. 31, 1979, 94 SCRA 14, 28, citing *People vs. Lasada*, No. 6742, Jan. 26, 1912, 21 Phil. 287; U.S. vs. Bañagale, No. 7870, Jan. 10, 1913, 24 Phil. 69)

6. Abuse of superiority is attendant where two accused, both armed with knives, had cooperated in such a way as to secure advantage from their combined superiority in strength and took turns in stabbing the victim who was unarmed. (People vs. Diamonon, No. L-38094, Nov. 7, 1979, 94 SCRA 227, 239)

7. It is manifest that the accused, together with his co-assailants who unfortunately have not been apprehended, took advantage of their superior strength, when the four of them, two of whom were armed with bladed weapons, surrounded and stabbed the unarmed, helpless and unsuspecting victim. Abuse of superior strength is aggravating. (People vs. Madlangbayan, No. L-33607, Dec. 14, 1979, 94 SCRA 679, 686)

8. Given the fact that the victim, himself unarmed, was simultaneously attacked by the two appellants and the third accused who has remained at large, all of them with weapons, they took advantage of superior strength. (G.R. No. 74736, Feb. 18, 1991, 194 SCRA 120, 128)

9. Advantage of superior strength attends. The number of the assailants and the firearms and bolos which they used on the victim show notorious inequality of forces between the victim and the aggressor. (People vs. Moka, G.R. No. 88838, April 26, 1991, 196 SCRA 378, 386)

10 There were four (4) accused, relatively of regular, medium build and size. Two were armed with *"guhi"* (piece of bamboo, sharpened or pointed at one end) and stone and the other two with Indian arrows. The four were carrying bolos inside a scabbard and tied to the waist. The victim was unarmed. He had companions but they did not do anything to help him. Abuse of superior strength was correctly found to be attendant. (People vs. Peñones, G.R. No. 71153, Aug. 16, 1991, 200 SCRA 624, 635-636)

There is abuse of superior strength when weapon used is out of proportion to the defense available to the offended party.

Abuse of superior strength is present not only when the offenders enjoy numerical superiority or there is a notorious inequality of force between the victim and the aggressor, but also when the offender uses a powerful weapon which is out of proportion to the defense available to the offended party. (People vs. Padilla, 233 SCRA 46)

Simultaneous attack by two persons with revolvers against a defenseless person is aggravated by superior strength.

When two persons took part in the crime armed with bolos or revolvers and made a simultaneous attack upon a defenseless person, the aggravating circumstance of abuse of superior strength should be taken into consideration. (U.S. vs. Bahagale, 24 Phil. 69, 71, 83; U.S. vs. Abril, 51 Phil. 670, 675; U.S. vs. Lasada, 21 Phil. 287, 291) In these cases, the two defendants are both guilty as principals.

There is no abuse of superior strength when one acted as principal and the other two as accomplices.

But when the court finds that one of the three accused committed the crime as principal and the *two* as accomplices, abuse of superior strength cannot be taken into consideration, because it would be *inconsistent.* Where abuse of superior strength is to be estimated as an aggravating circumstance from the mere fact that more than one person participated in the offense, it must appear that the accused *cooperated together* in some way designed to weaken the defense. This would make them guilty in the character of principals. (People vs. Cortez, 55 Phil. 143, 148-149; Lumiguis vs. People, G.R. No. L-20338, April 27, 1967, 19 SCRA 842, 846)

When there is an allegation of treachery, superior strength is absorbed.

Like nighttime, *superior strength is absorbed and inherent in treachery.* (People vs. Mobe, 81 Phil. 58, 63; People vs. Redoña, 87 Phil. 743, 745; People vs. Renejane, Nos. L-76954-55, Feb. 26, 1988, 158 SCRA 258, 269; People vs. Centeno, G.R. No. 33284, April 20, 1989, 172 SCRA 607, 612; People vs. Liston, G.R. No. 63396, Nov. 15, 1989, 179 SCRA 415, 421)

Abuse of superior strength is aggravating in coercion and forcible abduction, when greatly in excess of that required to commit the offense.

Abuse of superior strength may be present in *coercion* (Art. 286) or *forcible abduction.* (Art. 342; People vs. Fernando, C.A., 43 O.G. 1717) Although the commission of the crime of coercion or forcible abduction presupposes superiority of force on the part of the offenders, yet *when the strength availed of is greatly in excess of that required for the realization of the offense,* as where the offenders were very much superior to the complainant individually and collectively (*cf.* People vs. Dayug, 49 Phil. 423, 427; People vs. Pineda, 56 Phil. 688, 689, 690), abuse of superior strength should be considered for the purpose of increasing the penalty.

Other crimes in which abuse of superior strength is aggravating.

Abuse of superior strength is aggravating in illegal detention (Arts. 267 and 268), where *six* persons took and carried away the victim from his home (U.S. vs. Santiago, 4 Phil. 168, 169); in robbery with rape, committed by five armed persons (People vs. Macaya, 85 Phil. 540, 541, 544); in multiple rape, committed by *four men* (U.S. vs. Camiloy, 36 Phil. 757, 758); in robbery with homicide, committed by *three* men. (People vs. Boyles, No. L-15308, May 29, 1964, 11 SCRA 88, 91-92, 96)

The circumstance of "by a band" and that of "abuse of superior strength," distinguished.

The circumstance of abuse of superiority was, however, withdrawn by the prosecution on the ground that since the offense of

robbery with homicide was committed by a band, the element of *cuadrilla* necessarily absorbs the circumstance of abuse of superior strength. We believe that said withdrawal was ill-advised since the circumstances of band and abuse of superiority are separate and distinct legal concepts.

The element of band is appreciated when the offense is committed by more than three armed malefactors regardless of the comparative strength of the victim or victims. Hence, the indispensable components of *cuadrilla* are (1) at least four malefactors, and (2) all of the four malefactors are armed. On the other hand, the gravamen of abuse of superiority is the taking advantage by the culprits of their collective strength to overpower their relatively weaker victim or victims. Hence, in the latter aggravating factor, what is taken into account is not the number of aggressors nor the fact that they are armed, but their relative physical might *vis-á-vis* the offended party. (People vs. Apduhan, Jr., No. L-19491, Aug. 30, 1968, 24 SCRA 798, 814-815)

The aggravating circumstance of the commission of the crime by a band has been established, it appearing that there were more than three armed malefactors who acted together in the commission of the offense. (People vs. Escabarte, No. L-42964, March 14, 1988, 158 SCRA 602, 613)

The aggravating circumstance of commission of a crime by a band was incorrectly appreciated. A band *(en cuadrilla)* consists of at least four malefactors who are all armed. When there were only three perpetrators and two weapons, a kitchen knife and a dagger, the terrible threesome of the accused did not constitute a band. (People vs. Ga, G.R. No. 49831, June 27, 1990, 186 SCRA 790, 797-798)

Aggravating circumstances absorbing band.

Abuse of superiority absorbs *cuadrilla.* If treachery absorbs abuse of superiority and band (U.S. vs. Abelinde, 1 Phil. 568, 572) then it is reasonable to hold that band should not be treated separately and distinct from abuse of superior strength. The two circumstances have the same essence which is the utilization of the combined strength of the assailants to overpower the victim and consummate the killing. (People vs. Medrana, No. L-31871, Dec. 14, 1981, 110 SCRA 130, 145)

The aggravating circumstance of by a band is absorbed in treachery. (People vs. Ampo-an, G.R. No. 75366, July 4, 1990, 187 SCRA 173, 189; People vs. Rojas, Nos. L-46960-62, Jan. 8, 1987, 147 SCRA 169, 178-179)

Means employed to weaken defense.

The circumstance of employing means to weaken the defense is illustrated in the case where one, struggling with another, suddenly throws a cloak over the head of his opponent and while in this situation he wounds or kills him. (U.S. vs. Devela, *supra)*

One who, while fighting with another, suddenly casts sand or dirt upon the latter's eyes and then wounds or kills him, evidently employs means which weaken the defense of his opponent. (People vs. Siaotong, G.R. No. L-9242, March 29, 1957)

But the mere fact that a Garand rifle was used in killing the victim does not necessarily raise the aggravating circumstance of employing means to weaken the defense. (People vs. Tunhawan, No. L-81470, Oct. 27, 1988, 166 SCRA 638, 649)

Intoxicating the victim to weaken defense.

This aggravating circumstance exists also when the offender, who had the intention to kill the victim, made the deceased *intoxicated,* thereby *materially weakening* the latter's resisting power. (People vs. Ducusin, 53 Phil. 280, 289)

If the state of intoxication is such that the victim cannot put up any sort of defense — treachery.

If in his intoxicated state it was *impossible* for the victim to *put up any sort of resistance* at the time he was attacked, treachery may be considered. (People vs. Ducusin, *supra)*

Applicable only to crimes against persons, etc.

This circumstance is applicable only to crimes against persons, and sometimes against person and property, such as robbery with physical injuries or homicide.

Note: In *People vs. Guy, supra,* employing means to weaken the defense is not the aggravating circumstance. It is craft.

Means to weaken the defense absorbed in treachery.

The aggravating circumstance of employing means to weaken the defense is absorbed by treachery. (People vs. Tunhawan, No. L-81470, Oct. 27, 1988, 166 SCRA 638, 649-650)

Par. 16. — That the act be committed with treachery (alevosia).

Basis of this aggravating circumstance.

The basis has reference to the *means* and *ways* employed in the commission of the crime.

Meaning of treachery.

There is treachery 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. (Art. 14, par. 16, Revised Penal Code; People vs. Lacao, Sr., G.R. No. 95320, Sept. 4, 1991, 201 SCRA 317, 330; People vs. Velaga, Jr., G.R. No. 87202, July 23, 1991, 199 SCRA 518, 523)

Treachery means that the offended party was not given opportunity to make a defense. (People vs. Tiozon, G.R. No. 89823, June 19, 1991, 198 SCRA 368, 387, citing earlier cases; People vs. Narit, G.R. No. 77087, May 23, 1991, 197 SCRA 334, 351, citing earlier cases)

Treachery attended the shooting of the deceased. The attack was sudden, unexpected, without warning, and without giving the victim an opportunity to defend himself or repel the aggression, as, in fact, the deceased did not sense any danger that he would be shot by the assailant as there was no grudge or misunderstanding between them. (People vs. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149, 158)

Rules regarding treachery.

(1) ***Applicable only to crimes against the person.***

This is based on the phrase *"crime against the person"* in the definition of treachery.

(2) *Means, methods or forms need not insure accomplishment of crime.*

It is not necessary that the *means, methods* or *forms* employed in the execution of the crime insure its accomplishment, as the law says, "to insure its execution" only.

(3) *The mode of attack must be consciously adopted.*

This is based on the phrase *"employing* means, methods, or forms in the execution which *tend directly and specially,"* in the definition of treachery.

Applicable only to crimes against persons.

This circumstance is applicable only to crimes against persons.

It is not necessary that the mode of attack insures the consummation of offense.

The treacherous character of the means employed in the aggression does not depend upon the result thereof but upon the means itself, in connection with the aggressor's purpose in employing it. Otherwise, there would be no attempted or frustrated murder qualified by treachery. For this reason, the law does not require that the treacherous means insure the execution of the aggression, without risk to the person of the aggressor arising from the defense which the offended party might make, it being sufficient that it *tends to this end.* (People vs. Parana, 64 Phil. 331, 336)

So it has been held that where the accused attacked the offended party unexpectedly and the wounds inflicted by him upon the latter would have caused death had not the weapon whereby the same were inflicted met with an obstacle, such as the ribs, which prevented its penetrating the lungs and kidneys, *alevosia* is present and the defendant is guilty of *frustrated* murder. (People vs. Reyes, 47 Phil. 635, 639)

Also, where one assaulted another from behind, but failed to kill the latter because the wound inflicted was not sufficient to cause death, the attack was characterized by treachery even if the offender did not attain his end.

The above illustrations are examples of *frustrated* murder and *attempted* murder, respectively, characterized by treachery. Treachery was considered, even if the offense was not consummated.

Treachery cannot be presumed.

The suddenness of attack does not, of itself, suffice to support a finding of *alevosia,* even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. The qualifying circumstance of treachery may not be simply deduced from presumption as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit. (People vs. Ardisa, No. L-29351, Jan. 23, 1974, 55 SCRA 245, 258; People vs. Narit, G.R. No. 77087, May 23, 1991, 197 SCRA 334, 351; People vs. Tiozon, G.R. No. 89823, June 19, 1991, 198 SCRA 368, 387-388; People vs. Lubreo, G.R. No. 74146, Aug. 2, 1991, 200 SCRA 11, 28)

Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery. The wound in the back might have been the last one inflicted or might have been inflicted by accident in the course of the fight. (U.S. vs. Perdon, 4 Phil. 141, 143-144; U.S. vs. Panagilion, 34 Phil. 786, 792-793)

Illustrations:

1. There is no treachery under these circumstances: the assailant was alone while his victim had four (4) companions nearby who could respond instinctively upon seeing their injured companion; an altercation preceded the attack; and the meeting of the victim and the assailant was only accidental. (People vs. Velaga, Jr., G.R. No. 87202, July 23, 1991, 199 SCRA 518, 523)

2. Neither is treachery attendant where no witness who could have seen how the deceased was shot was presented. (People vs. Tiozon, *supra,* at 389)

3. Nor is treachery present in these circumstances: the witness to the attack did not see how it all began and could

not provide the details on how the initial attack was commenced and how it developed until the victim fell to the ground at which time he saw the fallen victim being beaten; the autopsy report shows no back injury; and the attack was made in broad daylight, on a public road and in an inhabited area, with the use of a wooden club, all indicative of a casual and not a planned encounter. (People vs. Narit, *supra,* at 351-352)

4. Neither is the circumstance attendant where the attack was frontal, indicating that the victim was not totally without opportunity to defend himself, and all surrounding circumstances indicate that the attack was the result of a rash and impetuous impulse of the moment rather than from a deliberate act of the will. (People vs. Tugbo, Jr., G.R. No. 75894, April 22, 1991, 196 SCRA 133, 138-139)

Exceptions:

1. When the victim was tied elbow to elbow, his body with many wounds and his head cut off, treachery may be considered, though no witnesses saw the killing. (U.S. vs. Santos, 1 Phil. 222, 224-225)

2. The killing of a child is murder qualified by treachery, even if the manner of attack was not shown. (People vs. Laggui, C.A., 34 O.G. 1708)

3. The Supreme Court in *People vs. Retubado,* No. L-58585, 162 SCRA 276, 286: Treachery must be appreciated in the killing of a child even if the manner of attack is not shown. It exists in the commission of the crime when an adult person illegally attacks a child of tender years and causes his death. (Citing People vs. Valerio, Jr., L-4116, Feb. 25, 1982, 112 SCRA 231)

The mode of attack must be consciously adopted.

This means that:

(1) The accused *must make* some *preparation* to kill the deceased in such a manner as to insure the execution of the crime or to make it impossible or hard for the person

attacked to defend himself or retaliate (People vs. Tumaob, 83 Phil. 738, 742; People vs. Saez, No. L-15776, March 29, 1961, 1 SCRA 937, 944; People vs. Iligan, G.R. No. 75369, Nov. 26, 1990, 191 SCRA 643, 653); or

(2) The *mode of attack must be thought of by* the offender, and must not spring from the unexpected turn of events. (People vs. Dauz, C.A., 40 O.G., Sup. 11, 107) The mode of attack could not have been thought of when the *decision to* shoot the deceased *was sudden,* in view of the latter's flight, and the relative *positions* of the victim and the killer were entirely accidental. (People vs. Abalos, 84 Phil. 771, 773)

In the following cases, it was held that there was treachery:

1) The act of shooting the victim at a distance, without the least expectation on his part that he would be assaulted, is characterized by treachery. The assailant deliberately employed a mode of execution which tended directly and specially to insure the consummation of the killing without any risk to himself arising from the defense which the victim could have made. (People vs. Tamani, Nos. L-22160-61, Jan. 21, 1974, 55 SCRA 153, 175)

2) The killings were attended with the aggravating circumstance of treachery because the accused made a deliberate, surprise attack on the victims. They perpetrated the killings in such a manner that there was no risk to themselves arising from any defense which the victims might have made. (People vs. Mori, Nos. L-23511-12, Jan. 31, 1974, 55 SCRA 382, 403-404)

3) The circumstances surrounding the killing of the deceased show treachery. His hands were raised and he was pleading for mercy with one of the assailants when another struck him on the neck with a bolo. The role of the third assailant of weakening the defense, by disabling the son of the deceased, was part and parcel of the means of execution deliberately resorted to by the assailants to insure the assassination of the deceased without any risk to themselves. (People vs. Ricohermoso, Nos. L-30527-28, March 29, 1974, 56 SCRA 431, 437)

4) The assailant, in strategically placing himself in a forested area near the highway and firing at the unsuspecting victim at a distance of eight meters, employed a mode of execution that insured the consummation of the killing without any risk arising from any defense that the victim could have made. (People vs. Zapatero, No. L-31960, Aug. 15, 1974, 58 SCRA 450, 459)

5) In a sense, there was treachery because the victim, a woman, was first reduced to helplessness before she was shot. (People vs. Clementer, No. L-33490, Aug. 30, 1974, 58 SCRA 742, 749)

6) The victim was shot while he was gathering tuba on top of a coconut tree. He was unarmed and defenseless. He was not expecting to be assaulted. He did not give any immediate provocation. The deliberate, surprise attack shows that Sangalang and his companions employed a mode of execution which insured the killing without any risk to them arising from any defense which the victim could have made. (People vs. Sangalang, No. L-32914, Aug. 30, 1974, 58 SCRA 737, 741)

7) It was treacherous to shoot Cayago at night, while he was urinating on the porch and when he did not expect at all that his enemy, Manangan, was only four meters away aiming a carbine at him. It was an ambuscade. Manangan resorted to a mode of execution that insured the consummation of the killing without risk to himself arising from any defense which the victim could have made. (People vs. Manangan, No. L-32733, Sept. 11, 1974, 59 SCRA 31, 37)

8) There is treachery where the victim was tied and gagged before being stabbed. Undisputed facts show that Henry Chua's hands were tied and his mouth was gagged with a flannel cloth before he was stabbed twice with an icepick and buried in a shallow grave near a creek. These facts portray well that the tied hands of the victim rendered him defenseless and helpless thereby allowing the accused to commit the crime without risk at all to their person. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 211)

9) There was treachery because the five accused suddenly intercepted the victim while he was on his way to the house of his cousin. The appellants resorted to a mode of attack which insured the consummation of the crime without any risk to themselves. The victim was unarmed and he had no time to defend himself in view of the suddenness of the assault and the fact that he was drunk at the time. (People vs. Pajenado, No. L-26458, Jan. 30, 1976, 69 SCRA 172, 179-180)

10) The attack on the victim was deliberate, sudden and unexpected and from behind. Most of the wounds sustained by the victim and which were fatal were found on his back. All of these are indicative of the fact that the accused employed means and methods which tended directly and especially to insure the execution of the offense without risk to the offenders arising from the defense which the offended party might have made. (People vs. Palencia, No. L-38957, April 30, 1976, 71 SCRA 679, 689)

11) The victim was clearly not in a position to defend himself at the time of the attack. He was then on top of a coconut tree. His assailant was on the ground aiming and firing at him much as if he were a sitting duck. There was, in other words, the employment of means or methods or manner of execution which insured the attacker's safety from any defensive or retaliatory act on the part of the victim, who was perched on top of the coconut tree quite helpless. (People vs. Toribio, G.R. No. 88098, June 26, 1991, 198 SCRA 529, 540)

12) Treachery was correctly appreciated. The accused, armed with a gun, riding tandem on a motorcycle, suddenly and without warning shot the victim in the back as the motorcycle sped by. The victim was then walking along a road, unsuspecting and unarmed. The motorcycle then turned back to where the victim lay wounded, and the accused fired at him once more, again hitting him in the back. The victim had no effective opportunity to defend himself and to strike back at the assassin. (People vs. Clamor, G.R. No. 82708, July 1, 1991, 198 SCRA 642, 654-655)

13) Treachery is attendant. The accused, after having made two steps behind the victim, suddenly and unexpectedly, with the use of a bolo, hacked the deceased at his back causing a deep wound and fracture of the 5th rib. When the victim faced the accused, he was again hacked at the forehead. (People vs. Lubreo, G.R. No. 74146, Aug. 2, 1991, 200 SCRA 11, 29)

14) The deceased was stabbed without warning. So sudden and unanticipated was the attack that the victim was given no chance to defend himself. Then the accused, although apparently acting without prior agreement, also instantly and all together attacked him. Even if their aforesaid acts were independently performed on their individual initiatives, such concerted action ensured the commission of the crime without risk to them arising from any defense or retaliation that the victim might have resorted to. Treachery was correctly appreciated against all the accused. (People vs. Lacao, Sr., G.R. No. 95320, Sept. 4, 1991, 201 SCRA 317, 330)

When treachery is not present.

1) There was no treachery. The attack was perpetrated in a frontal encounter, shown by the location of the wounds on the front part of the victim's body. There were no wounds on the back. The assailants did not make any deliberate, surprise attack on the victim. They did not consciously adopt a treacherous mode of attack. The attack was preceded by an altercation and on the spur of the moment. (People vs. Ybañez, Jr., No. L-30421, March 28, 1974, 56 SCRA 210, 217)

2) The trial court correctly held that there was no treachery. The initial assault on the victim was not made in a sudden and unexpected manner. The malefactors gave him an ominous warning of their presence and heralded their entrance into his house by firing two gunshots at the ground. They first mauled him presumably in a frontal encounter. (People vs. Manzano, Nos. L-33643-44, July 31, 1974, 58 SCRA 250, 260)

3) The accused and his companions did not camouflage their hostile intentions. They announced their presence at the scene of the crime with shouts and gunshots. That mode of attack negated the existence of treachery since the element of surprise, which marks the presence of treachery, was absent. (People vs. Cunanan, No. L-30103, Jan. 20, 1977, 75 SCRA 15, 23)

When treachery cannot be considered.

Treachery cannot be appreciated where there is nothing in the record to show that the accused had pondered upon the mode or method to insure the killing of the deceased or remove or diminish any risk to himself that might arise from the defense that the deceased might make, as when his decision to shoot the victim is sudden, brought about by a stinging provocation from the latter. (People vs. Macaso, No. L-30489, June 30, 1975, 64 SCRA 659, 666-667)

In the following cases, it was held that there was treachery:

"Inasmuch as Refuerzo was unarmed and utterly defenseless, he tried to escape through the window. Quirino Ramolete shot him in that situation. Refuerzo fell into the *batalan* with three serious gunshot wounds of entry on his back. Treachery *(alevosia)* was manifest in that manner of assault because it insured the killing without any risk to the assailant." (People vs. Ramolete, *et al.*, 56 SCRA 66)

"When the victim saw appellant hacking her sister, she ran out of the house and cried for help. Appellant chased her and, upon overtaking her, struck her on the head." (People vs. Cruz, 109 Phil. 288)

Note: Did the accused consciously adopt that method of shooting the deceased as the latter "tried to escape through the window" and of striking the victim on the head while chasing her? It happened so suddenly that he could not have thought of that manner of assault.

When there is no evidence that the accused had, prior *to the moment* of the killing, *resolved* to commit the crime, or there is no proof that the death of the victim was the result of *meditation, calculation* or *reflection, treachery* cannot be considered. (U.S. vs. Balagtas, 19 Phil. 164)

If the *decision to kill was sudden,* there is no treachery, even if the position of the victim was vulnerable, because it was *not deliberately sought* by the accused, but was purely accidental. (People vs. Cadag, *et al.*, G.R. No. L-13830, May 31, 1961)

The reason for those rulings is that the law itself says: "There is treachery when the culprit *employed* means, methods or forms of execution which tend *directly* and *specially* to insure the execution of the crime, without risk to himself." Hence, the mere fact that the attack was sudden and unexpected does not show treachery, unless there is evidence that such form of attack was *purposely adopted* by the accused. There must be evidence showing that the accused *reflected* on the means, methods and forms of killing the victim. (People vs. Tumaob, *supra)*

The characteristic and unmistakable manifestation of treachery is the *deliberate, sudden* and *unexpected* attack of the victim from behind, without any warning and without giving him an opportunity to defend himself or repel the initial assault.

But mere suddenness of the attack is not enough to constitute treachery. Such method or form of attack must be *deliberately* chosen by the accused. (People vs. Macalisang, G.R. No. L-24546, February 22, 1968, 22 SCRA 699, 704)

To sustain a finding of treachery, the means, method or form of attack must be shown to have been deliberately adopted by the appellant. (People vs. Caldito, G.R. Nos. 78432-33, Feb. 9, 1990, 182 SCRA 66, 77, citing People vs. Manalo, 148 SCRA 98, 108)

That the mode of attack was consciously adopted may be inferred from the circumstances.

The aggravating circumstance of treachery is established where the evidence showed that one of the accused approached the victim from behind, encircling his arm in a tight grip around the victim's neck while his co-accused held the victim's two hands, and as the victim was thus rendered helpless and unable to defend himself, both the former and a third co-accused stabbed the victim with the scissor blades, inflicting upon the victim at least four serious stab wounds, any one of which could have caused his death. (People vs. Lunar, No. L-15579, May 29, 1972, 45 SCRA 119, 140)

Treachery attended the killing where the assailants hid behind a pile of logs under cover of darkness and the victim was approached

from behind and shot as he turned around. (People vs. Jaravata, No. L-22029, August 15, 1967, 20 SCRA 1014, 1020)

By their acts of showering the house with bullets, executed in the darkness of the night, the offenders employed means, methods and forms in the execution of the crime which tended directly to insure the execution of their criminal design without risk to themselves arising from the defense which the occupants of the house might make. (People vs. Elizaga, No. L-23202, April 30, 1968, 23 SCRA 449, 463)

If the accused was well hidden behind a tree when he shot the victim who, unarmed and unaware, had no way of defending himself, the accused deliberately employed means, methods or forms to insure the execution of the crime, without risk to himself. (People vs. Guevarra, G.R. No. L-24371, April 16, 1968, 23 SCRA 58, 72)

In the case of *People vs. Dadis*, G.R. No. L-21270, Nov. 22, 1966, 18 SCRA 699, 700, 701-702, the defendant also hid behind a tree and shot at the victim while the latter was running away and was thus without means of defending himself, but treachery was not appreciated because the defendant did not purposely take advantage of the circumstance to kill the victim without risk to himself. He did so because he was scared, believing that the deceased was armed with a gun.

Treachery attended. Three men, armed with a knife, crept up in the dark against a defenseless and unsuspecting victim who was answering a call of nature. When two of them pinioned the victim's arms so that their companion could stab him repeatedly and with impunity, they thereby employed means which assured the execution of the crime without risk to themselves arising from the defense that their victim might have made. (People vs. Hernandez, G.R. No. 90641, Feb. 27, 1990, 182 SCRA 794, 799)

Treachery is present. The numerous stab wounds, some of which were inflicted at the back of the victim, show that the attack was sudden and brutal. The suddenness of the attack deprived the victim, a woman, unarmed and alone, the opportunity to run or fight back. The assailant, a strong young man, did not even suffer any injuries except for the small wound on his finger inflicted by a bite. Obviously, apart from using her teeth, the victim could not put up any defense. (People vs. Badilla, G.R. No. 69317, May 21, 1990, 185 SCRA 554, 570)

Where the meeting between the accused and the victim is casual and the attack impulsively done, there is no treachery.

Facts: **Upon seeing the accused, the deceased started to run, whereupon the accused whistled at him. As the deceased ignored the call and continued to run away, the accused got off from his bicycle and, from a distance of some fifty meters, fired a shot at the deceased who was fatally hit. The meeting of the two persons was *casual.* The accused fired at his victim *impulsively,* because the latter ignored the call of the accused.**

Held: **Where the meeting between the accused and the victim was *casual* and the attack was done *impulsively,* there is no treachery even if the attack was *sudden* and *unexpected* and while the victim was *running away with his back towards the accused.* (People vs. Calinawan, 83 Phil. 647, 648)**

The reason for this ruling is that the accused could not have made preparation for the attack, the meeting between him and the deceased being casual, and the means, method and form of attack could not have been thought of by the accused, because the attack was impulsively done.

In another case, the victim was sent to the store to buy some beer. It, therefore, just so happened that he was sent on an errand at that particular time to that particular place; otherwise, he would have remained at home. Nobody knew beforehand that he would go to the store. Not even the appellant nor his deceased brother could have expected to meet the victim there at that specific moment. Nor could appellant have foreseen that the victim would be carrying bottles of beer at the moment that he would attack the latter. The meeting of the victim and his assailants was casual. Treachery did not attend. (People vs. Diaz, No. L-75433, Nov. 9, 1988, 167 SCRA 239, 246)

***Alevosia* cannot be appreciated. The manner in which the aggression was made or how the act which resulted in the death of the victim began and developed was not shown. It would appear, too, that the accused had no opportunity to plan the way, method, or means with which to execute the felony, as the meeting between the accused and the deceased was accidental since there is no evidence that the accused knew beforehand that the deceased would be passing by the warehouse where they were working at that particular time. (People vs. Bacho, G.R. No. 66645, March 29, 1989, 171 SCRA 458, 465, 466)**

Another reason why treachery cannot be considered is that the meeting of the victim and the accused was only accidental. (People vs. Velaga, Jr., G.R. No. 87202, July 23, 1991, 199 SCRA 518, 523)

Attacks showing intention to eliminate risk.

(a) *Victim asleep.*

Treachery attends where the victim was stabbed while he was asleep. (People vs. Caringal, G.R. No. 75368, Aug. 11, 1989, 176 SCRA 404, 419; People vs. Nolasco, No. L-55483, July 28, 1988, 163 SCRA 623, 629; People vs. Trinidad, No. L-38930, June 28, 1988, 162 SCRA 714, 725; People vs. Reunir, No. L-73605, Jan. 29, 1988, 157 SCRA 686, 693; People vs. Andres, No. L-75355, Oct. 29, 1987, 155 SCRA 290, 300; People vs. Perante, Jr., Nos. L-63709-10, July 16, 1986, 143 SCRA 56, 60; People vs. Miranda, 90 Phil. 91, 96; People vs. Dequina, 60 Phil. 279, 286)

(b) *Victim half-awake or just awakened.*

Treachery characterized the crime. Even if the deceased was already awake when the aggression commenced, and even if there was light, the victim was still down on his back, still drowsy, and unarmed. He was unaware of the defendant's intention. The blows were delivered all of a sudden and without warning. (People vs. Yadaon, 82 Phil. 160, 163)

Treachery attends where the victim had just awakened when attacked, because he might still be dazed and unprepared for the attack and would not be in a position to offer any risk or danger of retaliation to the attacker. (People vs. Perante, Jr., *supra;* People vs. Atencio, No. L-22518, Jan. 17, 1968, 22 SCRA 88, 102; People vs. Avila, 92 Phil. 805, 809)

(c) *Victim grappling or being held.*

Treachery is present where the assailant stabbed the victim while the latter was grappling with another, thus rendering him practically helpless and unable to put up any defense. (People vs. Lingatong, G.R. No. 34019, Jan. 29, 1990, 181 SCRA 424, 430)

There is treachery where the victim was stabbed in a defenseless situation, as when he was being held by the others while he was being stabbed, as the accomplishment of the accused's purpose was ensured without risk to him from any defense the victim may offer. (People vs. Condemena, G.R. No. L-22426, May 29, 1968, 23 SCRA 910; People vs. Lunar, G.R. No. L-15579, May 29, 1972, 45 SCRA 119) Here, the accused-appellant stabbed the victim on the chest while his companions held both of the victim's arms. (People vs. Montejo, No. L-68857, Nov. 21, 1988, 167 SCRA 506, 515)

Attacked from behind.

(1) *With a firearm.*

Treachery attended the crime, the accused having shot the victim from behind without warning. (People vs. Acosta, G.R. No. 70153, July 2, 1990; People vs. Juanga, G.R. No. 83903, Aug. 30, 1990, 189 SCRA 226, 233; People vs. Marmita, Jr., G.R. No. 75618, Dec. 29, 1989, 180 SCRA 723, 731)

Treachery qualified the crime because, although the victim was forewarned of his impending death, he was shot in the back while he was entirely defenseless and the killers were under no risk whatsoever from any retaliation the victim might make. (People vs. Carmina, G.R. No. 81404, Jan. 28, 1991, 193 SCRA 429, 435)

The shooting of Atty. Norberto Maramba was treacherous. The accused suddenly and without warning shot him when the latter turned his back towards the accused and returned to his table to eat. Atty. Maramba was fatally hit on the back of his head and fell to the cement floor. Atty. Maramba did not sense any danger that he would be shot by the accused considering that he and the accused knew each other personally and that there was no previous grudge or misunderstanding between them. (People vs. LAC, Nos. L-66939-41, Jan. 10, 1987, 147 SCRA 219, 230)

(2) *With a bladed weapon.*

There was treachery, as the stabbing was from behind, done in a sudden and unexpected manner while the deceased was sitting and his head down on his hands. (People vs. Delgado, G.R. No. 79672, Feb. 15, 1990, 182 SCRA 343, 351)

Treachery was duly and sufficiently proven. The victim was suddenly and without warning stabbed at the back of his nape by the assailant from behind with a double-bladed knife. (People vs. Melgar, No. L-75268, Jan. 29, 1988, 157 SCRA 718, 727)

(3) *Other modes of armed attack.*

Treachery in the commission of the crime was correctly appreciated. The victim was suddenly stabbed by the assailant without any warning. Although he was armed with a gun, he was never given an opportunity to ward off the assault due to its suddenness. (People vs. De Mesa, G.R. No. 87216, July 28, 1990, 188 SCRA 48, 55)

Treachery attended where several accused took turns in stabbing the victim who was caught by surprise and did not have time to defend himself. (People vs. Dollantes, No. L-70639, June 30, 1987, 151 SCRA 592, 607)

There was treachery because at the time of the attack, the victim was not in a position to defend himself. After having been maltreated, then stabbed, and while in flight, he was chased as though he was a wounded quarry and in that defenseless state was shot from behind by the assailant. (People vs. Ferrera, No. L-66965, June 18, 1987, 151 SCRA 113, 139)

There was treachery in the commission of the crime where the victim was shot to death while he was lying face down on the floor, without any warning and thus was not able to defend himself at all. (People vs. Pecato, No. L-41008, June 18, 1987, 151 SCRA 14, 28)

Two policemen reacted to assert their authority in protecting and covering civilians from the indiscriminate firing by the accused. Accused instead, suddenly and without warning, successively shot them, knowing fully well that they were peace officers. Although both were armed with their service guns, they were unable to offer resistance and put up a defense due to the suddenness and close succession of the shots. Treachery attended the commission of the crimes. (People vs. IAC, Nos. L-66939-41, Jan. 10, 1987, 147 SCRA 219, 230)

Attacking the victim *suddenly* and with a *fire-arm.* (People vs. Rendora, G.R. No. L-14356, Sept. 30, 1959)

Calling the victim to come down from the house and subjecting him to a volley of shots, causing his death. (People vs. Mukung, G.R. No. L-2138, March 22, 1950)

Shooting unsuspecting victim who was hit in the abdomen while he was *wheeling around* to face the assailant. (People vs. Noble, 77 Phil. 93)

In all the above cases, the offenders attacked the victims while the latter were not in a position to make a defense.

From the circumstances of said cases, the Supreme Court believed that the offenders *purposely adopted* certain means, methods or forms of attack to insure the *execution* of the crime without risk to themselves.

Requisites of treachery:

(1) That at the time of the attack, the victim was *not in a position to defend himself;* and

(2) That the offender *consciously adopted* the particular means, method or form of attack employed by him.

To constitute treachery, two conditions must be present, to wit: (1) the employment of means of execution that gave the person

attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted. (People vs. Mabuhay, G.R. No. 87018, May 24, 1990, 185 SCRA 675, 680)

In order for treachery to exist, two conditions must concur, namely: (1) the employment of means, methods or manner of execution which would insure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) such means, method or manner of execution was deliberately or consciously chosen by the offender. (People vs. Sabado, No. L-76952, Dec. 22, 1988, 168 SCRA 681, 690; People vs. Rellon, No. L-74051, Nov. 8, 1988, 167 SCRA 75, 77-78; People vs. Marciales, No. L-61961, Oct. 18, 1988, 166 SCRA 436, 449; People vs. Estillore, No. L-68459, March 4, 1986, 141 SCRA 456, 460)

The victim was not in a position to defend himself.

Treachery is properly appreciated when the victims were made to lie face down, their hands tied at the back before they were killed (People vs. Saquing, No. L-27903, Dec. 26, 1969, 30 SCRA 834, 845), or when the victim was shot from behind while dancing (People vs. Berzuela, G.R. No. 132078, Sept. 25, 2000), or when the victim was shot while blindfolded (People vs. Jakosalem, G.R. No. 130506, Feb. 28. 2002).

Treachery attended the killing. The victim was totally defenseless. He was caught by surprise when the assailants, whom he considered his friends, suddenly attacked him. Without warning, he was hit in the head, then stabbed in the back. Thus disabled, he was stabbed in the chest. And even as he ran for his life, he was pursued and stabbed some more when he stumbled. He never had a chance to save his life. (People vs. Espinosa, G.R. No. 72883, Dec. 20, 1989, 180 SCRA 393, 400)

The violent death of the victim was accompanied by treachery where, although there were no eyewitnesses to the actual assault, he was apparently beaten to death while his hands and feet were tied with a rope. (People vs. Gapasin, No. L-52017, Oct. 27, 1986, 145 SCRA 178, 194)

Treachery was also present where the assailants made a deliberate, sudden and surprise attack from behind while the victim sat defenseless in the driver's seat of his jeep. When he stopped his jeep, one of the assailants placed a piece of wire around his neck and

strangled him while the other held him. At that precise moment of the attack, the victim was not in a position to defend himself and the accused deliberately and consciously adopted the particular method or form of attack which was strangulation from behind by one and holding him by the other beside him. (People vs. Masilang, No. L-64699, July 11, 1986, 142 SCRA 673, 682)

There is treachery when the offenders made a deliberate surprise or unexpected attack on the victim.

There was treachery because the brothers made a deliberate surprise or unexpected assault on Tadia. They literally ambushed him. They waited for him on the cliff, a high ground which rendered it difficult for him to flee or maneuver in his defense. Tadia was shot sidewise while he was ascending the hill or cliff burdened by his food basket. (People vs. Diaz, No. L-24002, Jan. 21, 1974, 55 SCRA 178, 186)

The accused waited patiently and deliberately at the farmhouse of the deceased, met her on the road when he saw her coming riding on a sled, waited by the roadside until the victim passed by and then, without warning and without giving the victim a chance to escape, made a sudden and unexpected attack. The unarmed, fifty-six-year-old woman was absolutely helpless and unable to defend herself from the overpowering strength of the accused when he stabbed her twice with a combat bolo. The victim had no opportunity to defend herself or repel the initial assault. (People vs. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 293)

There is treachery where everyone of the three victims was completely helpless and defenseless when shot and killed by the accused with no risk to themselves. The first was completely taken by surprise when he was shot in the face. The second was lying down when he was shot in the head. The third was seated when he was shot in the head and shoulders. None of the three victims had a chance to resist. (People vs. Muñoz, G.R. Nos. 38969-70, Feb. 9, 1989, 170 SCRA 107, 120)

Treachery was attendant where the victim was stabbed suddenly and he was totally unprepared for the unexpected attack as he was dancing at the precise time of the incident. He was given absolutely no chance to defend himself. (People vs. Acaya, No. L-72998, July 29, 1988, 163 SCRA 768, 773)

There was *alevosia* where the unarmed and unsuspecting victim was ambushed in the dark, without any risk to his assailants. (People vs. Egaras, No. L-33357, July 29, 1988, 163 SCRA 692, 696, citing earlier cases)

The victim was bringing food items for a *noche buena* when he was suddenly attacked by two assailants, one armed with a spear and the other with a bolo. The attack was so sudden that the victim had no opportunity to defend himself or to inflict retaliatory blows on the assailants. He just fell down after the spearing and was then hacked with the bolo. The killing was characterized by treachery. (People vs. Bravante, No. L-73804, May 29, 1987, 150 SCRA 569, 576)

There is no treachery when the victim was already defending himself when he was attacked by the accused.

Where the deceased was suddenly attacked, but he was able to retreat to avoid being hit by the hacking blows and was hit only when he was already in the act of defending himself against the attack of the accused, there is no treachery. (People vs. Diva, No. L-22946, April 29, 1968, 23 SCRA 332, 340)

Likewise, treachery is not present where the accused and the victim grappled with each other. (People vs. Butler, No. L-50276, Jan. 27, 1983, 120 SCRA 281, 306)

Does the fact that advantage was taken of relative confusion, so that the act and identity of the offender would not be detected, and so that his escape would be facilitated adequately establish treachery?

The Solicitor General in his brief recommends that defendant be found guilty only of homicide, stating that, in his view, treachery is not borne out by the evidence. Our consideration, however, of the facts shown in the record, particularly Rolando Banhao's testimony, convinces us that treachery has been adequately established. As recounted by said witness, defendant stabbed the deceased at the time when, on account of the shower, people were going out of the dance hall to seek for cover. Advantage was therefore taken by defendant of the relative confusion created by the shower on the crowd, so that his act and identity would not be detected by the people in the dance hall, and so that his escape would be facilitated. (People vs. Tilos, G.R. No. L-28596, February 21, 1968, 22 SCRA 657, 660-661)

The reason for the ruling is not in accordance with the second requisite of treachery, and is completely alien to the definition of the aggravating circumstance.

Treachery does not connote the element of surprise alone.

Counsel contends that since the deceased had been threatened since the day before the shooting, he was not caught by surprise at all. But treachery does not connote the element of surprise alone, but exists when the offender employs means which tend directly and specially to insure the execution of the offense, without risk to himself arising from the defense which the offended party might make. (Art. 14, par. 16, Revised Penal Code) When appellant accosted his victim, who could have had no idea as to just how the threat to him would be carried out, and without warning, shot him five times, nothing could possibly have been done by the latter in his own defense. (People vs. Casalme, No. L-18033, July 26, 1966, 17 SCRA 717, 720)

The appellant followed the serenaders as they walked, made no indication that he would shoot, and then suddenly fired from behind, two shots in rapid succession from a distance of about five meters. Under the circumstances, clearly there was treachery. (People vs. Pantoja, No. L-18793, October 11, 1968, 26 SCRA 468, 471)

Mere sudden and unexpected attack does not necessarily give rise to treachery.

It does not always follow that because the attack is sudden and unexpected it is tainted with treachery. Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim. (People vs. Sabanal, G.R. Nos. 73486-87, April 18, 1989, 172 SCRA 430, 434, citing *People vs. Malazzab,* 160 SCRA 123; People vs. Aniñon, 158 SCRA 701; People vs. Macaso, 64 SCRA 659; People vs. Ardiza, 55 SCRA 245; People vs. Macalisang, 22 SCRA 699; and People vs. Tumaob, 83 Phil. 738)

When the accused gave the deceased a chance to prepare, there was no treachery.

When the accused challenged the deceased to a gunfight before the shooting, the attack was not treacherous even if the shooting was sudden and the deceased was not prepared because it gave the

deceased a chance to prepare for the impending attack. (People vs. Visagar, 93 Phil. 319, 326-327)

No treachery where the attack is preceded by a warning.

And when the attack was frank, made face to face, and the accused first asked "What did you say?" before starting the aggression, there is no treachery because that question was already a warning to the offended party of the hostile attitude of the accused. (People vs. Luna, 76 Phil. 101, 104)

Calling attention of victim not necessarily a warning.

Treachery in the commission of the crime is clearly established in this case: the assailant fired two successive shots at the defenseless victim, a fiscal, while the latter was still seated in his jeep, hitting him at the neck and lumbar region. The fact that the assailant called out, "Fiscal" before shooting the victim does not negate the presence of treachery. The assailant being a hired killer, he wanted to insure that he was shooting the correct person. When the victim turned his face to find out who was calling him, the assailants fired immediately, rendering no opportunity for the victim to defend himself. (People vs. Magdueño, No. L-68699, Sept. 22, 1986, 144 SCRA 210, 217-218)

No treachery where shooting is preceded by heated discussion.

Facts: After a brief exchange of strong language, the accused pulled his revolver and fired at the deceased three times successively, while the latter was absolutely defenseless, as he had no weapon of any kind whatsoever in his hands at that time.

Held: Since the shooting was preceded by a heated discussion between the two, it must have placed the deceased on his guard, and the alleged treachery cannot be legally considered. (People vs. Gonzales, 76 Phil. 473, 479)

There is no treachery where the commission of the crime was preceded shortly before by a boxing incident and the victim and his companions had all the opportunity to insure their safety, immediately before the attack of the defendants. (People vs. Gupo, G.R. No. 75814, Sept. 24, 1990, 190 SCRA 7, 19)

There is no treachery where the assault upon the deceased was preceded by a heated exchange of words between the accused and the deceased. It cannot be said that the deceased was caught completely by surprise when the accused took up arms against him. (People vs. Rillorta, G.R. No. 57415, Dec. 15, 1989, 180 SCRA 102, 107)

Where the victim had provoked the assailant by hitting not only him, but also his wife, he should have been sufficiently forwarned that reprisal might be in the offing. The element of a sudden unprovoked attack indicative of treachery is therefore lacking. (People vs. Manlapaz, No. L-27259, Feb. 27, 1974, 55 SCRA 598, 604)

Killing unarmed victim whose hands are upraised is committed with treachery.

The accused pointed his rifle at the victim at a distance of six meters and said, "Pardong, stand up, we are going to shoot you." The victim had his hands upraised, pleading in a loud voice, "Do not kill me, investigate first what was my fault." The accused shot the victim, mortally wounding him.

Held: The killing was committed with treachery. (People vs. Barba, G.R. No. L-7136, Sept. 30, 1955)

Where the victim was shot when his hands were raised, to show that he would not fight, or because of fright, or to try to ward off the shots that were to come, he was clearly in a defenseless position. This circumstance constitutes treachery. (People vs. Castro, G.R. Nos. L-20555 and L-21449, June 30, 1967, 20 SCRA 543, 547)

Treachery was present in this case. The victim was unarmed and had raised his hands crying and pleading for his life when he was shot by the assailants. Obviously, the stand taken by the victim posed no risk to the assailants. (People vs. Jutie, G.R. No. 72975, March 31, 1989, 171 SCRA 586, 595, citing *People vs. Lebumfacil* L-32910, March 28, 1980, 96 SCRA 573; People vs. Lasatin, L-5874, February 11, 1953, 92 Phil. 668)

Killing a woman asking for mercy is committed with treachery.

The accused shot Mrs. Howell while she was pleading for her daughters: *"Maawa na kayo. Huwag po."*

Held: The killing was committed with treachery. (People vs. Dagundong, G.R. No. L-10398, June 30, 1960, 108 Phil. 682, 684, 693)

There is treachery in killing a child.

Killing a child is characterized by *treachery* because the weakness of the victim due to his tender age results in the absence of any danger to the accused. (U.S. vs. Oro, 19 Phil. 548, 554)

The killing of a one-year-old child, a six-year-old child, and a twelve-year-old child is attended with treachery. The killing is murder even if the manner of attack was not shown. The qualifying circumstance of treachery exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his death. (People vs. Retubado, G.R. No. 58585, June 20, 1988, 162 SCRA 276; People vs. Valerio, G.R. No. L-4116, February 25, 1982, 112 SCRA 208; U.S. vs. Lansangan, 27 Phil. 474; U.S. vs. Baul, 39 Phil. 846; People vs. Ganohon, G.R. Nos. 74670-74, April 30, 1991, 196 SCRA 431, 446)

Intent to kill is not necessary in murder with treachery.

Thus, one who struck another with the fist from behind, the blow landing on the back part of the head, causing the latter to fall backwards, his head striking the asphalt pavement which caused death resulting from a fracture of the skull, is guilty of murder *although he did not intend to kill the deceased.* The Supreme Court of Spain has held that there is no incompatibility, moral or legal, between *alevosia* and the mitigating circumstance of not having intended to cause so great an injury. (People vs. Cagoco, 58 Phil. 524, 530)

But intent to kill is *necessary* in murder committed by means of fire. (U.S. vs. Burns, 41 Phil. 418, 432-433)

Treachery may exist even if the attack is face to face.

It is not necessary for treachery to be present that the attack must come from behind the victim.

Treachery should be taken into account even if the deceased was face to face with his assailant at the time the blow was delivered, where it appears that the attack was *not preceded by a dispute* and the offended party was *unable to prepare himself* for his defense. (U.S. vs. Cornejo, 28 Phil. 457, 461)

The attack was *sudden* and *unexpected* to the point of incapacitating George Ott to repel or escape from it. The offender adopted a method which tended directly and especially to insure the accomplishment of his purpose without risk to himself arising from any defense which the offended party might make. True, the victim and the accused were face to face when the attack commenced, the first shot, according to all indications, having hit the victim in the abdomen. But it is also true that he had just wheeled around to see who had spoken to him when the defendant opened fire. (People vs. Noble, 77 Phil. 93)

Treachery is present although the shooting was frontal, as when the attack was so *sudden* and *unexpected* that the victim was not in a position to offer an effective defense. Thus, where the victim approached the driver of a pickup and, as he approached the pickup, the victim was met with gunfire which was followed by two more successive shots, there was treachery. (People vs. Cuadra, No. L-27973, Oct. 23, 1978, 85 SCRA 576, 595)

Treachery attended where the victim was completely taken by surprise and shot, where he was seated peacefully eating with his family. That he was shot face to face did not make the attack any less treacherous as he was totally taken aback and rendered completely defenseless when he was shot. (People vs. Liston, G.R. No. 63396, Nov. 15, 1989, 179 SCRA 415, 421)

Treachery attends although the attack is frontal where the victim was completely helpless, as when both his hands were held by the attackers numbering five ganging up on him. (People vs. Solares, G.R. No. 82363, May 5, 1989, 173 SCRA 203, 208)

Where before the victim was stabbed and hit several times with hollow blocks on the head, his arms were twisted, rendering him helpless to defend himself or repel the initial assault, the mode of attack was deliberately and consciously resorted to insure the commission of the crime without risk to the assailants arising from the defense that the victim might put up. (People vs. Paras, No. L-61773, Jan. 31, 1987, 147 SCRA 594, 610)

Flashing the beam of a flashlight on the face of victim.

Where immediately prior to the stabbing, the accused flashed the beam of his flashlight on the face of his victim, momentarily blinding

the latter, the attack, *though frontal,* was sudden and perpetrated in a manner tending directly to insure its execution, free from any danger that the victim might defend himself. (People vs. Pongol, C.A., 66 O.G. 5617)

Treachery must be proved by clear and convincing evidence.

Treachery is not to be presumed or taken for granted from the mere statement of a witness that "the attack was sudden." There must be a clear showing from the narration of facts why the attack or assault is said to be "sudden." The reason for this is that treachery, like any element of the crime, must be proved by clear and convincing evidence. (People vs. Santos, No. L-32073, Oct. 23, 1978, 85 SCRA 630, 639)

Treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing, if such be the crime, itself. (People vs. Tiozon, G.R. No. 89823, June 19, 1991, 198 SCRA 368, 387-388, citing earlier cases)

Attack from behind is not always alevosia.

The mere fact that the attack was inflicted when the victim had his back turned will not in itself constitute *alevosia.* It must appear that such mode of attack was consciously adopted and the question of risk to the offender must be taken into account. (People vs. Baldos, C.A., 34 O.G. 1937)

The fact that the fatal wounds were found at the back of the deceased does not, by itself, compel a finding of treachery. Such a finding must be based on some positive proof and not merely by an inference drawn more or less logically from hypothetical facts. The facts preceding the actual shooting must be in evidence. (People vs. Ablao, G.R. No. 69184, March 26, 1990, 183 SCRA 658, 668)

The mere fact that the victim had a stab wound at the back is not indicative *of alevosia,* where the deceased had sustained two (2) other stab wounds at the front, and the evidence clearly shows that the stab wound at the back was the last to be inflicted. (People vs. Bacho, G.R. No. 66645, March 29, 1989, 171 SCRA 458, 466)

The fact that the injuries of the victim were inflicted from behind as the latter was running away does not necessarily establish treachery where it does not appear that the assailant purposely chose to employ such means of attack so that there would be no risk

to himself from any defense which the offended party might make. (People vs. Besana, Jr., No. L-26194, May 19, 1975, 64 SCRA 84, 88, citing People vs. Tumaob, 83 Phil. 742)

Must treachery be present in the beginning of the assault?

It depends upon the circumstances of the case.

It must be shown that the treacherous acts were present and *preceded the commencement of the attack which caused the injury complained of.* (U.S. vs. Balagtas, 19 Phil. 164, 172)

Notwithstanding that the shooting was sudden and unexpected and committed on a helpless victim, in the absence of a showing that such mode of attack was adopted consciously and that the assailant knowingly intended to ensure the accomplishment of his criminal purpose, and where the shooting was only an aftermath of a mauling, kicking, and boxing incident, treachery did not attend. It is an established rule that treachery must be present from the commencement of the attack. (People vs. Tapeno, No. L-33573, Aug. 29, 1988, 164 SCRA 696, 703)

Even though in the inception of the aggression which ended in the death of the deceased, treachery was not present, *if there was a break in the continuity of the aggression and at the time the fatal wound was inflicted* on the deceased *he was defenseless, the circumstance of treachery must be taken into account.* (U.S. vs. Baluyot, 40 Phil. 385, 395)

Treachery need not exist in the beginning of the assault if the victim was first seized and bound and then killed. (People vs. Cañete, 44 Phil. 478, 483)

U.S. vs. Balagtas
(19 Phil. 164)

Facts: The accused knocked down the victim, striking him while on the ground. Then, the accused threw him into the water, face downward, while he was still alive in a helpless and defenseless condition.

Held: The knocking down of the victim, striking him on the ground, and throwing him into the water constituted one and the same attack. One *continuous* attack cannot be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein.

Note: In this case, there was no treachery at the inception of the attack.

Also, even if the deceased was shot while he was lying wounded on the ground, it appearing that the firing of the shot was a *mere continuation of the assault* in which the deceased was wounded, with *no appreciable time* intervening between the delivery of the blows and the firing of the shot, it cannot be said that the crime was attended by treachery. (People vs. Peje, 99 Phil. 1052 [Unrep.])

If the wounding of the victim while lying on the ground was merely incidental to the ensuing pursuit, not intended to ensure the safety of the attackers themselves, there is no treachery. (People vs. Clemente, No. L-23463, September 28, 1967, 21 SCRA 261, 270)

People vs. Cañete
(44 Phil. 478)

Facts: The accused assaulted the deceased with a knife and, in the course of the fight which ensued, inflicted a serious cut on his thigh. Upon receiving the wound, the deceased turned and fled, and was immediately pursued by the accused. After going a short distance, the deceased fell to the ground face downwards; and before he could recover his equipoise and resume his flight, the accused ran up and delivered a fatal thrust with his knife in the back of the deceased.

Held: That as the *assault* was not *characterized* by *alevosia in its inception* and the *aggression was continuous* until the consummation of the deed, the offense constituted simple homicide and not murder.

Canete could not have consciously adopted that *method of attack,* that is, stabbing the deceased in the back when the latter was in a helpless condition, since the assault began face to face and it was only when the deceased turned around and ran away that their relative positions changed. And as the aggression was continuous, Canete had no time to prepare for, or even to think of, that method of attack.

U.S. vs. Baluyot
(40 Phil. 385)

Facts: The accused entered the office of the governor of Bataan when the latter was sitting on a chair behind his desk. The accused approached the desk and upon reaching a position directly in front of the governor, spoke certain words. Upon discovering that the governor was

unarmed, the accused drew his own weapon and fired. The bullet fired entered in the frontal region of the right shoulder blade of the governor and inflicted a wound of minor importance. The governor immediately arose. He escaped in the direction to his left by way of the space between the left corner of his desk and the wall nearby, leading into a corridor. The accused meanwhile turned somewhat to his right and advanced slightly in the direction taken by the governor who was running away. The accused fired again at the governor, hitting the latter in the region of the right shoulder blade and passing through the body, an inch or two from the wound made by the first shot. The governor continued his flight along the corridor and took refuge in a closet at the end of the corridor. Once within, he shut the door and placed himself in a position to obstruct the entrance of his pursuer, who vainly attempted to open the door. The governor screamed for help. This time, the accused who was outside the closet *stopped for a moment* and *judging the position of the governor's head* from the direction of the sound emitted, fired his revolver in the direction indicated. The bullet passed through the panel of the door and struck the governor in the forward part of the head near and above the temple. This wound was necessarily fatal.

Held: The entire assault from the beginning *until the second shot was fired* must be considered *continuous* and that the second shot was fired while the victim was endeavoring to flee to a place of safety.

Even supposing that *alevosia* had not been present in the beginning of the assault, it would be necessary to find this element present from the manner in which the crime was *consummated.*

In the closet with the door shut, it was impossible for the governor to see what his assailant was doing or to make any defense whatever against the shot directed through the panel of the door. It was as if the victim had been bound or blind-folded, or had been treacherously attacked from behind in a path obscured by the darkness of the night.

When the second shot was fired, the deceased was fleeing away and entirely defenseless; but since the entire assault from the beginning up to that time was continuous and that the assault was begun without treachery, the Supreme Court did not consider the second wound as having been inflicted with treachery. Moreover, the second wound was not fatal, like the first wound. It was the third wound in the head which caused the death of the victim. The crime of murder was consummated with the infliction of the third wound.

But before the third wound was inflicted by the accused, *he had stopped for sometime.* This fact is deducible from the circumstances

that the accused attempted vainly to open the door of the closet; and that when he failed, he judged the position of the head of the governor before firing his revolver. Evidently, a certain period of time must have elapsed in doing all of these acts. Because of that interruption, the assault was *not continuous* up to the moment *when the fatal blow was inflicted* treacherously. During the period of interruption, the accused was able to think and even to make preparation for a method or form of attack that insured the execution of the crime without risk to himself.

Summary of the rules.

(1) When the aggression is *continuous*, treachery must be present *in the beginning* of the assault. (People vs. Canete, *supra)*

(2) When the assault *was not continuous,* in that there was an interruption, it is sufficient that treachery was present *at the moment the fatal blow was given.* (U.S. vs. Baluyot, *supra)*

In treachery, it makes no difference whether or not the victim was the same person whom the accused intended to kill.

As the appellant committed the act with intent to kill and with treachery, the purely accidental circumstance that as a result of the shots, a person other than the one intended was killed, does not modify the nature of the crime nor lessen his criminal responsibility, and he is responsible for the consequences of his acts. (People vs. Guevarra, No. L-24371, April 16, 1968, 23 SCRA 58, 72)

That another person, and not the victim, was the intended victim is not incompatible with the existence of treachery. Treachery may be taken into account even if the victim of the attack was not the person whom the accused intended to kill. (People vs. Trinidad, No. L-38930, June 28, 1988, 162 SCRA 714, 725)

Treachery, whenever present in the commission of a crime, should be taken into account no matter whether the victim of the treacherous attack was or was not the same person whom the accused intended to kill. (People vs. Mabug-at, 51 Phil. 967, 970-971; People vs. Guillen, 85 Phil. 307, 318)

The reason for this rule is that when there is treachery, it is impossible for either the intended victim or the actual victim to defend

himself against the aggression. (People vs. Andaya, C.A., 40 O.G. Sup. 12, 141)

When treachery is not to be considered as to the principal by induction.

When it is *not* shown that the principal by induction directed or induced the killer of the deceased to adopt the means or methods actually used by the latter in accomplishing the murder, because the former left to the latter the details as to how it was to be accomplished, treachery cannot be taken into consideration as to the principal by induction. It shall aggravate the liability of the actual killer only. (U.S. vs. Gamao, 23 Phil. 81, 96) The ruling is based on Art. 62.

Treachery, abuse of superior strength, and means employed to weaken the defense, distinguished.

Any one of these aggravating circumstances may facilitate the commission of the crime.

In *treachery,* means, methods or forms of attack are employed by the offender to make it *impossible* or *hard* for the offended party to put up any sort of resistance. (People vs. Ducusin, 53 Phil. 280, 289-290; People vs. Tumaob, 83 Phil. 738)

In *abuse of superior strength,* the offender does not employ means, methods or forms of attack; he only takes advantage of his superior strength.

In *means employed to weaken the defense,* the offender, like in treachery, employs means but the means employed *only materially* weakens the resisting power of the offended party.

When there is conspiracy, treachery is considered against all the offenders.

Treachery should be considered against all persons *participating or cooperating* in the perpetration of the crime, *except* when there is no *conspiracy* among them. Hence, if there was no conspiracy even if two accused helped each other in attacking the deceased, only the one who inflicted the wound upon the deceased while the latter was struggling with the other defendant, is to suffer the effect of the attendance of treachery. (People vs. Carandang, 54 Phil. 503, 506)

The ruling stated in the first sentence should be subject to the provision of Art. 62, paragraph No. 4, that is, treachery should be considered against "those persons only *who had knowledge"* of the employment of treachery "at the time of the execution of the act or their cooperation therein."

When there is conspiracy, treachery attends against all conspirators, although only one did the actual stabbing of the victim. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 211)

The mastermind should have knowledge of the employment of treachery if he was not present when the crime was committed.

The trial court refused to consider treachery even as a generic aggravating circumstance against appellant, on the ground that he was not present when the crime was actually committed, and left the means, modes or methods of its commission to a great extent to the discretion of the others, citing *People vs. De Otero,* 51 Phil. 201.

The citation is not in point. It refers to a case where the accused was convicted as principal by inducement *per se* under paragraph 2 of Article 17 of the Revised Penal Code, without proof of conspiracy with the other accused. In the case at bar, however, there was conspiracy among the defendants, and the rule is that every conspirator is responsible for the acts of the others in furtherance of the conspiracy. Treachery — evident in the act of the gunman in suddenly firing his revolver, preceded as it was by a false showing of courtesy to the victim, thus insuring the execution of the crime without risk from any defense or retaliation the victim might offer — should be appreciated as a generic aggravating circumstance against the mastermind even when he was not present when the crime was committed. (People vs. Pareja, No. L-21937, Nov. 29, 1969, 30 SCRA 693, 715-716)

The ruling in this case should be subject to the provision of Art. 62, paragraph No. 4.

If the intervention of other persons did not directly and especially insure the execution of the crime without risk to the accused, there is no treachery.

Thus, even if the wife and sister of the accused held the deceased by his shirt when the accused inflicted the bolo wounds which caused

his death, there is no treachery, because the body and hands of the deceased were not deprived of liberty of action and, hence, there is still risk to the person of the accused arising from the defense which the victim might make. (People vs. Julipa, 69 Phil. 751, 753)

But if, of the four persons who were to rob a house, one grappled with the watchman while the two opened fire and mortally wounded both combatants, it was held that even though in the inception of the aggression, the watchman carried a carbine and was at liberty to defend himself, it is a fact that at the time the fatal wounds were inflicted, he was defenseless. *His freedom of movement was being restrained* by one of the culprits when the others fired at him. (People vs. Mobe, 81 Phil. 58, 62)

Under the circumstances, there was *no risk* to the aggressor arising from any defense which the deceased might make.

Treachery, evident premeditation and use of superior strength are absorbed in treason by killings.

Treachery, evident premeditation and use of superior strength are, by their nature, inherent in the offense of treason. (People vs. Racaza, 82 Phil. 623, 637)

Treachery absorbs abuse of superior strength, aid of armed men, by a band and means to weaken the defense.

Abuse of superior strength and employing means to weaken the defense of the deceased by throwing sand to his face are absorbed in treachery. (People vs. Siaotong, G.R. No. L-9242, March 29, 1957 [Unrep.])

When treachery is taken into account as a qualifying circumstance in murder, it is improper to consider, in addition to that circumstance, the generic aggravating circumstance of abuse of superior strength, since the latter is necessarily included in the former. (U.S. vs. Estopia, 28 Phil. 97, 100; U.S. vs. Oro, 19 Phil. 548, 554-555; U.S. vs. Vitug, 17 Phil. 1, 20)

The aggravating circumstances of superior strength and by band are absorbed in treachery. (People vs. Ampo-an, G.R. No. 75366, July 4, 1990, 187 SCRA 173, 189; People vs. Manzanares, G.R. No. 82696, Sept. 8, 1989, 177 SCRA 427, 434; People vs. Molato, G.R. No.

66634, Feb. 27, 1989, 170 SCRA 640, 647; People vs. Renejane, Nos. L-76954-55, Feb. 26, 1988, 158 SCRA 258, 269)

The killings were attended with the aggravating circumstances of treachery, abuse of superiority, dwelling and band *(cuadrilla)*. The qualifying circumstance alleged in the information is treachery which absorbs abuse of superior strength and *cuadrilla.* (People vs. Mori, Nos. L-23511-12, Jan. 31, 1974, 55 SCRA 382, 403; People vs. Sangalang, No. L-32914, Aug. 30, 1974, 58 SCRA 737, 741)

The aggravating circumstances of superior strength and aid of armed men, as well as nighttime, are included in the qualifying circumstance of treachery. (People vs. Sespeñe, 102 Phil. 199, 210)

Nighttime and abuse of superior strength are inherent in treachery and cannot be appreciated separately. (People vs. Bardon, No. L-60764, Sept. 19, 1988, 165 SCRA 416, 426; People vs. Kintuan, No. L-74100, Dec. 3, 1987, 156 SCRA 195, 202)

Abuse of superiority and aid of armed men are absorbed in treachery. (People vs. Ferrera, No. L-66965, June 18, 1987, 151 SCRA 113, 139)

Treachery absorbs nocturnity, abuse of superiority, band and aid of armed men. While there may be instances where any of the other circumstances may be treated independently of treachery, it is not so when they form part of the treacherous mode of attack. (People vs. Sudoy, Oct. 10, 1974, 60 SCRA 174, 182)

Nighttime inherent in treachery.

The reason for this rule is that nighttime forms part of the peculiar treacherous means and manner adopted to insure the execution of the crime. (People vs. Pardo, 79 Phil. 568; People vs. Corpuz, 107 Phil. 44, 50)

Had it not been at night, the accused would not have been able to approach the deceased without the latter's becoming aware of his presence and guessing his intention. (People vs. Balagtas, 68 Phil. 675, 677) Hence, nighttime is not a separate aggravating circumstance, whenever treachery is already considered.

When nighttime is not absorbed in treachery.

There was treachery in the commission of the offense at bar.

The victims' hands were tied at the time they were beaten. Since the treachery rests upon an independent factual basis, the circumstance of nighttime is not absorbed therein, but can be perceived distinctly therefrom. A special case therefore is present to which the rule that nighttime is absorbed in treachery does not apply. (See People vs. John Doe, G.R. No. L-2463, March 31, 1950; 2 Viada, Codigo Penal, 274-275; People vs. Berdida, No. L-20183, June 30, 1966, 17 SCRA 520, 529; People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 212; People vs. Luna, No. L-28174, July 31, 1974, 58 SCRA 195, 208)

Craft is included in and absorbed by treachery.

Craft is included in and absorbed by the qualifying circumstance of treachery, because it was used to insure the commission of the crime without any risk to the culprits. (People vs. Malig, 83 Phil. 804)

But in the case of *People vs. Daos,* 60 Phil. 143, 154, it was held that the aggravating circumstances of *craft* and *treachery* should be taken into consideration, on the ground that the act of the accused in pretending to be *bona fide* passengers in the taxi in order not to arouse the driver's suspicion constitute craft; and the fact that in assaulting him they did so from behind, catching him completely unaware, certainly constitutes treachery.

When craft was employed in robbery with homicide, not with a view to making treachery more effective as nighttime or abuse of superior strength would in the killing of the victim, but to facilitate the taking of the jeep in the robbery scheme as planned by the culprits, it is not absorbed in treachery. (People vs. San Pedro, No. L-44274, Jan. 22, 1980, 95 SCRA 306, 309)

Age and sex are included in treachery.

Disregard of age and sex may be deemed included in treachery. (People vs. Limaco, 88 Phil. 35, 42, citing People vs. Mangsant, 65 Phil. 548)

The aggravating circumstances of disregard of age and sex, and advantage taken of superior strength, should not have been considered independently of the aggravating circumstance of treachery which was already considered. (People vs. Gervacio, No. L-21965, August 30, 1968, 24 SCRA 960, 976)

Illustration of aggravating circumstance absorbed by another.

The circumstances of nighttime, uninhabited place, cruelty and aid of armed persons cannot be taken into consideration as aggravating circumstances, because the first (nighttime) was necessarily included in that of treachery; that of uninhabited place, because it has not been proven that there were no houses near the house of the deceased; that of cruelty, because the fire, which is the fact in which said circumstance is made to consist, took place after the victims were already dead, the appellant not having taken advantage of said means to deliberately augment the seriousness of the crime; and that of aid of armed persons, because the appellant as well as those who cooperated with him in the commission of the crime in question, acted under the same plan and for the same purpose. (People vs. Piring, 63 Phil. 546, 553)

Dwelling is not included in treachery.

The aggravating circumstance of dwelling cannot be included in the qualifying circumstance of treachery. (People vs. Ruzol, 100 Phil. 537, 544; People vs. Jimenez, 99 Phil. 285, 288)

Defenseless condition of victims is included in abuse of superior strength, not treachery.

The defenseless condition of the women and children shot to death by the offenders should be considered as included in the qualifying circumstance of abuse of superior strength, not as an independent circumstance of treachery. (People vs. Lawas, G.R. Nos. L-7618-20, June 30, 1955)

Treachery is inherent in murder by poisoning.

Treachery **is inherent in murder by poisoning. (People vs. Caliso, 58 Phil. 283, 295)**

Treachery cannot co-exist with passion or obfuscation.

Treachery cannot co-exist with passion or obfuscation, for while in the mitigating circumstance of passion or obfuscation, the offender loses his reason and self-control, in the aggravating circumstance of treachery the mode of attack must be consciously adopted. One

who loses his reason and self-control could not deliberately employ a particular means, method or form of attack in the execution of the crime. (People vs. Wong, C.A., 70 O.G. 4844)

Par. 17. — That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

Basis of this aggravating circumstance.

The basis has reference to the *means* employed.

Ignominy, defined.

Ignominy is a circumstance pertaining to the *moral order,* which adds disgrace and obloquy to the material injury caused by the crime. (U.S. vs. Abaigar, 2 Phil. 417, 418; People vs. Acaya, No. L-72998, July 29, 1988, 163 SCRA 768, 774)

Applicable to crimes against chastity, less serious physical injuries, light or grave coercion, and murder.

This aggravating circumstance is applicable when the crime committed is against chastity.

Ignominy aggravates the penalty for the crime of less serious physical injuries. (Art. 265, par. 2)

Ignominy was considered in the crime of light *coercion* under Article 287, paragraph 2, in a case where the accused who *embraced* and *kissed* the offended party acted under an impulse of anger rather than a desire to satisfy his lust. The act was committed in the presence of many persons. The offended party was a young woman. These circumstances tended to make the effects of the crime more humiliating. (People vs. Cantong, C.A., 50 O.G. 5899)

There is ignominy to be considered in determining the proper penalty for murder, when before he was killed, the deceased, a landowner, was forced by the accused to kneel in front of his house servants drawn up in line before him. (U.S. vs. De Leon, 1 Phil. 163, 164)

"That means be employed."

When the accused raped a woman after winding cogon grass around his genital organ, he thereby augmented the wrong done by increasing its pain and adding ignominy thereto. (People vs. Torrefiel, *et al.*, *C.A.*, 45 O.G. 803)

"That x x x circumstances be brought about."

(1) It would be present in a case where one rapes a married woman in the presence of her husband (U.S. vs. Iglesia, 21 Phil. 55, 57), or alleged husband (People vs. Soriano, No. L-32244, June 24, 1983, 122 SCRA 740, 750-751), or where the accused rapes a woman in the presence of her betrothed (U.S. vs. Casañas, 5 Phil. 377-378), or where a woman was successively raped by four men (U.S. vs. Camiloy, 36 Phil. 757, 758), or where one of the victims was raped in the presence of her husband, and the other successively raped by five men (People vs. Detuya, No. L-39300, Sept. 30, 1987, 154 SCRA 410, 426), or where the accused used not only the missionary position, *i.e.*, male superior, female inferior, but also the dog style of sexual intercourse, *i.e.*, entry from behind. (People vs. Saylan, No. L-36941, June 29, 1984, 130 SCRA 159, 167)

But where the rape of the wife was not perpetrated in the presence or with the knowledge of her husband, or where the rape was done after the husband was killed, the rape committed could not have added ignominy to the crime. (People vs. Mongado, No. L-24877, June 30, 1969, 28 SCRA 642, 651)

(2) There is ignominy when in *compelling* an old woman to confess to the theft of clothes, the accused *maltreated* her and took off her drawers because the removing of her drawers could have no other purpose but to put her to shame. (People vs. Fernando, C.A., 43 O.G. 1717)

The crime committed in that case is grave coercion. (Art. 286)

"Which add ignominy to the natural effects of the act."

According to this clause, the means employed or the circum-

stances brought about must tend to make the effects of the crime *more humiliating or to put the offended party to shame.*

The fact that the appellants, in ordering the complainant to exhibit to them her complete nakedness for about two minutes before raping her, brought about a circumstance which tended to make the effects of the crime more humiliating. (People vs. Jose, No. L-28232, Feb. 6, 1971, 37 SCRA 450, 476) Similarly, in a case where it was established that the accused used a flashlight and examined the genital of the victim before he ravished her, and committed the bestial deed in the presence of the victim's old father, the Supreme Court held that these facts clearly show that the accused deliberately wanted to further humiliate the victim, thereby aggravating and compounding her moral sufferings. (People vs. Bumidang, G.R. No. 130630, Dec. 4, 2000)

Ignominy attended in this case: Between seven and eight o'clock in the evening, the unwary victim went to the beach where she was accustomed to void and when she squatted, the assailant unexpectedly appeared behind her, held her hair, thus tilting her face, and while in that posture, he inserted into her mouth the muzzle of his pistol and fired. She died. (People vs. Nierra, No. L-32624, Feb. 12, 1980, 96 SCRA 1, 5-6, 14)

But the fact that the accused sliced and took the flesh from the thighs, legs and shoulders of the victim *after killing her* by the use of a knife does not add ignominy to the natural effects of the act. (People vs. Balondo, No. L-27401, Oct. 31, 1969, 30 SCRA 155, 159, 161; People vs. Ferrera, No. L-66965, June 18, 1987, 151 SCRA 113, 140)

It is incorrect to appreciate adding ignominy to the offense where the victim was already dead when his body was dismembered. It is required that the offense be committed in a manner that tends to make its effects more humiliating to the victim, that is, add to his moral suffering. (People vs. Carmina, G.R. No. 81404, Jan. 28, 1991, 193 SCRA 429, 436)

The mere fact that the assailant fired more shots at the prostrate bodies of his victims is not sufficient to show the existence of ignominy. (People vs. Pantoja, No. L-18793, Oct. 11, 1968, 25 SCRA 468, 472)

No ignominy when a man is killed in the presence of his wife.

The fact that the deceased was killed in the presence of his wife certainly could not have such signification. The circumstance of ignominy was not present, because no means was employed nor did any circumstance surround the act tending to make the effects of the crime more humiliating. (U.S. vs. Abaigar, *supra)*

Rape as ignominy in robbery with homicide.

Rape committed on the occasion of robbery with homicide increases the moral evil of the crime, and it is incorrect to say that there is no law which considers rape as an aggravating circumstance simply because it is not specifically enumerated in Article 14 of the Revised Penal Code as an aggravating circumstance. As has been held in *People vs. Racaza,* 82 Phil. 623, 638, rapes, wanton robbery for personal gain, and other forms of cruelties are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately augmenting unnecessary wrongs to the main criminal objective under paragraphs 17 and 21 of Article 14 of the Revised Penal Code. (People vs. Tapales, No. L-35281, Sept. 10, 1979, 93 SCRA 134, 142. But see People vs. Mongado, No. L-24877, June 30, 1969, 28 SCRA 642, 651-652)

Par. 18. — That the crime be committed after an unlawful entry.

Basis of this aggravating circumstance.

The basis has reference to the *means* and *ways* employed to commit the crime.

Meaning of unlawful entry.

There is an unlawful entry when an entrance is effected by a way not intended for the purpose.

To effect entrance, not for escape.

Unlawful entry must be a means to effect entrance and *not for escape.* (People vs. Sunga, 43 Phil. 205, 206)

Example:

The act of entering through the window, which is not the proper place for entrance into the house, constitutes unlawful entry.

Is there unlawful entry if the door is broken and thereafter made an entry thru the broken door? No, it will be covered by paragraph 19.

Reason for aggravation.

One who acts, not respecting the walls erected by men to guard their property and provide for their personal safety, shows a greater perversity, a greater audacity; hence, the law punishes him with more severity.

Application of this circumstance.

It should be considered in rape committed in a house after an entry through the window. It should be considered also in murder where the accused entered the room of the victim through the window. It should be considered also in robbery with violence against or intimidation of persons, because unlawful entry is not inherent in that particular kind of robbery. The window is not intended for entrance into the building.

But unlawful entry is one of the ways of committing robbery with force upon things under Art. 299, par. (a), and Art. 302 of the Code. It is inherent in this kind of robbery.

If the crime charged in the information was only theft, and during the trial, the prosecution proved unlawful entry, it is a generic aggravating circumstance which may raise the penalty for theft to the maximum period. It would be improper to convict the accused of robbery with force upon things because unlawful entry was not alleged in the information. (People vs. Sunga, 43 Phil. 205, 206)

Dwelling and unlawful entry taken separately in murders committed in a dwelling.

When the accused gained access to the dwelling by climbing through the window and once inside, murdered certain persons in the dwelling, there were two aggravating circumstances which attended

the commission of the crimes — dwelling and unlawful entry. (People vs. Barruga, 61 Phil. 318, 331)

Unlawful entry is not aggravating in trespass to dwelling.

Trespass to dwelling is committed when a private individual shall enter the dwelling of another against the latter's will and may be committed by means of *violence.* (Art. 280)

If the offender entered the dwelling of another through an opening not intended for the purpose, like the window, the unlawful entry was an integral part of the circumstance of violence with which the crime of trespass was committed. (U.S. vs. Barberan, 17 Phil. 509, 511-512)

Par. 19. — That as a means to the commission of a crime, a wall, roof, floor, door, or window be broken.

Basis of this aggravating circumstance.

The basis has reference to *means* and *ways* employed to commit the crime.

Is the cutting of the canvas of the tent where soldiers are sleeping covered by par. 19?

It was considered aggravating in murder where the accused cut the ropes at the rear of a field tent and killed two soldiers inside the tent. (U.S. vs. Matanug, 11 Phil. 188, 189, 192)

The Supreme Court called it "the aggravating circumstance of forcible entry."

"As a means to the commission of a crime."

A broke a window to enable himself to reach a purse with money on the table near that window, which he took while his body was outside of the building. The crime of theft was attended by this aggravating circumstance. Note that because of the phrase "as a means to the commission of a crime," it is not necessary that the offender should have entered the building. What aggravates the liability of the offender is the breaking of a part of the building as a means to the commission of the crime.

To be considered as an aggravating circumstance, breaking the door must be utilized as a means to the commission of the crime. It is not to be appreciated where the accused did not break the door of the victims as a means to commit robbery with homicide where the accused after breaking the rope which was used to close the door could have already entered the house. Breaking of the shutters and the framing of the door to insure the elements of surprise does not aggravate the commission of the crime. (People vs. Capillas, No. L-27177, Oct. 23, 1981, 108 SCRA 173, 187)

To effect entrance only.

But it may be resorted to as a means to commit a crime in a house or building.

For example, a murderer who, for the purpose of entering the house of his victim, *breaks* a wall or a window of the house.

The circumstance is aggravating only in those cases where the offender resorted to any of said means *to enter* the house. If the wall, etc., is broken in order to get out of the place, it is not an aggravating circumstance.

Breaking a part of the building is one of the means of entering the building to commit robbery with force upon things under Art. 299, par. (a), and Art. 302 of the Code. It is inherent in this kind of robbery. Breaking a part of the building is not aggravating in that crime.

Where breaking of door or window is lawful.

Under Rule 113, Sec. 11 (Revised Rules of Criminal Procedure). — An officer, in order to make an arrest, either by virtue of a warrant, or without a warrant as provided in Section 5, may break into any building or enclosure where the person to be arrested is or is reasonably believed to be, if he is refused admittance thereto, after announcing his authority and purpose.

Rule 126, Sec. 7 (Revised Rules of Criminal Procedure). - The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.

Par. 20. — That the crime he committed (1) with the aid of persons under fifteen years of age, or (2) by means of motor vehicles, airships, or other similar means.

Basis of the aggravating circumstances.

The basis has reference to *means* and *ways* employed to commit the crime.

Two different aggravating circumstances in paragraph 20.

Two different circumstances are grouped in this paragraph. The first one tends to repress, so far as possible, the frequent practice resorted to by professional criminals to avail themselves of *minors* taking advantage of their *irresponsibility;* and the second one is intended to counteract the *great facilities* found by modern criminals in said means to *commit crime* and *flee and abscond once the same is committed.* (Albert)

"With the aid of persons under fifteen years of age."

A caused B, a boy 14 years old, to climb the wall of the house of C, to enter the same through its window, and once inside, to take, as in fact B took, clothes and other personal property in the house of C. Then B threw them to the ground where A picked them up. The aggravating circumstance that the crime was committed with the aid of a person under fifteen years of age should be taken into account against A.

"By means of motor vehicles."

Use of motor vehicle is aggravating where the accused used the motor vehicle in going to the place of the crime, in carrying away the effects thereof, and in facilitating their escape. (People vs. Espejo, No. L-27708, Dec. 19, 1970, 36 SCRA 400, 418)

May this aggravating circumstance be considered if the motor vehicle was used, not as a means to commit the crime, but only as a means for the flight or concealment of the offender? Judge Guevara believes that the use of motor vehicles is aggravating "because the same furnish a quick means for the flight or concealment of the offender."

The accused used the motor vehicle in going to the place of the crime, in carrying the effects thereof and in facilitating the escape. (People vs. Espejo, 36 SCRA 400)

When the accused has decided to realize his plan of liquidating the victim, drove his pickup with his companions, conducted a surveillance of the victim's whereabouts while driving his pickup, killed the victim upon meeting him, and made good his escape by speeding away in his vehicle, the motor vehicle was used as a means to commit the crime and to facilitate escape, which is aggravating. (People vs. Cuadra, No. L-27973, Oct. 23, 1978, 85 SCRA 576, 596)

After an earlier confrontation, the principal accused caught up with the victim on board a jeep which the former was driving. As soon as he had stopped the vehicle, he stepped down and axed the victim, while one of several companions stabbed him, the rest stoning him. The victim died. The jeep having played an important role in the accomplishment of the crime and the accused and his companions having made good their escape by speeding away aboard the jeep in order to avoid discovery of their identities, use of motor vehicle is aggravating. (People vs. Bardon, No. L-60764, Sept. 19, 1988, 165 SCRA 416, 420, 426)

Note: If the motor vehicle was used only in facilitating the escape, it should not be an aggravating circumstance.

Where the use of a vehicle was not deliberate to facilitate the killing of the victim, the escape of the assailants from the scene of the crime, and the concealment of the body of the victim, but only incidental, it is not an aggravating circumstance. (People vs. Muñoz, No. L-38016, Sept. 10, 1981, 107 SCRA 313, 338)

Where it appears that the use of motor vehicle was merely incidental and was not purposely sought to facilitate the commission of the offense or to render the escape of the offender easier and his apprehension difficult, the circumstance is not aggravating. (People vs. Garcia, No. L-32071, July 9, 1981, 105 SCRA 325, 343)

Use of motor vehicle will not be considered as an aggravating circumstance where there is no showing that the motor vehicle was purposely used to facilitate the commission of the crime or where it is not shown that without it, the offense charged could not have been committed. Thus, where the primary purpose of the assailant in riding on a motorized tricycle was to return to their camp (assail-

ant was a PC enlistedman) after shooting a first victim and it was just incidental that on his way to the camp, he happened to see the second victim, the circumstance is not aggravating. (People vs. Mil, Nos. L-28104-05, July 30, 1979, 92 SCRA 89, 102)

Estafa, which is committed by means of deceit or abuse of confidence, cannot be committed by means of motor vehicle.

While it is true that a jeep was used in carting away the Vicks Vaporub, we feel that the crime of estafa was not committed by means of said vehicle. Furthermore, under Article 14, paragraph 20 of the Revised Penal Code, that aggravating circumstance exists only if "the crime be committed *** *by means* of motor vehicles ***." (People vs. Bagtas, *et al.*, CA-G.R. No. 10823-R, September 12, 1955)

Theft, which is committed by merely taking personal property which need not be carried away, cannot be committed by means of motor vehicles.

The culprits used a car and, for part of the way, a hired jeep in going to and coming from the place where the crime (theft) was committed. It would be stretching the meaning of the law too far to say that the crime was committed *"by means of motor vehicles."* (People vs. Real, 10 C.A. Rep. 668)

Examples of crimes committed by means of motor vehicle.

A, with the help of B and with lewd designs, forcibly took and carried away a woman by means of an automobile to another town. The crime of forcible abduction (Art. 342) was committed with this aggravating circumstance.

Use of motor vehicle was aggravating in theft where a truck was used in carrying away the stolen rails and iron and wooden ties *from the scene of the theft* to the place where they were sold (People vs. Arabia, C.A., 53 O.G. 6569), and in robbery with homicide where a motor vehicle was used in transporting the accused. (People vs. Valeriano, 90 Phil. 15, 31, 35)

Even if the victims *rode voluntarily* in the jeepney, since they were *lured* and *taken* to the place where they were killed, the use of motor vehicles was considered aggravating. (People vs. De la Cruz, 100 Phil. 624, 634)

A jeep was used by the appellants in fetching and luring the deceased from his house to go with them on the night in question, which they must have used also in taking him to the spot where later on the victim's body was found. There can be no doubt that the use of the motor vehicle facilitated the commission of the offense. (People vs. Atitiw, 14 CAR [2s] 457, 467)

When the accused stabbed and inflicted upon his girlfriend, mortal wounds which caused her death, while they were in a taxi which was hired and used by him, the aggravating circumstance of by means of motor vehicle was present. (People vs. Marasigan, 70 Phil. 583, 594)

Where the accused used a motor vehicle to insure the success of their nefarious enterprise, the circumstance is aggravating. (People vs. Jaranilla, No. L-28547, Feb. 22, 1974, 55 SCRA 563, 575)

Use of motor vehicle is aggravating in this case: the car of the accused was used in trailing the victim's car up to the time that it was overtaken and blocked. It carried the victim on the way to the scene of the killing; it contained at its baggage compartment the pick and shovel used in digging the grave; and it was the fast means of fleeing and absconding from the scene. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 214)

"Or other similar means."

The expression should be understood as referring to *motorized* vehicles or other efficient means of transportation similar to automobile or airplane.

Thus, if the culprit, before committing and after committing the crime, rode in a bicycle and escaped, there is no aggravating circumstance. But it is aggravating if he used a motorcycle.

Par. 21. — That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission.

Basis of this aggravating circumstance.

The basis has reference to *ways* employed in committing the crime.

What is cruelty?

There is cruelty when the culprit *enjoys* and *delights* in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act. (People vs. Dayug, 49 Phil. 423, 427)

For cruelty to be aggravating, it is essential that the wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain. (People vs. Llamera, Nos. L-21604-6, May 25, 1973, 51 SCRA 48, 60)

For cruelty or vindictiveness to be appreciated, the evidence must show that the sadistic culprit, for his pleasure and satisfaction, caused the victim to suffer slowly and gradually, and inflicted on him unnecessary moral and physical pain. (People vs. Luna, No. L-28812, July 31, 1974, 58 SCRA 198, 209)

For cruelty to exist, it must be shown that the accused enjoyed and delighted in making his victim suffer slowly and gradually, causing him unnecessary physical or moral pain in the consummation of the criminal act. (People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 215)

Requisites of cruelty:

1. That the injury caused be *deliberately increased* by causing *other wrong*;
2. That the other wrong be *unnecessary* for the execution of the purpose of the offender.

"Be deliberately augmented by causing other wrong."

This phrase means that the accused at the time of the commission of the crime had a *deliberate intention* to prolong the suffering of the victim.

Cruelty was not present in a case where the assailant stoned twice the victim, not for the purpose of increasing his sufferings, but to kill him (U.S. vs. Gasal, 3 Phil. 354, 357), or in a case where the acts of the assailants showed only a decided purpose to kill and not to prolong sufferings of the victim (U.S. vs. Tan Corteso, 32 Phil. 104, 116), or where the purpose was to ensure the death of the three 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 killing them (People vs. Llamera, *supra),* or where the victim was drowned in the sea after stabbing him while bound (People vs. Luna, *supra),* or where the victim was buried after being stabbed, not to make him suffer any longer but to conceal his body and the crime itself (People vs. Ong, *supra),* or where the accused kicked the deceased or placed his right foot on the body of the deceased to verify whether or not the latter was still alive, and not for the purpose of deliberately and inhumanly increasing his sufferings. (People vs. Mil, Nos. L-28104-05, July 30, 1979, 92 SCRA 89, 101)

"Other wrong not necessary for its commission."

A and B, who had tied C in the latter's house, struck him with their guns to make him point the place where he was keeping his money. Striking him with the guns is "other wrong," but it is necessary for the commission of the crime of robbery, particularly to get C's money. Hence, there is no cruelty.

Cruelty refers to physical suffering of victim purposely intended by offender.

Cruelty requires *deliberate* prolongation of the physical suffering of victim. (People vs. Dayug, *supra;* People vs. Llamera, *supra)*

Cruelty cannot be presumed.

Cruelty is not to be inferred from the fact that the body of the deceased was dismembered, in the absence of proof that this was done while the victim was still alive. (People vs. Jimenez, 54 O.G. 1361)

Cruelty considered in murder by burning mouth of child.

This circumstance is considered in the charge of murder for burning the mouth and other parts of the body of an infant, 11 months old. If the desire of the defendant had been only to kill the child, he could have carried out his purpose without compelling the victim to undergo such great suffering and for so long a time. (U.S. vs. Oro, 19 Phil. 548, 554)

Cruelty considered in extracting victim's eye and stuffing his mouth with mud.

After hog-tying the victim, the accused extracted the victim's left eye from its socket with the pointed end of his cane and also stuffed the victim's mouth with mud. *Held:* There is cruelty. (People vs. Mariquina, 84 Phil. 39, 40-41, 43, 44)

When the series of acts causing unnecessary sufferings of victim took place in rapid succession, is there cruelty?

When a woman and her two daughters, one of them Corazon, were fired at by the accused, Corazon screamed for help. One of the accused grabbed her, raised her from the ground, while the other accused battered her with the butt of the rifle and pounded her on the ground. Corazon died of external and intra-cranial hemorrhage. *Held:* There was unnecessary cruelty. (People vs. Beleno, 92 Phil. 868, 869, 872)

Was there a deliberate intention on the part of the accused to prolong the suffering of the victim? There seems to be no appreciable time intervening between or among the series of acts of the accused.

In the case of *People vs. Dayug, supra,* it was held that "the mere fact of inflicting various successive wounds upon a person in order to cause his death, *no appreciable time intervening* between the infliction of one wound and that of another to show that the offender wanted to prolong the suffering of his victim, is not sufficient for taking this aggravating circumstance into consideration."

Plurality of wounds alone does not show cruelty.

Number of wounds alone does not show cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims. (People vs. Aguinaldo, 55 Phil. 610, 615-616; People vs. Manzano, Nos. L-33643-44, July 31, 1974, 58 SCRA 250, 262; People vs. Lacao, No. L-32078, Sept. 30, 1974, 60 SCRA 89, 96-97)

In the absence of a showing that the other wounds found on the body of the victim were inflicted to prolong his suffering before the fatal wound was dealt, it cannot be concluded that cruelty was duly proven. Cruelty cannot be presumed. (People vs. Artieda, No. L-38725, May 15, 1979, 90 SCRA 144, 156)

Where there were many wounds because there were many assailants, the number of wounds alone is not sufficient to show that the killing was committed for the purpose of deliberately and inhumanly augmenting the suffering of the victim. (People vs. Vasquez, No. 54117, April 27, 1982, 113 SCRA 772, 776)

No cruelty when other wrong was done after victim was dead.

Cutting extremities after victim is killed is not cruelty. (People vs. Bersabal, 48 Phil. 439, 441)

If at the time the house was set on fire the inmates who had been seriously wounded were already dead, there is no cruelty. (People vs. Piring, 63 Phil. 546, 553; People vs. Clamania, 85 Phil. 350, 353)

Neither may we consider the circumstance of cruelty as found by the trial court, because there is no showing that the other wounds found on the bodies of the victims were inflicted unnecessarily *while they were still alive* in order to prolong their physical suffering. (People vs. Curiano, Nos. L-15256-57, Oct. 31, 1963, 9 SCRA 323, 347-348)

For cruelty to be appreciated as a generic aggravating circumstance, there must be positive proof that the wounds found on the body of the victim were inflicted while he was still alive in order unnecessarily to prolong physical suffering. (People vs. Pacris, G.R. No. 69986, March 5, 1991, 194 SCRA 654, 663)

Ignominy distinguished from cruelty.

Ignominy (par. 17) involves *moral* suffering, while cruelty (par. 21) refers to *physical* suffering.

Rapes, robbery and other forms of cruelties are aggravating circumstances of ignominy and cruelty in treason.

Rapes, wanton robbery for personal gain, and other forms of cruelties are condemned and their perpetration will be regarded as aggravating circumstances *of ignominy* and of deliberately augmenting unnecessary wrongs to the main criminal objective, under paragraphs 17 and 21 of Article 14 of the Revised Penal Code. (People vs. Racaza, 82 Phil. 623, 638)

Rape as aggravating in robbery with homicide.

Where rape attends the commission of the crime of robbery with homicide, the rape should be deemed to aggravate the robbery with homicide. (People vs. Basca, 55 O.G. 797)

Rape as aggravating in murder.

Since the victim was already at the threshold of death when she was ravished, that bestiality may be regarded either as a form of ignominy causing disgrace or as a form of cruelty which aggravated murder, because it was unnecessary to the commission thereof and was a manifest outrage on the victim's person. (People vs. Laspardas, No. L-46146, Oct. 23, 1979, 93 SCRA 638, 645)

Aggravating circumstances peculiar to certain felonies.

Among the aggravating circumstances peculiar to certain felonies are the following:

1. **That the offense (violation of domicile) be committed in the nighttime, or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender. (Art. 128, par. 2)**

2. **That the crime (interruption of religious worship) shall have been committed with violence or threats. (Art. 132, par. 2)**

3. **That the assault (direct assault) is committed with a weapon, or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. (Art. 148)**

4. **If the crime (slavery) be committed for the purpose of assigning the offended party to some *immoral traffic,* the penalty shall be imposed in its maximum period. (Art. 272, par. 2)**

5. **If the threat (grave threats) be made in writing or through a middleman, the penalty shall be imposed in its maximum period. (Art. 282)**

6. **If the robbery with *violence* against or *intimidation* of persons (except robbery with homicide, or robbery with rape, etc.) is committed in an uninhabited place or by a band, etc.,**

or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties. (Art. 295)

7. If the robbery with the use of *force upon things* (Art. 299) is committed in an uninhabited place and by a band, it shall be punished by the maximum period of the penalty provided therefor. (Art. 300)

Alternative Circumstances

1. *Definition or concept.*

Alternative circumstances are those which must be taken into consideration as *aggravating* or *mitigating* according to the *nature and effects* of the crime and the *other conditions* attending its commission.

2. *Basis of the alternative circumstances.*

The basis is the nature and effects of the crime and the other conditions attending its commission.

Chapter Five

ALTERNATIVE CIRCUMSTANCES

Art. 15. ***Their concept.*** **— Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.**

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

The alternative circumstances are:

1. **Relationship;**
2. **Intoxication; and**
3. **Degree of instruction and education of the offender.**

Relationship.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the —

(a) spouse,

(b) ascendant,

(c) descendant,

(d) legitimate, natural, or adopted brother or sister, or

(e) relative by affinity in the same degree of the offender.

Other relatives included.

The relationship of stepfather or stepmother and stepson or stepdaughter is included by analogy as similar to that of ascendant and descendant. (People vs. Bersabal, 48 Phil. 439, 441; People vs. Portento, C.A., 38 O.G. 467)

The reason for considering these relationships, as stated in the case of *People vs. Portento, supra,* is that it is the duty of the stepmother to bestow upon her stepdaughter a mother's affection, care and protection. Hence, the *effect* of the crime of murder committed by the stepmother against her stepdaughter makes the relationship aggravating.

The relationship of adopted parent and adopted child may also be included, as similar to that of ascendant and descendant.

But the relationship between uncle and niece is not covered by any of the relationships mentioned. (U.S. vs. Insierto, 15 Phil. 358, 361; People vs. Balondo, No. L-27401, Oct. 31, 1969, 30 SCRA 155, 161; People vs. Lamberte, No. L-65153, July 11, 1986, 142 SCRA 685, 692-693)

When mitigating and when aggravating.

The law is silent as to when relationship is mitigating and when it is aggravating.

As a rule, relationship *is mitigating in crimes against property,* by analogy to the provisions of Art. 332.

Thus, relationship is mitigating in the crimes of robbery (Arts. 294-302), usurpation (Art. 312), fraudulent insolvency (Art. 314), and arson. (Arts. 321-322, 325-326)

Under Art. 332 of the Code, *no criminal,* but only civil, liability shall result from commission of the crime of theft, *swindling or malicious mischief* committed or caused mutually by spouses, ascendants,

and descendants, or relatives by affinity in the same line; brothers and sisters and brothers-in-law and sisters-in-law, if *living together.*

In view of the provision of Art. 332, when the crime committed is (1) theft, (2) swindling or estafa, or (3) malicious mischief, relationship is *exempting.* The accused is not criminally liable and there is no occasion to consider a mitigating or an aggravating circumstance.

It is *aggravating in crimes against persons* in cases where the offended party is a relative of a higher degree than the offender, or when the offender and the offended party are relatives of the *same level,* as killing a *brother* (People vs. Alisub, 69 Phil. 362, 364), a *brother-in-law* (People vs. Mercado, 51 Phil. 99, 102; People vs. Mendova, 100 Phil. 811, 818), a *half-brother* (People vs. Nargatan, 48 Phil. 470, 472, 475), or *adopted brother.* (People vs. Macabangon, 63 Phil. 1061-1062 [Unrep.])

Is relationship not aggravating when the offender killed his brother-in-law?

Except an admission by the appellant that the deceased was his brother-in-law, relationship by affinity should not be deemed to aggravate the crime in the absence of evidence to show that the offended party is of a higher degree in the relationship than that of the offender. (People vs. Canitan, No. L-16498, June 29, 1963, 8 SCRA 358, 364)

If the crime against persons is any of the serious physical injuries, the fact that the offended party is a descendant of the offender is not mitigating.

When the *crime against persons* is any of the serious physical injuries (Art. 263), even if the offended party is a descendant of the offender, relationship is an aggravating circumstance.

If the offense of *serious physical injuries* is committed by the offender against his child, whether legitimate or illegitimate, or any of his legitimate other *descendants,* relationship is aggravating. But the serious physical injuries must not be inflicted by a parent upon his child by excessive chastisement.

Art. 263 provides for a *higher penalty* "if the offense (any of the serious physical injuries) is committed against any of the persons

enumerated in Art. 246." Art. 246, which defines and penalizes the crime of parricide, enumerates the following persons: father, mother, or *child,* whether legitimate or illegitimate, or any of his ascendants or *descendants* or spouse.

When the crime is less serious physical injuries or slight physical injuries, the ordinary rule applies.

But when the offense committed is *less serious physical injuries* (Art. 265); or *slight physical injuries* (Art. 266), relationship is a mitigating circumstance, if the offended party is a relative of a lower degree of the offender; and an aggravating circumstance, if the offended party is a relative of a higher degree of the offender. Both Art. 265 and Art. 266 do not have provisions to the contrary, as in Art. 263.

When the crime against persons is homicide or murder, relationship is aggravating even if the victim of the crime is a relative of lower degree.

If the commission of the crime against persons resulted in the *death of the victim* who is a relative of a lower degree of the offender, relationship is an aggravating circumstance. This rule applies when the crime committed is homicide (Art. 249) or murder. (Art. 248)

Thus, the killing of a stepdaughter by her stepmother is attended by the circumstance of relationship which is considered as aggravating. (People vs. Portento, *supra)* The crime is not parricide, because the relationship is not by blood and in the direct line; but the relationship was considered by the Court to aggravate the penalty, notwithstanding the fact that the victim of the crime was a *relative of a lower degree.*

Relationship is mitigating in trespass to dwelling.

Where a son-in-law, believing his wife to be in her father's house, attempted to force an entry therein, the relationship is to be considered in mitigation. (U.S. vs. Ostrea, 2 Phil. 93, 95)

Relationship is neither mitigating nor aggravating, when relationship is an element of the offense.

When the qualification given to the crime is derived from the relationship between the offender and offended party, it is neither

mitigating nor aggravating, because it is *inseparable* from and *inherent* in the offense.

Examples: Parricide, adultery and concubinage.

In crimes against chastity, relationship is always aggravating.

In *crimes against chastity,* like of lasciviousness (Art. 336), relationship is *aggravating,* regardless of whether the offender is a relative *of a higher or lower degree* of the offended party.

In rape —

Relationship is aggravating in a case where a stepfather raped his stepdaughter (People vs. De Leon, 50 Phil. 539, 545); or in a case where a father raped his own daughter. (People vs. Porras, 58 Phil. 578-579; People vs. Lucas, G.R. No. 80102, Jan. 22, 1990, 181 SCRA 316, 327)

Reason for the difference in the rule.

Why is relationship aggravating in crimes against chastity even if the offended party is a relative of lower degree?

Because of the *nature* and *effect* of the crime committed, it is considered aggravating although the offended party is a relative of lower degree. It is not shocking to our moral sense when we hear a father committed, for instance, the crime of slight physical injury against his daughter; but it certainly is very shocking when we hear that a father committed acts of lasciviousness on the person of his own daughter.

The rule may be different because of the "other condition attending" the commission of the crime.

While the relationship of brothers-in-law is aggravating when one commits a crime against the other, such relationship is mitigating when the accused killed his brother-in-law in view of the conduct pursued by the latter in contracting adulterous relations with the wife of the accused. (U.S. vs. Ancheta, 1 Phil. 30, 32)

Also, in a case where the deceased was suffering from an attack of insanity and the accused, his brother-in-law, in his desire to place

the deceased under control, struck him with a club, exceeding the limits of his discretion in the heat of the struggle, it was held that relationship was mitigating because the cause of the maltreatment was the desire to render service to a relative. (U.S. vs. Velarde, 36 Phil. 991, 992-993)

The reason for the difference in the rule is the *"other condition attending"* the commission of the crime, which in the *Ancheta* case is the conduct of the deceased in having adulterous relations with the wife of the accused; and in the *Velarde* case, the desire of the accused to render service to a relative.

Intoxication.

a. *Mitigating* — (1) if intoxication is *not habitual,* or (2) if intoxication is *not subsequent to the plan* to commit a felony.

b. *Aggravating* — (1) if intoxication is *habitual;* or (2) if it is *intentional* (subsequent to the plan to commit a felony).

It is intentional when the offender drinks liquor *fully knowing* its effects, to find in the liquor a *stimulant* to commit a crime or a means to suffocate any remorse.

Drunkenness or intoxication is mitigating if accidental, not habitual nor intentional, that is, not subsequent to the plan to commit the crime. It is aggravating if habitual or intentional. A habitual drunkard is one given to intoxication by excessive use of intoxicating drinks. The habit should be actual and confirmed. It is unnecessary that it be a matter of daily occurrence. It lessens individual resistance to evil thought and undermines will-power making its victim a potential evildoer. (People vs. Camano, Nos. L-36662-63, July 30, 1982, 115 SCRA 688, 699-700)

For an accused to be entitled to the mitigating circumstance of intoxication, it must be shown that (a) at the time of the commission of the criminal act, he has taken such quantity of alcoholic drinks as to blur his reason and deprive him of a certain degree of control, and (b) that such intoxication is not habitual, or subsequent to the plan to commit the felony. (People vs. Boduso, Nos. L-30450-51, Sept. 30, 1974, 60 SCRA 60, 70-71)

"When the offender has committed a felony in a state of intoxication."

The last paragraph of Art. 15 says "when the offender has committed a felony in a state of intoxication," by which clause is meant that the offender's mental faculties must be affected by drunkenness.

Evidence for intoxication to be aggravating.

There is no showing of excessive and habitual use of intoxicating drinks, or that the accused purposely got drunk in order to commit the crime, where the witness merely declared that the accused were drinking liquor on the night in question and were telling stories, singing, laughing, and shouting and were very jolly, although said witness further testified that the accused used to drink liquor every Saturday night, such testimony not being competent proof that the accused are drunkards whose habit is to get drunk, and whose inebriety has become habitual. In such a case, intoxication is not aggravating but mitigating. (People vs. Moral, No. L-31139, Oct. 12, 1984, 132 SCRA 474, 488)

The accused's state of intoxication must be proved.

In *People vs. Noble,* 77 Phil. 93, 101-102, the defendant testified that before the murder, he took a bottle of wine and drank little by little until he got drunk. The policeman who arrested the accused testified that the latter smelled of wine and vomited. The Court held that the evidence presented was not satisfactory to warrant a mitigation of the penalty.

Intoxication was likewise not completely proved in a case where the only evidence was that the defendant had a gallon of *tuba* with him at the time he committed the crime. (People vs. Pardo, 79 Phil. 568, 579)

In another case, intoxication was not also proved where the accused merely alleged that when he committed the offense charged, he was intoxicated although he was "not used to be drunk." His self-serving statement was uncorroborated and was dismissed as devoid of any probative value. (People vs. Apduhan, Jr., No. L-19491, Aug. 30, 1968, 24 SCRA 798, 813-814)

To be mitigating, the accused's state of intoxication must be proved. Once intoxication is established by satisfactory evidence, in

the absence of proof to the contrary, it is presumed to be non-habitual or unintentional. (People vs. Apduhan, Jr., *supra,* at 813, citing People vs. Noble, 77 Phil. 93 and U.S. vs. Fitzgerald, 2 Phil. 419)

The accused merely alleged that when he committed the offense charged, he was intoxicated although he was "not used to be drunk." This self-serving statement stands uncorroborated. Obviously, it is devoid of any probative value.

In *People vs. Apduhan, Jr.,* 24 SCRA 798, it was held that to be mitigating, the accused's state of intoxication must be proved. Once intoxication is established by satisfactory evidence (People vs. Noble, 77 Phil. 93), in the absence of proof to the contrary, it is presumed to be non-habitual or unintentional. (U.S. vs. Fitzgerald, 2 Phil. 419)

Where the court below found that the appellant was under the influence of liquor in the afternoon immediately preceding the incident and there is no evidence indicating that he is a habitual drunkard, the mitigating circumstance of intoxication should be considered in favor of the appellant. (People vs. Gongora, Nos. L-14030-31, July 31, 1963, 8 SCRA 472, 482; People vs. De Gracia, No. L-21419, Sept. 29, 1966, 18 SCRA 197, 207)

Note: In these cases, there was no evidence that the intoxication was intentional or subsequent to the plan to commit the crime.

Drunkenness must affect mental faculties.

The Code says nothing about the degree of intoxication needed to mitigate; but obviously to produce such an effect, it must diminish the agent's capacity to know the injustice of his acts, and his will to act accordingly. (Albert)

The amount of wine taken must be of such quantity as to blur the offender's reason and deprive him of self-control. (People vs. Cabrera, CA-G.R. No. 13941-R, June 1, 1956)

Before drunkenness may be considered as a mitigating circumstance, it must first be established that the liquor taken by the accused was of such quantity as to have blurred his reason and deprived him of self-control. It should be such an intoxication that would diminish the agent's capacity to know the injustice of his acts,

and his will to act accordingly. (People vs. Ruiz, Nos. L-33604-05, Oct. 30, 1979, 93 SCRA 739, 760-761)

Thus, if the amount of the liquor the accused had taken *was not of sufficient quantity to affect his mental faculties,* he was not in a state of intoxication. If the accused was thoughtful enough not to neglect giving Don Vicente Noble his injection, the inference would be that his intoxication was not to such a degree as to affect his mental capacity to fully understand the consequences of his act. (People vs. Noble, 77 Phil. 93, 101-102)

Also, although the accused had taken some liquor on the day of the shooting, if he was *aware of everything* that occurred on that day and he was able to give a *detailed account* thereof, intoxication is not mitigating. (People vs. Buenaflor, C.A., 53 O.G. 8879)

And although the persons participating in the act of misappropriating public funds may, for some time prior thereto, had been drinking freely of intoxicating liquor, yet if they were *sufficiently sober to know* what they were doing when committing the unlawful act, the mitigating circumstance of intoxication cannot be considered. (U.S. vs. Dowdell, 11 Phil. 4 [Syllabus])

"When the intoxication is habitual."

The mere fact that the accused had been drinking intoxicating liquor about seven months and that he had been drunk once or twice a month is not constituting habitual drunkenness. A habitual drunkard is one given to intoxication by *excessive use* of intoxicating drinks. The habit should be actual and confirmed, but it is not necessary that it be continuous or by daily occurrence. (People vs. Amenamen, C.A., 37 O.G. 2324)

In *U.S. vs. McMann,* 4 Phil. 561, 565, a witness testified that he saw the defendant drunk twelve times or more. *Held:* He was a habitual drunkard.

Drunkenness was also found to be habitual where the defendants admitted in open court that before they committed the crime, they drank for three hours and often had a drinking party. (People vs. Mabilangan, No. L-48217, Jan. 30, 1982, 111 SCRA 398, 403)

"Or subsequent to the plan to commit a felony."

Illustration:

A decided to kill B. A planned to commit the crime by preparing the means to carry it out. When he was ready to kill B, A drank a glass of wine and when already intoxicated, he looked for B and killed him. Note that A drank wine to intoxicate himself *after* he had planned the commission of the crime. In this case, the intoxication is intentional.

Intoxication is mitigating where the same was not habitual nor intentional and the crime was not the offspring of planning and deliberation but a fatal improvisation dictated by an impromptu impulse. (People vs. Abalos, No. L-31726, May 31, 1974, 57 SCRA 330, 338)

Even if intoxication is not habitual, it is aggravating when subsequent to the plan to commit the crime.

In a case where the trial court found the commission of the crime of murder to be attended by the mitigating circumstance that the accused was drunk, but not habitually so, it was held that it appearing that the accused, who had plotted the death of the victim, drank wine in order to embolden himself in the carrying out of his evil plan, his intoxication cannot be considered as a mitigating circumstance. (People vs. Hernandez, 91 Phil. 334, 344)

Reasons for the alternative circumstance of intoxication.

As a mitigating circumstance, it finds its reason in the fact that when a person is under the influence of liquor, his *exercise of will power is impaired.*

As an aggravating circumstance, because it is *intentional,* the reason is that the offender resorted to it in order to bolster his courage to commit a crime.

It is aggravating when intoxication is *habitual,* because the constant use of intoxicating liquor lessens the individual resistance to evil thoughts and undermines the will power making himself a potential evildoer against whose activities, society has the right for its own protection to impose a more severe penalty. (People vs. Amenamen, *supra)*

Presumption is that intoxication is accidental.

The prosecution must prove that the intoxication of the offender is habitual or intentional. (People vs. Dungka, 64 Phil. 421, 426)

In the absence of proof to the contrary, it will be presumed that intoxication is *not* habitual but accidental, and the fact that the accused was drunk at the time of the commission of the crime must then be considered as a mitigating circumstance. (U.S. vs. Fitzgerald, 2 Phil. 419, 422; People vs. Dacanay, 105 Phil. 1265, 1266 [Unrep.], citing People vs. Dungka, *supra)*

Non-habitual intoxication, lack of instruction and obfuscation are not to be taken separately.

As non-habitual intoxication implies a disturbance of the reasoning powers of the offender, his lack of instruction cannot have any influence over him, and obfuscation which has the same effect on his reasoning powers cannot be considered independently of non-habitual intoxication. (People vs. Baterna, 49 Phil. 996, 997-998)

The trial court considered them separately as three distinct mitigating circumstances and imposed a penalty one degree lower. The Supreme Court considered them as one mitigating circumstance only and modified the penalty imposed by the trial court by raising it and imposing the proper penalty in the minimum period.

Degree of instruction and education of the offender.

Low degree of instruction and education or lack of it is generally mitigating. High degree of instruction and education is aggravating, when the offender avails himself of his learning in committing the crime.

Lack of instruction, as mitigating.

Lack of instruction cannot be taken into account where the defendant admitted that he studied in the first grade in a public elementary school. Art. 15 applies only to him who really has not received any instruction. (People vs. Mangsant, 65 Phil. 548, 552)

But the accused lacks education and instruction, if he did not finish even the first grade in elementary school. (People vs. Limaco, 88 Phil. 35, 44)

Lack of instruction is not mitigating where the accused finished Grade Two and answered in Tagalog, questions put to him in English. (People vs. Luna, No. L-28812, July 31, 1974, 58 SCRA 198, 208)

Having studied up to sixth grade is more than sufficient schooling to give the accused a degree of instruction as to properly apprise him of what is right and wrong. (People vs. Pujinio, No. L-21690, April 29, 1969, 27 SCRA 1185, 1189-1190)

Lack of sufficient intelligence is required in illiteracy.

Not illiteracy alone, but also lack of sufficient intelligence are necessary to invoke the benefit of the alternative circumstance of lack of instruction, the determination of which is left to the trial court.

A person able to sign his name but otherwise so densely ignorant and of such low intelligence that he does not fully realize the consequences of his criminal act, may still be entitled to this mitigating circumstance. On the other hand, another person unable to write because of lack of educational facilities or opportunities, may yet be highly or exceptionally intelligent and mentally alert that he easily realizes the full significance of his acts, in which case he may not invoke this mitigating circumstance in his favor. (People vs. Ripas, 95 Phil. 63, 70-71; People vs. Geronimo, No. L-35700, Oct. 15, 1973, 53 SCRA 246, 261-262)

Mere illiteracy is not sufficient to constitute a mitigating circumstance. There must be also lack of intelligence. (People vs. Retania, No. L-34841, Jan. 22, 1980, 95 SCRA 201, 221; People vs. Abanes, No. L-30609, Sept. 28, 1976, 73 SCRA 44, 47)

Lack of sufficient instruction is not mitigating when the offender is a city resident who knows how to sign his name.

Appellant is guilty of murder with the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation. The mitigating circumstance of lack of sufficient instruction cannot be justified as appellant is a city resident and even knows how to sign his name. The judgment is modified and appellant is sentenced to *reclusion perpetua*. (People vs. Cabrito, 101 Phil. 1253, 1254 [Unrep.])

Lack of instruction must be proved by the defense.

The mitigating circumstance of lack of instruction must be proved *positively* and *directly* and cannot be based on mere deduction or inference. (People vs. Bernardo, C.A., 40 O.G. 1707)

Lack of education must be proved positively and cannot be based on mere deduction or inference. (People vs. Retania, *supra,* citing *People vs. Bernardo, supra,* and *People vs. Sakam*,61 Phil. 64)

Lack of instruction needs to be proven as all circumstances modifying criminal liability should be proved directly and positively. (People vs. Macatanda, No. L-51368, Nov. 6, 1981, 109 SCRA 35, 38, citing People vs. Melendrez, 59 Phil. 154)

In the absence of any basis on record on which to judge the degree of instruction of the accused, no evidence having been taken relative thereto because he entered a plea of guilty, the circumstance of lack of instruction cannot be mitigating. (People vs. Macatanda, *supra,* at 39)

The question of lack of instruction cannot be raised for the first time in appellate court.

It is for the trial court rather than the appellate court *to find* and *consider* the circumstance of lack of instruction. (People vs. Sari, 99 Phil. 1040 [Unrep].)

When the trial court did not make any findings as to the degree of instruction of the offenders, on appeal that alternative circumstance cannot be considered in fixing the penalty to be imposed on the accused-appellants. (People vs. Diaz, No. L-24002, Jan. 21, 1974, 55 SCRA 178, 187)

The trial court's appreciation of lack of instruction as a mitigating circumstance was not disturbed on appeal because the said court was in a position to gauge appellant's level of intelligence from his appearance, demeanor and manner of answering questions. (People vs. Manuel, Nos. L-23786-87, Aug. 29, 1969, 29 SCRA 337, 346)

Ordinarily, low degree or lack of instruction is mitigating in all crimes.

Lack of instruction or low degree of it is appreciated as mitigating circumstance in almost all crimes. (U.S. vs. Reguera, 41 Phil. 506,

520 [robbery with homicide]; People vs. Baltazar, No. L-30557, March 28, 1980, 96 SCRA, 556, 562-563 [Anti-Subversion Law]; People vs. Talok, 65 Phil. 696, 707 [murder]; People vs. Hubero, 61 Phil. 64, 66 [homicide])

Exceptions:

1. *Not mitigating in crimes against property,* such as estafa, theft, robbery, arson. (U.S. vs. Pascual, 9 Phil. 491, 495 [estafa]; People vs. De la Cruz, 77 Phil. 444, 448; People vs. Melendrez, 59 Phil. 154, 155-156 [robbery]; People vs. San Pedro, No. L-44274, Jan. 22, 1980, 95 SCRA 306, 310 [robbery with homicide]; People vs. Condemena, No. L-22426, May 29, 1968, 23 SCRA 910, 920 [robbery with homicide])

   But in *U.S. vs. Maqui,* 27 Phil. 97, 101, lack of instruction was mitigating in *theft* of large cattle committed by a member of an uncivilized tribe of Igorots or in Igorot land.

   But see *People vs. Macatanda,* No. L-51368, Nov. 6, 1981, 109 SCRA 35, 38, 39, where the accused claimed that he was a Moslem belonging to a cultural minority, and the high court said: "Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery leave us with no choice but to reject the plea of appellant. Membership in a cultural minority does not *per se* imply being an uncivilized or semi-uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the *Maqui* case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle. Incidentally, the *Maqui* case is the only case where lack of instruction was considered to mitigate liability for theft, for even long before it, in *U.S. vs. Pascual,* 9 Phil. 491, a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery. The *Maqui* case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized."

In *robbery with homicide,* where the accused was illiterate, lack of instruction was held to be mitigating. (People vs. Patricio, 79 Phil. 227, 234; People vs. Mantawar, 80 Phil. 817, 823)

But in another case, it was held that the benefit of lack of instruction is unavailing to mitigate the crime of robbery with homicide as this circumstance is not applicable to the crime of theft or robbery, and much less to the crime of homicide. No one, however unschooled he may be, is so ignorant as not to know that theft or robbery, or assault upon the person of another is inherently wrong and a violation of the law. (People vs. Enot, No. L-17530, Oct. 30, 1962, 6 SCRA 325, 329)

In a later case, also of robbery with homicide, it was also held that belonging to the cultural minorities cannot conceivably reduce, from the subjective point of view, the defendants' awareness of the gravity of their offense, for robbery and killing are by their very nature just as wrong to the ignorant as they are to the enlightened. (People vs. Salip Mania, No. L-21688, Nov. 28, 1969, 30 SCRA 389, 397)

2. *Not mitigating in crimes against chastity,* such as rape and adultery. No one is so ignorant as not to know that the crime of rape is wrong and in violation of the law. (Malesa vs. Director, 59 Phil. 406, 408; U.S. vs. Borjal, 9 Phil. 140, 141; People vs. Lopez, 107 Phil. 1039, 1042)

How about in treason?

Not mitigating, because love of country should be a natural feeling of every citizen, however unlettered or uncultured he may be. (People vs. Lansanas, 82 Phil. 193, 196; People vs. Cruz, 88 Phil. 684, 687-688)

But in another case, the accused was also charged with treason. His schooling was confined in studying and finishing *caton* only. *Held:* Lack of instruction is mitigating. (People vs. Marasigan, 85 Phil. 427, 431)

Lack of education and instruction is not mitigating in murder.

Lack of education and instruction cannot mitigate appellant's guilt because to kill is forbidden by natural law which every rational

being is endowed to know and feel. (People vs. Mutya, G.R. Nos. L-11255-56, Sept. 30, 1959 [Unrep.])

Exception:

Although ordinarily lack of instruction is not considered as an extenuating circumstance in the crime of homicide or murder, nevertheless, in the instant cases, the same may be so considered because the crimes would probably not have been committed if the accused were not so ignorant as to believe in witchcraft. The trial court likewise did not err in failing to consider the lack of instruction as mitigating circumstance in the crime of arson as the same does not extenuate offenses against property. (People vs. Laolao, G.R. Nos. L-12978-80, Oct. 31, 1959 [Unrep.])

It is also considered mitigating in murder in the following case:

The crime was murder qualified by evident premeditation, the defendants having "for a long time" sought the encounter. There was also abuse of superior strength — four men with knives against one unarmed person. But this is compensated by lack of instruction, these appellants being "ignorant people living in a barrio almost 20 kilometers away from civilization." Consequently, the medium degree of the penalty for murder — *reclusion perpetua* — becomes imposable. (People vs. Mantala, G.R. No. L-12109, Oct. 31, 1959)

High degree of instruction, as aggravating.

Examples:

A lawyer, who, with abuse of his education and learning, commits estafa.

A medical student who was convicted of slander by deed. (People vs. Roque, C.A., 40 O.G. 1710)

Degree of instruction is aggravating when the offender availed himself or took advantage of it in committing the crime.

Thus, a doctor, who, using his knowledge, prepared certain kind of poison to kill his victim in such a way as to avoid detection, may be considered as having taken advantage of his high degree of instruction and education.

But the fact that the accused was a lawyer was not considered aggravating in physical injuries. (People vs. Sulit, CA-G.R. No. 21102-R, Sept. 29, 1959) He did not take advantage of his high degree of education.

Title Two

PERSONS CRIMINALLY LIABLE FOR FELONIES

Art. 16. ***Who are criminally liable.*** **— The following are criminally liable for grave and less grave felonies:**

1. Principals.

2. Accomplices.

3. Accessories.

The following are criminally liable for light felonies:

1. Principals.

2. Accomplices.

Treble division of persons criminally liable.

The treble division of persons criminally responsible for an offense rests upon the very nature ***of their participation*** **in the commission of the crime.**

When a crime is committed by many, ***without being equally shared by all, a different degree of responsibility*** **is imposed upon each and every one of them. In that case, they are criminally liable either as principals, accomplices, or accessories.**

Accessories are not liable for light felonies.

In view of the ***omission*** **of accessories in naming those liable for light felonies, the** ***accessories*** **are** ***not liable for light felonies.***

Reason: **In the commission of light felonies, the** ***social wrong*** **as well as the** ***individual prejudice is so*** **small that penal sanction is deemed not necessary for accessories.**

Rules relative to light felonies:

1. Light felonies are punishable only when they have been consummated. (Art. 7)
2. But when light felonies are committed against persons or property, they are punishable even if they are only in the attempted or frustrated stage of execution. (Art. 7)
3. Only principals and accomplices are liable for light felonies. (Art. 16)
4. Accessories are not liable for light felonies, even if they are committed against persons or property. (Art. 16)

Active subject and passive subject of crime.

In all crimes there are always two parties, namely: the *active* subject (the criminal) and the *passive* subject (the injured party).

Art. 16 of the Code enumerates the active subjects of the crime.

Only natural persons can be active subject of crime.

Only natural persons can be the active subject of crime because of the *highly personal nature* of the criminal responsibility.

Since a felony is a punishable *act* or *omission* which produces or tends to produce a change in the external world, it follows that only a *natural person* can be the active subject of the crime, because he alone *by his act* can set in motion a cause or *by his inaction* can make possible the completion of a developing modification in the external world.

Only a natural person can be the offender because —

(a) The Revised Penal Code requires that the culprit should have acted with *personal malice* or *negligence.* An artificial or *juridical* person cannot act with malice or negligence.

(b) A juridical person, like a corporation, cannot commit a crime in which a willful purpose or a malicious intent is required. (West Coast Life Ins. Co. vs. Hurd, 27 Phil. 401, 407-408)

(c) There is substitution of *deprivation of liberty* (subsidiary imprisonment) for pecuniary penalties in case of insolvency of the accused.

The Code requires that the culprit should have acted with *personal malice* or *negligence.* An artificial or *juridical* person cannot act with malice or negligence.

A corporation could not have committed a crime in which a willful purpose or a malicious intent was required. (West Coast Life Ins. Co. vs. Hurd, 27 Phil. 401)

There is the substitution of *deprivation of liberty* (subsidiary imprisonment) for pecuniary penalties in cases of insolvency.

(d) Other penalties consisting in imprisonment and other deprivation of liberty, like *destierro,* can be executed only against individuals. (Albert)

Officers, not the corporation, are criminally liable.

A corporation can act only through its officers or incorporators, and that as regards a violation of the law committed by an officer of a corporation, in *the exercise of his duties,* he answers criminally for *his acts,* and not the corporation to which he belongs, for being an artificial person, it cannot be prosecuted criminally. (People vs. Campos, C.A., 40 O.G., Sup. 12, 7)

Criminal actions are restricted or limited to the officials of the corporation and never directed against the corporation itself. The courts derived no authority to bring corporations before them in criminal actions, nor to issue processes for that purpose. In criminal cases, defendants are brought before the court through warrants of arrest, which are issued only against natural persons. (West Coast Life Ins. Co. vs. Hurd, 27 Phil. 401, 407-408)

Juridical persons are criminally liable under certain special laws.

Under Act 1459 (Corporation Law), Com. Act No. 146 (Public Service Law), the Securities Law, and the Election Code, corporations may be fined for certain violations of their provisions.

Only the officers of the corporation who participated either as principals by direct participation or principals by induction or by cooperation, or as accomplices in the commission of an act punishable by law are liable.

The partnership of M, A and B was granted a franchise to operate an electric plant. C, wife of M, was the manager of the business. M and his son installed electric wires in the houses of their customers. A boy who was with his father for the purpose of buying salted fish happened to hold an uninsulated portion of an electric wire of the electric plant managed by C. As the wire was charged with electricity, the boy was electrocuted and consequently died.

Held: **There is no evidence at all that C directly took part or aided in the careless installation of the electric wire, a portion of which was negligently left uninsulated by M and his son.**

As a general rule, a director or other officer of a corporation is criminally liable for his acts, though in his official capacity, if he participated in the unlawful act either directly or as an aider, abettor or accessory, but is not liable criminally for the corporate acts performed by other officers or agents thereof.

The ruling enunciated in the case of *West Coast Life Ins. Co. vs. Hurd,* 27 Phil. 401, 407-408, to the effect that criminal actions are restricted or limited to the officials of a corporation and never against itself, indicates the procedure to be taken in a criminal action when an official of a corporation is involved, but does not point his degree of participation in order to hold him liable for a certain criminal act as such corporate official. (People vs. Abdona A. Montilla, C.A., 52 O.G. 4327)

Manager of partnership is liable even if there is no evidence of his participation in the commission of the offense.

In the prosecution for a violation of Section 170, paragraph 2, of the National Internal Revenue Code, the manager of the partnership is criminally liable, *even in the absence of evidence* regarding his direct participation in the commission of the offense. It is a settled rule that since a corporation or partnership can only act through its officers and their agents, the president or manager can be held criminally liable for the violation of a law by the entity. (People vs.

Lao Chio, C.A., 59 O.G. 4859, citing *People vs. Manuel Cartesiano*, C.A., 53 O.G. 3276)

Under the Motor Vehicle Law.

The president and general manager of a corporation which violated the Motor Vehicles Law was held criminally liable for the offense imputable to the corporation. (People vs. Cartesiano, C.A., 53 O.G. 3276)

Passive subject of crime.

The passive subject of a crime is the holder of the *injured right:* the man, the juristic person, the group, and the State.

Thus, while a corporation or partnership cannot be the active subject, it can be a passive subject of a crime.

Corpse or animal cannot be passive subject.

Reason: **The dead and the animals *have no rights* that may be injured.**

Exception:

Under Art. 353, the crime of defamation may be committed if the imputation tends to blacken the memory of one *who is dead.*

Art. 17. *Principals.*— The following are considered principals:

1. Those who take a direct part in the execution of the act;

2. Those who directly force or induce others to commit it.

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Two or more persons participating in the crime.

When a single individual commits a crime, there is no difficulty in determining his participation in the commission thereof. In fact, a single individual committing a crime is always a principal, and one by direct participation, because he must necessarily take direct part in the execution of the act.

Thus, when a person kills another, there is no question as to his participation and liability in the commission of the crime. He is a principal by direct participation. But when two or more persons are involved in killing another, it is necessary to determine the participation of each. If they are all principals, all of them may be principals by direct participation (par. 1); or one may be a principal by induction (par. 2); and the other a principal by direct participation; or one may be a principal by direct participation and the other a principal by indispensable cooperation. (par. 3)

Illustration of the three types of principals.

A, by promises of price and reward, induced B to kill C, a person living on an island far from the mainland. D, the owner of the *only* motor boat in the place and knowing the criminal designs of A and B, offered to transport and actually transported B to the island. Once there, B alone killed C.

Although he did not actually participate in the killing of C, A is a principal, because he *directly induced* B to kill C. B is also a principal, because he *took direct part* in the execution of the felony by personally killing C. D is also a principal, because he *cooperated* in the commission of the offense by *another* act (transporting the actual killer to the island) *without which the commission of the offense would not have been accomplished.*

Difference between a principal under any of the three categories enumerated in Art. 17 and a co-conspirator.

The difference between an accused who is a principal under any of the three categories enumerated in Art. 17 of the Revised Penal Code and a co-conspirator who is also a principal is that while the former's criminal liability is limited to his own acts, as a general rule, the latter's responsibility includes the acts of his fellow conspirators. (People vs. Peralta, No. L-19069, Oct. 29, 1968, 25 SCRA 759, 777)

PAR. 1. - PRINCIPALS BY DIRECT PARTICIPATION.

"Those who take a direct part in the execution of the act."

"Take a direct part in the execution of the act."

The principal by direct participation *personally takes part in the execution of the act* constituting the crime.

Thus, one who shoots at and kills another or one who burns the house of another, *personally executes* the act of killing another or the act of burning the house of another. He is a principal by direct participation in the crime of homicide (unlawfully killing another) or in the crime of arson (maliciously burning another's property).

One who only orders or induces another to commit a crime is not a principal by direct participation, because he does not personally execute the act constituting the crime. It is the one personally committing the crime in obedience to that order or because of the inducement, who is the principal by direct participation.

A common-law wife who induced the killing of another common-law wife of her husband by giving money to the killer is a principal by induction, while the killer is a principal by direct participation. (People vs. Lao, No. L-10473, Jan. 28, 1961, 1 SCRA 42, 46-47, 51)

Two or more offenders as principals by direct participation.

Two or more persons may take *direct part* in the execution of the act, in which case they may be *principals by direct participation.*

Two or more persons who took part in the commission of the crime are principals by direct participation, when the following requisites are present:

1. **That they *participated* in the *criminal resolution;***
2. **That they *carried out* their plan and *personally took part* in its execution by acts which *directly tended to the same end.* (People vs. Ong Chiat Lay, 60 Phil. 788, 790; People vs. Tamayo, 44 Phil. 38, 45-46)**

Thus, where the two accused each inflicted a serious wound which contributed to the death of the victim, they are co-principals. (People vs. Cagod, No. L-36016, Jan. 18, 1978, 81 SCRA 110, 118)

First requisite — Participation in the criminal resolution.

Two or more persons are said to have participated in the criminal resolution when they were in *conspiracy* at the time of the commission of the crime.

It is well-settled that a person may be convicted *for the criminal act of another* where, between them, there has been conspiracy or unity of purpose and intention in the commission of the crime charged. (People vs. Talla, G.R. No. 44414, Jan. 18, 1990, 181 SCRA 133, 148, citing People vs. Ibañez, 77 Phil. 664; People vs. Serrano, L-45382, May 13, 1985, 136 SCRA 899)

Conspiracy.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Art. 8, par. 2)

The conspiracy contemplated in the first requisite is not a felony, but only a manner of incurring criminal liability.

To be a party to a conspiracy, one must have the intention to participate in the transaction with a view to the furtherance of the common design and purpose.

In order to hold an accused guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy. (People vs. Cortez, No. L-31106, May 31, 1974, 57 SCRA 308, 316, citing People vs. Peralta, L-19069, Oct. 29, 1968, 25 SCRA 759, 777; People vs. Tumalip, No. L-28451, Oct. 28, 1974, 60 SCRA 303, 318)

Mere knowledge, acquiescence, or approval of the act without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. (People vs. Izon, 104 Phil. 690, 697-698, citing 15 C.J.S. 1062; People vs. Cortez, *supra;* Taer vs. Court of Appeals, G.R. No. 85204, June 18, 1990, 186 SCRA 598, 604)

Silence does not make one a conspirator.

Silence is not a circumstance indicating participation in the same criminal design. (People vs. Gensola, No. L-24491, Sept. 30, 1969, 29 SCRA 483, 489)

Conspiracy transcends companionship.

It has been held that conspiracy transcends companionship. Hence, the fact that the two accused may have happened to leave together, and one of them left a closing warning to the victim, cannot instantly support a finding of conspiracy. (People vs. Padrones, G.R. No. 85823, Sept. 13, 1990, 189 SCRA 496, 506-507)

Existence of conspiracy.

The existence of conspiracy *does not require* necessarily an agreement *for an appreciable length of time* prior to the execution of its purpose, since from the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the *same purpose and were united in its execution.* (People vs. Binasing, *et al.*, 98 Phil. 908)

Conspiracy arises *on the very instant* the plotters agree, expressly or *impliedly,* to commit the felony and *forthwith* decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime actually committed by anyone of them. (People vs. Monroy, 104 Phil. 759, 764; People vs. Talla, G.R. No. 44414, Jan. 18, 1990, 181 SCRA 133, 148)

Proof of conspiracy.

a. The direct evidence of conspiracy may consist in the interlocking extrajudicial confessions of several accused and the testimony of one of the accused who is discharged and made a witness against his co-accused who did not make any confession.

In the absence of collusion among the declarants, their confessions may form a complete picture of the whole situation and may be considered collectively as corroborative and/or confirmatory of the evidence independent therefrom. (People vs. Castelo, No. L-10774, May 30, 1964, 11 SCRA 193, 221-222)

Two or more extrajudicial confessions given separately, untainted by collusion, and which tally with one another in all material respects, are admissible as evidence of the conspiracy of the declarants. (People vs. Bernardo, *et al.*, C.A., 57 O.G. 8675)

To establish conspiracy, it is not essential that there be proofs as to the previous agreement and decision to commit the crime, it being sufficient that the malefactors shall have *acted in concert pursuant to the same objective.* (People vs. San Luis, 86 Phil. 485, 497; People vs. Carpio, G.R. Nos. 82815-16, Oct. 31, 1990, 191 SCRA 108, 118; People vs. Cruz, Jr., G.R. No. 86217, Oct. 31, 1990, 191 SCRA 127, 135; People vs. Sazon, G.R. No. 89684, Sept. 18, 1990, 189 SCRA 700, 713)

Formal agreement or previous acquaintance among several persons not necessary in conspiracy.

In conspiracy, no formal agreement among the conspirators is necessary, not even previous acquaintance among themselves; it is sufficient that their minds meet understandingly so as to bring about an intelligent and deliberate agreement to commit the offense charged.

It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all. (People vs. Gupo, G.R. No. 75814, Sept. 24, 1990, 190 SCRA 7, 18)

Conspiracy need not be proved by direct evidence. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole. If it is proved that two or more persons aimed, by their acts, at the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert ways and means is proved. (People vs. Mateo, Jr., G.R. Nos. 53926-29, Nov. 13, 1989, 179 SCRA 303, 320, citing People vs. Carbonell, 48 Phil. 868)

Thus, when it is shown that all the accused were already armed when they met, and that they went together in a jeep to the place where they robbed the house of the offended party and raped his maids, their conspiracy is implied. Their conspiracy is implied, notwithstanding the claim of some of the accused that their participation therein was only of having accompanied the other accused who had requested them to show the house of the offended party. (People vs. Garduque, G.R. No. L-10133, July 31, 1958 [Unrep.])

Conspiracy is shown where the offenders were all present at the scene of the crime, acted in concert in attacking the victims, assaulting and beating them up and chasing them and stabbing them and in divesting them of their watches, gold rings and money, and after the bloody slayings were done, they fled from the scene and went their separate ways. By their concerted actions, they showed that they acted in unison and cooperated with each other towards the accomplishment of a common felonious purpose which was to rob and kill the victims. (People vs. Catubig, G.R. No. 71626, March 22, 1991, 195 SCRA 505, 516; People vs. Carcedo, G.R. No. 48085, June 26, 1991, 198 SCRA 503, 517)

Conspiracy must be established by positive and conclusive evidence.

But while conspiracy *may be implied* from the circumstances attending the commission of the crime, it is nevertheless a rule that conspiracy must be established by positive and conclusive evidence. (People vs. Ancheta, 66 Phil. 638, 644)

The same degree of proof necessary to establish the crime is required to establish a finding of criminal conspiracy, that is, proof beyond reasonable doubt. It cannot be established by conjectures but by positive and conclusive evidence. Since conspiracy must be proved beyond peradventure of a doubt, it follows that it cannot be appreciated where the facts can be consistent with the nonparticipation of the accused in the fancied cabal. (People vs. Furugganan, G.R. Nos. 90191-96, Jan. 28, 1991, 193 SCRA 471, 481; People vs. Cruz, G.R. No. 74048, Nov. 14, 1990, 191 SCRA 377, 384)

Thus, where the defendant satisfactorily explained his presence with the group that committed the robbery, he cannot be considered a conspirator. (People vs. Rico, CA-G.R. No. 3019-R, Jan. 12, 1950)

Thus, too, mere presence at the scene of the crime at the time of its commission is not by itself sufficient to establish conspiracy. (People vs. Taaca, G.R. No. 35652, Sept. 29, 1989, 178 SCRA 56, 70)

In order to hold an accused guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy. (People vs. Peralta, No. L-19069, Oct. 29, 1968, 25 SCRA 759, 777)

When there is no conspiracy, each of the offenders is liable only for the act performed by him.

When policeman Machica approached Guariño and Terencia who were quarreling and told them to stop the fight, Guarino stabbed Machica and ran away. Policeman Campos who pursued Guarino overtook the latter and took him to the municipal building where policeman Boco hit Guarino. Then, Chief of Police Castillo came and shot to death Guarino in the presence of Machica, Campos and Boco who had inflicted serious physical injuries on Guarino.

There was no competent proof that Machica, Campos and Boco wanted or intended to kill Guarino. There was no previous indication that Castillo intended to kill Guarino. Castillo just drew out his gun and fired, and Machica, Campos and Boco could not have stopped it even if they wanted to. There being no conspiracy or unity of purpose and intention among the four, Machica, Campos and Boco did not participate in the criminal resolution of Castillo. Only Castillo who shot Guarino to death was found guilty of murder qualified by treachery. Machica, Campos and Boco were held liable for serious physical injuries only. (People vs. Castillo, 103 Phil. 1168 [Unrep.])

In the crime of homicide, *immediate participation* in the *criminal design* entertained by the slayer is essential to the responsibility of one who is alleged to have taken a direct part in the killing, but who has not himself inflicted an injury *materially contributing* to the death. (People vs. Tamayo, 44 Phil. 38, 46)

Participation in criminal resolution essential.

It is not enough that a person participated in the assault made by another in order to consider him a co-principal in the crime committed. He must also participate in the criminal resolution of the other.

The cooperation which the law punishes is the assistance which is knowingly or intentionally given and which is not possible *without previous knowledge of the criminal purpose.* (People vs. Cruz, G.R. No. 74048, Nov. 14, 1990, 191 SCRA 377, 385)

People vs. Ortiz and Zausa
(55 Phil. 995)

Facts: **Sotero Bancoyo, the deceased, and accused Ortiz and Zausa had known one another for many years at the time the crime was committed, for his wife and that of Ortiz were sisters. About noon September 8, 1930, the deceased accompanied by three laborers, companions of his, was returning from a plantation belonging to Pio Brionson carrying some corn he had gathered; on reaching the house preceding that of the accused, as he felt thirsty, he attempted to ask the occupants for water, but as they happened to be absent, he went to the house of the accused, and while in front of the house called out to Ortiz for a drink of water. The latter answered from within that they had no water and could not serve him, to which the deceased replied: "May we not drink your water?" Ortiz rejoined, "But we have no water. How can you compel us to give you some water?" And immediately afterwards he descended from the house carrying his shotgun, which he pointed at the deceased. When the latter saw the aggressive attitude of Ortiz, he flung himself upon him, caught hold of the weapon, and they both struggled for it. At this juncture, Modesta Zausa, companion of Blas Ortiz, took a spear from within the house, rushed down and with it attacked the deceased stabbing him on the left side of the abdomen, so that the intestines protruded. (Dying declaration) The deceased fell to the ground unconscious, was assisted, and that night died of peritonitis.**

Held: **The defense contends that Ortiz should be acquitted, because he did not take part in the attack made by Modesta Zausa, and because, according to the facts, there was no previous agreement between them to commit the crime. In this we believe the defense is right. It has been indisputably shown by the *ante mortem* statement (Exhibit D) that while the deceased and Ortiz were struggling for the shotgun, Modesta Zausa caught up the spear, hurried downstairs, ap-**

proached the deceased, and suddenly stabbed him with it. From this, it appears that there was no plan or agreement between them to carry out the attack which ended in the death of the victim, and that from the time Modesta Zausa thought of wounding the deceased to the time she actually did so, barely a few seconds elapsed, and this interval is palpably insufficient to give rise to the criminal agreement alleged in the information.

In the *United States vs. Magcomot,* 13 Phil. 386, 390, it was held: "In the absence of a previous plan or agreement to commit a crime the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and each of the participants is liable only for the acts committed by himself."

In the *United States vs. Reyes and Javier,* 14 Phil. 27 (Syllabus), one of the defendants, named Reyes, suddenly and unexpectedly inflicted certain mortal wounds with his club upon one Legaspi, while the latter was being held by Javier, the other defendant. It was held: "That Javier was neither principal nor accomplice in the commission of the crime of homicide of which Reyes was convicted, it appearing that there was *no concerted action* between him and his co-defendant, that he had no reason to believe that a homicidal attack was about to be made, and that, in holding Legaspi, he was *voluntarily cooperating* therein."

In these cases, there was no anterior conspiracy. There was no *unity of purpose and intention immediately before* the commission of the crime. Hence, *their criminal responsibility* is individual.

In the absence of concerted action pursuant to a common criminal design, each of the accused, is responsible only for the consequences of his own acts.

Thus, in a case where one accused inflicted the mortal wound by stabbing the victim with a knife while the other two assailants merely hit the victim with a bamboo on the left arm and the head, the former was held guilty of murder while the latter was held liable only for *lesiones leves* or slight physical injuries. In still another case where two persons attacked a single victim, one inflicting a fatal wound hacking the victim with a bolo, almost amputating the left arm completely, while the other also using a bolo, struck the victim just below the armpit causing a wound that would heal in ten (10) days, the one who inflicted the mortal wound was convicted of murder

while the other, only of less serious physical injuries. (Araneta, Jr. vs. Court of Appeals, G.R. No. 43527, July 3, 1990, 187 SCRA 123, 133)

No conspiracy, as shown by the acts of the defendant.

Prosecution witness testified that after the appellant had stabbed the deceased, he immediately ran away, so that when his brother Mauricio cut off the head of the deceased, the appellant was no longer present. If the appellant had agreed with his brother to liquidate the deceased, instead of fleeing after he had stabbed the latter *on the arm,* he would have stayed and finished the deceased by himself or with Mauricio. The mere act of the appellant in *stabbing* the deceased once cannot conclusively prove conspiracy. It results that the appellant should be held answerable only for his individual act. (People vs. Quiosay, 103 Phil. 1160-1161 [Unrep.])

The gunshot wound inflicted by one of the accused being slight which did not cause the death of the victim nor materially contribute to it in order that he may be held liable for homicide, his liability is limited to the slight injury he caused. Since the use of a gun fired at another shows intent to kill, he is liable for attempted homicide and not merely for slight physical injury. (Araneta, Jr. vs. Court of Appeals, *supra,* at 133-134)

The spontaneity of the respective reactions of several accused, resulting in an attack where they all participated, rules out the existence of conspiracy. Their respective liabilities shall be determined by the nature of their individual participations in the felonious act. Thus, two of them who cooperated in the execution of the offense by simultaneous acts which, although not indispensable to the commission of the offense, bore a relation to the acts done by the principals and supplied material or moral aid in the execution of the crime in an efficacious way, aware of the criminal intent of the principals, are liable only as accomplices. (People vs. Lacao, Sr., G.R. No. 95320, Sept. 4, 1991, 201 SCRA 317, 329, 330-331)

The fact that two of the appellants were standing behind their co-appellant when the latter fired shots at the victim, did not make them liable for the act of the latter, there being no proof of any conspiracy among the three. They were not armed. They did nothing to help their co-appellant. Their mere passive presence at the scene of the

crime did not make them liable either as co-principals or accomplices. (People vs. Madera, No. L-35133, May 31, 1974, 57 SCRA 349, 355)

Conspiracy shown by circumstances.

Before the commission of the crime, Nelson drew Sumpay aside and said, "It is a good thing that you are here, because we are planning an idea (sic) to kill Varela;" while Norman said, "let us stab (buno) Jesus Varela." Sumpay protested: "Why should we stab him when I do not even know him and he has no fault?" and Norman (now appellant) retorted: "Just go with me because he has committed a fault against me."

Held: The presence of both brothers at the place and time of the attack on Varela; their remark to Sumpay just before the crime was committed; the assault on the deceased by Nelson Vinas, who had no personal reason to bear any grudge against said Varela, were circumstances showing that both brothers had conspired to carry out the killing. (People vs. Vinas, No. L-21756, October 28, 1968, 25 SCRA 682, 687)

These are telltale indicia of a community of design to kill: close relationship among the three accused brothers and nephew; their common desire to avenge the wrong done to their father (grandfather in the case of the third accused); their going together to the latter's house at lunchtime all armed; their concerted beating of the victim; their act of bringing him to the yard of one of the brother's house, with said brother dragging the victim and the other two accused, father and son, thrusting their rifles at his body, thus showing that he was their common captive; and their presence at the yard when policemen arrived thereat to investigate the killing. (People vs. Manzano, Nos. L-33643-44, July 31, 1974, 58 SCRA 250, 259)

There was conspiracy under these facts: the four accused were together in the yard of the victim's house when one of them called him and deceived him as to their purpose in awakening him at three o'clock in the morning. They were together when they rushed inside his house. As if implementing a previously rehearsed plan, two of them assaulted him, the third took the money, and the fourth stood guard. They left the house together after they had accomplished their malevolent mission. The four appellants were linked to each other by friendship or some sort of relationship. (People vs. Saliling, No. L-27974, Feb. 27, 1976, 69 SCRA 427, 443)

Conspiracy may be shown by the appellants' actuations immediately prior to, during, and right after the shooting of the victim, as when they were not merely present at the scene of the crime but were positively identified as among the armed men who arrived there, shot the victim, and left together after accomplishing their purpose, notwithstanding that they were not active participants in the killing itself, but made no effort to prevent it, and in fact, drew their guns that were tucked on their waists when the victim, after being shot for the first time, tried to run. (People vs. Umbrero, G.R. No. 93021, May 8, 1991, 196 SCRA 821, 829-830)

People vs. Timbol
(G.R. Nos. 47471-47473, Aug. 4, 1944)

Facts: **Gregorio Timbol, Carmelino Timbol, Dalmacio Timbol and Geronimo Buan were accused of the complex crime of assault upon an agent of authority with murder.**

The accused were armed and were menacingly pressing their demand for the approval of the 60-40 participation in the mill, which had been denied by the Board of Directors of Pasudeco. Subsequently, Capt. Olivas who was then present, said that, as peace officer, it was his duty to give De Leon and Gonzales protection. Gregorio Timbol drew his gun and shot Capt. Olivas at his back. Gregorio Timbol then shot De Leon. Buan shot Gonzales. Carmelino with teargas gun planted himself at the door out of the room to forestall any help that might be attempted on behalf of the victims. Dalmacio Timbol was not present during the shooting, because when his confederates were in the threatening attitude, he left the room.

Held: **The conspiracy in the instant case appears conclusively to have been proved by the following circumstances: (1) On July 2, 1939, Gregorio invited Buan to a "good time" in Manila. (2) On July 6, Gregorio and Carmelino came together to Manila. Gregorio bought a teargas gun. He wrote a special delivery letter inviting Dalmacio to see him without fail on July 8, the same date indicated to Buan. (3) On the appointed date, July 8, the four accused came together to Manila. (4) All of them carried firearms fully loaded. (5) Together, the four accused occupied one room in the Central Hotel and threw themselves into an orgy; dancing, drinking, gambling, and hiring prostitutes, all the expenses having been defrayed by Gregorio. (6) The four accused, again together, returned to Pampanga on July 12, and upon reaching San Fernando, together they went to the Pikes Hotel to embolden themselves with whisky. (7) About half an hour later and after making**

a redistribution of firearms among themselves, all of them together left the hotel, went to the Pasudeco offices, and entered the office of the President, Jose de Leon. (8) After a discussion with De Leon and Gonzales, accused Gregorio Timbol ordered them not to leave the office until his petition for a 60-40 participation shall have been acted upon favorably. (9) When the three victims were killed, the three accused fled, again together.

All these circumstances demonstrate conspiracy.

Conspiracy is implied when the accused had a common purpose and were united in its execution.

There is unity of purpose and unity of execution establishing conspiracy in this case: (1) a slapping incident preceded the shooting, wherein the deceased slapped the face of one of the appellants; (2) before the two groups could engage in a physical clash, they were pacified by the *carinderia* owner who later flagged a taxicab for the three accused; (3) the three boarded the taxicab leaving with the slapped accused's parting words, *"Pare hintay kayo, babalik kami"*; (4) they then proceeded to Unimart Greenhills arriving at the post of a security guard whom they persuaded to lend them his carbine; (5) in borrowing the gun, they all signed the logbook and when the carbine was being handed to them, they were grabbing it; (6) after receiving the gun, they again boarded the same taxicab and returned to the *carinderia;* (7) upon arrival, gunshot were fired from the taxicab with the three accused on board, hitting the victims; (8) after having fired at the victims, the three returned the weapon, and proceeded to the headquarters of the Rizal Security and Protective Agency, to which they belonged, where they narrated the incident. (People vs. Damaso, G.R. Nos. 41490-92, Oct. 18, 1990, 190 SCRA 595, 612)

People vs. Delgado
(77 Phil. 11)

Facts: **While Restituto Bragat and Ramon Chavez were occupying a table in a store, the three accused arrived. All of a sudden, accused Juanito Trinidad gave Bragat a fist blow on the back of his neck followed by another to the mouth which blows sent him to the ground. In the meantime, accused Edwin Delgado held Chavez by the shirt and accused Ricardo Villanueva joined in hitting Bragat. Bragat tried to run away, but he was overtaken by the three accused, was boxed by**

Delgado, and the three accused trampled on Bragat's body. The appearance of the police made the three accused run away.

Held: **The community of purpose on the part of the three accused is plainly inferable from these circumstances: (1) The three accused came together to the scene of the occurrence; (2) While accused Trinidad struck the first blow, accused Delgado held Chavez, and accused Villanueva unsuccessfully attempted to hit Bragat; (3) As Bragat tried to run away, he was pursued by the accused who trampled on his body after he had been boxed by Delgado; (4) The three accused together left Bragat unconscious on the ground and, together also, they went to the house of Pepe Ybañez.**

Unity of purpose and intention in the commission of the crime is shown in the following cases:

a. ***Spontaneous agreement*** **at the moment of the commission of the crime is sufficient to create joint responsibility. (People vs. Allado, 43 O.G. 1717, citing People vs. Caballero, 53 Phil. 585)**

Example:

Thus, where the deceased challenged the two accused, who accepted, assaulted and killed the challenger, it was said that the *acceptance* of the challenge *by the two accused* and *their concert of attack* clearly showed a community of purpose and design. (People vs. Ibañez, 77 Phil. 664, 665-667, citing Viada, Dec. of June 13, 1904)

b. ***Active cooperation by all the offenders*** **in the perpetration of the crime will also create *joint responsibility*.**

(1) On the occasion of a *huego de anillo,* where a number of people was present, A stepped up behind the deceased and struck him on the back of the head with a piece of wood. The deceased reeled under the blow and turned inclining backwards. While in this attitude, the deceased was struck on the upper lip with a whip in the hands by B. At this moment, C seized the deceased by the left hand and D seized him by the right. While the deceased was still inclining backwards with his hands held fast by C and D, E placed himself in front of the deceased and plunged a

knife into the body of the latter. The injury inflicted by E was almost instantly fatal, the deceased dying immediately without speaking a word.

Held: There was no proof sufficient to establish anything like an *anterior conspiracy*. But the manner in which the accused cooperated in the perpetration of the homicide shows that they were moved by a *common motive* and that their intention was to accomplish the death of the deceased.

Dissenting: There was only individual responsibility in this case.

When A gave the deceased the first blow, producing a mere bruise, when B dealt him the second blow, producing another slight bruise, when C later held the deceased by one arm and D by the other, there was yet nothing to indicate to them that there was another who sought to do away with the deceased; for it was subsequent to all these that E who came from behind them all, placed himself in front of the deceased and gave him the mortal blow. None of the other accused did anything more after E had stabbed the victim.

No participation in criminal design when the act of one came so close upon the heels of that of the other.

Reason: He had no time to see that the other intended to cause the deceased the wound he did. (People vs. Manalo, 52 Phil. 484, 489-490)

Simultaneity *per se* is not a badge of conspiracy, absent the requisite concurrence of wills. It is not sufficient that the attack is joint and simultaneous; it is necessary that the assailants are animated by one and the same purpose. Evidently, in a situation where the assaults were not simultaneous but successive, greater proof is demanded to establish concert of criminal design. (People vs. Tividad, No. L-21469, June 30, 1967, 20 SCRA 549, 555)

(2) People vs. Macabuhay, 46 O.G., No. 11.

Facts: A, B, C, D, and E were in the house of F. Someone threw a stone towards that house. Then, all the five marched to the residence of G, 40 yards away, to avenge the stone-throwing. In the house of G, they found the deceased. Suspecting the deceased as the person who threw the stone, the four of them suddenly seized and held fast the said victim and the 5th stabbed the victim who died thereafter. The common motive is to avenge the stone-throwing.

Held: A, B, C, D, and E were all liable as principals by direct participation for the death of the deceased.

(3) People vs. Cruz, Jr., G.R. No. 86217, Oct. 31, 1990, 191 SCRA 127, 135.

The fact of conspiracy is well-established where one of the appellant's companions announced the holdup while the rest took the personal effects of the victims, the appellant himself drawing out a bladed weapon and proceeding to rob the victims as well.

(4) People vs. Carpio, G.R. Nos. 82815-16, Oct. 31, 1990, 191 SCRA 108, 118.

Conspiracy is manifested in the coordinated acts of the assailants, of one of them holding the hand of the victim while another was stabbing him and a third delivering fist blows on different parts of the body of the victim, and, when the victim was able to escape, of giving chase and the first accused shooting the deceased five (5) times.

c. *Contributing by positive acts to the realization of a common criminal intent also creates joint responsibility.*

(1) People vs. Agbuya, 57 Phil. 238.

For several years, marked enmity existed between two families, the Palisocs and Agbuyas. A and D belonged to the Agbuya family, while C belonged to the Palisoc family.

A, preparatory to the commission of the crime, *cleaned* his shotgun. While cleaning his shotgun, A *inquired* from D whether he had seen C. Later, A carried the gun from his house to a certain place accompanied by his son D to look for C. In that place, D waited for C and, when the latter was coming, A *handed* his shotgun to D. D fired at C, killing him then and there. Is A liable as principal or merely as an accomplice?

Where the homicide was committed by the act of one of the two accused in shooting the deceased with a *gun* which was *supplied by his co-accused, father* of the actual slayer, and where it also appeared that the latter *contributed to the commission of the homicide by various other significant acts,* it was held that both father and son were properly convicted as principals in the crime.

There was a common criminal intent in this case, because there was bad blood between the Agbuyas and the Palisocs and the father and son took common cause.

People vs. Mancao, 49 Phil. 887.

The accused Crispino Mancao was the *instigator* and *aggressor,* Roberto Villela having done nothing but to defend himself, first disarming the former of his stick with which he was assaulted, and later of his bolo which he used after having been deprived of his stick. Roberto Villela might have had the advantage in the fight had not one of Crispino Mancao's laborers come to his rescue, upon his cry for help, and struck Roberto Villela on the thigh; then another man of Mancao struck Roberto Villela several times on the left knee, and, lastly, the accused Ciriaco Aguilar struck Roberto Villela several blows on the back with his sickle, one of which nearly severed his spine in the lumbar region which later caused his death.

Held: While it is true that the wounds which caused Roberto Villela's death were not inflicted by Crispino Mancao but by his co-accused Ciriaco

Aguilar, yet said Crispino Mancao, having been the *instigator* and *aggressor* and having *called his harvesters* to his aid, among them the said Ciriaco Aguilar, wanted them to carry out, as in fact they did, *the criminal act started by him* and, therefore, he is liable not only for his own acts, but also for the acts of those who aided him.

Mancao contributed the following positive acts: (1) his being the instigator, (2) his being the aggressor, and (3) his having called his harvesters.

The common criminal intent is shown by the unity of purpose and intention of all the offenders.

d. *Presence* during the commission of the crime by a band and *lending moral support* thereto, also create joint responsibility with the material executors.

(1) U.S. vs. Ancheta, 1 Phil. 165.

There were 7 defendants in this case. They had *conducted the deceased to a certain place* and there, by order of A and B, the deceased was killed by C, D and E. F and G posted themselves with A and B at some distance *to watch the approach of any one,* in order to prevent the discovery of the crime.

Held: All of them by previously concerted action, met together and witnessed the capture and later, the violent killing of the deceased. Some took a direct part in the actual commission of the crime, others were determined instigators who induced the former to commit it, while the remainder cooperated in the same by their *presence* and *lending their moral support.* The four who were not the actual perpetrators thereof, witnessed the commission of the crime, lending to the murderers their *moral support* and, therefore, all are thus directly responsible for the consequences and incidents of the same.

(2) U.S. vs. Santos, 2 Phil. 453.

Facts: A band composed of some 25 men succeeded in capturing 5 American soldiers and subse-

quently took them to a certain place and detained them in a house there. *Five of the band, among them the accused,* subsequently *took the Americans* from the house in which they were living and led them away. The Americans were killed by two members of the band in the presence of the accused and the other three of the same band.

Held: It is of no importance that the accused did not himself strike the blow or blows by which the prisoners were killed. *It is sufficient that he was present at the place of the commission of the act, augmenting with his arms and presence* the power of the band, thus aiding the common act of all, for him to be considered as a principal by direct participation in the crime prosecuted.

Note: There is a band in these cases. This circumstance is presumptive of a *previous understanding* between one offender and the others who formed the band, whereby he voluntarily lent his assistance of *thought* and *action* for the realization of the criminal object, increasing at least with his personal cooperation, in an effective manner, the offensive strength of said band. (U.S. vs. Asilo, 4 Phil. 175, 176)

Conspiracy is presumed when the crime is committed by a band.

Where the accused was a member of a band that appeared at the house of the deceased for the purpose of killing the latter, as he was in fact killed by two of the shots fired by some members of the band, the accused is liable for the resulting homicide although there was no evidence that he fired a shot at the deceased. (U.S. vs. Asilo, 4 Phil. 175, 176; U.S. vs. Perez, 13 Phil. 287, 291)

But where at the start of the encounter between the constabulary forces and an insurgent band, the accused, who was with the band, *fled from the scene* of the fight and did not take part therein, he is not criminally liable. (U.S. vs. Fresnido, 4 Phil. 522, 525)

Where the robbery was committed by a band, all the members of the band are presumed to be conspirators or co-principals also in the assaults committed by the band unless he who claims to be a non-conspirator proves that he attempted to prevent the assault. In the absence of a showing that appellants attempted to prevent the killing of the victim, they are equally guilty of his death at the hands of their companions. (People vs. Bazar, No. L-41829, June 27, 1988, 162 SCRA 609, 617; People vs. Cinco, G.R. No. 79497, Feb. 27, 1991, 194 SCRA 535, 543)

e. Where one of the accused knew of the plan of the others to kill the two victims and he accepted the role assigned to him, which was to shoot one of the victims, and he actually performed that role, *he is a co-principal* by direct participation in *the double murder.* (People vs. De la Cruz, 100 Phil. 624, 632-633)

There may be conspiracy even if there is no evident premeditation on the part of the accused.

Although the presence of Sinarimbo's 10-year-old child, and the fact that appellants were unarmed may indicate lack of evident premeditation on their part, these circumstances and the others do not necessarily negate the existence of conspiracy for the same does not require necessarily an agreement for an appreciable time prior to the occurrence. From the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution. (People vs. Binasing, 98 Phil. 902, 908, citing *U.S. vs. Ancheta,* 1 Phil. 165; U.S. vs. Santos, 2 Phil. 453; People vs. Mandagay, 46 Phil. 838; People vs. Agbuya, 57 Phil. 238; People vs. Ibañez, 77 Phil. 664; People vs. Macabuhay, 83 Phil. 464; People vs. San Luis, 86 Phil. 485)

Liability of participants where there is conspiracy.

Where there is conspiracy, the *act of one* is the *act of all.* There is collective criminal responsibility.

Where it appears that the defendants, after conspiring together to kill the deceased, went to his house for the purpose of carrying

out their common intent and prepared to cooperate to that end, and some of them actually killed the deceased, while the others posted themselves around the building ready to prevent his escape or render any assistance which might be necessary, all will be held equally guilty as principals irrespective of the individual participation of each in the material act of the murder. (U.S. vs. Bundal, 3 Phil. 89)

Where conspiracy has been adequately proven, all the conspirators are liable as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one is the act of all. The degree of actual participation by each of the conspirators is immaterial. As conspirators, each is equally responsible for the acts of their co-conspirators. (People vs. De la Cruz, G.R. No. 83798, March 29, 1990, 183 SCRA 763, 778; People vs. Carcedo, G.R. No. 48085, June 26, 1991, 198 SCRA 503, 517-518; People vs. Alvarez, G.R. No. 88451, Sept. 5, 1991, 201 SCRA 364, 380)

Liability of a conspirator for another conspirator's acts which differ radically and substantially from that which they intended to commit.

A conspirator should necessarily be liable for the acts of another conspirator even though such acts differ *radically* and *substantially* from that which they intended to commit. (See People vs. Enriquez, 58 Phil. 536; People vs. Rosario, 68 Phil. 720)

In a case, the Supreme Court said:

"Upon the circumstance that the wound made with the knife on the leg of the person assaulted was the primary cause of death and that the author of this injury has not been identified, the attorneys for the accused chiefly planted their defense, and in this connection it is insisted that the conspiracy to attack Gines contemplated only beating him up and did not include the infliction of injury by means of a cutting instrument. Such an act, so it is said, was not within the scope of the agreement; and it is insisted that only the individual who inflicted the cut (wound) could be held responsible for the death, if that person were known. It results, in this view, that none of the appellants can be held liable further than for the bruises inflicted by means of the iron bars. These injuries, so it is claimed, would in the natural course of events have been curable in a few days.

"We are of the opinion that this contention is not tenable. The accused had undoubtedly conspired to do grave personal injury to the deceased, and now that the injuries actually inflicted have resulted in death, they cannot escape from the legal effect of their acts on the ground that one of the wounds was inflicted in a different way from that which had been intended. A blow inflicted by one of the small iron bars used in this assault might well have resulted in the taking of life, and the circumstance that a knife was also used in striking the deceased does not relieve the appellants from the consequence of their joint acts. As has been said by the Supreme Court of the United States, 'If a number of persons agree to commit, and enter upon the commission of a crime which will probably endanger human life such as robbery, all of them are responsible for the death of a person that ensues as a consequence.' (Boyd vs. U.S., 142; U.S., 450; 35 Law ed., 1077). In *United States vs. Patten,* the Court said: 'Conspirators who join in a criminal attack on a defenseless man with dangerous weapons, knock him down, and when he tries to escape, pursue him with increased numbers, and continue the assault, are liable for manslaughter when the victim is killed by a knife wound inflicted by one of them during the beating, although in the beginning they did not contemplate the use of a knife.'" (People vs. Enriquez, 58 Phil. 536, 542-543)

And in another case: "There is no question that the four assailants acted in conspiracy with each other. This was evident from the time they went to Bernardo's house pretending to look for a lost carabao and, more convincingly, when they moved in concert to kill Bernardo even as the two witnesses were pulled away by the hair, after which all four of them fled together. As conspirators, they are each liable for the attack on Bernardo, regardless of who actually pulled the trigger or wielded the club that killed him." (People vs. Espiritu, G.R. No. 80406, Nov. 20, 1990, 191 SCRA 503, 507)

Suppose that three persons conspired to commit robbery only, but in the course of the robbery one of them killed an inmate of the house, must all of them be held liable for robbery with homicide?

It seems that the others must not be held responsible for the homicide which was not contemplated in their conspiracy and in which they did not take part. The reason for this opinion is that Art. 296 of the Revised Penal Code defines the liability of the offenders in robbery if committed by a band, that is, any

member of a band (at least *four armed* men) is liable for any assault committed by the other member of the band, unless it be shown that he attempted to prevent the same.

Hence, if the robbers are only three, or even more than three but not more than three are armed, Art. 296 is not applicable and the robber who does not take part in the assault is not liable therefor.

Where there is conspiracy to commit a felony, all the conspirators are liable for its consequences.

It is argued for appellant Barauel that inasmuch as there was no conspiracy to kill Acuna, and inasmuch as Barauel only hit him with an iron bar, the latter may not be held responsible for the death. *Held:* Since there was conspiracy to punish Acuna, and the death of Acuna resulted, all the conspirators are responsible for the consequences that arose from the punishment. (People vs. Villamora, 86 Phil. 287, 291)

Note: The ruling is in accordance with the provision of Article 4, paragraph 1, of the Revised Penal Code.

A conspirator is not liable for another's crime which is not an object of the conspiracy or which is not a necessary and logical consequence thereof.

In the case of *People vs. Umali*, 96 Phil. 185, where only the Huks, allies of defendant Umali, committed robbery which was not an object of the conspiracy, it was held that defendant Umali was not liable therefor, but liable for sedition, arson and murder, the objects of the conspiracy.

Other defendants not held liable for the killings of persons not covered by the conspiracy.

Appellant Sulpicio cannot be held liable for the killing of Casiano Cabizares, notwithstanding a conspiracy between him and Serapio Maquiling. The conspiracy was to kill Rafael only and no one else. Nothing was said or agreed upon about the members of Rafael's family. In fact, in executing their plan, appellants let the two women inside Demetrio's house leave unhurt and they did no harm to the

remaining companions of Rafael in the house. Their target was solely Rafael Cabizares. And the rule has always been that co-conspirators are liable only for acts done *pursuant to the conspiracy.* For other acts done outside the contemplation of the co-conspirators or which are not the necessary and logical consequence of the intended crime, only the actual perpetrators are liable. (People vs. De la Cerna, G.R. No. L-20911, October 30, 1967, 21 SCRA 569, 586, citing People vs. Hamiana, 89 Phil. 225; People vs. Daligdig, 89 Phil. 598; People vs. Umali, 96 Phil. 185; People vs. Duenas, L-15307, May 30, 1961, and I Reyes, The Rev. Penal Code, 432-433)

The ruling in the case *of People vs. De la Cerna, supra,* should be distinguished from the ruling in the cases of *People vs. Enriquez,* 58 Phil. 536, and *People vs. Rosario,* 68 Phil. 720. Conspirators are liable for the acts of another conspirator even though such acts differ radically and substantially from that which they intend to commit. This is in accordance with the provision of Art. 4, par. 1, of the Revised Penal Code. But when the conspirators selected a particular individual to be their victim, and another person was killed by one of them, only that conspirator who killed another person would be liable therefor.

Conspiracy may cover persons previously undetermined.

Even if the conspiracy was only against Jose de Leon and not against Augusto Gonzales and Capt. Olivas whose intervention was merely accidental and could not have been foreseen by the accused when they were preparing their plan, the accused are liable for all the natural and inherent consequences of such plan, it appearing that there was *a general plan* to kill anyone who might put up violent resistance. (People vs. Timbol, *supra)*

A person in conspiracy with others, who had desisted before the crime was committed by the others, is not criminally liable.

"Although this appellant (Dalmacio Timbol) was a member of the conspiracy, yet he desisted therefrom before the intended crimes were committed. He left the office of De Leon and the Pasudeco building long before the killings took place.

"And since conspiracy alone, without the execution of its purpose, is not a crime punishable by law, except in special instances (Art. 8), none of which is the case at bar, Dalmacio Timbol is not crimi-

nally liable." (People vs. Timbol, G.R. Nos. L-47471-47473, August 4, 1944)

It was held that the act of a conspirator who, as soon as the aggression was started by his co-conspirators, ran away and called for help of other persons who hurriedly responded, is an act of desistance from taking an active part in the aggression which removes the case from the operation of the established rule that when a conspiracy is proved, the act of one co-conspirator is the act of all. (People vs. Mappala, 40 O.G. 1681)

When there is conspiracy, it is not necessary to ascertain the specific act of each conspirator.

It is not necessary to ascertain the specific acts of aggression committed by each of the culprits, since, having participated in the criminal resolution, the act of one is the act of all. (People vs. Mendoza, 91 Phil. 58, 63)

Conspiracy having been established, it is immaterial who of the conspirators fired the fatal shot. (People vs. Canoy, G.R. Nos. L-4653-54, Jan. 30, 1953, 92 Phil. 1076 [Unrep.])

For indeed, it is well-entrenched in our jurisprudence that when there is conspiracy, the act of one is the act of all, and all persons taking part in the crime shall be held guilty as principals. It is of no moment that not all the accused took part in the actual commission of every act constituting the crime. Each is responsible for all the acts of the others done in furtherance of the conspiracy. The degree of actual participation is immaterial. (People vs. Maranion, G.R. Nos. 90672-73, July 18, 1991, 199 SCRA 421, 433, citing earlier cases. Also People vs. Base, G.R. No. 921, 196 SCRA 688, 696; People vs. Moka, G.R. No. 88838, April 26, 1991, 196 SCRA 378, 385-386; People vs. Catubig, G.R. No. 71626, March 22, 1991, 195 SCRA 505, 516-517)

Conspiracy having been established, it is immaterial whether it was VC or SG who fired the fatal shot. (People vs. Canoy, *et al.*, G.R. Nos. L-4653-4654, Jan. 30, 1953)

When there is conspiracy, the fact that an element of the offense is not present as regards one of the conspirators is immaterial.

Thus, in the complex crime of seduction by means of usurpation of official functions, where one of the accused simulated and falsely

pretended to be a minister authorized to perform marriage ceremonies and did simulate that he was performing a marriage ceremony between his co-accused and a girl in order thus the more easily to deceive her and cause her to live in marital relations with the other accused, the element *of performance of official functions* was present as regards one of the accused only; but the Supreme Court declared the other accused guilty of, and sentenced him to the penalty for, the same crime complexed with seduction which he actually committed. (U.S. vs. Hernandez, 29 Phil. 109)

All are liable for the crime of abduction, even if only one acted with lewd designs.

Lewd designs on the part of the offender is an essential element of the crime of abduction. (Art. 342 — forcible abduction; Art. 343 — consented abduction)

In a case where defendant Canaria conspired with his co-defendant Loyola to forcibly abduct Caridad and, in furtherance of the conspiracy, took a direct part by positive overt acts necessary to the realization of the abduction, it was held that it was of no moment that Loyola alone acted with lewd designs, for once conspiracy is established, the acts of one are considered the acts of all. (People vs. Loyola, C.A., 51 O.G. 253)

In multiple rape, each rapist is equally liable for the other rapes.

In a long line of cases, it has been held that in multiple rape, each defendant is responsible not only for the rape personally committed by him, but also for the rape committed by the others, because each of them cooperated in the commission of the rape perpetrated by the others, by acts without which it would not have been accomplished. (People vs. Fernandez, G.R. No. 62116, March 22, 1990, 183 SCRA 511, 517-518)

Exceptions:

1. In the crime of parricide, the element of relationship must be present as regards all the offenders.

   If the wife and son of the deceased conspired to kill the latter and did kill him, both the wife and the son are guilty of parricide. But if the wife of the deceased and a stranger conspired

to kill him and did kill him, only the wife is guilty of parricide and the stranger is guilty of homicide or murder, as the case may be. (People vs. Patricio, 46 Phil. 875)

The reason for the exception is that Art. 62, par. 3, provides that aggravating circumstances which arise from the private relations of the offender with the offended party shall serve to aggravate only the liability of the principals, accomplices and accessories as to whom such circumstances are attendant. This provision applies when the element of the felony arises from the private relation of the offender with the offended party.

2. In the crime of murder where treachery is an element of the crime, all the offenders must at least have knowledge of the employment of treachery at the time of the execution of the act or their cooperation therein.

Thus, if A and B who conspired to kill C, carried out their plan without previously considering the means, methods, or forms in killing the latter, and only A employed treachery, since B was present during the killing and knew the employment of treachery by A, both are liable for murder.

But if B remained at the gate of the premises of C, and only A actually killed C in the latter's house with treachery, so that B did not know of the employment of treachery, only A is liable for murder and B is liable for homicide.

The reason for this exception is that Art. 62, par. 4, provides that the circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein. Treachery is either a qualifying or a generic aggravating circumstance.

Participation in another's criminal resolution must either precede or be coetaneous with the criminal act.

People vs. Tan Diong
(59 Phil. 539)

Facts: Tan Diong, to avoid the execution of the judgment against him in a civil case, transferred his properties by *unilateral* deeds of

conveyance with fictitious consideration in favor of Eustaquio Baranda whose participation was only his testifying falsely in court that he had acquired the properties with sufficient consideration.

Held: **As to Eustaquio Baranda, we note that the conveyances by which these properties were conveyed to him were of a unilateral character. Baranda did not participate in the conveyances, and his alleged participation in the fraud consisted only in the fact that he *asserted ownership in the properties conveyed.* In our opinion, this does not justify his conviction as a participant in the fraud. His resolution to accept the benefit of the fraudulent conveyances may have been formed only *after* the act of Tan Diong. His guilt as a co-conspirator in the fraud is, therefore, not proved.**

Note: **Baranda would have been liable as a co-principal, had he concurred with Tan Diong *at the time of* or *before* the execution of the deeds of conveyance.**

There could be no conspiracy to commit an offense through negligence.

Since conspiracy presupposes an agreement and a decision to commit a felony, when it appears that the injuries inflicted on the offended party were due to the reckless imprudence of two or more persons, it is not proper to consider conspiracy between or among them.

In cases of criminal negligence or crimes punishable by special law, allowing or failing to prevent an act to be performed by another, makes one a co-principal.

Thus, a professional driver of a passenger truck who allowed his conductor to drive the truck which, while being driven by the latter, bumped a jeepney resulting in the death of one jeepney passenger, was held criminally liable as co-principal of homicide and damage to property through reckless imprudence under Act No. 3992 and Art. 365 of the Revised Penal Code. (People vs. Santos, C.A., 44 O.G. 1289) Both the driver and the conductor were held liable as co-principals.

Also, a storeowner was held criminally liable under the Pure Food and Drugs Act for the act of his employee, in selling adulterated coffee, although the storeowner did not know that the coffee was sold by his employee. (U.S. vs. Siy Cong Bieng and Co Kong, 30 Phil. 577) Both the storeowner and the employee were held liable as principals.

Second requisite — (Principals by direct participation)

That the culprits "carried out their plan and personally took part in its execution, by acts which directly tended to the same end."

The principals by direct participation must be at the scene of the crime, personally taking part in its execution.

A principal by direct participation must *personally take part* in executing the criminal plan to be carried out. This means that *he must be at the scene* of the commission of the crime, *personally taking part* in its execution.

Thus, in the case of *People vs. Ong Chiat Lay,* 60 Phil. 788, it was held that one of the accused was not a principal by direct participation because he *was absent from the scene* of the fire when the crime of arson was committed by the other accused.

The *exception to the rule* that to be a principal by direct participation, the offender must be at the scene of the commission of the crime, is the case where there was conspiracy to kidnap and kill the victim and only one of the conspirators kidnapped the victim and, after turning him over to his co-conspirators for execution, left the spot where the victim was killed. The one who kidnapped the victim was liable for murder committed by the others. The reason for the exception is that by kidnapping the victim, *he already performed his part* and the killing was done by his co-conspirators in pursuance of the conspiracy. (People vs. Santos, 84 Phil. 104)

The acts of each offender must directly tend to the same end.

While the principals by direct participation personally take part in the execution of their common purpose, it is not necessary that each of them should perform a positive act directly contributing to the accomplishment of their common purpose.

In a murder which the offenders *previously agreed to commit,* not only the one who inflicts the fatal wound is considered a principal, but also the one who holds down the victim and the one who lies in wait at the door to prevent any help from being rendered. The acts of each and every one of the offenders in this case are all directed to the same end, that is, the killing of their victim. Criminal responsibility in such a *case is collective.* (People vs. Mandagay, 46 Phil. 838)

One serving as guard pursuant to the conspiracy is a principal by direct participation.

The appellants were part of the plot to rob the victim. At the time of the robbery, they stood guard outside the house, while their co-accused entered the victim's dwelling. They are equally liable as the others. (People vs. Canumay, No. L-29181, July 9, 1984, 130 SCRA 301, 308)

Thus, one who stands guard outside the house for the purpose of keeping others away, or of warning his fellow-conspirators of danger of discovery, while the latter are murdering the occupant, takes a *direct part* in the commission of the crime of murder, and is guilty as a principal by direct participation. He is in fact *present, aiding,* and *abetting* in the commission of the crime. (U.S. vs. Reogilon, 22 Phil. 127; U.S. vs. Diris, 26 Phil. 133)

Exception:

People vs. Samano
(77 Phil. 136)

Facts: **The accused were jointly tried for the murder of three persons. Said accused were members of a guerrilla unit and were charged with having taken the deceased Lorenzana to their headquarters and beating him to death while investigating him on charges of espionage for the Japanese. The other accused admitted their guilty participation in the crime. Accused Samano and Alcantara admitted that they acted as guards near the place of the crime, but that they did so in obedience to superior orders and *without knowledge* that the deceased who was then under investigation would later be killed. There was no *evidence* that there was *conspiracy* between those who pleaded guilty and the present appellants.**

Held: **When there is no conspiracy or unity of criminal purpose and intention indicating participation in the criminal resolution, mere *passive presence* at the scene of another's crime does not constitute complicity.**

When the second requisite is lacking, there is only conspiracy.

The second requisite is that the persons who have participated in the criminal resolution, must carry out their plan and personally

take part in its execution by acts which directly tend to the same end.

If this second requisite is lacking, at most, there is only a conspiracy among the several defendants who participated in the CTiminal resolution, and if the crime they agreed and decided to commit is not treason, rebellion or sedition, they are not criminally liable.

Thus, if four of the accused merely attended the conferences and entered no opposition to the nefarious scheme, merely assenting out of respect and fear, and after the commission of the murders they joined with the other accused in celebrating with a fiesta, by way of custom, they were neither co-principals nor accomplices. (People vs. Asaad, 55 Phil. 697)

This is the reason why Dalmacio Timbol, who merely conspired with his co-accused to kill the deceased but left the place before his co-accused began shooting the deceased, was acquitted of the charge of murder. (People vs. Timbol, G.R. Nos. L-47471-73, August 4, 1944)

Even if G's participation in the first meeting sufficiently involved him in the conspiracy (as he was the one who explained the location of the house to be robbed in relation to the surrounding streets and the points thereof through which entrance and exit should be effected), such participation and involvement, however, would be inadequate to render him criminally liable as a conspirator. The reason for this is that conspiracy alone, without the execution of its purpose, is not a crime punishable by law, except in special instances (Article 8, Revised Penal Code) which, however, do not include robbery. (People vs. Pelagio, G.R. No. L-16177, May 24, 1967, cited in People vs. Peralta, No. L-19069, Oct. 29, 1968, 25 SCRA 759, 777-778)

PAR. *2.* - *PRINCIPALS BY INDUCTION.*

"Those who directly force or induce others to commit it."

Paragraph No. 2 of Art. 17 provides for the second class of principals.

The second class of principals, according to Article 17 of the Revised Penal Code, comprises "those who directly force or induce others to commit it (the act)." Those who directly induce others to commit the act are called "principals by inducement" or "principals

by induction," from the Spanish "*autorespor induction.*" The word "inducement" comprises, in the opinion of Viada and the Supreme Court of Spain, price, promise of reward, command, and *pacto.* (People vs. Gensola, No. L-24491, Sept. 30, 1969, 29 SCRA 483, 490)

The principal by induction becomes liable only when the principal by direct participation committed the act induced.

Thus, in the case of *People vs. Ong Chiat Lay,* 60 Phil. 788, it was held that one cannot be held guilty of having instigated the commission of the crime without first being shown that the crime was actually committed by another.

Two ways of becoming principal by induction.

There are two ways of becoming a principal by induction under the second paragraph of Art. 17, namely:

(1) by directly *forcing* another to commit a crime, and

(2) by directly *inducing* another to commit a crime.

By directly forcing another to commit a crime.

There are two ways of directly forcing another to commit a crime. They are:

a. By using *irresistible force.*

b. By causing *uncontrollable fear.*

In these cases, there is *no conspiracy,* not even a unity of criminal purpose and intention. Only the one using force or causing fear is criminally liable. The material executor is not criminally liable because of Art. 12, pars. 5 and 6.

By directly inducing another to commit a crime.

There are two ways of directly inducing another to commit a crime. They are:

a. By giving price, or offering *reward* or *promise.*

Both the one giving the price or offering reward or promise and the one committing the crime in consideration thereof are principals — the former, by inducement;

and the latter, by direct participation. There is *collective criminal responsibility*.

A wife, who induced the killing of the mistress of her husband by giving money to the killer, is a principal by induction. The killer is a principal by direct participation. (People vs. Lao, No. L-10473, Jan. 28, 1961, 1 SCRA 42)

b. By using *words of command.*

Both the person who used the words of command and the person who committed the crime, because of the words of command, are equally liable. There is also collective criminal responsibility. (U.S. vs. Gamao, 23 Phil. 81)

Requisites:

In order that a person may be convicted as a principal by inducement, the following requisites must be present:

1. That the inducement be made directly *with the intention* of procuring the commission of the crime; and
2. That such inducement be the *determining cause* of the commission of the crime by the material executor. (U.S. vs. Indanan, 24 Phil. 203; People vs. Kiichi Omine, 61 Phil. 609)

To constitute inducement, there must exist on the part of the inducer the *most positive resolution* and the most *persistent* effort to secure the commission of the crime, together with the presentation to the person induced of the very strongest kind of temptation to commit the crime. (U.S. vs. Indanan, *supra)*

Illustration of the first requisite.

When the accused, blinded by the grudge which she bore against the deceased, caused her co-accused thru promise of pecuniary gain to shoot the victims with a gun which she had furnished the latter, it is clear that she had the intention of procuring the commission of the crime. (People vs. Otadora, 86 Phil. 244)

In the case of a married woman who suggested to her paramour that he kill her husband in order that thereafter they might live together freely and the paramour, acting upon these suggestions,

killed him, it was held that the proposition of the woman constituted something *more than* mere counsel or advice which her co-defendant was entirely free to accept or not. It was coupled with a consideration which, in view of the relations existing between them, furnished a *motive strong enough* to induce the man to take the life of her husband. (U.S. vs. Alcontin, 10 O.G. 1888, cited in U.S. vs. Indanan, *supra;* People vs. Giron, 82 Phil. 783)

The cases cited also illustrate the second requisite. In the *Otadora* case, the promise of pecuniary gain was the determining cause of the commission of the crime by the principal by direct participation. In the *Alcontin* case, the proposition of the woman, in view of the relations existing between her and the other accused, was the determining cause of the commission of the crime by the latter.

A thoughtless expression without intention to produce the result is not an inducement to commit a crime.

But a *thoughtless* expression or act, *without any expectation or intention* that it would produce the result, is not an inducement to commit a crime.

Thus, a chance word spoken without reflection, a wrong appreciation of a situation, an ironical phrase, a thoughtless act, may give birth to a thought of, or even a resolution to, crime in the mind of one for some independent reason predisposed thereto *without the one who spoke the word or performed the act having any expectation* that his suggestion would be followed or any real intention that it produce the result. In such case, while the expression was imprudent and the results of it grave in the extreme, the one who spoke the word or performed the act would not be guilty of the crime committed by the other. (U.S. vs. Indanan, *supra)*

Example of imprudent advice, not constituting sufficient inducement.

In a decision by the Supreme Court of Spain rendered on the 10th of July, 1877, it was held that "a person who advised a married woman whose husband was very stingy and treated her badly that the only thing for her to do was to rob him, was not guilty of the crime of robbery by inducement, for the reason that an imprudent and ill-conceived advice is not sufficient." (Cited in the case of U.S. vs. Indanan, *supra)*

The person who gave the advice did not have the intention to procure the commission of the crime.

The inducement may be by acts of command, advice, or through influence, or agreement for consideration.

The inducement and the commission of a crime whereby the inducer becomes a principal, to the same extent and effect as if he had physically committed the crime, may exist in *acts of command,* sometimes of *advice, or agreement for a consideration,* or through an *influence* so effective that it alone determines the commission of the crime.

The words of advice or the influence must have actually moved the hands of the principal by direct participation.

Thus, a person who persuaded an inexperienced boy of tender age to steal certain jewels of his grandmother was found guilty of theft by inducement. (Viada, cited in U.S. vs. Indanan, *supra)* Minors under 15 years of age are easily susceptible to the suggestions of the inducer, because usually they have no discernment or judgment of their own. When induced to commit a crime, the influence of the inducer is the determining cause of the commission of the crime.

Words of command of a father may induce his son to commit a crime.

A distinction should be made between the words of command of a father to his sons, under conditions which determine obedience, and the excited exclamations uttered by an individual to whom obedience is not due. The moral influence of the words of the father may determine the course of conduct of a son in cases where the same words coming from a stranger would make no impression. (People vs. Tamayo, 44 Phil. 38, 57)

The accused, who, exercising dominance and ascendancy over his 3-year-old son, compelled the latter to hurl a stone at another boy, causing injury to the latter's eye, is clearly a principal by inducement. (People vs. Bautista, C.A., 58 O.G. 5197)

Meaning of the second requisite.

It is necessary that the inducement be the *determining cause* of the commission of the crime by the principal by direct participa-

tion, that is, *without such inducement the crime would not have been committed.* (Decision of the Supreme Court of Spain, cited in U.S. vs. Indanan, *supra)*

Inducement exists if the command or advice is of such a nature that, without its concurrence, the crime would not have materialized. (People vs. Cruz, G.R. No. 74048, Nov. 14, 1990, 191 SCRA 377, 385)

Thus, if the principal by direct participation had *personal reason* to commit the crime so that he would commit it just the same even if no inducement was made by another, this second requisite does not exist.

The inducement must precede the act induced and must be so influential in producing the criminal act that without it, the act would not have been performed.

Thus, the price given to the principal by direct participation *after* the commission of the crime, *without prior promise* to give a price or reward, *could not be an inducement.*

If the person who actually committed the crime had a reason of his own to commit the crime, it cannot be said that the inducement was influential in producing the criminal act. In such case, the one charged with having induced the commission of the crime is not criminally liable.

People vs. Castillo
(G.R. No. L-19238, July 26, 1966)

Facts: Convicted by the trial court were appellant Castillo as principal by inducement and Marincho Castillo as principal by direct participation. It appears that before the commission of the crime at bar, Marincho Castillo was slapped on the face by the now deceased Juan Vargas as a result of an altercation between them. Two months after, while appellant, holding gun, was talking face to face with Vargas, Marincho came from behind and hacked the latter on the head. As Marincho was about to strike the victim a second blow, appellant said: "You kill him." Marincho, accompanied by appellant, surrendered himself to the authorities.

Issue: Whether appellant can be found guilty as principal by inducement.

Held: In the case of *People vs. Caimbre*, L-12087, Dec. 29, 1960, this Court held that in determining whether the utterances of an accused are sufficient to make him guilty as co-principal by inducement, it must appear that the inducement was of such nature and was made in such a way as to become the determining cause of the crime and that such inducement was uttered with the intention of producing the result. In this case, appellant was, of course, armed with a revolver while talking with the deceased, but the firearm was not pointed at the latter. Then he is alleged to have uttered the words "You kill him" only after his son had already fatally boloed Vargas on the head. The inducement to commit the crime was, therefore, no longer necessary to induce the assailant to commit the crime. Appellant's guilt has not been established beyond reasonable doubt.

By using words of command.

With respect to command, it must be the moving cause of the offense. In the case at bar, the command shouted by Fidelina, "Rufino, strike him!" was not the moving cause of the act of Rufino Gensola. The evidence shows that Rufino would have committed the act at his own volition, even without said words of command. (People vs. Gensola, No. L-24491, Sept. 30, 1969, 29 SCRA 483, 490)

"Kill him and we will bury him" as an imprudent utterance said in the excitement of the hour or in the heat of anger, and not, rather, in the nature of a command that had to be obeyed, does not make the utterer a principal by inducement. (People vs. Agapinay, G.R. No. 77776, June 27, 1990, 186 SCRA 812, 821)

In determining whether the utterances of an accused are sufficient to make him guilty as co-principal by inducement, it must appear that the inducement was of such nature and was made in such a way as to become the *determining cause of the crime and* that such inducement was uttered *with the intention of producing the result.* (People vs. Castillo, No. 19238, July 26, 1966, 17 SCRA 721, 723-724)

For the utterances of an accused to make him a principal by inducement, it is necessary that the words be of such nature and uttered in such manner as to become the *determining cause* of the crime, and that the inducement precisely was intended to serve such purpose. In other words, the inciting words must have 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. (People vs. Canial, Nos. L-31042-43, Aug. 18, 1972, 46 SCRA 634, 651)

In order that a person using words of command may be held liable as principal under paragraph No. 2 of Art. 17, the following five requisites must all be present:

(1) That the one uttering the words of command must have the intention of procuring the commission of the crime.

(2) That the one who made the command must have an *ascendancy* or *influence* over the person who acted.

Illustration of this requisite:

A was a poor, ignorant fisherman, dependent upon his uncle B. On the other hand, B was a man of great influence in the community. B was the local political leader of his party. In the meeting where the plan to murder the priest was discussed, B was the prime mover and the dominant figure. B selected A who was present in the meeting to commit the crime and directed him to do it. The influence exercised by B over A was so great and powerful that the latter could not resist it. (U.S. vs. Gamao, 23 Phil. 81)

(3) That the words used must be so *direct, so efficacious, so powerful* as to amount to physical or moral coercion.

Illustration of this requisite:

(a) *Efficacious* —

One who makes the accused believe that the person to be killed was the one who had stolen the property of the accused, is guilty as principal by inducement.

***Note:* It would seem that the material executor had a reason to kill the victim, but it was furnished by the inductor who made him believe that the deceased had stolen his property.**

(b) *Powerful* — (U.S. vs. Gamao, *supra).*

(4) The words of command must be uttered *prior* to the commission of the crime.

Thus, when the commission of the crime has already been commenced when the words of inducement are uttered, this requisite is lacking.

In a decision of the Supreme Court of Spain, cited in *People vs. Kiichi Omine*,61 Phil. 609, it was held that a father who simply said to his son who was at the time engaged in a combat with another, "Hit him," was not responsible for the injuries inflicted after such advice was given.

(5) The material executor of the crime *has no personal reason* to commit the crime.

If the principal by direct participation has a personal reason to commit the crime, the supposed words of inducement cannot be the determining cause.

People vs. Kiichi Omine
(61 Phil. 611)

Facts: The witnesses for the prosecution contend that while the injured party, Angel Pulido, was talking with Omine, Eduardo Autor attempted to intervene, but was prevented by Hilario Pulido with a bolo, who did not wound him except on the left thumb; that Luis Ladion and Agapito Cortessano then held Angel Pulido by the arms, and when Eduardo Autor approached, Omine shouted to him *"pegaley matale,"* and Autor struck Angel Pulido in the breast with his bolo. Previously Eduardo Autor had struck Angel Pulido with the fist and a blow in the right eye.

Held: Under the circumstances of this case, even if it were satisfactorily proven that Kiichi Omine uttered the words in question, we are of the opinion that they would not be sufficient to make him a principal by induction, because it does not appear that the words uttered by Kiichi Omine caused Eduardo Autor to strike Angel Pulido. In the first place, as we have indicated, Eduardo Autor had already other reasons for striking Angel Pulido when Omine uttered the words of inducement. In the second place, the words in question were not in this particular case sufficient to cause Eduardo Autor to strike the offended party with his bolo. Although Eduardo Autor was working under the direction of Omine, apparently, according to the testimony of Angel Pulido, he was being paid by him (Pulido). It does not appear that Omine had any particular influence over Eduardo Autor.

Accused Autor was found guilty of serious physical injuries. Accused Omine was acquitted.

Requisites considered in determining the liability of a person accused as principal by inducement.

Appellant was prosecuted allegedly for uttering the words: "You had better kill him," at the time when his co-accused was attacking his victim. The Supreme Court stated:

"In the present case, there is nothing to show that appellant had any reason at all to have Angel Olimpo killed (first requisite, not present). On the other hand, even before he allegedly uttered the words attributed to him, Demetrio Caimbre, *had already boloed* his victim several times (fourth requisite, not present). To this we must add the circumstance that there is no evidence to show that appellant had sufficient moral influence over Demetrio Caimbre as to make the latter obey him blindly" (second requisite, not present). Appellant was acquitted. (People vs. Caimbre, 110 Phil. 370, 372)

The question whether a person present upon the occasion of a homicide but who takes no direct part in the act can be held criminally liable for inciting and encouraging another with expressions, such as, "go ahead," "hit him," "there you have him," "now is the time," etc., depends upon whether such words are spoken under conditions which give them a *direct* and *determinative* influence upon the mind of the principal actor. (People vs. Tamayo, 44 Phil. 38, 56-57)

Ascendancy or influence as to amount to moral coercion is not necessary when there is conspiracy.

To consider as principal by induction one who advises or incites another to perpetrate an offense, it is essential to show that the advisor had so great an ascendancy or influence that his words were so efficacious and powerful as to amount to moral coercion. Proof of such extremes is usually required to justify such conclusion. But such proof is unnecessary where, as in this case, the principal actor admits having been so impelled and says that he acted pursuant to a previous plan or conspiracy to kill and promise to condone his indebtedness. (People vs. Ulip, 89 Phil. 629, 633)

There is *collective criminal responsibility* when words of inducement were used.

One who planned the crime committed by another is a principal by inducement.

The persons who planned the crime committed by other persons are guilty as authors by inducement. (People vs. Asaad, 55 Phil. 697 [Syllabus])

If the crime committed is not contemplated in the order given, the inducement is not material and not the determining cause thereof.

People vs. Lawas
(G.R. Nos. L-7618-20, July 20, 1955)

Facts: **Accused Lawas, as head of the home guards whose duty was to preserve peace and order among the inhabitants in Barrio Baris, Lanao, ordered his men to fire at the Moros suspected of having killed 11 Christian residents. In the course of the melee that followed, some of the home guards fired at the women and children who were in the second floor of the house.**

Held: **While the home guards were given an order by accused Lawas to fire at the Moros then on the ground, said order could not imply or include an order to go up the house and massacre the innocent and defenseless women and children. Lawas clearly did not intend that the women and children inside the house should also be fired at. Lawas is not guilty of murder for the killing of the women and children, because to hold him liable as principal by induction, it is necessary (1) that the inducement is *material* and *precedes* the commission of the crime, and (2) that such inducement is the *determining* cause thereof.**

Principal by inducement in falsification.

While it is true that it was the employee of the office of the treasurer who performed the overt act of writing the false facts on the residence certificate of the accused, it was, however, the accused who induced him to do so by supplying him with those facts. The accused was a principal by inducement. The employee was a mere innocent agent of the accused in the performance of the act constituting the crime. (People vs. Po Giok To, 96 Phil. 913, 919)

In this case, the employee was not criminally liable, because he had no knowledge of the falsity of the facts supplied by the accused.

Distinguish principal by inducement from the offender who made proposal to commit a felony.

1. In both, there is an inducement to commit a crime.
2. In the first, the principal by inducement becomes liable only when the crime is committed by the principal by direct participation; in the second, the mere proposal to commit a felony is punishable in treason or rebellion. The person to whom the proposal is made should not commit the crime; otherwise, the proponent becomes a principal by inducement.
3. In the first, the inducement involves any crime; in the second, the proposal to be punishable must involve only treason or rebellion.

Effects of acquittal of principal by direct participation upon the liability of principal by inducement.

(1) Conspiracy is negatived by the acquittal of co-defendant.

(2) One cannot be held guilty of having instigated the commission of a crime without first being shown that the crime has been actually committed by another. (People vs. Ong Chiat, 60 Phil. 788, 790)

But if the one charged as principal by direct participation is acquitted because he acted without criminal intent or malice, his acquittal is not a ground for the acquittal of the principal by inducement. (See People vs. Po Giok To, *supra)*

The reason for the rule is that in exempting circumstances, such as when the act is not voluntary because of lack of intent on the part of the accused, there is a crime committed, only that the accused is not a criminal. In intentional felonies, the act of a person does not make him criminal unless his mind be criminal.

Possessor of recently stolen property is a principal.

It is clear from Section 5(j), Rule 131, of the Rules of Court, that the possessor of a recently stolen article is considered a principal, not

merely as an accessory or an accomplice, unless he proves in a satisfactory manner that he is but an accessory or an accomplice thereto and that another person, from whom the article came, is the one who stole it from the owner thereof. (People vs. Javier, No. L-36509, Feb. 25, 1982, 112 SCRA 186, 190)

PAR. *3. - PRINCIPALS BY INDISPENSABLE COOPERATION.*

"Those who cooperate in the commission of the offense by another act without which it would not have been accomplished."

Meaning of the term "cooperate."

To cooperate means *to desire or wish in common* a thing. But that common will or purpose does not necessarily mean previous understanding, for it can be explained or inferred from the circumstances of each case. (People vs. Apelgido, 56 Phil. 571, 576)

Requisites:

1. Participation in the criminal resolution, that is, there is either anterior conspiracy or unity of criminal purpose and intention immediately before the commission of the crime charged; and
2. Cooperation in the commission of the offense by performing *another act,* without which it would not have been accomplished.

First requisite:

As in Par. 1 of Art. 17, this co-delinquency in paragraph 3 also requires participation in the criminal resolution, that is, there must be conspiracy. But concurrence with the principal by direct participation in the purpose of the latter is sufficient, because the cooperation is indispensable to the accomplishment of the commission of the offense.

May there be cooperation by acts of negligence?

One who, by *acts of negligence,* cooperates in the commission of estafa through falsification or malversation through falsification,

without which negligent acts the commission of the crime could not have been accomplished, is a co-principal. But the one who cooperated in the commission of the crime was held guilty of the same crime through reckless imprudence. (Samson vs. Court of Appeals, 103 Phil. 277, 282-283; People vs. Rodis, 105 Phil. 1294, 1295 [Unrep.])

Second requisite:

The cooperation must be indispensable, that is, without which the commission of the crime would not have been *accomplished.* If the cooperation is *not* indispensable, the offender is only an *accomplice.*

"Cooperate xxx by another act"

The act of the principal by indispensable cooperation should be different from the act of the principal by direct participation. The law says "by another act," which means that it should not be the act of one who could be classified as principal by direct participation.

Examples:

(1) Where it appears that C seized the hands of a 12-year-old girl, dragged her by force and violence to a place behind a house where there were some trees whence he called to his confederate, J, the person chiefly interested in the perpetration of the crime, with whom C must have had an agreement beforehand, delivered her to him upon his arrival at the place, and then went away from the scene of the crime so that J might freely consummate the prearranged rape, as the latter did with violence and intimidation, it was held that C cooperated in the perpetration of the crime by acts without which its commission would not have been accomplished. (U.S. vs. Javier, 31 Phil. 235, 239-240)

(2) R, an employee of a bank, had the duty to examine the account of the drawer of a check, to determine whether or not the drawer of the check had sufficient balance to his credit to require the payment of the check, and to indorse upon the check, if it was entitled to payment, the words "Corriente, P.O. Luciano de los Reyes." After the check was marked in this manner, it would pass to the cashier of the bank who, in reliance upon the indorsement, would pay or order the same to be paid. R, in connivance with B, and knowing that the latter had no sufficient funds in

the bank, indorsed upon a check drawn by B the words "Corriente, P.O. Luciano de los Reyes." The cashier, relying upon the indorsement, ordered the payment of the check, thus enabling B to draw the amount of the check. In this case, R was a principal by indispensable cooperation. (U.S. vs. Lim Buanco, 14 Phil. 484)

In these two cases, it will be noted that the cooperation of the other accused consisted in performing an act which is different from the act of execution of the crime committed by the other accused.

In the case of *U.S. vs. Javier,* the act of cooperation is the forcible taking of the girl to the place where the rape was committed by the other accused. In rape, the act of execution is the sexual intercourse with the woman against her will.

In the case of *U.S. vs. Lim Buanco,* the act of execution of the crime of estafa committed by the principal by direct participation is the fraudulent cashing of the check which resulted in the damage to the bank. The act of cooperation of the other offender is the certification that the check was entitled to payment.

If the cooperation of one of the accused consists in performing an act necessary in the *execution of the crime committed,* he is a principal by direct participation.

Thus, if in the commission of homicide, one of the offenders held the victim while the other was stabbing him, the one who held the victim should be a principal by direct participation.

But there are cases where the Supreme Court considered the accused who held the victim while being stabbed by the other accused as a principal by indispensable cooperation under paragraph 3 of Art. 17.

The evidence amply demonstrates that said Platon cooperated in the execution of the deed on trial by holding the victim by the right arm while his brother and co-defendant inflicted the wounds that produced death. The responsibility he has incurred by virtue of such cooperation, without which the deed could not have been committed in the way it was, is beyond doubt that of principal. (U.S. vs. Cueva, 23 Phil. 553)

Appellants grabbed the waist of the deceased and placed his hands around it, thereby pinning his (the deceased's) arms. It was

at this juncture when his co-accused Marcelino Mario stabbed the deceased at his left breast above the nipple with his dagger (Exh. C). Under the circumstances, it is clear that appellant is a principal to the commission of the crime of murder, as he cooperated in the execution thereof by another act, without which, it would not have been committed (Art. 17[3], Revised Penal Code). (People vs. Mario, 108 Phil. 574, 577; People vs. Labis, No. L-22087, Nov. 15, 1967, 21 SCRA 875, 885)

Liability of conspirators who took turns in raping a girl.

Four persons each took turns in having sexual intercourse with a girl by force. It was held that each of them is responsible, not only for the act of rape committed personally by him, but also for the rape committed by the others, because while one of them was having sexual intercourse with the girl, the others were holding her, so that each one of them cooperated in the consummation of the rape committed by the others by acts without which it could not have been accomplished. Four sentences were imposed on each accused. (People vs. Villa, 81 Phil. 193, 197; People vs. Alfaro, 91 Phil. 404, 408-409; People vs. Fernandez, G.R. No. 62116, March 22, 1990, 183 SCRA 511, 517)

To be liable as principals, the offender must fall under any of the three concepts defined in Article 17.

In its decision of December 7, 1885, the Supreme Court of Spain held that a person who assists one who commits the crime of arson and who knows the latter's purpose, but whose participation in the arson is not disclosed, may not be considered as a principal because his acts were neither direct nor absolutely necessary for the commission of the offense nor did it induce the said commission. (2 Viada, pp. 369-370) In another decision dated December 6, 1902, it said that where the accused accompanied the killer on a road where the victim was going to pass and with open knife encouraged him (the killer) with his presence, the former is not guilty of the crime as principal because his participation is neither direct nor does it constitute the inducement necessary to bring about the execution of the crime or that of cooperation as his act is not indispensable in the commission of the crime. (*Ibid.*, pp. 383-384)

In *People vs. Ubina,* 97 Phil. 515, it was held that under the circumstances, the accused does not fall under any of the three con-

cepts defined in Article 17 of the Revised Penal Code, and may only be considered guilty as accomplice.

Collective criminal responsibility.

There is collective criminal responsibility when the offenders are criminally liable in the same manner and to the same extent. The penalty to be imposed must be the same for all.

Principals by direct participation have collective criminal responsibility. Principal by induction, *except* that who directly forced another to commit a crime, *and* principal by direct participation have collective criminal responsibility. Principal by indispensable cooperation has collective criminal responsibility *with* the principal by direct participation.

Individual criminal responsibility.

In the absence of previous conspiracy, unity of criminal purpose and intention immediately before the commission of the crime, or community of criminal design, the *criminal responsibility* arising from different acts directed against one and the same person is *individual* and not collective, and *each of the participants is liable only for the act committed by him.* (U.S. vs. Magcomot, 13 Phil. 386, 390; U.S. vs. Abiog, 37 Phil. 137, 139-140)

Where there is no pretension that there was any conspiracy between the accused nor concerted action pursuant to a common CTiminal design between them, each is responsible only for the consequences of his own acts. (Araneta, Jr. vs. Court of Appeals, G.R. No. 43527, July 3, 1990, 187 SCRA 123, 133)

Example of individual responsibility.

The deceased was the one who *assaulted* a group of three individuals with a knife, and in the course of an incomplete self-defense, two of them caused less serious physical injuries upon the assailant, while the third inflicted the fatal wound. In this case, the party who inflicted the fatal wound would be the only one responsible as principal for the crime of homicide; the other two would be held liable only for less serious physical injuries. (Dec. Sup. Ct. of Spain, June 2, 1874, 11 Jr. Crim. 11-14; 1 Viada, Cod. Pen., 342-343; People vs. Martinez, 42 Phil. 85, 89; People vs. Tamayo, 44 Phil. 38, 44-45)

Art. 18. *Accomplices.* — Accomplices are the persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

Quasi-collective criminal responsibility.

Between collective criminal responsibility and individual criminal responsibility, there is the so-called *quasi-collective* criminal responsibility.

In quasi-collective criminal responsibility, some of the offenders in the crime are principals and the others are *accomplices*.

The participation of an accomplice presupposes the commission of the crime by the principal by direct participation.

The principal element of every punishable complicity consists in the concurrence of the will of the accomplice with the will of the author of the crime (People vs. Tamayo, 44 Phil. 49), and the accomplice cooperates by previous or simultaneous acts in the execution of the offense by the principal.

"Not being included in Article 17."

But the participation or cooperation of the accomplice is not any one of those mentioned in Article 17, which defines the three concepts of principals. An accomplice does not fall under any of the three concepts defined in Art. 17. (People vs. Ubina, 97 Phil. 515)

When there is *no conspiracy* between or among the defendants but they were *animated* by one and the *same purpose* to accomplish the criminal objective, those who cooperated by previous or simultaneous acts but *cannot be* held *liable* as *principals* are accomplices.

In case of doubt as to whether principal or accomplice.

In case of doubt, the participation of the offender will be considered *that of an accomplice* rather than that of a principal.

In the case of appellants Carlos and Pascual Clemente, while they joined their brother in the pursuit of the fleeing Matnog, and in the attack on him as he fell, yet the prosecution eyewitness was unable

to assert positively that the two managed to hit the fallen man. There being no showing of conspiracy, and the extent of their participation in the homicide being uncertain, they should be given the benefit of the doubt, and consequently, they are declared to be mere accomplices in the crime. (People vs. Clemente, G.R. No. L-23463, Sept. 28, 1967, 21 SCRA 261, 270-271)

When the participation of an accused is not disclosed, he is only an accomplice.

A person who assists one who commits the crime of arson and *who knows* the latter's purpose, but whose *participation* in the arson is *not disclosed,* may not be considered as a principal, because his acts are neither direct nor absolutely necessary for the commission of the offense, nor do they induce the said commission. (2 Viada, pp. 369-370, cited in People vs. Ubina, 97 Phil. 515, 533)

In criminal cases, the *participation* of the accused must be established by the prosecution by positive and competent evidence. It cannot be presumed.

An accomplice does not have previous agreement or understanding or is not in conspiracy with the principal by direct participation.

An accomplice does not enter into a conspiracy with the principal by direct participation. He does not have previous agreement or understanding with the principal to commit a crime. But he participates to a certain point in the common criminal design. (People vs. Aplegido, 76 Phil. 571, 576)

If there is conspiracy, all the conspirators are equally liable for the crime actually committed by any one of them. The same penalty shall be imposed on each and every one of them.

On the other hand, the accomplice gets a penalty *one degree lower* than that provided for the principal in a consummated felony. (Art. 52)

Distinction between accomplice and conspirator.

Conspirators and accomplices have one thing in common: they know and agree with the criminal design. Conspirators, however,

know the criminal intention because they themselves have decided upon such course of action. Accomplices come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution. Conspirators decide that a crime should be committed; accomplices merely concur in it. Accomplices do not decide whether the crime should be committed; they merely assent to the plan and cooperate in its accomplishment. Conspirators are the authors of a crime; accomplices are merely instruments who perform acts not essential to the perpetration of the offense. (People vs. de Vera, G.R. No. 128966, 18 August 1999)

May a co-conspirator be held liable as an accomplice only?

In a case, the Supreme Court held: "It is true, strictly speaking, that as co-conspirators, Dablen and Rojas should be punished as co-principals. However, since their participation was not absolutely indispensable to the consummation of the murder, the rule that the court should favor the milder form of liability may be applied to them."

In the case of *People vs. Anin,* No. L-39046, June 30, 1975, 64 SCRA 729, 736, it was held that if the overt acts of the accused, although done with knowledge of the criminal intent of his co-accused was not indispensable to the homicidal assault, the accused should be held liable only as an accomplice in the killing of the victim.

In some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character. (People vs. Nierra, 76 O.G. 6600, No. 37, Sept. 15, 1980)

Note:

1. The ruling in *People vs. Nierra* is inconsistent with the ruling in *People vs. Manzano,* 58 SCRA 250, where it was held that appellant's alternative contention that he should be regarded only as an accomplice is untenable once it is postulated that *he conspired* with Bernardo and Delfin to kill Jose Quintos.

2. The fact that the role of a malefactor in the perpetration of the homicide or murder was of a minor character is of

no consequence, since having been in conspiracy with the others, the act of one is the act of all. (People vs. Mendoza, 91 Phil. 58, 63)

3. The ruling in *People vs. Nierra* failed to distinguish between "community of design" and "participation in the criminal resolution" of two or more offenders.

The first does not necessarily mean that there is conspiracy, although it may develop into a conspiracy; the second implies conspiracy.

If a malefactor entered with the others into an *agreement* concerning the commission of a felony and the *decision* to commit it, the malefactor and the others participated in the criminal resolution. Such agreement and decision may be inferred from the facts and circumstances of the case. If there was no such agreement and decision, but, knowing the criminal design of the others, the malefactor merely concurred in their criminal purpose, there is only community of design. The malefactor, whose role in the perpetration of the homicide or murder is of a minor character, may properly be held liable as accomplice.

In order that a person may be considered an accomplice, the following requisites must concur.

1. That there be community of design; that is, *knowing the criminal design* of the principal by direct participation, he *concurs with the latter* in his purpose;

2. That he cooperates in the execution of the offense by *previous or simultaneous acts,* with the intention of supplying *material* or *moral aid* in the execution of the crime in an efficacious way; and

3. That there be a *relation* between the acts done by the principal and those attributed to the person charged as accomplice. (People vs. Tamayo, 44 Phil. 38, 49)

First requisite:

Note that before there could be an accomplice, there must be a principal by direct participation. But the principal *originates* the

criminal design. The accomplice merely *concurs* with the principal in his criminal purpose.

The cooperation that the law punishes is the assistance *knowingly* or *intentionally* rendered, which cannot exist without *previous cognizance* of the criminal act intended to be executed by the principal by direct participation. (U.S. vs. Bello, 11 Phil. 526, 528; People vs. Cajandab, No. L-29598, July 26, 1973, 52 SCRA 161, 166)

The cooperation which the law punishes is the assistance which is knowingly or intentionally given and which is not possible *without previous knowledge of the criminal purpose.* (People vs. Cruz, G.R. No. 74048, Nov. 14, 1990, 191 SCRA 377, 385, citing People vs. Bello, 11 Phil. 526 and People vs. Ortiz, 55 Phil. 993)

Thus, the sentry is *not liable* as accomplice in this case:

The sentry improperly permitted certain convicts to go out of jail, accompanied by the corporal of the guards. The convicts committed robbery. Was the sentry an accomplice in the crime of robbery committed by the convicts? No. When the sentry permitted the convicts to go at large, the sentry had *no knowledge* of their intention to commit any crime. (U.S. vs. Bello, *supra)*

But the driver of a taxicab who, *knowing* that his co-accused were going to make a hold-up, permitted them to use the taxicab driven by him in going to a store where his said co-accused staged the hold-up, and waited for them until after the hold-up, is an accomplice in the crime of robbery. (People vs. Lingad, 98 Phil. 5, 12)

How an accomplice acquires knowledge of the criminal design of the principal.

1. When the principal *informs* or *tells* the accomplice of the former's criminal purpose.

   Thus, when the master *told his servant* that he would abduct (abduction with consent) a girl under 18 years of age and instigated his said servant to induce the girl to leave her home for immoral purposes, and the servant assisted in the commission of the crime by so inducing the girl, the master was the principal by direct participation and the servant was an accomplice. (U.S. vs. Sotto, 9 Phil. 231, 236)

Mariano Tadeo accompanied Crispino Tangbaoan from Tayum, Abra, to barrio Bacooc, Lagangilang, and on arriving there, Crispino *revealed* to Mariano that he was going to kill one Guilay. It is likely that out of friendship and companionship, Mariano did not leave Crispino *after* Mariano *learned of* Crispino's *intention.* Mariano was with Crispino when the latter killed Guilay. It was held that Mariano was an accomplice in the crime committed by Crispino. (People vs. Tangbaoan, 93 Phil. 686, 691)

2. When the accomplice *saw the criminal acts* of the principal.

In a quarrel, Ramon was choking the deceased. Then, Jose ran up and delivered a blow with a bamboo stick on the head of the deceased. After the blow struck by Jose, *which Ramon saw,* the latter continued to choke the deceased until life was extinct. The choking by Ramon was not the cause of death. It was the blow delivered by Jose which caused the death of the deceased. *Held:* Ramon is an accomplice. The reason is that after the deceased had received the fatal injury, Ramon continued to hold and choke the deceased until after life was extinct. It shows that Ramon *approved* of the blow struck by Jose, thereby showing his participation in the criminal design of Jose, and this is sufficient to make Ramon responsible as an accomplice. (People vs. Tamayo, 44 Phil. 38, 42, 49, 54-55)

Another case: Jovito Cagalingan stabbed the deceased after Alfredo Cagalingan had stabbed said deceased at the back, while Victor Romina, Jr. stabbed the same deceased while the latter was already lying prostrate on the ground. While the acts of Jovito Cagalingan and Victor Romina, Jr. show a community of design with the principal, Alfredo Cagalingan, who inflicted the fatal wound, and Jovito and Victor cooperated in hastening the victim's death, their acts were not absolutely indispensable in the commission of the crime. A person who assails a victim already fatally wounded by another is only regarded as accomplice. Jovito Cagalingan and Victor Romina, Jr. are only accomplices. (People vs. Cagalingan, G.R. No. 79168, Aug. 3, 1990, 319-320)

Where one of the accused embraced the victim and rendered him helpless to stop him from further hitting the other accused, the first accused should be held liable as accomplice where he did not stop his co-accused from further hitting the victim.

There is no showing that the attack was agreed upon between the two accused beforehand. No motive for it was shown other than the provocation given by the deceased; and such motive was true only insofar as the other accused was concerned. The circumstances indicate that if the accused embraced the deceased and rendered him helpless, it was to stop him from further hitting the other accused with his fists. However, even after the first knife thrust had been delivered, he did not try to stop the other accused, either by word or overt act. Instead, the accused continued to hold the deceased, even forced him down on the bamboo bed with the other accused still pressing the attack. *If the initial intent of the accused was free from guilt, it became tainted after he saw the first knife thrust delivered.* (People vs. Manansala, No. L-23514, Feb. 17, 1970, 31 SCRA 401, 405)

The criminal design to be considered in case there is no conspiracy or unity of criminal purpose and intention between two or among several accused charged with a *crime against persons*, is the criminal intent entertained by the accused who inflicted the *more* or *most* serious wound on the victim. In the case of *People vs. Tamayo, supra,* it was Jose who had the criminal intent, which is to kill the deceased. Such intent to kill can be inferred from the nature of the weapon used and the part of the body which was injured. When a bamboo stick was used in delivering a blow on the head, death to the victim can be expected.

Concurrence with the criminal purpose of another may make one a co-principal.

Even if only one of the offenders originated the criminal design and the other merely concurred with him in his criminal purpose, but before the actual commission of the crime both of them *agreed and decided* to commit it, the other is not merely an accomplice. He

is also a principal, because having agreed and decided to commit a felony with another, he becomes a co-conspirator.

No knowledge of the criminal design of the principal — not an accomplice.

Sixto and Cosme were partners in the trade of raising and selling hogs. Ireneo Ibanez was not directly involved in the business between the two. A quarrel between Sixto and Cosme sprang simultaneously out of a business discussion. Ireneo obtruded into the discussion to support the interest of his brother Sixto. In the course of the quarrel, one of the trio mentioned the word "fight." Whereupon Cosme started to run towards his house. Ireneo and Sixto pursued Cosme. When they caught up with Cosme, Sixto held Cosme's neck from behind and proceeded to tighten his grip. At this juncture, Ireneo stabbed Cosme in such a sudden and unexpected manner that the eyewitnesses did not even notice that Ireneo's blow carried a dagger with it. And Sixto showed surprise when later he saw the bloodstained dagger of Ireneo, and asked him, "What did you do?" Sixto immediately loosened his grip on Cosme's neck.

Held: **While it is true that the act of Sixto coincided with Ireneo's act of stabbing, simultaneousness does not of itself demonstrate the *concurrence of will nor the unity of action and purpose* which are the bases of the responsibility of two or more individuals.**

There is no proof that they pursued Cosme because they had accepted a challenge coming from him. Apparently, their intention was only to prevent him from taking from his house a weapon with which to carry out an attack. They were, therefore, just advancing a legitimate defense by preventing an illegitimate aggression. Sixto's act of holding Cosme's neck from behind is no proof of intention to kill. At that time he did not know yet what his brother's intention was. It was not shown that Sixto knew that his brother was armed. (People vs. Ibanez, 77 Phil. 664)

Ciriaco Limbo was an employee of the Bureau of Printing. He stole several blank certificates used for the registration of large cattle from the bookbinding department of that Bureau and sold them to one of his co-defendants, Pedro Flores, for the sum of P15 each. These registration certificates were used by Flores in effecting a sale of the two horses for the theft of which they were convicted.

Limbo took no part, direct or indirect, either in the stealing of the horses or in selling them after they had been stolen. He had no knowledge of the commission of the crime of theft by his co-defendants. He did not enter into any conspiracy or arrangement with them looking to the commission of the crime of theft of the horses. He did not receive any share of the proceeds of the sale of the horses.

Held: Limbo was liable only for the theft of the blank certificates, but he was neither a principal, an accomplice, nor an accessory in the crime of theft of the horses committed by the other defendants. (U.S. vs. Flores, 25 Phil. 595, 597)

The accomplice intends by his acts, to commit or take part in the execution of the crime.

Cariño vs. People
(G.R. No. L-14752, April 20, 1963)

Facts: It appears that appellant is a close friend of Dr. Jesus Lava, a top leader of the Communists, who was his classmate in the high school, and who later on became the godfather of appellant's first child. Appellant's wife and children were treated successfully by Dr. Lava in 1939 and 1943 for various illnesses free of charge, and appellant believed that his wife and children owe their lives to Dr. Lava. One night in 1946, Dr. Lava arrived in the house of the appellant asking for shelter. Appellant gave Lava accommodation for the night. The next time that appellant heard from Dr. Lava was in May 1949, when he received a note from the latter asking for some cigarettes, powdered milk and canned goods. Appellant furnished in as small amounts as he could send. It also appears that appellant, as a ranking employee of the National City Bank of New York, helped the Huks to open accounts and changed dollars to Philippine money for the Huks. The Court of Appeals found him guilty as an accomplice in the crime of rebellion.

Held: There are two elements required, in accordance with the definition of the term *accomplice* given in the Revised Penal Code (Art. 18), in order that a person may be considered an accomplice to a criminal act, namely, (1) that he takes part in the execution of the crime by previous or simultaneous acts and (2) that he intends by said acts to commit or take part in the execution of the crime. The crime of rebellion is committed by rising publicly and taking up arms against the Government for any of the purposes mentioned in Article 134 of the Revised Penal Code. Appellant did not take up arms against the Government. He did not openly take part in the commission of the

crime of rebellion by any other act without which said crime would not have been committed. The act of sending cigarettes and food supplies to a famous Huk does not prove intention to help him in committing rebellion or insurrection. Neither is the act of having dollars changed to pesos or in helping the Huks to open accounts, by themselves show an intent or desire to participate or help in an uprising or rebellion. Appellant was a public relations officer of the bank of which he was an employee and the work above indicated performed by him was a part of his functions as an employee of the bank. Good faith is to be presumed. No presumption of the existence of a criminal intent can arise from the above acts which are in themselves legitimate and legal. Said acts are by law presumed to be innocent acts while the opposite has not been proved. In the crime of treason, any act of giving comfort or moral aid may be criminal, but such is not the case with rebellion where the Penal Code expressly declares that there must be a public uprising and taking up of arms in rebellion or insurrection. Granting for the sake of argument that appellant had the criminal intent of aiding the communists in their unlawful designs to overthrow the Government, the assistance thus extended may not be considered efficacious enough to help in the successful prosecution of the crime of insurrection or rebellion so as to make him an accomplice therein.

The community of design need not be to commit the crime actually committed. It is sufficient if there was a common purpose to commit a particular crime and that the crime actually committed was a natural or probable consequence of the intended crime.

1. **In the case of *People vs. Largo,* 99 Phil. 1061, it appears that Crispin Verzo caused Amadeo Salazar and Gavino Largo to load a time bomb in a PAL plane, which carried Fructuoso Suzara. Verzo was the paramour of Suzara's wife. The bomb exploded when the plane was in mid-air. The plane fell into the sea. All of its 13 passengers and crew members were killed. It was held that Salazar and Largo were accomplices in the crime of which Crispin Verzo was found guilty as principal, "because although they cooperated in the execution of the criminal act with knowledge that something illicit or forbidden was being done, there is no evidence that they knew that the act would, or was intended to, cause the destruction of the plane and its passengers."**

2. In the case of *U.S. vs. De Jesus,* 2 Phil. 514, three men entered the house of Ramon Osete for the purpose of abducting his daughter, but instead of accomplishing the abduction, they killed Osete. While the homicide was being perpetrated, two other men remained in the street in front of the victim's house, standing by the carriage which had brought them to the scene of the crime. It was held that the two men who were on the street ready to overcome any opposition which they might meet were accomplices.

Where the accomplices consent to aid in the commission of forcible abduction (a crime in which the use of force is involved), they will be responsible as such accomplices for the resulting homicide, the commission of which might reasonably have been regarded as a possibility in attempting to carry out the abduction, and this even if it appears that the purpose to commit the homicide on the part of the principal was *unknown* to the accomplices.

When the owner of the gun knew that it would be used to kill a particular person, and the principal used it to kill another person, the owner of the gun is not an accomplice as to the killing of the other person.

Although Serapio got the carbine from Sulpicio, the latter cannot be considered a principal by indispensable cooperation or an accomplice. There is no evidence at all that Sulpicio was aware Serapio would use the rifle to kill Casiano. Presumably, he gave the carbine to Serapio for him to shoot Rafael only as per their agreement. Neither is there concrete proof that Sulpicio abetted the shooting of Casiano. Sulpicio might have been liable if after the shooting of Rafael, Serapio returned the carbine to him but upon seeing Casiano fleeing, immediately asked again for the carbine and Sulpicio voluntarily gave it to him. Serapio's criminal intention then would be reasonably apparent to Sulpicio and the latter's giving back of the rifle would constitute his assent thereto. But such was not the case. Sulpicio, therefore, must be acquitted for the killing of Casiano Cabizares. (People vs. De la Cerna, G.R. No. L-20911, October 30, 1967, 21 SCRA 569, 586-587)

Second requisite:

Like the principal by cooperation under par. 3 of Art. 17, the accomplice cooperates with the principal by direct participation. But the cooperation of an accomplice is only necessary, *not indispensable.*

However, if there is conspiracy between two or among several persons, even if the cooperation of one offender is only necessary, the latter is also a principal by conspiracy. The nature of the cooperation becomes immaterial.

Examples of cooperation by accomplice:

a. *By previous acts.*

The example of cooperation by *previous act is* the lending of a dagger or pistol to the murderer, *knowing* the latter's criminal purpose.

In the crime of rape, the pharmacist who, knowing the criminal purpose of another, furnishes him the drug with which he will put his victim to sleep in order to rape her, is also an accomplice in the crime. (U.S. vs. Flores, 25 Phil. 595, 597-598)

b. *By simultaneous acts.*

The defendant who held one of the hands of the victim and tried to take away the latter's revolver, while his co-defendant was attacking him, is an accomplice, for he cooperated in the execution of the crime by simultaneous acts without any previous agreement or understanding with his co-defendant. (People vs. Escarro, 89 Phil. 520, 524)

The three persons who actually detained the offended woman were principals in the crime of illegal detention and the three other accused who held the victim's companion, in order to prevent the latter from rendering any help to the victim, were accomplices, there being no conspiracy among them. (People vs. Crisostomo, 46 Phil. 775, 784)

The cooperation of an accomplice is not due to a conspiracy.

People vs. Francisco
(G.R. No. L-6270, Feb. 28, 1955)

Facts: **Francisco, then Mayor of Cordon, Isabela, accompanied by his co-accused Berganio, Badua, Dasalla and Tagasa, brought along with them in a jeep, Ricardo Corpus, whose hands were tied at his back and proceeded to the PC detachment where Francisco told the officer of the day that he was leaving Corpus under the custody of the constabulary because he was a bad man and wanted to take his life. The Corporal told him that he could not accept Corpus, because there was no detention cell there. Francisco and his co-accused left with Corpus. Corpus disappeared and was not seen anymore. The evidence shows that Francisco was the only one who had the criminal intention to kidnap Corpus.**

Held: **The companions of Francisco (Berganio, Badua, Dasalla and Tagasa) cannot be convicted as principals because of the *failure of the prosecution to prove the existence of conspiracy* between them and Francisco. But they are not entirely free from criminal liability for the reason that they helped Francisco in bringing Corpus from the municipal building to the PC detachment and ultimately to Barrio Raniag. These acts constitute cooperation by "simultaneous or previous acts" under Article 18 of the Revised Penal Code.**

Once it is postulated that one of three accused had conspired with his co-accused to kill the victim, he cannot be regarded only as an accomplice. (People vs. Manzano, Nos. L-33643-44, July 31, 1974, 58 SCRA 250, 259)

When the acts of the accused are not indispensable in the killing, they are merely accomplices.

As to appellants Emigdio and Alfredo, the evidence as a whole would show that they were not entirely free from participation in the killing of the deceased. The numerous contusions inflicted on the deceased support the assertion that they threw stones at the deceased, but the throwing of the stones was done during the struggle between Marciano and the deceased, after the latter had attacked the former with the iron pipe. Absolutely no evidence exists to prove that any stone thrown by either Emigdio or Alfredo inflicted any mortal injury on Felix Jugo, nor does it appear that they joined Marciano in hitting the deceased after the latter crashed to the ground

from Marciano's blows. Thus, the form and manner of assistance by Emigdio and Alfredo do not safely disclose that unity of purpose and design and compulsion by a common motive that would make them co-principals with the actual slayer, Marciano. The nature of the killing as an offshoot of a spontaneous turn of events — not a *previously conceived* ambush — is seen by the use of stones by Emigdio and Alfredo, weapons unlikely to be chosen in the cool calculation of a treacherous ambuscade. At most, they could only be held liable as accomplices, in that they cooperated in the execution of the offense by simultaneous acts which were not indispensable. (People vs. Villegas, *et al.*, 59 O.G. 7060, 7064)

The act of one, blocking people coming to the aid of the victim while being assailed is undoubtedly one of help and cooperation to the assailants. But, it is not indispensable to the stabbing of the victim. Hence, he is merely an accomplice. (People vs. Resayaga, No. L-49536, March 30, 1988, 159 SCRA 426, 432; People vs. Anin, No. L-39046, June 30, 1975, 64 SCRA 729, 736 [hitting the victim's companion with a piece of wood, apparently to dissuade him from going to the succor of the victim])

One who acted as a look-out or guard and also assisted in taking the stolen articles in the crime of robbery with homicide, absent a conspiracy. (People vs. Parcon, Nos. L-39121-22, Dec. 19, 1981, 110 SCRA 425, 434, 435)

The accomplice merely supplies the principal with material or moral aid without conspiracy with the latter.

Where the evidence does not prove that appellant conspired with the malefactors, he cannot be considered as a principal. However, in going with them, knowing their criminal intention, and in staying outside of the house with them while the others went inside the store to rob and kill the victim, the appellant effectively supplied the criminals with material and moral aid, making him guilty as an accomplice. (People vs. Balili, No. L-14044, Aug. 5, 1966, 17 SCRA 892, 898; People vs. Doctolero, G.R. No. 34386, Feb. 7, 1991, 193 SCRA 632, 645)

The act of one of the accused in inflicting wound upon the victim several times with a small knife only after the latter had fallen to the ground seriously wounded, if not already dead, is not necessary and indispensable for the consummation of the criminal assault but merely a "show-off" or expression of sympathy or feeling of camaraderie with

the other accused. For such act, the accused should be found guilty only as accomplice. (People vs. Vicente, No. L-26241, May 21, 1969, 28 SCRA 247, 256-257)

The wounds inflicted by an accomplice in crimes against persons should not have caused the death of victim.

The person charged as an accomplice should not have inflicted a mortal wound. (People vs. Aplegido, 76 Phil. 571) If he inflicted a mortal wound, he becomes a principal by direct participation.

Thus, when Z cut the deceased on the neck with a bolo and afterwards R likewise gave the deceased another blow on the neck, both wounds inflicted being mortal, even if only R originated the intention to assault the deceased while Z did no more than to assist the action of the *initiator* of the crime, the two must be considered as co-principals and therefore both are responsible for the crime perpetrated. (U.S. vs. Zalsos, 40 Phil. 96)

In the following cases, the other accused were held to be accomplices only, because the wounds inflicted by them were not the cause of death:

1. *People vs. Azcona,* 59 Phil. 580, because the wounds inflicted by the accused did not *materially* contribute to the death of the deceased.
2. *People vs. Tamayo,* 56 Phil. 587, because the wound inflicted by the accused was not of a character that would have resulted in the death of the deceased.
3. *People vs. Cortes,* 55 Phil. 143, because the accused who were armed with clubs merely struck the victim, as *he fell by the fatal blow made by the principal,* without causing the victim serious injuries.
4. *People vs. Antonio,* 73 Phil. 421, stoning the victim already mortally wounded by other accused, the stoning not being the cause of death.

People vs. Azcona
(59 Phil. 580)

Facts: Azcona induced the other accused to kill Cabili. The one who fired the shot which killed Cabili was the principal by direct par-

ticipation and Azcona was the principal by induction. The two other accused inflicted wounds after the fatal shot by the principal by direct participation, when Cabili was either dead or in the throes of dissolution.

Held: **The two other accused are merely accomplices.**

People vs. Antonio
(73 Phil. 421)

Facts: **One of the accused attacked and wounded the deceased, inflicting upon the latter, lacerated wounds on the forehead and on the neck. When the deceased was already prostrated on the ground mortally wounded, accused Faustino Divina threw stones against the wounded man, inflicting contusions on his body. The cause of death were the wounds on the forehead and neck.**

Held: **Faustino Divina is only an accomplice.**

In these cases, the following rules are indicated:

1. **The one who had the *original criminal design is* the person who committed the resulting crime.**

   Thus, in the *Tamayo case,* the son was the one who entertained the original criminal design, because it was he who caused the death of the victim which gave rise to the crime of homicide.

   The father, who continued choking the victim after the fatal blow was given, *merely concurred* in the criminal purpose of his son.

2. **The accomplice, after concurring in the criminal purpose of the principal, cooperates by previous or simultaneous acts.**

   When the cooperation is by simultaneous act, the accomplice takes part while the crime is being committed by the principal by direct participation or *immediately* thereafter.

   Thus, in the cases mentioned, the principal *had already attacked* the victim before the accomplice struck the said victim.

3. **The accomplice in crimes against persons *does not inflict* the more or most serious wounds.**

Problem: A gave a fist blow on the face of B. Seeing what A had done to B, C stabbed B to death. Is A an accomplice? No, because the one who had the original criminal design was C, the wound inflicted by C being the more serious. A could not have concurred in the criminal purpose of C, because A was the first to strike B and A did nothing more after C had stabbed B.

The criminal responsibility of A and C will be individual, that is, each is responsible for the act actually performed by him.

But if C stabbed B first, and as B was in a dying condition, A gave a first blow on B's face, then A is an accomplice.

Reason: When A gave a fist blow on the face of B after the latter had been mortally wounded by C, it shows that A concurred in the criminal purpose of C.

Being present and giving moral support when a crime is being committed will make a person responsible only as accomplice in the crime committed.

Absent knowledge of the criminal purpose of the principal, giving aid or encouragement, either morally or materially, in the commission of the crime, mere presence at the scene of the crime does not make one an accomplice. (People vs. Toling, No. L-28548, July 13, 1979, 91 SCRA 382, 400)

People vs. Ubina
(97 Phil. 515)

Facts: Tomas Ubina who was defeated by Aureliano Carag for the mayorship of Solana, Cagayan, and whom Carag had insulted, conspired with five persons to kill Carag. These five persons brought along Romero Pagulayan, Pascual Escote, and Pablo Binayug to the place where Carag was killed, but the actual killing was perpetrated by the said five persons. Their participation in the act of killing Carag was limited to being present and staying around the premises, while the five conspirators fired at the victim and carried out their purpose.

Held: Other than being present and, perhaps, giving moral support, no act of Pagulayan, Escote, and Binayug may be said to constitute a direct participation in the acts of execution. Neither did they induce in any manner, the commission of the offense; they joined the conspirators after the latter had decided to commit the act. Their presence and

company was not *indispensable and essential* to the perpetration of the murder. They are only accomplices.

The moral aid may be through advice, encouragement or agreement.

But the complicity which is penalized requires a certain degree of cooperation whether *moral,* — through advice, encouragement, or agreement, or *material,* — through external acts. In the case of accused Romana, there is no evidence of moral or material cooperation, and none of an agreement to commit the crime in question. Her *mere presence* and silence, while they are simultaneous acts, do not constitute cooperation, for it *does not appear* that they *encouraged* or *nerved* her co-accused Martin to commit the crime of arson; her failure to give alarm, being a *subsequent* act, does not make her liable as an accomplice. (People vs. Silvestre and Atienza, 56 Phil. 353, 358)

The responsibility of the accomplice is to be determined by acts of *aid* and *assistance,* either prior to or simultaneous with the commission of the crime, *rendered knowingly for the principal* therein, and not by the mere fact of having been present at its execution, *unless the object of such presence was to encourage the principal or to apparently or really increase the odds against the victim.*

Such an intent, concurring with some overt act, must be specifically shown by the evidence of the prosecution. (Decision of Supreme Court of Spain, June 25, 1886, cited in U.S. vs. Guevara, 2 Phil. 528, 532)

But the advice, encouragement or agreement should not be the determining cause of the commission of the crime by the principal by direct participation; otherwise, the one who gave the advice or encouragement or the one who entered into the agreement would be a principal by inducement. When the accomplice gives an advice or encouragement to, or enters into an agreement with the principal, he knows the principal is going to commit the crime.

Third requisite:

There must be a relation between the criminal act of the principal and the act of the one charged as accomplice.

It is not enough that a person entertains an *identical criminal* design as that of the principal. There must be a relation between the

criminal act of the principal by direct participation and that of the person charged as accomplice.

People vs. De la Cruz
(61 Phil. 162)

Facts: **A young lady was attacked by Reyes, her suitor, by throwing her on the ground and passing his hand over her body. When they learned of the incident, the parents of both parties agreed that the father of Reyes would punish him. In the meantime, the brother of the young lady, not knowing of such agreement, armed himself with a pistol and looked for Reyes to avenge the honor of his sister. In the house of the young lady, where Reyes was about to be punished, she immediately stabbed him on the chest with a pen knife. At the time, the brother of the young lady was under the house, again with his pistol, waiting for Reyes to come down in order to kill him. For the death of Reyes, the brother of the young lady was accused as accomplice.**

Held: **There can be no liability by reason of complicity if there is no relation between the criminal act of the principal by direct participation and that of the person charged as accomplice. The most that could be said against the brother of the young lady, is that he intended to kill the deceased but, even then, he did nothing in connection with his sister's act of attacking and killing said deceased.**

An accomplice may be liable for a crime different from that which the principal committed.

1. **A attacked B with treachery, the attack being sudden and unexpected. When B was mortally wounded, C, father of A, appeared, placed himself upon B's abdomen, and held his hands. Later, D also appeared and held both knees of B, C and D made it possible for A to search the body of B for the latter's revolver. It was *not shown* that C and D knew of the *manner* A attacked B. What they knew was that A had unlawfully attacked and wounded B. It was held that A was guilty of murder qualified by treachery (Art. 248) and C and D were guilty as accomplices in the crime of homicide. (Art. 249) Art. 62, paragraph 4, provides that the circumstances which consist in the material execution of the act or in the means employed to accomplish it (among them being treachery), shall serve to aggravate the liability (or qualify the crime) only of those persons who had knowledge of them at the time of the execution of the**

act or their cooperation therein. (See People vs. Babiera, 52 Phil. 98)

2. A, a NARIC guard, asked C to help him (A) remove from the NARIC warehouse some sacks of rice belonging to the NARIC, and sold them to D.

The qualifying circumstance of grave abuse of confidence which in the case of A makes the crime *qualified theft* (Art. 310) does not apply to C, who was not in confidential relations with the NARIC. C is guilty as accomplice in the commission of the crime of *simple theft* (Art. 308) only. (See People vs. Valdellon, 46 Phil. 245, 252)

Where the appellants may be said to have joined only in the plan to rob, by providing the banca used in the robbery, which makes them accomplices, they are not liable for the killing committed by the principals in the course of the robbery. Having been left in the banca, they could not have tried to prevent the killing, as is required of one seeking relief from liability for assaults committed during the robbery. (People vs. Doble, No. L-30028, May 31, 1982, 114 SCRA 131, 148, 149)

Art. 62, par. 3, provides that aggravating circumstances which arise from the *private relations* of the offender with the offended party shall aggravate the liability (or qualify the crime) of the principals, *accomplices* and accessories as to whom such circumstances are attendant.

Distinguish accomplice from principal in general.

An accomplice is one who does not take a direct part in the commission of the act, who does not force or induce others to commit it, or who does not cooperate in the commission of the crime by another act without which it would not have been accomplished, yet cooperates in the execution of the act by previous or simultaneous actions. (People vs. Silvestre, 56 Phil. 353, 356)

Distinguish an accomplice from a principal by cooperation.

The participation of the offender in a case of complicity, although necessary, is not indispensable as in the case of a co-principal by coop-

eration. For example, if one lends his dagger or pistol to a murderer fully knowing that the latter will commit murder, he undoubtedly cooperates in the commission of the crime of murder with a previous act which, however, cannot be considered indispensable for the reason that even though the offender did not lend his dagger or pistol, the murderer could have obtained it somewhere else or from some other person. In such a case, the participation of the offender is that of an accomplice by virtue of the provisions of this article. (See 1 Viada, Cod. Pen., 370)

Where the accused struck the deceased on the forehead with a piece of wood, rendering the latter unconscious, thereby facilitating the subsequent slaying of the deceased by the other accused, the former must be deemed responsible as an accomplice in the killing. (People vs. Templonuevo, 106 Phil. 1003, 1007)

Note: The accused who struck the deceased on the forehead *must have knowledge of the intention* of the other accused to *kill* the deceased *before* he struck the deceased. If he had no such knowledge, he is not an accomplice in the killing of the deceased. He is principal by direct participation in the crime he personally committed, say, physical injuries.

While the act of holding the victim by Romeo was one of help and cooperation, it is not indispensable for the commission of the offense by the others who boloed the victim, as the hacking could have been committed just the same without his holding the victim. Romeo is only an accomplice. (People vs. Geronimo, No. L-35700, Oct. 15, 1973, 53 SCRA 246, 259)

Note: If there was conspiracy between Romeo and the others, he would be liable as principal, notwithstanding the fact that his cooperation was not indispensable.

Distinguish an accomplice from a principal by direct participation.

(1) In both, there is community of criminal design.

By the overwhelming weight of authority, the same community of purpose and intention is necessary to jus-

tify the conviction of an accused person in the character of accomplice that is necessary to sustain conviction in the character of principal. (People vs. Tamayo, 44 Phil. 38, 49)

We must bear in mind that unity of purpose and of action must exist, not only among the principals themselves, but also between the principals and the accomplices, and that what distinguishes the latter from the former is that the accomplices cooperate in the execution of the offense by previous or simultaneous acts other than those which would characterize them as principals, pursuant to Article 17 of the Revised Penal Code. (People vs. Mañalac, C.A., 46 O.G. 111)

The person who entertains the owner of a house while robbers are assaulting it, so that he will not return thereto until after the robbery has been consummated, is an accomplice in the crime, inasmuch as he cooperated therein by simultaneous act, although not an indispensable one for its accomplishment. (I Viada 370, cited in U.S. vs. Diris, 133, 136)

This case implies that the owner of the house was entertained *at some distance from the place* where the robbery was committed. If that person was in the *same place,* say under the house, talking with the owner of the house in order to distract his attention from what was going on upstairs, he was a principal by direct participation, serving as guard to warn his companions in case there should arise any necessity for giving an alarm.

(2) As to the acts performed, there is no clear-cut distinction between the acts of the accomplice and those of the principal by direct participation. That is why, in case of doubt, it shall be resolved in favor of lesser responsibility, that is, that of mere accomplice.

(3) Between or among principals liable for the same offense, *there must be conspiracy;* but between the principals and the accomplices, *there is no conspiracy.* (People vs. Aplegido, 76 Phil. 571, 575)

Art. 19. *Accessories.* — Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime;

2. By concealing or destroying the body of the crime or the effects or instruments thereof, in order to prevent its discovery;

3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

An accessory does not participate in the criminal design, nor cooperate in the commission of the felony, but, with knowledge of the commission of the crime, he subsequently takes part in three ways: (a) by profiting from the effects of the crime; (b) by concealing the body, effects or instruments of the crime in order to prevent its discovery; and (c) by assisting in the escape or concealment of the principal of the crime, provided he acts with abuse of his public functions or the principal is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime. (People vs. Verzola, No. L-35022, Dec. 21, 1977, 80 SCRA 600, 608)

IMPORTANT WORDS AND PHRASES IN ART. 19.

1. ***"Having knowledge."***

An accessory must have knowledge of the commission of the crime, and having that knowledge, he took part *subsequent* to its commission.

In the absence of positive proof, direct or circumstantial, of his *knowledge* that the goods were of illegal origin or

fraudulently acquired by the vendors at the time of the transaction, a customer who purchases such goods cannot be held criminally responsible as accessory. (People vs. Labrador, C.A., 36 O.G. 166)

Thus, if A buys a stolen property, *not knowing that it was stolen,* he is not liable.

Mere possession of stolen property does not make the accused an accessory where the thief was already convicted.

The legal principle that unexplained possession of stolen articles is sufficient evidence to convict one of theft is not applicable where the principal or author of the robbery has already been convicted and where there is no proof that the alleged accessory knew of the commission of the crime and that he profited himself by its proceeds. It is within the realm of possibilities that he received it honestly, in the legal course of transactions without knowing that it was stolen. (People vs. Racimo, C.A., 40 O.G. 279)

Note: If there has been no one convicted as the thief, the possessor should be prosecuted as principal of the crime of theft.

Entertaining suspicion that a crime has been committed is not enough.

Entertaining *suspicion* that the carabao was a stolen object, is not of itself proof of *knowledge* that a crime has been committed. "Knowledge" and "suspicion" are not synonymous terms. "The word 'suspicion' is defined as being the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all." (Cook vs. Singer, 32 P. 2d. 430, cited in Words and Phrases, Vol. 40, p. 929)

If the accused had entertained some suspicion, it was only at that time when the truck driven by him with its load of a carabao had already left the *camarin* and on the way to Lantangan. But his suspicion was merely the product of his imagination founded on a fact that of itself, and under ordinary circumstances, will not give rise to a belief that the carabao was stolen, because transporting at nighttime is not an uncommon happening in everyday life, especially

when the trip was done in obedience to an order of his superior which he cannot ignore or disobey. The suspicion of Batuampo, under the circumstances, was but a flickering thought based on nothing more than the product of imagination. Upon the foregoing facts, we are of the opinion, and so hold, that the appellant is entitled to acquittal. (People vs. Batuampo, C.A., 62 O.G. 6269-6270)

Knowledge of the commission of crime may be acquired subsequent to the acquisition of stolen property.

U.S. vs. Montano
(3 Phil. 110)

Facts: The robbers took and carried away carabaos belonging to another. These animals were found in the possession of A who acquired them without knowing that they had been illegally taken. When the owners of the carabaos informed A that they were illegally deprived of their animals, A demanded the payment of one-half of what he had paid for them. The owners promised to come back with the money. When the owners came back, A informed them that he had returned the animals to the persons from whom he had bought them.

Held: To declare the accused guilty as accessory, it is not necessary that he should have acquired the property, knowing at that time that it had been stolen. It is sufficient that after acquiring that knowledge, he concealed or disposed of the property, thereby depriving the owner thereof.

Knowledge of the commission of crime may be established by circumstantial evidence.

When a person knew that his co-accused had no legitimate business; that some of the goods were taken to him as early as 5:00 to 6:00 o'clock in the morning; and that said co-accused was neither a barber nor the owner of a *sari-sari* store such as would induce in him a rational belief that the latter's possession of said goods (among them barber's utensils) was legitimate; the conclusion is that he had knowledge of their illegal source. (People vs. Dalena, CA-G.R. Nos. 11387-R and 11388-R, Oct. 25, 1954)

2. *"Commission of the crime."*

The crime committed by the principal must be proved beyond reasonable doubt.

Thus, where it is doubtful whether a woman killed her husband maliciously, as it is possible that she might have acted in self-defense, the fact that their servant took part in the burial of the deceased in a secluded place would not make the servant an accessory in parricide, an *offense* which was *not conclusively proven.* (See People vs. Pardito, G.R. No. L-3234, March 1, 1952 [Unrep.])

3. *"Without having participated therein either as principals or accomplices."*

A attacked and fatally wounded B. Seeing B fall to the ground as a result of the fatal blow made by A, C and D hit B with a piece of wood each was carrying. When B died, A, C, and D buried the corpse to prevent the authorities from discovering the crime.

Can A be held liable as an accessory? No, because he already participated as principal. Are C and D accessories? No, because they already participated as accomplices.

4. *"Take part subsequent to its commission."*

The accessory takes part *after* the crime has been committed. Note that paragraphs Nos. 1, 2 and 3 of Art. 19, which describe the different acts of the accessory, refer to those acts performed *after* the crime had been committed.

Specific acts of accessories.

1. *By profiting themselves or assisting the offender to profit by the effects of the crime.*

The crime committed by the principal under this paragraph may be any crime, provided it is not a light felony.

a. *By profiting themselves by the effects of the crime.*

Examples:

A person who received any property from another, and used it, knowing that the same had been stolen, is guilty of the crime of theft as an accessory. (People vs. Tanchoco, 76 Phil. 463, 467)

In murder, one who shared in the reward given for the commission of the crime (U.S. vs. Empainado, 9 Phil. 613) profited by the effects of the crime.

But one who received ₱200 from the owner of a stolen jeep, as a reward for locating it in the possession of someone who had bought it, is not an accessory, because the amount of P200 was in the nature of a reward and not fruits or effects of the crime. (People vs. Yatco, C.A., 51 O.G. 260)

The accessory should not take the property without the consent of the principal.

In profiting by the effects of the crime, the accessory must receive the property from the principal. He should not take it without the consent of the principal. If he took it without the consent of the principal, he is not an accessory but a principal in the crime of theft. Theft may be committed by taking with intent to gain, personal property from one who stole it, without the latter's consent.

When is profiting by the effects of the crime punished as the act of principal, and not the act of accessory?

When a person knowingly acquired or received property taken by the brigands. (Art. 307, Revised Penal Code)

b. ***Assisting the offender to profit by the effects of the crime.***

Examples:

A person who receives any property from another, which he knows to have been stolen, and sells the same for the thief to whom he gives the proceeds of the sale, is guilty of the crime of theft, as an accessory. (U.S. vs. Galanco, 11 Phil. 575)

In kidnapping for ransom, those who acted as runners or couriers in obtaining the ransom money (People vs. Magsino, G.R. No. L-3649, Jan. 29, 1954) assisted the offenders to profit by the effects of the crime.

One who takes part in cattle rustling by profiting himself by its effects with knowledge of the crime is only an accessory after the fact. (Taer vs. Court of Appeals, G.R. No. 85204, June 18, 1990, 186 SCRA 598, 604-605)

An accessory should not be in conspiracy with the principal.

A conspired with others to steal certain goods in the customhouse. A agreed to pay, as in fact he paid them, a substantial sum of money upon delivery of the stolen goods in his warehouse from the wagons on which his co-conspirators loaded the goods at the customhouse. It was held that A was guilty of the crime of theft as a principal and not merely as an accessory. (U.S. vs. Tan Tiap Co., 35 Phil. 611)

2. ***By concealing or destroying the body of the crime to prevent its discovery.***

The crime committed by the principal under this paragraph may be any crime, provided it is not a light felony.

"Body of the crime."

Same as *"corpus delicti."*

It means that a specific offense was in fact committed by someone. (People vs. Marquez, 43 O.G. No. 5)

Examples of concealing the body of the crime.

a. **Those who assist in the burial of the victim of a homicide to prevent the discovery of the crime incur the responsibilities of accessories. (U.S. vs. Leal, 1 Phil. 118)**

In homicide or murder, it is necessary to prove that a particular person is the victim. The victim must be properly identified. Thus, if the body of the victim cannot be found, the crime cannot be proved. Hence, the concealing of the body of the victim is *in effect* concealing the crime itself.

b. **Furnishing the means to make it appear that the deceased was armed, by placing a weapon in his hand when already dead, and that it was necessary to kill him on account of his resistance to the constabulary men; or making it appear that the deceased who had been arrested ran away. (U.S. vs. Cuison, 20 Phil. 433; People vs. Saladino, G.R. No. L-11893, May 23, 1958)**

This example may serve to illustrate *"destroying the body of the crime."*

The mere act of a person of *carrying* the cadaver of one unlawfully killed, when it was buried to prevent the discovery of the crime, *is sufficient* to make him responsible as an accessory under paragraph 2 of Art. 19. (People vs. Galleto, 78 Phil. 820)

There must be an attempt to hide the body of the crime.

With respect to appellant A.R., he should be acquitted. According to his affidavit — the only evidence against him — he was merely ordered to board the jeepney, not knowing, not even suspecting, the reason or purpose of the ride. He did not take part in the killing, neither did he profit by it, nor try to conceal the same from the authorities. It is true that he helped his companions in removing the two dead bodies from the jeepney and throwing them into the ditch; but there was no attempt to bury or hide said bodies, not even cover them with grass or bushes. In fact, the evident design and plan of the culprits as unfolded during the trial was not to hide the bodies, but to just leave them on the roadside so as to make it appear that the two victims were killed by Huks in an encounter with the Government forces. (People vs. De la Cruz, 100 Phil. 624, 633)

Concealing or destroying the effects or instruments of the crime to prevent its discovery.

A person who received personal property knowing that it had been stolen, for the purpose of concealing the same, as in fact he concealed it, is guilty of the crime of theft as an accessory. (U.S. vs. Villaluz, 32 Phil. 376)

He is guilty of the crime of homicide as an accessory, under paragraph No. 2 of Art. 19, who received a pistol or a knife, knowing that it had been used in killing the deceased, and concealed it.

The stolen property is the effect of the crime. The pistol or knife is the instrument of the crime.

A person who destroyed the ladder which he knew had been used by another in climbing the wall of the house where

the latter had committed robbery, is guilty of the same crime as accessory. The ladder is an instrument of the crime.

"To prevent its discovery."

The pronoun "its" refers to the word "crime." In the case of *U.S. vs. Villaluz,* 32 Phil. 376, 380, the Supreme Court stated: "Such facts also show that her concealment of said articles was for the purpose of preventing and defeating the discovery of the crime."

Note that the concealing or destroying of the body of the crime, the effects or instruments thereof, must be done in order to prevent the discovery of the crime. Note also that what is concealed is the body of the crime, the effects or instruments thereof, not the principal who committed the crime. If the principal is concealed, paragraph 3 of Art. 19 applies.

Simply assisting the principal in bringing the body down the house to the foot of the stairs and leaving said body *for anyone to see,* cannot be classified as an attempt to conceal or destroy the body of the crime. The concealing or destroying of the body of the crime, the effects or instruments thereof, must be done to prevent the discovery of the crime. In this case, the body was left at the foot of the stairs at a place where it was easily visible to the public. (People vs. Verzola, No. L-35022, Dec. 21, 1977, 80 SCRA 600, 609)

Is a person who merely received a property knowing it to be stolen liable as an accessory?

In *People vs. Tanchoco,* 76 Phil. 463, it was held: "A person who receives any property from another, knowing that the same had been stolen, is guilty of the crime of theft, as an accessory after the fact *(encubridor).* A person who receives any property from another, which he knows to have been stolen, for the purpose of selling the same and to share in the proceeds of the sale, is guilty of the crime of theft, as an accessory after the fact. (U.S. vs. Galanco, 11 Phil. 575) In the same manner that a person who receives stolen property for the purpose of concealing the same, is likewise guilty of the crime of theft as an accessory after the fact." (U.S. vs. Villaluz, 32 Phil. 376)

Note: Is it sufficient that the purpose to profit exist? Is it sufficient that there is a purpose to conceal?

3. *By harboring, concealing or assisting in the escape of the principal of the crime.*

Two classes of accessories are contemplated in paragraph 3 of Article 19.

a. *Public officers* who harbor, conceal or assist in the escape of the principal of *any crime* (not light felony) *with abuse of his public functions.*

Requisites:

(1) The accessory is a *public officer.*

(2) He *harbors, conceals,* or *assists* in the escape of the principal.

(3) The public officer acts *with abuse* of his *public functions.*

(4) The crime committed by the principal is any crime, provided it is not a light felony.

b. *Private persons* who harbor, conceal or assist in the escape of the *author* of the crime — *guilty of treason, parricide, murder,* or *an attempt against the life of the President,* or who is known to be *habitually guilty* of some other crime.

Requisites:

(1) The accessory is a *private person.*

(2) He *harbors, conceals* or *assists* in the *escape* of the *author* of the crime.

(3) The crime committed by the principal is either: (a) treason, (b) parricide, (c) murder, (d) an attempt against the life of the President, or (e) that the principal *is known* to be habitually guilty of some other crime.

"Habitually guilty of some other crime."

Thus, if a person was previously punished three times for less serious physical injuries and now commits estafa, the one

who helps in his escape is liable as an accessory although the accessory is a private individual.

But the accessory must have knowledge of the principal being habitually guilty of some other crime, because the law says "or is known to be habitually guilty of some other crime."

A mayor who refused to prosecute offender is accessory.

Abusing his public office, the president of the town of Cabiao refused to prosecute the crime of homicide and thus made it possible for the principal offender to escape. He refused to make an investigation of the serious occurrence, of which complaint was made to him. The municipal president was found guilty as accessory. (U.S. vs. Yacat, 1 Phil. 443)

One who kept silent with regard to the crime he witnessed is not an accessory.

A person who saw the commission of a crime, say murder, by another whom he knew, kept silent with regard to it, and did not report it to any of the authorities is not liable even as an accessory. (U.S. vs. Caballeros, 4 Phil. 350; U.S. vs. Callapag, 21 Phil. 262)

The reason for this ruling is that such an omission is not one of the different acts enumerated in Art. 19 of the Code. Such omission is not harboring, or concealing or assisting in the escape of the principal. (Art. 19, par. 3)

But if that person went to the authorities and volunteered false information which tended affirmatively to deceive the prosecuting authorities and thus to prevent the detection of the guilty parties and to aid them in escaping discovery and arrest, he is liable as an accessory. (U.S. vs. Romulo, 15 Phil. 408, 415)

Where the accused was present when her husband was shot, but she did not only enjoin her daughter not to reveal to anyone what the latter knew, but also warned her daughter that she would kill her if she would tell it to somebody, and when the peace officers who repaired to their house to investigate what had happened asked her, she (the accused) claimed that she had no suspects in mind, the accused thereby concealed or assisted in the escape of the principal in the crime, which made her liable as an accessory, under paragraph

3 of Article 19 of the Revised Penal Code, to the crime of murder. (People vs. Talingdan, No. L-32126, July 6, 1978, 84 SCRA 19, 35)

Accessories' liability is subordinate and subsequent.

Where the alleged incendiary was acquitted, it is neither proper nor possible to convict the defendant as accessory. The responsibility of the accessory is subordinate to that of the principal in a crime, because the accessory's participation therein is subsequent to its commission, and his guilt is directly related to that of the principal delinquent in the punishable act. If then the facts alleged are not proven in the prosecution instituted, or do not constitute a crime, no legal grounds exist for convicting a defendant as an accessory after the fact for a crime not perpetrated. (U.S. vs. Mendoza, 23 Phil. 194, 196)

When is conviction of accessory possible, even if principal is acquitted?

Conviction of an accessory is possible notwithstanding the acquittal of the principal, if the crime was in fact committed, but the principal was not held criminally liable, because of an exempting circumstance (Art. 12), such as insanity or minority. In exempting circumstances, there is a crime committed. Hence, there is a basis for convicting the accessory.

Thus, if a minor, eight years old, stole a ring worth P500.00 and B, knowing that it has been stolen, buys it for P200.00, B is liable as accessory in the crime of theft, even if the principal (the minor) is exempt from criminal liability. (See U.S. vs. Villaluz, 32 Phil. 376)

Apprehension and conviction of the principal is not necessary for the accessory to be held criminally liable.

Even if the principal is still unknown or at large, the accessory may be held responsible provided the requisites prescribed by law for the existence of the crime are present and that someone committed it.

May the trial of an accessory proceed without awaiting the result of the separate charge against the principal? The answer is in the affirmative. The corresponding responsibilities of the principal, accomplice and accessory are distinct from each other. As long as

the commission of the offense can be duly established in evidence, the determination of the liability of the accomplice or accessory can proceed independently of that of the principal. (Vino vs. People, G.R. No. 84163, Oct. 19, 1989, 178 SCRA 626, 632)

When the alleged principal is acquitted, may the accessory be convicted?

In *United States vs. Villaluz, supra,* a case involving the crime of theft, it was ruled that notwithstanding the acquittal of the principal due to the exempting circumstance of *minority* or *insanity,* the accessory may nevertheless be convicted if the crime was in fact established.

Corollary to this is *United States vs. Mendoza, supra,* where it was held in an arson case that the acquittal of the principal must likewise result in the acquittal of the accessory where it was shown that *no crime* was committed inasmuch as the fire was the result of an accident. Hence, there was no basis for the conviction of the accessory.

Where the commission of the crime and the responsibility of the accused as an accessory are established, the accessory can be convicted, notwithstanding the acquittal of the principal. (Vino vs. People, *supra,* at 632-634)

People vs. Billon
(C.A., 48 O.G. 1391)

Facts: Felicisimo Billon alias Guillermo Billon was prosecuted, together with Gorgonio Advincula *who was not brought to trial for being at large,* in the Court of First Instance of Pangasinan for murder. Billon positively testified that it was Advincula who shot De Castro to death. On the other hand, he admitted that he had harbored him at his house on 861 B. Hidalgo, Manila, after the commission of the crime, which was clearly one of murder. Billon also admitted that he assisted in the escape of Advincula. Billon was found guilty as accessory instead of as principal. On appeal, he contended that he could not be declared as an accessory because Advincula, the principal, was not yet tried and found guilty.

Held: Art. 19, paragraph 3, is stated in Spanish as follows:

"3. *Albergando, ocultando o proporcionando en fuga al autor del delito, cuando el encubridor lo hace con abuso de funciones publicas o*

cuando aquel lo fuere de traicion, parricidio, asesinato, atentado contra la vida del Jefe Ejecutivo, o reo conocidamente habitual de otro delito." (las cursivas nuestras.)

From the wordings of the above quoted legal provision, *it is not necessary that the principal should be first declared guilty before the accessory can be made liable as such.* Apparently, the opposite is the rule, as contended by the appellant's counsel, following the English text of the law.

> "3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is *guilty* of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime." (Italics ours.)

However, the Spanish text should prevail.

The accused cannot be held liable as accessory under paragraph 3 of Art. 19, if the principal charged with murder died before trial, because had he been alive he might have been found guilty only of homicide.

We note at once that a person may be held guilty as an accessory after the fact under pars. 1 and 2 of Article 19, *even if the principal of the crime is unknown* or *it cannot be proven who committed the crime,* provided that the accessory after the fact knew of the perpetration of the offense, because under the phraseology of the said paragraphs, it seems to us clear enough that the prosecution prove that a crime was committed without being put to prove who committed it, and that the person sought to be held guilty as accessory after the fact profited from the effects thereof or concealed the body of the crime or the instruments used in the commission thereof in order to impede its discovery. Thus, a person, knowing the illegal source of a thing that is stolen, benefits therefrom, is guilty as an accessory after the fact, even if the author of the theft has not been discovered. But Barlam is here charged with having assisted in the escape of Balisi, not with having profited from, or having concealed the effects or instruments of the crime. The principle we have just stated cannot apply to a person who is sought to be implicated as an accessory after the fact because he concealed the principal of the crime or assisted him in escaping when the said principal is guilty of treason, parricide, murder, an attempt on the life of the Chief Executive or is otherwise habitually known

to have committed another crime. And we draw this conclusion from the very wording of the law itself. It is our view that *not only must the crime be proven, but as well the identity of the author thereof* must be established, and both these in a *full-dress criminal trial.* In this case before us, Balisi was not tried, nor was final judgment rendered against him, because of his death prior to arraignment. (People vs. Barlam, C.A., 59 O.G. 2474)

Reasoning in the Barlam case refuted.

As far as the accused who actually stands trial and is found guilty as accessory is concerned, he is given a full hearing. Whether the principal is brought to court or is at-large, the prosecution has to prove the commission of the crime charged, with the same quantum of evidence, and the participation in it of all the persons named in the information. The accessory is accorded the opportunity to refute the evidence of the prosecution establishing the crime and the participation of the alleged principal. Upon the evidence adduced by both parties and for purposes of conviction of the accessory, the court can make a finding as to whether the crime charged has been established and the other accused is the principal thereof, without pronouncing judgment on him. (People vs. Inovero, 65 O.G. [March 31, 1969 issue] 3168)

The arraignment, trial and conviction of accessory during the pendency of a separate case against the principal are null and void.

The arraignment, trial and conviction of an accessory after the fact without the principal of the crime having first been tried and convicted in the separate case filed and pending at the time of the arraignment, trial and decision of the case against the accessory, is not proper and violates the legal system of procedural orderliness.

In view of all the foregoing, the arraignment, trial and conviction of the appellant Gaw Lin are hereby declared null and void. The case is remanded to the court below so that, in the event the defendants in Criminal Case No. 68874 are tried and convicted by final judgment of the crime of qualified theft, the defendant Gaw Lin in Criminal Case No. 71278, who allegedly purchased the stolen goods with knowledge of the commission of the crime, may be arraigned and tried, and the proper judgment rendered by the trial court. (People vs. Gaw Lin *alias* Juan Gaulin, C.A., 63 O.G. 3821, 3824)

But when the principal is not yet apprehended, the accessory may be prosecuted and convicted.

In a case, the accused was prosecuted as accessory to the crime of qualified theft by profiting himself and/or assisting the offender to profit by the effects of the crime, under par. 1 of Art. 19.

It may be asked whether or not appellant may be legally convicted as accessory after the fact of the crime of qualified theft, when up to now the principal has not yet been prosecuted for failure to identify and apprehend him. We believe that the answer should be in the affirmative. The crime of qualified theft has been proved; the nonprosecution of the principal for the reason that his identity has not as yet been discovered, cannot serve as basis to free appellant from the liability incurred by him as an accessory after the fact. (People vs. Ramos, C.A., 62 O.G. 6862)

For one to be found guilty and punished as an accessory, it is not necessary that there be a principal duly convicted (Cuello Calon, Codigo Penal, Tomo I, pages 515-516, Octava Edicion). Neither the letter nor the spirit of the law requires that the principal be convicted before one may be punished as an accessory. As long as the *corpus delicti* is proved and the accessory's participation as such shown, he can be held criminally responsible and meted out the corresponding penalty. (Inovero vs. Coronel, C.A., 65 O.G. 3160)

Can there be an accessory even after the principal was convicted?

Yes, by presenting oneself to serve out the sentence in lieu of the real culprit. But the crime committed by the real culprit must be treason, parricide, murder, or an attempt to take the life of the President, that he is known to be habitually guilty of some other crime, because this is possible only when the accessory is a private individual.

Heavy penalties for accessories in robbery and theft.

PRESIDENTIAL DECREE NO. 1612

ANTI-FENCING LAW OF 1979

SECTION 1. Title. — This decree shall be known as the Anti-Fencing Law.

ANTI-FENCING LAW OF 1979

SEC. 2. **Definition of Terms.** — The following terms shall mean as follows:

a. **"Fencing"** is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

b. "Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing.

SEC. 3. **Penalties.** — Any person guilty of fencing shall be punished as hereunder indicated:

a. The penalty of *prision mayor,* if the value of the property involved is more than ₱12,000 pesos but not exceeding ₱22,000 pesos; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional ₱10,000 pesos, but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed *reclusion temporal* and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.

b. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the property robbed or stolen is more than ₱6,000 pesos but not exceeding ₱12,000 pesos.

c. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property involved is more than P200 pesos but not exceeding ₱6,000 pesos.

d. The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property involved is over ₱50 pesos but not exceeding ₱200 pesos.

e. The penalty of *arresto mayor* in its medium period if such value is over five (5) pesos but not exceeding P50 pesos.

f. The penalty of *arresto mayor* in its minimum period, if such value does not exceed P5 pesos.

SEC. 4. **Liability of Officials of Juridical Persons.** — If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

SEC. 5. Presumption of Fencing. — Mere possession of any goods, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

SEC. 6. Clearance/Permit to Sell/Used Second Hand Articles. — For purposes of this Act, all stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value obtained from an *unlicensed dealer or supplier thereof,* shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police* in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as fence.**

SEC. 7. Repealing Clause. — All laws or parts thereof, which are inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.

SEC. 8. Effectivity. — This Decree shall take effect upon approval.

Done in the City of Manila, this 2nd day of March, in the year of Our Lord, nineteen hundred and seventy-nine.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

Note: **In other crimes punishable by the Revised Penal Code, the penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony. (Art. 53, Revised Penal Code)**

Accessory distinguished from principal and from accomplice.

1. ***The accessory does not take direct part or cooperate* in, or *induce,* the commission of the crime.**

*Now, Philippine National Police (PNP).
**Now, Director General, PNP.

2. The accessory *does not cooperate* in the commission of the *offense by acts either prior thereto or simultaneous* therewith.

3. The participation of the accessory in all cases always takes place *after the commission of the crime.*

An accessory does not participate in the criminal design, nor cooperate in the commission of the felony, but, with knowledge of the commission of the crime, he subsequently takes part in any of the three ways mentioned in Article 19. (People vs. Verzola, No. L-35022, Dec. 21, 1977, 80 SCRA 608)

Art. 20. *Accessories who are exempt from criminal liability.* — The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.

Ground for exemption.

The exemption provided for in this article is based on the *ties of blood* and the *preservation of the cleanliness* of one's name, which compels one to conceal crimes committed by relatives so near as those mentioned in this article.

Principals related to accessories exempt from criminal liability.

An accessory is exempt from criminal liability, when the *principal is his* —

(1) spouse, or

(2) ascendant, or

(3) descendant, or

(4) legitimate, natural or adopted brother, sister or relative by affinity within the same degree.

Even if only two of the principals guilty of murder are the brothers of the accessory and the *others are not related to him,* such accessory is exempt from criminal liability. It appeared that some time after the crime was committed, the accused (accessory) accompanied some of the other accused to the place where the bodies of the victims were concealed on the night of the murder, and helped them to remove and bury these bodies at another and more remote spot. (U.S. vs. Abanzado, 37 Phil. 658, 669)

Nephew or niece not included among such relatives.

A nephew, who had witnessed the killing by his uncle of the deceased, helped in burying the dead body. Is the nephew criminally liable as an accessory? Yes, because the relationship of uncle and nephew is not included in Art. 20.

In the case of *U.S. vs. Insierto,* 15 Phil. 358, it was held that the relationship between uncle and niece does not come within any of the degrees of relationship of spouse, or ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree.

Accessory is not exempt from criminal liability even if the principal is related to him, if such accessory (1) profited by the effects of the crime, or (2) assisted the offender to profit by the effects of the crime.

The last part of Article 20 says, "with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article." The preceding article is Article 19.

Paragraph 1 of Article 19, covers the accessories who take part subsequent to the commission of the crime in any of the following manners:

1. By profiting by the effects of the crime.
2. By assisting the offender to profit by the effects of the crime.

If the accessory has performed any of those acts, he is liable, even if the principal is his spouse, ascendant, descendant, brother or sister, or father-in-law, or son-in-law, or brother-in-law, because such acts are prompted not by affection but by a *detestable* greed.

The daughter stole the earrings and the mother pawned them as a pledge for her debt. *Held:* The mother is an accessory for although she had no part in stealing the earrings, she took steps to obtain gain and profit from the effects of the crime. The relationship does not exempt her from liability, because she assisted in obtaining profit from the theft. (U.S. vs. Deuda, 14 Phil. 595, 601)

Only accessories under paragraphs 2 and 3 of Article 19 are exempt from criminal liability if they are related to the principals.

A son who helps his father bury the body of a person whom the latter has murdered, in order to prevent its discovery; a grandson who, having knowledge of the commission of robbery by his grandfather, *conceals* or *destroys* the body of the crime, or the effects or instruments thereof, in order to prevent its discovery; and a person who *harbors*, *conceals*, or *assists* in the escape of his brother who committed treason, do not incur any liability, because the acts of the accessories in those cases are covered by paragraphs 2 and 3 of Art. 19. Not one of them falls under paragraph 1 of Art. 19, because none of those accessories profits or assists the offender to profit by the effects of the crime.

Does the concealing of the effects of the crime, not to prevent its discovery, but to obtain gain, fall under paragraph 2 of Art. 19?

Paragraph 2 of Article 19 requires that the purpose of the concealment is to *prevent the discovery of the crime.* On the other hand, paragraph 1 says, *"by profiting themselves by the effects of the crime."* Does paragraph 1 mean that the accessory should *actually* profit from the effects of the crime? That seems to be the meaning. But suppose a husband conceals the property stolen by his wife in order to profit from it later, is he liable as accessory?

It would seem that he may be held liable as accessory, because his said act is prompted not by affection but by a detestable greed. In that case, his purpose in concealing the stolen property is not to prevent the discovery of the crime.

But suppose A, who committed parricide by killing his wife, went to his adopted brother to hide in the latter's house and his adopted brother harbored and concealed A because he gave his adopted brother

₱1,000.00, is the adopted brother an accessory? Is he criminally liable?

He is an accessory, because knowing that A committed parricide, he harbored and concealed him. But he is not criminally liable, because he did not profit by the effects of the crime. The ₱1,000.00 received by him from A was not the effect of the crime of parricide.

Liability of a public officer when related to the principal.

Is a public officer who, with evident abuse of his office, furnished the means of escape to his brother who had committed murder criminally liable as accessory?

Such a public officer does not incur any criminal liability. Ties of blood or relationship constitutes a more powerful incentive than the call of duty.

Furthermore, Article 20 does not grant the benefits of exemption *only* to accessories who *profited or helped the offender profit* by the effects of the crime. This is the only case where the accessory who is related to the offender incurs criminal liability.

Title Three
PENALTIES

Chapter One
PENALTIES IN GENERAL

Penalty, defined.

Penalty is the suffering that is inflicted by the State for the transgression of a law.

Concept of penalty.

Penalty in its general sense signifies *pain;* especially considered in the juridical sphere, it means suffering undergone, because of the action of human society, by one who commits a crime. (Pessina, *Elementos de Derecho Penal,* pp. 375-376)

Different juridical conditions of penalty:

1. **Must be *productive of suffering,* without however affecting the integrity of the human personality.**
2. **Must be *commensurate* with the offense — different crimes must be punished with different penalties.**
3. **Must be *personal* — no one should be punished for the crime of another.**
4. **Must be *legal* — it is the consequence of a judgment according to law.**
5. **Must be *certain* — no one may escape its effects.**
6. **Must be *equal* for all.**
7. **Must be *correctional.***

These are the juridical conditions of penalty according to the classical school on which the Code is mainly based.

What is the purpose of the State in punishing crimes?

To secure justice. The State has an existence of its own to maintain, a conscience of its own to assert, and moral principles to be vindicated. Penal justice must therefore be exercised by the State in the service and satisfaction of a duty, and rests primarily on the moral rightfulness of the punishment inflicted. (Albert)

Theories justifying penalty:

(a) *Prevention* — The State must punish the criminal to prevent or suppress the danger to the State arising from the criminal acts of the offender.

(b) *Self-defense* — The State has a right to punish the criminal as a measure of self-defense so as to protect society from the threat and wrong inflicted by the criminal.

(c) *Reformation* — The object of punishment in criminal cases is to correct and reform the offender.

(d) *Exemplarity* — The criminal is punished to serve as an example to *deter* others from committing crimes.

(e) *Justice* — That crime must be punished by the State as an act of retributive justice, a vindication of absolute right and moral law violated by the criminal.

Social defense and exemplarity justify the penalty of death.

When a person has proved himself to be a dangerous enemy of society, the latter must protect itself from such enemy by taking his life in retribution for his offense and as an example and warning to others. (People vs. Carillo, 85 Phil. 611, 635)

The penalty under this Code has three-fold purpose.

(a) *Retribution or expiation* — The penalty is commensurate with the gravity of the offense.

(b) *Correction or reformation* — as shown by the rules which regulate the execution of the penalties consisting in deprivation of liberty.

(c) *Social defense* — shown by its inflexible severity to recidivists and habitual delinquents.

Constitutional restriction on penalties.

The Constitution directs that "excessive fines shall not be imposed, nor cruel and unusual punishment inflicted."

The punishment is "cruel and unusual" when it is so disproportionate to the offense committed as to shock the moral sense of all reasonable men as to what is right and proper under the circumstances.

Example: Those inflicted at the whipping post, or in pillory, burning at the stake, breaking on the wheel, and the like. (People vs. De la Cruz, 92 Phil. 906, 908)

Appellant, who has been tried, convicted, and sentenced to suffer one month imprisonment for collecting without legal authority bets for a daily double race, an offense penalized by Rep. Act No. 3063 by "a fine of not less than One thousand pesos nor more than Two thousand pesos or by imprisonment for not less than one month or more than six months, or both, in the discretion of the court," maintains that the penalty as applied to his offense infringes the constitutional provision against excessive or cruel and unusual punishment. *Held:* Neither fines nor imprisonment constitute in themselves cruel and unusual punishment, for the constitutional stricture has been interpreted as referring to penalties that are inhuman and barbarous, or shocking to the conscience (Weems vs. U.S., 217 U.S. 349) and fines or imprisonment are definitely not in this category. (People vs. Dionisio, G.R. No. L-25513, March 27, 1968, 22 SCRA 1299, 1301)

Art. 21. *Penalties that may be imposed.* — No felony shall be punishable by any penalty not prescribed by law prior to its commission.

Art. 21 simply announces the policy of the State as regards punishing crimes.

This article is general in its provisions and in effect prohibits the Government from punishing any person for any felony with any penalty which has not been prescribed by the law.

It has no application to any of the provisions of the Revised Penal Code for the reason that for every felony defined in the Code, a penalty has been prescribed.

The provisions of Art. 21 can only be invoked when a person is being tried for an act or omission for which no penalty has been prescribed by law.

Art. 21 is not a penal provision. It neither defines a crime nor provides a punishment for one. It has simply announced the policy of the Government with reference to the punishment of alleged criminal acts. It is a guaranty to the citizen of this country that no act of his, will be considered criminal until the Government has made it so by law and has provided a penalty. It is a declaration that no person shall be subject to criminal prosecution for any act of his until after the State has defined the crime and has fixed a penalty therefor. (U.S. vs. Parrone, 24 Phil. 29, 35)

Reason for the provision.

An act or omission cannot be punished by the State if at the time it was committed there was no law prohibiting it, because a law cannot be rationally obeyed unless it is first shown, and a man cannot be expected to obey an order that has not been given.

No penalty prescribed by law prior to its commission.

A was charged with "fraud or infringement of literary rights or property," because A allegedly reproduced and sold fraudulent copies of another's literary work. At that time, we had no copyright law. Can A be punished for such act? No, because there was no law *at that time* defining and penalizing the act. (U.S. vs. Yam Tung Way, 21 Phil. 67)

Subsidiary penalty for a crime cannot be imposed, if it was "not prescribed by law prior to its commission."

U.S. vs. Macasaet
(11 Phil. 447)

Facts: Macasaet was charged with and convicted of a violation of the Internal Revenue Law (Act No. 1189) punishable by a fine. That

law did not provide imprisonment for failure to pay the fine by reason of insolvency. While the case was pending trial, Act No. 1732 took effect. This new law provides subsidiary imprisonment for failure to pay the fine under the old law (Act No. 1189). The court in imposing the payment of the fine also imposed subsidiary imprisonment in view of the provisions of the new law.

Held: Inasmuch as Act No. 1732 did not go into force until after the commission of the crime by Macasaet, subsidiary imprisonment cannot be lawfully imposed.

Art. 22. *Retroactive effect of penal laws.* — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Art. 22 is not applicable to the provisions of the Revised Penal Code.

This provision clearly has no direct application to the provisions of the Revised Penal Code. Its application to the Revised Penal Code can only be invoked where some former or subsequent law is under consideration. It must necessarily relate (1) to penal laws existing prior to the Revised Penal Code, in which the penalty was less severe than those of the Code; or (2) to laws enacted subsequent to the Revised Penal Code, in which the penalty is more favorable to the accused.

It is not believed, therefore, that the Legislature in enacting Art. 10 (first clause) of the Revised Penal Code intended to provide that Art. 22 should not be applicable to special laws.

If by an amendment to the Revised Penal Code or by a later special law, the punishment for an act is made less severe than by the provisions of the Code, then the accused person might invoke the provisions of Art. 22. (See U.S. vs. Parrone, 24 Phil. 29, 35-36)

General rule is to give criminal laws prospective effect.

Before Art. 365 of the Revised Penal Code was amended, slight physical injuries (a light felony) through reckless imprudence was not

punishable. On September 21, 1954, the offended party suffered slight physical injuries through the reckless imprudence of the accused. On June 21, 1957, before the case against the accused could be finally decided, Republic Act No. 1790 was approved, amending Art. 365 and making slight physical injuries through reckless imprudence punishable. It was held that since the act involved occurred long before the enactment of the amendatory legislation, it cannot be applied as it is axiomatic that a criminal law may not be given retroactive effect. (People vs. Changco, C.A., 54 O.G. 6749)

Exception — to give them retroactive effect when favorable to the accused.

Before Republic Act No. 587, amending the Motor Vehicle Law took effect (on January 1, 1951), Section 68 of the Motor Vehicle Law specifically provides that conviction thereunder shall not bar prosecution for other offenses under another law.

The accused, driver of a bus, was convicted of the crime of homicide with serious physical injuries through reckless imprudence for the death of one passenger and for the injuries suffered by two other passengers of the bus. He was also convicted of the crime of damage to property through reckless imprudence for the destruction caused to the other bus. The act of the accused which gave rise to the two crimes occurred before Republic Act No. 587 took effect. The information for homicide with serious physical injuries alleged facts sufficient to constitute such crime as that defined and penalized by Section 67(d) of the Motor Vehicle Law, whereas the information for damage to property is under Art. 365 of the Code.

As amended, the Motor Vehicle Law provides in its Section 67(d) that "if, as the result of negligence or reckless or unreasonably fast driving any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver at fault shall, upon conviction, be punished under the provisions of the Penal Code."

It was held that although Republic Act No. 587 took effect after the incident in question, the same may be applied, it being more favorable to the accused. (Lapuz vs. Court of Appeals, 94 Phil. 710, 713)

Republic Act No. 587 is favorable to the accused, because instead of being liable for two separate crimes under the Motor Vehicle Law

and under the Code, respectively, he is liable for one complex crime under the Code only.

The exception applies to a law dealing with prescription of crime.

Art. 22 applies to a law dealing with prescription of an offense which is intimately connected with that of the penalty, for the length of time for prescription depends upon the gravity of the offense. (People vs. Moran, 44 Phil. 387, 400)

When the new law reduces the period of prescription of criminal actions or establishes easier requirements to give the prescription effect, the reduction conceded by the new law implies an acknowledgment on the part of the sovereign power that the more severe requirements of the former law were unjust in regard to the essence of the criminal action. (People vs. Parel, 44 Phil. 437, 442)

Reason for the exception.

The sovereign, in enacting a subsequent penal law more favorable to the accused, has recognized that the greater severity of the former law is unjust. The sovereign would be inconsistent if it would still enforce its right under conditions of the former law, which has already been regarded by conscientious public opinion as juridically burdensome. (People vs. Moran, 44 Phil. 387, 414)

The new law may provide otherwise.

Thus, Rep. Act No. 4661, reducing the period of prescription of criminal action for libel from two years to one year, specifically provides that "The provisions of this amendatory Act shall not apply to cases of libel already filed in court at the time of approval of this amendatory Act."

Revised Penal Code was not given retroactive effect.

People vs. Carballo
(62 Phil. 651)

Facts: On January 12, 1929, the accused who had been convicted of bigamy accepted a conditional pardon extended to him by the Governor General. During that year, he committed violations of the Revised Ordinances of Manila and was convicted thereof by final judgment on March 18, 1931.

Prior to January 1, 1932, when the Revised Penal Code took effect, there was no law punishing the violation of a conditional pardon as a crime.

Held: The provisions of the Revised Penal Code cannot be given retroactive effect.

Giving a law retroactive effect, if unfavorable to accused, will violate the constitutional inhibition as to *ex post facto* laws.

An act which when committed was not a crime, cannot be made so by statute without violating the constitutional inhibition as to *ex post facto* laws. (People vs. Carballo, 62 Phil. 651, 653)

An *ex post facto* law is one which: (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act; (2) aggravates a crime, or makes it greater than it was, when committed; (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty. (Mejia vs. Pamaran, Nos. L-56741-42, April 15, 1988, 160 SCRA 457, 472)

"Although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

The provision of Art. 22 that penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony is applicable even if the accused is already serving sentence. (Escalante vs. Santos, 56 Phil. 483, 485)

Illustration:

Under the old Penal Code, plea of guilty was not a mitigating circumstance. A person accused of estafa under the old Penal Code pleaded guilty upon arraignment. He began to

serve sentence. While serving sentence, the Revised Penal Code took effect. In the petition for *habeas corpus,* the Supreme Court took into account the mitigating circumstance of plea of guilty provided for in Art. 13, par. 7, of the Revised Penal Code, as such mitigating circumstance had the effect of decreasing the penalty already imposed. (Rodriguez vs. Director of Prisons, 57 Phil. 133, 135-136)

The favorable retroactive effect of a new law may find the defendant in one of these three situations:

1. The crime has been committed and prosecution begins;
2. Sentence has been passed but service has not begun;
3. The sentence is being carried out. (Escalante vs. Santos, *supra)*

In any case, the favorable new statute benefits him and should apply to him.

"Who is not a habitual criminal?"

But when the culprit is a *habitual delinquent,* he is not entitled to the benefit of the provisions of the new favorable statute. (People vs. Alcaraz, 56 Phil. 520, 522)

A person shall be deemed to be a habitual delinquent if within a period of *ten years* from the date of his *release or last conviction* of the crimes of *serious* or *less serious physical injuries, robbery, theft, estafa, or falsification,* he is found *guilty* of any said crimes a *third* time or oftener. (last paragraph of Rule 5, Art. 62)

Not applicable to civil liability.

The principle that criminal statutes are retroactive so far as they favor the culprit does not apply to the latter's *civil liability,* because the rights of offended persons or innocent third parties are not within the gift of arbitrary disposal of the State.

Suppose the indemnity in favor of the heirs of the person unlawfully killed is reduced t ₱1,000 by a new law, may the accused who committed the crime before the new law is enacted demand that he be allowed to pay only ₱1,000, instead of ₱3,000 as provided in the

Civil Code? Since this question refers to civil liability, the new law even if favorable to him cannot be given retroactive effect.

But a new law increasing the civil liability cannot be given retroactive effect.

Com. Act No. 284, which *increased* the minimum indemnity for the death of a person by reason of the commission of a crime from P1,000 to P2,000, *was not given* retroactive effect. (People vs. Panaligan, C.A., 40 O.G. 207)

Both laws must refer to the same deed or omission, having the same end.

In order that a subsequent statute may have a retroactive effect, it must in the first place refer to the same *deed* or *omission* penalized by the former statute and must seek the same end and purpose. (U.S. vs. Macasaet, 11 Phil. 447, 449)

When new law is expressly made inapplicable.

The rule that criminal laws have retroactive effect when favorable to the accused has no application where the new law is expressly made inapplicable to pending actions or existing causes of action. (Tavera vs. Valdez, 1 Phil. 468, 470-471)

Rule applied to special laws.

The provisions of this article are applicable even to special laws which provide more favorable conditions to the accused. (U.S. vs. Soliman, 36 Phil. 5)

Republic Act No. 9346 given retroactive effect.

Republic Act No. 9346 which was enacted on June 24, 2006 prohibited the imposition of the death penalty.

Section 2 of Rep. Act No. 9346 which provides that the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty likewise affects death sentences, whether or not already affirmed by the Supreme Court. As Justice Callejo, Sr. points out in his *ponencia* in *People v. Quiachon*, Article 22 of the Revised Penal Code mandates that "[p]enal laws shall have a retroactive effect insofar as they favor

the persons guilty of a felony, who is not a habitual criminal . . . although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same." Persons previously convicted by final judgment to death should enjoy the beneficial retroactive effect of Rep. Act No. 9346 which is reduction of the death penalty to either life imprisonment or *reclusion perpetua,* as the case may be. The conclusion is confirmed by Section 3 of the law, which makes reference to "persons whose sentences will be reduced to *reclusion perpetua,* by reason of this Act." x x x (Concurring Opinion in People vs. Tubongbanua, G.R. No. 171271, Aug. 31, 2006)

Art. 22 and Art. 366 compared.

Art. 366. *Application of laws enacted prior to this Code.* Without prejudice to the provisions contained in Art. 22 of this Code, felonies and misdemeanors committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their commission.

Art. 22. *Retroactive effect of penal laws.* Penal laws shall have retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, x x x although at the time of the publication of such laws a *final sentence* has been pronounced and the convict is serving the same.

These two articles mean that while felonies and misdemeanors committed prior to the date of effectiveness of the Revised Penal Code shall be punished in accordance with the Code or Acts in force at the time of their commission, the same should not be the case if such Code or Acts are *unfavorable* to the guilty party, for the general principle on the retroactivity of favorable penal laws, recognized in Art. 22, should then apply.

Lagrimas case and Tamayo case compared.

Lagrimas vs. Director of Prisons
(57 Phil. 249)

Facts: This is a petition for *habeas corpus.* The petitioner slapped and use offensive language to a teacher in the public school. The accused, now petitioner, was found guilty of assault upon a public official and sentenced to the penalty of Art. 251 of the old Penal Code. Article 149 of the Revised Penal Code does not prescribe a penalty for the crime penalized by Art. 251 of the old Code.

Art. 251 of the old Penal Code is concordant to Art. 149 of the Revised Penal Code with the difference that the latter contains no penal sanction for the offense of laying hands upon agents of the authorities or upon public officials.

Question: **Whether the petitioner, who was sentenced under the provision of the former Code, may be set at liberty on the ground that the Revised Penal Code provides no penalty for the crime committed under the former Code.**

Held: **The intention of the Legislature in embodying this provision of Art. 366 in the Revised Penal Code was to insure that the elimination from this Code of certain crimes penalized by former acts before the enforcement of this Code should not *have the effect* of pardoning *guilty* persons who were serving their sentences for the commission of such crimes. *Petition denied.***

Dissenting: **If the new law totally eliminates the penalty, it is decidedly favorable to the accused and the new law should be applied in accordance with Art. 22.**

People vs. Tamayo
(61 Phil. 226)

Facts: **The accused was convicted in the Justice of the Peace Court for the violation of Sec. 2, Municipal Ordinance No. 5, Series of 1932, of Magsingal, Ilocos Sur. While his appeal was pending, the Municipal Council repealed Sec. 2 in question, with the result that the act complained of was no longer a crime. The accused moved for the dismissal of the action.**

Held: **A person cannot be prosecuted, convicted, and punished for acts no longer criminal. The case was dismissed.**

It would seem that in the *Lagrimas* case, the Legislature re-enacted in the Revised Penal Code the provision of Art. 251 of the old Penal Code, with the difference that Art. 149 of the Revised Penal Code does not punish an assault upon a public school teacher. If this is the case, Art. 149 of the Revised Penal Code did not absolutely repeal Art. 251 of the old Code. On the other hand, in the *Tamayo* case, the repeal (completely eliminating Section 2 of the Ordinance under which the accused was being prosecuted) was *absolute.* When the repeal is by *reenactment,* the court has jurisdiction to try and punish an accused person under the old law. (U.S. vs. Cuna, 12 Phil. 241, 247)

Criminal liability under former law is obliterated when the repeal is absolute.

The repeal in the case of *People vs. Tamayo* is absolute, and not a reenactment or repeal by implication. Nor is there any saving clause.

Criminal liability under the repealed law subsists:

(1) When the provisions of the former law are *reenacted;* or

(2) When the repeal is by *implication;* or

(3) When there is a *saving clause.* (U.S. vs. Cuna, 12 Phil. 241, *supra;* Wing vs. U.S., 218 U.S. 272)

The right to punish offenses committed under an old penal law is not extinguished if the offenses are still punished in the repealing penal law. (U.S. vs. Cuna, *supra;* People vs. Rosenthal, 68 Phil. 328)

The repeal of penal law which impliedly repealed an old penal law revives the old law.

When a penal law, which impliedly repealed an old law, is itself repealed, the repeal of the repealing law revives the prior penal law, unless the language of the repealing statute provides otherwise.

Illustration:

Act 1697 impliedly repealed the provisions of the old Penal Code on perjury, but later, Act 1697 was itself repealed by the old Administrative Code. The penalty provided in the old Penal Code, which was lighter than the penalty provided in Art. 1697, was imposed on the accused. (U.S. vs. Soliman, *supra)*

No retroactive effect of penal laws as regards jurisdiction of court.

People vs. Pegarum
(58 Phil. 715)

Facts: **A committed estafa involving an amount of P94.35. Under the law then in force, the penalty for that crime was *arresto mayor***

in its medium period to *prisión correccional* minimum. This penalty cannot be imposed by the justice of the peace court. The Court of First Instance has jurisdiction over the case. *At the time the complaint* was filed, the Revised Penal Code took effect. The penalty now for that crime is *arresto mayor* in its medium and maximum periods, a penalty which the justice of the peace court can impose.

Held: **The justice of the peace court has jurisdiction.**

The jurisdiction of a court to try a criminal action is to be determined by *the law* in force *at the time of instituting* the action, *not* at the time of the commission of the crime. (People vs. Romualdo, 90 Phil. 739, 744)

Jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information.

The jurisdiction of the courts in criminal cases is determined by the allegations of the complaint or information, and not by the findings the court may make after trial. (People vs. Mission, 87 Phil. 641, 642)

What penalty may be imposed for the commission of a felony?

Only that penalty prescribed by law *prior* to the commission of the felony may be imposed. (Art. 21)

Felonies are punishable under the laws in force at the time of their commission. (Art. 366)

But the penalty prescribed by a law enacted *after* the commission of the felony may be imposed, if it is *favorable* to the offender. (Art. 22)

Art. 23. *Effect of pardon by the offended party.* — *A* pardon by the offended party does not extinguish criminal action except as provided in Article 344 of this Code; but civil liability with regard to the interest of the injured party is extinguished by his express waiver.

"A pardon by the offended party does not extinguish criminal action."

Even if the injured party already pardoned the offender, the fiscal can still prosecute the offender. Such pardon by the offended party is not even a ground for the dismissal of the complaint or information.

Reason: A crime committed is an offense against the State. In criminal cases, the intervention of the aggrieved parties is limited to being witnesses for the prosecution. (People vs. Despavellador, 53 O.G. 21797) Only the Chief Executive can pardon the offenders. (Art. 36)

Compromise does not extinguish criminal liability.

It is well-settled that criminal liability for estafa is not affected by compromise, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party. (People vs. Benitez, 59 O.G. 1407)

There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. (Art. 2034, Civil Code)

A contract stipulating for the renunciation of the right to prosecute an offense or waiving the criminal liability is void. The consideration or subject-matter is illegal. (See Arts. 1306, 1352 and 1409 of the new Civil Code.)

"Except as provided in Art. 344 of this Code."

The offended party in the crimes of adultery and concubinage cannot institute criminal prosecution, if he shall have *consented* or *pardoned* the offenders. (Art. 344, par. 2)

The pardon here may be *implied,* as continued inaction of the offended party after learning of the offense.

The second paragraph of Art. 344 requires also that *both* offenders must be pardoned by the offended party. (People vs. Infante, 57 Phil. 138, 139)

In the crimes of seduction, abduction, rape or acts of lasciviousness, there shall be no criminal prosecution if the offender has been *expressly* pardoned by the offended party or her parents, grandparents, or guardian, as the case may be. The pardon here must be express.

Pardon under Art. 344 must be made before institution of criminal prosecution.

But the pardon afforded the offenders must come *before* the institution of the criminal prosecution. (People vs. Infante, 57 Phil. 138 — *adultery;* People vs. Miranda, 57 Phil. 274 — *seduction)*

Thus, when the complaint for adultery, concubinage or seduction, rape, acts of lasciviousness, or abduction has already been filed in court, a motion to dismiss based solely on the pardon by the offended party, given after the filing of the complaint, will be denied by the court.

The only act that, according to Art. 344, extinguishes the penal action *after the institution of criminal action,* is the marriage between the offender and the offended party.

Pardon under Art. 344 is only a bar to criminal prosecution.

Even under Art. 344, the pardon by the offended party does not extinguish criminal liability; it is only a bar to criminal prosecution. Art. 89, providing for total extinction of criminal liability, does not mention pardon by the offended party as one of the causes of totally extinguishing criminal liability.

"But civil liability with regard to the interest of the injured party is extinguished by his express waiver."

As a general rule, an offense causes two classes of injuries: (1) *social injury,* produced by the disturbance and alarm which are the outcome of the offense; and (2) *personal injury,* caused to the victim of the crime who suffered damage either to his person, to his property, to his honor or to her chastity.

The social injury is sought to be repaired through the imposition of the corresponding penalty. The State has an interest in this class of injury. The offended party cannot pardon the offender so as to relieve him of the penalty.

But since personal injury is repaired through indemnity, which is civil in nature, the offended party may waive it and the State has no reason to insist in its payment.

The waiver, however, must be express.

Art. 24. *Measures of prevention or safety which are not considered penalties.* — The following shall not be considered as penalties.

1. The arrest and temporary detention of accused persons, as well as their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital.

2. The commitment of a minor to any of the institutions mentioned in Article 80* and for the purposes specified therein.

3. Suspension from the employment or public office during the trial or in order to institute proceedings.

4. Fines and other corrective measures which, in the exercise of their administrative or disciplinary powers, superior officials may impose upon their subordinates.

5. Deprivation of rights and the reparations which the civil law may establish in penal form.

"As well as their detention by reason of insanity or imbecility."

Paragraph No. 1 of Article 24 contains the above phrase. This paragraph does not refer to the confinement of an insane or imbecile who has not been arrested for a crime. It refers to *"accused persons"* who are detained "by reason of insanity or imbecility." The word "their" in the second clause of paragraph No. 1, refers to "accused persons" in the first clause.

Why are they not considered penalties?

They are not penalties, because they are not imposed as a result of judicial proceedings. Those mentioned in paragraphs Nos. 1, 3 and 4 are merely preventive measures before conviction of offenders.

*Now Art. 192, P.D. No. 603 (after Art. 80 in this Book).

The commitment of a minor mentioned in paragraph 2 is not a penalty, because it is *not imposed by the court* in a judgment of conviction. The imposition of the sentence in such case is suspended.

The fines mentioned in this article should not be imposed by the court.

The "fines" mentioned in paragraph 4 are not imposed by the court, because when imposed by the court, they constitute a penalty. (See Art. 25)

The Commissioner of Civil Service may, on certain grounds, fine an employee in an amount not exceeding six months' salary.

Example of deprivation of rights established in penal form.

The deprivation of rights established in penal form by the civil laws is illustrated in the case of parents who are deprived of their parental authority if found guilty of the crime of corruption of their minor children, in accordance with Art. 332 of the Civil Code.

Chapter Two

CLASSIFICATION OF PENALTIES

Art. 25. ***Penalties which may be imposed.*** **— The penalties which may be imposed, according to this Code, and their different classes, are those included in the following:**

SCALE

PRINCIPAL PENALTIES

Capital punishment:

Death

Afflictive penalties:

Reclusion perpetua
Reclusion temporal
Perpetual or temporary absolute disqualification
Perpetual or temporary special disqualification
Prisión mayor

Correctional penalties:

Prision correccional
Arresto mayor
Suspension
Destierro

Light penalties:

Arresto menor
Public censure

Penalties common to the three preceding classes:

Fine, and
Bond to keep the peace.

ACCESSORY PENALTIES

Perpetual or temporary absolute disqualification
Perpetual or temporary special disqualification
Suspension from public office, the right to vote and be voted for, the profession or calling
Civil interdiction
Indemnification
Forfeiture or confiscation of instruments and proceeds of the offense
Payment of cost.

"The penalties which may be imposed, according to this Code, x x x are those included" in Art. 25 only.

A sentence of "five years in Bilibid" is defective, because it does not specify the exact penalty prescribed in the Revised Penal Code. (U.S. vs. Avillar, 28 Phil. 131, 134-135)

The penalty of hard labor in addition to imprisonment cannot be imposed, because it is not authorized by the Revised Penal Code. (U.S. vs. Mendoza, 14 Phil. 198, 203; People vs. Limaco, 88 Phil. 35, 43-44)

The penalty of life imprisonment or *cadenaperpetua* imposed by the trial court is an erroneous designation. The correct term is *reclusion perpetua.* The penalty of *cadena perpetua* was abolished by the Revised Penal Code. (People vs. Abletes, No. L-33304, July 31, 1974, 58 SCRA 241, 248)

"Life imprisonment" should be denominated *reclusion perpetua* since that technical term is the penalty that carries with it the imposition of the accessory penalties. (People vs. De la Cruz, No. L-45485, Sept. 19, 1978, 85 SCRA 285, 292)

It is error to impose *cadena perpetua.* That penalty, which was imposed by the Spanish Penal Code of 1870, was repealed by the Revised Penal Code. That barbarous, cruel and unusual punishment belongs to a bygone era and is no longer imposed in this enlightened age. (People vs. Lugtu, No. L-52237, Sept. 30, 1981, 108 SCRA 84, 91, Concurring Opinion of Justice Aquino)

The Revised Penal Code does not prescribe the penalty of life imprisonment for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special law. *Reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for parole. It also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as life imprisonment which, for one thing, does not appear to have any definite extent or duration. (People vs. Penillos, 205 SCRA 546, citing People vs. Baguio, 196 SCRA 459)

Note: **Under R.A. No. 7659, the duration of *reclusion perpetua* is now from 20 years and 1 day to 40 years.**

Republic Act No. 9346 prohibited the imposition of the death penalty.

Republic Act No. 9346 which was signed into law on June 24, 2006 prohibited the imposition of the death penalty, and provided for the imposition of the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. (Secs.l and 2, Rep. Act No. 9346)

Art. 25 classifies penalties into principal and accessory.

This article classifies penalties into:

1. ***Principal penalties*** **— those *expressly* imposed by the court in the judgment of conviction.**
2. ***Accessory penalties*** **— those that are *deemed* included in the imposition of the principal penalties.**

The principal penalties may be classified:

According to their divisibility.

1. **Divisible.**
2. **Indivisible.**

Indivisible penalties **are those which have no fixed duration.**

The indivisible penalties are:

1. **Death.**

2. *Reclusion perpetua.*
3. Perpetual absolute or special disqualification.
4. Public censure.

Divisible penalties are those that have fixed duration and are divisible into three periods.

Classification of penalties according to subject-matter:

1. Corporal *(death).*
2. Deprivation of freedom *(reclusión, prision, arresto).*
3. Restriction of freedom *(destierro).*
4. Deprivation of rights *(disqualification and suspension).*
5. Pecuniary *(fine).*

Classification of penalties according to their gravity:

1. Capital,
2. Afflictive,
3. Correctional,
4. Light.

This classification corresponds to the classification of the felonies in Art. 9, into grave, less grave and light.

Public censure is a penalty.

Censure, being a penalty, is not proper in acquittal. (People vs. Abellera, 69 Phil. 623, 625)

In a criminal case, there is only one issue, *viz.:* whether the accused is guilty or not guilty. If he is found guilty, the court acquires jurisdiction to impose a penalty; if he is found not guilty, no court has the power to mete out punishment; a finding of guilt must precede the punishment. (Gomez vs. Concepcion, 47 Phil. 717, 723)

Court acquitting the accused may criticize his acts or conduct.

But a competent court, while acquitting an accused, may permit itself nevertheless to criticize or reprehend his acts and conduct *in*

connection with the transaction *out of which the accusation arose.* The court may, with unquestionable propriety, express its disapproval or reprehension of those acts to avoid the impression that by acquitting the accused it approves or admires his conduct.

In the case of *People vs. Abellera,* the accused was reprimanded by the court in his capacity as clerk of court for various acts not material to the issue, such as his acceptance of free meals and transportation from litigants, while the charge was infidelity in the custody of public documents, of which he was acquitted. (People vs. Meneses, 74 Phil. 119, 125, 127)

Penalties that are either principal or accessory.

Perpetual or temporary *absolute* disqualification, perpetual or temporary *special* disqualification, and suspension may be *principal* or *accessory* penalties, because they are formed in the two general classes.

Art. 236, punishing the crime of anticipation of duties of a public office, provides for *suspension* as a principal penalty.

Arts. 226, 227 and 228, punishing infidelity of public officers in the custody of documents, provide for *temporary special disqualification* as a principal penalty.

Art. 26. *Fine — When afflictive, correctional, or light penalty.* - A fine, whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos.

"Whether imposed as a single or as an alternative penalty."

Fines are imposed in many articles of this Code as an *alternative* penalty. Example: In Art. 144, punishing disturbance of proceedings, the penalty is *arresto mayor* or a fine ranging from P200 to ₱1,000.

Example of fine as a *single penalty* is a fine of ₱200 to ₱6,000.

Penalties cannot be imposed in the alternative.

The Court of First Instance of Quezon found Alejandro Mercadejas guilty of a violation of Republic Act No. 145 and sentenced him "to pay a fine of ₱1,000, or to suffer an imprisonment of two years, and to pay the costs."

Held: The law does not permit any court to impose a sentence in the alternative, its duty being to indicate the penalty imposed definitely and positively. (People vs. Mercadejas, C.A., 54 O.G. 5707; People vs. Tabije, C.A., 59 O.G. 1922)

Art. 26 merely classifies fine and has nothing to do with the definition of light felony.

A felony punishable by *arresto menor* or a fine not exceeding P200 is a light felony. (Art. 9, par. 3) When the penalty is correctional, it is a less grave felony. (Art. 9, par. 2) It is a light penalty if the amount of the fine imposed is less than P200, and it is a correctional penalty if it is *not less* than P200 and does not exceed ₱6,000. (Art. 26) If the fine prescribed by the law for a felony is exactly P200, is it a light felony or a less grave felony? It is a light felony because Art. 9, par. 3, which defines light felony should prevail.

Fine is:

1. Afflictive - over ₱6,000.00
2. Correctional - P200.00 to ₱6,000.00
3. Light penalty — less than P200.00

Bond to keep the peace is by analogy:

1. Afflictive — over P6,000.00
2. Correctional - P200.00 to ₱6,000.00
3. Light penalty - less than P200.00 (Albert)

Chapter Three
DURATION AND EFFECT OF PENALTIES

Section One. — Duration of Penalties

Art. 27. ***Reclusion perpetua.*** **— The penalty of *reclusion perpetua* shall be from twenty years and one day to forty years.**

Reclusion temporal. **— The penalty of *reclusion temporal* shall be from twelve years and one day to twenty years.**

Prision mayor and temporary disqualification. **— The duration of the penalties of *prision mayor* and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.**

Prision correccional, suspension, and destierro. **— The duration of the penalties of *prision correccional, suspension,* and *destierro* shall be from six months and one day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.**

Arresto mayor. **— The duration of the penalty of *arresto mayor* shall be from one month and one day to six months.**

Arresto menor. **— The duration of the penalty of *arresto menor* shall be from one day to thirty days.**

Bond to keep the peace. **— The bond to keep the peace shall be required to cover such period of time as the court may determine.** ***(As amended by R.A. No. 7659, approved on December 13, 1993)***

Duration of each of different penalties.

1. ***Reclusion perpetua*** **— 20 yrs. and 1 day to 40 yrs.**
2. ***Reclusion temporal*** **— 12 yrs. and 1 day to 20 yrs.**

3. *Prision mayor and temporary disqualification* — 6 yrs. and 1 day to 12 yrs., except when disqualification is accessory penalty, in which case its duration is that of the principal penalty.

4. *Prision correccional, suspension, and destierro* — 6 mos. and 1 day to 6 yrs., except when suspension is an accessory penalty, in which case its duration is that of the principal penalty.

5. *Arresto mayor* — 1 mo. and 1 day to 6 mos.

6. *Arresto menor* — 1 day to 30 days.

7. *Bond to keep the peace* — the period during which the bond shall be effective is discretionary on the court.

Temporary disqualification and suspension, when imposed as accessory penalties, have different durations — they follow the duration of the principal penalty.

Thus, if the penalty imposed is *arresto mayor,* the duration of the accessory penalty of suspension of the right to hold office and the right of suffrage (Art. 44) shall be that of *arresto mayor.*

Note the clauses in paragraphs 3 and 4 which say "except when the penalty (of disqualification or suspension) is imposed as an accessory penalty, in which case its duration shall be that of the principal penalty."

In what cases is *destierro* imposed?

In the following:

1. Serious physical injuries or death under exceptional circumstances. (Art. 247)

2. In case of failure to give bond for good behavior. (Art. 284)

3. As a penalty for the concubine in concubinage. (Art. 334)

4. In cases where after reducing the penalty by one or more degrees *destierro* is the proper penalty.

Bond to keep the peace is not specifically provided as a penalty for any felony and therefore cannot be imposed by the court.

Since according to Art. 21 no felony shall be punishable by any penalty not prescribed by law prior to its commission, and bond to keep the peace is not specifically provided for by the Code for any felony, that penalty cannot be imposed by the court.

Bond for good behavior under Art. 284 of the Code, which is required of a person making a grave or light threat, is not required to be given in cases involving other crimes.

Art. 28. *Computation of penalties.* — If the offender shall be in prison, the term of the duration of the temporary penalties shall be computed from the day on which the judgment of conviction shall have become final.

If the offender be not in prison, the term of the duration of the penalty consisting of deprivation of liberty shall be computed from the day that the offender is placed at the disposal of the judicial authorities for the enforcement of the penalty. The duration of the other penalties shall be computed only from the day on which the defendant commences to serve his sentence.

Rules for the computation of penalties.

The Director of Prisons or the warden should compute the penalties imposed upon the convicts, observing the following rules:

1. **When the offender *is in prison* — the duration of *temporary penalties* is from the day on which the judgment of conviction *becomes final.***
2. **When the offender *is not in prison* — the duration of *penalty consisting in deprivation of liberty*, is from the day that the offender is *placed at the disposal of judicial authorities* for the enforcement of the penalty.**
3. **The duration of *other penalties* — the duration is from the day on which the offender *commences to serve* his sentence.**

If the accused, who was *in custody,* appealed, his service of sentence should commence *from the date of the promulgation of the decision of the appellate court,* not from the date the judgment of the trial court was promulgated. (Ocampo vs. Court of Appeals, 97 Phil. 949 [Unrep.], No. L-7469, May 6, 1955)

The service of a sentence of *one in prison* begins only on the day the judgment of conviction becomes final. (Baking vs. Director of Prisons, No. L-30603, July 28, 1969, 28 SCRA 851, 856)

The accused could not be considered as committed or placed in jail by virtue of the decision of the Court of Appeals, although he was already in jail when that judgment was received. The fact of his custody as a mere appellant pending appeal continued, and the receipt of the decision of the Court of Appeals did not change the detention of the accused into service of the judgment. The reading of the sentence of the Court of Appeals to the accused was still a necessary step previous to the actual commitment of the accused. (People vs. Enriquez, 107 Phil. 201, 207)

Examples of temporary penalties:

(1) Temporary absolute disqualification.

(2) Temporary special disqualification.

(3) Suspension.

Rules in cases of temporary penalties:

If offender is under detention, as when he is undergoing preventive imprisonment, Rule No. 1 applies.

If *not* under detention, because the offender has been released on bail, Rule No. 3 applies.

Examples of penalties consisting in deprivation of liberty:

(1) Imprisonment.

(2) *Destierro.*

Rules in cases of penalties consisting in deprivation of liberty.

When the offender is *not* in prison, Rule No. 2 applies.

If the offender *is undergoing preventive imprisonment,* the computation of the penalty is *not* from the day that the offender is placed at the disposal of the judicial authorities for the enforcement of the penalty. Rule No. 3 applies, that is, the duration of the penalty shall be computed from the day on which the defendant commences to serve his sentence.

But the offender is entitled to a deduction of full time or four-fifths (4/5) of the time of his detention.

Reason for Rule No. 1:

The duration of temporary penalties shall be computed only from the day the judgment of conviction becomes final, and not from the day of his detention, because under Art. 24 the arrest and temporary detention of the accused is not considered a penalty.

Art. 29. *Period of preventive imprisonment deducted from term of imprisonment.* — Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. When they are recidivists, or have been convicted previously twice or more times of any crime; and

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is

under review. In case the maximum penalty to which the accused may be sentenced is *destierro,* he shall be released after thirty (30) days of preventive imprisonment. *(As amended by Rep. Act No. 6127, and Exec. Order No. 214)*

When is there preventive imprisonment?

The accused undergoes preventive imprisonment when the offense charged is nonbailable, or even if bailable, he cannot furnish the required bail.

The full time or four-fifths of the time during which offenders have undergone preventive imprisonment shall be deducted from the penalty imposed.

Offenders who have undergone preventive imprisonment shall be credited in the service of their sentence with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

The appellant should be credited with the full time of his preventive imprisonment upon a showing that he agreed to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, he shall be credited with four fifths (4/5) of the time of such preventive imprisonment. (People vs. Herila, No. L-32785, May 21, 1973, 51 SCRA 31, 39; People vs. Abanes, No. L-30609, Sept. 28, 1976, 73 SCRA 44, 48; People vs. Lingao, No. L-28506, Jan. 31, 1977, 75 SCRA 130, 135-136; People vs. Clementer, No. L-33490, Aug. 30, 1974, 58 SCRA 742, 749)

Under Art. 197 of the Child and Youth Welfare Code (Presidential Decree No. 603), the youthful offender shall be credited in the service of his sentence *with the full time he spent* in actual confinement and detention. It is not necessary that he agreed to abide by the disciplinary rules imposed upon convicted prisoners.

Illustration of the application of this article.

A was accused of homicide punishable by *reclusion temporal.* Because he could not put a bail of ₱15,000, A was detained pending his trial which lasted for two years. If after trial, A was found guilty and sentenced to an indeterminate penalty of from 6 years and 1 day to 12 years and 1 day, the full period of A's preventive imprisonment of 2 years shall be deducted from 12 years and 1 day, if he agreed voluntarily in writing before or during the time of his temporary detention to abide by the same disciplinary rules imposed upon convicted prisoners. But if A did not agree to abide by the same disciplinary rules imposed upon convicted prisoners, only 4/5 of the 2 years during which he has undergone preventive imprisonment will be deducted from 12 years and 1 day.

Must preventive imprisonment be considered in perpetual penalties?

This allowance should be made even in the case of *perpetual punishment.* This article does not make any distinction between temporal and perpetual penalties.

Thus, even if the accused is sentenced to life imprisonment, he is entitled to the full time or 4/5 of the time of the preventive imprisonment. (See U.S. vs. Ortencio, 38 Phil. 341, 345)

The credit is given in the service of sentences "consisting of deprivation of liberty."

Thus, if the offense for which the offender is undergoing preventive imprisonment is punishable by imprisonment or a fine, and upon conviction the court imposed on him only a fine, there is no credit to be given.

Illustration:

A was accused of a violation of Art. 143 of the Revised Penal Code. The penalty provided for in that Article is *prision correccional* or a fine from ₱200 to ₱2,000, or both. During the pendency of his trial, A was detained for ten days. Having been found guilty, A was sentenced to pay a fine of P500. Can A successfully claim that his fine should be reduced because of his preventive imprisonment for ten days?

No, because his sentence does not consist in deprivation of liberty.

Destierro constitutes "deprivation of liberty."

Although *destierro* does not constitute imprisonment (which is a typical example of deprivation of liberty), it is nonetheless a deprivation of liberty. It follows that Article 29 is applicable when the penalty is *destierro*. The accused should be credited with the time during which he has undergone preventive imprisonment. (People vs. Bastasa, No. L-32792, Feb. 2, 1979, 88 SCRA 184, 193)

Convict to be released immediately if the penalty imposed after trial is less than the full time or four-fifths of the time of the preventive imprisonment.

Thus, if A has been detained for 5 months and 10 days pending his trial for less serious physical injuries and after trial he is sentenced to 4 months of *arresto mayor*, he should be released immediately. (See People vs. Quiosay, 103 Phil. 1160 [Unrep.])

The accused need not serve the penalty of *destierro*, for having satisfied the conditions laid down in Article 29 of the Revised Penal Code, he should be entitled to credit for the preventive imprisonment which he has undergone since August, 1970. (People vs. Salik Magonawal, No. L-35783, March 12, 1975, 63 SCRA 106, 113)

Accused shall be released immediately whenever he has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment for the offense charged.

Illustration:

A is accused of the crime of less serious physical injuries punishable by imprisonment from 1 month and 1 day to 6 months. He has been under detention in jail for 6 months, pending his trial. In that case, A should be released immediately, but the trial of his case will continue.

If the maximum penalty to which the accused may be sentenced is destierro.

Illustration:

A is accused of a crime punishable by a penalty from *arresto menor to destierro* (6 months and 1 day to 6 years). A has been detained for 30 days since his arrest. In that case, A should be released immediately after 30 days from his arrest and detention, even if the duration of *destierro,* the maximum penalty to which he may be sentenced, is from 6 months and 1 day to 6 years. The reason for this is that in *destierro,* the accused sentenced to that penalty does not serve it in prison. He is free, only that he cannot enter the prohibited area specified in the sentence.

Offenders not entitled to the full time or four-fifths of the time of preventive imprisonment.

The following offenders are not entitled to be credited with the full time or 4/5 of the time of preventive imprisonment:

1. Recidivists or those convicted previously twice or more times of any crime.

2. Those who, upon being summoned for the *execution of their sentence,* failed to surrender voluntarily.

Before Art. 29 was amended by Rep. Act No. 6127, those who were convicted of robbery, theft, estafa, malversation of public funds, falsification, vagrancy or prostitution were not credited with any part of the time during which they underwent preventive imprisonment. Those offenses are enumerated in paragraph No. 3 of the original Art. 29.

In view of the elimination in Rep. Act No. 6127 of paragraph No. 3 of the original Art. 29, those convicted of robbery, theft, estafa, malversation, falsification, vagrancy or prostitution are now to be credited in the service of their sentence with the full time or 4/5 of the time during which they have undergone preventive imprisonment.

Habitual delinquent is included in paragraph No. 1.

A habitual delinquent is not entitled to the full time or 4/5 of the time of preventive imprisonment, because a habitual delinquent is necessarily a recidivist or that at least he has been "convicted previ-

ously twice or more times of any crime." (See People vs. Gona, G.R. No. 47177, Nov. 4, 1940)

"They have failed to surrender voluntarily."

Note that paragraph No. 2 does not refer to failure to surrender voluntarily after the commission of the crime. It says, "when upon being summoned for the execution of their sentence."

Example:

A was arrested for serious physical injuries inflicted on B and, pending his investigation and trial, he was detained for one year. He was able to go out on bail after one year. Later, he was summoned for the execution of his sentence, he having been found guilty. Because he failed to appear, the court issued an order for his arrest and confiscation of his bond. Although, he is not covered by paragraph No. 1 of Art. 29, as amended, A will not be credited in the service of his sentence for serious physical injuries with one year or four-fifths of one year preventive imprisonment.

Section Two. — Effects of the penalties according to their respective nature

Art. 30. *Effects of the penalties of perpetual or temporary absolute disqualification.* — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.

2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.

3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this Article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

Art. 31. *Effects of the penalties of perpetual or temporary special disqualification.* — The penalties of perpetual or temporary special disqualification for public office, profession, or calling shall produce the following effects:

1. The deprivation of the office, employment, profession or calling affected.

2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

Art. 33. *Effects of the penalties of suspension from any public office, profession, or calling, or the right of suffrage.* — The suspension from public office, profession, or calling, and the exercise of the right of suffrage shall disqualify the offender from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence.

The person suspended from holding public office shall not hold another having similar functions during the period of his suspension.

Art. 34. ***Civil interdiction.*** **— Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority, or guardianship, either as to the person or property of any ward, of marital authority, of the right to manage his property, and of the right to dispose of such property by any act or any conveyance** ***inter vivos.***

Art. 35. ***Effects of bond to keep the peace.*** **— It shall be the duty of any person sentenced to give bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the offense sought to be prevented, and that in case such offense be committed they will pay the amount determined by the court in its judgment, or otherwise to deposit such amount in the office of the clerk of the court to guarantee said undertaking.**

The court shall determine, according to its discretion, the period of duration of the bond.

Should the person sentenced fail to give the bond as required he shall be detained for a period which shall in no case exceed six months, if he shall have been prosecuted for a grave or less grave felony, and shall not exceed thirty days, if for a light felony.

Outline of the effects of penalties under Arts. 30-35.

1. ***The penalties of perpetual or temporary absolute disqualification for public office produce the following effects:***
   - a. **Deprivation of public offices and employments, even if by election.**
   - b. **Deprivation of right to vote or to be elected.**
   - c. **Disqualification for the offices or public employments and for the exercise of any of the rights mentioned.**
   - d. **Loss of right to retirement pay or pension for any office formerly held. (Art. 30)**

Note: Perpetual absolute disqualification is effective during the lifetime of the convict and even after the service of the sentence. *Temporary absolute* disqualification lasts during the term of the sentence, and is removed after the service of the same, except (1) deprivation of the public office or employment; and (2) loss of all rights to retirement pay or other pension for any office formerly held. (See Art. 30, par. following No. 3.)

2. *The penalties of perpetual or temporary special disqualification for public office, profession or calling produce the following effects:*

   a. Deprivation of the office, employment, profession or calling affected.

   b. Disqualification for holding similar offices or employments perpetually or during the term of the sentence. (Art. 31)

3. *The penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage produce the following effects:*

   a. Deprivation of the right to vote or to be elected to any public office.

   b. Cannot hold any public office during the period of disqualification. (Art. 32)

4. *The penalties of suspension from public office, profession or calling or the right of suffrage produce the following effects:*

   a. Disqualification from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence.

   b. If suspended from *public office,* the offender cannot hold another office having similar functions during the period of suspension. (Art. 33)

5. *Civil interdiction shall produce the following effects:*

   a. Deprivation of the rights of parental authority or guardianship of any ward.

b. Deprivation of marital authority.

c. Deprivation of the right to manage his property and of the right to dispose of such property by any act or any conveyance *inter vivos*. (Art. 34)

Note: But he can dispose of such property by will or donation *mortis causa.*

6. *Bonds to keep the peace.*

a. The offender must present two sufficient sureties who shall undertake that the offender will not commit the offense sought to be prevented, and that in case such offense be committed they will pay the amount determined by the court; or

b. The offender must deposit such amount with the clerk of court to guarantee said undertaking; or

c. The offender may be detained, if he cannot give the bond, for a period not to exceed 6 months if prosecuted for *grave or less grave* felony, or for a period not to exceed 30 days, if for a *light felony.* (Art. 35)

Note: Bond to keep the peace is different from bail bond which is posted for the provisional release of a person arrested for or accused of a crime.

Disqualification is withholding of privilege, not a denial of right.

The manifest purpose of the restrictions upon the right of suffrage or to hold office is to preserve the purity of elections. The presumption is that one rendered infamous by conviction of felony, or other base offenses indicative of moral turpitude, is unfit to exercise the privilege of suffrage or to hold office. The exclusion must for this reason be adjudged a mere disqualification, imposed for protection and not for punishment, the withholding of a privilege and not the denial of a personal right. (People vs. Corral, 62 Phil. 945, 948)

In this case, the accused, who was sentenced in 1910 by final judgment to suffer 8 years and 1 day of *prision mayor* for an offense and who was not granted plenary pardon, voted at the general elections held on June 5, 1934. It was held that the right of the State to

deprive persons of the right of suffrage by reason of their having been convicted of crime, is beyond question.

The *accessory penalty of temporary absolute disqualification* disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence. (Lacuna vs. Abes, No. L-28613, Aug. 27, 1968, 24 SCRA 780, 784)

"Perpetually or during the term of the sentence, according to the nature of said penalty."

The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus, the word "perpetually" refers to the perpetual kind of special disqualification, while the phrase "during the term of the sentence" refers to the temporary special disqualification. The duration between the *perpetual* and the *temporary* (both special) are necessarily different because the provision, instead of merging their durations into one period, states that such duration is "according to the nature of said penalty" — which means according to whether the penalty is the perpetual or the temporary special disqualification. (Lacuna vs. Abes, *supra,* at 784)

What suspension from exercise of profession covers.

Suspension, which deprives the offender of the right of exercising any kind of profession or calling, covers such calling or trade as for instance that of *broker, master plumber,* etc.

Bond to keep the peace is not bail bond.

Bond to keep the peace or for good behavior is imposed as a penalty in threats. (Art. 284) This is different from a bail bond (Rule 114, Revised Rules of Criminal Procedure) to secure the provisional release of an accused person after his arrest or during trial but before final judgment of conviction.

Art. 36. *Pardon; its effects.* — A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

Effects of pardon by the President.

1. A pardon shall not restore the right to hold public office or the right of suffrage.

   Exception: When any or both such rights is or are expressly restored by the terms of the pardon.

2. It shall not exempt the culprit from the payment of the civil indemnity. The pardon cannot make an exception to this rule.

Limitations upon the exercise of the pardoning power:

1. That the power can be exercised only *after* conviction;

2. That such power does not extend to cases of impeachment. (Cristobal vs. Labrador, 71 Phil. 34, 38)

Pardon may be granted only "after conviction by final judgment."

The "conviction by final judgment" limitation under Section 19, Article VII of the present Constitution prohibits the grant of pardon, whether full or conditional, to an accused during the pendency of his appeal from his conviction by the trial court. Any application therefor, if one is made, should not be acted upon nor the process toward its grant be commenced unless the appeal is withdrawn. Accordingly, the agencies or instrumentalities of the Government concerned must require proof from the accused that he has not appealed from his conviction or that he has withdrawn his appeal. Such proof may be in the form of a certification issued by the trial court or the appellate court, as the case may be. The acceptance of the pardon shall not operate as an abandonment or waiver of the appeal, and the release of an accused by virtue of a pardon, commutation of sentence, or parole before the withdrawal of an appeal shall render those responsible therefor administratively liable. (People vs. Salle, Jr., 250 SCRA 592)

Pardon granted in general terms does not include accessory penalty.

When the principal penalty is remitted by pardon, only the effect of that principal penalty is extinguished, *but not the accessory penalties* attached to it.

For instance, a person sentenced to *prision mayor* (which carries with it the accessory penalty of perpetual special disqualification from the right of suffrage) is pardoned by the President. Such pardon does not restore to the ex-convict the right to vote, unless such right be expressly restored by the terms of the pardon.

Exception:

When an absolute pardon is granted *after* the term of imprisonment has expired, it removes all that is left of the consequences of conviction. (Cristobal vs. Labrador, *supra)*

Although the rule is that a pardon does not restore the right to hold public office or the right of suffrage, unless expressly stated in the pardon, the *exception* is where the facts and circumstances of the case already show that the purpose of the Chief Executive is precisely to restore those rights. For instance, when it appears that the respondent mayor-elect committed the offense more than 25 years ago; that he was granted conditional pardon in 1915; that thereafter he exercised the right of suffrage, was elected councilor for the period from 1918 to 1921; that he was elected municipal president three times in succession (1922 to 1931); that he was elected mayor in 1940; it is evident that the purpose in granting him absolute pardon, after the election of 1940 but before the date fixed by law for assuming office, was to enable him to assume the position in deference to the popular will. (Pelobello vs. Palatino, 72 Phil. 441, 443; Cristobal vs. Labrador, *supra)*

Pardon after serving 30 years does not remove perpetual absolute disqualification.

Suppose a pardon is granted upon a convict undergoing life imprisonment after serving 30 years. Is the convict likewise pardoned from the penalty of perpetual absolute disqualification which is an accessory to life imprisonment?

No, because Art. 30 is silent as to the maximum duration of perpetual disqualification and Art. 36 expressly provides that a par-

don shall not work the restoration of the right to hold public office or the right of suffrage, unless such rights be expressly restored by the terms of the pardon. (Guevara)

Pardon by the Chief Executive distinguished from pardon by the offended party:

1. Pardon by the Chief Executive extinguishes the criminal liability of the offender; such is not the case when the pardon is given by the offended party.
2. Pardon by the Chief Executive cannot include civil liability which the offender must pay; but the offended party can waive the civil liability which the offender must pay.
3. In cases where the law allows pardon by the offended party (Art. 344), the pardon should be given before the institution of criminal prosecution and must be extended to both offenders; whereas, pardon by the Chief Executive is granted only after conviction and may be extended to any of the offenders.

Art. 37. *Costs — What are included.* — Costs shall include fees and indemnities in the course of the judicial proceedings, whether they be fixed or unalterable amounts previously determined by law or regulations in force, or amounts not subject to schedule.

The following are included in costs:

1. Fees, and
2. Indemnities, in the course of judicial proceedings.

Costs are chargeable to the accused in case of conviction.

Costs which are expenses of litigation are chargeable to the accused only in cases of conviction. In case of acquittal, the costs are *de oficio*, each party bearing his own expenses.

Thus, of three accused, two were convicted while the third was acquitted. Only one of the two convicted appealed. His conviction

was affirmed. He was ordered to pay one-third of the costs. (People vs. Bongo, No. L-26909, Feb. 22, 1974, 55 SCRA 547, 548, 555)

No costs against the Republic, unless the law provides the contrary.

No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law. (Sec. 1, Rule 142, Rules of Court)

Payment of costs is discretionary.

The payment of costs is a matter that rests entirely upon the discretion of courts. Appeal will hardly lie to interfere with the discretion. (Roque vs. Vda. de Cogan, 40 O.G., 10th Supp., 35; Bacolod-Murcia Planters' Assn., Inc. vs. Chua, 84 Phil. 596, 599)

Whether costs should be assessed against the accused lie within the discretion of the court. The Government may request the court to assess costs against the accused, but not as a right. No attorney's fees shall be taxed as cost against the adverse party. (Sec. 6, Rule 142, Rules of Court)

Art. 38. *Pecuniary liabilities — Order of payment.* — In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order:

1. The reparation of the damage caused.
2. Indemnification of the consequential damages.
3. The fine.
4. The costs of the proceedings.

What are the pecuniary liabilities of persons criminally liable?

They are:

1. The reparation of the damage caused.
2. Indemnification of the consequential damages.

3. Fine.

4. Costs of proceedings.

When is Art. 38 applicable?

It is applicable "in case the property of the offender should *not* be *sufficient* for the payment of *all* his *pecuniary* liabilities." The order of payment is provided in this article.

Hence, if the offender has sufficient or no property, there is no use for Art. 38.

The order of payment of pecuniary liabilities in Article 38 must be observed.

Thus, in robbery with violence against persons, A inflicted upon B serious physical injuries and took the latter's watch and ring worth ₱1,250. As a result of the physical injuries inflicted, B was hospitalized and was not able to attend to his work for one month. For hospital bills, he paid ₱500. For his failure to earn his salary for one month, he lost ₱300. If A, after conviction, had only property not exempt from execution worth ₱1,000, it shall be applied to the payment of the watch and ring, which could not be returned, because they are covered by the "*reparation* of the damage caused" and it is No. 1 in the order of payment.

The hospital bills in the amount of ₱500 and the salary which he failed to earn in the sum of ₱300 are covered by the "indemnification of the consequential damages" which is only No. 2 in the order of payment.

Courts cannot disregard the order of payment.

When respondent judge permitted the accused to pay the ₱500.00 fine ahead and postponed the payment of the indemnity of ₱1,900.00 to some other date, he obviously deviated from the express mandates of the law. Indemnity is No. 2 and fine is No. 3 in the order of payment. What was done was exactly the opposite of what the law ordained. What the court should have done was to commit the accused to jail for a period not exceeding six months (Art. 39, par. 2) upon the nonpayment on the date scheduled for its execution of the indemnity imposed by the sentence. (Domalaon vs. Yap, C.A., 59 O.G. 6675)

There is reparation in the crime of rape when the dress of the woman was torn.

In a case where the accused was convicted of rape, that part of the judgment ordering the defendant to pay the value of the woman's torn garments is reparation for the damage caused to her property and is distinct from indemnity. (U.S. vs. Yambao, 4 Phil. 204, 206)

Liability of conjugal partnership assets.

Fines and indemnities imposed upon either husband or wife may be enforced against the partnership assets after the responsibilities enumerated in Article 161 of the Civil Code have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient, which presupposes that the conjugal partnership is still existing. (People vs. Lagrimas, No. L-25355, Aug. 28, 1969, 29 SCRA 153, 158)

Art. 39. *Subsidiary penalty.* — If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding Article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:

1. If the principal penalty imposed be *prision correccional* or *arresto* and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.

2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

3. When the principal penalty imposed is higher than *prision correccional* no subsidiary imprisonment shall be imposed upon the culprit.

4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve. *(As amended by Rep. Act No. 5465, which lapsed into law on April 21, 1969.)*

What is subsidiary penalty?

It is a subsidiary personal liability to be suffered by the convict who has no property with which to meet the fine, at the rate of one day for each eight pesos, subject to the rules provided for in Article 39.

Judgment of conviction must impose subsidiary imprisonment.

An accused cannot be made to undergo subsidiary imprisonment in case of insolvency to pay the fine imposed upon him when the subsidiary imprisonment is not imposed in the judgment of conviction. (Ramos vs. Gonong, No. L-42010, Aug. 31, 1961, 72 SCRA 559, 565)

No subsidiary penalty for nonpayment of other pecuniary liabilities.

As Article 39 is now worded, there is no subsidiary penalty for nonpayment of: (1) the reparation of the damage caused, (2) indemnification of the consequential damages, and (3) the costs of the proceedings. (See Ramos vs. Gonong, *supra,* at 566)

Retroactive application of RA 5465.

In that it eliminated the pecuniary liabilities of the accused, other than fine, in Article 39 of the Revised Penal Code, Rep. Act 5465 is favorable to the accused. It has retroactive application. (Buiser vs.

People, No. L-32377, Oct. 23, 1982, 117 SCRA 750, 752, citing People vs. Doria, 55 SCRA 435)

"If the convict has no property with which to meet the fine."

Article 39 applies only when the convict has no property with which to meet the fine mentioned in paragraph 3 of Article 38.

It would seem that the convict, who has property enough to meet the fine and not exempt from execution, cannot choose to serve the subsidiary penalty, instead of paying for the fine.

A fine, whether imposed as a single or as an alternative penalty, should not and cannot be reduced or converted into a prison term. There is no rule for transmutation of the amount of a fine into a term of imprisonment. (People vs. Dacuycuy, G.R. No. 45127, May 5, 1989, 173 SCRA 90, 101)

The word "principal" should be omitted.

The word "principal" referring to the penalty imposed is not the correct translation. The words used in Spanish *"cuandola pena impuesta"* (when the penalty imposed) should be controlling. (People vs. Concepcion, 59 Phil. 518, 522)

Subsidiary imprisonment is not an accessory penalty.

Subsidiary imprisonment is *not an accessory penalty*. That subsidiary imprisonment is a penalty, there can be no doubt, for according to Article 39, it is imposed upon the accused and served by him in lieu of the fine which he fails to pay on account of insolvency.

Therefore, the culprit cannot be made to undergo subsidiary imprisonment unless the judgment *expressly* so provides. (People vs. Fajardo, 65 Phil. 539, 542)

Illustration:

A was convicted of bribery and sentenced to 2 months and 1 day of *arresto mayor* as minimum, to 1 year, 8 months and 21 days of *prisión correccional*, as maximum, to pay a fine of P40.00, with the accessories of the law, and to pay the costs. Since the decision does not provide for subsidiary imprisonment in the event of inability of

A to pay the fine of ₱40.00, A cannot be required to serve subsidiary imprisonment, if he appears to be insolvent.

Article 73 of the Revised Penal Code provides that "Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict." Subsidiary imprisonment is not covered by any of those articles. (People vs. Jarumayan, C.A., 52 O.G. 244)

Rules as to subsidiary imprisonment:

1. If the penalty imposed is *prision correccional* or *arresto* and fine — subsidiary imprisonment, not to exceed 1/3 of the term of the sentence, and in no case to continue for more than one year. Fraction or part of a day, not counted.

2. When the penalty imposed is fine only — subsidiary imprisonment, not to exceed 6 months, if the culprit is prosecuted for grave or less grave felony, and not to exceed 15 days, if prosecuted for light felony.

3. When the penalty imposed is higher than *prision correctional* — no subsidiary imprisonment.

4. If the penalty imposed is *not* to be executed by *confinement,* but of *fixed* duration — subsidiary penalty shall consist in the same deprivations as those of the principal penalty, under the same rules as in Nos. 1, 2 and 3 above.

5. In case the financial circumstances of the convict *should improve,* he shall pay the fine, notwithstanding the fact that the convict suffered subsidiary personal liability therefor.

Examples of the application of the rules:

(1) Rule 1 *(Applicable only when the penalty imposed is imprisonment not exceeding 6 years): A* is convicted of falsification by private individual (Art. 172) and sentenced to 4 years, 9 months and 10 days of *prision correccional,* as the maximum term of the indeterminate penalty, and to pay a fine of ₱4,000.00.

If A has no property with which to meet the fine, he will have to suffer subsidiary imprisonment at the rate of one day for each ₱8.00 which he cannot pay, but not to exceed 365 days, computed as follows:

365	days in one year
x 4	years
1,460	— days in 4 years
270	— days in 9 months
10	— days
3) 1,740	— days in 4 years, 9 months and 10 days
580	— days, which represent 1/3 of the penalty imposed
₱8.00) ₱4,000.00	- amount of fine
500	— days, which are less than 1/3 of the penalty imposed (580 days)

Although the quotient of 500 days does not exceed 1/3 of the term of the penalty imposed, yet A can be made to suffer subsidiary imprisonment only for 365 days, because "in no case shall it continue for more than one year."

The subsidiary imprisonment not to exceed one-third of the penalty imposed and not to exceed one year.

When the quotient, after dividing the amount of the fine by ₱8.00, is one year or less and such quotient does not exceed 1/3 of the penalty imposed, the whole period of imprisonment represented by the quotient must be served by the convict as subsidiary penalty.

Illustration:

A is convicted of a crime and sentenced to 3 years of *prision correccional,* as the maximum term of the indeterminate penalty, and to pay a fine of P2,000.00, which A could not pay. P2,000.00 ÷ P8.00 = 250 days. Since 1/3 of the penalty imposed is 1 year and the quotient is 250 days, which does not exceed 1 year, all the 250 days imprisonment must be served by A for nonpayment of the fine, in addition to the penalty of 3 years for the crime he committed.

Where the defendant was sentenced to 21 days of imprisonment and a fine of ₱1,000.00, the subsidiary imprisonment cannot exceed 7 days. ₱1,000.00 ÷ ₱8.00 = 125 days. But since the subsidiary imprisonment cannot exceed 1/3 of the penalty imposed, he cannot be required to serve all the 125 days of imprisonment for failure to pay the fine.

No subsidiary imprisonment if the indemnity is less than ₱8.00.

If the indemnity which the accused should pay is less than ₱8.00, no subsidiary imprisonment should be imposed for its non-payment. (See People vs. Abad, C.A., 36 O.G. 653 and U.S. vs. Ballesteros, 1 Phil. 208)

(2) ***Rule 2 (Applicable when the penalty imposed is fine only): A*** **is sentenced to pay a fine of ₱800.00 for a crime punishable by a fine not exceeding ₱2,000.00. In case of insolvency, A shall suffer subsidiary imprisonment at the rate of one day for every ₱8.00 which he cannot pay. To divide ₱800.00 by ₱8.00 will be 100 days. Since A is prosecuted for a *less grave* felony, the fine provided by law being not less than ₱200.00 and not more than ₱6,000.00 (Art. 26), the duration of his subsidiary imprisonment shall be all the 100 days or 3 months and 10 days, the same not exceeding 6 months.**

But suppose A is sentenced to pay a fine of ₱160.00 for a crime punishable by a fine not exceeding ₱200.00, what is the duration of the subsidiary imprisonment? Why? It cannot exceed 15 days, because he is prosecuted for a light felony, the *fine provided by law* not exceeding ₱200.00. (Art. 9)

When the penalty is fine only, the phrases, "if the culprit shall have been prosecuted for a grave or less grave felony" and "if for a light felony," are controlling.

When the penalty prescribed by the Code for the crime is fine only, the duration of the subsidiary penalty is based on the classification of the felony.

When the fine provided by the Code, as the penalty for the offense, is exactly P200.00, apply Art. 9 in determining the classification of the felony, because that article, in

defining light felony, states that the fine is "not exceeding ₱200.00." When the amount of the fine fixed by the Code as the penalty for the offense is more than ₱200.00, apply Art. 26 to determine the classification of the felony.

(3) *Rule 4:* A is sentenced to 4 years, 9 months and 10 days of destierro and to pay a fine of ₱4,000.00. If A has no money with which to pay the fine, he shall suffer an additional period of *destierro* at the same rate of one day for every ₱8.00. The same rule is to be applied when the principal penalty is suspension and fine.

The penalty imposed must be (1) *prision correccional,* (2) *arresto mayor,* (3) *arresto menor,* (4) suspension, (5) destierro, or (6) fine only.

Hence, if the penalty imposed by the court is not one of them, subsidiary penalty cannot be imposed. There is no subsidiary penalty, if the penalty imposed by the court is *prision mayor, reclusion temporal, or reclusion perpetua.*

Six years and one day is *prision mayor.*

Will there be subsidiary imprisonment if the penalty imposed is 6 years and 1 day?

No, because when one day is added to 6 years, it raises the prison sentence from *prision correccional* to *prision mayor;* hence, no subsidiary imprisonment. (Rosares vs. Director of Prisons, 85 Phil. 730, 731)

Additional penalty for habitual delinquency should be included in determining whether or not subsidiary penalty should be imposed.

Even if the penalty imposed is not higher than *prision correccional,* if the accused is a habitual delinquent who deserves an additional penalty of 12 years and 1 day of *reclusion temporal,* there is no subsidiary imprisonment. (People vs. Concepcion, 59 Phil. 518, 522)

"If the principal penalty imposed."

When the penalty prescribed for the offense is imprisonment, it is the penalty actually imposed by the Court, not the penalty provided

for by the Code, which should be considered in determining whether or not subsidiary penalty should be imposed.

Thus, even if the penalty provided for by the Code for the crime is *prision mayor* but there are two mitigating circumstances without any aggravating circumstance (Art. 64, par. 5), and the court imposes 2 years, 11 months and 11 days of *prision correccional,* subsidiary penalty may be imposed for nonpayment of the fine.

Penalty not to be executed by confinement, but has fixed duration.

Under Art. 236, the penalty of *suspension* and *fine* from ₱200 to ₱500 shall be imposed upon any person who shall assume the performance of the duties and powers of any public office without first being sworn in or having given bond required by law. Such suspension shall last until he shall have complied with the formalities. If he cannot pay the fine, although he already complied with the formalities required by said Art. 236, his suspension shall continue until the amount of the fine is covered at the rate of one day suspension for every ₱8.00.

Penalty not to be executed by confinement and has no fixed duration.

Example:

The penalty is fine not exceeding ₱200.00 and *censure.* (Art. 365, par. 4)

If the accused cannot pay the fine, there is no subsidiary liability, because the penalty of censure has no fixed duration and is not to be executed by confinement.

Rule No. 1, Art. 39, specifically mentions the penalty of *'prision correccional or arresto* and *fine"; Rule* No. 2 of the same article speaks of fine only; and Rule No. 4 mentions penalty of *"fixed duration."* Hence, when fine goes with a penalty *not to be executed* by *imprisonment* or *destierro* and which has no fixed duration, there is no subsidiary penalty for nonpayment of the fine. (People vs. Laure, 19 CAR [2s] 977, 984)

In a case where the accused was charged with the crime of slight physical injuries and was sentenced by the trial court to pay

a fine of 530.00 and *public censure,* with subsidiary imprisonment in case of insolvency, the Court of Appeals held that the trial court is not authorized to impose subsidiary imprisonment in case of insolvency. (People vs. Garcia, CA-G.R. No. 25764-R, 56 O.G. 4938)

The subsidiary penalty is "the same deprivations as those of which the principal penalty consists."

If the penalty imposed is imprisonment, the subsidiary penalty must be imprisonment also. If the penalty imposed is *destierro,* the subsidiary penalty must be *destierro* also. If the penalty imposed is suspension, the subsidiary penalty must be suspension also. This is so, because paragraph No. 4 of Art. 39 states that the convict "shall continue to suffer the same deprivations as those of which the principal penalty consists."

The convict who served subsidiary penalty may still be required to pay the fine.

It will be noted from paragraph No. 5 of Art. 39, as amended, that the convict who suffered subsidiary penalty for nonpayment of the fine *is not relieved* from paying the fine should his financial circumstances improve.

Before Art. 39 was amended, once a convict suffered subsidiary penalty for nonpayment of the fine, he was forever relieved from paying the fine.

Subsidiary imprisonment is not imprisonment for debt.

The laws which prohibit imprisonment for debt relate to the imprisonment of debtors for liability incurred in the fulfillment of contracts, but not to the cases seeking the enforcement of penal statutes that provide for the payment of money as a penalty for the commission of crime. (U.S. vs. Cara, 41 Phil. 828, 834-837)

Thus, the civil liability arising from libel is not a "debt" within the purview of the constitutional provision against imprisonment for nonpayment of "debt." Insofar as said injunction is concerned, "debt" means an obligation to pay a sum of money "arising from *contract,*" express or implied. In addition to being part of the penalty, the civil liability in libel arises from a tort or crime; hence, from law. As a consequence, the subsidiary imprisonment for nonpayment of said

liability does not violate the constitutional injunction. (Quemuel vs. Court of Appeals, No. L-22794, Jan. 16, 1968, 22 SCRA 44, 47)

No subsidiary penalty in the following cases:

1. When the penalty imposed is *higher than prision correccional.* (Par. 3, Art. 39; People vs. Bati, G.R. No. 87429, Aug. 27, 1990, 189 SCRA 97, 106; People vs. Domingo, G.R. No. 82375, April 18, 1990, 184 SCRA 409, 415; Humilde vs. Pablo, Adm. Matter No. 604-CFI, Feb. 20, 1981, 102 SCRA 731, 732)
2. For *failure to pay* the reparation of the damage caused, indemnification of the consequential damages, and the costs of the proceedings.
3. When the penalty imposed is *fine and a penalty not to he executed by confinement* in a penal institution and which has no *fixed duration.*

Subsidiary imprisonment under special law.

Act No. 1732 of the Philippine Commission provides for the rules in case the court shall impose a fine as the whole or as a part of the punishment for any *criminal offense* made punishable by any *special law.*

Rules:

1. When the court merely imposes a fine, the subsidiary liability shall not exceed 6 months, at the rate of one day of imprisonment for every ₱2.50.
2. In case both fine and imprisonment are imposed, the subsidiary liability shall not exceed 1/3 of the term of imprisonment, and in no case shall it exceed 1 year.
3. In case the imprisonment is for more than 6 years in addition to a fine, there shall be no subsidiary imprisonment.
4. When a fine is imposed for violation of any municipal ordinance or ordinances of the City of Manila, the rate is one day for every ₱1.00, until the fine is satisfied, provided that the total subsidiary imprisonment does not exceed 6

months, if the penalty imposed is fine alone; and not more than 1/3 of the principal penalty, if it is imposed together with imprisonment.

The provisions of Act No. 1732 are applicable to offenses made punishable by acts of the Philippine Legislature. (U.S. vs. Esteban, 42 Phil. 1, 2)

Act No. 1732 is not applicable to offenses made punishable by the Act of the United States Congress.

Subsidiary imprisonment cannot be imposed on the defendant convicted of violating Sec. 2 of the Act of U.S. Congress of July 16, 1918, for failure to pay the fine, because said Act contains no provision authorizing the imposition of subsidiary penalty. Neither Art. 39 of the Revised Penal Code nor Act No. 1732 is applicable. (People vs. Tan, 51 Phil. 71, 75)

Since the Tax Code does not provide for the imposition of a subsidiary penalty in case of insolvency, no subsidiary imprisonment can be imposed.

Where the defendant is charged with having failed to pay on or before May 15 or August 15 of certain years his taxes, as required by paragraphs (b) and (c), Section 51 of the Tax Code, the provision of law relative to the imposition of subsidiary imprisonment in case of insolvency is Section 353 of the Tax Code. The subsidiary penalty provided in said section refers only to non-payment of the fine and not of the taxes due. In other words, while the appealed decision is correct as regards the imposition of the subsidiary imprisonment in case of failure to pay the fine, the same is erroneous with respect to the imposition of such subsidiary penalty for nonpayment of taxes due. (People vs. Balagtas, 105 Phil. 1362-1363 [Unrep.])

No subsidiary imprisonment for nonpayment of income tax.

As the Internal Revenue Code fails to provide for the collection of the income tax in criminal proceedings, conviction for failure or neglect to pay such tax does not include payment of indemnity to the State in the amount of the tax not paid, nor can subsidiary imprisonment be imposed in case of insolvency. (People vs. Arnault, 92 Phil. 252, 262)

Subsidiary imprisonment under special laws.

Persons convicted of violation of special laws are liable to subsidiary imprisonment in case of insolvency in the payment of indemnity, except where the indemnity consists in unpaid internal revenue tax. (People vs. Domalaon, C.A., 56 O.G. 5072, citing People vs. Moreno, 60 Phil. 712 and People vs. Arnault, 92 Phil. 252)

Subsidiary imprisonment, like accessory penalties, not essential in determining jurisdiction.

The accused was prosecuted for violation of the Usury Law. The penalty for such violation is a fine of not less than ₱50 nor more than ₱200, or imprisonment for not less than 10 days nor more than 6 months, or both, and also the return of the entire sum received as interest from the party aggrieved, and in case of nonpayment to suffer subsidiary imprisonment. It was argued by the Solicitor General that in view of the possible subsidiary imprisonment which must be added to the principal penalty of 6 months, the justice of the peace court has no jurisdiction in cases involving the Usury Laws.

Held: The return of the usurious interest is a *civil liability* and is not a part of the penalty provided for the offense. (People vs. Caldito, 72 Phil. 262, 264-265)

What *determines* the *jurisdiction* of the Court in criminal cases *is the extent of the penalty* which *the law imposes* for the crime charged in the information or complaint. (People vs. Fajardo, 49 Phil. 206, 210)

It is settled rule that subsidiary imprisonment, like accessory penalties, is not essential in the determination of the criminal jurisdiction of a court. (People vs. Caldito, *supra,* at 267)

The decision need not state that there should not be any subsidiary imprisonment when the law forbids it.

Counsel for appellee submits that, "In view of the principal penalty imposed, the decision should state that there should not be any subsidiary imprisonment in case of insolvency." The recommendation is not well taken because Article 39, No. 3, Revised Penal Code provides that when the principal penalty is higher than *prision correccional,* no subsidiary imprisonment in case of insolvency shall

be imposed. Hence, it is not necessary for the decision to state what the law expressly forbids. We are aware of the practice of courts in making such statement although unnecessary and find nothing wrong in the superfluity. However, a judgment which does not include said pronouncement is in accordance with law. (People vs. Rivera, 1 C.A. Rep. 38)

Section Three. — Penalties in which other accessory penalties are inherent

Art. 40. *Death — Its accessory penalties.* — The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, unless such accessory penalties have been expressly remitted in the pardon.

Art. 41. *Reclusion perpetua and reclusion temporal — Their accessory penalties.* — The penalties of *reclusion perpetua and reclusion temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 42. *Prision mayor — Its accessory penalties.* — The penalty of *prision mayor* shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 43. *Prision correccional — Its accessory penalties.* — The penalty of *prision correccional* shall carry with it that of suspension from public office, from the right to follow a profession

or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 44. *Arresto — Its accessory penalties.* — The penalty of *arresto* shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.

Outline of accessory penalties inherent in principal penalties:

1. Death, when not executed by reason of commutation or pardon — (1) perpetual *absolute* disqualification; and (2) civil interdiction for 30 years, if not expressly remitted in the pardon.

2. *Reclusion perpetua* and *reclusion temporal* — (1) civil interdiction for life or during the sentence; and (2) perpetual *absolute* disqualification, unless expressly remitted in the pardon of the principal penalty.

3. *Prision mayor* — (1) temporary absolute disqualification; and (2) perpetual *special* disqualification from suffrage, unless expressly remitted in the pardon of the principal penalty.

4. *Prision correccional* — (1) suspension from *public office, profession or calling*, and (2) perpetual special disqualification from suffrage, if the *duration of imprisonment exceeds 18 months*, unless expressly remitted in the pardon of the principal penalty.

Note: There is perpetual special disqualification from suffrage, only when the duration of the imprisonment exceeds 18 months.

5. *Arresto* — suspension of the right to hold office and the right of suffrage *during the term of the sentence.*

Destierro has no accessory penalty.

The Code does not provide for any accessory penalty for *destierro*.

Is there accessory penalty attached to death penalty?

None, for obvious reasons.

It is only when the death penalty is not executed by reason of commutation or pardon that the accessory penalty provided for in Art. 40 shall be suffered by the convict.

"Unless expressly remitted in the pardon."

The accessory penalties mentioned in Articles 40 to 43 must be suffered by the offender, although pardoned as to the principal penalties. To be relieved of the accessory penalties, the same must be *expressly remitted* in the pardon.

Persons who served out the penalty may not have the right to exercise the right of suffrage.

Absolute pardon for any crime for which one year imprisonment or more was meted out restores the prisoner to his political rights. Where the penalty is less than one year, disqualification does not attach, except when the crime committed is one against property. For illustrations: (1) A was prosecuted for physical injuries and condemned to suffer 10 months imprisonment. Though not pardoned, he is not disqualified. (2) B was prosecuted for theft and sentenced to imprisonment for 10 months. He cannot vote unless he is pardoned. (3) C was prosecuted and sentenced to 4 years for physical injuries, or estafa. C has to be pardoned if he is to exercise the right of suffrage. The nature of the crime is immaterial when the penalty imposed is one year imprisonment or more. (Pendon vs. Diasnes, 91 Phil. 848, explaining paragraphs a and b of Section 99 of Rep. Act No. 180, as amended by Rep. Act No. 599)

Accessory penalties need not be expressly imposed; they are deemed imposed.

The accessory penalties are understood to be always imposed upon the offender by the mere fact that the law fixes a certain penalty for a given crime.

Article 73 provides that whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict.

Thus, when the law provides that those guilty of homicide shall be punished by *reclusion temporal,* it is understood that it includes civil interdiction during the period of the sentence and perpetual absolute disqualification.

Accessory penalties do not determine jurisdiction.

The accused was charged with estafa, and was sentenced to *arresto mayor* with the accessory penalty of suspension from public office and the right of suffrage during the term of his sentence by the justice of the peace court.

The accused raised the question of jurisdiction of the justice of the peace court.

Held: **The justice of the peace court has jurisdiction. The accessory penalties do not affect the jurisdiction of the court in which the information is filed, because they do not modify, or alter the nature of the penalty provided by the law. What determines jurisdiction in criminal cases is the extent of the principal penalty which the law imposes for the crime charged in the information or complaint. (People vs. Fajardo, *supra;* People vs. Caldito, *supra)***

Note: **Under Sec. 2 of R.A. No. 7691, the MTC has exclusive original jurisdiction over offenses punishable with imprisonment not exceeding 6 years irrespective of the amount of the fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof.**

Art. 45. *Confiscation and forfeiture of the proceeds or instruments of the crime.* — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

Outline of the provision of this article.

1. **Every penalty imposed carries with it the forfeiture of the proceeds of the crime and the instruments or tools used in the commission of the crime.**
2. **The proceeds and instruments or tools of the crime are confiscated and forfeited in favor of the Government.**
3. **Property of a third person not liable for the offense, is not subject to confiscation and forfeiture.**
4. **Property not subject of lawful commerce (whether it belongs to the accused or to third person) shall be destroyed.**

No forfeiture where there is no criminal case.

Where the slot machines were seized under a search warrant *and there is no criminal case* as yet against their operator for violation of the gambling law, and there is only a civil case brought by the operator to enjoin the municipal officials from banning the operation of the slot machines, the court cannot order the destruction of the machines as not subject of lawful commerce. (Philips vs. Municipal Mayor, 105 Phil. 1344 [Unrep.], No. L-9183, May 30, 1959)

The ruling is based on the phrase "every penalty imposed." A penalty cannot be imposed unless there is a criminal case filed, the case is tried, and the accused is convicted.

The forfeiture of the proceeds or instruments of the crime cannot be ordered if the accused is acquitted, because no penalty is imposed.

Courts cannot order the confiscation of property belonging to a third person if the latter is not indicted.

Under Article 45 of the Revised Penal Code, which authorizes the confiscation and forfeiture of the proceeds of the crime and the

instruments or tools with which it was committed except when they are "the property of a third person not liable for the offense," the court cannot order the forfeiture of goods the owner of which is not indicted although there is sufficient ground to hold him guilty of the acts for which the accused has been convicted. (People vs. Delgado, C.A., 64 O.G. 785)

Where the smuggled goods are owned by a third person, they cannot be ordered forfeited as instrument of the crime because Article 45 of the Revised Penal Code authorizes the confiscation and forfeiture of the proceeds of the crime and the instrument or tools with which it was committed except when they are "the property of a third person not liable for the offense, although the owner could have been convicted if he had been indicted with the accused." (People vs. Delgado, 9 CAR [2s], 960, 979-980)

Third party ownership was considered established under the following set of facts: that the car in question was registered in the name of the third party, who, in the absence of strong evidence to the contrary, must be considered as the lawful owner thereof; that the only basis in concluding that the said car belongs to the accused were the latter's statements during the trial of the criminal case to that effect; that the said statements were not, however, intended to be, nor could constitute, a claim of ownership over the car adverse to his mother, who is the third party, but were made simply in answer to questions propounded in court for the sole purpose of establishing the identity of the defendant who furnished the car used by the appellants in the commission of the crime; that the chattel mortgage on the car and its assignment in favor of the intervenor, the assignee of the chattel mortgage, were made several months before the date of the commission of the crimes charged, which circumstance forecloses the possibility of collusion to prevent the State from confiscating the car. (People vs. Jose, No. L-28232, Feb. 6, 1971, 37 SCRA 450, 481)

Instruments of the crime belonging to innocent third person may be recovered.

U.S. vs. Bruhez
(28 Phil. 305)

Facts: Lorenzo Uy was an employee and during the absence of his employer and without the latter's knowledge, Lorenzo Uy drew out

a check for ₱3,500 against the bank account of the employer and used the money consisting of seven P500 bills to bribe Bruhez.

Held: Where the money used to bribe a customs official to permit the illegal importation of opium belongs to an innocent third party, it should not be confiscated. The person who owns the money used in the commission of the crime has a right to intervene in the proceeding in the court having jurisdiction of the offense for the purpose of determining his rights in the premises.

Confiscation can be ordered only if the property is submitted in evidence or placed at the disposal of the court.

U.S. vs. Filart
(30 Phil. 80)

Facts: The accused planned to sell 450 tickets, each representing a chance on an automobile to be given as a prize to the one who would draw the lucky number. The trial court ordered the confiscation of the automobile and the money obtained from the sale of the tickets which were not before the court or in the possession of any of the parties to the action at the time the order of confiscation was made.

Held: Where it appears that in a prosecution for violation of the Gambling Law, the automobile as well as the money used in committing such violation was not in the possession of the court, or of any of the parties to the action, the court has no jurisdiction to order the confiscation of the property.

Articles which are forfeited, when the order of forfeiture is already final, cannot be returned even in case of an acquittal.

Com. of Customs vs. Encarnacion
(95 Phil. 439)

Facts: A crew member of the PAL, coming from Madrid, brought with him certain dutiable articles. As they were not declared, the collector of Customs decreed that said articles be forfeited to the Government. The order of forfeiture became final. Said crew member was charged with violation of the Revised Administrative Code for his failure to declare dutiable articles, but after trial, he was acquitted on the ground of insufficiency of evidence, the Court ordering at the same time the Bureau of Customs to return to him said articles upon prior payment of the customs duties due thereon.

Held: The respondent judge erred in ordering the release of the dutiable articles, because said articles already ceased to belong to the crew member, as they had been forfeited to the Government.

Confiscation and forfeiture are additional penalties.

After several defendants had pleaded guilty to a charge of *gambling,* the court sentenced each of them to pay a fine. Immediately after the sentence was read to them, they paid the fine. Subsequently, the fiscal discovered that a certain sum of money used by the defendants in gambling had not been ordered confiscated. He moved the court to modify the judgment by issuing an order confiscating the money. Can the court properly issue such order? No, because the confiscation of the money is an additional penalty and as the sentence has become final, the court cannot modify, alter or change that sentence. (U.S. vs. Hart, 24 Phil. 578, 581-582)

This Court has held in *People vs. Alejandro Paet y Velasco,* 100 Phil. 357, that where the penalty imposed did not include the confiscation of the dollars involved, the confiscation or forfeiture of the said dollars as is sought in the Government's appeal, would be an additional penalty and would amount to an increase of the penalty already imposed, thereby placing the accused in double jeopardy. And under Rule 118 (now Rule 122), Section 2, of the Rules of Court, the Government cannot appeal in a criminal case if the defendant would be placed thereby in double jeopardy. (People vs. Sanchez, 101 Phil. 745, 747-748)

When the accused has appealed, confiscation and forfeiture not ordered by the trial court, may be imposed by the appellate court.

Article 45 of the Revised Penal Code (providing for the confiscation or forfeiture of the instruments or tools employed in the commission of a crime) has repeatedly been applied to crimes penalized by special laws, in default of a contrary mandate therein. While this Court in the case of *People vs. Paet,* 53 O.G. 668 and *People vs. Sanchez, supra,* refused to entertain the Government's appeal from the refusal of the Court to decree such a forfeiture, it did so, not because Art. 45 of the Penal Code did not apply but exclusively on the ground that in a criminal case wherein the accused had not appealed, no appeal can be interposed by the Government with a view to increasing the penalty

imposed by the Court below; and confiscation being an additional penalty, the accused would be placed twice in jeopardy of punishment for the same offense, should the Government's appeal be entertained. But in the present case, the accused's own appeal has removed all bars to the review and correction of the penalty imposed by the court below, even if an increase thereof should be the result. Judgment modified by ordering that the unlicensed money found in the possession of the appellant be declared forfeited to the Government. (People vs. Exconde, 101 Phil. 1125, 1133-1134)

Forfeiture and confiscation of instruments and proceeds of the offense are accessory penalties. Are they not deemed imposed?

Chapter Four

APPLICATION OF PENALTIES

Section One. — Rules for the application of penalties to the persons criminally liable and for the graduation of the same.

Art. 46. ***Penalty to be imposed upon principals in general.*** **— The penalty prescribed by law for the commission of a felony shall be imposed upon the principals in the commission of such felony.**

Whenever the law prescribes a penalty for a felony in general terms, it shall be understood as applicable to the consummated felony.

Penalty prescribed in general terms — general rule.

The penalty prescribed by law in *general terms* shall be imposed:

1. **Upon the principals.**
2. **For consummated felony.**

In Art. 249, for instance, the penalty of *reclusion temporal* is provided for the crime of homicide. That penalty is intended for the *principal* in a *consummated* homicide.

Exception — when the law fixes a penalty for frustrated or attempted felony.

The exception is when the penalty to be imposed upon the principal in frustrated or attempted felony is fixed by law.

Whenever it is believed that the penalty lower by one or two degrees corresponding to said acts of execution is not in proportion to the wrong done, the law fixes a distinct penalty for the principal in frustrated or attempted felony.

Example: The penalty prescribed by the Code for robbery with homicide is *reclusion perpetua* to death (Art. 294, No. 1); but the penalty to be imposed upon the offender in case the homicide was consummated but the robbery was attempted or frustrated is not two degrees or one degree lower than said penalty, but *reclusion temporal* in its maximum period to *reclusion perpetua* as prescribed in Art. 297.

Graduation of penalties by degrees or by periods.

The graduation of penalties by degrees refers to *stages of execution* (consummated, frustrated or attempted) and to the *degree of the criminal participation* of the offender (whether as principal, accomplice, or accessory).

The division of a divisible penalty into three periods, as maximum, medium and minimum, refers to the proper period of the penalty which should be imposed when aggravating or mitigating circumstances attend the commission of the crime.

Art. 47. *In what cases the death penalty shall not be imposed; Automatic review of death penalty cases.* — The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be *reclusion perpetua.*

In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court *en banc,* within twenty (20) days but not earlier than fifteen (15)

days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter. *(As amended by R.A. No. 7659)*

Majority vote of the Supreme Court is required for the imposition of the death penalty.

Since the Supreme Court is composed of 15 members (Sec. 4[1], Art. VIII, 1987 Constitution), the vote of eight (8) members is required to impose the death penalty.

Court of Appeals to Review Death Penalty Cases.

Up until now, the Supreme Court has assumed the direct appellate review over all criminal cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment (or lower but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua,* or life imprisonment is imposed).

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It must be stressed, however, that the constitutional provision is not preclusive in character, and it does not necessarily prevent the Court, in the exercise of its rule-making power, from adding an intermediate appeal or review in favor of the accused.

In passing, during the deliberations among the members of the Court, there has been a marked absence of unanimity on the crucial point of guilt or innocent of herein appellant. Some are convinced that the evidence would appear to be sufficient to convict; some would accept the recommendation of acquittal from the Solicitor General on the ground of inadequate proof of guilt beyond reasonable doubt. Indeed, the occasion best demonstrates the typical dilemma, *i.e.*, the determination and appreciation of primarily factual matters, which the Supreme Court has had to face with in automatic review cases; yet, it is the Court of Appeals that has aptly been given the direct mandate to review factual issues.

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion*

perpetua, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for the its final disposition. (People vs. Mateo, G.R. Nos. 147678-87, July 7, 2004)

The 1987 Constitution merely suspended the imposition of the death penalty.

Section 19(1), Article III of the 1987 Constitution provides that: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua.*" A reading of said Section will readily show that there is really nothing therein which expressly declares the abolition of the death penalty. The 1987 Constitution merely suspended the imposition of the death penalty. (People vs. Muñoz, G.R. Nos. 38969-70, Feb. 9, 1989, 170 SCRA 107, 120, 121)

R.A. No. 7659 restored the death penalty while R.A. No. 9346 prohibited the imposition of the death penalty.

Republic Act No. 7659 which took effect on 31 December 1993, restored the death penalty for certain heinous crimes. Republic Act No. 9346 which was enacted on June 24, 2006 prohibited the imposition of the death penalty, and provided for the imposition of the penalty of *reclusion perpetua* in lieu of death.

Death penalty is not imposed in the following cases:

1. When the guilty person is below 18 years of age at the time of the commission of the crime.
2. When the guilty person is more than 70 years of age.
3. When upon appeal or automatic review of the case by the Supreme Court, the vote of eight members is not obtained for the imposition of the death penalty.

Death penalty shall not be imposed when guilty person is over 70 years.

At the time the trial court rendered its decision on March 11, 1967, Manosca was 64 years old. He should now be 74. Article 47 of the Revised Penal Code prohibits the imposition of the death penalty when the guilty person is more than seventy years of age. (People vs. Alcantara, No. L-16832, Nov. 18, 1967, 21 SCRA 906, 913-914)

Exceptional cases in which the death penalty was not imposed.

(1) Considering the circumstances under which the offense in question was perpetrated in the light of the deplorable conditions existing in the national penitentiary which had been previously taken cognizance of by this Court, imposition of the penalty of death is believed unwarranted. (People vs. Dela Cruz, No. L-46397, May 16, 1983, 122 SCRA 227, 231, citing People vs. Delos Santos, 14 SCRA 4702 and People vs. Garcia, 96 SCRA 497)

(2) Appellant has already been detained for almost eight years now and is presently confined at the National Penitentiary awaiting the outcome of our review of the judgment rendered by the trial court. The facts of the case tend to show that the crime was not the result of any deliberate and well-formed nefarious conspiracy of a criminal group. It was rather a crime clumsily conceived on the spur of the moment. Appellant obviously did not fully realize the gravity of the crime he and his companions were embarking upon. The extreme penalty of death imposed on appellant is inappropriate. Under the given circumstances, the penalty

that should be imposed should be reduced to life imprisonment. (People vs. Marcos, No. L-65048, Jan. 9, 1987, 147 SCRA 204, 217)

What is the justification for death penalty?

Social defense and exemplarity justify the penalty of death. Carillo has proved himself to be a dangerous enemy of society. The death penalty imposed upon him is a warning to others. (People vs. Carillo, 85 Phil. 611, 635)

Death penalty not cruel and unusual.

The death penalty, as such, is not excessive, unjust or cruel, within the meaning of that word in the Constitution. Punishments are cruel when they involve torture or lingering death. Cruel punishment implies something inhuman and barbarous, something more than the mere extinguishment of life. (People vs. Marcos, *supra,* at 216, citing People vs. Camano, 115 SCRA 688)

Rep. Act No. 296 can be given retroactive effect.

Republic Act No. 296, providing that eight justices must concur in the imposition of death penalty is retroactive.

Rep. Act No. 296 is *procedural* and *not* substantive, and that it is applicable to cases pending in the courts at the time of the approval of said Act and to crimes committed before its approval. (People vs. James Young, 83 Phil. 702)

In what crimes is death penalty imposed?

In (1) treason, (2) piracy, (3) qualified piracy, (4) qualified bribery, (5) parricide, (6) murder, (7) infanticide, (8) kidnapping and serious illegal detention, (9) robbery with homicide, (10) destructive arson, (11) rape with homicide, (12) plunder, (13) certain violations of the Dangerous Drugs Act, and (14) carnapping.

"Death penalty shall be imposed in all cases in which it must be imposed under existing law."

The accused, without any provocation, hacked to death three girls in their house. The court refused to impose the death penalty,

believing and stating that "a quick death would seem to be too sweet a medicine for him and he should be put to death slowly but surely" and imposed life imprisonment at hard labor, without hope whatsoever of any pardon or reprieve.

Is the pronouncement of the court in accordance with law?

No, because as long as the death penalty remains in the statute books, it is the duty of the judicial officers to respect and apply the law regardless of their private opinion. (People vs. Limaco, 88 Phil. 35, 43)

The trial court must require the prosecution to present evidence, despite plea of guilty when the crime charged is punished with death.

The fact that there were no stenographic notes taken of the proceedings and that the lower court made only a brief reference to the plea of guilty in the decision did not speak well of the trial court's conduct in so serious a matter involving a human life. The essence of judicial review in capital offenses is that while society allows violent retribution for heinous crimes committed against it, it always must make certain that the blood of the innocent is not spilled, or that the guilty are not made to suffer more than their just measure of the punishment and retribution. Thus, a sentence of death is valid only if it is susceptible of a fair and reasonable examination by this court. This, however, is impossible if no evidence of guilt was taken after a plea of guilty. (People vs. Busa, No. L-32047, June 25, 1973, 51 SCRA 317, 321)

Death penalty is not imposed in view of certain circumstances.

Precisely because of the limited nature of his schooling and of the effect upon his general outlook, of the unenlightened environment prevailing in the community of Ilongots to which he belongs, as well as of the circumstance that the deceased Flaviano Fontanilla had been a former municipal mayor, whose act in clearing and working on a land claimed by the Ilongots was seemingly regarded by these non-Christians as one of oppression and abuse of authority, the Court feels that Santos should not be dealt with the severity due to persons otherwise circumstanced. (People vs. Santos, Nos. L-17215-17, Feb. 28, 1967, 19 SCRA 445, 454)

Where the penalty of *reclusion perpetua* is imposed, in lieu of the death penalty, there is a need to perfect an appeal.

Since the death penalty's imposition is now prohibited, there is a need to perfect an appeal, if appeal is desired, from a judgment of conviction for an offense where the penalty imposed is *reclusion perpetua* in lieu of the death penalty. (People vs. Salome, G.R. No. 169077, Aug. 31, 2006)

The records of all cases imposing the penalty of death, *reclusion perpetua* or life imprisonment shall be forwarded by the Court of Appeals to the Supreme Court for review.

Pursuant to the ruling of the Supreme Court in *People vs. Mateo,* G.R. Nos. 147678-87, July 7, 2004, if the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.

Art. 48. *Penalty for complex crimes.* — 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. *(As amended by Act No. 4000.)*

At least two crimes must be committed.

Art. 48 requires the commission of at least two crimes. But the two or more *grave or less grave* felonies must be the result of a *single* act, or an offense must be a *necessary means for committing* the other.

A complex crime is only one crime.

In complex crime, although two or more crimes are actually committed, they constitute only *one* crime in the eyes of the law as well as in the conscience of the offender. The offender has *only* one

criminal intent. Even in the case where an offense is a necessary means for committing the other, the evil intent of the offender is only one. (People vs. Hernandez, 99 Phil. 515) Hence, there is only *one* penalty imposed for the commission of a complex crime.

Two kinds of complex crimes:

1. When a single act constitutes two or more grave or less grave felonies.
2. When an offense is a necessary means for committing the other.

The first is otherwise known as *compound crime.* The second is the *complex crime proper.*

But ordinarily, both are referred to as complex crimes.

"When a single act constitutes two or more grave or less grave felonies."

Requisites:

1. That only a *single act* is performed by the offender.
2. That the single act produces (1) *two* or *more grave* felonies, or (2) *one* or *more grave* and *one* or *more less grave* felonies, or (3) *two or more less grave* felonies.

The single act of throwing a hand grenade producing murder and multiple attempted murders.

Guillen, by a *single act* of throwing a highly explosive hand grenade at President Roxas resulting in the death of another person, committed several grave felonies, namely:

(1) murder, of which Simeon Varela was the victim; and

(2) multiple attempted murders, of which President Roxas and four others were the injured parties. (People vs. Guillen, 85 Phil. 307, 318)

Murder is committed when a person is killed by means of explosion. (Art. 248) The penalty for the crime committed is death, the maximum of the penalty for murder, which is the graver offense. The penalty for each of the attempted murder is two degrees lower,

which is still an afflictive penalty. The attempted murders are grave felonies.

Placing a time bomb in a plane, which caused it to explode in mid-air, killing 13 persons therein, constitutes a complex crime of multiple murder and destruction of property. (People vs. Largo, 99 Phil. 1061-1062 [Unrep.])

Several shots from Thompson sub-machine gun causing several deaths, although caused by a single act of pressing the trigger, are considered several acts.

The accused fired his Thompson sub-machine gun at several persons. The first burst of shots hit three persons. The accused let loose a second burst of shots wounding two others.

Held: For each death caused or physical injuries inflicted upon the victims corresponds a distinct and separate shot fired by the accused, who thus made himself criminally liable for as many offenses as those resulting from every single act that produced the same. (People vs. Desierto, C.A., 45 O.G. 4542)

Although each burst of shots was caused by one single act of pressing the trigger of the sub-machine gun, in view of its special mechanism the person firing it has only to keep pressing the trigger with his finger and it would fire continually. Hence, it is not the act of pressing the trigger which should be considered as producing the several felonies, but the number of bullets which actually produced them.

No single act in the following cases.

But when the acts are wholly different, not only in themselves, but also because they are directed against two different persons, as when one fires his revolver twice in succession, killing one person and wounding another (U.S. vs. Ferrer, 1 Phil. 56), or when two persons are killed one after the other, by different acts, although these two killings were the result of a single criminal impulse (People vs. Alfindo, 47 Phil. 1), the different acts must be considered as distinct crimes.

The eight killings and the attempted murder were perpetrated by means of different acts. Hence, they cannot be regarded as consti-

tuting a complex crime under Article 48 of the Revised Penal Code which refers to cases where "a single act constitutes two or more grave felonies, or when an offense is a necessary means for committing the other." (People vs. Toling, No. L-27097, Jan. 17, 1975, 62 SCRA 17, 34)

The infliction of the four fatal gunshot wounds on Siyang and of the wound in the palm of the mayor's right hand was not the result of a single act. The injuries were the consequences of two volleys of gunshots. Hence, the assaults on Siyang and the mayor cannot be categorized as a complex crime. (People vs. Tamani, Nos. L-22160-61, Jan. 21, 1974, 55 SCRA 153, 176)

Although several independent acts were performed by the accused in firing separate shots from their individual firearms, it was not possible to determine who among them actually killed victim Rolando Tugadi. Moreover, there is no evidence that accused-appellants intended to fire at each and every one of the victims separately and distinctly from each other. On the contrary, the evidence clearly shows a single criminal impulse to kill Marlon Tugad's group as a whole. Thus, one of accused-appellants exclaimed in frustration after the ambush: "My gosh, we were not able to kill all of them." Where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a single complex offense. (People vs. Sanidad, G.R. No. 146099, April 30, 2003)

"Two or more grave or less grave felonies."

In the case of a compound crime, the *offenses* involved should be either *both grave* or *both less grave,* or *one* of them a *grave* felony and the *other less grave.*

Light felonies produced by the same act should be treated and punished as separate offenses or may be absorbed by the grave felony.

1. *Several light felonies resulting from one single act — not complex.*

Thus, in a collision between two automobiles driven in a careless and negligent manner, resulting in the slight

physical injuries of the passengers and light felony of damage to property, there is no complex crime, because the crime of *slight physical injuries,* as well as that of damage to property, is a *light* felony. (People vs. Turla, 50 Phil. 1001, 1002)

In this case, there are as many crimes as there are persons injured with light physical injuries and as many penalties as there are light felonies committed, even if they are produced by a single act of the offender.

2. *When the crime is committed by force or violence, slight physical injuries are absorbed.*

a. Where the person in authority or his agent, who was attacked while in the performance of his duty, suffered slight physical injuries only, the crime of slight physical injuries is absorbed in the crime of direct assault. (Art. 148) This is the ruling in the cases of *People vs. Benitez,* 73 Phil. 671 and *People vs. Acierto,* 57 Phil. 614.

b. When in the commission of rape, slight physical injuries are inflicted on the girl's genital organ, the crime of slight physical injuries is absorbed in the crime of rape. (People vs. Apiado, 53 Phil. 325, 327)

The reason for the rulings is that the slight physical injuries are the necessary consequence of the force or violence inherent in the crimes of direct assault and rape.

Examples of compound crime:

(a) The *single act* of Pama in firing a shot, the *same bullet* causing the death of two persons who were standing on the same line of the direction of the bullet. (People vs. Pama, C.A., 44 O.G. 3339)

Homicide, which is the unlawful killing of a person, is punishable by *reclusion temporal,* an afflictive penalty. Hence, in killing two persons, Pama committed two homicides, which are two *grave* felonies. (See Art. 9) Since they were the result of one single act of firing a shot, a complex crime was committed.

(b) The act of raping a girl, causing her physical injuries which required medical attention for about twenty days. (U.S. vs. Andaya, 34 Phil. 690) This is a complex crime of rape with less serious physical injuries. (Arts. 266-A and 265 in relation to Art. 48) The Supreme Court considered the crime of less serious physical injuries (the laceration of the genital parts which required medical attendance for about twenty days) as necessary to the commission of the crime of rape.

With due respect, it is believed that there being only one act of forcible sexual intercourse which produced the two crimes, the accused committed a compound crime.

Less serious physical injuries is a *less grave felony,* because it is punishable by *arresto mayor,* a correctional penalty. (See Art. 9)

The Court of Appeals has a different ruling:

The less serious physical injuries inflicted on that complainant cannot be made to complex the offense of attempted rape, because these injuries were the result of the force exerted by the appellant to subdue her and force her to submit to his vile desires. (People vs. De la Cruz, C.A., 61 O.G. 5384)

(c) After a justice of the peace had read to the accused the sentence of conviction, the latter took a dagger and stabbed said justice of the peace in the back, the wound incapacitating him for ordinary work for more than 30 days. This is a complex crime of direct assault with serious physical injuries, the single act of stabbing the justice of the peace constituting the two *less grave* felonies of direct assault and serious physical injuries. (U.S. vs. Montiel, 9 Phil. 162, 167-168)

(d) Where the victim was killed while discharging his duty as barangay captain to protect life and property and enforce law and order in his barrio, the crime is a complex crime of homicide with assault upon a person in authority. (G.R. No. 57415, Dec. 15, 1989, 180 SCRA 102, 107)

(e) Where the stabbing and killing of the victim which caused likewise the death of the fetus arose from the single criminal intent of killing the victim, as shown by accused's pursuit of the victim after she was able to escape, the crime committed is the complex crime of murder with abortion. (People vs. Lopez, G.R. No. 136861, Nov. 15, 2000)

Rape with homicide is a special complex crime not covered by Art. 48.

When by reason or on the occasion of the rape, a homicide is committed, or when the rape is frustrated or attempted and a homicide is committed by reason or on the occasion thereof, Art. 266-B shall apply.

Therefore, the ruling in the case of *People vs. Matela,* 58 Phil. 718, that raping a girl and killing her afterwards constitute two distinct offenses which must be punished separately, is no longer controlling.

Likewise, the ruling in the case of *People vs. Acosta,* 60 Phil. 158, that raping a girl transmitting to her a venereal disease which caused her death or that killing the victim of rape when she tried to shout, *People vs. Yu,* 1 SCRA 199, is a complex crime of rape with homicide under Art. 48, is no longer controlling.

Under Art. 266-B, the facts in both cases would constitute a special complex crime of rape with *homicide* punished with death.

When in obedience to an order several accused simultaneously shot many persons, without evidence how many each killed, there is only a single offense, there being a single criminal impulse.

Lawas ordered the Moros to be tied in order to be brought to another place. When one of the guards approached Datu Lomangcolob, the latter refused, thereupon, Lawas fired his revolver at him and ordered the guards to fire; the guards following instructions fired at the Moros including those who tried to escape. After a short time, Lawas ordered his men to "cease fire" and the firing stopped. The evidence positively shows that the killing was the result of a single impulse, which was induced by the order of the leader to fire, and continued with the intention to comply therewith, as the firing stopped as soon

as the leader gave the order to that effect. There was no intent on the part of the appellants to fire at each and everyone of the victims separately and distinctly from each other. The Supreme Court held "that if the act or acts complained of resulted from a single criminal impulse, it constitutes a single offense." The Court continued by stating, "it may also be added that there is absolutely no evidence as to the number of persons killed by each and every one of the appellants, so even if we were induced to hold each appellant responsible for each and every death caused by him, it is impossible to carry that desire into effect as it is impossible to ascertain the individual deaths caused by each and everyone. We are, therefore, forced to find the appellants guilty of only one offense of multiple homicide for which the penalty to be imposed should be in the maximum period." (People vs. Lawas, G.R. L-7618, June 30, 1955, 97 Phil. 975 [Unrep.])

The ruling in the Lawas case applies only when there is no evidence at all to show the number of persons killed by each of several defendants.

The ruling in the *Lawas* case that each of the appellants was guilty only of the complex crime of homicide, notwithstanding the fact that about fifty persons were killed by the appellants who fired at them with their guns a number of shots, because the killings were the result of a single impulse, does not apply when the appellant alone killed all the six victims, one after another, with one shot each. (People vs. Remollino, 109 Phil. 607, 612)

In *People vs. Abella,* No. L-32205, Aug. 31, 1979, 93 SCRA 25, 76 O.G. 1091, sixteen members of the OXO gang, who were prisoners occupying three small cells on one side of the jailhouse, were able to break into the big cell opposite theirs and, in that big cell, killed fourteen inmates who were members of the *Sigue-Sigue gang.*

The fiscal and the trial court treated the fourteen killings and injuries inflicted on the three other victims as a complex crime of multiple murder and multiple frustrated murder, the court imposing one penalty of death on all of the accused.

In sustaining the trial court, the Supreme Court said:

"In the *De Los Santos case, (supra),* which involved two riots on two successive days in the national penitentiary wherein nine prisoners were killed (five on the first day and four on the second

day), the fourteen members of the *Sigue-Sigue gang* who took part in the killing were convicted of multiple murder (a complex crime) and not of nine separate murders. x x x."

"The ruling in the *De Los Santos* case is predicated on the theory that 'when, for the attainment of a single purpose (underscoring supplied) which constitutes an offense, various acts are executed, such acts must be considered only as one offense,' a complex crime (People vs. Peñas, 66 Phil. 682, 687; See also People vs. Cu Unjieng, 61 Phil. 236, 302 and 906) where the falsification of one hundred twenty eight warehouse receipts during the period from November 30 to July 6, 1931, which enabled the accused to swindle the bank in the sum of one million four hundred thousand pesos was treated as only one complex crime of estafa through multiple falsification of mercantile documents and only one penalty was imposed." (See also People vs. Garcia, No. L-40106, March 13, 1980, 96 SCRA 497, 504, which applied the same "same motive" rule.)

Note: The "single-criminal-impulse," "same motive" or the "single-purpose" theory has no legal basis, for Article 48 speaks of "a single act." However, the theory is acceptable when it is not certain who among the accused killed or injured each of the several victims.

When it is within the scope of possibility that the two victims were killed by one and the same missile.

When there is no evidence as to how many wounds the victims received and it is within the scope of possibility that they were killed by one and the same missile as they were riding astride the same carabao, and they were shot by the accused in that position, in the absence of a showing that the victims died from more than one bullet, the crime should be classified as a complex crime of double murder. (People vs. Bersamin, G.R. No. L-3098, March 5, 1951)

Ruling in the *Bersamin* case is applicable only when there is no evidence as to how many wounds the victims received and there is a possibility that they were killed by one and the same missile.

Thus, when the two victims each received *more than one* bullet wound, they were *not close to each other* when fired at, and their bodies were found in *different places,* the ruling is not applicable. In

such case, the presumption is that the victims were killed by different shots, and, therefore, the accused are liable for two separate murders. (People vs. Basarain, G.R. No. L-6690, May 24, 1955)

There is no complex crime of arson with homicide under Art. 48.

The ruling in the case of *U.S. vs. Burns,* 41 Phil. 418, that under an information charging the accused with setting fire to an automobile in the basement of an inhabited house, whereby said house was destroyed and one of its inmates burned to death, the accused is guilty of a complex crime of arson with homicide, is no longer applicable to such case, Art. 320 of the Revised Penal Code, as amended by Rep. Act No. 7659, having provided one penalty therefor.

Applicable to crimes through negligence.

Thus, a municipal mayor who *accidentally* discharged his revolver during a school program, killing a girl and injuring a boy requiring medical attendance for more than 30 days, was found guilty of a complex crime of homicide with less serious physical injuries through reckless imprudence. (People vs. Castro, 40 O.G., Supp. 12, 83)

The reason for this ruling is that in view of the definition of *felonies* in Article 3 of the Code, that is, "Acts and omissions punishable by law," committed either "by means of deceit *(dolo)*" or "by means of fault *(culpa),*" it is clear that Article 48 which speaks of "felonies" is applicable to violations under Article 365 which defines and penalizes criminal negligence, a *felony* by means of fault *(culpa).*

A man while pouring gasoline in the tank of his passenger bus in a garage used a candle to light the place. The gasoline caught fire and the house was burned. His mother-in-law, who jumped from a window during the fire, died due to burns and injuries and another person suffered serious physical injuries.

Held: The crimes of arson, homicide, serious physical injuries, and damage to property constitute a complex crime within the meaning of Art. 48. (People vs. Pacson, C.A., 46 O.G. 2165)

The accused, who drove a cargo truck at a fast rate without sounding its horn and without lights in the evening, caused his

truck to collide with a bicycle which was thrown to a group of pedestrians. Two of them died and several other persons were seriously injured.

Held: The two deaths and several serious physical injuries resulted from his single act of reckless driving. Hence, only one penalty should be imposed upon him. (People vs. Villamora, C.A., 40 O.G. 768)

Theft of firearm and illegal possession of same firearm do not form a complex crime — they are two distinct crimes.

While in stealing a firearm the accused must necessarily come into possession thereof, the crime of illegal possession of firearm is not committed by mere transient possession of the weapon. It requires something more: there must be not only intention to own but also intent to use (People vs. Estoista, 93 Phil. 647), which is not necessarily the case in every theft of firearm. Thus, stealing a firearm with intent not to use but to render the owner defenseless, would not justify a charge of illegal possession of the firearm. (People vs. Remerata, 98 Phil. 413, 414)

The other reason is that Art. 48 speaks of two or more grave or less grave felonies resulting from a single act, which excludes crimes punishable by special laws, like the law punishing illegal possession of firearms.

"When an offense is a necessary means for committing the other."

Although the law uses the term "offenses," the Supreme Court, in the case of *People vs. Araneta,* 48 Phil. 650, held that this kind of complex crime does not exist when the two crimes are punished under different statutes.

Requisites:

1. That *at least two* offenses are committed.
2. That one or some of the offenses must be *necessary* to commit the other.
3. That both or all the offenses must be punished under the same statute.

At least two offenses must be committed.

Examples:

(a) Falsification of a public document by an accountable officer (altering the duplicate of the *cedulas* already issued to other persons by erasing the names originally written thereon and writing in their places new names) is an offense which is necessary to commit malversation (collecting ₱2.00 from each of them and misappropriating the amount), which is another offense. (People vs. Barbas, 60 Phil. 241, 243)

The falsification of the cedula certificate, which is a crime under Art. 171, was necessary to commit the crime of malversation under Art. 217, because the accused had to falsify the duplicate of the *cedulas* to obtain from the taxpayers the money which he later misappropriated.

(b) Simple seduction by means of usurpation of official functions. (U.S. vs. Hernandez, 29 Phil. 109)

U.S. vs. Hernandez
(29 Phil. 109)

Fact: Accused Hernandez, in order to seduce a girl, 15 years old, had a talk with accused Bautista. Between them they concocted a plan and then accused Hernandez proposed marriage to the girl. She agreed. In a house in Ermita, accused Bautista, under the name of Aniceto de Castro and pretending to be a Protestant minister, solemnized a fictitious marriage between the girl and accused Hernandez. Thereafter, they lived as a married couple. Later, accused Hernandez and Bautista were prosecuted for seduction through usurpation of public functions.

Held: Without legal authority, accused Bautista performed an act properly pertaining to a person in authority by assuming the official character of a minister of a religious sect in order to make the girl believe that she was legally married to accused Hernandez who had the intention to seduce her. The girl would not have been seduced were it not for the act of accused Bautista.

Note: The crime of usurpation of official function (Art. 177) was a necessary means for committing the crime of simple seduction. (Art. 338)

Abduction as a necessary means for committing rape.

A girl, 19 years of age, who had worked in the rice fields in Calamba, Laguna, was on her way home in the afternoon. When in an uninhabited place, the two accused forcibly abducted her against her strong protest and resistance, took her to the woods in Silang, Cavite, and other places where she was raped by one of the accused while her hands were being held by the other. The crime of forcible abduction (taking a woman against her will with lewd designs — Art. 342) was a necessary means for committing the crime of rape (having sexual intercourse with a woman by using force, etc. — Art. 266-A). (See People vs. Manguiat, 51 Phil. 406)

The phrase "necessary means" does not mean "indispensable means."

The phrase "necessary means" used in Art. 48 has been interpreted *not* to mean indispensable means, because if it did, then the offense as a "necessary means" to commit another would be an indispensable element of the latter and would be an ingredient thereof. The phrase merely signified that, for instance, a crime such as simple estafa can be and ordinarily is committed in the manner defined in the Penal Code; but if the *"estafador"* resorts to or employs falsification, merely to facilitate and insure his committing estafa, then he is guilty of the complex crime of estafa through falsification. (Dissenting Opinion, People vs. Hernandez, 99 Phil. 515, 557)

In complex crime, when the offender executes various acts, he must have a single purpose.

The accused received 17 money orders with a letter, all in one envelope, addressed to the offended party. The accused presented them to the post office for cashing on *one occasion,* after having falsified the signature of the remitter on each and every one of the 17 money orders.

Held: **In all the acts performed by the accused, there was only one criminal intent. To commit estafa, the accused had to commit 17 falsifications. These falsifications were necessary means to commit estafa. (People vs. Gallardo, C.A., 52 O.G. 3103)**

The crime committed is only one complex crime of estafa

through multiple falsifications, and not seventeen separate estafas and seventeen separate falsifications.

But if a person falsified 27 vouchers, *not to commit* estafa or malversation, he is liable for 27 falsifications, because the various acts of falsification were not executed for the attainment of a single purpose. (See Gonzales vs. City Fiscal, CA-G.R. No. 19075-R, March 20, 1957)

In this case, one or more offenses are not necessary means for committing the others.

When in the definition of a felony one offense is a means to commit the other, there is no complex crime.

In murder where the killing of a person is qualified by the circumstance that it was committed *by means of fire or by means of explosion* (Art. 248, par. 3) which in themselves are felonies defined and penalized in Art. 321 and Art. 324, as arson and crimes involving destruction, respectively, there is no complex crime. The crime is murder, plain and simple.

Subsequent acts of intercourse, after forcible abduction with rape, are separate acts of rape.

Where the complaining witness was forcibly abducted by the four accused and violated on board a truck by one of them with the assistance of the three others, and after reaching a house in the evening, the four of them alternately ravished her inside the house three times each and one each the following morning, there was only one forcible abduction with rape which was the one committed in the truck, and the subsequent acts of intercourse in the house against her will are *separate* acts of rape. The reason for the ruling is that when the first act of rape was committed in the truck, the crime of forcible abduction was already consummated so that each of the succeeding rapes committed in the house cannot legally be considered as still connected with the abduction. The crimes committed are one (1) forcible abduction with rape and sixteen (16) separate rapes. (People vs. Bohos, No. L-40995, June 25, 1980, 98 SCRA 353, 364)

Even *while* the first act of rape *was being performed,* the crime of forcible abduction *was already consummated, so* that each

of the three succeeding rapes cannot be complexed with forcible abduction. (People vs. Jose, No. L-28232, Feb. 6, 1971, 37 SCRA 450, 475)

No complex crime when trespass to dwelling is a direct means to commit a grave offense.

When trespass to dwelling (Art. 280) is a direct means to commit a graver offense, like rape, homicide or murder, there is no complex crime of trespass to dwelling with rape, homicide or murder. The trespass to dwelling will be considered as the aggravating circumstance of unlawful entry under par. 18, or of breaking a part of the dwelling under par. 19, of Art. 14. (People vs. Abedosa, 53 Phil. 788, 791)

Note: Trespass to dwelling is committed when a private person shall enter the dwelling of another against the latter's will.

No complex crime, when one offense is committed to conceal the other.

But when one of the offenses was committed for the purpose of *concealing* the commission of the other, there *is no complex crime.*

Examples:

(a) After committing homicide, the accused, *in order to conceal the crime,* set fire to the house where it had been perpetrated. (People vs. Bersabal, 48 Phil. 439, 442)

Note: Setting fire to the house is arson. (Art. 321) But in this case, neither homicide nor arson was necessary to commit the other.

(b) A postmaster received from the offended party ₱1,250 to be transmitted as a telegraph money order to a third person. He failed to send the money and when the complainant demanded its return, he returned only ₱417, having already misappropriated the difference of ₱833. He then forged the signature of the complainant to a receipt made by him (the accused), reciting therein that said complainant had already received from him the entire amount.

Held: The amount appropriated to himself was in the possession and at the disposal of the accused and he could

have appropriated it to himself without the necessity of the falsified document. Two crimes were committed. The falsification was a means to conceal, not to commit, the malversation. (U.S. vs. Geta, 43 Phil. 1009, 1013)

When the offender had in his possession the funds which he misappropriated, the falsification of a public or official document involving said funds is a separate offense.

The accused, a municipal treasurer of Batac, Ilocos Norte, misappropriated ₱741.24 belonging to the public funds. He made it appear in the payroll that several municipal teachers of Batac received their salaries when in fact they did not receive the sums indicated in the payroll as received by them. It was held that the accused was guilty of malversation and falsification, two separate crimes, because the falsification was not a necessary means for the commission of the malversation, but was committed only to conceal the malversation. (People vs. Cid, 66 Phil. 354, 363)

The municipal president, municipal treasurer, and a private individual signed two official payrolls on April 30 for ₱473.70 and on May 2 for ₱271.60, where it was made to appear that certain persons worked as laborers in street projects, when in fact no work was done and those persons were not entitled to pay. The three spent the money for their own personal benefit. It was held that the falsification of the payrolls were not necessary means for the commission of malversation. (Regis vs. People, 67 Phil. 43, 47)

The municipal treasurer having in his possession the funds, the same could be misappropriated by him and his co-accused without the necessity of falsifying any document. Hence, the falsification was not a necessary means for committing the malversation. The falsification of the payrolls was committed to conceal the malversation, in the sense that it was made to appear that the amounts were lawfully disbursed.

But when the offender had to falsify a public or official document to obtain possession of the funds which he misappropriated, the falsification is a necessary means to commit the malversation.

Thus, when the special deputy of the provincial treasurer collected from two individuals the amount of ₱2.00 each in payment

of their cedula tax, which he was able to do by altering the duplicates of the cedulas, which he had already issued to other persons, and issuing the altered duplicates to the two individuals, the falsification of the duplicates was necessary to obtain the ₱4.00 from the two individuals and was the means to commit the malversation by misappropriating the amount. (People vs. Barbas, 60 Phil. 241, 244)

No complex crime where one of the offense is penalized by a special law.

Although the evidence shows that a crime has been committed for the express purpose of committing another, as when a public officer misappropriates public funds for which he is accountable through falsification of public document, yet both crimes should be punished *separately* where it appears that they are *punished under different statutes, i.e.,* the Administrative Code and the Penal Code. (People vs. Araneta, 48 Phil. 650, 654)

Note: Before the Revised Penal Code took effect, the crime of malversation was punished under the Administrative Code.

Illegal possession of firearm is not a necessary means to commit homicide.

The accused was previously convicted of homicide for the perpetration of which he used a .30 caliber rifle. Later, he was prosecuted for illegal possession of said firearm.

Held: The accused committed two different acts with two separate criminal intents, to wit, the desire to take unlawfully the life of a person, and the willful violation of the law which prohibits the possession of a firearm without the required permit. (People vs. Alger, 92 Phil. 227, 229-230)

Note: The other reason is that homicide and illegal possession of firearm are punished under different statutes.

Illegal possession of firearm, when considered a special aggravating circumstance.

With the passage of Rep. Act No. 8294 on June 6, 1997, the use of an unlicensed firearm in murder or homicide is now consid-

ered, not as a separate crime, but merely a special aggravating circumstance. (People vs. Castillo, G.R. Nos. 131592-93, February 15, 2000)

Illegal possession of firearm absorbed in rebellion.

People vs. Rodriguez
(G.R. L-13981, April 25, 1960)

Facts: **The accused was charged with illegal possession of firearm and ammunition. The accused filed a motion to quash on the ground that the crime with which he was charged was already alleged as a component ingredient of the crime of rebellion with which he was already charged in the Court of First Instance of Manila.**

Held: **This gun was introduced by the prosecution as evidence in the case of rebellion. On October 24, 1951, the case for rebellion was filed in the Court of First Instance. On the other hand, the information in the present case was filed on October 30, 1956, which involves the charge of illegal possession of the same firearm and same ammunition. Considering that "any or all of the acts described in Art. 135, when committed as a means to or in furtherance of the subversive ends described in Art. 134, become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves x x x and cannot be considered as giving rise to a separate crime that, under Art. 48 of the Code, would constitute a complex one with that of rebellion (People vs. Geronimo, L-8936, Oct. 23, 1956), the conclusion is inescapable that the crime with which the accused is charged in the present case is already absorbed in the rebellion case and so to press it further now would place him in double jeopardy. While it is true that in the crime of rebellion, there is no allegation that the firearm in question is one of those used in carrying on the rebellion and that the same was borne by the accused without a license, the same would not make the present charge different from the one included in the crime of rebellion, for it appears from the record that one of the firearms used in furtherance thereof is the same pistol with which the accused is now charged. In fact, that pistol was presented in the rebellion case as evidence. Nor is the fact that there is no allegation in the rebellion case that the carrying of the firearm by the accused was without license of any consequence, for it can be safely assumed that it was so, not only because the accused was a dissident but because the firearm was confiscated from his possession."**

When two or more crimes are committed but (1) not by a single act, or (2) one is not a necessary means for committing the other, there is no complex crime.

The accused compelled the pilot to direct the airplane from Laoag to Amoy instead of Aparri, and for not complying with such illegal demand, the accused shot him to death.

Held: The accused committed two separate crimes of frustrated coercion (Arts. 6 and 286) and murder (Art. 248). They do not constitute a complex crime of grave coercion with murder, because the accused could have killed the pilot, without necessity of compelling him to change the route of the airplane; the coercion was not necessary for the commission of murder. Neither was murder necessary to commit coercion. The accused executed two distinct acts, and not only one. Compelling the pilot to change the route of the airplane is one act. Shooting him when he did not comply with that order is another act. (People vs. Ang Cho Kio, 95 Phil. 475, 478)

There is no complex crime of rebellion with murder, arson, robbery, or other common crimes.

Murder, arson and robbery are mere ingredients of the crime of rebellion, as means "necessary" for the perpetration of the offense. (Enrile vs. Salazar, G.R. No. 92163, June 5, 1990, 186 SCRA 217, 229) Such common offenses are absorbed or inherent in the crime of rebellion. (People vs. Hernandez, 99 Phil. 515) But a rebel who, for some independent or personal motives, commits murder or other common offenses in addition to rebellion, may be prosecuted for and convicted of such common offenses. (People vs. Geronimo, 100 Phil. 90, 99)

When two crimes produced by a single act are respectively within the exclusive jurisdiction of two courts of different jurisdiction, the court of higher jurisdiction shall try the complex crime.

Through reckless imprudence committed in one single act, the accused caused damage to property, punishable by a fine which only the Court of First Instance can impose and less serious physical injuries which ordinarily is within the exclusive jurisdiction of the municipal court.

Held: The Court of First Instance should try the case charging a complex crime. Since both crimes were the result of a single act, the information cannot be split into two; one for physical injuries, and another for damage to property. (Angeles vs. Jose, 96 Phil. 151)

An accused should not be harassed with various prosecutions based on the same act by splitting the same into various charges. (People vs. Lizardo, No. L-22471, Dec. 11, 1967, 21 SCRA 1225, 1227, reiterating People vs. Silva, No. L-15974, Jan. 30, 1962, 4 SCRA 95)

People vs. Cano
(G.R. No. L-19660, May 24, 1966)

Facts: Defendant was accused of the crime of damage to property with multiple physical injuries, thru reckless imprudence. The information alleges that, thru reckless negligence of the defendant, the bus driven by him hit another bus causing upon some of its passengers, serious physical injuries and upon still others slight physical injuries, in addition to damage to property.

Held: The information does not purport to complex the offense of slight physical injuries thru reckless negligence with that of damage to property and serious and less serious physical injuries thru reckless imprudence. It is merely alleged that, thru reckless negligence of the defendant, the bus driven by him hit another bus causing upon some of its passengers, serious physical injuries, upon others less serious physical injuries and upon still others slight physical injuries, in addition to damage to property.

From the viewpoint both of trial practice and justice, it is doubtful whether the prosecution should split the action against the defendant, by filing against him several informations, one for damage to property and serious and less serious physical injuries, thru reckless imprudence, before the court of first instance, and another for slight physical injuries thru reckless negligence, before the justice of the peace or municipal court. Such splitting of the action would work unnecessary inconvenience to the administration of justice in general and to the accused in particular, for it would require the presentation of substantially the same evidence before two different courts. In the event of conviction in the municipal court and appeal to the court of first instance, said evidence would still have to be introduced once more in the latter court.

The CFI (now, RTC) of Manila retained jurisdiction in a charge of abduction with rape, although abduction, which was commenced in Manila, was not proven, and the rape which was committed in Cavite, was the only matter proved.

Although the forcible abduction, which was supposedly commenced in Manila, was not proven, and although the rape, which was proven, was actually committed in Cavite, still the CFI of Manila had jurisdiction to convict the accused of rape. The complex crime of forcible abduction with rape was charged in the complaint on the basis of which the case was tried. (People vs. Peña, No. L-36435, Dec. 20, 1977, 80 SCRA 589, 598)

Art. 48 is intended to favor the culprit.

In directing that the penalty for the graver offense shall be imposed in its maximum period, Art. 48 could have had no other purpose than to prescribe a penalty lower than the aggregate of the penalties for each offense, if imposed separately. The reason for this benevolent spirit of Art. 48 is readily discernible. When two or more crimes are the result of a single act, the offender is deemed less perverse than when he commits said crimes through separate and distinct acts. (People vs. Hernandez, 99 Phil. 515, 542-543)

Note: If a person fired a shot and killed two persons with the same shot, were it not for Art. 48, he would be sentenced to *reclusion temporal* for each homicide. But under Art. 48, he shall be sentenced to the maximum period of one *reclusion temporal* only. *Reclusion temporal* has a duration of 12 years and 1 day to 20 years.

The penalty for complex crime is the penalty for the most serious crime, the same to be applied in its maximum period.

Thus, in the complex crime of direct assault with homicide, the penalty for homicide, being the more serious crime, shall be imposed and the penalty is to be applied in its maximum period. The penalty for direct assault is at most *prisión correccional* in its medium and maximum periods; whereas, the penalty for homicide is *reclusion temporal.*

The penalty for the complex crime of homicide with assault upon a person in authority is the maximum period of the penalty for the

more serious crime — homicide. That penalty is the maximum period of *reclusion temporal.* (People vs. Rillorta, G.R. No. 57415, Dec. 15, 1989, 180 SCRA 102, 109-110)

If the different crimes resulting from one single act are punished with the same penalty, the penalty for any one of them shall be imposed, the same to be applied in the maximum period.

The same rule shall be observed when an offense is a necessary means for committing the other.

A complex crime of the second form may be committed by two persons, as in seduction through usurpation of official functions where one of the accused committed usurpation of official functions by simulating the performance of a marriage ceremony without legal right between the victim and his co-accused who thereafter seduced the victim. Both accused, being in conspiracy, were sentenced to the maximum period of the penalty for usurpation of official functions, an offense more serious than the crime of seduction. (U.S. vs. Hernandez, 29 Phil. 109, 113-114)

But when one of the offenses, as a means to commit the other, was committed by one of the accused by reckless imprudence, that accused who committed the offense by reckless imprudence is liable for his act only.

There is no question that appellant cooperated in the commission of the complex offense of estafa through falsification by reckless imprudence by acts without which it could not have been accomplished, and this being a fact, there would be no reason to exculpate him from liability. Even assuming that he had no intention to defraud the offended party if his co-defendants succeeded in attaining the purpose sought by the culprits, appellant's participation *together* with the participation of his co-defendants in the commission of the offense *completed* all the elements necessary for the perpetration of the complex crime of *estafa* through falsification of commercial document. (Article 172, Revised Penal Code) Anyway and for the purpose of the penalty that was actually imposed upon appellant, it is immaterial that he be considered only guilty of falsification of a commercial document through reckless negligence, because the penalty for the crime of falsification of a commercial document under Article 172, No. 1, of

the Revised Penal Code, is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00 which under the provisions of Articles 25 and 26 of the same Code is a *correctional penalty.* Consequently, if in the cases at bar the crimes of falsification were due to reckless imprudence, the corresponding penalty would be *arresto mayor* in its minimum and medium periods (Article 365, opening paragraph, of the Revised Penal Code), which comprehends the penalty imposed by the Court of Appeals upon appellant. (Samson vs. Court of Appeals, 103 Phil. 277, 282-283)

When the homicide, physical injuries, and the burning of a house are the result of one single act of negligence, there is only one penalty, but there are three civil liabilities.

In the case of *People vs. Pacson,* C.A. 46 O.G. 2165, Roque Pacson and Ambrosio Francisco, who poured gasoline from one container to another near a lighted candle, causing the burning of the house of Aurelio de Leon, valued at P18,320, the injury of Romualdo de Leon, who was confined in the hospital at the cost of ₱600, and the death of Paula Elhino, were sentenced each to suffer from four (4) months of *arresto mayor* to two (2) years and 4 (four) months of *prision correccional,* to indemnify jointly and severally the heirs of Paula Elhino in the sum of ₱2,000, Romualdo de Leon in the sum of ₱600, and Aurelio de Leon in the sum of ₱18,320.

When the penalty for one of the crimes resulting from a single act is beyond the jurisdiction of the municipal court, there should be additional penalty for the other.

The third paragraph of Article 365 reads as follows:

"When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damage to three times such value, but which shall in no case be less than 25 pesos."

The above-quoted provision simply means that if there is only damage to property, the amount fixed therein shall be imposed, but if there are also physical injuries, there should be an additional penalty for the latter. (Angeles vs. Jose, 96 Phil. 151, 152)

When two felonies constituting a complex crime are punishable by imprisonment and fine, respectively, only the penalty of imprisonment should be imposed.

When a single act constitutes two grave or less grave felonies, or one grave and another less grave, and the penalty for one is imprisonment while that for the other is fine, the severity of the penalty for the more serious crime should not be judged by the classification of each of the penalties involved, but by the nature of the penalties. (People vs. Yongco, CA-G.R. No. 18252-CR, January 26, 1977)

Even if the fine for damage to property through reckless imprudence is ₱40,000.00, an afflictive penalty, and the penalty for physical injuries resulting from the same act is only four (4) months of *arresto mayor,* a correctional penalty, the latter penalty should be imposed.

This opinion is based on the following observation:

In the order of severity of the penalties, *arresto mayor* and *arresto menor* are considered more severe than *destierro* (Article 70, R.P.C.) and *arresto menor* is higher in degree than *destierro* (Article 71, R.P.C), even if both *arresto mayor* and *destierro* are classified as correctional penalties, and *arresto menor* is only a light penalty.

On the other hand, fine is not included in the list of penalties in the order of severity, and it is the last in the graduated scales in Article 71 of the Revised Penal Code.

The ruling in *Angeles vs. Jose,* 96 Phil. 151, that if damage to property and physical injuries resulted from a single act of the defendant there should be an additional penalty for the latter, is in disregard of Article 48 of the Revised Penal Code which provides that only one penalty should be imposed for a complex crime.

Generally, the penalty for complex crime is intended to favor the offender. (People vs. Hernandez, 99 Phil. 515)

In *People vs. Pacson,* 46 O.G. 2165, the Court of Appeals held that the penalty for a complex crime, causing the burning of a house valued at ₱18,320.00 and the death of one of the inmates of the house through reckless imprudence, is from four (4) months *of arresto mayor* to two (2) years and four (4) months of *prision correccional,*

to indemnify the owner of the house and the heirs of the deceased in the amounts stated, without fine.

Art. 48 applies only to cases where the Code does not provide a definite specific penalty for a complex crime.

The accused inflicted less serious physical injuries on the municipal mayor in the cockpit where at the time there were many people present. There was a manifest intent to insult the mayor and of adding ignominy to the offense.

The prosecution charged the accused with a complex crime of serious slander by deed with less serious physical injuries, because Art. 359 considers as slander by deed any act "which shall cast dishonor, discredit, or contempt upon another person," and since said act resulted in the infliction of less serious physical injuries, it is also covered by Art. 265.

Held: The act cannot come under Art. 48 for the simple reason that in this particular case, that act is specifically covered by paragraph 2 of Art. 265.

Under Art. 265, par. 2 of the Revised Penal Code, whenever an act has been committed which inflicts upon a person less serious physical injuries with the manifest intent to insult or offend him or under circumstances adding ignominy to the offense, the offender should be prosecuted under that article and, if convicted, should be sentenced to the penalty therein prescribed.

The acts complained of cannot constitute a complex crime of slander by deed with less serious physical injuries, because complex crime exists only in cases where the Code has no specific provision penalizing the same with defined specific penalty. (People vs. Lasala, G.R. No. L-12141, Jan. 30, 1962, 4 SCRA 61, 62, 64-65)

One information should be filed when a complex crime is committed.

Thus, even if several persons were killed, only one information should be filed if the victims were killed by a single act.

But if four crimes of murder and a frustrated murder resulted from the firing of several shots at five victims, the crimes are not complex. Five informations should be filed. (People vs. Pineda, G.R.

No. L-26222, July 21, 1967, 20 SCRA 748, 750, 754) In case of conviction, five penalties shall be imposed.

The same ruling applies when one of the offenses committed is not a necessary means for committing the other, as when one offense is committed to conceal the other. In that case, two informations will have to be filed and in case of conviction, two penalties shall be imposed.

When a complex crime is charged and one offense is not proven, the accused can be convicted of the other.

When a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the other. (People vs. Maribung, No. L-47500, April 29, 1987, 149 SCRA 292, 300-301, 304)

Art. 48 does not apply when the law provides one single penalty for special complex crimes.

Thus, in robbery with homicide (Art. 294, par. 1), robbery with rape (Art. 294, par. 2), or kidnapping with serious physical injuries (Art. 267, par. 3), or kidnapping with murder or homicide (Art. 267, last par.), or rape with homicide (Art. 335), Art. 48 does not apply because the Revised Penal Code provides for one single penalty for each of those special complex crimes.

Special Complex Crime of Kidnapping with Murder or Homicide.

Prior to 31 December 1993, the date of effectivity of R.A. No. 7659, the rule was that where the kidnapped victim was subsequently killed by his abductor, the crime committed would either be a complex crime of kidnapping with murder under Art. 48 of the Revised Penal Code, or two (2) separate crimes of kidnapping, and murder. Thus, where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping and murder under Art. 48 of the Revised Penal Code, as the kidnapping of the victim was a necessary means of committing the murder. On the other hand, where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, 2 separate crimes of kidnapping and murder were committed.

However, R.A. No. 7659 amended Art. 267 of the Revised Penal Code by adding thereto a last paragraph which provides — When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

This amendment introduced in our criminal statutes the concept of 'special complex crime' of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought.

Consequently, the rule now is: *Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by R.A. No. 7659.* (People vs. Ramos, 297 SCRA 618, citing *Parulan vs. Rodas)*

Plurality of crimes.

Plurality of crimes defined.

Plurality of crimes consists in the successive execution by the same individual of different criminal acts upon any of which no conviction has yet been declared. (Guevara)

Kinds of plurality of crimes.

There are two kinds of plurality of crimes: (1) formal or ideal plurality, and (2) real or material plurality.

Art. 48 provides for two cases of *formal or ideal plurality* of crimes. There is but one criminal liability in this kind of plurality.

In real or material plurality, there are different crimes in law as well as *in the conscience of the offender.* In such cases, the offender shall be punished for each and every offense that he committed.

Example of real or material plurality.

A stabbed B with a knife. Then, A also stabbed C. There are two crimes committed. Note that there are two acts performed.

Plurality of crimes distinguished from recidivism.

In recidivism, there must be conviction by final judgment of the first or prior offense; in plurality of crimes, there is no conviction of any of the crimes committed.

Plural crimes of the formal or ideal type are divided into three groups.

A person committing multiple crimes is punished with ONE penalty in the following cases:

1. **When the offender commits any of the complex crimes defined in Art. 48 of the Code.**
2. **When the law specifically fixes a single penalty for two or more offenses committed.**

   Examples:

   (1) Robbery with homicide (Art. 294);

   (2) Kidnapping with serious physical injuries. (Art. 267, par. 3)
3. **When the offender commits continued crimes.**

Continued crime.

A continued (continuous or continuing) crime is a single crime, consisting of a series of acts but all arising from one criminal resolution.

A continuing offense is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. (22 C.J.S., 52)

Although there is a series of acts, there is only one crime committed. Hence, only one penalty shall be imposed.

Examples of continued crimes:

1. **Thus, a collector of a commercial firm misappropriates for his personal use several amounts collected by him from different persons. There is here *one crime only,* because the different and successive appropriations are but the different moments during which one criminal resolution arises and a single defraudation develops.**

But if it does not appear that when the malversation and the falsification were committed on April 30, it was *already* the *intention* of the appellant *to commit also* the falsification and the malversation of May 2, 1931, the same being necessary to justify the finding that, although they were committed on different dates, a single intention determined the commission of both, the appellant is liable for each and every one of those offenses. (Regis vs. People, 67 Phil. 43, 47)

2. Likewise, a thief who takes from the yard of a house two game roosters belonging to two different persons commits only one crime, for the reason that there is a *unity of thought* in the criminal purpose of the offender. There is no series of acts here for the accomplishment of different purposes, but only of one (purpose) which is consummated, and which determines the existence of only one crime. (People vs. De Leon, 49 Phil. 437, 439-441)

In getting hold of the two roosters, it is not done by a single act of taking, but by two separate acts. There is, however, a unity of thought and action in taking the two roosters.

The taking of six roosters from coop is a single offense of theft. The assumption is that the accused were animated by single criminal impulse. (People vs. Jaranilla, No. L-28547, Feb. 22, 1974, 55 SCRA 563, 575)

3. *Eight robberies as component parts of a general plan.* While the inhabitants of a barrio were working in a sugar mill, seven armed persons, who had a *general plan to commit robbery against all* those in the place, entered the mill and while two of the bandits guarded the people with guns levelled at them, five of them ransacked the houses for their personal properties.

Held: The several acts of ransacking the different houses were *not* unconnected and entirely distinct from one another. They formed component parts of the *general plan to despoil all those within the vicinity.* There is *only one crime of* robbery in this case. (People vs. De la Cruz, G.R. L-1745, May 23, 1950)

4. The accused and his companion ran amok in the passengers' section of the upper deck of a motorboat. Eleven persons were killed and twenty other persons were seriously wounded by him and his companion who was later killed by a patrolman. The accused confessed that he and his companion had a common motive to run amok. It was held that since the killings were the result of a single impulse and that neither the accused nor his companion had in mind killing any particular individual, the acts complained of should be considered as resulting from a single criminal impulse and constituting a single offense. (People vs. Emit, CA-G.R. No. 13477-R, Jan. 31, 1956)

Not one continuing crime, but three separate crimes.

People vs. Enguero
(100 Phil. 1001)

Facts: Appellants were charged with the crime of robbery in band in three separate informations, committed by robbing one house, then proceeded to another house where the second robbery was committed and then to another house where the third robbery was committed.

Held: Appellants argue that they are guilty of one crime only, citing in support of their contention the case of *People vs. De Leon,* 49 Phil. 437. The contention is without merit. In the case cited, defendant entered the yard of a house where he found two fighting cocks belonging to different persons and took them. In the present case, appellants, after committing the first crime, went to another house where they committed the second and then proceeded to another house where they committed the third. Obviously, the rule in the case cited cannot be invoked and applied to the present.

The series of acts born of a single criminal impulse may be perpetrated during a long period of time.

A sent an anonymous letter to B, demanding ₱5,000 under threats of death and burning the latter's house. B sent ₱1,000 to A. Two months later, A sent again another letter to B, demanding the balance of ₱4,000 and making the same threats. B sent ₱2,000 to A. Four months later, A sent again another letter to B, demanding the amount of ₱2,000 and making the same threats. B sent P1,000. Six months thereafter, A sent another letter to B, demanding the

remaining ₱1,000 and making the same threats. This time, A was arrested for grave threats.

It was held that the different acts of sending letters of demand for money with threats to kill and burn the house of the offended party constitute only one and the same crime of grave threats born of a single criminal impulse to attain a definite objective. (See People vs. Moreno, C.A., 34 O.G. 1767)

When two acts are deemed distinct from one another although proceeding from the same criminal impulse.

Where the accused, after uttering defamatory words against the offended party, attacked and assaulted the latter, resulting in slight physical injuries, two offenses were committed, for while the insults as well as the assault were the product of the same criminal impulse, the act of insulting is entirely different and distinct from that of inflicting physical injuries, although the two offenses may have taken place on the same occasion, or that one preceded the other. The act of insulting cannot be deemed included in that of inflicting physical injuries, because the offense of insult is an offense against honor, whereas slight physical injuries is an offense against persons. Hence, prosecution of the accused for the two offenses cannot place him in danger of double jeopardy. (People vs. Ramos, 59 O.G. 4052)

Slander (uttering defamatory words) is defined and penalized in Art. 358. Slight physical injuries is defined and penalized in Art. 266.

A continued crime is not a complex crime.

A continued crime is not a complex crime, because the offender in continued or continuous crime does not perform a single act, but a series of acts, and one offense is not a necessary means for committing the other.

Not being a complex crime, the penalty for continued crime is not to be imposed in the maximum period.

There is no provision in the Revised Penal Code or any other penal law defining and specifically penalizing a continuing crime. The principle is applied in connection with two or more crimes committed with a single intention.

Thus, in the case *of People vs. De Leon, supra,* the theft of the two game roosters belonging to two different persons was punished with one penalty only, the Supreme Court holding that there being only *one criminal purpose* in the taking of the two roosters, only one crime was committed.

A continued crime is different from a transitory crime.

A continued, continuous or continuing crime is different from a transitory crime in criminal procedure to determine venue. An example of transitory crime, also called a "moving crime," is kidnapping a person for the purpose of ransom, by forcibly taking the victim from Manila to Bulacan where ransom was demanded. The offenders could be prosecuted and tried either in Manila or in Bulacan.

When a transitory crime is committed, the criminal action may be instituted and tried in the court of the municipality, city or province wherein any of the essential ingredients thereof took place. The singleness of the crime, committed by executing two or more acts, is not considered.

Distinguish real or material plurality from continued crime.

In real or material plurality as well as in continued crime, there is a *series of acts* performed by the offender.

While in real or material plurality, each act performed by the offender constitutes a separate crime, because each act is generated by a criminal impulse; in continued crime, the different acts constitute only one crime because all of the acts performed arise from one criminal resolution.

Art. 49. *Penalty to be imposed upon the principals when the crime committed is different from that intended.* — In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed.

1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.

2. If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.

3. The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher penalty for either of the latter offenses, in which case the penalty provided for the attempt or the frustrated crime shall be imposed in the maximum period.

Rules as to the penalty to be imposed when the crime committed is different from that intended.

1. If the penalty for the felony committed be *higher* than the penalty for the offense which the accused intended to commit, the *lower* penalty shall be imposed in its maximum period.

2. If the penalty for the felony committed be *lower* than the penalty for the offense which the accused intended to commit, the lower penalty shall be imposed in its maximum period.

3. If the act committed *also* constitutes an attempt or frustration of another crime, and the law prescribes a higher penalty for either of the latter, the penalty for the attempted or frustrated crime shall be imposed in its maximum period.

Art. 49 has reference to the provision of the 1st paragraph of Art. 4.

When the crime actually committed is different from that intended, as contemplated in the first paragraph of Art. 4, the penalty to be imposed must be governed by the rules provided in Art. 49, because the opening sentence of Art. 49 specifically mentions "cases in which the felony committed is different from that which the offender intended to commit." On the other hand, Art. 4 in its paragraph 1 provides that criminal liability shall be incurred "by any person committing a felony *(delito)* although the wrongful act done *be different from that which he intended."*

Art. 49 applies only when there is a mistake in the identity of the victim of the crime, and the penalty for the crime committed is different from that for the crime intended to be committed.

Paragraph 1 of Art. 4 covers (1) *aberratio ictus* (mistake in the blow), (2) *error in personae* (mistake in the identity of the victim), and (3) *praeter intentionem* (where a more serious consequence not intended by the offender befalls the same person).

(1) *Aberratio ictus* —

***Example:* A fired his gun at his father, with intent to kill him, but he missed and hit C, killing the latter.**

In this case, two crimes were actually committed: (1) homicide, of which C was the victim; and (2) attempted parricide, of which A's father was the offended party. One who fires a gun at his father with intent to kill is guilty of attempted parricide, even if the latter is not injured at all.

The two crimes actually committed were the result of a single act; hence, A committed a complex crime of consummated homicide with attempted parricide. There being a complex crime, Art. 48, not Art. 49, is applicable.

Thus, the Supreme Court in the case of Guillen, 85 Phil. 307, said: "We think it is (Art. 48) and not paragraph 1 of Article 49 that is applicable. The case before us is clearly governed by the first clause of Article 48 because by a single act, that of throwing a highly explosive hand grenade at President Roxas, the accused committed several grave felonies, namely: (1) murder, of which Simeon Valera was the victim; and (2) multiple attempted murder, of which President Roxas, Alfredo Eva, Jose Fabio, Pedro Carillo and Emilio Maglalang were the injured parties."

(2) *Error in personae* —

Examples:

A, thinking that the person walking in a dark alley was B, a stranger, fired at that person, who was killed as a result. It turned out that person was C, the father of A.

In this case, the crime actually committed is parricide, punishable by *reclusion perpetua* to death. The crime which A intended to commit is homicide, punishable by *reclusion temporal.* In view of rule No. 1 provided for in Art. 49, the penalty for homicide shall be imposed in its maximum period.

But suppose that A wanted to kill his father and waited for the latter in a dark alley where he used to pass in going home; when A saw a person coming and thinking that he was his father, A shot him; and it turned out that that person was a stranger. In this case, A should be punished with the penalty for homicide to be applied in its maximum period.

Note that in either case, the lesser penalty is always to be imposed, only that it shall be imposed in the maximum period.

(3) *Praeter intentionem* —

Example: A, without intent to kill, boxed B from behind on the back part of the latter's head. B fell to the cement pavement with his head striking it. B died due to the fracture of the skull. In this case, the death of B was not intended by A.

Art. 49 has no application to cases where a more serious consequence not intended by the offender befalls the same person.

A wanted only to inflict a wound on the face of B that would leave a permanent scar on his face or one that would compel the latter to remain in the hospital for a week or two, but never intended to kill him. But as A did not have control of his right arm on account of paralysis, the blow, although intended for the face, landed at the base of the neck, resulting in the fatal wound in that part of the body of B, who died as a consequence. (People vs. Albuquerque, 59 Phil. 150, 152)

In this case, there is *praeter intentionem* and the crime not intended by the offender *befell the same person.* Note that in the examples under *error in personae,* the crime not intended by the offender befell a *different* person.

From the foregoing examples and discussions, it will be noted that the rules stated in paragraphs 1 and 2 of Art. 49 cannot apply to cases involving *aberratio ictus* or *praeter intentionem.*

On the other hand, in *error in personae,* since only one crime is produced by the act of the offender, there could be no complex crime, which presupposes the commission of at least two crimes. In the two examples of *error in personae,* it will be noted that only one person was affected by the single act of the offender; hence, only one crime was produced. For this reason, it is Art. 49, and not Art. 48, that is applicable.

Art. 49 is applicable only when the intended crime and the crime actually committed are punished with different penalties.

The rules prescribed in paragraphs 1 and 2 of Art. 49 contemplate of cases where the *intended* crime and the crime *actually* committed are punished with different penalties by reason of relationship between the offender and the offended party, which qualifies one of the crimes.

If the intended crime and the crime actually committed are punished with the *same* or *equal penalties,* Art. 49 is not applicable.

Thus, if A, intending to kill B, a stranger, actually killed C, another stranger, Art. 49 is not applicable, because whether it was B or it was C who was killed, the crime committed was homicide. There is no difference in the penalty.

Art. 49 distinguished from Art. 48.

In Art. 49, the *lesser* penalty is to be imposed, to be applied in the maximum period (Pars. 1 and 2); in Art. 48, the penalty for the more or *most* serious crime shall be imposed, the same to be applied in its maximum period.

Rule No. 3 in Art. 49 is not necessary.

The rule in paragraph 3 of Art. 49 is not necessary because the cases contemplated in that paragraph may well be covered by Art. 48, in view of the fact that the *same* act committed by the guilty person, which gives rise to one crime, *also constitute(s)* an attempt or a frustration of *another crime.*

Art. 50. ***Penalty to be imposed upon principals of a frustrated crime.*** **— The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony.**

Art. 51. ***Penalty to be imposed upon principals of attempted crime.*** **— The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.**

Art. 52. ***Penalty to be imposed upon accomplices in a consummated crime.*** **— The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony.**

Art. 53. ***Penalty to be imposed upon accessories to the commission of a consummated felony.*** **— The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony.**

Art. 54. ***Penalty to be imposed upon accomplices in a frustrated crime.*** **— The penalty next lower in degree than that prescribed by law for the frustrated felony shall be imposed upon the accomplices in the commission of a frustrated felony.**

Art. 55. ***Penalty to be imposed upon accessories of a frustrated crime.*** **— The penalty lower by two degrees than that prescribed by law for the frustrated felony shall be imposed upon the accessories to the commission of a frustrated felony.**

Art. 56. ***Penalty to be imposed upon accomplices in an attempted crime.*** **— The penalty next lower in degree than that prescribed by law for an attempt to commit a felony shall be imposed upon the accomplices in an attempt to commit the felony.**

Art. 57. ***Penalty to be imposed upon accessories of an attempted crime.*** **— The penalty lower by two degrees than that prescribed by law for the attempt shall be imposed upon the accessories to the attempt to commit a felony.**

Diagram of the application of Arts. 50 to 57.

	Consummated	*Frustrated*	*Attempted*
Principals	**0**	**1**	**2**
Accomplices	**1**	**2**	**3**
Accessories	**2**	**3**	**4**

"0" represents the penalty prescribed by law in defining a crime, which is to be imposed on the *principal* in a *consummated offense,* in accordance with the provisions of Article 46. The other figures represent the degrees to which the penalty must be lowered, to meet the different situations anticipated by law.

In Articles 50, 51, 52 and 53 of the Revised Penal Code, the basis for reduction of the penalty by one or two degrees, is invariably the penalty prescribed by law for the consummated crime, while under Articles 54 and 55, the basis for the reduction is the penalty prescribed by law for the frustrated felony; and under Articles 56 and 57, the basic penalty to be used for reduction by one or two degrees is that for the attempted felony. From all of these, it will also be observed that in making any reduction by one or two degrees, the basis used is that already prescribed, not as already reduced. It will also be noticed that under Article 51, the penalty for an attempted crime is that for the consummated felony, reduced by two degrees, not the penalty

for the frustrated felony, reduced by one degree. (De los Angeles vs. People, 103 Phil. 295, 298-299)

Examples:

A is convicted of attempted homicide for having shot B with intent to kill the latter, but without inflicting a mortal wound.

The penalty for consummated homicide is *reclusion temporal.* (Art. 249, Book II, Revised Penal Code) The penalty lower by one or more degrees is indicated in Scale No. 1 of Art. 71. The crime committed by A being attempted homicide, the penalty to be imposed on him is that penalty lower by two degrees than *reclusion temporal* (No. 3 in Scale No. 1, Art. 71), and the penalty two degrees lower is *prision correccional* (No. 5 in the same Scale No. 1).

To find the penalty for frustrated homicide, which is one degree lower than *reclusion temporal,* use also Scale No. 1 of Art. 71, and that penalty one degree lower is *prision mayor* (No. 4 in the Scale).

A, as *principal,* B, as *accomplice,* and C, as *accessory,* are convicted of consummated homicide. The penalty for A is *reclusion temporal,* he being the principal. (Art. 46) The penalty for *B is prision mayor,* the penalty next lower in degree than that prescribed for the consummated homicide. (Art. 52) The penalty for C is *prision correccional,* it being two degrees lower than that prescribed for consummated homicide. (Art. 53)

In the examples, the penalty for the principal in the attempted homicide, and the penalties for the principal, accomplice and accessory in the commission of consummated homicide shall be imposed in the proper period and shall be subject to the provisions of the Indeterminate Sentence Law.

Exceptions to the rules established in Articles 50 to 57.

Arts. 50 to 57 shall not apply to cases where the law expressly prescribes the penalty for a frustrated or attempted felony, or to be imposed upon accomplices or accessories. (Art. 60)

The penalty for frustrated parricide, murder, or homicide may be two degrees lower; and the penalty for attempted parricide, murder, or homicide may be three degrees lower.

The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of *parricide, murder,* or *homicide,* a penalty lower by one degree than that which should be imposed under the provisions of Art. 50; and may reduce by one degree, the penalty which under Art. 51 should be imposed for an attempt to commit any of such crimes. (Art. 250)

What are the bases for the determination of the extent of penalty to be imposed under the Revised Penal Code?

1. **The stage *reached* by the crime in its development (either attempted, frustrated or consummated).**
2. **The *participations* therein of the persons liable.**
3. **The aggravating or mitigating circumstances which attended the commission of the crime.**

In the different stages of execution in the commission of the crime and in the participation therein of the persons liable, the penalty is graduated by degree.

What is a degree in relation to penalty?

A *degree* is one entire penalty, one whole penalty or one unit of the penalties enumerated in the graduated scales provided for in Art. 71. Each of the penalties of *reclusion perpetua, reclusion temporal, prision mayor,* etc., enumerated in the graduated scales of Art. 71, is a degree.

When there is mitigating or aggravating circumstance, the penalty is lowered or increased by period only, except when the penalty is divisible and there are two or more mitigating and *without* aggravating circumstances, in which case the penalty is lowered by degree.

What is a period of penalty?

A *period* is one of the three equal portions, called minimum, medium, and maximum, of a divisible penalty. (See Art. 65)

A period of a divisible penalty, when prescribed by the Code as a penalty for a felony, is in itself a degree.

In Art. 140, the penalty for the leader of a sedition is *prision mayor* in its minimum period and fine.

It being a degree, the penalty next lower than that penalty is *prision correccional* in its maximum period. (People vs. Gayrama, 60 Phil. 796, and People vs. Haloot, 64 Phil. 739)

Art. 58. *Additional penalty to be imposed upon certain accessories.* — Those accessories falling within the terms of paragraph 3 of Article 19 of this Code who should act with abuse of their public functions, shall suffer the additional penalty of absolute perpetual disqualification if the principal offender shall be guilty of a grave felony, and that of absolute temporary disqualification if he shall be guilty of a less grave felony.

Additional penalties for public officers who are guilty as accessories under paragraph 3 of Article 19.

Public officers who help the author of a crime by *misusing* their office and duties shall suffer the additional penalties of:

1. Absolute *perpetual* disqualification, if the principal offender is guilty of a *grave* felony.

2. Absolute *temporary* disqualification if the principal offender is guilty of *less grave* felony.

Why does this article limit its provisions to grave or less grave felonies? Because it is not possible to have accessories liable for light felonies. (Art. 16).

This article applies only to public officers who abused their public functions.

The accessories referred to in Art. 58 are only those falling within the term of *paragraph 3* of Art. 19.

The additional penalty prescribed in this article will be imposed only on those accessories whose participation in the crime is characterized by the *misuse* of public office or authority. This is so, because Art. 58 says "who should act with abuse of their public functions."

Art. 59. *Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible.* — When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of *arresto mayor* or a fine ranging from 200 to 500 pesos.

Penalty for impossible crime.

The penalty for impossible crime is *arresto mayor* or a fine ranging from 200 to 500 pesos.

Basis for imposition of proper penalty: (1) social danger, and (2) degree of criminality shown by the offender.

The court must take into consideration the *social danger* and the *degree of criminality* shown by the offender. (Art. 59)

Thus, a person who fired a revolver upon his enemy from a distance of one kilometer, shows stupidity rather than dangerousness. According to the Positivist theory, such person should not be punished, because there is neither *"social danger"* nor any *"degree of criminality"* shown by such person. His said act is absolutely harmless. Even subjectively, a man with a little common sense will know that he cannot hit a person by firing a revolver one kilometer away. (Guevara)

But one who discharged a shotgun at another from a distance of 200 yards, is guilty of discharge of firearm under Art. 254, not of

impossible crime, there being no proof of intent to kill on the part of the offender and it being possible of accomplishing the evil intent of the offender (to frighten the offended party). (See People vs. Agbuya, 57 Phil. 238, 243)

Is the penalty for impossible crime proper?

The fixing of the penalty of *arresto mayor* or a fine of ₱200 to P500 is subject to criticism, because this article uses the words *"offense"* and *"crime"* which include light felony. So, he who attempts to commit a light felony of impossible materialization may be punished by a penalty of *arresto mayor* which is higher than that prescribed for the consummated light felony, which is *arresto menor.* (Albert)

But the provision of Article 59 is limited to those cases where the act performed would be grave felonies or less grave felonies. (Guevara)

Art. 60. *Exceptions to the rules established in Articles 50 to 57.* — The provisions contained in Articles 50 to 57, inclusive, of this Code shall not be applicable to cases in which the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.

Arts. 50 to 57 do not apply when the law expressly prescribes the penalty for a frustrated or attempted felony or to be imposed upon accomplices or accessories.

Thus, when on the occasion or in consequence of an *attempted* or *frustrated* robbery, the offender commits a homicide, the law provides in Art. 297 that the special penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon the offender.

Were it not for this provision in Art. 60, the penalty to be imposed would be *reclusion temporal* which is the penalty next lower in degree than *reclusion perpetua* to death, the penalty for consummated offense of robbery with homicide.

Because of the enormity of the offense of attempted or frustrated robbery with homicide, the law provides a special penalty therefor.

Accomplice, punished as principal.

Again, under the general rule, an accomplice is punished by a penalty one degree lower than the penalty imposed upon the principal. But in two cases, the Code punishes an accomplice with the same penalty imposed upon the principal. They are:

1. The ascendants, guardians, curators, teachers and any person who by abuse of authority or confidential relationship, shall cooperate as accomplices in the crimes of rape, acts of lasciviousness, seduction, corruption of minors, white slave trade or abduction. (Art. 346)
2. One who furnished the place for the perpetration of the crime of slight illegal detention. (Art. 268)

Furnishing the place for the perpetration of the crime is ordinarily the act of an accomplice.

Accessory punished as principal.

Knowingly concealing certain evil practices is ordinarily an act of the accessory, but in Art. 142, such act is punished as the act of the principal.

Certain accessories are punished with a penalty one degree lower, instead of two degrees.

In certain crimes, the participation of the offender is that of an accessory because he perpetrates the act after someone has committed counterfeiting or falsification. But the penalty for the act perpetrated is one degree lower instead of two degrees lower in the following crimes:

1. Knowingly using counterfeited seal or forged signature or stamp of the President. (Art. 162)
2. Illegal possession and use of a false treasury or bank note. (Art. 168)
3. Using a falsified document. (Art. 173, par. 3)
4. Using a falsified dispatch. (Art. 173, par. 2)

Art. 61. ***Rules for graduating penalties.*** **— For the purpose of graduating the penalties which, according to the provisions of Articles fifty to fifty-seven, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:**

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.

4. When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.

5. When the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose the corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories. ***(As amended by Com. Act No. 217.)***

Art. 61 provides for the rules to be observed in lowering the penalty by one or two degrees.

According to Art. 46, the penalty prescribed by law in general terms shall be imposed upon the *principal* in a *consummated* felony. According to Arts. 50 to 57, the penalty prescribed by law for the felony shall be lowered by one or two degrees, as follows:

(1) For the principal in frustrated felony — one degree lower;

(2) For the principal in attempted felony — two degrees lower;

(3) For the accomplice in consummated felony — one degree lower; and

(4) For the accessory in consummated felony — two degrees lower.

The rules provided for in Art. 61 should also apply in determining the *minimum* of the indeterminate penalty under the Indeterminate Sentence Law. The *minimum* of the indeterminate penalty is within the range of the penalty *next lower* than that prescribed by the Revised Penal Code for the offense.

Those rules also apply in lowering the penalty by one or two degrees by reason of the presence of *privileged* mitigating circumstance (Arts. 68 and 69), or when the penalty is divisible and there are two or more mitigating circumstances (generic) and no *aggravating* circumstance. (Art. 64)

The lower penalty shall be taken from the graduated scale in Art. 71.

Scale No. 1 in Art. 71 enumerates the penalties in the following order:

1. Death,
2. *Reclusion perpetua,*
3. *Reclusion temporal,*
4. *Prision mayor,*
5. *Prision correccional,*

6. *Arresto mayor,*

7. *Destierro,*

8. *Arresto menor,*

9. *Public censure,*

10. Fine.

The *indivisible* penalties are: (1) death, (2) *reclusion perpetua,* and (3) public censure.

The *divisible* penalties are *reclusion temporal* down to *arresto menor.*

The divisible penalties are divided into three periods, namely: (1) the *minimum,* (2) the *medium,* (3) the *maximum.*

Illustrations of the rules:

First rule:

When the penalty is single and indivisible.

A single and indivisible penalty is *reclusion perpetua.* This is the penalty for kidnapping and failure to return a minor. (Art. 270) In Scale No. 1 in Art. 71, the penalty immediately following *reclusion perpetua* is *reclusion temporal.* The penalty next lower in degree, therefore, is *reclusion temporal.*

Second rule:

When the penalty is composed of two indivisible penalties.

Two indivisible penalties are *reclusion perpetua* to death. This is the penalty for parricide. (Art. 246) The penalty immediately following the *lesser* of the penalties, which is *reclusion perpetua,* is *reclusion temporal.* (See Scale No. 1 in Art. 71)

When the penalty is composed of one or more divisible penalties to be imposed to their full extent.

One *divisible* penalty to be imposed to its *full extent is reclusion temporal;* and two *divisible* penalties to be imposed to their full extent are *prision correccional* to *prision mayor.* The penalty immediately

following the divisible penalty of *reclusion temporal* in Scale No. 1 of Art. 71 is *prisión mayor;* and the penalty immediately following the *lesser* of the penalties of *prision correccional* to *prisión mayor* is *arresto mayor.* (See Scale No. 1 in Art. 71)

Third rule:

When the penalty is composed of two indivisible penalties and the maximum period of a divisible penalty.

The penalty for murder (Art. 248) is *reclusion temporal* in its maximum period to death. *Reclusion perpetua,* being between *reclusion temporal* and death, is included in the penalty.

Thus, the penalty for murder consists in two *indivisible* penalties of death and *reclusion perpetua* and one *divisible penalty* of *reclusion temporal* in its maximum period.

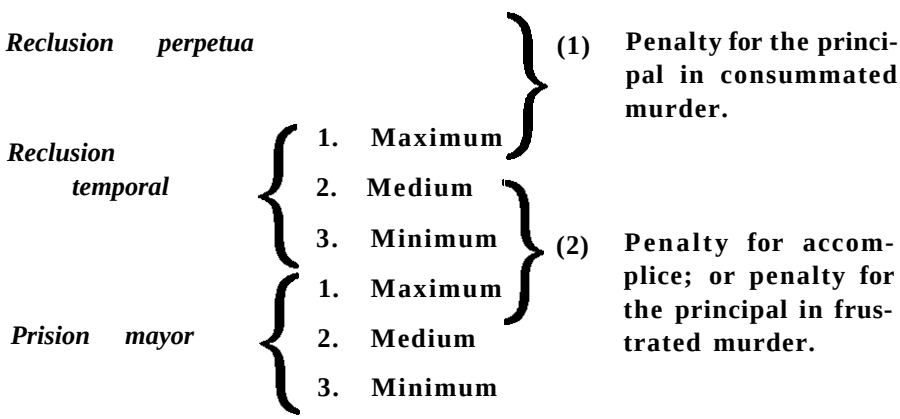
The proper divisible penalty is *reclusion temporal.* The penalty immediately following *reclusion temporal* is *prisión mayor.*

Under the third rule, the penalty next lower is composed of the medium and minimum periods of *reclusion temporal* and the maximum of *prision mayor.*

This is the penalty computed in the case of *People vs. Ong Ta,* 70 Phil. 553, 555.

Illustration:

Death



When the penalty is composed of one indivisible penalty and the maximum period of a divisible penalty.

Example: Reclusion temporal in its maximum period to *reclusion perpetua.* The same rule shall be observed in lowering the penalty by one or two degrees.

Fourth rule:

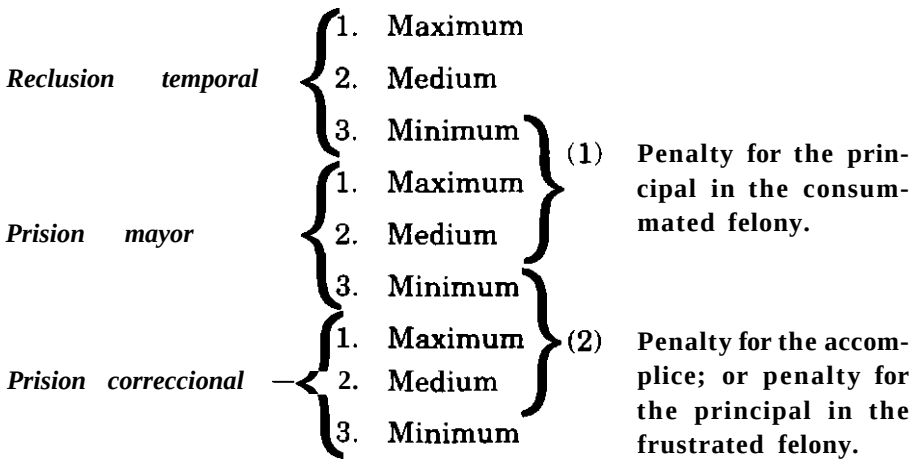
When the penalty is composed of several periods.

The word "several" in relation to the number of periods, means consisting in more than two periods. Hence, the fourth rule contemplates a penalty composed of at least *three* periods.

The several periods must correspond to different divisible penalties.

The penalty which is composed of *several periods* corresponding to *different* divisible penalties is *prision mayor* in its medium period to *reclusion temporal* in its minimum period. The period immediately following the minimum, which is *prision mayor* in its medium period, is *prision mayor* in its minimum period. The two periods next following are the maximum and medium periods of *prision correccional,* the penalty next following in the scale prescribed in Art. 71 since it cannot be taken from the penalty prescribed.

Illustration:



Fifth rule: (by analogy, because "not specially provided for in the four preceding rules.")

When the penalty has two periods.

Certain offenses defined in the Code are punished with a penalty *composed of two* periods, either of the same *penalty* —

(1) For abduction (Art. 343) — *prision correccional* in its minimum and medium periods;

or of different penalties —

(2) For physical injuries (Art. 263, subsection 4) — *arresto mayor* in its maximum period to *prision correccional* in its minimum period.

In these cases, the penalty lower by one degree is formed by *two periods* to be taken from the same penalty prescribed, if possible, or from the periods of the penalty numerically following the lesser of the penalties prescribed.

These cases are not covered by the fourth rule, because the penalty contemplated in the fourth rule must contain at *least three periods.* The penalty under the fifth rule (by analogy) contains *one* or *two* periods only.

Example:

The penalty next lower than *prision correccional* in its minimum and medium periods is *arresto mayor* in its medium and maximum periods.

Prisióncorrecional — Maximum —, Medium —, Minimum — } The penalty prescribed for the felony.

Arresto mayor — { Maximum, Medium, Minimum } The penalty next lower.

When the penalty has one period.

If the penalty is any one of the three periods of a divisible penalty, the penalty next lower in degree shall be that period next following the given penalty. Thus, the penalty immediately inferior to *prisión*

mayor in its maximum period is *prision mayor* in its medium period. (People vs. Co Pao, 58 Phil. 545, 551)

If the penalty is *reclusion temporal* in its medium period, the penalty next lower in degree is *reclusion temporal* in its minimum period. (People vs. Gayrama, 60 Phil. 796, 810)

The penalty prescribed by the Code for a felony is a degree. If the penalty prescribed for a felony is one of the three periods of a divisible penalty, that period becomes a degree, and the period immediately below is the penalty next lower in degree.

Simplified rules:

The rules prescribed in paragraphs 4 and 5 of Art. 61 may be simplified, as follows:

(1) If the penalty prescribed by the Code consists in *three* periods, corresponding to different divisible penalties, the penalty next lower in degree is the penalty consisting in the *three* periods *down* in the scale.

(2) If the penalty prescribed by the Code consists in *two* periods, the penalty next lower in degree is the penalty consisting in *two* periods *down* in the scale.

(3) If the penalty prescribed by the Code consists in only *one* period, the penalty next lower in degree is the next period *down* in the scale.

If the given penalty is composed of *one, two* or *three* periods, the penalty next lower in degree should begin where the given penalty ends, because, otherwise, if it were to skip over intermediate ones, it would be lower but not *next* lower in degree. (People vs. Haloot, 64 Phil. 739, 744)

In the case of *U.S. vs. Fuentes,* 4 Phil. 404, 405, it was held that the penalty next lower in degree to *prisión correccional* in its medium period is *arresto mayor* in its medium period.

The reason for this ruling is that a degree consists in one whole or one unit of the penalties enumerated in the graduated scales mentioned in Art. 71. To lower a penalty by one degree, it is necessary to keep a distance of one *whole* penalty or one unit of the penalties in Art. 71 between one degree and another.

In the cases of *People vs. Co Pao* and *People vs. Gayramat*, there is a distance of only one-third of a degree. But the ruling in the *Fuentes* case has been superseded by the rulings in those cases.

Mitigating and aggravating circumstances are disregarded in the application of the rules for graduating penalties.

It will be noted that each paragraph of Art. 61 begins with the phrase, "When the penalty prescribed for the felony" or "crime." Hence, in lowering the penalty, the penalty prescribed by the Revised Penal Code for the crime is the basis, without regard to the mitigating or aggravating circumstances which attended the commission of the crime.

It is only after the penalty next lower in degree is already determined that the mitigating and/or aggravating circumstances should be considered.

Section Two. — Rules for the application of penalties with regard to the mitigating and aggravating circumstances, and habitual delinquency.

Art. 62. *Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency.* — Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

1. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

1(a). When in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum regardless of mitigating circumstances.

The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.

An **organized/syndicated** crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime.

2. The same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof.

3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices, and accessories as to whom such circumstances are attendant.

4. The circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein.

5. Habitual delinquency shall have the following effects:

(a) Upon a third conviction, the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of *prision correccional* in its medium and maximum periods;

(b) Upon a fourth conviction, the culprit shall **be** sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of *prision mayor* in its minimum and medium periods; and

(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of *prisión mayor* in its maximum period to *reclusion temporal* in its minimum period.

Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, *robo, hurto, estafa,* or *falsification,* he is found guilty of any of said crimes a third time or **oftener.** *(As amended by Republic Act No. 7659.)*

Effect of the attendance of aggravating or mitigating circumstances or of habitual delinquency.

1. Aggravating circumstances (generic and specific) have the effect of *increasing* the penalty, without, however, *exceeding* the maximum provided by law.

2. Mitigating circumstances have the effect of *diminishing the penalty*.

3. Habitual delinquency has the effect, not only of *increasing* the penalty because of recidivism which is generally implied in habitual delinquency, but also of *imposing* an *additional* penalty.

Rules regarding aggravating and mitigating circumstances:

Par. 1 -

Aggravating circumstances which (1) *in themselves constitute a crime* especially punished by law or which (2) are *included by the law in defining a crime* and prescribing the penalty therefor are not to be taken into account to increase the penalty.

Examples:

(1) Which in themselves constitute a crime.

That the crime be committed "by means of fire" (Art. 14, par. 12), is not considered as aggravating in arson; and that the crime be committed by means of "derailment of a locomotive" (Art. 14, par. 12), is not considered as aggravating in the crime described in Art. 330 known as "Damages and obstruction to means of communication."

Art. 330 punishes the act of damaging any railway resulting in derailment of cars.

(2) Which are included by law in defining a crime.

That the crime was committed in the dwelling of the offended party is not aggravating in robbery with force upon things (Art. 299); abuse of confidence is not aggravating in qualified theft committed with grave abuse of confidence. (Art. 310)

Neither can the aggravating circumstance that the crime was committed by means of *poison* (Art. 14, par. 12) be considered in the crime of murder committed by means of poison, since using poison to kill the victim is included by law in defining the crime of murder. (Art. 248, par. 3)

When maximum of the penalty shall be imposed.

The maximum of the penalty shall be imposed in the following cases:

1. When in the commission of the crime, advantage was taken by the offender of his public position;
2. If the offense was committed by any person who belongs to an organized/syndicated crime group.

What is an organized/syndicated crime group?

An organized/syndicated crime group means a group of two or more persons collaborating confederating or mutually helping one another for purposes of gain in the commission of any crime.

Par. 2 -

The same rule applies with respect to aggravating circumstances which are *inherent in the crime.*

Example: Evident premeditation is inherent in robbery and theft. (U.S. vs. Castroverde, 4 Phil. 246, 248)

Par. 3 -

Aggravating or mitigating circumstances which arise from (1) *the moral attributes of the offender,* or (2) *from his private relations*

with the offended party, or (3) *from any other personal cause,* serve to aggravate or mitigate the liability of the principals, accomplices and accessories as *to whom such circumstances are attendant.*

Examples:

(1) From the moral attributes of the offender:

A and B killed C. A acted with evident premeditation, and B with passion and obfuscation.

The circumstances of evident premeditation and passion and obfuscation arise from the moral attributes of the offenders. Evident premeditation should affect and aggravate only the penalty for A, while passion and obfuscation will benefit B only and mitigate his liability.

Note: The states of their minds are different.

(2) From his private relations with the offended party:

A and C inflicted slight physical injuries on B. A is the son of B. C is the father of B. In this case, the alternative circumstance of relationship, as aggravating, shall be taken into account against A only, because he is a relative of a lower degree than the offended party, B. Relationship is mitigating as regards C, he being a relative of a higher degree than the offended party, B.

Also, if A assisted the wife of B in killing the latter, only the wife is guilty of parricide and A for homicide or murder, as the case may be. (People vs. Bucsit, 43 Phil. 184, 185; People vs. Patricio, 46 Phil. 875, 879)

V, a confidential clerk in the American Express Co., learned of the description of the turns of the combination of his employer's safe. B cooperated as accomplice in the commission of the crime of qualified theft by V. It was held that the qualifying circumstance of breach of confidence which in the case of Valdellon justifies the imposition of a penalty one degree (now two degrees) higher than that prescribed for simple theft does not apply to B who was not in confidential relations with the offended party and who therefore should be punished as an accomplice in the crime of simple theft. (People vs. Valdellon, 46 Phil. 245, 252.)

Note: This ruling holds true even if there was conspiracy between V and B. The rule that in conspiracy the act of one is the act of all, does not mean that the crime of one is the crime of all.

(3) From any other personal cause:

A and B committed a crime. A was under 16 years of age and B was a recidivist.

Par. 4 -

The circumstances which consist (1) *in the material execution of the act,* or (2) *in the means employed to accomplish it,* shall serve to aggravate or mitigate the liability of those persons only *who had knowledge of them* at the time of the execution of the act or their cooperation therein.

Examples:

(1) Material execution of the act:

A, as principal by induction, B, and C agreed to kill D. B and C killed D with treachery, which mode of committing the offense had not been previously agreed upon by them with A. A was not present when B and C killed D with treachery.

The aggravating circumstance of treachery should not be taken into account against A, but against B and C only. (People vs. De Otero, 51 Phil. 201) But if A was present and had knowledge of the treachery with which the crime was committed by B and C, he is also liable for murder, qualified by treachery.

The qualifying circumstance of treachery should not be considered against the principal by induction when *he left to the principal by direct participation the means, modes or methods* of the commission of the felony. (U.S. vs. Gamao, 23 Phil. 81, 96)

(2) Means to accomplish the crime:

A ordered B to kill C. B invited C to eat with him. B mixed poison with the food of C, who died after he had eaten the food. A did not know that B used poison to kill C.

In this case, the aggravating circumstance that the crime be committed by means of poison is not applicable to A.

There is no mitigating circumstance relating to the means employed in the execution of the crime.

Insofar as relates to the means employed in the execution of the crime and other acts incident to the actual perpetration thereof, it is impossible to conceive of any mitigating circumstance which can properly be considered as to one of the defendants, but is not equally applicable to the others, even to those who had no knowledge of the same at the time of the commission of the crime, or their cooperation therein. (U.S. vs. Ancheta, 15 Phil. 470, 482, citing Groizard)

Difference between (1) circumstances relating to the persons participating in the crime and (2) circumstances consisting in the material execution or means employed.

S induced four Igorots to kill B. S instructed them to hide in the bushes *until night* when they should go to the house of B and kill him. The crime was committed by the four Igorots as they were instructed. The trial court considered the aggravating circumstance of nocturnity against the four Igorots but not against S.

Is the ruling of the trial court correct?

No, nocturnity being a circumstance *in the material execution* of the deed and one of the *means employed to accomplish its commission,* and S having knowledge of its use, should be considered against S.

The circumstances attending the commission of a crime relate either (1) *to the persons participating in the same,* or (2) *to its material execution,* or to the means employed.

The former (1), *do not* affect all the participants in the crime, but only those to whom they particularly apply.

The latter (2), have a direct bearing upon the criminal liability of all the defendants *who had knowledge thereof* at the time of the commission of the crime, or of their cooperation therein. (U.S. vs. Ancheta, *supra)*

Defendants-appellants, though forming part of the conspiracy of kidnapping, were not the ones who actually kidnapped the victim at nighttime; and, under Art. 62, paragraph 4, of the Revised Penal

Code, they are not bound or affected by the aggravating circumstance of nighttime unless they *knew* that it would be availed of in accomplishing the offense, and there is no proof of said knowledge. (People vs. Villanueva, 98 Phil. 327, 339)

7s it necessary that there be proof of cooperation or participation with regard to the act of cruelty?

The aggravating circumstance of cruelty, while it may be considered as against one accused, may not be appreciated as against another accused, where there is no sufficient proof of conspiracy in the commission of the main act, nor is there proof of cooperation or participation on the part of the latter with regard to the act of cruelty. (People vs. Vocalos, 59 O.G. 693)

If cruelty is a *means employed to accomplish* the act, cooperation or participation with regard to the act of cruelty is not necessary, as only knowledge of it is required by Art. 62, par. 4, of the Code.

Note, however, that as cruelty is defined in Art. 14, par. 21, the act of cruelty (the other wrong) is "not necessary for" the "commission" of the crime. It would seem that cruelty consists neither "in the material execution of the act" nor "in the means employed to accomplish it." If this is the case, the ruling in *People vs. Vocales* is correct, because Art. 62, par. 4, would not be applicable.

Par. 5 -

Who is a habitual delinquent?

A person is a habitual delinquent if within a period of ten years from the date of his *(last) release* or *last conviction* of the crimes of (1) *serious* or *less serious physical injuries,* (2) *robo,* (3) *hurto,* (4) *estafa,* or (5) *falsification,* he is found *guilty* of any of said crimes a *third* time or *oftener.*

The crimes are specified in habitual delinquency.

The crimes mentioned in the definition of habitual delinquency are: serious or less serious physical injuries (Arts. 263 and 265), robbery (Arts. 293-303), theft (Arts. 308-311), estafa (Arts. 315-318), and falsification (Arts. 170-174).

Thus, if A was convicted of and served sentence for theft in 1935; after his release he committed homicide (Art. 249), was convicted in

1937, and was released in 1951; and in 1957 was convicted of rape (Art. 335); he is not a habitual delinquent even if he was convicted the third time. Homicide and rape are not mentioned in the definition of habitual delinquency. (See Molesa vs. Director of Prisons, 59 Phil. 406, 408)

If the accused is convicted of a violation of Art. 155 (Llobrera vs. Director of Prisons, 87 Phil. 179), or of Art. 190 (People vs. Go Ug, 67 Phil. 202), he is not a habitual delinquent, even if he has previous convictions of theft, estafa, robbery, falsification, or serious or less serious physical injuries.

Requisites of habitual delinquency.

1. That the offender had been convicted of any of the crimes of *serious* or *less serious physical injuries, robbery, theft, estafa, or falsification.*

2. That after that conviction or after serving his sentence, he again *committed,* and, within 10 years from his release or first conviction, he was again convicted of any of the said crimes for the *second time.*

3. That after his conviction of, or after serving sentence for, the second offense, he again *committed,* and, within 10 years from his last release or last conviction, he was again *convicted* of any of said offenses, the *third time* or *oftener.*

Computation of ten-year period.

With respect to the period of ten years, the law expressly mentions the defendant's *last conviction* or *(last) release* as the starting point from which the ten-year period should be counted.

For instance, a person has the following criminal records:

Crimes Committed	*Date of Conviction*	*Date of Release*
Theft	June, 1915	July, 1916
Estafa	May, 1920	Oct., 1922
Attempted Robbery	July, 1928	Aug., 1930
Theft	Aug., 1937	Sept., 1940
Crime charged	Oct., 1946	

With respect to the conviction for estafa in May, 1920, the starting point would be the date of his *conviction* for theft, which is June, 1915, or the date of his release, which is July, 1916; and the date of his conviction for estafa, which is May, 1920, or the date of release, which is Oct. 1922, should be the starting point with reference to the conviction for attempted robbery in July, 1928, etc.

The ten-year period should not be counted from the date of conviction for theft, which is June, 1915, or the date of release, which is July, 1916, in relation to the last crime of which the offender was found guilty in October, 1946, because June, 1915, or July, 1916, is not the date of defendant's *last conviction* or *last release.* The date of last conviction with respect to the crime charged is August, 1937, for theft. The date of last release is September, 1940.

But if A was convicted of theft in 1920, of robbery in 1922, of swindling in 1935, and of theft again in 1936, only the crime of swindling, of which he was convicted in 1935 can be taken into account in the imposition of the penalty for theft in 1936 and, therefore, A is not a habitual delinquent but only a recidivist.

Why the starting point is date of release or date of last conviction.

Suppose, a convict has the following criminal records:

Offenses	*Date of Commission*	*Date of Conviction*	*Date of Release*
Theft	Aug., 1914	April, 1915	Sept., 1915
Estafa	Nov., 1920	April, 1923	April, 1925
Robbery	July, 1932	April, 1934	

Note that as regards the crime of estafa committed in November, 1920, the starting point may be the date of conviction for theft (April, 1915) or the date of release (Sept., 1916), because between April, 1923 and April, 1915 there is only a difference of 8 years or between April, 1923 and Sept., 1916, there is only a difference of 7 years. But as regards robbery committed in July, 1932, if we have to make the date of last conviction (April, 1923) as the starting point to determine the ten-year period to April, 1934, the date when the offender was found guilty of robbery, there is already a difference of

11 years. In this case, it seems that he is not a habitual delinquent. But the law says "from the date of his *release* or *last conviction.*" So, we can count the ten-year period from April, 1925. The difference will be only 9 years. He is then a habitual delinquent.

If the starting point is only the date of last conviction, there will be a case where the offender cannot be considered a habitual delinquent. Suppose that in connection with the three crimes hereinbefore mentioned, the offender was sentenced one after another to 12 years for each, even if he should commit the subsequent offense immediately after release, he cannot be a habitual delinquent.

"The culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty."

Thus, if the accused is tried for robbery and previously he was convicted of *theft* and *estafa,* robbery is the last crime, and if found guilty, the penalty for robbery shall be imposed upon him. In view of his two previous convictions of theft and estafa, he will be declared a habitual delinquent upon his conviction of robbery and he will be sentenced also to the additional penalty of *prisión correccional* in its medium and maximum periods.

Additional penalty for habitual delinquency:

1. Upon a *third* conviction, the culprit *shall* be sentenced to the penalty provided by law for the last crime of which he is found guilty and to the *additional* penalty of *prisión correccional* in its medium and maximum periods.
2. Upon a *fourth* conviction, the culprit shall also be sentenced to the *additional* penalty of *prisidn mayor* in its minimum and medium periods.
3. Upon a *fifth* or *additional* conviction, the culprit shall also be sentenced to the *additional* penalty of *prisidn mayor* in its minimum period to *reclusion temporal* in its minimum period.

Total penalties not to exceed 30 years.

The total of the two penalties shall not exceed 30 years. The two penalties refer to (1) the penalty for the last crime of which he is found guilty and (2) the additional penalty for being a habitual delinquent.

Reason for imposing additional penalty in habitual delinquency.

If, after undergoing punishment for the first time for any of those crimes, instead of abandoning his ways he goes on to commit again any of them, this second offense is punished with the maximum period of the penalty provided by law. He may be a *recidivist.*

If such graver punishment for committing the second offense has proved insufficient to restrain his proclivities and to amend his life, he is deemed to have shown a dangerous propensity to crimes. Hence, he is punished with a severer penalty for committing any of those crimes the third time or oftener. An additional penalty is imposed on him.

Purpose of the law in imposing additional penalty.

The purpose of the law in imposing *additional* penalty on habitual delinquents is to render more effective social defense and the reformation of multirecidivists. (People vs. Abuyen, 52 Phil. 722, 725)

Subsequent crime must be committed AFTER CONVICTION of former crime.

Thus, although the accused was six times previously convicted of estafa, yet if (1) the second crime was committed *before his first conviction,* and (2) the *fourth before his third conviction,* and (3) the *fifth* and *sixth* were committed on the same day, the six convictions are *equivalent* to three only. (People vs. Ventura, 56 Phil. 1, 5-6)

Illustration:

Offenses	*Date of Commission*	*Date of Conviction*
(1) Theft	January, 1920	October, 1921
(2) Estafa	September, 1921	December, 1921
(3) Robbery	January, 1930	March, 1931
(4) Falsification	February, 1931	December, 1931
(5) Serious physical injuries	Nov. 1, 1932	Dec. 4, 1932
(6) Less serious physical injuries	Nov. 1, 1932	Dec. 7, 1932

Note that when the crime of estafa was committed in September, 1921, the offender was not yet convicted of theft because the date of conviction is October, 1921. When the crime of falsification was committed in February, 1931, the offender was not yet convicted of robbery, because the date of conviction in the crime of robbery is March, 1931.

In order that an accused may be legally deemed a habitual criminal, it is necessary that he committed the *second* crime after his *conviction* of, or after service of sentence for, the first crime; that he committed the *third* crime after his conviction of, or after service of sentence for, the second crime; the *fourth* crime, after his conviction of, or after service of sentence for, the third crime, etc. (People vs. Santiago, 55 Phil. 266, 272)

In the information must be alleged:

1. The dates of the commission of the previous crimes.
2. The date of the last conviction or release.
3. The dates of the other previous convictions or releases. (People vs. Venus, 63 Phil. 435, 440)

The allegation of habitual delinquency in the information should be, as follows:

That the accused is a habitual delinquent, under the provisions of paragraph 5 of Art. 62 of the Revised Penal Code, having been previously convicted of theft and estafa, to wit:

Previous Offenses	*Date of Commission*	*Date of Conviction*	*Date of Release*
Theft	June 7, 1930	July 5, 1931	Oct. 3, 1931
Estafa	April 9, 1935	Sept. 14, 1936	Dec. 14, 1937

Effect of plea of guilty when allegations are insufficient.

A plea of guilty to an information which fails to allege the *dates of commission* of previous offenses, of *convictions* and of *releases* is not an admission that the offender is a habitual delinquent, but only a recidivist. (People vs. Masonson, 63 Phil. 92, 93-94; People vs. Flores, 63 Phil. 443, 444-445)

Effect of failure to object to admission of decision showing dates of previous convictions.

However, failure to allege said dates in the information is deemed cured where the accused did not object to the admission of decisions for previous offenses which show the dates of his convictions. (People vs. Nava, C.A., 58 O.G. 4750)

Date of release is not absolutely necessary.

If the preceding conviction is less than 10 years from the date of the conviction in the offense complained of, the date of last release is not important, because the release comes after conviction. (People vs. Tolentino, 73 Phil. 643, 644)

Habitual delinquency distinguished from recidivism.

(1) ***As to the crimes committed.*** **In recidivism, it is sufficient that the accused on the date of his trial, shall have been previously convicted by final judgment of another crime embraced in the same title of the Code; in habitual delinquency, the *crimes are specified.***

(2) ***As to the period of time the crimes are committed.*** **In recidivism, *no period of time* between the former conviction and the last conviction is fixed by law; in habitual delinquency, the offender is found guilty of any of the crimes specified within ten years from his last release or last conviction.**

(3) ***As to the number of crimes committed.*** **In recidivism, the second conviction for an *offense* embraced in the same title of the Code is sufficient; in habitual delinquency, the accused must be found guilty the third time or oftener of any of the crimes specified. (People vs. Bernal, 63 Phil. 750, 755)**

(4) ***As to their effects.*** **Recidivism, if not offset by a mitigating circumstance, serves to increase the penalty only to the maximum; whereas, if there is habitual delinquency, an additional penalty is also imposed.**

Rulings on habitual delinquency:

1. **Ten-year period computed either from *last conviction* or *last release*.The law on habitual delinquency does**

not contemplate the exclusion from the computation of prior convictions those falling outside the ten-year period immediately preceding the crime for which the defendant is being tried, provided each conviction is followed by another transgression *within ten years from one conviction to another.* (People vs. Lacsamana, 70 Phil. 517, 520; People vs. Rama, 55 Phil. 981, 982-983)

Ten-year period is counted not to the *date of commission* of subsequent offense, but to the *date of conviction* thereof in relation to the date of his last release or last conviction. (People vs. Morales, 61 Phil. 222, 224)

The definition of a habitual delinquent in the last paragraph of Art. 62 says, "if within a period of ten years x x x, he is *found guilty* of any of said crimes a third time or oftener."

Thus, if A was convicted of theft in 1920; after his release he committed and was convicted of estafa in 1922; was released on December 5, 1923; and on December 4, 1933, he committed robbery, and was convicted thereof in January, 1934; he is not a habitual delinquent. The reason for this is that when he was *convicted* of robbery in January, 1934, more than 10 years had elapsed. The period of ten years from December 5, 1923, *should not* be counted up to the commission of robbery on December 4, 1933, but to the date of A's conviction thereof, which is January, 1934.

When an offender has committed several crimes mentioned in the definition of habitual delinquent, without being first convicted of any of them before committing the others, he is not a habitual delinquent. (People vs. Santiago, 55 Phil. 266, 269-270)

Convictions on the same day or about the same time are considered as one only. (People vs. Kaw Liong, 57 Phil. 839, 841-842) Convictions on March 3 and 5, 1934 are considered one only. (People vs. Lopido, C.A., 38 O.G. 1907)

The reason for this ruling lies in the fact that the additional penalties fixed by law for habitual delinquency are *reformatory* in character and that their application

should be *gradual,* and this can be carried out only when the second conviction takes place after the first or after service of sentence for the first crime, etc. (People vs. Santiago, *supra,* at 270-271)

5. Crimes committed on the same date, although convictions on different dates (July 29 and Sept. 2, 1937), are considered only one. (People vs. Albuquerque, 69 Phil. 608-609)

The reason for this ruling lies in the fact that until the offender has served the additional penalty provided in his case, and has committed or abstained from committing another crime, it cannot be known if said additional penalty has or has not reformed him. (People vs. Santiago, *supra,* at 271)

6. Previous convictions are considered every time a new offense is committed.

On February 12, 1935, defendant was convicted of estafa. In said case, defendant's two previous convictions were taken into consideration for the imposition of the additional penalty. In April, 1935, defendant was also found guilty of estafa committed on October 18, 1934, and his two previous convictions were also considered for the imposition of the additional penalty. Defendant contended that he could be sentenced only to one additional penalty which was already imposed in the first case.

Held: The contention of defendant is untenable. Ruling in *People vs. Santiago,* 55 Phil. 266, *reversed.* (People vs. De la Rama, G.R. No. 43744, Jan. 31, 1936, 62 Phil. 972 [Unrep.])

7. The commission of any of those crimes need not be consummated. He who commits a crime, whether it be *attempted* or *frustrated,* subjectively reveals the same degree of depravity and perversity as one who commits a consummated crime. (People vs. Abuyen, 52 Phil. 722, 725-726)

8. Habitual delinquency applies to accomplices and accessories. Their participation in committing those crimes (serious or less serious physical injuries, robbery, theft, estafa or falsification) repeatedly, whether as principals,

accomplices or accessories, reveals the persistence in them of the inclination to wrongdoing, and of the perversity of character that had led them to commit the previous crimes. (People vs. San Juan, 69 Phil. 347, 349)

9. If one crime was committed *during the minority of the offender,* such crime should not be considered for the purpose of treating him as a habitual offender, because the proceedings as regards that crime were suspended.

10. The imposition of the additional penalty prescribed by law for habitual delinquents is *mandatory.* (People vs. Ortezuela, 51 Phil. 857, 860-861)

The imposition of additional penalty is not discretionary. (People vs. Navales, 59 Phil. 496, 497)

11. Modifying circumstances applicable to additional penalty.

In the case of *People vs. De Jesus,* 63 Phil. 760, 764-765, it was held that the additional penalty is subject to the general rules prescribed by Art. 64, that is, that such additional penalty is to be imposed in its minimum, medium or maximum period according to the number and nature of the modifying circumstances present. When the law prescribed the additional punishment for habitual delinquency in such form as to make it susceptible of division into periods, it must have been for no other reason than to take into account all the circumstances which may exist in a given case with the end in view of avoiding arbitrariness in the selection of the period in which the punishment is to be imposed.

This case being the latest is controlling. The ruling in this case upholds the dissenting opinion of Chief Justice Avanceha and Justice Villamor in the *Tanyaquin* and *Sanchez* cases.

12. Habitual delinquency is not a crime. It is simply a fact or circumstance which, if present in a given case with the other circumstances enumerated in Rule 5 of Art. 62, gives rise to the imposition of the additional penalties therein prescribed. (People vs. De Jesus, *supra,* at 767; People vs. Blanco, 85 Phil. 296, 297)

13. **Penalty for habitual delinquency is a real penalty that determines jurisdiction. (People vs. Costosa, 70 Phil. 10, 11-12)**

14. **A habitual delinquent is necessarily a recidivist. (People vs. Tolentino, 73 Phil. 643, 644)**

Recidivism is inherent in habitual delinquency and shall be considered as aggravating circumstance in imposing the *principal penalty.* (People vs. Espina, 62 Phil. 607, 608; People vs. De Jesus, 63 Phil. 760, 764)

Reason for the rule:

The purpose of the law in imposing additional penalty on a habitual delinquent is to punish him more severely. If in imposing the additional penalty, recidivism could not be considered as aggravating circumstance in fixing the principal penalty, the imposition of the additional penalty would make the penalty lighter, instead of more severe, contrary to the purpose of the law. (People vs. Tolentino, *supra)*

Illustration:

A was previously twice convicted of theft within ten years. Within ten years after service of his last sentence, he was convicted of robbery under Art. 294, subsection 2, of the Code, punished by *reclusion temporal* in its medium period to *reclusion perpetua.*

Being a habitual delinquent, A should suffer 2 years, 4 months, and 1 day *of prision correctional,* as an additional penalty.

Without taking into consideration the aggravating circumstance of recidivism, the principal penalty to be imposed would be 17 years, 4 months and 1 day of *reclusion temporal,* the medium of the penalty prescribed for the crime. If we add 2 years, 4 months and 1 day (additional penalty) to the principal penalty, the total would be 19 years, 8 months and 2 days.

But if the additional penalty is not imposed and recidivism is taken into consideration in fixing the prin-

cipal penalty, it would be *reclusion perpetua,* which is the maximum of the penalty prescribed by law.

15. But in imposing the *additional penalty*, recidivism is *not* aggravating because inasmuch as recidivism is a qualifying or inherent circumstance in habitual delinquency, it cannot be considered an aggravating circumstance at the same time. Consequently, the additional penalty to be imposed upon the accused must be the minimum of that prescribed by law as, with the exception of recidivism, no other circumstance or fact justifying the imposition of said penalty in a higher period has been present. (People vs. De Jesus, 63 Phil. 760, 766-767; People vs. Tolentino, 73 Phil. 643, 644)

Can a convict be a habitual delinquent without being a recidivist?

Yes, when *no* two of the crimes committed are embraced in the same title of the Code.

Illustration:

A was convicted of *falsification* in 1920 and served sentence in the same year. Then, he committed estafa, convicted, and served sentence in 1925. His last crime was physical injuries committed in 1930. Falsification is a crime against public interests; estafa, against property; physical injuries, against person.

The imposition of additional penalty for habitual delinquency is constitutional.

It is neither an *ex post facto* law nor an additional punishment for former crimes. It is simply a punishment on future crimes, the penalty being enhanced on account of the criminal propensities of the accused. (People vs. Montera, 55 Phil. 933-934)

Art. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Outline of the rules.

1. **When the penalty is *single indivisible*, it shall be *applied regardless* of any mitigating or aggravating circumstances.**
2. **When the penalty is composed of *two indivisible* penalties, the following rules shall be observed:**
   - **(a) When there is *only one aggravating* circumstance, the *greater penalty shall be imposed.***
   - **(b) When there is neither mitigating nor aggravating circumstances, the *lesser* penalty shall be imposed.**
   - **(c) When there is a *mitigating* circumstance and *no aggravating* circumstance, the *lesser* penalty shall be imposed.**
   - **(d) When *both* mitigating and aggravating circumstances are present, the court shall allow them to *offset one another.***

Art. 63 applies only when the penalty prescribed by the Code is either one indivisible penalty or two indivisible penalties.

Art. 63 does not apply when the penalty prescribed by the Code is *reclusion temporal* in its maximum period to death, because although this penalty includes the two indivisible penalties of death and *reclusion perpetua,* it has three periods; namely, the minimum *(reclusion temporal* maximum); the medium *(reclusión perpetua);* and the maximum (death).

In this case, Art. 64 shall apply.

Example of single and indivisible penalty.

In kidnapping and failure to return a minor (Art. 270) and in rape (Art. 266-B), the penalty is *reclusion perpetua,* a penalty which is single and indivisible.

Death as a single indivisible penalty is imposed for kidnapping and serious illegal detention when the purpose of the offender is to extort ransom (Art. 267, as amended by Rep. Act No. 7659) and for rape with homicide. (Art. 266-B)

Example of two indivisible penalties.

Reclusion perpetua to death. This penalty is imposed for parricide (Art. 246), robbery with homicide (Art. 294, par. 1), kidnapping and serious illegal detention without intention to extort ransom (Art. 267), and rape committed with the use of a deadly weapon or by two or more persons. (Art. 266-B)

When the penalty is composed of two indivisible penalties, the penalty cannot be lowered by one degree, no matter how many mitigating circumstances are present.

When there are two or more mitigating circumstances and no aggravating circumstance, the court *cannot* proceed by analogy to the provisions of subsection 5 of Art. 64 and impose the penalty lower by one degree. (U.S. vs. Guevara, 10 Phil. 37, 38; U.S. vs. Relador, 60 Phil. 593, 603-604; People vs. Formigones, 87 Phil. 658, 663-664)

In a case, the commission of the crime of parricide punishable with *reclusion perpetua* to death was attended by the two mitigating

circumstances of illiteracy and lack of intention to commit so grave a wrong as that committed, without any aggravating circumstance. The lower court imposed the penalty next lower, which is *reclusion temporal,* applying Art. 64, paragraph No. 5.

Held: The penalty imposed is not correct. The rule applicable in this case is found in Art. 63 and not in Art. 64. (U.S. vs. Relador, *supra)*

Exception —

When a privileged mitigating circumstance under Art. 68 or Art. 69 is present.

But if the circumstance present is a *privileged* mitigating circumstance under Art. 68 or Art. 69, since a penalty lower by one or two degrees shall be imposed upon the offender, he may yet get a penalty one or two degrees lower.

Thus, if a woman who was being boxed by her husband stabbed him with a knife in the chest, causing his death, she is entitled to a penalty one degree lower from *reclusion perpetua* to death. The penalty one degree lower is *reclusion temporal.*

The imposable penalty for the crime of rape is *reclusion perpetua.* The accused being entitled to the privileged mitigating circumstance of minority, the imposable penalty is *reclusion temporal* in its medium period, absent any other mitigating or aggravating circumstance. (People vs. Galang, G.R. No. 70713, June 29, 1989, 174 SCRA 454, 460-462)

Moral value, not numerical weight, of circumstances should prevail.

As regards paragraph No. 4 of Art. 63, the *moral value* rather than the numerical weight should prevail. (U.S. vs. Bulfa, 25 Phil. 97, 101; U.S. vs. Antonio, 31 Phil. 205, 212; U.S. vs. Reguera, 41 Phil. 506, 521-522)

Mitigating circumstance is not necessary to impose *reclusión perpetua* when the crime is punishable with two indivisible penalties of *reclusión perpetua* to death.

The reason is that under Art. 63, when the crime is penalized with two indivisible penalties, *reclusion perpetua* to death, the lesser

penalty should be imposed even when there is no mitigating circumstance present. (People vs. Belarmino, 91 Phil. 118, 122; People vs. Laureano, 71 Phil. 530, 537)

Art. 64. *Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number

and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

Art. 64 applies only when the penalty has three periods.

Thus, Art. 64 applies when the penalty prescribed by law for the offense is *reclusión temporal, prisión mayor, prisidn correccional, arresto mayor, arresto menor,* or *prisidn correccional* to *reclusidn temporal,* etc., because they are divisible into three periods (minimum, medium and maximum).

When the law prescribes a single divisible penalty, as *reclusidn temporal* for homicide, which according to Art. 76, is understood as distributed in three equal parts, each part forms a period called minimum, medium and maximum.

If the penalty is made up of three different penalties, as *prisidn correccional* to *reclusidn temporal,* each forms a period according to Art. 77. Thus, *prisidn correccional* will be the minimum; *prisidn mayor,* the medium; and *reclusidn temporal,* the maximum. *Prisidn mayor* is included because it is between *prisidn correccional* and *reclusidn temporal* in Scale No. 1 of Art. 71.

Outline of the rules:

1. No aggravating and no mitigating — medium period.
2. Only a mitigating — minimum period.
3. Only an aggravating — maximum period.

As no generic aggravating and mitigating circumstances were proven in this case, the penalty for murder should be imposed in its medium period or *reclusidn perpetua.* The death penalty imposed by the trial court was not warranted. (People vs. Toling, No. L-27097, Jan. 17, 1975, 62 SCRA 17, 35)

The Revised Penal Code provides that when the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, when neither aggravating nor mitigating circumstances attend, the penalty prescribed by law shall be imposed in its medium period. (Taer vs.

Court of Appeals, G.R. No. 85204, June 18, 1990, 186 SCRA 598, 606-607; People vs. Centeno, G.R. No. 33284, April 20, 1989, 172 SCRA 607, 612)

Illustrations of Nos. 2 and 3:

A is convicted of homicide punishable by *reclusión temporal,* which has three periods (minimum, medium, and maximum).

a. **If there is no mitigating or aggravating circumstance — the penalty is *reclusidn temporal* medium (14 years, 8 months and 1 day).**

b. **If A pleaded guilty and there is no aggravating circumstance to offset the mitigating circumstance of plea of guilty, the penalty is *reclusidn temporal* minimum (12 years and 1 day).**

c. **If A committed the crime of homicide in the dwelling of the deceased, and there is no mitigating circumstance to offset the aggravating circumstance of dwelling, the penalty to be imposed on him is *reclusidn temporal* maximum (17 years, 4 months and 1 day).**

When there are two (2) aggravating circumstances and there is no mitigating circumstance, the penalty prescribed by law for the crime should be imposed in its maximum period. (People vs. Mateo, Jr., G.R. Nos. 53926-29, Nov. 13, 1989, 179 SCRA 303, 324)

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusidn temporal* in its maximum period to death. There being only one mitigating circumstance and no aggravating circumstance to offset the same, the imposable penalty is the minimum pursuant to Article 64, paragraph 2, of the same Code, which is the maximum period of *reclusidn temporal.* The Indeterminate Sentence Law applies which provides for a *minimum* term within the range of the penalty next lower in degree to be fixed in any of its periods in the discretion of the court. Under Article 61, paragraph 3, of the same Code, when the penalty prescribed for the crime is composed of one or two indivisible penalties, as in this case, the penalty

next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum of that immediately following in the scale. The penalty next lower in degree in the instant case ranges from the maximum of *prisión mayor* to the medium degree of *reclusión temporal.* (People vs. Ordiales, No. L-30956, Nov. 23, 1971, 42 SCRA 238, 248-249)

When there are aggravating and mitigating — the court shall offset those of one class against the other according to their relative weight.

Illustration:

A committed homicide in the nighttime, purposely sought for by him and which facilitated the commission of the crime. He surrendered to the mayor of the town and when tried pleaded guilty to the charge.

One mitigating circumstance (either voluntary surrender or plea of guilty) will offset the aggravating circumstance of nighttime.

The remaining mitigating circumstance will result in the imposition of the minimum period of the penalty of *reclusidn temporal,* the penalty for homicide.

The mitigating circumstance must be ordinary, not privileged; the aggravating circumstance must be generic or specific, not qualifying or inherent.

A qualifying circumstance (treachery) cannot be offset by a generic mitigating circumstance (voluntary surrender). (People vs. Abletes, No. L-33304, July 31, 1974, 58 SCRA 241, 247-248)

Two or more mitigating and no *aggravating* — penalty next lower, *in the period applicable,* according to the number and nature of such circumstances.

The penalty for the offense is *reclusidn temporal* maximum to *reclusidn perpetua.* (Par. 4, Art. 217, RPC, as amended by RA 1060) That penalty should be lowered by one degree because of the presence of two mitigating circumstances. So, the maximum of the indeterminate penalty should be taken from *prisidn*

mayor maximum to *reclusión temporal* medium. (Par. 5, Art. 64, RPC) And the minimum penalty should be taken from *prision correccional* maximum to *prisidn mayor* medium. (Ramirez vs. Sandiganbayan, No. 56441, July 25, 1983, 123 SCRA 709, 710-711)

Any or both of the two mitigating circumstances should not be considered for the purpose of fixing the proper penalty to be imposed, since they were already taken into account in reducing the penalty by one degree lower. (Basan vs. People, No. L-39483, Nov. 29, 1974, 61 SCRA 275, 277)

Question:

A was once convicted by final judgment of the crime of serious physical injuries. A now committed homicide with three mitigating circumstances. Is A entitled to a penalty one degree lower?

No, because there is an aggravating circumstance of recidivism. Physical injuries and homicide are embraced in the same title of the Revised Penal Code. In this case, paragraph 4 applies.

No penalty greater than the maximum period of the penalty prescribed by law shall be imposed, no matter how many aggravating circumstances are present.

Thus, even if four generic aggravating circumstances attended the commission of homicide without any mitigating circumstance, the court cannot impose the penalty of *reclusion perpetua,* which is higher than *reclusidn temporal,* the penalty for homicide.

Whatever may be the number and nature of the aggravating circumstances, the courts may not impose a greater penalty than that prescribed by law in its maximum period. (Art. 64, par. 6, Revised Penal Code; People vs. Manlolo, G.R. No. 40778, Jan. 26, 1989, 169 SCRA 394, 400-401)

The court can determine the extent of the penalty *within the limits of each period, according to the number* and *nature* of the aggravating and mitigating circumstances and the greater or lesser *extent of the evil* produced by the crime.

Example:

A crime punished with *arresto mayor* was committed with the concurrence of three circumstances, two aggravating and one mitigating. Under rule 4, the penalty of *arresto mayor* in its maximum period (4 mos. and 1 day to 6 mos.) shall be imposed.

Under Rule 7, the court can impose an intermediate penalty between 4 months and 1 day to 6 months. It may impose 4 months and 1 day, 5 months, or 6 months.

The court has discretion to impose the penalty within the limits fixed by law.

The penalty prescribed by the Code for the offense is *prision mayor* or 6 years and 1 day to 12 years. The court imposed 8 years and 1 day as the maximum of the indeterminate penalty. The defense contended that the court should have imposed a maximum lower than 8 years. Is this contention correct?

The contention of the defense is not correct. Where a penalty imposed is within the limits fixed by law, the charge that it was excessive is without foundation, as the court imposing the penalty may exercise discretion in its imposition. (People vs. Recto, *et al.*, CA-G.R. No. 11341-R, December 13, 1954)

The court imposed the medium period of *prisión mayor.* The medium period of that penalty is from 8 years and 1 day to 10 years.

"Extent of the evil produced."

V deposited in a bank certain checks of no value and later knowing that he had no money in said bank, issued checks against it. V was convicted of estafa.

How would you apply paragraph 7 of this article?

Taking into account the extent of the injury produced by the offense which, in a certain degree, disturbed the economic life of a banking institution, it is proper, in accordance with Article 64, par. 7, to impose upon the accused, the *maximum* of the medium degree of the penalty. (People vs. Velazco, 42 Phil. 75, 81)

Art. 64 is not applicable when the penalty is indivisible or prescribed by special law or fine.

Art. 64 does not apply to (1) indivisible penalties, (2) penalties prescribed by special laws, and (3) fines. As to Nos. (2) and (3), see People vs. Ching Kuan, 74 Phil. 23.

In what cases are mitigating and aggravating circumstances not considered in the imposition of penalty?

In the following cases:

1. When the penalty is single and indivisible. (Art. 63)

2. In felonies thru negligence. The rules for the application of penalties prescribed by Article 64 are not applicable to a case of reckless imprudence under Art. 365. (People vs. Quijano, C.A., 43 O.G. 2214; Art. 365)

3. The penalty to be imposed upon a Moro or other non-Christian inhabitants. It lies in the discretion of the trial court, irrespective of the attending circumstances. (Sec. 106, Adm. Code of Mindanao and Sulu; People vs. Moro Disimban, 88 Phil. 120, 124)

   The term "non-Christian" refers not only to religious belief but in a way to geographical area and, more particularly, directly to Philippine natives of a low grade of civilization. (De Palad vs. Saito, 55 Phil. 831, 838)

   Sec. 106 does not apply to a Moro who has lived in a Christian province for many years. (People vs. Salazar alias Darquez, 105 Phil. 1058)

   Acts Nos. 2798 and 2913 extended Sec. 106 to the Mountain Province. (People vs. Tumbali, C.A., 39 O.G. 214; People vs. Cawol, G.R. No. L-7250, March 31, 1955, 96 Phil. 972 [Unrep.])

4. When the penalty is only a *fine* imposed by an ordinance.

   For violation of an *ordinance,* the accused was sentenced to pay a fine of ₱175, after a plea of guilty. Is he entitled to a mitigating circumstance? No, because the penalty imposed being *only a fine,* the rules established in

Arts. 63 and 64 cannot be applied. (People vs. Ching Kuan, 74 Phil. 23, 24)

5. When the penalties are prescribed by special laws. (People vs. Respecia, 58 O.G. 458)

Art. 65. *Rules in cases in which the penalty is not composed of three periods.* — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

Meaning of the rule.

1. Compute and determine first the three periods of the entire penalty.
2. The time included in the penalty prescribed should be divided into three equal portions, after subtracting the minimum (eliminate the 1 day) from the maximum of the penalty.
3. The minimum of the minimum period should be the minimum of the given penalty (including the 1 day).
4. The quotient should be added to the minimum prescribed (eliminate the 1 day) and the total will represent the maximum of the minimum period. Take the maximum of the minimum period, add 1 day and make it the minimum of the medium period; then add the quotient to the minimum (eliminate the 1 day) of the medium period and the total will represent the maximum of the medium period. Take the maximum of the medium period, add 1 day and make it the minimum of the maximum period; then add the quotient to the minimum (eliminate the 1 day) of the maximum period and the total will represent the maximum of the maximum period.

Illustration of the computation when the penalty has three periods.

(1) Let us take as an example *prisión mayor* which has a duration of 6 years and 1 day to 12 years.

(2) Subtract the minimum (disregarding the 1 day) from the maximum, thus —

12 years - 6 years = 6 years.

(3) Divide the difference by 3, thus —

6 years ÷ 3 = 2 years.

(4) Use the minimum of 6 years and 1 day of *prisión mayor* as the minimum of the minimum period. Then add 2 years to the minimum (disregarding the 1 day) to get the maximum of the minimum period. Thus — we have 8 years as the maximum of the minimum period. The range of the minimum period is, therefore, 6 years and 1 day to 8 years.

(5) Use the maximum of the minimum period as the minimum of the medium period, and add 1 day to distinguish it from the maximum of the minimum period; we have — 8 years and 1 day. Then add 2 years to the minimum of the medium period (disregarding the 1 day) to get the maximum of the medium period. The range of the medium period is, therefore, 8 years and 1 day to 10 years.

(6) Use the maximum of the medium period as the minimum of the maximum period, and add 1 day to distinguish it from the maximum of the medium period; we have — 10 years and 1 day. Then add 2 years to the minimum of the maximum period (disregarding the 1 day) to get the maximum of the maximum period. Hence, the range of the maximum period is — 10 years and 1 day to 12 years.

See Art. 76. The computation is not followed in the division of *arresto mayor.*

Illustration of the computation when the penalty is not composed of three periods.

Note that Art. 65 provides for the rule to be applied when the penalty prescribed by the Code is not composed of three periods.

***Prision correccional* in its medium and maximum periods is the penalty prescribed by the Code for infanticide committed by the mother to conceal her dishonor. (Art. 255, par. 2)**

Computation:

The duration of *prisidn correccional* is 6 months and 1 day to 6 years. 6 years - 6 months = 5 years and 6 months ÷ 3 = 1 year and 10 months.

Min. — 5 months and 1 day to 2 years and 4 months.

Med. — *2 years, 4 months and 1 day* to 4 years and 2 months.

Max. — 4 years, 2 months and 1 day to 6 *years.*

Since the duration of the penalty of *prisión correccional* in its medium and maximum periods is 2 years, 4 months and 1 day to 6 years, the time included in that penalty should be divided into three equal portions. Thus —

5 years and 12 mos. (or 6 yrs.)
2 years and 4 mos.

3) 3 years and 8 mos. (1 yr., 2 mos. and 20 days)
3 years 6 mos.

2 mos. or 60 days

The duration of each portion after dividing the duration of the penalty into three equal portions is 1 year, 2 months and 20 days.

Since the minimum prescribed by law is 2 years and 4 months, and the duration of each portion is 1 year, 2 months and 20 days, the time comprised in the minimum is from 2 years, 4 months and 1 day to 3 years, 6 months and 20 days. *Computation:* The minimum of the minimum is 2 years, 4 months and 1 day. To obtain the maximum of the minimum we have to add 1 year, 2 months and 20 days to 2 years and 4 months. Therefore, the maximum of the minimum is 3 years, 6 months and 20 days, computed as follows:

2 years, 4 months (and 1 day) — The minimum of the minimum.
+
1 year, 2 months and 20 days — The duration of each portion.
3 years, 6 months and 20 days — The maximum of the minimum.

To obtain the minimum of the medium, add 1 day to the maximum of the minimum and make it the minimum of the medium.

Then, to obtain the maximum of the medium, we compute as follows:

3 y., 6 m. and 21 d. — The minimum of the medium.
1 y., 2 m. and 20 d. — The duration of each portion.
4 y., 9 m. and 10 d. — The maximum of the medium.

To obtain the minimum of the maximum, we have to add 1 day to the maximum of the medium and make it the minimum of the maximum.

To obtain the maximum of the maximum, we have to add 1 year, 2 months and 20 days to 4 years, 9 months and 11 days, as follows:

4 y., 9 m. and 11 d.	—	The minimum of the maximum.
+		
1 y., 2 m. and 20 d.		The duration of each portion.
6 years		The maximum of the maximum.

Hence, the maximum is from 4 years, 9 months, and 11 days to 6 years.

Art. 66. *Imposition of fines.* — In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.

Outline of this provision:

1. The court can fix any amount of the fine *within the limits* established by law.
2. The court must consider —
   a. The mitigating and aggravating circumstances; and
   b. *More particularly,* the wealth or means of the culprit.

When the minimum of the fine is not fixed.

When the law does not fix the minimum of the fine, the determination of the amount of the fine to be imposed upon the culprit is left to the sound discretion of the court, provided it shall not exceed the maximum authorized by law. (People vs. Quinto, 60 Phil. 351, 357-358)

Fines are not divided into three equal portions.

The courts are not bound to divide the amount of fine prescribed by law into three equal portions as in the case of imprisonment imposed in relation to a divisible penalty.

Wealth or means of culprit is main consideration in fine.

The wealth or means of the culprit is emphasized, because a fixed amount of fine for all offenders of a particular crime, will result in an inequality. ₱100 to a rich man is chicken-feed; but certainly, that amount is something to a poor man.

To an indigent laborer, for instance, earning ₱8.00 a day or about ₱208.00 a month, a fine of ₱20.00 would undoubtedly be more severe than a fine of ₱50.00 to an office holder or property owner with a monthly income of ₱800.00.

Obviously, to impose the same amount of a fine for the same offense upon two persons thus differently circumstanced would be to mete out to them a penalty of unequal severity; hence, unjustly discriminatory. (People vs. Ching Kuan, 74 Phil. 23, 24)

But mitigating and aggravating circumstances are not entirely disregarded. Factors other than financial condition of accused may be considered by the court.

Art. 66 says that the court may also consider mitigating and aggravating circumstances.

The court may also consider, in the imposition of the proper amount of the fine, other factors, such as the gravity or seriousness of the crime committed, the heinousness of its perpetration, and the magnitude of its effects on the offender's victims. (People vs. Manuel, CA-G.R. Nos. 14648-61-R, July 6, 1957)

Position and standing of accused considered aggravating in gambling.

a. Where a person found guilty of violation of the Gambling Law is a man of station or standing in the community, the maximum penalty should be imposed. (U.S. vs. Salaveria, 39 Phil. 102, 113)

b. Because the accused in a gambling case was a municipal treasurer, the Court imposed a fine of ₱500 and one year imprisonment, the maximum penalty provided by law. (U.S. vs. Mercader, 41 Phil. 930, 932)

Art. 67. ***Penalty to be imposed when not all the requisites of exemption of the fourth circumstance of Article 12 are present.*** **— When all the conditions required in circumstance number 4 of Article 12 of this Code to exempt from criminal liability are not present, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon the culprit, if he shall have been guilty of a grave felony, and *arresto mayor* in its minimum and medium periods, if of a less grave felony.**

Art. 67 applies only when all the requisites of the exempting circumstance of accident are not present.

Circumstance No. 4 of Art. 12 refers to the exempting circumstance of accident.

The conditions necessary to exempt from liability under Subsection 4 of Art. 12 are four:

1. That the act causing the injury be lawful; that is, permitted not only by law but also by regulations.
2. That it be performed with due care.
3. That the injury be caused by mere accident, *i.e.*, by an unforeseen event.
4. That there be no fault or intention to cause the injury.

If all these conditions are not present, the act should be considered as reckless imprudence if the act is executed without taking those precautions or measures which the most common prudence would require; and simple imprudence, if it is a mere lack of precaution in those cases where either the threatened harm is not imminent or the danger is not openly visible. The case will fall under Art. 365, par. 1.

The penalty provided in Art. 67 is the same as that in Art. 365.

Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.*

Article 68 has been partly repealed by Republic Act No. 9344.

Article 68 of the Revised Penal Code which prescribes the penalty to be imposed upon a person under eighteen (18) years of age has been partly repealed by Rep. Act No. 9344 which provides that (1) a child fifteen years and under is exempt from criminal responsibility, and (2) a child above fifteen (15) years but below eighteen (18) years of age is exempt from criminal liability unless he/she has acted with discernment. (Sec. 6, Rep. Act No. 9344)

*Partly repealed by Republic Act No. 9344 (Juvenile Justice and Welfare Act of 2006). See explanations, *infra.*

While an offender over nine (9) years but under fifteen (15) years who acts with discernment is not exempt from criminal liability under Art. 68, and a discretionary penalty shall be imposed which shall be always lower by two degrees than that prescribed by law for the crime committed, said offender is exempt from criminal liability under Rep. Act No. 9344; hence, no penalty shall be imposed.

When an offender is over fifteen (15) but under eighteen (18) years of age, the penalty next lower than that prescribed by law shall be imposed under Art. 68, while under Rep. Act No. 9344, the offender shall be exempt from criminal liability unless he/she acted with discernment.

If the offender acted with discernment, he/shall shall undergo diversion programs provided under Chapter 2 of Rep. Act No. 9344.

If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law has not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment. (Sec. 40, Rep. Act No. 9344) The penalty to be imposed on the child in conflict with the law shall be that provided for in paragraph 2 of Art. 68, that is, the penalty next lower than that prescribed by law.

Probation as an alternative to imprisonment.

The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," is hereby amended accordingly.

Art. 69. ***Penalty to be imposed when the crime committed is not wholly excusable.*** **— A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and**

12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

Unlawful aggression is indispensable in self-defense, defense of relatives and defense of stranger.

The first circumstance in self-defense, etc. (Subsections 1, 2 and 3 of Art. 11), which is *unlawful aggression* must be present.

For instance, B, who was challenged by A to a fight, was the *first to attack* A with a knife, whereupon A with similar weapon retaliated by stabbing B, but in the struggle, B killed A.

Can B be given a reduction of one or two degrees lower than the penalty prescribed for homicide?

Although the greater number of the conditions required to justify the deed, that is, (1) reasonableness of the means employed and (2) lack of sufficient provocation, is present, since the essential or primordial element of *unlawful aggression is lacking,* he is not entitled to a reduction. (See U.S. vs. Navarro, 7 Phil. 713)

There was no unlawful aggression, because there was an agreement to fight between A and B. The latter accepted the challenge by attacking the challenger A.

"In the several cases mentioned in Articles 11 and 12."

The privileged mitigating circumstances contemplated in Article 69 include the incomplete justifying and incomplete exempting circumstances, provided the *majority* of their conditions is present.

"Provided the majority of such conditions be present."

In the case of *People vs. Alvarez,* 44 O.G. 946, the Court of Appeals refused to apply this article because there was only unlawful aggression on the part of the victim, but the means employed by the accused was not reasonable and he (accused) provoked the aggression.

Let us take a case of homicide in which the *provocation* and *unlawful aggression* came from the deceased, but the means employed by the offender was not reasonable.

In this case, there are present more than one of the requisites of self-defense. (Guevara)

When *two* of the essential requisites for justification are present, the penalty *lower by two degrees* may be imposed. (People vs. Dorado, 43 Phil. 240, 244-245; People vs. Lucero, 49 Phil. 160, 162; People vs. Almendrelejo, 48 Phil. 268, 276)

Where only *unlawful aggression* is present, the penalty next lower may be imposed. (People vs. Cabellon, 51 Phil. 846, 852)

This decision is contrary to the provision of this Article which says: "provided, the *majority* of such conditions be present."

"A penalty lower by one or two degrees than that prescribed by law shall be imposed x x x in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking."

In view of this clause in Art. 69, the court has the discretion to impose *one* or *two* degrees lower than that prescribed by law for the offense.

But in determining the proper period of the penalty one or two degrees lower, the court must consider the number and nature of the conditions of exemption or justification present or lacking.

When the majority of the requisites of self-defense and two mitigating without aggravating circumstances are present, the penalty is three degrees lower.

Thus, if the accused charged with homicide punishable *by reclusion temporal* proved unlawful aggression on the part of the deceased and another requisite of self-defense; plus two mitigating circumstances of surrender and obfuscation, without any aggravating circumstance, the proper penalty for him is *arresto mayor* medium or from 2 months and 1 day to 4 months.

Art. 70. *Successive service of sentences.* — When the culprit has to serve two or more penalties, he shall serve them simultane-

ously if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties **first** imposed, or should they have been served out.

For the purpose of applying the provisions of the next preceding paragraph the respective severity of the penalties shall be determined in accordance with the following scale:

1. Death,
2. ***Reclusión*** *perpetua,*
3. ***Reclusión*** *temporal,*
4. *Prisidn mayor,*
5. ***Prisión*** *correccional,*
6. *Arresto mayor,*
7. *Arresto menor,*
8. Destierro,
9. Perpetual absolute disqualification,
10. Temporary absolute disqualification,
11. Suspension from public office, the right to vote and be voted for, the right to follow profession or calling, and
12. Public censure.

Notwithstanding the provisions of the rule next preceding, the maximum duration of the **convict's** sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum of those imposed equals the said maximum period.

Such maximum period shall in no case exceed forty years.

In applying the provisions of this rule the duration of perpetual penalties *(pena perpetua)* shall be computed at thirty years. *(As amended by Com. Act No. 217.)*

Outline of the provisions of this Article:

1. **When the culprit has to serve *two* or *more* penalties, he shall serve them simultaneously if the nature of the penalties will so permit.**
2. **Otherwise, the order of their respective severity shall be followed.**
3. **The respective severity of the penalties is as follows:**
   - **a. Death,**
   - **b. *Reclusion perpetua,***
   - **c. *Reclusion temporal,***
   - **d. *Prisión mayor,***
   - **e. *Prisidn correccional,***
   - **f. *Arresto mayor,***
   - **g. *Arresto menor,***
   - **h. *Destierro,***
   - **i. Perpetual absolute disqualification,**
   - **j. Temporary absolute disqualification,**
   - **k. Suspension from public office, the right to vote and be voted for, the right to follow profession or calling, and**
   - **1. Public censure.**

The penalties which can be simultaneously served are:

- **(a) Perpetual absolute disqualification,**
- **(b) Perpetual special disqualification,**
- **(c) Temporary absolute disqualification,**
- **(d) Temporary special disqualification,**

(e) Suspension,

(f) *Destierro,*

(g) Public censure,

(h) Fine and bond to keep the peace,

(i) Civil interdiction, and

(j) Confiscation and payment of costs.

The above penalties, except *destierro,* can be served simultaneously with imprisonment.

Penalties consisting in deprivation of liberty cannot be served simultaneously by reason of the nature of such penalties.

The order of the respective severity of the penalties shall be followed so that they may be executed successively.

Thus, where the convict was sentenced on October 28, 1905, to imprisonment for 6 months for one offense, and on November 11, 1905, he was sentenced to imprisonment for 4 months and 1 day for another offense, it was held that he should serve the two terms *successively* and the *time of the second sentence did not commence to run until* the expiration of the first. (Gordon vs. Wolfe, 6 Phil. 76, 78)

Where the defendant was sentenced to three distinct terms of imprisonment for the separate offenses of frustrated homicide, trespass, and less serious physical injuries, the three penalties should be served *successively in the order of their severity.* (People vs. Dola, 59 Phil. 134, 138)

Imprisonment must be served before *destierro. Arresto menor* is more severe than *destierro.* (People vs. Misa, C.A., 36 O.G. 3697)

The three-fold rule.

According to the three-fold rule, the maximum *duration of the convict's sentence* shall not be more than three times the length of time corresponding to the *most severe* of the penalties imposed upon him.

Example: A person is sentenced to suffer — 14 years, 8 months and 1 day for homicide; 17 years, 4 months and 1 day in another case;

14 years and 8 months in the third case; and in a case of frustrated homicide, he is sentenced to 12 years, or a total of 59 years, 8 months and 2 days.

The most severe of those penalties is 17 years, 4 months and 1 day. Three times that penalty is 52 years and 3 days. But since the law has limited the duration of the maximum term of imprisonment to not more than 40 years, the accused will have to suffer 40 years only. (See People vs. Alisub, 69 Phil. 362, 366; People vs. Lagoy, G.R. No. L-5112, May 14, 1954, 94 Phil. 1050 [Unrep.])

The phrase "the most severe of the penalties" includes equal penalties.

Thus, the petitioner for *habeas corpus* who had been sentenced in six (6) different cases of estafa, *in each of which he was penalized with 3 months and 11 days of arresto mayor, cannot be made to suffer* more than *3 months* and *11 days multiplied by* 3 or 9 months and 33 days.

Hence, the petitioner who was in jail for *one year* and *three months* remained there beyond the period allowed under the three-fold rule. (Aspra vs. Director of Prisons, 85 Phil. 737, 738)

The three-fold rule applies only when the convict has to serve at least four sentences.

If only two or three penalties corresponding to different crimes committed by the convict are imposed, it is hardly possible to apply the three-fold rule.

Illustration: A was convicted of three crimes of homicide for each of which he was sentenced to 12 years and 1 day of *reclusión temporal.* Adding all the three penalties, you will find a total of 36 years and 3 days; or multiplying one of the penalties, each of 12 years and 1 day, by 3 you will find the same result.

Suppose, for the first homicide A was sentenced to 12 years and 1 day; for the second, 14 years, 8 months and 1 day; and for the third, 17 years, 4 months and 1 day; in this case, the total of all the penalties is 44 years and 3 days. On the other hand, 17 years, 4 months and 1 day multiply by 3 equals 52 years and 3 days. The three-fold rule does not apply, because the total of all the penalties is less than the most severe multiplied by 3.

But if A was convicted of four crimes of homicide, for each of which he was sentenced to 12 years and 1 day or to different penalties, the three-fold rule can properly be applied.

Follow the same computation on the basis of four convictions, the fourth penalty at least equal to any one of the penalties mentioned, and you will find that the most severe multiplied by 3 is less than the sum total of all the penalties.

If the sum total of all the penalties does not exceed the most severe multiplied by 3, the three-fold rule does not apply.

Thus, if A was sentenced to 1 year for theft, 2 years for robbery, 1 year for estafa, 4 months for physical injuries, and 4 months and 1 day for slander, the total of all the penalties being only 4 years, 8 months and 1 day, which is less than 2 years multiplied by 3 or 6 years, the three-fold rule does not apply. The three-fold rule applies only when the total of all the penalties imposed exceeds the most severe multiplied by 3.

All the penalties, even if by different courts at different times, cannot exceed three-fold the most severe.

This rule, for the reason stated, should be followed *irrespective* of the fact that the different offenses are charged in several informations, or are included in a single prosecution, or the several cases are tried before the same court or in different courts. (People vs. Geralde, 50 Phil. 823, 829)

The three-fold rule applies although the penalties were imposed for *different crimes*, at *different times*, and under separate informations. (Torres vs. Superintendent, 58 Phil. 847, 848)

Reason for the ruling.

The Rules of Court specifically provide that an information must not charge more than one offense. Necessarily, the various offenses punished with different penalties must be charged under different informations which may be filed in the same court or in different courts, at the same time or at different times.

Duration of the convict's sentence refers to several penalties for different offenses, not yet served out.

Note, however, that this rule applies only when the convict has to serve *continuous* imprisonment for several offenses. If the convict

already served sentence for one offense, that imprisonment will not be considered, for the purpose of the three-fold rule, if after this release he commits again and is convicted of new offenses. Note the opening sentence of Article 70 which says: "When the culprit has to serve two or more penalties, he shall serve them *simultaneously* if the nature of the penalties will so permit." Only penalties which have not yet been served out can be served simultaneously.

No prisoner shall be required to remain in prison *continuously* for more than 40 years. The duration of *perpetual* penalties is 30 years.

If the sentence is indeterminate, the maximum term is to be considered.

If the sentence is indeterminate, the basis of the three-fold rule is the maximum term of the sentence. (People vs. Desierto, C.A., 45 O.G. 4542)

Subsidiary imprisonment forms part of the penalty.

The imposition of three-fold maximum penalty under Art. 70 *does not preclude* subsidiary imprisonment for failure to pay a fine.

The rule is to multiply the highest penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, *plus* the payment of all indemnities with or without subsidiary imprisonment, *provided the principal penalty does not exceed 6 years.* (Bagtas vs. Director of Prisons, 84 Phil. 692, 698)

Example: A was found guilty in 17 criminal cases, the most severe of the 17 sentences being 6 months and 1 day plus a fine of P1,000, with subsidiary imprisonment in case of insolvency.

After serving 18 months and 3 days in prison, A filed a petition for *habeas corpus,* contending that under Art. 70, the maximum duration of his sentence cannot exceed three-fold the length of time corresponding to the most severe of the penalties imposed upon him, which in this case was 18 months and 3 days. A further contended that the subsidiary imprisonment for nonpayment of the fine should be eliminated, because Art. 70 *provides that "no other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the maximum period."*

The subsidiary imprisonment for nonpayment of the fine cannot be eliminated so long as the principal penalty is not higher than 6 years of imprisonment.

The provision of Art. 70 that "no other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period," simply means that the convict shall not serve the excess over the maximum of three-fold the most severe penalty. For instance, if the aggregate of the principal penalties is six years and that is reduced to two years under the three-fold rule, he shall not be required to serve the remaining four years.

If the petitioner would not be able to pay the fine, the maximum duration of his imprisonment shall be 18 months and 3 days of the principal penalty plus 6 months and 1 day of subsidiary imprisonment for failure to pay the fine, or a total of 2 years and 4 days. (See Bagtas vs. Director of Prisons, *supra)*

Indemnity is a penalty.

The accused contended that in applying the three-fold rule, the court *should* not have taken into account the indemnity of ₱498 or its corresponding subsidiary imprisonment.

Held: This contention is without merit for an *indemnity,* to all intents and purposes, is *considered a penalty,* although pecuniary in character. Art. 70 *makes no distinction* between the principal penalty and subsidiary imprisonment. (Arlinda vs. Director of Prisons, G.R. No. 47326)

Court must impose all the penalties for all the crimes of which the accused is found guilty, but in the service of the same, they shall not exceed three times the most severe and shall not exceed 40 years.

The three-fold rule is applied, not in the imposition of the penalties, but in connection with the service of the sentences imposed. (People vs. Escares, 102 Phil. 677, 679; People vs. Jose, No. L-28232, Feb. 6, 1971, 37 SCRA 450, 477; Dulpo vs. Sandiganbayan, No. L-74652, May 21, 1987, 150 SCRA 138, 143)

Article 70 of the Revised Penal Code is concerned exclusively with the "service" of sentence; it speaks of "duration" of penalty and

penalty to "be inflicted." It has nothing to do with the imposition of the proper penalty. Nowhere is it there envisioned that the court should make a computation and, in its decision, sentence the culprit to not more than three-fold the most severe of the penalties imposable upon him. Computation is for the prison authorities to undertake. (People vs. Salazar, C.A, 61 O.G. 5913)

In the case of *People vs. Mendoza,* G.R. L-3271, May 5, 1950, it was held that the accused were guilty of murders and that each of them must be sentenced to suffer *reclusion perpetua* for each of the five murders, although the duration of the aggregate penalties shall not exceed 40 years. In this case, after serving one *reclusion perpetua,* which is computed at 30 years, the accused will serve 10 years more. All the other penalties will not be served.

In the case of *People vs. Lagoy,* G.R. L-5112, May 14, 1954, the accused were sentenced to *reclusión perpetua* for each of the *three* murders, to be served *continuously and successively,* provided that, under Art. 70 of the Revised Penal Code, the maximum or total period shall not exceed forty (40) years. (See also People vs. Macatembal, Nos. L-17486-88, Feb. 27, 1965, 13 SCRA 328, 333)

In the case of *U.S. vs. Jamad,* 37 Phil. 305, 311, the accused committed four crimes, but the trial court imposed only death penalty for one of them.

Held: "All the penalties corresponding to the several violations of law" should be imposed, to wit: (1) the penalty of death for parricide of his wife; (2) the penalty of life imprisonment for the murder of L; (3) the penalty of life imprisonment for the murder of I; and (4) the penalty of 12 years and 1 day of *reclusion temporal* for the frustrated murder of T.

Two or more death penalties imposed on one convict.

Multiple death penalties are not impossible to serve because they will have to be executed simultaneously. A cursory reading of Article 70 will show that there are only two modes of serving two or more (multiple) penalties: *simultaneously* or *successively.* The first rule is that two or more penalties shall be served simultaneously if the nature of the penalties will so permit. In the case of multiple capital penalties, the nature of said penal sanctions does not only permit but actually necessitates simultaneous service.

The imposition of multiple death penalties, far from being a useless formality, has practical importance. The sentencing of an accused to several capital penalties is an indelible badge of his extreme criminal perversity, which may not be accurately projected by the imposition of only one death sentence irrespective of the number of capital felonies for which he is liable. Showing thus the reprehensible character of the convict in its real dimensions, the possibility of a grant of executive clemency is justifiably reduced in no small measure. Hence, the imposition of multiple death penalties could effectively serve as a deterrent to an improvident grant of pardon or commutation. Faced with the utter delinquency of such a convict, the proper penitentiary authorities would exercise judicious restraint in recommending clemency or leniency in his behalf.

Granting, however, that the Chief Executive, in the exercise of his constitutional power to pardon (one of the presidential prerogatives which is almost absolute) deems it proper to commute the multiple death penalties to multiple life imprisonments, then the practical effect is that the convict has to serve the maximum of forty (40) years of multiple life sentences. If only one death penalty is imposed, and then is commuted to life imprisonment, the convict will have to serve a maximum of only thirty years corresponding to a single life sentence. (People vs. Peralta, No. L-19069, Oct. 29, 1968, 25 SCRA 759, 785-786; People vs. Jose, No. L-28232, Feb. 6, 1971, 37 SCRA 450, 479)

Different systems of penalty.

There are three different systems of penalty relative to the execution of two or more penalties imposed on one and the same accused. They are:

(1) The material accumulation system;

(2) The juridical accumulation system; and

(3) The absorption system (the lesser penalties are absorbed by the graver penalties).

The material accumulation system.

Previous legislation adopted the theory of absolute accumulation of crimes and penalties and established no limitation whatever and,

accordingly, all the penalties for all the violations were imposed even if they reached beyond the natural span of human life. (Guevara)

Pars. 1, 2 and 3 of Art. 70 follow the material accumulation system.

The juridical accumulation system.

Pars. 4, 5 and 6 of Art. 70 are in accordance with the juridical accumulation system. The service of the several penalties imposed on one and the same culprit is limited to not more than three-fold the length of time corresponding to the most severe and in no case to exceed 40 years.

The absorption system.

The absorption system is observed in the imposition of the penalty in complex crimes (Art. 48), continuing crimes, and specific crimes like robbery with homicide, etc.

Art. 71. *Graduated scales.* — In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in Article 61 shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

1. Death
2. *Reclusion perpetua*
3. *Reclusion temporal*
4. *Prision mayor*
5. *Prision correccional*
6. *Arresto mayor*
7. *Destierro*

8. *Arresto menor*
9. Public censure
10. Fine.

SCALE NO. 2

1. Perpetual absolute disqualification
2. Temporary absolute disqualification
3. Suspension from public office, the right to vote and be voted for, and the right to follow a profession or calling
4. Public censure
5. Fine.

Death shall no longer form part of the equation in the graduation of penalties, pursuant to Rep. Act No. 9346.

The negation of the word "death" as previously inscribed in Article 71 will have the effect of appropriately downgrading the proper penalties attaching to accomplices, accessories, frustrated and attempted felonies to the level consistent with the rest of our penal laws. Thus, a convicted accomplice in kidnapping for ransom, would now bear the penalty of *reclusion temporal,* the penalty one degree lower than what the principal would bear *(reclusion perpetua).* Such sentence would be consistent with Article 52 of the Revised Penal Code, as well as Article 71, as amended, to remove the reference to "death." Moreover, the prospect of the accomplice receiving the same sentence as the principal, an anomalous notion within our penal laws, would be eliminated. Thus, the same standard would prevail in sentencing principals and accomplices to the crime of kidnapping in ransom, as that prescribed to the crime of simple kidnapping.

The harmonization that would result if Rep. Act No. 9346 were construed as having eliminated the reference to "death" in Article 71 would run across the board in our penal laws. Consistent with Article 51 of the Revised Penal Code, those convicted of attempted qualified rape would receive the penalty two degrees lower than that prescribed by law, now Rep. Act No. 9346, for qualified rape.

There are principles in statutory construction that will sanction, even mandate, this *"expansive"* interpretation of Rep. Act

No. 9346. The maxim *interpretare et concordare legibus est optimus interpretandi* embodies the principle that a statute should be so construed not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system—a uniform system of jurisprudence. "Interpreting and harmonizing laws with laws is the best method of interpretation. x x x This manner of construction would provide a complete, consistent and intelligible system to secure the rights of all persons affected by different legislative and quasi-legislative acts." There can be no harmony between Rep. Act No. 9346 and the Revised Penal Code unless the later statute is construed as having downgraded those penalties attached to death by reason of the graduated scale under Article 71. Only in that manner will a clear and consistent rule emerge as to the application of penalties for frustrated and attempted felonies, and for accessories and accomplices.

It is also a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and liberally in favor of the accused. If the language of the law were ambiguous, the court will lean more strongly in favor of the defendant than it would if the statute were remedial, as a means of effecting substantial justice. The law is tender in favor of the rights of an individual. It is this philosophy of caution before the State may deprive a person of life or liberty that animates one of the most fundamental principles in our Bill of Rights, that every person is presumed innocent until proven guilty.

x x x

For purposes of legal hermeneutics, the critical question is whether Rep. Act No. 9346 intended to delete the word "death" as expressly provided for in the graduated scale of penalties under Article 71.

x x x

Since Article 71 denominates "death" as an element in the graduated scale of penalties, there is no question that the operation of Article 71 involves the actual application of the death penalty as a means of determining the extent which a person's liberty is to be deprived. Since Rep. Act No. 9346 unequivocally bars the application of the death penalty, as well as expressly repeals all such statutory provisions requiring the application of the death penalty, such effect

necessarily extends to its relevance to the graduated scale of penalties under Article 71.

x x x

We cannot find basis to conclude that Rep. Act No. 9346 intended to retain the operative effects of the death penalty in the graduation of the other penalties in our penal laws.

x x x

Henceforth, "death," as utilized in Article 71 of the Revised Penal Code, shall no longer form part of the equation in the graduation of penalties. (People vs. Bon, G.R. No. 166401, Oct. 30, 2006)

Example.

In the case of an appellant convicted of attempted rape, the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than *reclusion perpetua.* Hence, the maximum term of his penalty shall no longer be *reclusion temporal,* as ruled by the Court of Appeals, but instead, *prision mayor.* (People vs. Bon, G.R. No. 166401, Oct. 30, 2006)

What is the penalty next lower in degree from *arresto mayor*?

Art. 71 provides in Scale No. 1 that the penalty next lower in degree from *arresto mayor* is *destierro.*

The ruling in the case of *Rivera vs. Geronimo,* 76 Phil. 838, to the effect that the penalty next lower from *arresto mayor* is *arresto menor* may be considered *overruled by the ruling* in the case of *Uy Chin Hua vs. Dingalasan,* 47 O.G., Supp. 12, 233.

According to the case of *Uy Chin Hua vs. Dingalasan,* the scale of penalties in Art. 71 which places *destierro* below *arresto mayor* cannot be disregarded and the respective severities of *arresto mayor* and *destierro* must not be judged by the duration of each of these penalties, but by the degree of deprivation of liberty involved. The penalty next lower in degree from *arresto mayor* is *destierro.*

The metropolitan and municipal courts can impose *destierro.*

Offenses penalized by *destierro* fall under the jurisdiction of justice of the peace and municipal courts. (People vs. Santos, 87 Phil. 687, 688)

Destierro, although a correctional penalty consisting in banishment (Art. 87) with a duration of 6 months and 1 day to 6 years (Art. 27) is considered not higher than *arresto mayor* which is imprisonment of 1 month and 1 day to 6 months.

Under the Judiciary Reorganization Act of 1980, Batas Pambansa Blg. 129, as amended by Rep. Act No. 7691, metropolitan trial courts, municipal trial courts, and municipal circuit trial courts shall exercise exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof: *Provided, however,* That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction thereof.

Must *destierro* be applied only when it is specifically imposed by law?

No. *Destierro* may be imposed when it is the penalty next lower and the circumstances require the imposition of a penalty one degree lower.

The penalty two degrees lower from arresto mayor in its medium and maximum periods is destierro in its minimum and medium periods.

Arresto mayor	max. — — / med. — — / min. — —	Penalty prescribed by law.
	max. — — / med. — — / min. — —	One degree lower.
Destierro		Two degrees lower.

Arts. 25, 70 and 71, compared:

Under Art. 25, penalties are classified into (1) *principal* and (2) *accessory* penalties. The principal penalties are subdivided into *capital, afflictive, correctional,* and *light.*

Art. 70 classifies the penalties, for the purpose of the successive service of sentences, according to their *severity.*

Art. 71 provides for the scales which should be observed in graduating the penalties by degrees in accordance with Art. 61. Note that in Art. 71, *destierro* is placed above *arresto menor.* The reason for this is that *destierro,* being classified as a correctional penalty, is higher than *arresto menor,* a light penalty. Art. 71, par. 2, speaks of "lower or higher" penalty. Art. 70 speaks of "severity."

Under Art. 70, *destierro* is placed under *arresto menor,* according to their respective severity. *Destierro* is considered lighter than *arresto menor.* Under Art. 25, *destierro* is placed above *arresto menor,* because it is classified as a correctional penalty.

In Art. 71, the different principal penalties provided for in Art. 25 are classified and grouped into two graduated scales. Under Scale No. 1, all personal penalties, such as deprivation of life and liberty, are grouped together. Under Scale No. 2 are grouped all penalties consisting in deprivation of political rights.

Art. 72. *Preference in the payment of the civil liabilities.* — The civil liabilities of a person found guilty of two or more offenses shall be satisfied by following the chronological order of the dates of the final judgments rendered against him, beginning with the first in order of time.

The person guilty of two or more offenses has two or more civil liabilities.

This article applies when the offender who is found guilty of two or more offenses is required to pay the corresponding civil liabilities resulting from different offenses.

The order of payment of civil liabilities is based on dates of final judgments.

The order of payment of civil liabilities is not based on the dates of the commission of the offense.

While criminal liability is satisfied by successive service of sentences in the order of respective severity (Art. 70), civil liability is satisfied by following the chronological order of the dates of the final judgments.

Section Three. — Provision common to the last two preceding sections.

Art. 73. ***Presumption in regard to the imposition of accessory penalties.*** **— Whenever the courts shall impose a penalty which by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict.**

Accessory penalties are deemed imposed.

The accessory penalties provided for in Arts. 40 to 45 are deemed imposed by the courts without the necessity of making an express pronouncement of their imposition.

In a case, the Solicitor General suggested that the decision below be modified to show expressly that appellants were also sentenced to the accessory penalties provided by law. It was held that there was no necessity for such modification, as the accessory penalties are deemed imposed. (People vs. Baltazar, CA-G.R. No. 14882-R, May 25, 1956)

According to the case of *People vs. Perez,* 47 Phil. 984, accessory penalties are never presumed to be imposed. This is because under Art. 90 of the old Penal Code, the accessory penalties are to be imposed *expressly.*

Subsidiary imprisonment, not an accessory penalty.

Subsidiary imprisonment is not an accessory penalty and therefore, the judgment of conviction must expressly state that the offender shall suffer the subsidiary imprisonment in case of insolvency. (People vs. Fajardo, 65 Phil. 539, 542)

Art. 74. ***Penalty higher than reclusión perpetua in certain cases.*** **— In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty.**

Death cannot be the penalty next higher in degree when not provided by law.

Suppose that an employee of the Registry Section of the Bureau of Posts stole a registered package of diamonds worth ₱250,000. The penalty for simple theft involving that amount is *reclusion temporal.* (Art. 309) The property stolen being mail matter, the crime is qualified theft and "shall be punished by the penalties (penalty) next higher by two degrees." (Art. 310) Under Art. 71, "in the cases in which the law prescribes a penalty x x x higher by one or more degrees than another given penalty," two degrees higher than *reclusión temporal* would be death according to Scale No. 1 in said article.

But under the provisions of Art. 74, when a given penalty has to be raised by one or two degrees and the resulting penalty is *death* according to the scale, *but is not specifically provided by law as a penalty,* the latter cannot be imposed. The given penalty *(reclusidn temporal)* and the accessory penalties of death when not executed by reason of commutation or pardon (Art. 40) shall be imposed.

Application of this article.

The Code has meant to say here that the judgment should provide that the convict should not be given the benefit of Art. 27 (that he should be pardoned after undergoing the penalty for 30 years) until 40 years have elapsed; otherwise, there would be no difference at all between *reclusidn perpetua* when imposed as the penalty next higher in degree and when it is imposed as the penalty fixed by law. (Albert) In this opinion, the given penalty is *reclusidn perpetua.*

Reason for the provision of this article.

The penalty higher than *reclusidn perpetua* cannot be death, because the penalty of death must be specifically imposed by law as a penalty for a given crime.

Art. 75. *Increasing or reducing the penalty of fine by one or more degrees.* — Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without however, changing the minimum.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional.

Fines are graduated into degrees for the accomplices and accessories and for the principals in frustrated and attempted felonies.

Fines are also graduated into degrees for the imposition of the proper amount of the fine on accomplices and accessories or on the principals in frustrated or attempted felonies. (Arts. 50 to 57)

Examples of reducing fine by one or two degrees.

Suppose the fine is from P200 to P2,000. To find each degree is to take 1/4 of P2,000 or ₱500. The minimum of P200 is not changed. For each degree, take P500 from the maximum of the next higher degree.

Therefore, one degree lower would be P200 as minimum to ₱1,500 as maximum.

And two degrees lower would be P200 as minimum to P1,000 as maximum.

For the guidance of the bench and bar, in reducing the penalty of fine by one or more degrees, the basis for the reduction of the first as well as the second degree must necessarily be the penalty prescribed by law for the consummated felony. Thus, where the maximum fine fixed for the consummated offense is not more than ₱2,000, the fine for the frustrated felony is determined by reducing the maximum by one-fourth, which is ₱1,500.00. Reducing it further by one degree for attempted felony, the second reduction by one-fourth should be based on P2,000, not on the penalty as reduced (Pl,500.00) so that the maximum fine as reduced by two degrees would be ₱1,000.00. (De los Angeles vs. People, 103 Phil. 295, 297-298)

Example of increasing fine by one degree.

Let us suppose that a certain crime is punished with a fine of not less than P200 and not more than P6,000. One-fourth of the maximum of P6,000 is Pl,500. The fine immediately higher in degree in accordance with this article will be from P200.00 to ₱7,500.00.

"Without changing the minimum."

This article specifically mentions the word "minimum" of the fine. Under this article, the fine must have a *minimum* and a *maximum* fixed by law.

A, a minor fifteen years and two months old, committed acts tending to prevent the meeting of a provincial board under Art. 143. The penalty is *prision correccional* or a fine from P200 to ₱2,000 or both. Being a minor, A must be given a penalty one degree lower in accordance with Article 68. The penalty one degree lower is *arresto mayor* or a fine from P200 to ₱1,500. Under Art. 75, the court cannot change the minimum of P200, even if the offender is a poor man. (See People vs. Rodriguez, G.R. No. L-6300, April 20, 1954)

This article, therefore, does not apply when the law does not fix the minimum of the fine.

Determination of amount of reduced fine.

There are cases where it becomes necessary to reduce the fines, because the penalty has to be lowered by one or two degrees. In determining the amount of the reduced fine, a distinction should be made between cases where the minimum of the fine is fixed by law and those where the minimum is not fixed by law.

In Articles 143, 144 and 150, for instance, the Code fixes the minimum as well as the maximum of the fines. In Articles 114, 115 and 129, for instance, the minimum of the fine is not fixed.

When the minimum is not fixed by law.

When only the maximum of the fine is fixed, the determination of the amount to be imposed is left to the sound discretion of the courts, without exceeding the maximum authorized by law. (People vs. Quinto, 60 Phil. 351, 357)

Distinctions between fine with a minimum and fine without a minimum.

1. In both, the law fixes the maximum of the fine.
2. When the law fixes the minimum of the fine, the court cannot change that minimum; whereas, when the law does not state

the minimum of the fine but only the maximum, the court can impose any amount not exceeding such maximum.

3. When the law fixes both the minimum and the maximum, the court can impose an amount higher than the maximum; whereas, when only the maximum is fixed, it cannot impose an amount higher than the maximum.

As to "fines that do not consist of a fixed amount, but are made proportional."

The last paragraph of this article speaks of fines which are not of fixed amount, but are made proportional.

Examples:

When the negligent act resulted in damage to property of another, the fine shall be from an amount equal to the value of the damage to three times such value, but shall in no case be less than 25 pesos. (Art. 365, par. 3)

In the crime of direct bribery (Art. 210) involving a bribe of P2,300, the maximum fine is ₱6,900 (three times the value of the gift), and that amount (₱6,900) should be the basis for lowering the penalty by two degrees, which is the penalty for attempted bribery. (De los Angeles vs. People, 103 Phil. 295, 298-299)

In this case, the minimum of the fine is ₱2,300 and the maximum is ₱6,900. The fine for attempted bribery is determined, as follows: Take one-fourth of P6,900, which is ₱1,725. Reducing the maximum by one-fourth, we have ₱5,175. Reducing it further by one-fourth of the maximum, we have ₱3,450. This amount is the maximum of the fine for attempted bribery. The court can fix any amount of the fine from ₱2,300 to ₱3,450.

Art. 76. *Legal period of duration of divisible penalties.* — The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum in the manner shown in the following table. (See p. 768)

Article 76 shows the manner divisible penalties are divided into three periods.

For instance, the time included in each of the periods *of reclusión temporal* is determined, as follows:

(1) *Reclusión temporal* has a duration of from 12 years and 1 day as the minimum, to 20 years, as the maximum.

(2) Subtract the minimum (disregarding the 1 day) from the maximum; thus —

20 years - 12 years = 8 years

(3) Divide the difference by 3; thus —

8 years ÷ 3 = 2 years and 8 months.

(4) Use the minimum of 12 years and 1 day of *reclusidn temporal* as the minimum of the minimum period. Then add 2 years and 8 months to the minimum (disregarding the 1 day) to get the maximum of the minimum period. Thus, we have 14 years and 8 months as the maximum of the minimum period. The range of the minimum period is, therefore, 12 years and 1 day to 14 years and 8 months.

(5) Use the maximum of the minimum period as the minimum of the medium period, and add 1 day to distinguish it from the maximum of the minimum period; we have 14 years, 8 months and 1 day. Then add 2 years and 8 months to the minimum of the medium period (disregarding the 1 day); we have 17 years and 4 months, as the maximum of the medium period. The range of the medium period is, therefore, 14 years, 8 months and 1 day to 17 years and 4 months.

(6) Use the maximum of the medium period as the minimum of the maximum period, and add 1 day to distinguish it from the maximum of the medium period; we have 17 years, 4 months and 1 day. Then add 2 years and 8 months to the minimum of the maximum period (disregarding the 1 day); and we have 20 years. Hence, the range of the maximum period is 17 years, 4 months and 1 day to 20 years.

When the penalty is composed of three periods corresponding to different divisible penalties.

If the Revised Penal Code prescribes the penalty of *prision correccional* in its medium and maximum periods to *prisidn mayor* in its minimum period, what is the duration of each of its three periods?

The time included in the prescribed penalty is from 2 years, 4 months and 1 day to 8 years.

Must the duration of each of the three periods of the prescribed penalty be that of the period of the corresponding divisible penalty included in the prescribed penalty, as follows:

Minimum — 2 years, 4 months and 1 day to 4 years and 2 months (the medium of *prisidn correccional),*

Medium — 4 years, 2 months and 1 day to 6 years (the maximum of *prisidn correccional),* and

Maximum — 6 years and 1 day to 8 years (the minimum of *prisidn mayor),*

or must the time included in the prescribed penalty be divided into three *equal portions,* each to form one period, as follows:

Minimum — 2 years, 4 months and 1 day to 4 years, 2 months and 20 days,

Medium — 4 years, 2 months and 21 days to 6 years, 1 month and 10 days, and

Maximum — 6 years, 1 month and 11 days to 8 years?

It will be noted that, in the first, the duration of the minimum period of the penalty is the time included in the medium period of *prisidn correccional;* the duration of the medium period of the penalty is the time included in the maximum period of *prisidn correccional;* and the duration of the maximum period is the time included in the minimum period of *prisidn mayor.* The penalty is not divided into three equal parts to form the three periods. While the time included in its minimum and medium periods is 1 year and 8 months, the time included in its maximum period is 2 years.

It seems that the intention of the Legislature when it enacted the law (Revised Penal Code) is to give the three periods of a di-

TABLE SHOWING THE DURATION OF DIVISIBLE PENALTIES AND THE TIME INCLUDED IN EACH OF THEIR PERIODS

alties	Time included in the penalty in its entirety	Time included in its minimum period	Time included in its medium period	Time inclu in its maxi period
ón tempo-	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years, 8 months and 1 day to 17 years and 4 months.	From 17 ye months an to 20 years
nayor, ab- disquali- ion and al tempo- disqualifi- .	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 yea 1 day to 12
correc- suspen- and *destie-*	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years, 4 months and 1 day to 4 years and 2 months.	From 4 yea months an to 6 years.
mayor.	From 1 month and 1 day to 6 months.	From 1 to 2 months.	From 2 months and 1 day to 4 months.	From 4 month day to 6 m
menor.	From 1 to 30 days.	From 1 to 10 days.	From 11 to 20 days.	From 21 to 30

visible penalty equal or uniform duration. Even in cases in which the penalty prescribed by law is not composed of three periods, the courts shall divide "into three *equal* portions the time included in the penalty prescribed, x x x forming one period of each of the three portions." (Art. 65)

It is noted that Art. 76 provides that "divisible penalties shall be considered as divided into three parts, forming three periods," without stating that the three parts must be the three equal portions of the time included in the divisible penalties, but the time included in each of the divisible penalties mentioned in the table in that article, except that of *arresto mayor,* is divided into three equal portions.

It may be argued that the duration of each of the periods of those divisible penalties is fixed by Art. 76 and must be maintained even if it is included in a different three-period penalty. But Art. 76 does not even remotely suggest it. On the contrary, the phrase in that article, which reads: "in the *manner* shown in the following table," indicates merely the way or method of dividing into three periods the divisible penalties as those mentioned in the table.

Those which are fixed in the table are respectively the periods of the divisible penalties mentioned therein. To maintain the durations of those periods even when one or two of them form part of a prescribed three-period penalty is to give the periods of the prescribed penalty different durations as earlier indicated. It would be the only divisible penalty where the duration of one of its three periods is not equal to that of the others. When the prescribed penalty does not have three periods, it has to be divided into three *equal* portions for the application of the rules contained in Art. 64. When the penalty prescribed is any of the divisible penalties enumerated in Art. 25, its three periods, except those of *arresto mayor,* are the three *equal* portions of the divisible penalty. The penalty composed of several periods corresponding to different divisible penalties cannot be the exception, for there is no legal or practical basis for the exception.

It is clear that the duration of each of the periods of the divisible penalties as fixed in the table in Art. 76 of the Revised Penal Code is not controlling when the penalty prescribed is composed of three periods corresponding to different divisible penalties.

The division of *arresto mayor* into three equal periods does not follow the rule.

According to the table prepared under Art. 76, the three periods of *arresto mayor* are:

Minimum period — 1 month and 1 day to 2 months.

Medium period — 2 months and 1 day to 4 months.

Maximum period — 4 months and 1 day to 6 months.

Distinction between "period" and "degree."

The Revised Penal Code, unlike the old Penal Code, clearly establishes a distinction between "period" and "degree," by designating as a "period" each of the three equal parts of a divisible penalty and designating as a "degree" the diverse penalties mentioned by name in the Revised Penal Code. (People vs. Padilla, 36 O.G. 2404)

Art. 77. ***When the penalty is a complex one composed of three distinct penalties.*** **— In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period.**

Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying by analogy the prescribed rules.

What is a complex penalty?

It is a penalty prescribed by law composed of three distinct penalties, each forming a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period. (Art. 77)

When the penalty is composed of three distinct penalties.

When the law prescribes a penalty composed of three distinct penalties, each one shall form a period.

Example: *Reclusión temporal* to death (Art. 114).

Maximum — Death.

Medium — *Reclusión perpetua* (this is between *reclusidn temporal* and death).

Minimum — *reclusidn temporal.*

Application by analogy of the rules.

Examples:

1. Art. 114, par. 3, provides a penalty of *prisidn mayor* to *death.* The penalty is composed of four distinct penalties, namely, *prisidn mayor, reclusidn temporal, reclusidn perpetua,* and death.

   The maximum period must be death, it being indivisible; the medium period must be *reclusidn perpetua,* it being also indivisible; and the minimum period must be composed of *prisidn mayor* and *reclusidn temporal.*

2. Art. 294, par. 2, provides a penalty of *reclusidn temporal* in its medium period to *reclusidn perpetua.* The penalty is composed of two distinct penalties.

   The maximum is *reclusidn perpetua,* it being indivisible; the medium is *reclusidn temporal* in its maximum period; and the minimum is *reclusidn temporal* in its medium period.

INDETERMINATE SENTENCE LAW
(Act No. 4103 as amended by Act No. 4225)

AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR AND FOR OTHER PURPOSES.

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. ***(As amended by Act No. 4225)***

SECTION 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section five hereof. ***(As amended by Act No. 4225)***

SECTION 3. There is hereby created a Board of Pardons and Parole to be composed of the Secretary of Justice who shall be its

chairman, and four members to be appointed by the President, with the consent of the Commission on Appointments who shall hold office for a term of six years: *Provided,* That one member of the board shall be a trained sociologist, one a clergyman or educator, one psychiatrist unless a trained psychiatrist be employed by the board, and the other members shall be persons qualified for such work by training and experience. At least one member of the board shall be a woman. Of the members of the present board, two shall be designated by the President to continue until December thirty, nineteen hundred and sixty-nine. In case of any vacancy in the membership of the Board, a successor may be appointed to serve only for the unexpired portion of the term of the respective members. *(As amended by R.A. No. 4203, approved June 19, 1965.)*

SECTION 4. The Board of Pardons and Parole is authorized to adopt such rules and regulations as may be necessary for carrying out its functions and duties. The Board is empowered to call upon any bureau, office, branch, subdivision, agency, or instrumentality of the Government for such assistance as it may need in connection with the performance of its functions. A majority of all the members shall constitute *a quorum* and a majority vote shall be necessary to arrive at a decision. Any dissent from the majority opinion shall be reduced to writing and filed with the records of the proceedings. Each member of the Board, including the Chairman and Executive Officer, shall be entitled to receive as compensation Fifty pesos for each meeting actually attended by him, notwithstanding the provisions of Sec. 259 of the Revised Administrative Code, and in the addition thereto, reimbursement of actual and necessary traveling expenses incurred in the performance of duties: *Provided, however,* That the Board meeting will not be more than three times a week. *(As amended by R.A. No. 4203, approved June 19, 1965.)*

SECTION 5. It shall be the duty of the Board of Indeterminate Sentence to look into the physical, mental and moral record of the prisoners who shall be eligible to parole and to determine the proper time of release of such prisoners. Whenever any prisoner shall have served the minimum penalty imposed on him, and it shall appear to the Board of Indeterminate Sentence, from the reports of the prisoner's work and conduct which may be received in accordance with the rules and regulations prescribed and from the study and investigation made by the Board itself, that such prisoner is fitted by his training for release that there is a reasonable probability that such prisoner

will live and remain at liberty without violating the law, and that such release will not be incompatible with the welfare of society, said Board of Indeterminate Sentence may, in its discretion, and in accordance with the rules and regulations adopted hereunder, authorize the release of such prisoner on parole, upon such terms and conditions as are herein prescribed and as may be prescribed by the Board. The said Board of Indeterminate Sentence shall also examine the records and status of prisoners who shall have been convicted of any offense other than those named in Section two hereof, and have been sentenced for more than one year by final judgment prior to the date on which this Act shall take effect, and shall make recommendations in all such cases to the Governor General (President of the Philippines) with regard to the parole of such prisoners as they shall deem qualified for parole as herein provided, after they shall have served a period of imprisonment not less than the minimum period for which they have been sentenced under this Act for the same offense.

SECTION 6. Every prisoner released from confinement on parole by virtue of this Act shall, at such times and in such manner as may be required by the conditions of his parole, as may be designated by the said Board for such purpose, report personally to such government officials or other parole officers hereafter appointed by the Board of Indeterminate Sentence for a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Indeterminate Sentence as herein provided, x x x. The limits of residence of such paroled prisoner during his parole may be fixed and from time to time changed by the said Board in its discretion. If during the period of surveillance such paroled prisoner shall show himself to be a law-abiding citizen and shall not violate any of the laws of the Philippine Islands, the Board of Indeterminate Sentence may issue a final certification of release in his favor, which shall entitle him to final release and discharge.

SECTION 7. The Board shall file with the court which passed judgment on the case and with the Chief of Constabulary, a certified copy of each order of conditional or final release and discharge issued in accordance with the provisions of the next preceding two sections.

SECTION 8. Whenever any prisoner released on parole by virtue of this Act shall, during the period of surveillance, violate any of the

conditions of his parole, the Board of Indeterminate Sentence may issue an order for his arrest which may be served in any part of the Philippine Islands by any police officer. In such case the prisoner so rearrested shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison, unless the Board of Indeterminate Sentence shall, in its discretion, grant a new parole to the said prisoner. *(As amended by Act No. 4225)* x x x

The court must determine two penalties.

The court must, instead of a single fixed penalty, determine *two* penalties, referred to in the Indeterminate Sentence Act as the "MAXIMUM" and "MINIMUM" terms.

The law should be applied in imposing a *prison* sentence for a crime punishable either by special law or by the Revised Penal Code.

When the crime is punished by a special law —

If the offense is punished by a special law, the court shall sentence the accused to an indeterminate penalty, the *maximum* term of which shall not exceed the maximum fixed by said law and the *minimum* term shall not be less than the minimum prescribed by the same. (Sec. 1, Act No. 4103)

When the crime is punished by the Code —

If the offense is punished by the Revised Penal Code, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the *minimum* term of which shall be *within* the range of the penalty next lower to *that prescribed by the Code for the offense.* (Sec. 1, Act No. 4103 as amended by Act No. 4225)

The court *cannot* put the minimum penalty in the *same period* and the *same degree* as the maximum penalty, because the minimum penalty "shall be *within the range* of the penalty *next lower* to that prescribed by the Code for the offense."

The penalty next lower must be based on the penalty prescribed by the Code for the offense, *without considering in the meantime the*

modifying circumstances, such as, the mitigating or aggravating circumstances. (People vs. Gonzales, 73 Phil. 549, 552)

In determining the "minimum" penalty, Act No. 4103, as amended, confers upon the courts in fixing the penalties the widest discretion that the courts have ever had. (People vs. Ducosin, 59 Phil. 109, 116; Basan vs. People, No. L-39483, Nov. 29, 1974, 61 SCRA 275, 277)

In determining the minimum term, it is left entirely within the discretion of the court to fix it anywhere within the range of the penalty next lower without reference to the periods into which it may be subdivided. (People vs. Ducosin, *supra,* at 117)

Under the Indeterminate Sentence Law (Act No. 4103, as amended), if the offense is punishable under the Revised Penal Code, the minimum penalty should be within any of the periods of the penalty next lower in degree to that prescribed by law, and the maximum thereof should be within the proper period of the penalty that may be imposed were the sentence is a straight penalty. (Basan vs. People, *supra,* at 277)

Note: This is not in accordance with the ruling in *People vs. Ducosin, supra.*

The mitigating or aggravating circumstance is required to be considered only in the imposition of the *maximum* term of the indeterminate sentence. (People vs. De Joya, 98 Phil. 238, 240)

Hence, if the *minimum* term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, which has a duration of 2 months and 1 day to 4 months, the court may impose 4 months of imprisonment, even if there is no aggravating circumstance.

For the same reason, the court may impose 2 months and 1 day, even if there is an aggravating circumstance, it being discretionary to the court to impose the minimum term anywhere within its range.

When there is a privileged mitigating circumstance, so that the penalty has to be lowered by one degree, the starting point for determining the *minimum* term of the indeterminate penalty is the *penalty next lower* from that prescribed by the Code for the offense. (People vs. Gonzales, 73 Phil. 549, 552)

Examples of application of Indeterminate Sentence Law —

Under Special law:

A is convicted of illegal possession of firearm punishable by imprisonment from one year and one day to five years.

The court can impose an indeterminate sentence from 2 years and 1 day, as the minimum term, to 4 years, as the maximum term; 2 years and 1 day to 3 years; or 3 years and 1 day to 5 years.

The maximum term of each of the different examples does not exceed the maximum of 5 years prescribed by the law, and the minimum term is not less than the minimum of 1 year and 1 day prescribed by the said law.

Under the Revised Penal Code:

A is convicted of falsification of official document committed by a public officer penalized by *prision mayor.* There is *one mitigating circumstance* of plea of guilty.

To determine the penalty next lower, *disregard first* the mitigating circumstance of plea of guilty. Hence, *prision mayor* in its full extent, the penalty prescribed by the Code for the offense, should be the basis, and not *prision mayor minimum,* because it is not the penalty "prescribed by the Code for the offense."

Prision mayor minimum becomes the proper penalty only because of the presence of the mitigating circumstance of plea of guilty. The penalty next lower is *prisión correccional.*

Therefore, the indeterminate sentence will be:

MAXIMUM — *prisión mayor* minimum, in its proper period after considering the mitigating circumstance.

MINIMUM — *prisidn correccional,* in any of its periods or anywhere within the range of *prision correccional* without reference to any of its periods.

The maximum term is determined according to the rules of the Code.

The maximum term of the indeterminate penalty is determined in any case punishable under the Revised Penal Code in accordance

with the rules and provisions of the Code exactly as if the Indeterminate Sentence Law had never been enacted.

The rules and provisions which must be applied to determine the maximum term of the indeterminate penalty are those provided in Arts. 46, 48, 50 to 57, 61, 62 (except par. 5), 64, 65, 68, 69, and 71.

The rules of the Code are not applicable in fixing the minimum term.

The rules and provisions in those articles, particularly Arts. 50 to 57, 62, 64 and 65, are not applicable in fixing the minimum term of the indeterminate penalty. The duration of the minimum term is within the range of the penalty next lower to that prescribed by the Code for the offense, *without regard to its three periods.* The court has the *discretion* to fix as the minimum term any period of imprisonment within the penalty next lower to that prescribed by the Code for the offense.

When modifying circumstances considered.

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be 'that which, in view of the attending circumstances, could be properly imposed' under the Revised Penal Code, and the minimum shall be 'within the range of the penalty next lower to that prescribed' for the offense, *without first considering any modifying circumstance attendant to the commission of the crime.* The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. *The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence. (People vs. Gabres,* 267 SCRA 581)

Illustrations of indeterminate penalty based on Arts. 48, 61, 64, 68, 69, etc. of the Revised Penal Code.

1. *Indeterminate penalty, when neither mitigating circumstance nor aggravating circumstance attended the commission of the crime. (Art. 64, par. 1)*

A was prosecuted for, and was found guilty after a regular trial of, homicide under Art. 249 which prescribes the penalty

of *reclusión temporal.* There being no mitigating or aggravating circumstance, the *maximum* term of the indeterminate penalty, which is *reclusión temporal,* should be imposed in the medium period. (Art. 64, par. 1) The *minimum* term of the indeterminate penalty is anywhere within the range of *prisidn mayor,* the penalty next lower from *reclusidn temporal* (Art. 71), with or without reference to the period into which it may be subdivided.

Indeterminate penalty, when there is one ordinary mitigating circumstance. (Art. 64, par. 2)

In the preceding example, if A pleaded guilty before the presentation of evidence by the prosecution, there being no aggravating circumstance to offset it, the *maximum* term of the indeterminate penalty, which is *reclusidn temporal,* should be imposed in the minimum period. (Art. 64, par. 2) The *minimum* term of the indeterminate penalty is also anywhere within the range of *prisidn mayor,* the penalty next lower from *reclusidn temporal, with* or *without* reference to the period into which it may be subdivided. His plea of guilty is required to be considered (by way of mitigation) only in the imposition of the maximum term of his sentence. (People vs. De Joya, 98 Phil. 238, 240)

Indeterminate penalty, when there is only an aggravating circumstance. (Art. 64, par. 3)

In the example under No. 1, if in the execution of the crime concurred the generic aggravating circumstances of relationship (Art. 15, R.P.C.) and that it was committed with insult or in disregard of the respect due the offended party on account of his rank or age (Art. 14, No. 3, R.P.C), *which shall be merged into one circumstance* (People vs. Kho Choc, 50 O.G. 1667), the penalty imposable on A is *reclusidn temporal* in its maximum period. (Art. 64, No. 3, R.P.C.) The minimum term of the indeterminate penalty is also anywhere within the range of *prisidn mayor* with or without reference to the period into which it may be subdivided.

Indeterminate penalty, when there are mitigating and aggravating circumstances. (Art. 64, par. 4)

In the example under No. 1, if after committing homicide at nighttime purposely sought by A to better accomplish his purpose (Art. 14, par. 6), he surrendered voluntarily to the agent

of authority and during the arraignment pleaded guilty to the charge (Art. 13, par. 7), there is one mitigating circumstance left after offsetting the aggravating circumstance of nighttime with the two mitigating circumstances. Hence, the penalty of *reclusión temporal* should be imposed in the minimum period. (Art. 64, par. 4)

The MAXIMUM of the indeterminate penalty is *reclusion temporal* minimum and the MINIMUM is *prision mayor* in any of its periods or anywhere within its range.

Indeterminate penalty, when the crime committed is complex under Art. 48.

A was convicted of a complex crime of frustrated homicide with assault upon an agent of a person in authority under Art. 249, in relation to Art. 6, Art. 148, and Art. 48 of the Revised Penal Code. The penalty for homicide is *reclusión temporal.* Being frustrated, the penalty should be one degree lower (Art. 50) or *prisión mayor.* The penalty for assault is *prisidn correccional* in its medium and maximum periods. Therefore, the penalty for the complex crime is *prisidn mayor,* the penalty for the graver offense, the same to be applied in its maximum period. The MAXIMUM of the indeterminate penalty is *prisidn mayor* maximum and the MINIMUM is *prisidn correccional* in its maximum period. (People vs. Dosal, 92 Phil. 877)

In *Lontoc vs. People,* 74 Phil. 513, 520, where the accused was convicted of complex crime of estafa through falsification of a public document (Art. 315, case No. 4, in connection with Arts. 171 and 48 of the Code), and the penalty is *prisidn mayor* to be applied in its maximum period plus a fine not to exceed ₱5,000 (the penalty for falsification which is the graver offense), the MAXIMUM of the indeterminate penalty is within the maximum period of *prisidn mayor* and the MINIMUM is within that next lower in degree to *prisidn mayor,* namely, *prisidn correccional.*

Indeterminate penalty, when the penalty is next lower by two degrees than that prescribed by law for the crime threatened and there is one aggravating circumstance.

A threatened to kill B if the latter would not give him a certain sum of money. A failed to attain his purpose, because he was arrested by the police upon complaint by B. Under Art.

282, No. 1, of the Revised Penal Code, the crime of grave threats, when the offender did not attain his purpose, is punishable with a penalty next lower by two degrees than that prescribed by law for the crime threatened, which in this case is homicide. The penalty for homicide is *reclusión temporal.* In the execution of the crime concurred the generic aggravating circumstances of relationship (Art. 15, R.P.C.) and that it was committed with insult or in disregard of the respect due the offended party on account of his rank or age (Art. 14, No. 3, R.P.C), which shall be merged into one circumstance.

Held: The penalty imposable on A is *prisión correccional* in its maximum period or from 4 years, 2 months and 1 day to 6 years. (People vs. Kho Choc, 50 O.G. 1667)

It will be noted that the penalty of *reclusidn temporal,* the penalty for the crime threatened to be committed, is lowered first by two degrees to determine the penalty for the crime of grave threats actually committed by A, before fixing the latter penalty in its proper period. The penalty of *prisidn correccional* was fixed in its maximum period, because of the presence of one aggravating circumstance of relationship or disregard of respect due the offended party.

Therefore, the maximum term of the indeterminate penalty is *prisidn correccional* in its maximum period and the minimum term of the indeterminate penalty is anywhere within the range of *arresto mayor,* the penalty next lower from *prisidn correccional.*

7. *Indeterminate penalty, when the accused is convicted of a complex crime and there are two mitigating circumstances without any aggravating circumstance. (Arts. 48, and 64, par. 5)*

The crime committed is estafa thru falsification by a public officer under No. 4, Art. 315, in connection with Art. 171, of the Revised Penal Code. The penalty to be imposed is that which is provided for the more serious offense to be applied in its maximum period, pursuant to Art. 48, it being a complex crime. The penalty for the more serious offense, which is falsification, is *prisidn mayor* in its full extent and fine. There being two mitigating circumstances of (1) voluntary surrender and (2) plea of guilty, without any aggravating circumstance, the penalty next lower to that provided by law should be imposed. (Art. 64, par. 5)

For purposes of the Indeterminate Sentence Law, the penalty next lower should be determined without regard as to whether the basic penalty provided by the Code should be applied in its maximum or minimum period as circumstances modifying liability may require.

When however — *and this may be the only exception to the rule* — the number of the mitigating circumstances is such as to entitle the accused to the *penalty next lower in degree,* this penalty in the application of the Indeterminate Sentence Law should be the starting point for the determination of the penalty next lower in degree (the MINIMUM of the indeterminate penalty).

For the purpose of determining the penalty next lower in degree, the penalty that should be considered as the starting point is the whole *prisión mayor,* it being the penalty prescribed by law for the crime of falsification (Art. 171), and not *prisión mayor* in its maximum period which happens to be the penalty, because the crime committed is complex under Art. 48.

The penalty next lower from *prisidn mayor* is *prisidn correccional* and this latter penalty should be applied in its maximum period, as the MAXIMUM of the indeterminate penalty. The MINIMUM of the indeterminate penalty is *arresto mayor,* the penalty next lower in degree, which may be imposed by the court in any of its periods.

The penalty next lower in degree (the MINIMUM of the indeterminate penalty) should be determined first, before imposing the penalty prescribed by law for the offense in its proper period, because Sec. 1 of the Indeterminate Sentence Law provides that the MINIMUM of the indeterminate penalty "shall be within the range of the penalty next lower to *that prescribed by the Code for the offense."*

Although the penalty prescribed by the Code for the offense is *prisidn mayor* in its full extent, in this case, it should not be the starting point for determining the MINIMUM, because there is a *privileged mitigating circumstance. This is the exception to the general rule*.

The penalty *next lower in degree* should be the starting point for determining the MINIMUM of the indeterminate penalty.

Thus — *prisión correccional* will be the starting point. *Arresto mayor* will be the penalty next lower. (People vs. Gonzalez, 73 Phil. 549, 552)

When the accused is guilty of *a complex crime, the penalty immediately lower* is the next below the penalty provided for the gravest crime. (People vs. Caburao, C.A., 54 O.G. 8261)

In the case *of People vs. Fulgencio,* 92 Phil. 1069, where the accused, a minor 17 years old, committed two crimes of parricide resulting from a single act of exploding a home-made bomb under the house occupied by his grandparents, the Supreme Court held that since the penalty for the crime committed is death (Art. 48), it being the maximum of the penalty of *reclusión perpetua* to death for parricide (Art. 246), and there is a privileged mitigating circumstance of minority (Art. 68), the penalty next lower is *reclusion perpetua.*

It will be noted that the penalty of *reclusión perpetua* to death was first applied in the maximum (death), the crime being complex, and then lowered by one degree from the maximum.

This ruling does not follow the ruling in the case of *People vs. Gonzalez, supra,* which requires that the penalty prescribed by the Code for the offense be lowered first by one degree, because of the privileged mitigating circumstance, and then the lower penalty to be applied in its maximum period. Had this ruling in the *Gonzalez* case been followed, the penalty imposed would have been *prisidn mayor* in any of its periods, as the MINIMUM, to *reclusidn temporal* in its maximum period, as the MAXIMUM. The penalty next lower from *reclusidn perpetua* to death is *reclusidn temporal.* (Art. 61, par. *2) Reclusidn temporal* is applied in its maximum period, because the accused was found guilty of complex crime.

The accused pleaded guilty to and was convicted of the crime of direct assault upon a person in authority with homicide. This being a complex crime, the penalty for the more serious crime should be imposed, the same to be applied in its maximum period. (Art. 48, Revised Penal Code) The more serious crime is homicide punishable by *reclusidn temporal.*

The accused, who was 17 years, 9 months and 12 days old on the date of the commission of the crime, has to his

credit two mitigating circumstances: the special or privileged mitigating circumstance of minority (Art. 68, par. 2) and the ordinary mitigating circumstance of plea of guilty. (Art. 13, par. 7) Therefore, under Art. 64, par. 5 (should be Art. 68, par. 2) of the Revised Penal Code, the penalty imposable is the penalty next lower to that prescribed by law. Under Article 71, Revised Penal Code, the penalty next lower to *reclusión temporal* is *prisión mayor.* Because of the complex nature of the crime committed by the accused, the penalty of *prisidn mayor* is to be applied in its maximum period. However, having in his favor the ordinary mitigating circumstance of plea of guilty without any offsetting aggravating circumstance, applying Art. 64, par. 2 of the Revised Penal Code, the penalty of *prisidn mayor* maximum should be imposed in its minimum range.

Parenthetically, We must state that the lower court erred in the imposition of the correct penalty — despite its proper appreciation of the privileged mitigating circumstance of minority and the ordinary circumstance of plea of guilty in favor of the appellant — because it applied first the imposable penalty to its maximum degree, *i.e., reclusidn temporal* maximum, and then imposed the penalty immediately inferior to it, *i.e., reclusidn temporal* medium. This latter penalty is imposed as the maximum of the indeterminate sentence, but applied in the minimum range because of the ordinary mitigating circumstance of plea of guilty. As the minimum of the indeterminate sentence, it imposed the minimum of the penalty next lower, *i.e., reclusidn temporal* minimum.

The proper method is to start from the penalty imposed by the Revised Penal Code, *i.e., reclusidn temporal;* then apply the privileged mitigating circumstance of minority and determine the penalty immediately inferior in degree, *i.e., prisidn mayor;* and finally apply the same in its maximum degree but within the minimum range thereof because of the ordinary mitigating circumstance of plea of guilty. *Prisidn mayor* being the maximum of the indeterminate sentence, the minimum of the indeterminate penalty is within the range of the penalty next lower to it as prescribed by the Revised Penal Code, *i.e., prisidn correccional* (People vs. Gonzalez, 73 Phil. 549, 551-552)

All told, and applying now the Indeterminate Sentence Law, the accused should be sentenced to an indeterminate penalty of not less than six (6) years of *prisióncorreccional,* to not more than ten (10) years and eight (8) months of *prisiónmayor.* (People vs. Cesar, G.R. No. L-26185, March 13, 1968, 22 SCRA 1024, 1028)

8. *Indeterminate sentence, when there are privileged mitigating and ordinary mitigating circumstances. (Arts. 68 and 64)*

When there is a privileged mitigating circumstance (such as, minority or incomplete defense) and ordinary mitigating circumstance (such as, plea of guilty or voluntary surrender to the authorities), the rule is: lower first the penalty *prescribed by the Code for the offense by one degree* (because of the privileged mitigating circumstance), using the scale in Art. 71, and make the penalty next lower as the starting point for determining the MINIMUM of the indeterminate penalty. Once the MINIMUM is determined, by lowering by another degree, the penalty next lower, the penalty which is made the starting point should be imposed in the proper period. That penalty in the proper period will be the MAXIMUM of the indeterminate penalty.

Problem:

A, a minor 15 years and 2 months old, was found guilty of murder upon a plea of guilty. The court suspended the sentence and ordered the commitment of the minor to the Training School for Boys in the Welfareville in accordance with Article 80. Because he became incorrigible in the Training School for Boys, A was returned to the court for the imposition of the proper penalty. (Art. 68) The court imposed an indeterminate penalty of from five (5) years of *prisidn correccional,* as the MINIMUM, to ten (10) years and one (1) day of *prisidn mayor,* as the MAXIMUM. Is this penalty correctly imposed?

Yes. The penalty for murder is *reclusidn temporal* in its maximum period to death. (Art. 248) The penalty next lower in degree is *prisidn mayor* in its maximum period to *reclusidn temporal* in its minimum and medium periods (Art. 61, par. 3), computed as follows:

Death		Penalty for murder
Reclusidn perpetua		
Reclusión temporal (12 years and 1 day to 20 years)	Max. Med. Min.	One degree lower — MAXIMUM of indeterminate sentence
Prisidn mayor (6 years and 1 day to 12 years)	Max. Med. Min.	MINIMUM of indeterminate sentence
Prisidn correccional (6 months and 1 day to 6 years)	Max. Med. Min.	

There being a mitigating circumstance of plea of guilty, without any aggravating circumstance to offset it, the penalty one degree lower *(prisidn mayor* in its maximum period to *reclusidn temporal* in its minimum and medium periods) should be imposed in its minimum period, which is *prisidn mayor* in its maximum period.

Prisidn mayor maximum has a duration of from ten (10) years and one (1) day to twelve (12) years. *Prisidn correccional* in its maximum period to *prisidn mayor* in its minimum and medium periods has a duration of from four (4) years, two (2) months and one (1) day to ten (10) years. Hence, the sentence imposed (from 5 years to 10 years and 1 day) by the court is within the limits of the penalty prescribed by law. (See People vs. Ong Ta, 70 Phil. 553, 555; People vs. Cesar, *supra)*

9. *Indeterminate penalty, when there are two privileged mitigating and ordinary mitigating circumstances. (Arts. 68 and 69)*

A, a minor under 18 years, killed B who was the unlawful aggressor. A did not give sufficient provocation to B. But the means employed by A to defend himself was not reasonable. After killing B, A surrendered to the authorities.

Held: There are two privileged mitigating circumstances in this case, namely: (1) minority under Art. 68, and (2) incomplete self-defense under Art. 69. The penalty of *reclusion temporal* prescribed for homicide should be lowered by two degrees or *prision correccional,* which should be applied in the minimum period, in view of one ordinary mitigating circumstance of voluntary surrender. The indeterminate penalty is not less than 2 months and 21 days of *arresto mayor* and not more than 1 year, 1 month and 11 days of *prision correccional.* (People vs. Maula, G.R. No. L-7191, Oct. 18, 1954, 96 Phil. 963 [Unrep.])

10. *Indeterminate penalty, when there is incomplete defense, without any ordinary mitigating or aggravating circumstance. (Art. 69)*

A woman who stabbed and killed a man who had placed his hand on her upper thigh, without any provocation on her part, was given a reduced penalty by two degrees. (Art. 69) The penalty for homicide is *reclusión temporal.* Two degrees lower (Art. 61, in relation to Art. 71) is *prisión correccional;* and pursuant to the Indeterminate Sentence Law, the indeterminate penalty is from *arresto mayor* in its medium period, as the MINIMUM, to *prisidn correccional* in its medium period, as the MAXIMUM. (People vs. Jaurigue, 76 Phil. 174, 183)

11. *Indeterminate penalty, when there is incomplete defense with two ordinary mitigating circumstances, and without any aggravating circumstance. (Arts. 69 and 64, par. 5)*

A killed B in incomplete self-defense. There was unlawful aggression on the part of B and lack of sufficient provocation on the part of A. But the means employed by A in defending himself was not reasonable. A acted with obfuscation and, after killing B, surrendered himself to the authorities. There was no aggravating circumstance.

Held: The penalty of *reclusidn temporal* for homicide should be reduced by two degrees (Art. 69) and because of two ordinary mitigating circumstances without any aggravating circumstance, the reduced penalty should be further reduced by another degree or *arresto mayor* in its medium period or 2 months and 1 day. (People vs. Nicolas, C.A., 50 O.G. 2133)

12. *Indeterminate penalty, when the penalty prescribed by the Code is reclusion temporal in its maximum period to death (penalty for murder) and there are two or more mitigating circumstances and no aggravating circumstance. (Art. 64, par. 5)*

A committed murder, qualified by treachery, with the mitigating circumstances of voluntary plea of guilty and voluntary surrender, and without any aggravating circumstance.

Held: Under Art. 64, No. 5 of the Revised Penal Code, the next lower penalty should be imposed, that is, *prision mayor* in its maximum period to *reclusión temporal* in its medium period or from 10 years and 1 day to 17 years and 4 months. (People vs. Soriano, 70 Phil. 334)

The penalty for murder is *reclusión temporal* in its maximum period to death. (Art. 248) One degree lower is *prisión mayor* in its maximum period to *reclusión temporal* in its medium period, in accordance with Art. 61, No. 3, of the Code.

The penalty of *prisidn mayor* maximum to *reclusidn temporal* medium should be subdivided into three periods, as follows:

Time included in the entire penalty	Time included in its minimum period	Time included in its medium period	Time included in its maximum period
From 10 yrs., and 1 day to 17 yrs. and 4 mos.	From 10 yrs., and 1 day to 12 yrs., 5 mos. and 10 days.	From 12 yrs., 5 mos. and 11 days to 14 yrs., 10 mos. and 20 days.	From 14 yrs., 10 mos. and 21 days to 17 yrs. and 4 mos.

The penalty next lower, as the MAXIMUM of the indeterminate penalty, is to be imposed in the medium period, because the two mitigating circumstances are already considered in lowering the penalty by one degree. It is not proper to consider any one or both of them again in fixing the proper period of the penalty to be imposed. Therefore, as regards the penalty next lower, there is neither mitigating nor aggravating circumstance.

Hence, the MAXIMUM of the indeterminate penalty is the medium period of *prisidn mayor* maximum to *reclusidn temporal* medium or 12 years, 5 months and 11 days to 14 years, 10 months

and 20 days (at the discretion of the court). The MINIMUM of the indeterminate penalty is anywhere within the range of the penalty next lower or *prisión correccional* maximum to *prisión mayor* medium. (Art. 61, par. 3)

13. *Indeterminate penalty, when the crime committed is robbery in inhabited house, and the penalty is to be lowered by one degree.*

A pleaded guilty to the charge of robbery in an inhabited house defined and penalized in Art. 299 of the Code. The penalty for robbery in an inhabited house is *reclusión temporal.* There being no allegation that A was armed and it appearing that the value of the property taken did not exceed P250, the penalty to be imposed is the minimum period of the penalty next lower, that is, *prisidn mayor* in its minimum period. That penalty is to be imposed in the medium period, there being no aggravating or mitigating circumstance. The MINIMUM of the indeterminate penalty is within the range of the penalty next lower in degree from *prisidn mayor* in its full extent (disregard first the fact that it shall be imposed in the minimum period). The MAXIMUM of the indeterminate penalty is the medium period of *prisidn mayor* minimum or 6 years, 8 months and 1 day to 7 years and 4 months. (People vs. De Lara, 98 Phil. 584, 586)

Not applicable when unfavorable to the accused.

A was convicted of illegal possession of grease guns and 2 Thompson sub-machine guns punishable by imprisonment from 5 years to 10 years. The trial court imposed a sentence that the accused should suffer imprisonment of 5 years and 1 day. Is this penalty correct?

Yes, because in cases where the application of the law on indeterminate sentence *would be unfavorable to the accused,* resulting in the lengthening of his prison sentence, said law on indeterminate sentence should not be applied. If we had no law on indeterminate sentence, considering the plea of guilty entered by the appellant, the trial court could well and lawfully have given him a prison sentence of five (5) years. If we are to apply the law, the prison term would have to be more than five (5) years, as the minimum could not be less than five years. (People vs. Nang Kay, 88 Phil. 515, 519)

The law on indeterminate sentence as a rule is *intended to favor the defendant in a criminal case* particularly to shorten his term of imprisonment depending upon his behavior, etc.

Indeterminate Sentence Law not applicable to the following:

1. Persons convicted of offenses punished with death penalty or life imprisonment.
2. Those convicted of treason, conspiracy or proposal to commit treason.
3. Those convicted of misprision of treason, rebellion, sedition or espionage.
4. Those convicted of piracy.
5. Those who are habitual delinquents.
6. Those who shall have escaped from confinement or evaded sentence.
7. Those who violated the terms of conditional pardon granted to them by the Chief Executive.
8. Those whose maximum term of imprisonment does not exceed one year.
9. Those who, upon the approval of the law (December 5, 1933), had been sentenced by final judgment. (Sec. 2, Act No. 4103)
10. Those sentenced to the penalty of destierro or suspension.

"Persons convicted of offenses punished with death penalty or life imprisonment."

The trial court did not err in convicting the appellant of simple rape which is penalized with *reclusión perpetua.* But it erred in giving him the benefit of the Indeterminate Sentence Law. Article 63 of the Revised Penal Code (not its Article 64[1], which was cited by the lower court), applies to the case. (People vs. Amores, No. L-32996, Aug. 21, 1974, 58 SCRA 505, 510-511)

A is accused and convicted of murder punishable with the penalty of *reclusión temporal* in its maximum period to death. Two mitigating circumstances of voluntary surrender and plea of guilty are to be considered in favor of A. Is he entitled to an indeterminate penalty?

The Indeterminate Sentence Law uses the word "punished," not the word "punishable." It would seem that it is the penalty *actu-*

ally imposed, not the penalty that may be imposed, that should be considered.

In the case of *People vs. Roque,* 90 Phil. 142, 146, the accused, who was 17 years old and convicted of murder, was sentenced to an indeterminate penalty of from 10 years and 1 day of *prision mayor* to 17 years, 4 months and 1 day of *reclusion temporal.*

In the case of *People vs. Colman,* 103 Phil. 6, 19-20, the accused was also 17 years old and convicted of murder, but the provisions of the Indeterminate Sentence Law were not applied because he was convicted of an offense punished with death, although the penalty actually imposed was imprisonment of 12 years and 1 day.

In imposing an indeterminate sentence upon the accused, the Court hereby overrules the contrary doctrine in *People vs. Colman,* et al., 103 Phil. 6, Resolution of March 26, 1958, pp. 19-20, holding that the Indeterminate Sentence Law (Act No. 4103, as amended by Act No. 4225) is not applicable to a case similar to that of the accused. The penalty actually imposed upon this accused not being death, he is entitled to the benefits of the Indeterminate Sentence Law. (People vs. Moises, No. L-32495, Aug. 13, 1975, 66 SCRA 151, 164; People vs. Cempron, G.R. No. 66324, July 6, 1990, 187 SCRA 248, 256)

The Indeterminate Sentence Law is applicable to recidivist.

While habitual delinquents are not entitled to an indeterminate sentence, a recidivist for the first time may be given the benefits of the law. (People vs. Yu Lian, C.A., 40 O.G. 4205; People vs. Venus, 63 Phil. 435, 442)

"Those who evaded the service of the sentence."

A was sentenced to *destierro.* While serving sentence, A entered the prohibited area and committed robbery therein. Is A entitled to an indeterminate sentence in case he is found guilty of robbery? No, because by entering the prohibited area, he evaded the service of his sentence. The Indeterminate Sentence Law is not applicable.

Defendant was found guilty of robbery. By his own admission, appearing in his confession, Exhibit F, it appears that defendant is an escaped prisoner. *Held:* He is not entitled to the benefits of the Indeterminate Sentence Law. (People vs. Rivera, C.A., 44 O.G. 123)

"Those who shall have escaped from confinement."

A minor who escaped from the Philippine Training School for Boys does not acquire the status of escaped prisoner as to be excluded from the benefits bestowed by the Indeterminate Sentence Law, because his confinement therein is not considered imprisonment. (People vs. Perez, C.A., 44 O.G. 3884, citing People vs. Soler, 63 Phil. 868)

While there is evidence that prior to the incident in question the appellant has had several brushes with the law, there is no showing that he has been prosecuted and found guilty thereof. It appears that he was an escapee from the National Mental Hospital. Later, the appellant was convicted of homicide. Is he entitled to the benefits of the Indeterminate Sentence Law?

It is true, as provided in Section 2 thereof, that the Indeterminate Sentence Law shall also not apply "to those who shall have escaped from confinement or evaded sentence." However, we do not think that the appellant's escape from the National Mental Hospital falls within the purview of said provision. Confinement as a patient in the National Mental Hospital is not imprisonment. By escaping from said hospital, the appellant did not acquire the status of an escaped prisoner as to be excluded from the benefits bestowed by the Indeterminate Sentence Law. (People vs. Co, C.A., 67 O.G. 7451)

Those whose maximum period of penalty does not exceed one year.

The Indeterminate Sentence Law does not apply to non-divisible penalties. It covers only divisible penalties and does not include indivisible penalties. (People vs. Gonzales, 148 SCRA 649)

Application of the Indeterminate Sentence Law is mandatory where imprisonment would exceed one year. (People vs. Lee, Jr., 132 SCRA 66)

A is convicted of a crime for which the penalty imposed is eight (8) months of *prision correccional.* Is A entitled to an indeterminate penalty? No, because the penalty imposed does not exceed one year. (People vs. Arellano, 68 Phil. 678, 683)

Indeterminate Sentence Law does not apply to *destierro.*

In view of the nature of the penalty of *destierro,* the convict is not entitled to the provisions of the Indeterminate Sentence Law,

since the benefits of the law are expressly granted to those who are sentenced to *imprisonment exceeding one year.* (People vs. Almeda, C.A.-G.R. No. 1583, June 8, 1938)

This ruling applies to the penalty of suspension.

The application of the Indeterminate Sentence Law is based on the penalty actually imposed.

Thus, if the accused was charged with the crime of acts of lasciviousness punishable by *prisión correccional* (Art. 336), the duration of which is from 6 months and 1 day to 6 years, and the court imposed upon him 6 months and 1 day, the minimum of *prisión correccional,* the Indeterminate Sentence Law does not apply, because the application of that law is based upon the penalty *actually imposed* in the discretion of the court. (People vs. Dimalanta, 92 Phil. 239, 242; People vs. Moises, No. L-32495, Aug. 13, 1975, 66 SCRA 151, 163-164)

Purpose.

The purpose of the Indeterminate Sentence Law is "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." (People vs. Ducosin, 59 Phil. 109, 117)

The Indeterminate Sentence Law aims to individualize the administration of our criminal law.

Factors to be taken into consideration by the court in fixing the minimum penalty.

It is necessary to consider the criminal, first, as an individual and, second, as a member of society.

Considering the criminal as an individual, some of the factors that should be considered are: (1) his age, especially with reference to extreme youth or old age; (2) his general health and physical conditions; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record, if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime

was committed; (9) the gravity of the offense. (Note that Section 2 of Act No. 4103 excepts certain grave crimes — this should be kept in mind in assessing the minimum penalties for analogous crimes.)

In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, his relationship towards society at large and the State, are important factors. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in this country. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature. (People vs. Ducosin, 59 Phil. 109, 118)

Reason for fixing the MINIMUM and MAXIMUM penalties in the indeterminate sentence.

1. Whenever any prisoner shall have served the *minimum* penalty imposed on him, and it shall appear to the Board of Indeterminate Sentence that such prisoner is fitted for release, said Board may authorize the release of such prisoner on parole, upon such terms and conditions as may be prescribed by the Board.

2. Whenever such prisoner released on parole shall, during the period of surveillance, violate any of the conditions of his parole, the Board may issue an order for his arrest. In such case, the prisoner so rearrested shall serve the remaining unexpired portion of the maximum sentence. (Secs. 5 and 8, Act No. 4103)

3. Even if a prisoner has already served the *minimum,* but he is not fitted for release on parole, he shall continue to serve imprisonment until the end of the *maximum.*

Mandatory.

It is mandatory in the cases specified therein, for it employs the phrases *"convicts shall be sentenced"* and "the court *shall* sentence the accused to an indeterminate sentence." (People vs. Yu Lian, C.A., 40 O.G. 4205)

PRESIDENTIAL DECREE NO. 968, AS AMENDED BY PRESIDENTIAL DECREE NO. 1257, AND AS FURTHER AMENDED BY BATAS PAMBANSA BLG. 76 AND PRESIDENTIAL DECREE NO. 1990

ESTABLISHING A PROBATION SYSTEM, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.

SECTION 1. Title and Scope of the Decree. - This Decree shall be known as the Probation Law of 1976. It shall apply to all offenders except those entitled to the benefits under the provisions of Presidential Decree Numbered Six Hundred and Three and similar laws.

SEC. 2. Purpose. — This Decree shall be interpreted so as to:

(a) Promote the correction and rehabilitation of an offender by providing him with individualized treatment;

(b) Provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and

(c) Prevent the commission of offenses.

SEC. 3. Meaning of Terms. — As used in this Decree, the following shall, unless the context otherwise requires, be construed thus:

(a) "Probation" is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.

(b) "Probationer" means a person placed on probation.

(c) "Probation Officer" means one who investigates for the court a referral for probation or supervises a probationer or both.

SEC. 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: *Provided,* That no application for probation shall be entertained

or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable. ***(As amended by PD 1257 and by PD 1990, Oct. 5, 1985)***

The provisions of Section 4 of Presidential Decree No. 968, as above amended, shall not apply to those who have already filed their respective applications for probation at the time of the effectivity of this Decree. (Sec. 3 of PD 1990)

SEC. 5. Post-sentence Investigation. — No person shall be placed on probation except upon prior investigation by the probation officer and a determination by the court that the ends of justice and the best interest of the public as well as that of the defendant will be served thereby.

SEC. 6. Form of Investigation Report. — The investigation report to be submitted by the probation officer under Section 5 hereof shall be in the form prescribed by the Probation Administrator and approved by the Secretary of Justice.

SEC. 7. Period for Submission of Investigation Report. — The probation officer shall submit to the court the investigation report on a defendant not later than sixty days from receipt of the order of said court to conduct the investigation. The court shall resolve the application for probation not later than fifteen days after receipt of said report. ***(As amended by PD 1257, Dec. 1, 1977)***

Pending submission of the investigation report and the resolution of the petition, the defendant may be allowed on temporary liberty under his bail filed in the criminal case: ***Provided,*** **That in case where no bail was filed or that the defendant is incapable of filing one, the court may allow the release of the defendant on recognizance to the custody of a responsible member of the community who shall guarantee his appearance whenever required by the court.**

SEC. 8. Criteria for Placing an Offender on Probation. — In determining whether an offender may be placed on probation, the court shall consider all information relative to the character, antecedents, environment, mental and physical condition of the

offender, and available institutional and community resources. Probation shall be denied if the court finds that:

(a) The offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(b) There is an undue risk that during the period of probation the offender will commit another crime; or

(c) Probation will depreciate the seriousness of the offense committed.

SEC. 9. Disqualified offenders. — The benefits of this Decree shall not be extended to those:

(a) Sentenced to serve a maximum term of imprisonment of more than six (6) years;

(b) Convicted of subversion or any crime against the national security or the public order;

(c) Who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than Two Hundred Pesos;

(d) Who have been once on probation under the provisions of this Decree; and

(e) Who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof. ***(As amended by BP Blg. 76, and PD 1990, Oct. 5, 1985)***

SEC. 10. Conditions of Probation. — Every probation order issued by the court shall contain conditions requiring that the probationer shall:

(a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order;

(b) report to the probation officer at least once a month at such time and place as specified by said officer.

The court may also require the probationer to:

(a) cooperate with a program of supervision;

(b) meet his family responsibilities;

(c) devote himself to a specific employment and not to change said employment without the prior written approval of the probation officer;

(d) undergo medical, psychological or psychiatric examination and treatment and enter and remain in a specified institution, when required for that purpose;

(e) pursue a prescribed secular study or vocational training;

(f) attend or reside in a facility established for instruction, recreation or residence of persons on probation;

(g) refrain from visiting houses of ill-repute;

(h) abstain from drinking intoxicating beverages to excess;

(i) permit the probation officer or an authorized social worker to visit his home and place of work;

(j) reside at premises approved by it and not to change his residence without its prior written approval; or

(k) satisfy any other condition related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

SEC. 11. Effectivity of Probation Order. — A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that upon his failure to comply with any of the conditions prescribed in the said order or his commission of another offense, he shall serve the penalty imposed for the offense under which he was placed on probation.

SEC. 12. Modification of Conditions of Probation. — During the period of probation, the court may, upon application of either the probationer or the probation officer, revise or modify the conditions or period of probation. The court shall notify either the probationer or the probation officer of the filing of such an application so as to give both parties an opportunity to be heard thereon.

The court shall inform in writing the probation officer and the probationer of any change in the period or conditions of probation.

SEC. 13. Control and Supervision of Probationer. — The probationer and his probation program shall be under

the control of the court who placed him on probation subject to actual supervision and visitation by a probation officer.

Whenever a probationer is permitted to reside in a place under the jurisdiction of another court, control over him shall be transferred to the Executive Judge of the Court of First Instance of that place, and in such a case, a copy of the probation order, the investigation report and other pertinent records shall be furnished said Executive Judge. Thereafter, the Executive Judge to whom jurisdiction over the probationer is transferred shall have the power with respect to him that was previously possessed by the court which granted the probation.

SEC. 14. Period of Probation. —

(a) The period of probation of a defendant sentenced to a term of imprisonment of not more than one year shall not exceed two years, and in all other cases, said period shall not exceed six years.

(b) When the sentence imposes a fine only and the offender is made to serve subsidiary imprisonment in case of insolvency, the period of probation shall not be less than nor be more than twice the total number of days of subsidiary imprisonment as computed at the rate established in Article thirty-nine of the Revised Penal Code, as amended.

SEC. 15. Arrest of Probationer; Subsequent Dispositions. — At any time during probation, the court may issue a warrant for the arrest of a probationer for any serious violation of the conditions of probation. The probationer, once arrested and detained, shall immediately be brought before the court for a hearing of the violation charged. The defendant may be admitted to bail pending such hearing. In such case, the provisions regarding release on bail of persons charged with a crime shall be applicable to probationers arrested under this provision.

In the hearing, which shall be summary in nature, the probationer shall have the right to be informed of the violation charged and to adduce evidence in his favor. The court shall not be bound by the technical rules of evidence but may inform itself of all the facts which are material and relevant to ascertain the veracity of the charge. The State shall be represented by a prosecuting officer in any contested hearing. If the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If revoked, the court shall order the probationer to serve the sentence originally imposed. An order revoking the grant of probation or modifying the terms and

conditions thereof shall not be appealable. ***(As amended by PD 1257)***

SEC. 16. Termination of Probation. — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon, the case is deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.

The probationer and the probation officer shall each be furnished with a copy of such order.

SEC. 17. Confidentiality of Records. — The investigation report and the supervision history of a probationer obtained under this Decree shall be privileged and shall not be disclosed directly or indirectly to anyone other than the Probation Administration or the court concerned, except that the court, in its discretion, may permit the probationer or his attorney to inspect the aforementioned documents or parts thereof whenever the best interest of the probationer makes such disclosure desirable or helpful: ***Provided, further,*** **That any government office or agency engaged in the correction or rehabilitation of offenders may, if necessary, obtain copies of said documents for its official use from the proper court or the Administration.**

SEC. 18. The Probation Administration. — There is hereby created under the Department of Justice an agency to be known as the Probation Administration herein referred to as the Administration, which shall exercise general supervision over all probationers.

The Administration shall have such staff, operating units and personnel as may be necessary for the proper execution of its functions.

SEC. 19. Probation Administrator. — The Administration shall be headed by the Probation Administrator, hereinafter referred to as the Administrator, who shall be appointed by the President of the Philippines. He shall hold office during good behavior and shall not be removed except for cause.

The Administrator shall receive an annual salary of at least Forty thousand pesos. His powers and duties shall be to:

(a) Act as the executive officer of the Administration;

(b) Exercise supervision and control over all probation officers;

(c) Make annual reports to the Secretary of Justice, in such form as the latter may prescribe, concerning the operation, administration and improvement of the probation system;

(d) Promulgate, subject to the approval of the Secretary of Justice, the necessary rules relative to the methods and procedures of the probation process;

(e) Recommend to the Secretary of Justice the appointment of the subordinate personnel of his Administration and other offices established in this Decree; and

(f) Generally, perform such duties and exercise such powers as may be necessary or incidental to achieve the objectives of this Decree.

SEC. 20. Assistant Probation Administrator. — There shall be an Assistant Probation Administrator who shall assist the Administrator and perform such duties as may be assigned to him by the latter and as may be provided by law. In the absence of the Administrator, he shall act as head of the Administration.

He shall be appointed by the President of the Philippines and shall receive an annual salary of at least Thirty-six thousand pesos.

SEC. 21. Qualifications of the Administrator and Assistant Probation Administrator. — To be eligible for appointment as Administrator or Assistant Probation Administrator, a person must be at least thirty-five years of age, holder of a master's degree or its equivalent in either criminology, social work, corrections, penology, psychology, sociology, public administration, law, police science, police administration, or related fields, and should have at least five years of supervisory experience, or be a member of the Philippine Bar with at least seven years of supervisory experience.

SEC. 22. Regional Office; Regional Probation Officer. — The Administration shall have regional offices organized in accordance with the field service area pattern established under the Integrated Reorganization Plan.

Such regional offices shall be headed by a Regional Probation Officer who shall be appointed by the President of the Phil-

ippines in accordance with the Integrated Reorganization Plan and upon the recommendation of the Secretary of Justice.

The Regional Probation Officer shall exercise supervision and control over all probation officers within his jurisdiction and such duties as may be assigned to him by the Administrator. He shall have an annual salary of at least Twenty-four thousand pesos.

He shall, whenever necessary, be assisted by an Assistant Regional Probation Officer who shall also be appointed by the President of the Philippines, upon recommendation of the Secretary of Justice, with an annual salary of at least Twenty thousand pesos.

SEC. 23. Provincial and City Probation Officers. — There shall be at least one probation officer in each province and city who shall be appointed by the Secretary of Justice upon recommendation of the Administrator and in accordance with civil service law and rules.

The Provincial or City Probation Officer shall receive an annual salary of at least Eighteen thousand four hundred pesos.

His duties shall be to:

(a) Investigate all persons referred to him for investigation by the proper court or the Administrator;

(b) Instruct all probationers under his supervision or that of the probation aide on the terms and conditions of their probation;

(c) Keep himself informed of the conduct and condition of probationers under his charge and use all suitable methods to bring about an improvement in their conduct and conditions;

(d) Maintain a detailed record of his work and submit such written reports as may be required by the Administration or the court having jurisdiction over the probationer under his supervision;

(e) Prepare a list of qualified residents of the province or city where he is assigned who are willing to act as probation aides;

(f) Supervise the training of probation aides and oversee the latter's supervision of probationers;

(g) Exercise supervision and control over all field assistants, probation aides and other personnel; and

(h) Perform such duties as may be assigned by the court or the Administration.

SEC. 24. Miscellaneous Powers of Provincial and City Probation Officers. — Provincial or City Probation Officers shall have the authority within their territorial jurisdiction to administer oaths and acknowledgments and to take depositions in connection with their duties and functions under this Decree. They shall also have, with respect to probationers under their care, the powers of a police officer.

SEC. 25. Qualifications of Regional, Assistant Regional, Provincial, and City Probation Officers. — No person shall be appointed Regional or Assistant Regional or Provincial or City Probation Officer unless he possesses at least a bachelor's degree with a major in social work, sociology, psychology, criminology, penology, corrections, police science, police administration, or related fields and has at least three years of experience in work requiring any of the above-mentioned disciplines, or is a member of the Philippine Bar with at least three years of supervisory experience.

Whenever practicable, the Provincial or City Probation Officer shall be appointed from among qualified residents of the province or city where he will be assigned to work.

SEC. 26. Organization. — Within twelve months from the approval of this Decree, the Secretary of Justice shall organize the administrative structure of the Administration and the other agencies created herein. During said period, he shall also determine the staffing patterns of the regional, provincial and city probation offices with the end in view of achieving maximum efficiency and economy in the operations of the probation system.

SEC. 27. Field Assistants, Subordinate Personnel. — Provincial or City Probation Officers shall be assisted by such field assistants and subordinate personnel as may be necessary to enable them to carry out their duties effectively.

SEC. 28. Probation Aides. — To assist the Provincial or City Probation Officers in the supervision of probationers, the Probation Administrator may appoint citizens of good repute and probity to act as probation aides.

Probation Aides shall not receive any regular compensation for services except for reasonable travel allowance. They shall hold office for such period as may be determined by the Probation

Administrator. Their qualifications and maximum case loads shall be provided in the rules promulgated pursuant to this Decree.

SEC. 29. Violation of Confidential Nature of Probation Records. — The penalty of imprisonment ranging from six months and one day to six years and a fine ranging from six hundred to six thousand pesos shall be imposed upon any person who violates Section 17 hereof.

SEC. 30. Appropriations. — There is hereby authorized the appropriation of the sum of Six Million Five Hundred Thousand Pesos or so much as may be necessary, out of any funds in the National Treasury not otherwise appropriated, to carry out the purpose of this Decree. Thereafter, the amount of at least Ten Million Five Hundred Thousand Pesos or so much as may be necessary shall be included in the annual appropriations of the national government.

SEC. 31. Repealing Clause. — All provisions of existing laws, orders and regulations contrary to or inconsistent with this Decree are hereby repealed or modified accordingly.

SEC. 32. Separability of Provisions. — If any part, section or provision of this Decree shall be held invalid or unconstitutional, no other parts, sections or provisions hereof, shall be affected thereby.

SEC. 33. Effectivity. - This Decree shall take effect upon its approval; *Provided, however,* That the application of its substantive provisions concerning the grant of probation shall only take effect on January 3, 1978. *(As amended by PD 1257)*

Done in the City of Manila, this 24th day of July in the year of Our Lord, nineteen hundred and seventy-six.

(SGD.) FERDINAND E. MARCOS
President of the Philippines

Presidential Decree No. 1257, which amended Sections 4, 7, 15 and 33 of P.D. No. 968, took effect on December 1, 1977. Batas Pambansa Blg. 76, which amended Section 9 of P.D. No. 968, took effect on June 13, 1980. P.D. No. 1990 which amended Secs. 4 and 9 of P.D. No. 968, took effect on October 5, 1985.

Probation, defined.

Probation is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.

Probation may be granted even if the sentence imposed a fine only, but with subsidiary imprisonment.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine *with subsidiary imprisonment* in case of insolvency.

Upon application by defendant for probation, the court may suspend the execution of the sentence.

Subject to the provisions of the Decree (No. 968), the court may, after it shall have convicted and sentenced a defendant and upon his application *within the period for perfecting an appeal,* suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

Time for filing application for probation; purpose and effect.

What the law requires is that the application for probation must be filed within the period for perfecting an appeal. The need to file it within such period was intended to encourage offenders, who are willing to be reformed and rehabilitated, to avail of probation at the first opportunity. Such provision was never intended to suspend the period for the perfection of an appeal, and the filing of the application for probation operates as a waiver of the right to appeal. (Palo vs. Militante, G.R. No. 76100, April 18, 1990, 184 SCRA 395, 400)

In sharp contrast with Section 4 as amended by P.D. No. 1257, in its present form, Section 4 establishes a much narrower period during which an application for probation may be filed with the trial court: "after [the trial court] shall have convicted and sentenced a defendant and — *within the period for perfecting an appeal."* As if to provide emphasis, a new proviso was appended to the first paragraph of Section 4 that expressly *prohibits* the grant of an application for probation *"if the defendant has perfected an appeal from the judgment of conviction."* It is worthy of note too that Section 4 in its present form, *i.e.,* as amended by P.D. No. 1990, has *dropped* the phrase

which said that the filing of an application for probation means "the automatic *withdrawal* of a *pending appeal*." (Llamado vs. Court of Appeals, G.R. No. 848, June 29, 1989, 174 SCRA 566, 574)

Note: The convict is not immediately placed on probation, for no person shall be placed on probation except upon *prior* investigation by the probation officer and a determination by the court. (Sec. 5)

Where application for probation filed.

An application for probation shall be filed with the trial court.

Convict who filed an application for probation cannot appeal.

The filing of the application for probation is a waiver of the right to appeal.

Inappealability of resolution on application for probation.

An order granting or denying probation is not appealable.

Nature of order granting probation.

An order placing defendant on "probation" is not a "sentence" but is rather in effect, a suspension of the imposition of sentence. It is not a final judgment but is rather an "interlocutory judgment" in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment of sentence if the conditions are violated. (Baclayon vs. Mutia, No. L-59298, April 30, 1984, 129 SCRA 148, 154)

Probation officer to submit the investigation report not later than 60 days and the court to resolve the application for probation not later than fifteen days after receipt of the report.

The probation officer shall submit to the court the investigation report on a defendant not later than sixty days from receipt of the order of said court to conduct the investigation. The court shall resolve the application for probation not later than fifteen days after receipt of said report.

Pending submission of report and resolution of the petition, defendant may be released under his bail filed in the criminal case.

Pending submission of the investigation report and the resolution of the petition, the defendant may be allowed on temporary liberty under his bail filed in the criminal case.

Defendant may be released on recognizance to the custody of a responsible member of the community, (1) in case where no bail was filed, or (2) in case where defendant is incapable of filing a bail.

The member of the community who takes custody of defendant on recognizance guarantees only the latter's appearance whenever required by the court.

Criteria for placing an offender on probation.

The court shall consider (1) all information relative to the —

(a) character,

(b) antecedents,

(c) environment,

(d) mental, and

(e) physical

condition of the offender, and (2) available institutional and community resources.

When probation shall be denied.

Probation shall be denied if the court finds that:

(a) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(b) there is an undue risk that during the period of probation, the offender will commit another crime; or

(c) probation will depreciate the seriousness of the offense committed.

The grant or denial of an application for probation does not rest solely on the offender's potentiality to reform but also on the observance of demands of justice and public interest. These are expressed in statutes enacted by the lawmaker. (Amandy vs. People, No. L-76258, May 23, 1988, 161 SCRA 436, 440, citing Tolentino vs. Alconcel, 121 SCRA 92)

Who are the offenders disqualified from being placed on probation?

The benefits of the Decree shall not be extended to —

(a) those sentenced to serve a *maximum term* of imprisonment *of more than six years;*

(b) those convicted of subversion or any crime against the national security or public order;

(c) those who were previously convicted by final judgment of an offense punished by imprisonment of *not less than one month and one day and/or a fine of not more than two hundred pesos;*

(d) those who have been once on probation under the provisions of the Decree; and

(e) those who are already serving sentence at the time the substantive provisions of the Decree became applicable pursuant to Section 33 thereof.

Previous offense punished by imprisonment of not less than 1 month and 1 day and/or a fine of not more than ₱200.

A was previously sentenced for an offense punished by 30 days imprisonment and/or by a fine of ₱100.00. A may be placed on probation, if convicted of a new offense. But if A was previously sentenced to 1 month and 1 day imprisonment and/or to pay a fine of ₱200.00, he is disqualified from being placed on probation if convicted of a new offense.

What are the conditions of probation?

Every probation order issued by the court shall contain conditions requiring the probationer to:

(a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within 72 hours from receipt of the order;

(b) report to the probation officer at least once a month at such time and place as specified by said officer.

The court may also require the probationer to do any of those enumerated in sub-paragraphs (a) to (k) of Section 10 of the Decree.

The conditions which trial courts may impose on a probationer may be classified into general or mandatory and special or discretionary. The mandatory conditions, enumerated in Section 10 of the Probation Law, require that the probationer should (a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within 72 hours from receipt of said order, and (b) report to the probation officer at least once a month at such time and place as specified by said officer. Special or discretionary conditions are those additional conditions, listed in the same Section 10 of the Probation Law, which the courts may additionally impose on the probationer towards his correction and rehabilitation outside of prison. The enumeration, however, is not inclusive. Probation statutes are liberal in character and enable courts to designate practically any term it chooses as long as the probationer's constitutional rights are not jeopardized. There are innumerable conditions which may be relevant to the rehabilitation of the probationer when viewed in their specific individual context. It should, however, be borne in mind that the special or discretionary conditions of probation should be realistic, purposive and geared to help the probationer develop into a law-abiding and self-respecting individual. Conditions should be interpreted with flexibility in their application and each case should be judged on its own merits — on the basis of the problems, needs and capacity of the probationer. The very liberality of the probation should not be made a tool by trial courts to stipulate instead unrealistic terms. (Baclayon vs. Mutia, No. L-59298, April 30, 1984, 129 SCRA 148, 152-153; Salgado vs. Court of Appeals, G.R. No. 89606, Aug. 30, 1990, 189 SCRA 304, 311)

Example of condition that may not be imposed.

The court may not impose as a condition for the grant of probation that the probationer should refrain from continuing her teaching profession. (Baclayon vs. Mutia, *supra)*

Discretion of the court on probation.

Even if a convicted person falls within the classes of those qualified for probation, the grant of probation is not automatic or ministerial. Probation is a privilege and its grant rests upon the discretion of the court. The discretion is exercised primarily for the benefit of society as a whole and only secondarily for the personal advantage of the accused. (Amandy vs. People, No. L-76258, May 23, 1988, 161 SCRA 436, 443)

Effect of probation on accessory penalties.

Accessory penalties are deemed suspended once probation is granted. (Baclayon vs. Mutia, *supra,* at 154)

What are the effects of violation of probation order?

Upon the *failure* of the probationer to *comply with any of the conditions* prescribed in the order, or upon his *commission of another offense,* he shall serve the penalty imposed for the offense under which he was placed on probation.

For how long may a convict be placed on probation?

1. If the convict is sentenced to a term of imprisonment of *not more than one year,* the period of probation shall *not exceed two years.*
2. In all other cases, if he is sentenced to *more than one year,* said period *shall not exceed six years.*
3. When the sentence imposes a fine only *and* the offender is made to serve subsidiary imprisonment, the period of probation shall be *twice* the total number of days of subsidiary imprisonment.

When may a probationer be arrested, and what is the disposition once he is arrested?

At any time during probation, the court may issue a warrant for the arrest of a probationer for any *serious* violation of the conditions of probation. The probationer, once arrested and detained, shall immediately be brought before the court for a hearing of the violation charged. The defendant may be admitted to bail pending such hearing. In such a case, the provisions regarding release on bail of persons

charged with a crime shall be applicable to probationers arrested under this provision.

In the hearing, which shall be summary in nature, the probationer shall have the right to be informed of the violation charged and to adduce evidence in his favor. The court shall not be bound by the technical rules of evidence but may inform itself of all the facts which are material and relevant to ascertain the veracity of the charge. The State shall be represented by a prosecuting officer in any contested hearing. If the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If revoked, the court shall order the probationer to serve the sentence originally imposed. An order revoking the grant of probation or modifying the terms and conditions thereof shall not be appealable.

Notes:

1. The violation of the conditions of probation must be serious to justify the issuance of a warrant of arrest.
2. The defendant may be admitted to bail pending hearing.
3. The hearing is summary in nature, but the probationer shall have the right to be informed of the violation charged and to adduce evidence in his favor.
4. Court is not bound by the technical rules of evidence.
5. If the violation is established, the court may revoke or continue his probation and modify the conditions thereof.
6. If revoked, the court shall order the probationer to serve the sentence originally imposed.
7. The order revoking the grant of probation or modifying the term and conditions thereof is not appealable.

When and how probation is terminated, and what are the effects of the termination?

After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

The final discharge of the probationer *shall operate to restore to him all civil rights* lost or suspended as a result of his conviction *and to fully discharge his liability for any fine* imposed as to the offense for which probation was granted.

The expiration of the probation period alone does not automatically terminate probation. Probation is not coterminous with its period. There must first be issued by the court, an order of final discharge based on the report and recommendation of the probation officer. Only from such issuance can the case of the probationer be deemed terminated. (Bala vs. Martinez, G.R. No. 67301, Jan. 29, 1990, 181 SCRA 459, 465-466)

Purpose of the Decree establishing a probation system.

The three-fold purpose of the Decree is to —

(a) promote the correction and rehabilitation of an offender by providing him with individualized treatment;

(b) provide an opportunity for the reformation of a penitent offender, which might be less probable if he were to serve a prison sentence; and

(c) prevent the commission of offenses.

Probation affects only the criminal aspect of the case.

Probation affects only the criminal aspect of the case. The suspension of the sentence imposed on the accused who is granted probation has no bearing on his civil liability. The court must hear the civil aspect. (Budlong vs. Apalisok, No. L-60151, June 24, 1983, 122 SCRA 935, 942-943, 945)

Penalty on Moros and Non-Christians (Sec. 106, Administrative Code of Mindanao and Sulu).

Sec. 106. Sentences upon Moros and Non-Christians. — In pronouncing sentence upon a Moro or other non-Christian inhabitants of the Department convicted of crime or misdemeanor, the judge or justice may ignore any minimum penalty provided by law for the offense, and may impose such penalty not in excess of the highest penalty provided by law, as, in his opinion, after taking into consideration all the circumstances of the case, including the state of enlightenment

of the accused and the degree of moral turpitude which attaches to the offense among his own people, will best subserve the interest of justice. The judge or justice may also, in his discretion at any time before the expiration of the period allowed for appeal, suspend the execution of any penalty or part thereof so imposed, subject to such condition as he may prescribe.

The application of Section 106 of the Administrative Code of Mindanao and Sulu is discretionary to the court.

In the imposition of penalty to non-Christian inhabitants, it is within the discretion of the trial court to apply the special provision of Section 106 of the Administrative Code of Mindanao and Sulu. (People vs. Pawin, 85 Phil. 528, 532)

Where the accused-appellant is a Mohammedan, inhabitant of Mindanao, the penalty to be imposed upon him, regardless of the attending circumstances, lies in the discretion of the trial court pursuant to Section 106 of the Administrative Code of Mindanao and Sulu. Ruling in *People vs. Pawin, supra,* reiterated. (People vs. Disimban, 88 Phil. 120, 124)

In the Administrative Code of Mindanao and Sulu, the court is granted discretion to impose the proper penalty taking into account the degree of instruction of the Moros without following a fixed rule. The Igorots are in worse condition than the Moros; the latter are Mohammedans and the former Pagans; their culture in embryonic stage is subject to their savage spirit. The lack of instruction among the Igorots should be considered as a mitigating circumstance. (People vs. Cawol [Unrep.], 96 Phil. 972)

He cannot even invoke in his favor what Sec. 106 of the Administrative Code of Mindanao and Sulu accords to a Moro who commits a crime and is convicted, for even then, said section gives to the court ample discretion to determine the penalty to be imposed considering the circumstances of the case, the degree of his instruction, and the nature of the crime committed, the court being justified in imposing the penalty which would best serve the interest of justice. This is a case where the degree of perversity of the criminal warrants not mercy but the enforcement of the law to the full extent. (People vs. Salazar, 105 Phil. 1058, 1065)

Chapter Five

EXECUTION AND SERVICE OF PENALTIES

Section One. — General provisions

Art. 78. ***When and how a penalty is to be executed.*** **— No penalty shall be executed except by virtue of a final judgment.**

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institutions in which the penalties are to be suffered shall be observed with regard to the character of the work to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet.

The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments, and also for the correction and reform of the convicts.

Only penalty by final judgment can be executed.

Paragraph one of this Article provides that "no penalty shall be executed except by virtue of a final judgment."

The judgment must be *final* before it can be executed, because the accused may still appeal within 15 days from its promulgation. But if the defendant has expressly waived in writing his right to appeal, the judgment becomes final immediately. (Rule 120, Sec. 7, Rules of Court)

If the judgment does not condemn the accused to suffer subsidiary imprisonment in case of insolvency, the accused cannot be required

to suffer the same in case of inability to pay the fine imposed upon him. (People vs. Jarumayan, 52 O.G. 249)

Art. 79. *Suspension of the execution and service of the penalties in case of insanity.* — When a convict shall become insane or an imbecile after final sentence has been pronounced, the execution of said sentence shall be suspended only with regard to the personal penalty, the provisions of the second paragraph of circumstance number 1 of Article 12 being observed in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code.

The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence.

Rules regarding execution and service of penalties in case of insanity.

1. When a convict becomes insane or imbecile *after final sentence* has been pronounced, the execution of said sentence is *suspended* only as regards the *personal penalty.*
2. If he recovers his reason, his sentence shall be executed, unless the penalty has *prescribed.*
3. Even if *while serving* his sentence, the convict becomes insane or imbecile, the above provisions shall be observed.
4. But the payment of his civil or pecuniary liabilities shall not be suspended.

Only execution of personal penalty is suspended in case of insanity; civil liability may be executed even in case of insanity of convict.

After the judgment of conviction has become final, the accused becomes insane. He has enough property to cover the civil liability.

Can the offended party ask for the execution of the judgment with respect to civil liability?

Yes, because while the execution of the sentence is suspended as regards the personal penalty, the payment of his civil or pecuniary liability shall not be suspended.

An accused person may become insane:

1. **At the time of the commission of the offense;**
2. **At the time of trial;**
3. **At the time of final judgment; or**
4. **While serving sentence.**

If he was insane at the time of the commission of the offense, he is exempt from criminal liability. (Art. 12, par. 1) If he was sane at the time of the commission of the offense but subsequently becomes insane during the trial of the case, in such a way that he cannot have a fair trial or make proper defense even with the help of counsel (U.S. vs. Guendia, 37 Phil. 337, 345), the court shall suspend proceedings and order his confinement in a hospital until he recovers his reason. (Art. 12, par. 1) If his insanity should come after final sentence or while serving his sentence, the execution thereof shall be suspended with regard to the personal penalty only.

Art. 80. ***Suspension of sentence of minor delinquents.*** **— Whenever a minor of either sex, under sixteen years of age at the date of the commission of a grave or less grave felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law for the care, correction, or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of any other responsible person in any other place subject to visitation and supervision by the Director of Public Welfare or any of his agents or representatives, if there be any, or otherwise by the superintendent of public schools or his**

representatives, subject to such conditions as are prescribed hereinbelow until such minor shall have reached his majority or for such less period as the court may deem proper. *(As amended by R.A. No. 47.)*

The court, in committing said minor as provided above, shall take into consideration the religion of such minor, his parents or next of kin, in order to avoid his commitment to any private institution not under the control and supervision of the religious sect or denomination to which they belong.

The Director of Public Welfare or his duly authorized representatives or agents, the superintendent of public schools or his representatives, or the person to whose custody or care the minor has been committed, shall submit to the court every four months and as often as required in special cases, a written report on the good or bad conduct of said minor and the moral and intellectual progress made by him.

The suspension of the proceedings against a minor may be extended or shortened by the court on the recommendation of the Director of Public Welfare or his authorized representatives or agents, or the superintendent of public schools or his representatives, according as to whether the conduct of such minor has been good or not and whether he has complied with the conditions imposed upon him, or not. The provisions of the first paragraph of this article shall not, however, be affected by those contained herein.

If the minor has been committed to the custody or care of any of the institutions mentioned in the first paragraph of this article, with the approval of the Director of Public Welfare and subject to such conditions as this official in accordance with law may deem proper to impose, such minor may be allowed to stay elsewhere under the care of a responsible person.

If the minor has behaved properly and has complied with the conditions imposed upon him during his confinement, in accordance with the provisions of this article, he shall be returned to the court in order that the same may order his final release.

In case the minor fails to behave properly or to comply with the regulations of the institution to which he has been

committed or with the conditions imposed upon him when he was committed to the care of a responsible person, or in case he should be found incorrigible or his continued stay in such institution should be inadvisable, he shall be returned to the court in order that the same may render the judgment corresponding to the crime committed by him.

The expenses for the maintenance of a minor delinquent confined in the institution to which he has been committed, shall be borne totally or partially by his parents or relatives or those persons liable to support him, if they are able to do so, in the discretion of the court: *Provided,* That in case his parents or relatives or those persons liable to support him have not been ordered to pay said expenses, the municipality in which the offense was committed shall pay one-third of said expenses; the province to which the municipality belongs shall pay one-third; and the remaining one-third shall be borne by the National Government: *Provided, however,* That whenever the Secretary of Finance certifies that a municipality is not able to pay its share in the expenses above mentioned, such share which is not paid by said municipality shall be borne by the National Government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, the internal revenue allotments which may be due to said city shall be withheld and applied in settlement of said indebtedness in accordance with section five hundred and eighty-eight of the Administrative Code. *(As amended by Com. Act No. 99 and Rep. Act No. 47)*

The provisions of Article 80 of the Revised Penal Code have been repealed by Chapter Three of P.D. No. 603, as amended (The Child and Youth Welfare Code), and by the provisions of Rep. Act No. 9344 (Juvenile Justice and Welfare Act of 2006).

Child in Conflict with the Law.

Under Sec. 4 of Rep. Act No. 9344, a "Child" is defined as "a person under eighteen (18) years" while a "Child In Conflict with the Law" refers to "a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws."

YOUTHFUL OFFENDER UNDER THE CHILD AND YOUTH WELFARE CODE AND JUVENILE JUSTICE AND WELFARE ACT OF 2006

Under P.D. No. 603, a youthful offender is a "child, minor or youth, including one who is emancipated in accordance with law, who is over nine years but under eighteen years of age at the time of the commission of the offense." (Art. 189, par.1)

Rep. Act No. 9344 repealed P.D. No. 603 on the matter although both cover children who are under 18 years of age.

Minimum Age of Criminal Responsibility.

A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws. (Sec. 6, Rep. Act No. 9344)

Intervention Program.

If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative.

Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children-(BCPC); a local social welfare and development officer; or, when and where appropriate, the DSWD.

If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or

abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code." (Sec. 20, Rep. Act No. 9344)

Diversion Programs for children over 15 and under 18 who acted with discernment. (Refer to Par. 2, Art. 13)

Automatic suspension of sentence under Rep. Act No. 9344.

Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however,* That suspension of sentence shall be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt. (See Sec. 38, Rep. Act No. 9344)

Compared to P.D. No. 603.

1) *Minimum Age of Criminal Responsibility*

Under P.D. No. 603, a child nine (9) years of age or under at the time of the commission of the offense, and a child over nine (9) years and under fifteen (15) years of age unless he acted with discernment, shall be exempt from criminal liability (Sec. 189, P.D. No. 603) Under Rep. Act No. 9344, a child under fifteen (15) years of age, shall be exempt from criminal liability, regardless of whether or not he/she acted with discernment.

2) *Discernment*

If a child over nine (9) years and under fifteen (15) years of age acted with discernment, the court shall hear the evidence in the proper proceedings and if it finds the youthful offender to have committed the acts charged against him, the court shall determine the imposable

penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court, upon application of the youthful offender and it if finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and shall commit such minor to the custody or care of the DSWD or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper. (Sec. 189 and 192, P.D. No. 603) Under Rep. Act No. 9344, a child above fifteen (15) years but below eighteen (18) years of age who acted with discernment shall be subjected to the appropriate proceedings in accordance with the Act.

3) ***Suspension of Sentence***

Under P.D. No. 603, there is no automatic suspension of sentence. The youthful offender should apply for a suspended sentence and it is discretionary on the court to approve the application. The order of the court denying an application for suspension of sentence shall not be appealable. (Sec. 193, P.D. No. 603) Under Rep. Act No. 9344, suspension of sentence is automatic.

COURT PROCEEDINGS.

Bail.

For purpose of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered. (Sec. 34, Rep. Act No. 9344)

Release on Recognizance.

Where a child is detained, the court shall order:

(a) the release of the minor on recognizance to his/her parents and other suitable persons;

(b) the release of the child in conflict with the law on bail; or

(c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case. (Sec. 35, Rep. Act No. 9344)

Detention of the Child Pending Trial.

Children detained pending trial may be released on ball or recognizance. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an education setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required. (Sec. 36, Rep. Act No. 9344)

Diversion Measures.

Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate. (Sec. 37, Rep. Act No. 9344)

Discharge of the Child in Conflict with the Law.

Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law. (Sec. 39, Rep. Act No. 9344)

Return of the Child in Conflict with the Law to Court.

If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years. (Sec. 40, Rep. Act No. 9344)

Credit in Service of Sentence.

The child in conflict with the law shall be credited in the service of his/her sentence with the full time spent in actual commitment and detention under this Act. (Sec. 41, Rep. Act No. 9344)

Probation as an Alternative to Imprisonment.

The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child, or probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," is hereby amended accordingly. (Sec. 42, Rep. Act No. 9344)

REHABILITATION AND REINTEGRATION.

Objective of Rehabilitation and Reintegration.

The objective of rehabilitation and reintegration of children in conflict with the law is to provide them with interventions, ap-

proaches and strategies that will enable them to improve their social functioning with the end goal of reintegration to their families and as productive members of their communities. (Sec. 44, Rep. Act No. 9344)

Court Order Required.

No child shall be received in any rehabilitation or training facility without a valid order issued by the court after a hearing for the purpose. The details of this order shall be immediately entered in a register exclusively for children in conflict with the law. No child shall be admitted in any facility where there is no such register. (Sec. 45, Rep. Act No. 9344)

Separate Facilities from Adults.

In all rehabilitation or training facilities, it shall be mandatory that children shall be separated from adults unless they are members of the same family. Under no other circumstance shall a child in conflict with the law be placed in the same confinement as adults.

The rehabilitation, training or confinement area of children in conflict with the law shall provide a home environment where children in conflict with the law can be provided with quality counseling and treatment. (Sec. 46, Rep. Act No. 9344)

Female Children.

Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law. (Sec. 47, Rep. Act No. 9344)

Care and Maintenance of the Child in Conflict with the Law.

The expenses for the care and maintenance of a child in conflict with the law under institutional care shall be borne by his/her parents or those persons liable to support him/her: *Provided,* That in case his/her parents or those persons liable to support him/her cannot pay all or part of said expenses, the municipality where the offense was committed shall pay one-third (1/3) of said expenses or part thereof; the province to which the municipality belongs shall pay one-third

(1/3) and the remaining one-third (1/3) shall be borne by the national government. Chartered cities shall pay two-thirds (2/3) of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said obligations: *Provided, further,* That in the event that the child in conflict with the law is not a resident of the municipality/city where the offense was committed, the court, upon its determination, may require the city/municipality where the child in conflict with the law resides to shoulder the cost.

Confinement of Convicted Children in Agricultural Camps and other Training Facilities.

A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the Bureau of Corrections, in coordination with the Department of Social Welfare and Development. (Sec. 51, Rep. Act No. 9344)

Rehabilitation of Children in Conflict with the Law.

Children in conflict with the law, whose sentences are suspended may, upon order of the court, undergo any or a combination of disposition measures best suited to the rehabilitation and welfare of the child as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

If the community-based rehabilitation is availed of by a child in conflict with the law, he/she shall be released to parents, guardians, relatives or any other responsible person in the community. Under the supervision and guidance of the local social welfare and development officer, and in coordination with his/her parents/guardian, the child in conflict with the law shall participate in community-based programs, x x x .

In accordance therewith, the family of the child in conflict with the law shall endeavor to actively participate in the community-based rehabilitation.

Based on the progress of the youth in the community, a final report will be forwarded by the local social welfare and development officer to the court for final disposition of the case.

If the community-based programs are provided as diversion measures under Chapter II, Title V, the programs enumerated above shall be made available to the child in conflict with the law. (Sec. 52, Rep. Act No. 9344)

Youth Rehabilitation Center.

The youth rehabilitation center shall provide 24-hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals. A quarterly report shall be submitted by the center to the proper court on the progress of the children in conflict with the law. Based on the progress of the youth in the center, a final report will be forwarded to the court for final disposition of the case. The DSWD shall establish youth rehabilitation centers in each region of the country. (Sec. 53, Rep. Act No. 9344)

Civil Liability of Youthful Offenders.

The civil liability for acts committed by a youthful offender shall devolve upon the offender's father and, in case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian. Civil liability may also be voluntarily assumed by a relative or family friend of the youthful offender. (Art. 201, P.D. No. 603)

Liability of Parents or Guardian or Any Person in the Commission of Delinquent Acts by Their Children or Wards.

A person whether the parent or guardian of the child or not, who knowingly or willfully,

(1) Aids, causes, abets or connives with the commission by a child of a delinquency, or

(2) Does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent, shall be

punished by a fine not exceeding five hundred pesos or to imprisonment for a period not exceeding two years, or both such fine and imprisonment, at the discretion of the court. (Art. 204, P.D. No. 603)

Confidentiality of Records and Proceedings

All records and proceedings involving children in conflict with the law from initial contact until final disposition of the case shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child in conflict with the law may have his/her sentence suspended or if he/she may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child's identity. Records of a child in conflict with the law shall not be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his/her written consent.

A person who has been in conflict with the law as a child shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him/her for any purpose. (Sec. 43, Rep. Act No. 9344)

P.D. No. 1179, amending P.D. No. 603 by providing that Article 192 shall not apply to those convicted of an offense punishable by death or life imprisonment *(reclusión perpetua)* took effect in 1977, after the decision of the Court of First Instance.

Section Two. — Execution of principal penalties

Art. 81. *When and how the death penalty is to be executed.* — The death sentence shall be executed with preference to

any other penalty and shall consist in putting the person under sentence to death by lethal injection. The death sentence shall be executed under the authority of the Director of the Bureau of Corrections, endeavoring so far as possible to mitigate the sufferings of the person under sentence during the lethal injection as well as during the proceedings prior to the execution.

The Director of the Bureau of Corrections shall take steps to ensure that the lethal injection to be administered is sufficient to cause the instantaneous death of the convict.

Pursuant to this, all personnel involved in the administration of lethal injection shall be trained prior to the performance of such task.

The authorized physician of the Bureau of Corrections, after thorough examination, shall officially make a pronouncement of the convict's death and shall certify thereto in the records of the Bureau of Corrections.

The death sentence shall be carried out not earlier than one (1) year nor later than eighteen (18) months after the judgment has become final and executory without prejudice to the exercise by the President of his executive clemency powers at all times. *(As amended by Republic Act No. 7659 and Republic Act No. 8177)*

Rep. Act No. 9346 expressly repealed Rep. Act No. 8177 which prescribed death by lethal injection.

Section 1 of Rep. Act No. 9346 provides as follows:

"SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection, is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly."

In view of the enactment of Rep. Act No. 9346, the death penalty may not be imposed. Thus, Arts. 81 to 85 of the Revised Penal Code have no application.

Death sentence shall be executed with preference to any other penalty.

According to Art. 81, the death sentence shall be executed *with preference* to any other penalty. This is in accordance with Art. 70 providing for successive service of sentences. Death penalty is No. 1 in the order of the severity of the penalties listed there.

Death sentence is executed by lethal injection.

Under Republic Act No. 8177 which was approved on March 20, 1996, the death sentence shall be executed by means of lethal injection. Prior to the enactment of R.A. No. 8177, the death sentence was executed by electrocution.

When death sentence shall be carried out.

The death sentence shall be carried out not earlier than 1 year nor later than 18 months after the judgment becomes final and executory, without prejudice to the exercise by the President of his executive clemency powers.

Art. 82. *Notification and execution of the sentence and assistance to the culprit.* — The court shall designate a working day for the execution, but not the hour thereof; and such designation shall not be communicated to the offender before sunrise of said day, and the execution shall not take place until after the expiration of at least eight hours following the notification, but before sunset. During the interval between the notification and the execution, the culprit shall, insofar as possible, be furnished such assistance as he may request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as in order to make a will and confer with members of his family or person in charge of the management of his business, of the administration of his property, or of the care of his descendants.

A convict sentenced to death may make a will.

Such convict shall have the right to consult a lawyer and to make a will for the disposition of his property.

May a convict sentenced to death dispose of his property by an act or conveyance *inter vivos*?

According to Art. 40, one of the accessory penalties of death is civil interdiction. According to Art. 34, civil interdiction shall deprive the offender of the right to dispose of his property by any act or conveyance *inter vivos.* But Art. 40 specifically provides that civil interdiction is its accessory penalty only when the death penalty is not executed by reason of commutation or pardon.

Problem:

A had been sentenced to death which was affirmed by the Supreme Court. After he was notified of the date of execution, A asked for his friend B and by means of a deed of donation *inter vivos,* transferred all his property to him who accepted the donation. If A had no forced heirs, is the transfer valid?

It seems that the transfer is valid, because if A was put to death subsequently, he was not suffering civil interdiction at the time he executed the deed of donation *inter vivos.*

Complication may arise if A was not executed by reason of commutation or pardon, for in that case, he would suffer civil interdiction. A question may be asked whether the deed of donation *inter vivos* could still be considered valid.

Art. 83. *Suspension of the execution of the death sentence.* — The death sentence shall not be inflicted upon a woman within one (1) year after delivery, nor upon any person over seventy years of age. In this last case, the death sentence shall be commuted to the penalty of *reclusion perpetua* with the accessory penalties provided in Article 40.

In all cases where the death sentence has become final, the records of the case shall be forwarded immediately by the Supreme Court to the Office of the President for possible

exercise of the pardoning power. *(As Amended by Republic Act No. 7659)*

Death sentence shall be suspended when the accused is a —

(1) Woman, while pregnant;

(2) Woman, within one year after delivery;

(3) Person over 70 years of age.

The suspension of the execution of the death sentence as regards a person over 70 years old is necessary to give the President time to act, because only the President can commute the sentence.

The accused was fifty-six years old when he testified in 1962. An agent of the National Bureau of Investigation reported that in 1972, he was already seventy years old. The death penalty cannot be imposed upon any person over seventy years of age. It should be commuted to *reclusión perpetua* with the accessory penalties provided in Article 40. (People vs. Yu, No. L-29667, Nov. 29, 1977, 80 SCRA 382, 395)

The appellant was found guilty of the complex crime of murder with frustrated murder with the aggravating circumstances of evident premeditation, craft and dwelling and was sentenced to death. However, since he was already more than 70 years old, the penalty of *reclusión perpetua* was imposed. (People vs. Miraflores, Nos. L-32144-45, July 30, 1982, 115 SCRA 570, 593-594; People vs. Del Mundo, No. L-39051, June 29, 1982, 114 SCRA 719, 724)

(4) Convict *who becomes insane after final sentence of death* has been pronounced. (See Art. 79)

But when he recovers his reason and *before* the penalty has prescribed, he may be put to death.

Distinguish Art. 83 from Art. 47.

Art. 47 provides for cases in which *death penalty is not to be imposed.* They are:

1. When the guilty person is more than 70 years of age;
2. When upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for imposing the death penalty; and
3. When the convict is a minor under 18 years of age.

Note: This No. 3 may be added in view of Art. 68.

On the other hand, Art. 83 provides for *suspension* only of the execution of death sentence.

Regional Trial Court (formerly CFI) can suspend execution of death sentence.

The *Regional Trial Court* which imposes death penalty *has the power to suspend temporarily the execution* of the sentence, after the judgment has become final, and after the date has been fixed for execution, upon petition on behalf of the prisoner, based upon grounds arising after judgment has become final, the adjudication of which does not challenge the validity of the judgment or involve a review or reconsideration of the proceedings.

Among such grounds are the alleged (1) *insanity* or *pregnancy* of the convict, (2) the alleged *nonidentity* of the prisoner with the person actually convicted and sentenced, (3) the alleged lack of a suitable opportunity to be heard on an application for executive clemency, and the like. (Director of Prisons vs. Judge of First Instance of Cavite, 29 Phil. 265, 271-274)

But the court cannot grant *indefinite, permanent* or *conditional* suspension of the execution of sentences pronounced in criminal cases.

Execution of death sentence after delivery of pregnant woman.

Under the old Code, the death sentence could be executed only after the lapse of 40 days from delivery.

Under R.A. No. 7659, the execution of the death sentence upon a pregnant woman will be carried out only one (1) year after her delivery.

Records to be forwarded to the Office of the President, when the death sentence has become final.

In all cases where the death sentence has become final, the records of the case shall be forwarded to the Office of the President for possible exercise of the pardoning power. (Art. 83, par. 2)

Art. 84. ***Place of execution and persons who may witness the same.*** **— The execution shall take place in the penitentiary or Bilibid in a space closed to the public view and shall be witnessed only by the priests assisting the offender and by his lawyers and by his relatives, not exceeding six, if he so requests, by the physician and the necessary personnel of the penal establishment, and by such persons as the Director of Prisons may authorize.**

Place of execution.

The execution shall take place in the penitentiary or Bilibid in a space closed to the public view.

Persons who may witness execution.

1) **priests assisting the offender,**
2) **offender's lawyers,**
3) **offender's relatives, not exceeding six, if so requested,**
4) **physician, and**
5) **necessary personnel of penal establishment.**

A person below 18 years of age may not be allowed to witness an execution. (Sec. 23, par. 2, Amended Rules and Regulations to Implement Rep. Act No. 8177)

Art. 85. ***Provisions relative to the corpse of the person executed and its burial.*** **— Unless claimed by his family, the corpse of the culprit shall, upon the completion of the legal proceedings**

subsequent to the execution, be turned over to the institute of learning or scientific research first applying for it, for the purpose of study and investigation, provided that such institute shall take charge of the decent burial of the remains. Otherwise, the Director of Prisons shall order the burial of the body of the culprit at government expense, granting permission to be present thereat to the members of the family of the culprit and the friends of the latter. In no case shall the burial of the body of a person sentenced to death be held with pomp.

The "burial of the body of a person sentenced to death" should not "be held with pomp."

The last sentence of Art. 85 prohibits the burying of the corpse of a person sentenced to death with pomp. This is penalized under Art. 153. The purpose of the law is to prevent anyone from making a hero out of a criminal.

Art. 86. *Reclusidn perpetua, reclusión temporal, prisidn mayor, prisidn correccional and arresto mayor.* — The penalties of *reclusidn perpetua, reclusidn temporal, prisidn mayor, prisidn correccional* and *arresto mayor,* shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.

Art. 87. *Destierro.* — Any person sentenced to *destierro* shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be not more than 250 and not less than 25 kilometers from the place designated.

Illustration of *destierro* imposed as a penalty.

A was sentenced to the penalty of *destierro,* according to which he should not enter the place within the radius of 25 kilometers from

the City Hall of Manila, for a period of two years, four months and one day.

In this case, A was not completely deprived of his liberty, as he could go freely to whatever place except within the radius of 25 kilometers from the City Hall of Manila.

Destierro is imposed:

1. When death or serious physical injuries is caused or are inflicted under exceptional circumstances. (Art. 247)
2. When a person fails to give bond for good behavior. (Art. 284)
3. As a penalty for the concubine in the crime of concubinage. (Art. 334)
4. When after lowering the penalty by degrees, *destierro* is the proper penalty.

Entering the prohibition area is evasion of the service of the sentence.

Facts: For the crime committed, the accused was sentenced to the penalty of *destierro,* according to which he should not enter while serving the sentence within the radius of 25 kilometers of the City Hall of Manila. (Art. 87). In that penalty *of destierro,* the convict could freely go to whatever place, except within the radius of 25 kilometers from the City Hall of Manila. But the accused entered Manila while serving the sentence of *destierro.*

Held: There is evasion of the service of the sentence of *destierro.* (People vs. De Jesus, 80 Phil. 748, 750)

Art. 88. ***Arresto menor.*** **— The penalty of *arresto menor* shall be served in the municipal jail, or in the house of the defendant himself under the surveillance of an officer of the law, when the court so provides in its decision, taking into consideration the health of the offender and other reasons which may seem satisfactory to it.**

Penalty that may be served in the house of defendant.

This article provides that the penalty of *arresto menor* may be served in the house of the defendant.

But it is required as a condition that it should be under the surveillance of an officer of the law.

"When the court so provides in its decision."

Note the use of the clause in the law.

Hence, unless the court makes a statement in its decision that the accused can serve the sentence in his house, the accused cannot be permitted to do so by the jailer.

The grounds are the health of the offender and other reasons satisfactory to the court.

It is not a satisfactory, plausible reason that the accused is a woman of 50 years, respectable member of the community and that her means of subsistence and that of her husband are a retail store. (People vs. Torrano, C.A., 40 O.G., 12th Supp., 18)

But where the accused was sentenced to 30 days imprisonment under Act 3992 and he was suffering from tuberculosis, requiring outside treatment, he was allowed to serve his sentence in his house. (People vs. Dayrit, C.A., 40 O.G., 11th Supp., 280)

Title Four

EXTINCTION OF CRIMINAL LIABILITY

Chapter One

TOTAL EXTINCTION OF CRIMINAL LIABILITY

Art. 89. ***How criminal liability is totally extinguished.*** **— Criminal liability is totally extinguished:**

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

2. By service of the sentence;

3. By amnesty, which completely extinguishes the penalty and all its effects;

4. By absolute pardon;

5. By prescription of the crime;

6. By prescription of the penalty;

7. By the marriage of the offended woman, as provided in Article 344 of this Code.

Extinction of criminal liability does not automatically extinguish the civil liability.

Extinction of criminal liability does not necessarily mean that the civil liability is also extinguished. (Petralba vs. Sandiganbayan, G.R. No. 81337, Aug. 16, 1991, 200 SGRA 644, 649)

Causes of extinction of criminal liability distinguished from causes of justification or exemption.

Causes of extinction of criminal liability arise *after* the commission of the offense; while the causes of justification or exemption from

criminal liability arise from circumstances existing either *before* the commission of the crime or *at the moment* of its commission.

That criminal liability is totally extinguished is a ground for motion to quash.

Under Sec. 3(g) of Rule 117 of the Revised Rules of Criminal Procedure, one of the grounds for motion to quash is that the criminal action has been extinguished. The order sustaining a motion to quash on this ground constitutes a bar to another prosecution for the same offense. (Sec. 6, Rule 117)

By the death of the convict.

The death of the convict, whether before or after final judgment, extinguishes criminal liability, because one of the juridical conditions of penalty is that it is *personal.*

Civil liability is extinguished only when death occurs before final judgment.

The death of the convict *also extinguishes* pecuniary penalties only when the death of the offender occurs *before* final judgment.

Hence, if the offender dies *after* final judgment, the pecuniary penalties are not extinguished.

Where a person is charged with homicide, for instance, the civil liability for indemnity is based solely on the finding of guilt. If he is acquitted because of self-defense, the heirs of the deceased have no right to indemnity. Should the offender die *before* final judgment, their right to indemnity is likewise extinguished as there is no basis for the civil liability. Civil liability exists only when the accused is convicted by final judgment.

Criminal and civil liability is extinguished when the offender dies before final judgment.

When the accused died while the judgment of conviction against him was pending appeal, his civil and criminal liability was extinguished by his death. (People vs. Castillo, C.A., 56 O.G. 4045; People vs. Alison, No. L-30612, April 27, 1972, 44 SCRA 523, 525)

In view of the death of the accused during the pendency of this case he is relieved of all personal and pecuniary penalties attendant

to his crime, his death occurring before rendition of final judgment. (People vs. Jose, No. L-28397, June 17, 1976, 71 SCRA 273, 282)

Definition of "final judgment."

The term "final judgment" employed in the Revised Penal Code means judgment beyond recall. As long as a judgment has not become executory, it cannot be truthfully said that defendant is definitely guilty of the felony charged against him. (People vs. Bayotas, G.R. No. 152007, September 2, 1994, 236 SCRA 239) Section 7, Rule 16 of the Rules of Court likewise states that a judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal.

Effect of the death of the accused pending appeal on his criminal and civil liability.

General rule —

Death of the accused pending appeal of his conviction *extinguishes* his criminal liability as well as the civil liability based *solely on the offense committed.*

Exception —

The claim for civil liability *survives* notwithstanding the death of accused, if the same may also be *predicated on a source of obligation other than delict,* such as law, contracts, quasi-contracts and quasi-delicts. (People vs. Bayotas, *supra)*

Examples:

a) The claim for civil liability based on law may also be made — in the offense of physical injuries, since Article 33 of the Civil Code establishes a civil action for damages on account of physical injuries, entirely separate and distinct from the criminal action (See Belamala vs. Polinar, No. L-24098, November 18, 1967, 21 SCRA 700);

b) Claim for civil liability based on contract may also be made — in the offense of estafa when the civil liability springs neither solely nor originally from the crime itself but from a civil contract of purchase and sale (as when accused had swindled the vendees of the property subject matter of the

contract of sale). (See Torrijos vs. Court of Appeals, No. L-40336, October 24, 1975, 67 SCRA 394)

Where action for recovery of damages must be filed, when civil liability survives.

If the private offended party, upon extinction, of the civil liability *ex delicto,* desires to recover damages from the *same act or omission complained of,* he must, subject to Section 1, Rule 111 of the Revised Rules of Criminal Procedure, *file a separate civil action,* this time predicated not on the felony previously charged but on other sources of obligation. The source of obligation upon which the separate civil action is premised determines against whom the same shall be enforced. Thus —

a) If the same act or omission complained of also arises from *quasi-delict* or may, by provision of law, result in an *injury to person or property* (real or personal), the separate civil action must be filed *against the executor or administrator of the estate* of the accused pursuant to Sec. 1, Rule 87 of the Rules of Court.

b) If the same act or omission complained of also arises from *contract,* the separate civil action must be filed *against the estate* of the accused, pursuant to Sec. 5, Rule 86 of the Rules of Court. (People vs. Bayotas, *supra)*

Right of offended party to file separate civil action not lost by prescription when accused dies pending appeal.

The private offended party need not fear a forfeiture of his right to file the separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code. (People vs. Bayotas, *supra)*

Death of the offended party does not extinguish the criminal liability of the offender.

The death of the offended party does not extinguish the criminal liability of the offender, because the offense is committed against the State. (People vs. Misola, 87 Phil. 830, 833)

By service of sentence.

Crime is a debt incurred by the offender as a consequence of his wrongful act and the penalty is but the amount of his debt. When payment is made, the debt is extinguished.

Service of sentence does not extinguish the civil liability. (Salgado vs. Court of Appeals, G.R. No. 89606, Aug. 30, 1990, 189 SCRA 304, 310)

By amnesty.

Amnesty, defined.

It is an act of the sovereign power granting oblivion or a general pardon for a past offense, and is rarely, if ever, exercised in favor of a single individual, and is usually exerted in behalf of certain classes of persons, who are subject to trial but have not yet been convicted. (Brown vs. Walker, 161 U.S. 602)

Amnesty completely extinguishes the penalty and all its effects.

Note the clause in paragraph 3 of Art. 89, which says: "which completely extinguishes the penalty and all its effects."

Amnesty may be granted after conviction.

The amnesty proclamation in favor of the Hukbalahaps is applicable to those *already undergoing sentence* upon the date of its promulgation. (Tolentino vs. Catoy, 82 Phil. 300)

Examples of amnesty:

1. Proclamation No. 51, dated January 28, 1948, by President Roxas, granting amnesty to those who collaborated with the enemy during World War II. (See 44 O.G. 408)
2. Proclamation No. 76, dated June 21, 1948, by President Quirino, extending amnesty to the Huks and PKM (Pambansang Kaisahan ng mga Magbubukid), who committed rebellion, sedition, illegal association, etc. (See 44 O.G. 1794)
3. Proclamation No. 80, dated February 28, 1987, by President Aquino, extending amnesty to those who, in the furtherance of their political beliefs, may have committed treason,

conspiracy or proposal to commit the crime of treason, misprision of treason, espionage, rebellion or insurrection, conspiracy and proposal to commit rebellion or insurrection, inciting to rebellion or insurrection, sedition, conspiracy to commit sedition, inciting to sedition, illegal assemblies, illegal associations, direct assault, indirect assault, resistance and disobedience to a person in authority or agents of such person or persons, subversion, and illegal possession of firearms and explosives.

Civil liability not extinguished by amnesty.

While amnesty wipes out all traces and vestiges of the crime, it does not extinguish the civil liability of the offender. (U.S. vs. Madlangbayan, 2 Phil. 426, 428-429)

By absolute pardon.

Pardon, defined.

It is an act of grace proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed.

Kinds of pardon:

(a) Absolute pardon.

(b) Conditional pardon.

A pardon, whether absolute or conditional, is in the nature of a deed, for the validity of which *delivery* is an indispensable requisite. Until accepted, all that may have been done is a matter of intended favor and may be cancelled. But once accepted by the grantee, the pardon already delivered cannot be revoked by the authority which granted it.

Pardon in adultery case.

***A* was charged with the crime of adultery with a married woman. The married woman, after conviction of both accused, was pardoned by the Chief Executive.**

Does the pardon of the woman have the effect of extinguishing the criminal liability of A?

No, because (1) the power to extend executive clemency is unlimited, and (2) that the exercise of that power lies in the absolute and uncontrolled discretion of the Chief Executive. (U.S. vs. Guarin, 30 Phil. 85, 87)

But if the one giving the pardon is the offended spouse in adultery, both offenders must be pardoned by the offended party if said pardon is to be effective. (People vs. Infante, 57 Phil. 138, 139)

Pardon of murder after evasion of service of sentence.

A was convicted of murder. Subsequently, A evaded the service of the sentence. *A* was prosecuted for and convicted of evasion. The President thereafter pardoned A of the murder.

Held: The pardon refers only to the crime of murder and does not have the effect of remitting the penalty for evasion of the service of the sentence committed prior to said pardon. (Alvarez vs. Director of Prisons, 80 Phil. 43)

Amnesty and pardon distinguished.

1. Pardon includes any crime and is exercised individually by the President; amnesty is a blanket pardon to classes of persons or communities who may be guilty of *political offenses.*

2. Pardon is exercised when the person is already convicted; amnesty may be exercised even before trial or investigation is had.

3. Pardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does "not work the restoration of the rights to hold public office or the right of suffrage, unless such rights be expressly restored by the terms of the pardon." On the other hand, amnesty looks backward and abolishes and puts into oblivion the offense itself; it so overlooks and obliterates the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense. (Barrioquinto, *et al.* vs. Fernandez, 82 Phil. 642, 646-647)

Thus -

(a) Pardon does not alter the fact that the accused is a *recidivist,* because it produces the extinction only of the personal effects of the penalty. (U.S. vs. Sotelo, 28 Phil. 147, 160)

(b) Amnesty makes an ex-convict *no longer a recidivist,* because it obliterates the last vestige of the crime. (U.S. vs. Francisco, 10 Phil. 185, 187)

4. Both do not extinguish the civil liability of the offender. (Art. 113)

5. Pardon, being a private act of the President, must be pleaded and proved by the person pardoned; while amnesty being by Proclamation of the Chief Executive with the concurrence of Congress, is a public act of which the courts should take judicial notice. (Barrioquinto, *et al.* vs. Fernandez, *supra)*

By prescription of crime and by prescription of penalty.

By prescription, the State or the People loses the right to prosecute the crime or to demand the service of the penalty imposed. (Santos vs. Superintendent, 55 Phil. 345)

Definitions.

Prescription ofthe crime is the forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain time.

Prescription of the penalty is the loss or forfeiture of the right of the Government to *execute* the *final sentence* after the lapse of a certain time.

Two conditions necessary in prescription of penalty.

(a) That there be *final judgment.*

(b) That the period of time prescribed by law for its enforcement has elapsed.

By the marriage of the offended woman.

Marriage of the offender with the offended woman after the commission of any of the crimes of rape, seduction, abduction or acts of lasciviousness, as provided in Art. 344, must be contracted by the offender in good faith. Hence, marriage contracted only to avoid

criminal liability is devoid of legal effects. (People vs. Santiago, 51 Phil. 68, 70)

Art. 90. *Prescription of crimes.* — Crimes punishable by death, *reclusión perpetua or reclusión temporal* shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by *arresto mayor,* which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second, and third paragraphs of this article. *(As amended by Rep. Act No. 4661)*

Rep. Act No. 4661 not applicable to cases already filed in court prior to June 18, 1966.

The provision of this amendatory Act (reducing the prescriptive period of the crime of libel or other similar offenses, from two years to one year) shall not apply to cases of libel already filed in court at the time of approval of this amendatory Act. (Sec. 2, Rep. Act No. 4661, approved June 18, 1966)

In computing the period of prescription, the first day is to be excluded and the last day included.

Facts: The accused committed slight physical injuries on May 28, 1953. An information was filed on July 27, 1953. This crime, be-

ing a light offense, prescribes in two months according to Art. 90. The Municipal Court sustained the motion to quash and dismissed the case, holding that the information was filed on the 61st day, not on the 60th day from May 28, 1953, "the day on which the crime is discovered by the offended party."

Held: The information should be considered as filed on the 60th day. In the computation of a period of time within which an act is to be done, the law in this jurisdiction has always directed that the *first day* be *excluded* and the last included. (See Art. 13, Civil Code.)

A month is computed as the regular 30-day month. The running of the prescriptive period should commence *from the day following* the day on which the crime was committed. (People vs. Del Rosario, 97 Phil. 67, 70)

But as regards the month of February of a *leap year,* February 28 and 29 should be counted as separate days in computing periods of prescription. (Namarco vs. Tuazon, 29 SCRA 70, cited in People vs. Ramos, No. L-25644, May 9, 1978, 83 SCRA 1, 13)

Thus, where the prescriptive period was supposed to commence on December 21, 1955, the filing of the action on December 21, 1965, was done after the ten-year period had elapsed — since 1960 and 1964 were both leap years, and the case was thus filed two (2) days too late.

Rule where the last day of the prescriptive period falls on a Sunday or legal holiday.

Where the last day of the prescriptive period for filing an information falls on a Sunday or legal holiday, the information can no longer be filed on the next day as the crime has already prescribed. (Yapdiangco vs. Buencamino, No. L-28841, June 24, 1983, 122 SCRA 713)

Prescription of oral defamation and slander by deed.

As to the prescription of oral defamation and slander by deed, distinction should be made between simple and grave slander. Simple slander prescribes in two months. Grave slander prescribes in six months. (People vs. Maceda, 73 Phil. 679, 681)

Crimes punishable by *arresto menor* or a fine not exceeding P200 prescribe in two months.

The lower court ruled that the offense charged was a light felony under par. 3 of Art. 9 of the Revised Penal Code, which, as provided in Art. 90, prescribes in two months. The Solicitor General cites Art. 26 of the same Code and contends that inasmuch as the penalty imposable under Art. 195 of the Code is *arresto menor,* or a fine not exceeding 200 pesos, then a fine of 200 pesos, imposable as a single or as an alternative penalty, may be considered as a correctional penalty and so under Art. 90, the offense charged prescribes in ten years and not two months. This Court has already ruled that a violation of Art. 195 of the Revised Penal Code, punishable with *arresto menor* or a fine not exceeding ₱200.00 is a light felony under Art. 9 of said Code and prescribes in two months, according to Art. 90, par. 6, of the same Code. (People vs. Canson, 101 Phil. 537, 538-539, citing People vs. Yu Hai, 99 Phil. 725, and People vs. Aquino, 99 Phil. 1059)

Two months in Art. 90, regarding the prescriptive period for light felonies, means 60 days. (People vs. Del Rosario, 97 Phil. 67, 71)

Penalty for attempted bribery is *destierro,* which prescribes in 10 years, being a correctional penalty.

The period of prescription of the offense of attempted bribery, penalized with *destierro,* is 10 years according to Article 90, for the reason that *destierro* is classified as a correctional penalty under Art. 25. (Dalao vs. Geronimo, 92 Phil. 1042, 1043)

Prescription of crimes punishable by fines.

Fines are also classified as afflictive, correctional, or light penalty. (Art. 26)

The crimes punishable by fines shall prescribe in 15 years, if the fine is afflictive; or in 10 years, if it is correctional; or in two months, if the fine is light. The subsidiary penalty for nonpayment of the fine should not be considered in determining the period of prescription of such crimes. (People vs. Basalo, 101 Phil. 57, 61-62)

Note: Since light felony is specifically defined in Art. 9 as an infraction of the law for the commission of which the penalty of *arresto menor* or a fine not exceeding P200,

or both, is provided, a fine of P200 provided for a light felony should not be considered correctional.

When the penalty is a compound one, the highest penalty is the basis of the application of the rules in Art. 90.

There is no merit in the contention that the crime of perjury, which is punishable by *arresto mayor* in its maximum period to *prision correccional* in its minimum period, has already prescribed. Where the penalty fixed by law is a compound one, the highest penalty shall, according to the last paragraph of Art. 90, be made the basis of the application of the rules contained therein. The penalty for the crime of perjury being a compound one, the higher of which is correctional, said crime prescribes in ten years. (People vs. Cruz, 108 Phil. 255, 259)

When fine is an alternative penalty higher than the other penalty which is by imprisonment — prescription of the crime is based on the fine.

Under Art. 319 of the Code, the penalty for the offense is *arresto mayor* or a fine double the value of the property involved. The accused sold 80 cavans of palay with a value of P320, which he had mortgaged to the PNB, without the knowledge and consent of the mortgagee.

Held: The period of prescription applicable is ten years, instead of five years. True, the offense under Art. 319 insofar as it is penalized with *arresto mayor* prescribes in five (5) years, but the fine equivalent to double the amount of the property involved may also be imposed as a penalty, and when said imposable penalty is either correctional or afflictive, it should be made the basis for determining the period of prescription. (People vs. Basalo, 101 Phil. 57, 61)

The ruling in the *Basalo* case applies even if the penalty is *arresto mayor* and fine.

When the penalty prescribed by the Code is *arresto mayor* and fine (Art. 316, par. 2), and the fine is afflictive (₱15,000 to ₱45,000), the fine should be the basis of the application of the rules in Art. 90. (People vs. Crisostomo, G.R. No. L-16945, Aug. 31, 1962, 5 SCRA 1048, 1052-1053)

Prescriptive periods of offenses punished under special laws and municipal ordinances.

Act No. 3763, amending Act No. 3326, provides:

1. Offenses punished only *by a fine* or by imprisonment for *not* more than *one month,* or both, prescribe after 1 year;
2. Offenses punished by imprisonment for *more than one month,* but *less than two years* — after 4 years;
3. Offenses punished by imprisonment for two years or more but less than six years — after 8 years;
4. Offenses punished by imprisonment for six years or more — after 12 years;
5. Offenses under Internal Revenue Law — after 5 years;
6. Violations of municipal ordinances — after 2 months;
7. Violations of the regulations or conditions of certificate of convenience by the Public Service Commission — after 2 months.

Act No. 3326 is not applicable where the special law provides for its own prescriptive period. (People vs. Ramos, No. L-25265, May 9, 1978, 83 SCRA 1, 12)

Prescription of violations penalized by special laws and ordinances — when it begins to run.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. (Sec. 2, Act No. 3326)

When interrupted.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Sec. 2, Act No. 3326)

Defense of prescription may be raised during the trial or during the appeal.

The rule in Section 10, Rule 113 of the Rules of Court (now Section 9, Rule 117 of the Revised Rules of Criminal Procedure) that

if the accused failed to move to quash before pleading, he must be deemed to have waived all objections, which are grounds of a motion to quash, cannot apply to the defense of prescription, which under Art. 89 of the Revised Penal Code extinguishes criminal liability. (People vs. Castro, 95 Phil. 462, 464-465)

Prescription, although not invoked in the trial, may be invoked on appeal. (People vs. Balagtas, 105 Phil. 1362-1363 [Unrep.])

The accused cannot be convicted of an offense lesser than that charged if the lesser offense had already prescribed at the time the information was filed.

Where an accused has been found to have committed a lesser offense includible within the offense charged, he cannot be convicted of the lesser offense, if it has already been prescribed. To hold otherwise would be to sanction the circumvention of the law on prescription by the simple expedient of accusing the defendant of the graver offense. (Francisco vs. CA, 122 SCRA 545)

People vs. Rarang
(C.A., 62 O.G. 6458)

Facts: Defendant Dominador Rarang was charged with the crime of grave slander in an information filed on October 19, 1962, for having allegedly proffered and uttered, on or about July 18, 1962, slanderous words and expressions against complainant Fausto Carlos, Jr., such as *"hindi kami natatakot sa inyo, mga tulisan."* He filed a motion to quash the information on the ground that the crime had prescribed because the offense alleged in the information, although designated as grave slander, should properly be classified as slight oral defamation which prescribes in two months; but said motion, opposed by the prosecution, was denied.

After hearing the evidence, the Court of First Instance of Manila found that "there is evidence beyond reasonable doubt that the herein accused slandered the complainant, as established by the prosecution, the said offense, however, being slight in nature as it arose from the heat of anger, the same being defined and penalized under Article 358 of the Revised Penal Code," but instead of dismissing the case, the Court sentenced the defendant to pay a fine of ₱50.00 with subsidiary imprisonment in case of insolvency, and to pay the costs.

Held: The accused cannot be convicted of the offense of slight oral defamation necessarily included in the offense of grave slander charged

in the information, where the lesser offense had already prescribed at the time the information was filed.

Prescription does not divest court of jurisdiction; it is a ground for acquittal of the accused.

When there is a plea of prescription by the defense and the same appears from the allegation of the information or is established, the court must exercise jurisdiction, not inhibit itself, holding the action to have prescribed and absolving the defendant. (Santos vs. Superintendent, 55 Phil. 345, 349)

Art. 91. *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

Outline of the provisions:

1. The *period of prescription* commences to run *from the day* on which the *crime is discovered* by the offended party, the authorities or their agents.
2. It is *interrupted* by the filing of the complaint or information.
3. It commences to run again when such proceedings *terminate without* the accused being convicted or acquitted or are *unjustifiably* stopped for any reason not imputable to him.
4. The term of prescription shall *not run* when the offender is *absent* from the Philippines.

Illustration of rules Nos. 1, 2 and 3.

A committed serious oral defamation against K in March, 1935. As K came to know of the act complained of only on March 4, 1936, K filed the complaint on that date.

Because his official duties needed him to be in Mindanao, K was not able to attend the hearing of the case. *Upon motion of defendant* A, the case was dismissed on January 21, 1937, without prejudice to the fiscal filing again the same action.

On February 13, 1937, the case was revived by the fiscal by filing a new information. *Serious oral defamation* prescribes in 6 months.

From what date must the six-month period be counted?

It must be counted from January 21, 1937. (People vs. Aquino, 68 Phil. 588, 590)

It cannot be counted from March, 1935, when the crime was committed, because it was discovered by the offended party only on March 4, 1936, and the running of the period of prescription stopped on that date by the filing of the complaint in court. Hence, it must be counted from January 21, 1937, because when the case was dismissed on that date, the period of prescription commenced to run again. Note that the proceedings terminated without the accused being convicted or acquitted.

The period of prescription commences to run from the date of commission of crime if it is known at the time of its commission.

Thus, if there is nothing that was concealed or needed to be discovered, because the entire series of transactions was by public instruments, duly recorded, the crime of estafa committed in connection with said transactions was known to the offended party when it was committed and the period of prescription commenced to run from the date of its commission. (People vs. Dinsay, C.A., 40 O.G., 12th Supp., 50)

The offended party had constructive notice of the forgery after the deed of sale, where his signature had been falsified, was registered in the Office of the Register of Deeds on August 26, 1948. (Cabral vs. Puno, No. L-41692, April 30, 1976, 70 SCRA 606, 609)

From the date of commission or from the date of discovery.

The period of prescription of crime *commences* to run from the commission of the offense or its *discovery,* if the commission of the same was unknown. (People vs. Tamayo, 40 O.G. 2313)

The period of prescription for the offense of failure to register with the SSS shall begin from the day of the discovery of the violation if this was not known at the time of its commission. A contrary view would be dangerous as the successful concealment of an offense during the period fixed for its prescription would be the very means by which the offender may escape punishment. (People vs. Monteiro, G.R. No. 49454, Dec. 21, 1990, 192 SCRA 548, 551)

It is discovery of crime, not discovery of offender.

The discovery of the crime should not be confused with the discovery of the offender. The fact that the culprit is unknown will not prevent the period of prescription from commencing to run.

It is not necessary that the accused be arrested. (People vs. Joson, 46 Phil. 380, 384)

Period of prescription of continuing crime never runs.

Facts: The accused was charged with violation of a municipal ordinance in that he constructed dikes in navigable waterways (river and creek) of the public domain without authorization from the Secretary of Public Works and Communications. The dikes were constructed in 1939 while the case was filed in 1947. Did the crime prescribe?

Held: The prescriptive period of continuing crime, *cannot begin* to run because there could be no termination of continuity and the crime does not end. The case would have been different had the information alleged that the dikes existed until such date obstructing the course of the streams, because the crime ended on that date. (Arches vs. Bellasillo, 81 Phil. 190, 192)

The crime is discovered by (1) the offended party, (2) the authorities or (3) their agents.

A saw the killing with treachery of B by C. After the commission of the crime, C threw the dead body of B into the river. The dead body

of B was never seen again or found. A was neither an authority nor an agent of an authority, nor a relative of B. For 25 years, A kept silent as to what he witnessed. After 25 years, A revealed to the authorities that C murdered B.

May C be prosecuted for murder even if 25 years already elapsed?

Yes, because the period of prescription did not commence to run. The commission of the crime was known only to A, who was not the offended party, an authority or an agent of an authority. It was discovered by the authorities only when A revealed to them the commission of the crime.

Period of prescription was interrupted when preliminary examination was made by municipal mayor but accused could not be arrested because he was in hiding.

The accused killed a man on June 19, 1911. The municipal president, who began the preliminary investigation because the justice of the peace was absent, issued a warrant of arrest. The accused could not be arrested because they fled to an unknown place. The information for homicide was filed on June 29, 1927. Accused Isidro Parao was captured in July, 1927. Did the offense prescribe?

Held: No. The preliminary investigation conducted by the municipal president, in the absence of the justice of the peace or auxiliary justice of the peace, partakes of the nature of a judicial proceeding. Judicial proceedings having been taken against the accused and his arrest having been ordered, which could not be carried into effect on account of his default, the crime has not prescribed. (People vs. Parao, 52 Phil. 712, 715)

The crime of homicide prescribed in 15 years under the old Penal Code. The proceedings in this case were stopped for reasons imputable to the accused, that is, they fled to an unknown place, making it difficult to arrest them for further proceedings.

Filing of complaint with the prosecutor's office interrupts running of period of prescription of offense charged.

Section 1, Rule 110, of the Revised Rules of Criminal Procedure provides:

"SEC. 1. *Institution of criminal actions.* — Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to Section 1 of Rule 112, by filing the complaint with the proper officer for the purposes of conducting the requisite preliminary investigation;

(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The institution of the criminal action shall *interrupt* the period of prescription of the offense charged unless otherwise provided in special laws." (Emphasis supplied.)

The filing of the complaint in the municipal court, even if it be merely for purposes of preliminary examination or investigation, interrupts the period of prescription.

In view of this diversity of precedents, and in order to provide guidance for Bench and Bar, this Court has re-examined the question and, after mature consideration, has arrived at the conclusion that the true doctrine is, and should be, the one established by the decisions holding that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed can not try the case on its merits. Several reasons buttress this conclusion: first, the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense

may do on his part to initiate the prosecution is to file the requisite complaint.

And it is no argument that Article 91 also expresses that the interrupted prescription "shall commence to run again when such proceedings terminate without the accused being convicted or acquitted," thereby indicating that the court in which the complaint or information is filed must have power to acquit or convict the accused.

Precisely, the trial on the merits usually terminates in conviction or acquittal, not otherwise. But it is in the court conducting a preliminary investigation where the proceedings may terminate without conviction or acquittal, if the court should discharge the accused because no *prima facie* case has been shown.

Considering the foregoing reasons, the Court hereby overrules the doctrine of the cases of *People vs. Del Rosario,* L-15140, December 29, 1960, and *People vs. Coquia,* L-15456, promulgated June 29, 1963. (People vs. Olarte, No. L-22465, Feb. 28, 1967, 19 SCRA 494, 500-501)

The complaint or information that will interrupt the period of prescription must be the proper information or complaint corresponding to the offense.

On April 1, 1959, Felipe Abuy was charged in the Municipal Court of Zamboanga City with the crime of trespass to dwelling committed against Ruperto Carpio. Upon motion of the prosecution, the case was dismissed on the ground that the evidence so far presented would not sustain accused's conviction. Subsequently, on Nov. 13, 1959, Abuy was charged before the same court with the crime of unjust vexation committed on the person of Michaela de Magadia. Abuy filed a motion to quash the information on the ground of prescription. The court sustained the motion.

The complaint or information that will interrupt the period must be the proper information or complaint corresponding to the offense. Here, the first information was for trespass to dwelling, the elements of which are entirely different from the elements of the offense of unjust vexation. There is nothing to show that the two offenses are related to each other. Consequently, the filing of one does not interrupt the prescriptive period as to the other. (People vs. Abuy, G.R. No. L-17616, May 30, 1962, 5 SCRA 222, 226-227)

Effect of filing amended complaint or information upon period of prescription.

If the original complaint or information is filed within the prescriptive period and the amendment was made after said period, a distinction should be made between a new and different act complained of and mere correction or new specifications to amplify and give greater precision to the allegations in support of the cause originally presented.

If it is merely a correction of a defect, the date of the *original* complaint or information should be considered. (LTB vs. Ramos, G.R. No. 41399, Aug. 9, 1934)

The filing of the information in the court of Batangas for estafa, even if erroneous, because it had no territorial jurisdiction over the offense charged, tolls the running of the prescriptive period of the crime, since the jurisdiction of a court is determined in criminal cases by the allegations of the complaint or information, and not by the result of proof.

In a case, respondent judge, in sustaining the ground of prescription, ruled that there was no interruption of the prescriptive period during the pendency of the case in his court, because it had no territorial jurisdiction over the offense charged, and that "[t]he proceedings contemplated by Article 91 are proceedings which are valid and before a competent court."

Held: Settled is the rule that the jurisdiction of a court is determined in criminal cases by the allegations of the complaint or information, and not by the result of proof. It follows that the Batangas court was vested with lawful jurisdiction over the criminal complaint filed with it, which expressly alleged that the offense was committed "in the Municipality of Batangas, Province of Batangas," and that the proceedings therein were valid and before a competent court, until the same court issued its order, dismissing the case and declaring itself without territorial jurisdiction on the basis of the evidence presented to it by both the prosecution and the accused. (People vs. Galano, No. L-42925, Jan. 31, 1977, 75 SCRA 193, 198)

"Proceedings terminate without the accused being convicted or acquitted."

In the case of *People vs. Aquino,* 68 Phil. 588, 590, when the case was dismissed upon petition of accused Aquino, the proceeding terminated without the accused being convicted or acquitted. The period of prescription commenced to run again.

Suppose, the case was dismissed without the consent or over the objection of the accused who had already been arraigned?

In this case, the dismissal is final. A cannot be prosecuted any more for the same offense, even within the prescriptive period, on the ground of double jeopardy.

The termination of a criminal case contemplated in Article 91 on prescription of crimes refers to a termination that is final as to amount to a jeopardy that would bar a subsequent prosecution.

One Lauron was charged with the crime of grave oral defamation which was discovered on December 15, 1973. The information was filed in court on January 24, 1974. On March 14, 1974, the court, on Lauron's motion to dismiss, issued an order of dismissal, on the ground that the preliminary investigation conducted by the fiscal did not comply with the requirements of Presidential Decree No. 77. Lauron had not been arraigned. The case was refiled in court under a new information on March 3, 1975. The crime of grave oral defamation prescribes in six months.

Said the Supreme Court:

> "We hold that the termination of a criminal case contemplated in Article 91 refers to a termination that is final, in the sense of being beyond reconsideration, as in the cases of an unappealed conviction or an acquittal."

Comment: Article 91 provides that the period of prescription (of offenses) "shall commence to run again when such proceedings (the filing of the complaint or information) terminate *without the accused being convicted or acquitted.*"(italics supplied)

If the "termination x x x refers to a termination that is final, x x x as in the cases of an unappealed conviction or an acquittal," there

would be no occasion to speak of prescription of offenses, no matter how long a time has elapsed, because the accused is already convicted (and he does not appeal) or acquitted.

Article 91 may be considered only when the accused, who invokes it, is being *charged with* and *prosecuted for* an offense that allegedly has already prescribed. If the proceedings, which began with the filing of the complaint or information, terminate in the conviction of the accused or in his acquittal (the termination being final), how may the question of prescription arise? Or, what period of prescription "shall commence to run again?"

This is why the law says, "without the accused being convicted or acquitted." In such case, the accused may still be prosecuted, but with the previous termination of the proceedings, the question of prescription may still arise, because the period of prescription ran again. At the time of the new prosecution, the crime may have already prescribed.

"Or are unjustifiably stopped for any reason not imputable to him."

Thus, if the proceedings are stopped for a reason *imputable to the accused,* the period of prescription *does not commence* to run again.

Example:

When the accused has evaded arrest and the case has to be archived by the court, the proceedings are stopped because of the fault of the accused. The case cannot be tried if he is not present.

(See also the case of *People vs. Parao,* 52 Phil. 712)

The term of prescription does not run when the offender is absent from the Philippines.

A published a libel in a newspaper and immediately left for Hongkong where he remained for three years. Later, he returned to the Philippines. Can A be prosecuted for libel upon his return to his country?

Yes, because the crime of libel did not prescribe. A was absent from the Philippines during the period when the crime would have prescribed.

Prescription of election offenses — (1) if discovery of offense is incidental to judicial proceedings, prescription begins when such proceeding terminates; otherwise, (2) from date of commission of offense.

If the discovery of the offense is incidental to judicial proceedings in election contest, prescription begins when such proceedings terminate.

But, if the falsification committed by the inspectors in connection with the counting of the votes and the preparation of election returns was known to the protestants and their election watchers before the filing of the election protests, the period of prescription began from the date of the commission of the offense. (People vs. Cariño, 56 Phil. 109, 114)

Art. 91 may apply when a special law, while providing a prescriptive period, does not prescribe any rule for the application of that period.

Thus, in a case *where the accused is prosecuted for violation of the Usury Law,* there being no rule in Act No. 4763 regarding the enforcement of the period of prescription established thereby, pursuant to Article 10 of the Revised Penal Code, *the rule provided for in Article 91 of said Code shall be applied,* according to which the period of prescription of crimes shall commence to run from the time of the perpetration of the offense and in case the commission of the same is unknown, from the day on which the crime is discovered by the offended party, the authorities or their agents. (People vs. Tamayo, C.A., 40 O.G. 2313)

Prescription of the offense of false testimony — from time principal case is finally decided.

With regard to the crime of *false testimony* against the defendant (Art. 180), considering that the penalties provided therefor are made to depend upon the conviction or acquittal of the defendant in the principal case, the act of testifying falsely does not therefore constitute an actionable offense until the principal case is finally decided. And before an act becomes a punishable offense, it cannot possibly be discovered as such by the offended party, the authorities or their agents. (People vs. Maneja, 72 Phil. 256, 257-258)

This is true only when the false testimony is against the defendant. As regards false testimony in favor of the defendant, there is a specific penalty which does not depend on the conviction or acquittal of the defendant. (Art. 181)

Art. 92. *When and how penalties prescribe.* — The penalties imposed by final sentence prescribe as follows:

1. Death and *reclusion perpetua,* in twenty years;

2. Other afflictive penalties, in fifteen years;

3. Correctional penalties, in ten years, with the exception of the penalty of *arresto mayor,* which prescribes in five years;

4. Light penalties, in one year.

The penalties must be imposed by final sentence.

Note the first sentence of this article which specifically requires that the penalties must be "imposed by *final sentence."* Hence, if the convict appealed and thereafter fled to the mountains, the penalty imposed upon him would never prescribe, because pending the appeal, the sentence is not final.

In prescription of crimes, it is the penalty prescribed by law that should be considered; in prescription of penalties, it is the penalty imposed that should be considered.

A committed the crime of falsification punishable by *prisión mayor.* Twelve years elapsed since the crime was discovered by the authorities. Then, the fiscal filed an information for falsification. A was arrested and prosecuted. During the trial, A proved two mitigating circumstances without any aggravating circumstance. Did the crime prescribe?

No, because although the proper penalty to be imposed is *prision correccional,* the penalty one degree lower, in view of the privileged mitigating circumstance (Art. 64, par. 5), is the penalty of *prision mayor* which is prescribed by the law for the crime that should be

considered. Art. 90 uses the words, *"Crimes punishable by."* Hence, the crime did not prescribe, because the time that elapsed is not more than 15 years.

But suppose that in the same problem, A commenced to serve the sentence and after a month, he escaped and remained at large for twelve years, in case he is captured thereafter, can he be required to serve the remaining period of his sentence? No, because the penalty of *prisión correccional* already prescribed. Art. 92 uses the words "the penalties *imposed* by final sentence."

Fine as a light penalty.

Under Art. 26, a fine of less than ₱200 is a light penalty, and if not less than ₱200, it is a *correctional* penalty. Under Art. 9, par. 3, a light felony is punishable by a light penalty, whose fine does *not exceed* ₱200. Under Art. 90, light offenses prescribe in two months. If the fine imposed be exactly ₱200, should it prescribe in two months as a light penalty or in ten years as *correctional* penalty?

In the case of *People vs. Hu Hai @ Haya,* 99 Phil. 725, 727, the Supreme Court held that where the question at issue is the *prescription of a crime* and not the prescription of a penalty, *Art. 9 should prevail over Art. 26.* Art. 26 has nothing to do with the definition of offenses but merely classifies fine when imposed as a principal penalty.

Illustrations:

1. A committed a crime for which the law provides a fine of ₱200 as a penalty. What is the prescriptive period of the crime? Two months. The issue here is not the prescription of penalty, because there is no final sentence and A has not evaded the sentence. Art. 9 shall prevail. Since the fine does not exceed ₱200, the crime committed is a light felony.

2. But suppose that A was convicted, he could not pay the fine of ₱200; and was made to serve subsidiary imprisonment. Then, while serving subsidiary imprisonment, he escaped, thereby evading the service of his sentence. What is the prescriptive period? Ten years. The issue here is prescription of penalty. Art. 26 prevails. Since the fine is not less than P200, it is a *correctional* penalty.

The subsidiary penalty for nonpayment of the fine is immaterial.

A fine of ₱525, being a *correctional* penalty, prescribes in 10 years. That the subsidiary imprisonment could not exceed six months is immaterial. (People vs. Salazar, 98 Phil. 663, 665)

Art. 93. *Computation of the prescription of penalties.* — The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

Outline of the provisions:

1. The period of prescription of penalties commences to run *from the date* when the *culprit evaded the service* of his sentence.
2. It is *interrupted* if the convict —
   (1) Gives himself up,
   (2) Be captured,
   (3) Goes to a foreign country with which we have no extradition treaty, or
   (4) Commits another crime *before* the expiration of the period of prescription.

   The period of prescription of penalties shall commence to run again when the convict escapes again, after having been captured and returned to prison.

Elements:

1. That the penalty is imposed by *final* sentence;
2. That the convict *evaded* the service of the sentence by escaping during the term of his sentence;

3. That the convict who escaped from prison *has not* given himself up, or been captured, or gone to a foreign country with which we have no extradition treaty, or committed another crime;

4. That the penalty has prescribed, because of the lapse of time from the date of the evasion of the service of the sentence by the convict.

Evasion of the service of the sentence is an essential element of prescription of penalties.

According to Art. 93, the period of prescription of penalties commences to run from the date when the culprit should evade the service of his sentence.

Infante vs. Warden
(92 Phil. 310)

Facts: In this case, the accused was convicted of murder and sentenced to 17 years, 4 months and 1 day of *reclusidn temporal.* After serving 15 years, 7 months and 11 days, on March 6, 1939, he was granted a conditional pardon. The condition of his pardon was that he should not commit any crime in the future. On April 25, 1949, he was found guilty of driving without license. He was committed to prison for violation of said conditional pardon. Between March 6, 1939, and April 25, 1949, more than 10 years elapsed.

The accused interposed the defense of prescription, contending that since the remitted portion of his original penalty was less than 6 years (like *prisióncorreccional),* the prescriptive period of that penalty was only 10 years.

Held: The defense of prescription will not prosper because there was no evasion of the service of the sentence. There was no evasion of the service of the sentence in this case, because such evasion presupposes escaping during the service of the sentence consisting in deprivation of liberty.

Period of prescription that ran during the time the convict evaded service of sentence is not forfeited upon his capture.

The period of prescription that ran during the evasion is *not forfeited,* so that if the culprit is captured and evades again the service of his sentence, the period of prescription that has run in his favor should be taken into account. (Albert)

Example:

A committed a crime punishable by *prision correccional.* He was convicted after trial. While serving sentence for one month, A escaped. He remained at large for 5 years. Then, he was captured. After staying in prison for two months, he escaped again and remained at large for 6 years. In this case, if captured again, A cannot be required to serve the remaining portion of his sentence, because the penalty of *prision correccional* prescribes in ten years. On two occasions, A evaded the service of his sentence for a total of eleven years.

"Should go to some foreign country with which this Government has no extradition treaty."

Suppose the Government has extradition treaty with the country to which the offender escaped, but the crime committed is not included in the treaty, will that fact interrupt the running of the prescriptive period?

It is believed that it would interrupt the running of the prescriptive period.

"Should commit another crime before the expiration of the period of prescription."

Thus, if A, sentenced to suffer 4 months and 11 days of *arresto mayor,* escaped from jail and remained at large for 4 years, 11 months and 28 days, but on the next day he committed theft and was arrested 6 months after, A can be required to serve the remaining period of his sentence of 4 months and 11 days. The reason is that A committed a crime (theft) *before* the expiration of five years, the period of prescription of the penalty of *arresto mayor.*

Evading the service of the sentence is not committing a crime before the expiration of the period of prescription of penalties.

It has been asked whether or not the evasion of the service of the sentence, being in itself a crime (Art. 157), should interrupt the running of the period of prescription of penalties.

The clause "should commit another crime before the expiration of the period of prescription" refers to crime committed when the

period of prescription has already commenced to run. On the other hand, Art. 93 specifically provides that "the period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence."

Hence, this evasion of the service of the sentence, which is a requisite in the prescription of penalties, must necessarily take place *before* the running of the period of prescription and cannot interrupt it.

Acceptance of conditional pardon interrupts the prescriptive period.

The *acceptance* of a conditional pardon also *interrupts* the prescriptive period, likening such acceptance to the case of one who flees from this jurisdiction. (People vs. Puntillas, G.R. No. 45269, June 15, 1938)

Reason why evasion of service of sentence is taken in favor of the convict in prescription of penalties.

"If a convict under confinement, at the risk of being killed, succeeds in breaking jail and also succeeds in evading re-arrest for a certain period of time which by no means is short, despite the efforts of all the instrumentalities of the Government including sometimes the setting of a prize or reward on his head, which thereby enlists the aid of the citizenry, the law calls off the search for him, and condones the penalty. But during that period of prescription the escaped convict lives a life of a hunted animal, hiding mostly in the mountains and forests in constant mortal fear of being caught. His life far from being happy, comfortable and peaceful is reduced to a mere existence filled with fear, discomfort, loneliness and misery. As the distinguished penal law commentator Viada said, the convict who evades sentence is sometimes sufficiently punished by his voluntary and self-imposed banishment, and at times, that voluntary exile is more grievous than the sentence he was trying to avoid. (Viada y Villaseca, Codigo Penal, Vol. III, p. 41, 5th ed.) And all the time he has to utilize every ingenuity and means to outwit the Government agencies bent on recapturing him. For all this, the Government extends to him a sort of condonation or amnesty." (Infante vs. Provincial Warden, 92 Phil. 310, 325, Concurring and Dissenting Opinion of Montemayor, *J.)*

Chapter Two

PARTIAL EXTINCTION OF CRIMINAL LIABILITY

Art. 94. ***Partial extinction of criminal liability.*** **— Criminal liability is extinguished partially:**

1. By conditional pardon;

2. By commutation of the sentence; and

3. For good conduct allowances which the culprit may earn while he is serving his sentence.

Nature of conditional pardon.

Conditional pardon delivered and accepted is considered a *contract* between the sovereign power of the executive and the convict that the former will release the latter upon compliance with the condition.

Usual condition imposed upon the convict in conditional pardon.

In conditional pardon, the condition usually imposed upon the convict is that "he shall not again violate any of the penal laws of the Philippines."

Commutation of sentence.

It is a change of the decision of the court made by the Chief Executive by reducing the degree of the penalty inflicted upon the convict, or by decreasing the length of the imprisonment or the amount of the fine.

Specific cases where commutation is provided for by the Code.

1. When the convict sentenced to death is over 70 years of age. (Art. 83)
2. When eight justices of the Supreme Court fail to reach a decision for the affirmance of the death penalty.

In either case, the degree of the penalty is reduced from death to *reclusion perpetua.*

In commutation of sentence, *consent* of the offender *is not necessary.* The public welfare, not his consent, determines what shall be done. (Biddle vs. Perovich, 274 U.S. 480)

For good conduct allowances.

Allowances for good conduct are deductions from the term of the sentence for good behavior. (Art. 97)

This is different from that provided in Art. 29 which is an *extraordinary* reduction of full time or four-fifths of the preventive imprisonment from the term of the sentence.

A prisoner is also entitled to special time allowance *for loyalty.* (Art. 98) A deduction of 1/5 of the period of his sentence is granted to a loyal prisoner. (See Art. 158.)

Parole should be added as No. 4 in the enumeration of causes of partial extinction of criminal liability.

The parole granted to a convict by the Parole Board should be added. A parole may be granted to a prisoner after serving the minimum penalty under the Indeterminate Sentence Law.

Definition of parole.

Parole consists in the *suspension* of the sentence of a convict after serving the minimum term of the indeterminate penalty, without granting a pardon, prescribing the terms upon which the sentence shall be suspended.

If the convict fails to observe the conditions of the parole, the Board of Pardons and Parole is authorized to direct his arrest and

return to custody and thereafter to carry out his sentence without deduction of the time that has elapsed between the date of the parole and the subsequent arrest.

Is conviction necessary to revoke parole?

The mere commission, not conviction by the court, of any crime is sufficient to warrant parolee's arrest and reincarceration. (Guevara)

In a petition for *habeas corpus*, it was contended that the recommitment order was premature, because it came down before his convictions of the series of estafa committed by him during the period of the parole. It was held that it was now rather academic, even assuming that final conviction is necessary in order to constitute a violation of the condition of the parole. (Fortunato vs. Director, 80 Phil. 187, 189)

Conditional pardon distinguished from parole.

1. Conditional pardon, which may be given at any time after final judgment, is granted by the Chief Executive under the provisions of the Administrative Code; parole, which may be given after the prisoner has served the minimum penalty, is granted by the Board of Pardons and Parole under the provision of the Indeterminate Sentence Law.

2. For violation of the conditional pardon, the convict may be ordered rearrested or reincarcerated by the Chief Executive, or may be prosecuted under Art. 159 of the Code; for violation of the terms of the parole, the convict cannot be prosecuted under Art. 159. He can be rearrested and reincarcerated to serve the unserved portion of his original penalty.

Art. 95. *Obligation incurred by a person granted conditional pardon.* — Any person who has been granted conditional pardon shall incur the obligation of complying strictly with the conditions imposed therein, otherwise, his noncompliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of Article 159 shall be applied to him.

Outline of the provisions:

1. He must comply strictly with the conditions imposed in the pardon.
2. Failure to comply with the conditions shall result in the revocation of the pardon. Under Sec. 64(i), R.A.C., the Chief Executive may order his arrest and reincarceration. (People vs. Aglahi, 61 Phil. 233, 235)
3. He becomes liable under Art. 159. This is the judicial remedy.

Condition of pardon is limited to the unserved portion of the sentence, unless an intention to extend it beyond that time is manifest.

The duration of the conditions subsequent, annexed to a pardon, would be limited to the period of the prisoner's sentence, unless an intention to extend it beyond the term of his sentence was manifest from the nature of the condition or the language in which it was imposed. (Infante vs. Warden, 92 Phil. 310, 314)

Illustration:

Thus, if a convict was sentenced to 12 years and 1 day of *reclusión temporal*, as the maximum term of the indeterminate penalty, and after serving 5 years he was granted a conditional pardon, the condition being that he should not commit any crime in the future, that condition must be complied with by him until the end of the 7 years from the grant of the conditional pardon, it being the unserved portion of his sentence. If he commits a crime *after* the expiration of the 7 years, he is not *liable* for violation of the conditional pardon. The condition of the pardon is no longer operative when he commits a new offense.

But if he commits a crime *before* the expiration of the 7 years, he is *liable* for violation of the conditional pardon.

Art. 96. *Effect of commutation of sentence.*— The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.

Art. 97. ***Allowance for good conduct.*** **— The good conduct of any prisoner in any penal institution shall entitle him to the following deductions from the period of his sentence:**

1. During the first two years of imprisonment, he shall be allowed a deduction of five days for each month of good behavior;

2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of eight days for each month of good behavior;

3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of ten days for each month of good behavior; and

4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of fifteen days for each month of good behavior.

Application of the provisions of Art. 97.

The release of appellee Tan by the provincial warden, after an imprisonment of only 2 years, 8 months and 21 days, was premature. Under paragraph No. 1, Article 97 of the Revised Penal Code, he may be allowed a deduction of five (5) days for each month of good behavior during his first two years of imprisonment, which would be 24 months multiplied by 5, or 120 days; under paragraph No. 2, he may be allowed a deduction of eight (8) days a month for the next three years. For the balance of eight (8) months, multiplied by 8, we have 64 days; so that the total credit for good behavior would be 184 days, equivalent to 6 months and 4 days. The prisoner's actual confinement of 2 years, 8 months and 21 days, plus his possible total credit of 6 months and 4 days, would give the result of 3 years, 2 months and 25 days. Since the maximum term of his sentence is 4 years and 2 months, appellee Tan has an unserved portion of 11 months and 5 days. (People vs. Tan, No. L-21805, Feb. 25, 1967, 19 SCRA 433, 437)

No allowance for good conduct while prisoner is released under conditional pardon.

The reason is that the good conduct time allowance is given in consideration of the good conduct observed by the prisoner *while*

serving his sentence. In this case, the accused was enjoying liberty under a conditional pardon. He was not serving the remitted penalty in prison. (People vs. Martin, 68 Phil. 122, 125)

By a consideration of the terms of Article 97 alone, and also in conjunction with other parts of the Revised Penal Code, the phrase "any prisoner" in Article 97 thereof is to be regarded as referring only to a prisoner serving sentence. (Baking vs. Director of Prisons, No. L-30603, July 28, 1969, 28 SCRA 851, 860)

Art. 98. *Special time allowance for loyalty.* — A deduction of one fifth of the period of his sentence shall be granted to any prisoner who, having evaded the service of his sentence under the circumstances mentioned in Article 158 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe referred to in said article.

What is special time allowance for loyalty of prisoner?

It is a deduction of 1/5 of the period of the sentence of a prisoner who, having evaded the service of his sentence during the calamity or catastrophe mentioned in Art. 158, gives himself up to the authorities within 48 hours following the issuance of the proclamation by the President announcing the passing away of the calamity or catastrophe.

The deduction of one-fifth is based on the original sentence.

While this article mentions "the period of his sentence," it should be understood that the convict is to be credited for loyalty with 1/5 of his original sentence, not of the unexpired portion of his sentence.

Art. 158 provides for increased penalty.

Under Art. 158, a convict who evaded the service of his sentence by leaving the penal institution where he had been confined, on the occasion of disorder resulting from a conflagration, earthquake, explosion or similar catastrophe or during a mutiny in which he did

not participate, is liable to an increased penalty (1/5 of the time still remaining to be served — not to exceed 6 months), if he fails to give himself up to the authorities within forty-eight hours following the issuance of a proclamation by the Chief Executive announcing the passing away of the calamity.

Art. 99. *Who grants time allowance.* — Whenever lawfully justified, the Director of Prisons shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

The allowance for good conduct is not an automatic right. It must be granted by the Director of Prisons.

Allowances for good conduct once granted by the Director of Prisons *cannot be revoked by him.*

The authority to grant time allowance is exclusively vested in the Director.

There is no justification for the provincial warden's usurping the authority of the Director of Prisons in crediting the prisoner with good conduct time allowance. Such authority is exclusively vested in the Director. (People vs. Tan, G.R. No. L-21805, Feb. 25, 1967, 19 SCRA 433, 437)

Title Five
CIVIL LIABILITY

Chapter One
PERSONS CIVILLY LIABLE FOR FELONIES

As a general rule, an offense causes two classes of injuries:

1. *Social* injury, produced by the disturbance and alarm which are the outcome of the offense.

2 *Personal* injury, caused to the victim of the crime who may have suffered damage, either to his person, to his property, to his honor, or to her chastity.

The social injury is sought to be repaired through the imposition of the corresponding penalty; while the personal injury, through indemnity, which is civil in nature.

Art. 100. *Civil liability of a person guilty of felony.* — Every person criminally liable for a felony is also civilly liable.

Civil liability arising from offenses.

Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same. (Article 20, New Civil Code)

Civil obligations arising from criminal offenses shall be governed by the penal laws. (Article 1161, New Civil Code)

The civil liability arising from negligence under the Revised Penal Code is entirely separate and distinct from the responsibility for fault or negligence called a quasi-delict. (Article 2176, New Civil

Code) But the party claiming payment for the damage done cannot recover twice for the same act or omission of the defendant. (Article 2177, New Civil Code)

Thus, if A was convicted of serious physical injuries through negligence under the Revised Penal Code, and B, the injured party, was indemnified in the criminal case for the damages caused to him, the latter cannot recover damages in a separate civil action for the same act or omission of A.

Civil liability under the Revised Penal Code includes (1) restitution, (2) reparation of the damage caused, and (3) indemnification for consequential damages. (Article 104, Revised Penal Code)

Basis of civil liability.

Underlying the legal principle that a person who is criminally liable is also civilly liable is the view that from the standpoint of its effects, a crime has dual character: (1) as an offense against the state because of the disturbance of the social order; and (2) as an offense against the private person injured by the crime unless it involves the crime of treason, rebellion, espionage, contempt and others wherein no civil liability arises on the part of the offender either because there are no damages to be compensated or there is no private person injured by the crime. In the ultimate analysis, what gives rise to the civil liability is really the obligation of everyone to repair or to make whole the damage caused to another by reason of his act or omission, whether done intentionally or negligently and whether or not punishable by law. (Occena vs. Icamina, G.R. No. 82146, Jan. 22, 1990, 181 SCRA 328, 333)

Damages that may be recovered in criminal cases.

In crimes against property, *damages* based on the price of the thing and its special sentimental value to the injured party may be recovered, if the thing itself cannot be restored. (Article 106, in relation to Article 105, Revised Penal Code)

In crimes against persons, like the crime of physical injuries, the injured party is entitled to be paid for whatever he spent for the treatment of his wounds, doctor's fees, and for medicine, as well as the salary or wages unearned by him because of his inability to work due to his injuries.

Damages may also be recovered *for loss* or *impairment of earning capacity* in cases of temporary or permanent *personal injury.* (Article 2205, new Civil Code)

Moral damages may be recovered in a criminal offense resulting in physical injuries, in the crimes of seduction, abduction, rape or other lascivious acts, adultery or concubinage, illegal or arbitrary detention or arrest, illegal search, libel, slander or any other form of defamation, and in malicious prosecution. (Article 2219, new Civil Code)

Exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. (Article 2230, new Civil Code)

Damages for death caused by a crime have been raised to ₱50,000.00 (People vs. Ravelo, G.R. Nos. 78781-82, Oct. 15, 1992, 202 SCRA 655, 673 [Murder]; People vs. Velaga, Jr., G.R. No. 87202, July 23, 1991, 199 SCRA 518, 524 [Homicide]); and in addition:

(1) The defendant shall be liable *for the loss of the earning capacity* of the deceased, unless the deceased, on account of permanent physical disability not caused by the defendant, had no earning capacity;

(2) He shall be liable to give support *if the deceased was obliged to give support* under Article 291 of the new Civil Code, to one *not an heir* of the deceased;

(3) He shall pay *moral damages* for mental anguish to the spouse, legitimate and illegitimate descendants and ascendants. (Article 2206, New Civil Code)

But if there is no damage caused by the commission of the crime, the offender is not civilly liable.

Thus, if the felony committed could not or did not cause any damage to another, the offender is not civilly liable even if he is criminally liable for the felony committed.

Example: A slapped the face of the mayor who was then in the performance of his duty. Under Art. 148, the crime committed is direct assault. As the slapping did not cause any injury to the mayor, A is not civilly liable.

A person criminally liable for a felony is also civilly liable.

Every person criminally liable is also civilly liable. Civil liability arising from crimes *(ex delicto)* shall be governed by the penal laws, subject to the provisions of Arts. 29 to 35, 2176, 2177, and 2202, 2204, 2206, 2216, 2230, 2233, and 2234 (regulating damages) of the Civil Code and to the provisions of Rule 111, Revised Rules of Criminal Procedure.

Since a person criminally liable is also civilly liable, does his acquittal in a criminal case mean extinction of his civil liability?

The Revised Penal Code is silent on this point. But the Revised Rules of Criminal Procedure provide:

"The extinction of the penal action does not carry with it extinction of the civil. However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist." (Sec. 2, par. 4, Rule III, Revised Rules of Criminal Procedure)

Thus, the dismissal of the information or the criminal action does not affect the right of the offended party to *institute* or *continue* the civil action already instituted arising from the offense, because such dismissal or extinction of the penal action does not carry with it the extinction of the civil one. (People vs. Velez, 77 Phil. 1027) In this case, there was a pending separate civil action, arising out of the same offense, filed by the offended party against the same defendant.

Though the death of an accused-appellant during the pendency of an appeal extinguished his criminal liability, his civil liability survives. Extinction of criminal liability does not necessarily mean that the civil liability is also extinguished. Only the criminal liability, including the fine, which is pecuniary, but not civil, of the accused is extinguished by his death, but the civil liability remains. (Petralba vs. Sandiganbayan, G.R. No. 81337, Aug. 16, 1991, 200 SCRA 644, 649-650, citing People vs. Navoa, 132 SCRA 410 and People vs. Sendaydiego, 81 SCRA 120)

Civil liability may exist, although the accused is not held criminally liable, in the following cases:

1. *Acquittal on reasonable doubt.* — When the accused in a criminal prosecution is acquitted on the ground that his

guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. (Art. 29, Civil Code)

Award in judgment of acquittal.

The court may acquit an accused on reasonable doubt and still order payment of civil damages already proved in the same case without need for a separate civil action. The reason is the accused has been accorded due process. To require a separate civil action would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort and money on the part of all concerned. (Maximo vs. Gerochi, Jr., Nos. L-47994-97, Sept. 24, 1986, 144 SCRA 326, 329, citing Padilla vs. Court of Appeals [129 SCRA 558])

2. *Acquittal from a cause of nonimputability.* — The exemption from criminal liability in favor of an imbecile or insane person, and a person under fifteen years of age, or one over fifteen but under eighteen years of age, who has acted without discernment, and those acting under the compulsion of an irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury, does not include exemption from civil liability. (Art. 101, Revised Penal Code)

3. *Acquittal in the criminal action for negligence* does not preclude the offended party from filing a civil action to recover damages, based on the new theory that the act is a quasi-delict. (Art. 2177, Civil Code)

4. *When there is only civil responsibility.* — When the court finds and so states in its judgment that there is only civil responsibility, and not criminal responsibility, and that this finding is the cause of acquittal. (De Guzman vs. Alva, 51 O.G. 1311)

5. In cases of independent civil actions. (Arts. 31, 32, 33, and 34, Civil Code)

PROSECUTION OF CIVIL ACTION ARISING FROM CRIME

Provisions of the Revised Rules of Criminal Procedure (Rule 111) on the prosecution of civil action arising from offenses:

Institution of criminal and civil actions. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action. (Sec. l[a], 1st par.)

The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action shall be allowed. (Sec. l[b], 1st par.)

When civil action may proceed independently. — In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action. (Sec. 3)

When separate civil action is suspended. —

(a) After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been rendered in the criminal action;

(b) If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine

the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly. (Sec. 2)

Judgment in civil action not a bar. — A final judgment rendered in a civil action absolving the defendant from civil liability is not bar to a criminal action against the defendant for the same act or omission subject of the civil action. (Sec. 5)

Suspension by reason of prejudicial question. — A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (Sec. 6)

Exception to the rule that extinction of the criminal action does not extinguish civil action.

The civil action reserved by the complainant during the prosecution of the criminal action will be allowed after the termination of the criminal proceedings, only when he has the right thereto, that is to say, when the judgment rendered is one of conviction, or, in case the accused is acquitted, the complaint is based on some other fact or ground different from the criminal act. For instance, a defendant was charged with the crime of estafa thru falsification of commercial documents. The court acquitted him from the charge on the ground that money had been received or retained by him pursuant to an arrangement between the latter and the offended party, and that the liability of the defendant for the return of the amount so received arises from a civil contract, not from a criminal act, and may not be enforced in the criminal case. (People vs. Miranda, No. L-17389, Aug. 31, 1962, 5 SCRA 1067, 1068-1069)

Since the court acquitted the accused on the ground that the money had been received or retained by appellant pursuant to an arrangement between the latter and the offended party, in order to conceal the transaction from the other offended party, it was improper and unwarranted to impose a civil liability in the same criminal action. The liability of the defendant for the return of the amount so received

arises from a civil contract, not from a criminal act, and may not be enforced in the criminal case but in a separate civil action. (People vs. Miranda, *supra;* People vs. Pantig, 51 O.G. 5627)

In *People vs. Lagman,*70 O.G. 4671, where the complainant appealed, through her private prosecutor, from the decision of the lower court, acquitting the accused on the ground of reasonable doubt, the Court of Appeals held:

> "With respect to the award of damages in favor of the complainant, the rule is that in a criminal case, the accused is civilly liable only if he is found guilty. But not if he is declared innocent. In the case before us, the accused was acquitted of the crime charged. Therefore, the award of damages in favor of the complainant should be set aside."

The ruling is erroneous for two reasons: (1) under Article 29 of the new Civil Code, when the accused in a criminal prosecution is acquitted on the ground that his guilt was not proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted; and (2) according to Section 2(b), Rule 111 of the Rules of Court, extinction of the penal action does not carry with it extinction of the civil, and in that case the lower court did not make any declaration that the fact from which the civil may arise did not exist.

Commencement of criminal action not a condition precedent to the filing and prosecution of civil action arising from crime.

The Revised Rules of Criminal Procedure permit the institution of a civil action to demand civil responsibility arising from crime before the institution of the criminal prosecution.

A contrary doctrine would render the right of the injured party to indemnity a myth, and justice a farce, for the guilty party would be able to dispose of his property. (Alba vs. Acuña, 53 Phil. 380, 387)

But the civil action arising from crime cannot be instituted or prosecuted in the following cases:

1. After the criminal action has been commenced, the separate *civil action* arising therefrom *cannot be instituted* until final

judgment has been entered in the criminal action. (Sec. 2, Rule 111, Revised Rules of Criminal Procedure)

2. If the criminal action is filed after the said *civil action* has already been instituted, the latter *shall be suspended* in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the ciminal action. (Sec. 2[a], Rule 111, Revised Rules of Criminal Procedure)

The rule which requires the suspension of the civil case after the criminal action has been commenced, refers to the commencement of the criminal action in court and not to the mere filing of a complaint with the prosecuting officer. (Coquia, *et al.* vs. Cheong, *et al.*,[Unrep.] 103 Phil. 1170)

Judgment in the civil case already promulgated cannot be suspended by the filing of criminal action.

The provision of Section 2 of Rule 111, Rules of Court, that "after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted, and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered" does not contemplate the suspension of a *judgment already promulgated* in a civil action by the filing of a criminal complaint with the prosecution attorney charging the winning party with having introduced false documentary evidence. (See Tanda vs. Aldaya, 89 Phil. 497, 504)

Sec. 2 of Rule 111 applies only (1) when the claimant in the civil action is the offended party in the criminal action and (2) both cases arise from the same offense.

Section 2 of Rule 111, Rules of Court (now Revised Rules of Criminal Procedure), requiring the suspension of the civil action in view of the commencement of the criminal action applies only *when the claimant* in the civil action is the *same offended party* in *the criminal action* and *both cases arise from the same offense or transaction.* (See Belleza vs. Huntington, 89 Phil. 689, 695) (Sec. 3[b], now Sec. 2[a], of Rule 111, was Sec. 1 of Rule 107 then])

Thus, if in the civil case, the plaintiff is the accused in the criminal case and the defendant in that civil case is the offended party

in the criminal case, the counterclaim covering not only the sum of ₱24,000 advanced to the plaintiff to purchase jute bags but also the sum of ₱171,000 as damages which the defendant claims to have sustained, and the information in the criminal case being merely confined to the former sum (₱24,000) *the claimant (plaintiff) is not the offended party in the criminal case* and both cases do not arise from the same transaction. (Belleza vs. Huntington, *supra)*

The rule that a *civil action* shall be suspended until final judgment is rendered in criminal case, applies *when the civil action arises from the offense charged in the criminal case.* (Alerta, *et al.* vs. Mendoza, *et al.*,XIV L.J. 528)

Sec. 2(a) of Rule 111 applies only to civil liability arising from crime.

Thus, when the cause of action in the civil case is based on *culpa contractual* and not on the civil liability arising from the offense involved in the criminal case, Sec. 2(a) (Sec. 1, Rule 107, then 3[b], Rule 111) of Rule 111, Rules of Court, does not apply and the trial court erred in suspending the hearing of the civil case until the final determination of the criminal case. Sec. 2(a) of Rule 111 contemplates a case where the offended party desires to press his right to demand indemnity from the accused in the criminal case which he may assert either in the same criminal case or in a separate civil action. (See Parker vs. Panlilio, 91 Phil. 1, 4)

Culpa contractual is the basis of a civil action against a transportation company, for instance, for its failure to carry safely its passenger to his destination. The obligation to pay for damages arises from contract, and not from crime.

Allegations of damages in information not necessary.

The court may sentence the accused to pay the offended party, moral and material damages, even if there is no specific allegation of such damages in the information, provided the offended party has not expressly waived such liability or reserved his right to have civil damages determined in a separate civil action. (People vs. Vigo, C.A., 52 O.G. 7629; People vs. Soldevilla, 49 O.G. 2857; People vs. Gerodias, 51 O.G. 4614)

Under Art. 100 of this Code, when an information or complaint is filed, even without any allegation of damages and the intention

to prove and claim them, it is to be understood that the offender is liable for them. (People vs. Celorico, G.R. No. 45738, VII L.J., p. 403; People vs. Oraza, 83 Phil. 633, 636)

Civil liability ofthe accused extends in favor of persons not mentioned in the information.

In criminal cases where the intervention of the aggrieved parties is limited to being witnesses for the prosecution, the civil liability of the accused should not extend only in favor of the person or persons mentioned in the information. Unless the record shows that an omitted party has waived the civil liability or has reserved the right to file a separate civil action to recover the same, such party's right to the civil liability arising from the offense is impliedly included in the criminal action. (People vs. Despavellador, 53 O.G. 7297)

Attachment in criminal cases.

When the civil action is properly instituted in the criminal action as provided in Rule 111 the offended party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

(a) When the accused is about to abscond rrom the Philippines;

(b) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) When the accused has concealed, removed, or disposed of his personal property, or is about to do so;

(d) When the accused resides outside the Philippines. (Sec. 2, Rule 127, Revised Rules of Criminal Procedure)

Writ of attachment, etc. may be issued in criminal cases.

Within the criminal action, with which the civil action is impliedly instituted, the offended party may obtain the preliminary

writ of attachment. The court in which the civil action is pending is, after the filing of the information in the criminal case, not *ipso facto* deprived of the power to issue preliminary and auxiliary writs, such as preliminary injunction, attachment, appointment of receiver, fixing amounts of bonds, and other processes of similar nature, which do not go into the merits of the case. (Ramcar, Inc. vs. De Leon, 78 Phil. 449, 452-453; Babala vs. Abaño, 90 Phil. 827, 828-829)

Availability of provisional remedies. — The provisional remedies in civil actions insofar as they are applicable may be availed of in connection with civil action deemed instituted with the criminal action. (Sec. 1, Rule 127, Revised Rules of Criminal Procedure)

From the judgment of conviction in criminal case, two appeals may be taken.

Every criminal case involves two actions: one criminal and another civil. From a judgment of conviction, two appeals may, accordingly, be taken. The accused may seek a review of said judgment as regards both actions. Similarly, the complainant may appeal with respect only to the civil action. The right of either to appeal or not to appeal is not dependent upon the other. (People vs. Coloma, [Unrep.] 105 Phil. 1287)

Remedy of offended party where fiscal asks for dismissal.

If the criminal action is dismissed by the court on motion of the fiscal upon the ground of insufficiency of evidence, the offended party has no right to appeal, his remedy being a separate civil action after proper reservation is made therefor. (People vs. Lipana, 72 Phil. 166, 170)

The reason for the rule is that the continuation of the offended party's intervention in a criminal action depends upon the continuation of such action by the provincial fiscal. Once the criminal action is dismissed by the trial court on petition of the provincial fiscal, the offended party's right to intervene ceases, and he cannot appeal from the order of dismissal, otherwise it "would be tantamount to giving said offended party the direction and control of the criminal proceeding." (People vs. Lipana, *supra)*

But the offended party may rightly intervene by interposing an appeal from the order dismissing the action upon a question of law. (People vs. Maceda, 73 Phil. 679, 681)

Right to appeal as to civil liability.

When the court found the accused guilty of criminal negligence, but failed to enter judgment of civil liability, the private prosecutor has a right to appeal for purposes of the civil liability of the accused. The appellate court may remand the case to the trial court for the latter to include in its judgment, the civil liability of the accused. (People vs. Ursua, 60 Phil. 252, 254-255)

Offended party has right to be heard during the appeal.

When a judgment convicting the accused is appealed, the offended party has the right to be heard during the appeal. If the Solicitor General asks for the reversal of the appealed judgment and the acquittal of the accused, the offended party has also the right to be heard. (People vs. Villegas, G.R. No. 45039, C.A., IV L.J. 635)

Civil liability may be added within the 15-day period, even if the convict has started serving sentence.

Before the expiration of the 15-day period for appealing, the trial court can amend the judgment of conviction by adding a provision for the civil liability of the accused, and this notwithstanding that the judgment became final because the accused had commenced the service of his sentence. (People vs. Rodriguez, 97 Phil. 349, 351)

This ruling applies even though an appeal from the judgment of conviction has already been perfected. (People vs. Co Ko Tong, C.A., 51 O.G. 6337)

But *after* the 15-day period for appealing, the trial court cannot amend its decision by adding thereto the civil liability. (Sese vs. Montesa, 87 Phil. 245, 247)

An independent civil action may be brought by the injured party during the pendency of the criminal case, provided the right is reserved.

In the cases provided in Articles 31, 32, 33, 34 and 2176 of the Civil Code, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action, and shall require only a preponderance of evidence. In no case,

however, may the offended party recover damages twice for the same act or omission charged in the criminal action. (Sec. 3, Rule 111, Revised Rules of Criminal Procedure)

Reservation of the right to institute separate civil action is necessary in the following cases:

1. In any of the cases referred to in Art. 32, Civil Code.

2. In cases of defamation, fraud, and physical injuries.

   The words "defamation," "fraud" and "physical injuries" are used in their ordinary sense. The term "physical injuries" means bodily injury, not the crime of physical injuries. It includes attempted homicide, frustrated homicide, or even death. (Carandang vs. Hon. Vicente Santiago, 97 Phil. 94, 96-97) Estafa is included in the term "fraud."

   Where fraud is the basis for both the civil and the criminal actions, they are, according to law, to proceed independently. In the same way that the civil suit can be tried, the criminal prosecution has to run its course. (Rojas vs. People, No. L-22237, May 31, 1974, 57 SCRA 243, 249)

3. When the civil action is against a member of a city or municipal police force for refusing or failing to render aid or protection to any person in case of danger to life or property. Such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. (Art. 34, Civil Code)

4. In an action for damages arising from fault or negligence, there being no pre-existing contractual relation between the parties *(quasi-delict).* (Art. 2176, Civil Code)

   Responsibility for such fault or negligence is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant. (Art. 2177, Civil Code)

   The purpose of the reservation is to prevent the matter from becoming *res adjudicata.* (Philippine Railway Co. vs. Jalandoni, C.A., 40 O.G. 19, Supp. 11)

Effect of reservation of right to intervene in prosecution of criminal case.

Once the offended party has reserved his right to institute a separate civil action to recover indemnity, he thereby loses his right to intervene in the prosecution of the criminal case. Consequently, appellant no longer had any right to move for the reconsideration of, much less to appeal from the decision in the criminal case, insofar as it decided the question of civil indemnity, for appellant no longer had any standing in the case. (Tactaquin vs. Palileo, No. L-20865, Dec. 29, 1967, 21 SCRA 1431, 1434)

Article 33 of the Civil Code has modified the provisions of Rule 107, Rules of Court. Under said article, a civil action to recover damages for physical injuries, distinct and separate from the criminal action and of which it shall proceed independently, may be brought by the injured party; hence, the right to file said complaint for damages need not even be reserved. (Alvarez vs. Manalaysay, *et al.*, C.A., 57 O.G. 6629)

If the offended party in the criminal case is represented by a private prosecutor, he cannot file an independent civil action.

If the offended party elected to claim the civil liability in the criminal case by intervening therein through a private prosecutor and the court did not award any civil liability because the offended party did not present evidence, he cannot thereafter file an independent civil action for said civil liability. The matter is already *res judicata* in the criminal case. (Roa vs. De la Cruz, 107 Phil. 8, 12-13)

When the accused pleaded guilty during the arraignment, so that the offended party could not have expressly renounced his right to file the civil action or reserved the same, can the latter subsequently file a civil action for indemnity for physical and moral damages caused by the accused?

The mere appearance of a private prosecutor in the criminal case does not necessarily constitute such intervention on the part of the aggrieved party as could only import an intention to press claim for damages in said criminal case and a waiver of the right to file a separate civil action for damages, where the accused had pleaded

guilty upon arraignment and was immediately sentenced, there being no chance for the aggrieved party to present evidence in support of the claim for damages and to enter a reservation in the record to file a separate civil action. (Reyes vs. Sempio-Diy, No. L-71914, Jan. 29, 1986, 141 SCRA 208, 212-213)

When the final judgment in a criminal case does not state "that the fact from which the civil might arise did not exist," extinction of the penal action does not carry with it extinction of the civil.

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (Sec. 2[4th par.], Rule 111, Revised Rules of Criminal Procedure)

When the accused in a criminal case for estafa (Art. 315, l[b], R.P.C.) was acquitted because there was no conversion or misappropriation, an element of the crime, but the evidence shows that she really received the jewelry, then the civil action is not extinguished. (Laperal vs. Alvia, 51 O.G. 1311)

But if in a criminal case for arson, the court states in its judgment of acquittal that "the accused *cannot in any manner be held responsible for the fire,"* such declaration fits well into the exception of the rule and actually exonerates the accused from civil liability. (Tan vs. Standard Vacuum Oil Co., *et al.*, 91 Phil. 672, 675)

The question is whether or not appellants may still recover damages from Priela, considering that he has been explicitly acquitted by the trial court, upon the ground that "he has not been remiss in his caution nor in his presence of mind trying to avoid" said "freak accident." *Held:* Pursuant to the Rules of Court: "Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist." In the case at bar, the decision appealed from has not only acquitted Priela; but also, declared that the collision, which resulted in the destruction of appellants' car, had not been due to any negligence on his part. Since appellants' civil action is predicated upon Priela's alleged negligence, which does not exist, according to said final judgment, it follows

necessarily that his acquittal in the criminal action carries with it the extinction of the civil responsibility arising therefrom. (Faraon vs. Priela, G.R. No. L-23129, August 2, 1968, 24 SCRA 582, 583)

Prejudicial question.

This is another *exception* to the rule that the criminal action shall be decided first and that the civil action should be suspended.

Prejudicial questions must be decided before any criminal prosecution may be instituted or may proceed. (Art. 36, new Civil Code)

A petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil action, may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (Sec. 6, Rule 111, Revised Rules of Criminal Procedure)

For the principle on prejudicial question to apply, it is essential that there be two cases involved, invariably a civil case and a criminal case. If the two cases are both civil or if they are both criminal, the principle finds no application. (Malvar vs. Cruz, 14 C.A. Rep. [2s] 395 [Syllabus])

Prejudicial question defined.

A prejudicial question is one which arises in a case, the resolution of which is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal. (Jimenez vs. Averia, No. L-22759, March 29, 1968, 22 SCRA 1380, 1382, citing Encyclopedia Juridical Española, p. 228)

It is based on a fact *distinct* and *separate* from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.

Elements of prejudicial question.

The two essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue

determines whether or not the criminal action may proceed. (Sec. 5, Rule 111, Rules of Court)

1. The prejudicial question must be *determinative* of the case before the court;

2. Jurisdiction to try said question must be lodged in another tribunal. (People vs. Aragon, 94 Phil. 357; Rojas vs. People, 57 SCRA 243)

Venue of the actions.

Spanish jurisprudence, from which the principle of prejudicial question has been taken, requires that the essential element determinative of the criminal action must be cognizable by another court. This requirement of a different court is demanded in Spanish jurisprudence because Spanish courts are divided according to their jurisdictions, some courts being exclusively of civil jurisdiction, others of criminal jurisdiction. In the Philippines where our courts are vested with both civil and criminal jurisdiction, the principle of prejudicial question is to be applied even if there is only one court before which the civil action and the criminal action are to be litigated. But in this case, the court, when exercising its jurisdiction over the civil action for the annulment of marriage, for example, is considered as a court distinct and different from itself when trying the criminal action for bigamy. (Merced vs. Diez, 109 Phil. 155, 160-161)

Examples of prejudicial question:

(1) There was a pending appeal before the Supreme Court wherein the principal question involved was the genuineness of a certain document. After the presentation of the appellant's brief, appellee presented a motion alleging that said document was false. The Supreme Court resolved that when the appeal was to be determined on the merits, the said motion would be decided. At that stage of the case, appellee filed with the City Fiscal a complaint for falsification based on the same document. Was it proper for the fiscal to proceed with the investigation of the criminal complaint for falsification?

Held: No. The Fiscal must wait until the case before the Supreme Court is decided first, because if the Supreme

Court should decide that the document is genuine and has not been substituted, such finding would be contrary to the stand taken by the Fiscal. (De Leon vs. Mabanag, 70 Phil. 202)

(2) The pendency of a petition for judicial declaration of nullity of the first marriage is not a prejudicial question in an action for bigamy. The subsequent judicial declaration of the nullity of the first marriage is immaterial because prior to the declaration of nullity, the crime had already been consummated. (Mercado vs. Tan, G.R. No. 137110, Aug. 1, 2000)

A case for annulment of marriage is a prejudicial question to a bigamy case if it is proved that the accused's consent to such marriage was obtained by means of duress, violence and intimidation in order to establish that his act in the subsequent marriage was an involuntary one and as such the same cannot be the basis for conviction. (Donato vs. Luna, No. L-53642, April 15, 1988, 160 SCRA 441, 447, citing Landicho vs. Relova, 22 SCRA 731)

When civil action not a prejudicial question. **— If it is the second wife who filed the civil action against the accused charged with bigamy, alleging that the accused by means of force and threats forced her to marry him, the accused cannot properly claim that the civil action is a prejudicial question, because even if the allegation in the civil case is true, the fact remains that *the accused contracted the second marriage voluntarily.* If the second wife were the one accused of bigamy, she could perhaps raise force or intimidation as a defense in the charge of bigamy, because on her part there was no consent to the marriage; but not the party, who used the force or intimidation. The latter may not use his own malfeasance to defeat the action based on his criminal act. (People vs. Aragon, 94 Phil. 357, 360; See also Donato vs. Luna, No. L-53642, April 15, 1988, 160 SCRA 441, 447 where the complaint for annulment was grounded on deceit.)**

(3) A civil case was filed for unpaid wages claimed by a number of laborers. In that case, the obligation of defendants to pay wages was in issue. There was then a criminal action

pending against one of the defendants in the civil case for protracted delay in the payment of wages as penalized by Com. Act No. 303. The defendants asked for the suspension of the civil action until the criminal case be finally disposed of. Must the court order the suspension of the trial of the civil action?

No. The obligation to pay wages is a prejudicial question, for there can be no extended delay in the payment of such obligations unless the obligation be first proved. (Aleria vs. Mendoza, 83 Phil. 427, 429)

Compare the above case with the following case.

A and B were accused of violation of the Copyright Law. Later, A and B brought an action for the cancellation of copyrights granted to the complainant. Is the action for cancellation of the copyrights a prejudicial question which must be decided first? No, because until cancelled, the copyrights are presumed to have been duly granted and issued. (Ocampo vs. Tancinco, 96 Phil. 459, 460)

In the case of *Aleria vs. Mendoza, supra,* the ruling is consistent with the presumption of innocence on the part of the accused. In the case *of Ocampo vs. Tancinco,* the ruling is based on the presumption of regularity in the granting and issuance of the copyrights.

When the question is not determinative of the guilt or innocence of the parties charged with estafa, it is not a prejudicial question.

The alleged prejudicial question is not determinative of the guilt or innocence of the parties charged with estafa. Even if the execution of the receipt in the civil case was vitiated by fraud, duress or intimidation, the guilt of the accused could still be established by other evidence by showing that they actually received from the complainant the sum of ₱20,000 with which to buy a fishing boat and that instead of doing so, they misappropriated the money and refused to return it to him upon demand. A claim to this effect is a matter of defense to be interposed by the party charged in the criminal proceeding. (Jimenez vs. Averia, No. L-22759, March 29, 1968, 22 SCRA 1380, 1382)

An acquittal in a criminal case is not evidence of innocence in subsequent civil action based upon the alleged criminal act.

In a civil case, the Solicitor General moved for the cancellation of the certificate of naturalization issued in favor of the petitioner, upon the ground that it was secured illegally and fraudulently. Among the acts of misrepresentation and misconduct imputed to the petitioner was the alleged maltreatment by him of Mrs. Joist. It appeared that the Municipal Court which tried the maltreatment case acquitted the defendant (petitioner). The court trying the civil case did not take into account the evidence introduced in that civil case in support of the charge of maltreatment.

It was held that the trial court erred in not taking into account the evidence introduced in the civil case in support of the charge of maltreatment. The Supreme Court stated that the great weight of authority supports the rule that a judgment of *acquittal* is not effective under the doctrine of *res judicata* in later civil proceedings, and does not constitute a bar to a subsequent civil action involving the same subject-matter. An acquittal in a criminal prosecution does not constitute evidence of innocence in subsequent civil action based upon the alleged criminal act. (Republic vs. Asaad, 51 O.G. 703)

But where the state is a party to the civil action, the issues determined by the conviction of the defendant are concluded in the civil action. (See the citation in the same case of Republic vs. Asaad.)

When to plead prejudicial question.

A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (Sec. 6, Rule 111, Revised Rules of Criminal Procedure)

Art. 101. *Rules regarding civil liability in certain cases.* — The exemption from criminal liability established in subdivisions 1, 2, 3, 5, and 6 of Article 12 and in subdivision 4 of Article 11

of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules:

First: In cases of subdivisions 1, 2, and 3 of Article 12, the civil liability for acts committed by an imbecile or insane person, and by a person under nine years of age, or over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such a person under their legal authority or control, unless it appears that there was no fault or negligence on their part.

Should there be no person having such insane, imbecile, or minor under his authority, legal guardianship, or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

Second: In cases falling within subdivision 4 of Article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

The courts shall determine, in their sound discretion, the proportionate amount for which each one shall be liable.

When the respective shares cannot be equitably determined, even approximately, or when the liability also attaches to the Government, or to the majority of the inhabitants of the town, and, in all events, whenever the damage has been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

Third: In cases falling within subdivisions 5 and 6 of Article 12, the persons using violence or causing the fear shall be primarily liable and secondarily, or, if there be no such persons, those doing the act shall be liable, saving always to the latter that part of their property exempt from execution.

Civil liability of persons exempt from criminal liability.

Exemption from criminal liability does not include exemption from civil liability.

Exceptions:

1. **There is no civil liability in paragraph 4 of Article 12 which provides for injury caused by mere accident.**

2. **There is no civil liability in paragraph 7 of Article 12 which provides for failure to perform an act required by law when prevented by some lawful or insuperable cause.**

Note: **The exemption from criminal liability does not include exemption from civil liability in the cases provided for in paragraphs 1, 2, 3, 5 and 6 of Article 12. Paragraphs 4 and 7 are not mentioned. Therefore, there is also exemption from civil liability in the cases provided for in paragraphs 4 and 7 of Article 12.**

The ruling in *People vs. Vitug*, 8 C.A. Rep. 905, that exemption from criminal liability under paragraph 4, Article 12, Revised Penal Code, does not include exemption from civil liability, is erroneous.

Who are civilly liable for acts of insane or minor exempt from criminal liability?

The civil liability for acts committed by an imbecile or insane or minor exempt from criminal liability shall devolve upon the persons having legal authority or control over them, if the latter are at *fault* or *negligent.*

If there is *no fault* or *negligence* on their part, or even if at fault or negligent but *insolvent*, or should there be no person having such authority or control, the insane, imbecile, or such minor shall respond with their own property not exempt from execution.

The persons having the insane or minor under their legal authority or control are *primarily* liable to pay the civil liability for acts committed by such insane or minor.

But they can avoid civil liability by pleading and proving the defense that there was no fault or negligence on their part.

Under Article 101 of the Revised Penal Code, a father is made civilly liable for the acts committed by his son if the latter is an imbecile, an insane, under 9 years of age, or over 9 but under 15 years of age, who acts without discernment, unless it appears that

there is no fault or negligence on his part. This is because a son who commits the act under any of those conditions is by law exempt from criminal liability. (Articles 12, 1, 2 and 3, Revised Penal Code) The idea is not to leave the act entirely unpunished but to attach certain civil liability to the person who has the delinquent minor under his legal authority or control. (Paleyan vs. Bangkili, No. L-22253, July 30, 1971, 40 SCRA 132, 135, citing Salen vs. Balce, 107 Phil. 748)

Civil liability for acts of a minor over 15 years of age who acts with discernment.

A minor over 15 years of age who acts with discernment is not exempt from criminal liability, hence, the silence of the Revised Penal Code as to the subsidiary liability of his parents should he be convicted. The particular law that governs is Article 2180 of the Civil Code, the pertinent portion of which provides: "The father and, in case of his death or incapacity, the mother, are responsible for damages caused by the minor children who live in their company." To hold that this provision does not apply because it only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. The void that apparently exists in the Revised Penal Code is subserved by this particular provision of the Civil Code. (Paleyan vs. Bangkili, *supra)*

Note: Art. 201 of the Child and Youth Welfare Code which provides that the civil liability for acts committed by a youthful offender (a child over 9 but under 18 years of age at the time of the commission of the offense) shall devolve upon the offender's father and, in case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian, now governs with respect to the subsidiary liability of parents for the civil liability of a minor over 15 years of age who acts with discernment.

The provisions of the Civil Code.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The responsibility treated in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Art. 2180, 2nd and last par., Civil Code)

If the minor or insane person causing damage has no parents or guardian, the minor or insane person shall be answerable with his own property in an action against him where a guardian ad litem shall be appointed. (Art. 2182, Civil Code)

The final discharge of a child in conflict with the law does not obliterate his civil liability.

The Juvenile Justice and Welfare Act of 2006 provides:

"SECTION 39. *Discharge ofthe Child in Conflict with the Law.* - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

"The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law."

Persons civilly liable for acts committed by youthful offenders.

The Child and Youth Welfare Code provides:

"ART. 201. *Civil Liability of Youthful Offenders.* - The civil liability for acts committed by a youthful offender shall devolve upon the offender's father and, in case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian. Civil liability may also be voluntarily assumed by a relative or family friend of the youthful offender."

Duty of court trying an insane.

In a fit of insanity, the accused attacked a woman with a bolo and instantly killed her.

In declaring the accused not guilty because he is exempt from criminal liability by reason of insanity, has the court the authority to order him to indemnify the heirs of the deceased?

Courts, in rendering judgment in a criminal case prosecuted against an insane, even when they hold the accused exempt from criminal liability, must fix the civil liability of the person charged with the watching over and caring for him or the liability of the demented person himself with his property. (U.S. vs. Baggay, 20 Phil. 142, 146-147)

In the case of *U.S. vs. Baggay, supra,* the defendant was acquitted of murder because he was insane when he committed the act, but he was sentenced to indemnify the heirs of the deceased in the sum of ₱1,000.

This ruling applies also to other cases under this article.

Who are civilly liable for acts committed by persons acting under irresistible force or uncontrollable fear?

The persons *using* violence or causing the fear are *primarily* liable.

If there be no such persons, those *doing* the act shall be liable *secondarily.*

Civil liability of persons acting under justifying circumstances.

There is no civil liability in justifying circumstances.

Exception:

In paragraph 4 of Article 11, there is civil liability, but the person civilly liable is the one benefited by the act which causes damage to another. (See Tan vs. Standard Vacuum Oil Co., 91 Phil. 672.)

Art. 102. *Subsidiary civil liability of innkeepers, tavernkeepers, and proprietors of establishments.* — In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes com-

mitted in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulations shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

Elements under paragraph 1:

1. That the *innkeeper, tavernkeeper or proprietor* of establishment or his *employee* committed a violation of municipal ordinance or some general or special police regulation.
2. That a crime is committed in such inn, tavern or establishment.
3. That the person criminally liable is *insolvent.*

When all the above elements are present, the innkeeper, tavernkeeper or any other person or corporation is civilly liable for the crime committed in his establishment. This is known as *subsidiary civil liability* of innkeepers, tavernkeepers or proprietors of establishments.

Example:

If homicide is committed in an inn or bar on a Sunday which, according to the ordinances, should be closed, since the innkeeper in this case violates the ordinances by opening his establishment for business on a prohibited day, he shall be *subsidiarily* liable for the indemnity or civil liability to the heirs of the deceased. (Guevara)

In such case, the innkeeper or owner of the establishment is civilly liable for such crime committed therein, if the offender is insolvent.

Elements under paragraph 2:

1. The guests *notified in advance* the innkeeper or the person representing him of the *deposit of their goods* within the inn or house.
2. The guests *followed the directions* of the innkeeper or his representative with respect to the *care of* and *vigilance over* such goods.
3. Such goods of the guests lodging therein were taken by *robbery with force upon things* or *theft* committed within the inn or house.

When all the above elements are present, the innkeeper is *subsidiarily* liable.

No liability shall attach in case of robbery with violence against or intimidation of persons, *unless committed* by the innkeeper's employees.

It is not necessary that the effects of the guest be actually delivered to innkeeper.

In a case where the owner of a hotel disclaimed liability because plaintiff did not deposit his properties with the manager despite a notice to that effect posted in the hotel, it was held that actual delivery to him or his employee of the effects of the guest is not necessary; it is enough that they were within the inn. (De los Santos vs. Tam Khey, C.A., 58 O.G. 7693, citing 29 Am. Jur. 89-90)

Art. 103. *Subsidiary civil liability of other persons.* — The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

Elements:

1. The employer, teacher, person or corporation is engaged in any kind of *industry.*
2. Any of their servants, pupils, workmen, apprentices or employees commits a felony *while in the discharge of his duties.*
3. The said employee is *insolvent* and has not satisfied his civil liability.

In order that an employer may be held subsidiarily liable for the employee's civil liability in the criminal action, it should be shown: (1) that the employer is engaged in any kind of industry, (2) that the employee committed the offense in the discharge of his duties and (3) that he is insolvent. The subsidiary liability of the employer, however, arises only after conviction of the employee in the criminal action. (Carpio vs. Doroja, G.R. No. 84516, Dec. 5, 1989, 180 SCRA 1, 7, citing *Basa Marketing Corp. vs. Bolinao Sec. & Inv. Services,Inc.,* 117 SCRA 15)

In this case, when all these elements are present, the employer or teacher is subsidiarily liable.

Example:

A workman of a construction company stole some things while he was making minor repairs in a house, and after being prosecuted was found guilty by the court. The workman cannot satisfy his own civil liability.

Under such circumstances, the company is liable subsidiarily for the restitution of the things or for the payment of their value. (Guevara)

Employer must be engaged in industry.

Meaning of "industry."

An enterprise not conducted as a *means of livelihood or for profit* does not come within the meaning of the term "business," "trade," or "industry." (Clemente vs. Foreign Mission Sisters, C.A., 38 O.G. 1594)

"Industry" is any department or branch of art, occupation or business; especially, one which employs so much labor and capital

and is a distinct branch of trade. Hence, a person who owns a truck and uses it in the transportation of his own products is engaged in industry. (Telleria vs. Garcia, C.A., 40 O.G., Supp., 12, 115)

Hospital not engaged in industry; nurses not servants.

A hospital is not engaged in industry; hence, not subsidiarily liable for acts of nurses. Nurses, in treating a patient, are not acting as servants of the hospitals, because they are employed to carry out the orders of the physicians, to whose authority they are subject. (Clemente vs. Foreign Mission Sisters, *supra)*

Private persons without business or industry, not subsidiarily liable.

The car driven by S was bumped by the car of V driven by the latter's chauffeur. The chauffeur who was found guilty was insolvent.

Is V subsidiarily liable?

No, because V is a private person who has no *business* or *industry* and uses his automobile for private purposes. V does not fall under Art. 103 of the Revised Penal Code. (Steinmetz vs. Valdez, 72 Phil. 92, 93)

The felony must be committed by the servant or employee of the defendant in the civil case.

Thus, where the driver, who drove a jeepney *without the owner's consent,* was arrested and prosecuted for, and found guilty of, homicide through reckless imprudence, the owner of the jeepney is not subsidiarily liable for the indemnity adjudged against the driver. (Clarianes vs. Sabinosa, C.A., 55 O.G. 3846)

Decision convicting an employee is binding upon the employer with respect to the civil liability and its amount.

Under Article 103 of the Revised Penal Code, employers are subsidiarily liable for the adjudicated civil liabilities of their employees in the event of the latter's insolvency. The provisions of the Revised Penal Code on subsidiary liability — Articles 102 and 103 — are deemed written into the judgments in the cases to which they are applicable. (Alvarez v. CA, 158 SCRA 57, February 23, 1988)

Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer.

The decision convicting an employee in a criminal case is binding and conclusive upon the employer not only with regard to the former's civil liability, but also with regard to its amount. The liability of an employer cf.nnot be separated from that of the employee. (Yusay v. Adil, 164 SCRA 494, August 18, 1988.; Pajarito v. Señeris, 87 SCRA 275, December 14, 1978)

Before the employers' subsidiary liability is exacted, however, there must be adequate evidence establishing that (1) they are indeed the employers of the convicted employees; (2) that the former are engaged in some kind of industry; (3) that the crime was committed by the employees in the discharge of their duties; and (4) that the execution against the latter has not been satisfied due to insolvency.

The resolution of these issues need not be done in a separate civil action. But the determination must be based on the evidence that the offended party and the employer may fully and freely present. Such determination may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced (Ozoa v. Vda de Madula, 156 SCRA 779, December 22, 1987); and in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment. (Phil. Rabbit Bus Lines vs. People, 147703, April 14, 2004)

Enforcement of civil liability is upon a motion for subsidiary writ of execution.

The subsidiary liability may be enforced only upon a motion for subsidiary writ of execution against the employer and upon proof that the employee is insolvent. (Basilio v. Court of Appeals, 385 Phil. 21 [2000])

"While in the discharge of his duties."

The law makes the employer subsidiarily liable for the civil liability arising from a crime committed by an employee "in the discharge of his duties." This subsidiary liability does not arise from any and all offenses that the employee may commit, but limited to those which he shall be found guilty of *in the discharge of his duties.*

The law does not say that the crime of the employee must be the one committed *"while in the discharge of his duties."* It could not be contemplated that an employer will be held responsible for any misdeed that his employee could have done while performing his assigned tasks. Thus, it is neither just nor logical that, if a security guard committed robbery in a neighboring establishment near the one he is assigned to guard, or raped a woman passerby in the course of his tour of duty, his employer should be made subsidiarily liable for his said misdeed. In such circumstances, it cannot be said that the crime was committed by the employee "in the discharge of his duties." (Baza Marketing Corporation vs. Bolinao Security and Investigation Service, Inc., No. L-32383, Sept. 30, 1982, 117 SCRA 156, 163)

The fact that the owner of the car was not riding therein at the time of the accident and *did not know that the chauffeur had taken the car,* clearly shows that the accident did not occur in the course of the performance of the duties for which said chauffeur had been hired. His service is confined to driving his master's car as the latter ordered him. The owner of the car was not subsidiarily liable. (Marquez vs. Castillo, 68 Phil. 568, 571)

The subsidiary liability of the employer is not determined in the criminal case against the employee. Reservation not necessary.

The subsidiary liability of the master or employer provided for in Article 103 of the Revised Penal Code is not litigated in connection with the criminal prosecution of the employee, pupil, etc. Reservation of the right to bring action by the injured party against the master or employer is not necessary. The rule of *res adjudicata* cannot be invoked for or against one who was not a party to the cause in which the former judgment was rendered. (Phil. Railway Co. vs. Jalandoni, C.A., 40 O.G. 19, Supp. 11, 19)

Subsidiary liability of employers, etc., "for felonies committed by their x x x employees."

The word "committed," as used in Article 103, implies that the employee was convicted of the felony with which he was charged in the criminal case.

There can be *no* automatic *subsidiary* liability of defendant-employer under Article 103 of the Revised Penal Code, where his

employee has not been previously *criminally convicted.* There having been no criminal conviction of the employee wherein his civil liability was determined and fixed, no subsidiary liability under Article 103 can be claimed against defendant-employer. (Jamelo vs. Serfino, No. L-26730, April 27, 1972, 44 SCRA 464, 467)

Employer has the right to take part in the defense of his employee.

It is true that an employer is not a party to the criminal case instituted against his employee, but he has subsidiary liability imposed upon him by law. It is his concern to see to it that his interest be protected in the criminal case by taking virtual participation in the defense of his employee. He cannot leave him to his own fate because his failure is also his. (Miranda vs. Malate Garage & Taxicab, Inc., 99 Phil. 670, 675)

Certified copy of decision sufficient to prove offense committed by servant or employee.

Judgment of conviction of servant or employee in the absence of any collusion between the defendant and the *offended party binds* the persons subsidiarily liable. The *plaintiff* can rely solely on the judgment of conviction.

Common sense dictates that a finding of guilt in a criminal case, in which proof beyond reasonable doubt is necessary, should not be nullified in a subsequent civil action requiring only a preponderance of evidence to support a judgment. (Martinez vs. Barredo, 81 Phil. 1, 3)

Employer is subsidiarily liable for the full amount against employee.

R was the driver of a Halili bus. B was the driver of a jeepney. The two vehicles collided through the reckless imprudence of both drivers, causing serious physical injuries on G. R and B were convicted of serious physical injuries through reckless imprudence and were sentenced *solidarily* to pay an indemnity of ₱3,670 to G. As R and B could not pay the indemnity by reason of insolvency, G sued the owner of the bus.

Held: Halili was liable for the full amount of ₱3,670, and not merely 1/2 thereof, but without prejudice to the right of action against

B for contribution. (Gonzales vs. Halili, G.R. No. L-11521, Oct. 31, 1958)

No defense of diligence of a good father of a family.

It will be seen that neither in Art. 103 nor in any other article of the Revised Penal Code, is it provided that the employment of the diligence to be expected of a good father of a family in the selection of his employees will exempt the parties secondarily liable for damages, as is provided in Art. 1903 in connection with Art. 1902 (now Arts. 2176 and 2180) of the Civil Code, which treat of liabilities arising from acts or omissions not punishable by law. (Arambulo vs. Meralco, 55 Phil. 75, 78-79; Yumul vs. Pampanga Bus Co., 72 Phil. 94, 97)

Art. 103 is applicable to violations of Revised Motor Vehicle Law.

The defendant is subsidiarily liable for indemnities even if its driver was convicted under the Revised Motor Vehicle Law, because Art. 103 of the Code is applicable by virtue of its Art. 10. (Copiaco vs. Luzon Brokerage, 66 Phil. 184, 190-191)

Arts. 102 and 103 of the Revised Penal Code are not repealed by Art. 2177 of the new Civil Code.

Art. 2177 of the Civil Code expressly recognizes civil liabilities arising from negligence under the Penal Code, only that it provides that the plaintiff cannot recover damages twice of the same act or omission of the defendant. (Manalo vs. Robles Trans. Co., Inc., 52 O.G. 5797)

The provisions of the Civil Code.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody. (Art. 2180, Civil Code)

In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of Article 2180 are applicable. (Art. 2184, Civil Code)

Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. (Art. 2185, Civil Code)

The responsibility of two or more persons who are liable for a quasi-delict is solidary. (Art. 2194, Civil Code)

Persons civilly liable in the absence of those criminally liable, the civil responsibility being a necessary part of the criminal liability.

1. **Innkeeper, tavernkeeper, and any other person or corporation who committed violation of municipal ordinance or some general or special police regulation, and the person who committed a crime in his establishment cannot be found or is insolvent.**

2. **Innkeeper, for robbery with force upon things or theft of goods of guests lodging therein, provided the guests notified the innkeeper in advance of the deposit of their goods within the inn, and provided further that such guests followed the directions of the innkeeper with respect to the care of and vigilance over such goods.**

3. The employer who is engaged in any kind of industry, for the crime committed by his employee while in the discharge of his duties.

4. Those having an imbecile or insane person or minor exempt from criminal liability under their legal authority or control, if they are at fault or negligent, for acts committed by the imbecile, insane or minor.

5. Persons who acted under the compulsion of irresistible force or under the impulse of uncontrollable fear are civilly liable if the person who used violence or who caused the fear is insolvent or cannot be found.

Chapter Two

WHAT CIVIL LIABILITY INCLUDES

Art. 104. ***What is included in civil liability.*** **— The civil liability established in Articles 100, 101, 102, and 103 of this Code includes:**

1. Restitution;

2. Reparation of damage caused;

3. Indemnification for consequential damages.

Civil liability in criminal cases.

The first remedy granted by law is *restitution* of the thing taken away by the offender; if restitution cannot be made by the offender (Art. 105), or by his heirs (Art. 108), the law allows the offended party *reparation.* (Art. 106; People vs. Mostasesa, 94 Phil. 243, 244) In either case, indemnity for consequential damages may be required. (Art. 107)

There are crimes where there is no civil liability.

There are crimes where *only one or none at all* of these civil obligations is possible.

Thus, in theft or robbery — when the property taken is recovered — only reparation, if any damage, will be allowed.

In assault upon a person in authority which caused no physical injuries, not one of them is possible.

In some crimes, the three civil obligations in Art. 104 may be declared and enforced. Thus, for the crime of occupation of real property in Art. 312, the defendant may be required:

(a) to restore the real property occupied *(restitution)*;

(b) to repair the damages caused to *it (reparation);* and

(c) to *indemnify* the offended party for all the consequential

damages he has sustained due to the commission of the crime. *(indemnification)*

Examples of —

1. *Restitution* — in theft the culprit is duty-bound to return the property stolen.
2. *Reparation* — in case of inability to return the property stolen, the culprit must pay the value of the property stolen; in case of physical injuries, the reparation of the damage caused would consist in the payment of hospital bills and doctor's fees to the offended party.
3. *Indemnifications for consequential damages* — the loss of his salary or earning.

When property taken away is not recovered, the court must order the accused to restore it to its owner or, as an alternative, to pay its just value.

When in due judgment of conviction the court did not grant the accused the alternative to return the thing which he had appropriated or to pay its just value, the court is in error. (People vs. Fortuno, 73 Phil. 429, 430)

Civil liabilities distinguished from pecuniary liabilities.

Art. 104, providing for three forms of civil liabilities, and Art. 38, providing for the order of payment of pecuniary liabilities, may be distinguished, as follows:

1. Both include (a) the reparation of the damage caused, and (b) indemnification for consequential damages;
2. While civil liabilities include restitution, pecuniary liabilities *do not* include restitution, because the latter refer to liabilities to be *paid* out of the property of the offender. In restitution, there is nothing to pay in terms of money, as the property unlawfully taken is returned.
3. Pecuniary liabilities include (a) fine, and (b) the costs of the proceedings. Civil liabilities do not include them.

Art. 105. ***Restitution — How made.*** **— The restitution of the thing itself must be made whenever possible, with allowance for any deterioration or diminution of value as determined by the court.**

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.

"The restitution of the thing itself must be made whenever possible."

The convict cannot, by way of restitution, give to the offended party a similar thing of the same amount, kind or species and quality.

Appellants claim that since the property (tobacco) involved in the criminal case is a fungible thing and that, in accordance with Art. 1953 of the Civil Code, the obligation of one who receives money or fungible things is to return to the creditor the same amount of the thing owed, of the same kind or species and quality, they should be allowed to return only the equivalent.

Held: **The civil liability of the appellants is not governed by the Civil Code, but by Articles 100-111 of the Penal Code. The sentence should be for the return of the *very thing taken* (restitution), or, if it cannot be done, for the payment of its value (reparation). The purpose of the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. (People vs. Mostasesa, 94 Phil. 243, 244)**

Is Art. 105 properly applied to the forfeiture of the house built with the money malversed by a public officer?

In the case of *Garcia vs. Bituin,* CA-G.R. No. 12297-R, Sept. 24, 1958, the Court of Appeals applied Art. 105 to the forfeiture of the house built with the money malversed by a public officer.

"With allowance for any deterioration or diminution of value."

Thus, if the property stolen while in the possession of the thief suffers deterioration due to his fault, the court will assess the amount of the deterioration and, in addition to the return of the property, the culprit will be ordered to pay such amount representing the deterioration.

"The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means."

The general rule is that the owner of property illegally taken by the offender can recover it from whomsoever is in possession thereof.

Whoever may have been deprived of his property in consequence of a crime is entitled to the recovery thereof, even if such property is in the possession of a third party who acquired it by legal means other than those expressly stated in Arts. 559 and 1505 of the Civil Code. (See U.S. vs. Sotelo, 28 Phil. 147.)

The fact that the accused was sentenced to pay its value, does not bar the recovery of the article by the owner from anyone holding it. (Gacula vs. Martinez, 88 Phil. 142, 145)

"Who has acquired it by lawful means."

The second paragraph of Art. 105 provides that the thing itself shall be restored, even though it be found in the possession of a third person *who has acquired it by lawful means.*

Thus, even if the property stolen was acquired by a third person by purchase *without knowing* that it had been stolen, such property shall be returned to the owner.

If the thing is acquired by a person *who knows it to be stolen,* he is an accessory and he is also criminally liable.

Under the Civil Code, the person who has lost any personal property or has been unlawfully deprived thereof cannot obtain its return without reimbursing the price paid therefor,

only when the possessor thereof acquired it in good faith at a public sale.

Art. 559 of the Civil Code (Rep. Act No. 386) provides: The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has *been unlawfully* deprived thereof, may recover it from the person in possession of the same.

If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in *good faith at a public sale,* the owner cannot obtain its return without reimbursing the price paid therefor.

Must be acquired (1) "at public sale," and (2) "in good faith."

A was convicted of estafa for having pawned the jewels which had been given to him by B *to be sold on commission.* Having found that the jewels had been pawned by A to a pawnshop, B filed a petition in court to require the owner of the pawnshop to restore said jewels.

Held: The owner of the pawnshop may be obliged to make restitution of the jewels, because although he acted in good faith, he did not acquire them at *public sale.* (Varela vs. Finnick, 9 Phil. 482, 484)

The court which convicted the accused of estafa may summon the owner of the pawnshop and, after hearing him, order the return of the jewels pawned to him without reimbursement of the amount of the pledge. The pawnshop owner may seek his remedy from the person who pawned the jewels. (Reyes vs. Ruiz, 27 Phil. 458, 460-461)

Where the purchaser of the stolen carabao was held not criminally liable, he should nevertheless restore the carabao to the lawful owner, without reimbursement of the price, since he did not purchase the carabao at a *public sale.* But said purchaser may sue the thief for the recovery of what he had paid. (U.S. vs. Soriano, 12 Phil. 512, 515)

Restitution cannot be ordered before final judgment.

The things involved in an estafa case, which are in the custody of a possessor in good faith, cannot be returned by the trial court to

the alleged offended party before final judgment is rendered in the estafa case. Restitution would be premature in that case, because the mere filing of a criminal action for estafa is no proof that estafa was in fact committed. (Chua Hai vs. Kapunan, Jr., 104 Phil. 110, 114-115)

When the third person acquired the thing "in the manner and under the requirements which, by law, bar an action for its recovery."

Restitution shall not be ordered by the court when the thing has been acquired by the third person in the manner and under the circumstances which, *by law*, bar an action for its recovery.

1. Thus, an innocent purchaser for value of property covered by a Torrens Title, cannot be required to return the same to its owner who has been unlawfully deprived of it, because Sec. 39 of Act No. 496 specially protects the title of an innocent purchaser.

2. *When sale is authorized, the property cannot be recovered.* Where the owner of personal property delivered it to another for the purpose of sale, the fact that the latter sold it at a price lower than that fixed *does not* prevent the passing of title to the purchaser and the property cannot be recovered by the previous owner. It was not the sale of the jewels for a lower price that constituted the crime of estafa, but the act of misappropriating the proceeds of the sale.

A person who is not a party in the case cannot recover in the criminal action any indemnity from the accused.

Example: A stole a caraballa belonging to B. A sold it to C for ₱100. In the case where A was charged with theft of the caraballa, the court ordered C to return the animal to B and ordered A to indemnify C in the sum of P100. Can C recover the ₱100 in the same case? No, because in selling the animal to C, A pretended to be the owner thereof, thereby committing estafa, which is another offense.

The person convicted of theft cannot be condemned to indemnify the purchaser of the stolen animal, because the stealing of the animal and its subsequent sale by the thief to a third person constitute dis-

tinct crimes of theft and estafa and the offended parties are different, being the owner and purchaser, respectively. (U.S. vs. Barambangan, 34 Phil. 645, 646)

When the liability to return a thing arises from contract, not from a criminal act, the court cannot order its return in the criminal case.

Thus, when after trial the court finds that a sum of money was received by the accused from the complainant as a loan, and for that reason dismisses the criminal case for estafa, it cannot order the accused to pay the amount to the complainant, because his liability to return it arises from civil contract, not from a criminal act, and may not be enforced in the criminal case. (People vs. Pantig, 97 Phil. 749, 750)

Restitution may be ordered, even if accused is acquitted, provided the offense is proved and it is shown that the thing belongs to somebody else.

As a rule, if the accused is acquitted, the court should not order the return of the property to its alleged owner. But if it is shown that the ring belonged to, and was in the possession of, somebody else, and that it was stolen from him, but the identity of the thief was not established by the prosecution, and the accused pawned it in the pawnshop from which it was recovered, the court should order its return to the owner. In this case, the *offense* was *proved* but not the identity of the offender. (People vs. Alejano, 54 Phil. 987, 989)

Is restitution limited only to crimes against property?

When a crime is *not against property,* no restitution or reparation of the thing can be done. (De las Peñas vs. Royal Bus Co., Inc., C.A., 56 O.G. 4052)

But in a *treason* case, the defendant was ordered to return the P3,900 to the person from whom he took the same when he committed the treasonous act. (People vs. Logo, 80 Phil. 377, 379)

In an *abduction* case, the defendants were ordered to return the ₱10.00 taken by them from the offended girl. (U.S. vs. Banila, 19 Phil. 130, 134)

The return of the usurious interest collected in violation of the Usury Law is in the nature of restitution of a thing criminally obtained. (People vs. Caldito, 72 Phil. 263, 265)

Salary of acquitted accused may not be ordered paid in criminal cases.

The payment of salary of an employee during the period of suspension cannot, as a general rule, be properly decreed by the court in a judgment of acquittal. It devolves upon the head of the department concerned, and is discretionary with him. (People vs. Mañigo, 69 Phil. 496, 497)

Neither the Revised Penal Code nor the Rules of Court on criminal procedure vests in the court, authority to grant such relief. No issue was joined on whether the accused was entitled to the payment of his salary during suspension. (Manila Railroad Co. vs. Baltazar, 93 Phil. 715, 717-718)

The Court has authority to order the reinstatement of the accused acquitted of a crime punishable by the penalty of perpetual or temporary disqualification.

People vs. Consigna
(G.R. No. L-18087, Aug. 31, 1965)

Facts: Pablo A. Consigna, then property clerk of the Division Superintendent of Schools for Surigao del Norte, and Prospero E. Borja, warehouseman of the NAMARCO, Surigao Branch, were charged with the crime of willful malversation of government property. After trial, the court rendered judgment of acquittal and ordered both accused to be reinstated to their former positions.

Issue: Whether or not the trial court, besides acquitting accused, had the authority to order their reinstatement.

Held: According to Art. 217 of the Revised Penal Code, a party found guilty of malversation of public funds shall be punished with imprisonment and the additional penalty of special perpetual disqualification. It is clearly inferable from this that his conviction necessarily results in his dismissal from public office he occupied at the time he committed the offense.

The case of *People vs. Daleon*, L-15630, March 24, 1961, is not controlling because the ruling in said case was simply to the effect that

upon acquitting one charged with malversation of public funds, the court has no authority to order payment of his salaries corresponding to the period of his suspension because his right to the same was not involved in the case. This ruling does not apply to defendant's right — in case of acquittal — of reinstatement because this matter would seem to be involved in the case of malversation — albeit as a mere incident — *because conviction of the offense charged results necessarily in a denial of such right to reinstatement in review of the penalty of disqualification provided by law.* If this is the inevitable result of conviction, reinstatement should also follow acquittal.

The above ruling was applied in the case of *People vs. Villanueva*, G.R. No. L-18769, May 27, 1966, where the accused, who was acquitted, was charged with the crime of infidelity in the custody of documents. Art. 226, R.P.C, which defines the crime, prescribes the additional penalty of temporary special disqualification in its maximum period to perpetual special disqualification. Under Art. 31, R.P.C, the penalties of perpetual or temporary disqualification shall produce the effect of deprivation of the office affected.

Art. 106. ***Reparation — How made.*** **— The court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly.**

Reparation will be ordered by the court if restitution is not possible.

Thus, when the stolen property cannot be returned because it was sold by the thief to an unknown person, he will be required by the court, if found guilty, to pay *the actual price* of the thing plus *its sentimental value* to its owner.

If there is no evidence as to the value of the thing unrecovered, reparation cannot be made. (People vs. Dalena, C.A., G.R. Nos. 11387-R and 11388-R, Oct. 25, 1954)

What reparation includes.

Under this provision, the repair of the material damage caused by the robbers in *breaking doors, wardrobes, etc., in addition* to the

value of the thing taken, may be assessed and included as part of the reparation to be paid by the robbers.

In a rape case, the accused was ordered to pay the value of the woman's torn garments. This is reparation which is distinct from the indemnity. (U.S. vs. Yambao, 4 Phil. 204, 206)

Civil damages are limited to those caused by and flowing from the commission of the crime.

The civil damages which may be recovered in criminal action are limited to consequential damage *caused by,* and *flowing from,* the commission of the crime of which the accused is convicted.

Thus, if a person was convicted of estafa for not having returned a bicycle which he had rented at the rate of ₱ 1.50 a day, the court may only impose as *indemnity* or reparation the value of the bicycle, but cannot further order him to pay the rents of said bicycle corresponding to the days during which the owner of the same was deprived of its use.

The *unpaid hire* of the bicycle arose under the *contract of hire* and did not result from the commission of the crime. The amount corresponding to the unpaid hire is recoverable in a civil action. (U.S. vs. Dionisio, 35 Phil. 141, 143)

Payment by the insurance company does not relieve the offender of his obligation to repair the damage caused.

The accused contends that inasmuch as the owner of the car damaged was already paid his damages by the insurance company, he should not be required to pay such damages caused by him. *Held:* That payment by the insurance company was not made on behalf of the accused, but was made pursuant to its contract with the owner of the car. But the insurance company is subrogated to the right of the offended party as regards the damages. (People vs. Reyes, C.A., 50 O.G. 665)

Art. 107. *Indemnification — What is included.* — Indemnification of consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

Indemnity refers generally to crimes against persons; reparation to crimes against property.

Indemnity is ordinarily the remedy granted to the victims of crimes against persons; reparation, to the victims of crimes against property.

Example of damages caused the injured party.

In physical injuries, the injured party is entitled to be paid for whatever he spent for the treatment of his wounds, doctor's fees, and for medicine, and furthermore, his salary or wages unearned by him because of his inability to work due to the injuries received by him, the damages sustained by him because of the loss of a limb or the lessening of his earning capacity, etc. (Guevara)

Indemnity for medical services still unpaid may be recovered.

Since the offended party has not yet paid the doctor for medical services, the court cannot sentence the accused to indemnify the offended party in the amount of ₱500.00, because the offended party has not spent it. Action is, however, reserved to him to recover it from the accused as soon as he shall have paid it to the doctor. (People vs. Granale, C.A., 50 O.G. 698)

But in the case of *Araneta vs. Arreglado*, 104 Phil. 529, 531, the Supreme Court held that, taking into account the necessity and cost of corrective measures to arrest the degenerative process taking place in the mandible and restore the injured boy to a nearly normal condition, surgical intervention was needed, for which the doctor's charges would amount to ₱3,000, while removal of the scar on the face obviously demanded plastic surgery, the indemnity granted by the trial court should be increased.

It will be noted that even if there was no actual payment of the doctor's fee, the amount necessary to pay the doctor for surgical operation was taken into account in awarding the damages.

Example of damages suffered by the family.

The chauffeur of defendant, through reckless imprudence, bumped a carretela, resulting in the death of four passengers. Chauffeur was convicted.

Plaintiffs brought action against defendant on its subsidiary liability as employer of the guilty chauffeur. Lower court sentenced defendant to pay, by way of indemnity, P500.00 to each family of the victims.

Defendant contended that since there were only three families involved, because two of the victims as brothers pertained to one family, it should pay only ₱1,500 instead of ₱2,000.

Held: The parents or heirs of the two deceased have suffered double damages by reason of the death of their two children, with the consequence that it is just to indemnify them in the same measure for the death of each. (Copiaco vs. Luzon Brokerage Co., Inc., 66 Phil. 184, 192)

Contributory negligence on the part of the offended party reduces the civil liability of the offender.

Since the deceased was guilty of contributory negligence, this circumstance reduces the civil liability of the offender in homicide through reckless imprudence. (People vs. De Guia, C.A., G.R. No. 11769-R, Aug. 29, 1955)

When civil indemnity may be increased on appeal.

The civil indemnity may be increased only if it will not require an aggravation of the decision in the criminal case on which it is based. In other words, the accused may not, on appeal by the adverse party, be convicted of a more serious offense or sentenced to a higher penalty to justify the increase in the civil indemnity. (Heirs of Rillorta vs. Firme, No. L-54904, Jan. 29, 1988, 157 SCRA 518, 522)

Damages recoverable in case of death.

They are:

1. In recent cases, the Supreme Court has raised it to ₱50,000.00. (Art. 2206, Civil Code; People vs. Ravelo, G.R. Nos. 78781-82, Oct. 15, 1991, 202 SCRA 655, 673)
2. For the loss of the earning capacity of the deceased. (Art. 2206, par. [1], Civil Code)

3. Support in favor of a person to whom the deceased was obliged to give, such person not being an heir of the deceased. (Art. 2206, par. [2], Civil Code)

4. Moral damages for mental anguish in favor of spouse, descendants and ascendants of the deceased. (Art. 2206, par. [3], Civil Code)

5. Exemplary damages in certain cases. (Art. 2230, Civil Code)

Damages in crimes and quasi-delicts.

In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant. (Art. 2202, Civil Code)

In crimes, the damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances. (Art. 2204, Civil Code)

The amount of damages for death caused by a crime or quasi-delict shall be at least Fifty thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages

for mental anguish by reason of the death of the deceased. (Art. 2206, Civil Code)

Civil indemnity for death caused by crime raised to ₱50,000.00.

The civil indemnity for death caused by a crime has been raised from ₱30,000.00 to 50,000.00 in accordance with the Resolution of the Supreme Court *en banc* dated August 30, 1990. (People vs. De Guzman, G.R. No. 82002, Dec. 20, 1990, 192 SCRA 478, 482; People vs. Ravelo, G.R. Nos. 78781-82, Oct. 15, 1991, 202 SCRA 655, 673)

Civil indemnity for crimes qualified by circumstances where the death penalty may be imposed.

The ₱50,000.00 awarded by the trial court as civil indemnity was correctly increased by the Court of Appeals to ₱75,000.00 which is the amount awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty. (People v. Barcena, G.R. No. 168737, 482 SCRA 543, 561 [2006])

If the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the indemnity of the victim shall be in the increased amount of not less than ₱75,000. (People vs. Victor, 292 SCRA 186)

Effect of Rep. Act No. 9346 on civil indemnity for heinous crimes.

It should be understood that the debarring of the death penalty through Rep. Act No. 9346 did not correspondingly declassify those crimes previously catalogued as "heinous." The amendatory effects of Rep. Act No. 9346 extend only to the application of the death penalty but not to the definition or classification of crimes. True, the penalties for heinous crimes have been downgraded under the aegis of the new law. Still, what remains extant is the recognition by law that such crimes, by their abhorrent nature, constitute a special category by themselves. Accordingly, Rep. Act No. 9346 does not serve as basis for the reduction of civil indemnity and other damages that adhere to heinous crimes. (People vs. Bon, G.R. No. 166401, Oct. 30, 2006)

In the case of *People vs. Salome,* G.R. No. 169077, Aug. 31, 2006, the Supreme Court sustained the grant of Php75,000 as civil indemnity to the victim, explaining "that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous."

Civil indemnity for rape.

The award of ₱50,000, as indemnity *ex-delicto* is mandatory upon the finding of the fact of rape. (People vs. Maglente, 306 SCRA 546)

Civil indemnity for rape with homicide.

The civil indemnity for rape with homicide is now set at ₱100,000.00. (People vs. Robles, G.R. No. 124300, March 25, 1999, People vs. Bantilan, G.R. No. 129286, Sept. 14, 1999)

Damages recoverable for rape with homicide.

In the case of *People vs. Gumimba,* G.R. No. 174056, Feb. 27, 2007, Appellant was ordered to indemnify the heirs of the victim in the amount of P100,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱100,000.00 as exemplary damages.

The amount of damages for death caused by a crime is increased from time to time by the Supreme Court.

Art. 2206 of the Civil Code provides that:

> "The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos even though there may have been mitigating circumstances x x x "

The amount of ₱3,000 referred to in the above article has already been increased by the Supreme Court first, to ₱6,000.00 in *People v. Amansec,* 80 Phil. 426, and then to ₱12,000.00 in the case of *People v. Pantoja,* G.R. No. 18793, promulgated October 11, 1968. As per the policy adopted by the Court en banc on August 30, 1990, the amount of civil indemnity for death caused by a crime has been increased to ₱50,000.00. (People vs. Teehankee, Jr., G.R. Nos. 111206-08, Oct. 6, 1995)

The indemnity for death caused by a quasi-delict used to be pegged at P3,000, based on Article 2206 of the Civil Code. However, the amount has been gradually increased through the years because of the declining value of our currency. (Pestaño vs. Spouses Sumayang, G.R. No. 139875, Dec. 4, 2000)

In quasi-delicts, the contributory negligence of the plaintiff shall reduce the damages that he may recover. (Art. 2214, Civil Code)

No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case. (Art. 2216, Civil Code)

Indemnity for Lost Earnings.

The indemnity for the loss of the victim's earning capacity is computed as follows:

Net earning capacity = Life expectancy x (Gross annual income - living expenses)

Life expectancy is based on the American Expectancy Table of Mortality and is computed using the formula: 2/3 x (80 - age of the deceased at the time of death).

In the absence of proof, living expenses is estimated to be 50% of the gross annual income.

(People vs. Lara, G.R. No. 171449, 23 Oct 2006, citing [People v. Dinamling, G.R. No. 134605, 12 March 2002, 379 SCRA 107, 124])

Documentary Evidence should be presented to substantiate a claim for loss of earning capacity.

The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence if there is testimony that the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice is taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed

as a daily-wage worker earning less than the minimum wage under current labor laws. (People vs. Mallari, G.R. No. 145993, 17 June 2003, 404 SCRA 170).

Computation of award for loss of earning capacity is based on the life expectancy of the deceased.

In the computation of the award for loss of earning capacity of the deceased, the life expectancy of the deceased's heirs is not factored in. The rule is well-settled that the award of damages for death is computed on the basis of the life expectancy of the deceased, and not the beneficiary. (Philippine Airlines, Inc. v. Court of Appeals, G.R. No. 54470, May 8, 1990, 185 SCRA 110, 121, citing Davila v. Philippine Airlines, No. L-28512, February 28, 1973, 49 SCRA 497)

Temperate damages may be awarded if income of victim is not sufficiently proven.

In *Pleno v. Court of Appeals,* G.R. No. L-56505, 9 May 1988, 161 SCRA 208, 224-225, the Supreme Court sustained the trial court's award of ₱200,000.00 as temperate damages in lieu of actual damages for loss of earning capacity because the income of the victim was not sufficiently proven, thus -

"The trial court based the amounts of damages awarded to the petitioner on the following circumstances:

> "As to the loss or impairment of earning capacity, there is no doubt that Pleno is an ent[re]preneur and the founder of his own corporation, the Mayon Ceramics Corporation. It appears also that he is an industrious and resourceful person with several projects in line, and were it not for the incident, might have pushed them through. On the day of the incident, Pleno was driving homeward with geologist Longley after an ocular inspection of the site of the Mayon Ceramics Corporation. His actual income however has not been sufficiently established so that this Court cannot award actual damages, but, an award of temperate or moderate damages may still be made on loss or impairment of earning capacity. That Pleno sustained a permanent deformity due to a shortened left leg and that he also suffers from double vision in his left eye is also established.

Because of this, he suffers from some inferiority complex and is no longer active in business as well as in social life. In similar cases as in Borromeo v. Manila Electric Railroad Co., 44 Phil 165; Coriage, *et al.* v. LTB Co., *et al.*, L-11037, Dec. 29, 1960, and in Araneta, *et al.* v. Arreglado, *et al.*, L-11394, Sept. 9, 1958, the proper award of damages were given."

Article 2224 of the Civil Code which provides that temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty, was applied in the cases of *People v. Singh,* 412 Phil. 842, 859 (2001), and *People v. Almedilla,* G.R. No. 150590, 21 August 2003, 409 SCRA 428, 433, to justify the award of temperate damages in lieu of damages for loss of earning capacity which was not substantiated by the required documentary proof.

In the *Singh* case, the Supreme Court awarded ₱200,000.00 by way of temperate damages, in lieu of the ₱5,760,000.00 awarded by the trial court as damages for loss of earning capacity of the deceased since the prosecution did not present sufficient evidence to prove the deceased's income.

In the *Almedilla* case, the Supreme Court did not compute damages for loss of earning capacity on the basis of the widow's testimony that her deceased husband was earning ₱22,000.00 a month and ₱10,000.00 from his sideline. Instead, the widow was awarded ₱25,000.00 as temperate damages.

Compensation for loss of earning capacity, not required that the victim is gainfully employed.

To be compensated for loss of earning capacity, it is not necessary that the victim, at the time of injury or death, is gainfully employed. Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. In *Cariaga v. Laguna Tayabas Bus Company,* No. L-11037, December 29, 1960, 110 Phil 346, the Supreme Court awarded to the heirs of the victim a sum representing loss of his earning capacity although he was still a medical student at the time of injury. However, the award was not without basis for the victim was then a fourth year medical student at a reputable school; his scholastic record, which was presented at the trial, justi-

fied an assumption that he would have been able to finish his course and pass the board in due time; and a doctor, presented as witness, testified as to the amount of income the victim would have earned had he finished his medical studies. (People vs. Teehankee, Jr., G.R. Nos. 111206-08, Oct. 6, 1995)

Moral Damages.

Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) xxx;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) x x x;

(10) xxx.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages. x x x. (Art. 2219, Civil Code)

Moral damages in rape.

In crimes of rape, moral damages may additionally be awarded to the victim, *without need for pleading or proof of the basis thereof.* x x x

x x x (T)he fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages are too obvious to still require the recital thereof at the trial by the victim, since the court itself even assumes and acknowledges such agony on her part as gauge of her credibility. What exists by necessary implication as being ineludibly present need not go through a testimonial charade. (People vs. Prades, 293 SCRA 411)

The amount of moral damages for rape has been set at ₱50,000. (People vs. Prades, *supra)*

Exemplary Damages.

In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party. (Art. 2230, Civil Code)

Exemplary damages may be given *only* when one or more aggravating circumstances are alleged in the information and proved during the trial. (People vs. Moran, Jr., G.R. No. 170849, March 7, 2007)

If a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. (People vs. Cabinan, G.R. No. 176158, March 27, 2007)

Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated. (Art. 2233, Civil Code)

While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. (Art. 2234, Civil Code)

With respect to the exemplary damages awarded by the trial court, the same are justified by the fact that the herein appellant without having been issued by competent authority a license to drive a motor vehicle, wilfully operated a BHP dump truck and drove it in a negligent and careless manner as a result of which he hit a pedestrian who died from the injuries sustained by him. (People vs. Medroso, Jr., No. L-37633, Jan. 31, 1975, 62 SCRA 245, 252)

Indemnification for consequential damages in homicide thru reckless imprudence.

The appellant was guilty of reckless negligence, and that the incident at bar was due to such negligence. The acts committed by him constitute the crime of multiple homicide with less serious physical injuries, prescribed and punished in Article 365, in relation with Article 48 of the Revised Penal Code.

The heirs of the deceased are entitled to indemnification for consequential damages under Article 38 of the Revised Penal Code. Hence, we find that —

(1) For the death of Crescenciano Barabag, who was around 70 years old when he died, leaving as heirs a brother and several nephews, an award of ₱3,000 indemnity to his heirs should be made. This amount would adequately indemnify his heirs for his death, inasmuch as he had no occupation when he died and there is no evidence as to the expenses incurred in his funeral.

(2) For the death of Juanito Camposo, who at the time of his death was 26 years old and was engaged in farming and other activities from which he derived an earning of about ₱120.00 a month, leaving as heirs a widow and 5 minor children, an award of ₱10,000.00 to his heirs should be made. This amount is deemed adequate for the loss to said heirs of the deceased's earnings, protection, guidance and company.

(3) For the death of Juan Camposo, who at the time he died was engaged in farming and basket weaving from which he derived an income of approximately ₱1,000.00 a year, leaving as heirs a widow and 11 children, ₱10,000 would be adequate for the loss to the latter of his earnings, protection, guidance and company.

(4) For the death of Jesus Butalid, who was about 12 years old and only a student when he died, leaving as heirs a father and a mother, an award of ₱5,000.00 to the latter would be adequate to compensate them for the loss of their son. (People vs. Biador, 55 O.G. 6384)

In a case where the deceased was crushed to death due to the negligence of the bus driver of the Meralco, the

factors considered by the court in assessing the actual and moral damages were: (1) the tender ages of the heirs at the time of the death of the deceased — ranging from 5 to 13 years; (2) the age (39 years), life expectancy (28.9 years), and state of health of the deceased; (3) his earning capacity; (4) actual pecuniary losses; (5) the pain and suffering of the deceased and his heirs; and (6) the financial situation of the party liable.

At the time of his death, the deceased was vice-president of Go Soc & Sons with an annual salary of ₱3,000. Using this item as the basis, the court awarded ₱9,000 as damages equivalent to his salary for 3 years, 1946-1948. The court found that if the deceased were alive in 1949, his salary would be ₱9,000 a year. Salaries for four years in the total amount of ₱18,000 were allowed. The award was considered conservative, because the court took into account only 4 years out of his life expectancy of 28.9 years. The award of ₱5,000 as moral damages was held to be reasonable. (Alcantara vs. Surro, 49 O.G. 2769)

Distinction between civil indemnity and moral damages.

Jurisprudence has elucidated that the award authorized by the criminal law as civil indemnity *ex-delicto* for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. For that matter, the civil liability *ex-delicto* provided by the Revised Penal Code, that is, restitution, reparation and indemnification, all corresponds to actual or compensatory damages in the Civil Code, since the other damages provided therein are moral, nominal, temperate or moderate, liquidated and exemplary or corrective damages, which have altogether different concepts and fundamentals. (People vs. Prades, 293 SCRA 411)

Actual damages must be proved.

Except as provided by law or by stipulation, one is entitled to an adequate compensation for such *pecuniary loss* suffered by him as he has *duly proved.* Such compensation is referred to as actual or compensatory damages. (Art. 2199, Civil Code)

Where the messenger of the Bureau of Forestry stole treasury warrants which were not cashed, no pecuniary loss was suffered by the government. Consequently, no indemnity can be properly imposed on the messenger who was convicted. (People vs. Neria, 71 Phil. 506, 507)

In a robbery case, the indemnity for the goods taken by the accused amounting to ₱2,000 was eliminated, because there was no allegation in the information as to the value of the goods taken. (People vs. Tundia, G.R. L-2576, May 25, 1951, 89 Phil. 807 [Unrep.])

The indemnity cannot be assessed on speculation or guesswork. (People vs. Dalena, CA-G.R. No. 11387-R, Oct. 25, 1954)

It is necessary for a party seeking the award of actual damages to produce competent proof or the best evidence obtainable to justify such award. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim shall be recognized in courts. The courts will not rely merely on supposition or conjecture. (People vs. Jamiro, 279 SCRA 290)

Moral and exemplary damages do not require proof of pecuniary loss.

When the offended party was injured with multiple wounds inflicted upon him by the accused, causing him to be hospitalized for 4 months, he is entitled to moral damages which, like the exemplary damages, *do not require proof of pecuniary loss,* as the assessment of such damages is left to the discretion of the court. The amount of ₱2,400 as moral damages is not excessive. (People vs. Gerodias, C.A., 51 O.G. 4614)

Moral damages in accident cases.

Moral damages could be recovered if a *pedestrian* was *injured* or *killed* by a motor vehicle due to the negligence of its driver. (Alcantara vs. Surro, 93 Phil. 472, 480; Castro vs. Acro Taxicab Co., 82 Phil. 359, 378)

But *no moral damages* can be claimed by an *injured passenger* in an action against the bus owner based on *culpa contractual.* Said moral damages are not allowed under Art. 2219 of the Civil Code. The negligent driver was the one who caused the moral damages not the bus owner. (Cachero vs. Manila Yellow Taxicab Co., 54 O.G. 6599)

Claim for moral damages does not determine jurisdiction of court.

The claim for moral damages, as only an incident to a criminal case, does not determine jurisdiction of the court. (People vs. Tejero, C.A., 59 O.G. 739)

Temperate damages.

Under Article 2224 of the Civil Code, temperate or moderate damages (which are more than nominal but less than compensatory damages) may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty. (Victory Liner, Inc. v. Gammad, G.R. No. 159636, 25 November 2004)

Temperate damages, in the amount of ₱25,000.00, must be awarded considering that it was established that the victim's family incurred expenses for his hospitalization and burial. (People vs. Cabinan, G.R. No. 176158, March 27, 2007, citing *People vs. Abatayo*, G.R. No. 139456, July 7, 2004, 433 SCRA 562, 581)

Attorney's fees in criminal cases.

The recovery of attorney's fees in the concept of actual or compensatory damage is allowed under the circumstances provided for in Article 2208 of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. (People vs. Bergante, *et. al.*, 120369-70, February 27, 1998)

Article 2208 of the Civil Code allows the recovery of attorney's fees in cases when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

We affirm the award of ₱30,000 for attorney's fees made by the trial court and the appellate court. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation may be recovered when exemplary damages have been awarded, as in this case. (España vs. People, G.R. No. 163351, June 21, 2005)

Civil liability not part of the punishment.

As the civil liability is not part of the punishment for the crime, the action of the Supreme Court in affirming the judgment as to the guilt and punishment of the accused and of reversing it as to the question of damages, with instructions to try the civil branch of the case, does not constitute double jeopardy. (U.S. vs. Heery, 25 Phil. 600, 611)

Art. 108. *Obligation to make restoration, reparation for damages, or indemnification for consequential damages and action to demand the same — Upon whom it devolves.* — The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs of the person liable.

The action to demand restoration, reparation and indemnification likewise descends to the heirs of the person injured.

The heirs of the person liable has no obligation if restoration is not possible and the deceased left no property.

Thus, if A stole a ring which he later sold to an unknown person and after A's conviction by final judgment, A died but he left no property to meet the reparation, A's heirs cannot be made to repair the damage. But if A left property, the heirs may be required to pay out of the proceeds of the property of A. The same thing may be said with respect to indemnification.

Civil liability is possible only when the offender dies after final judgment.

If the obligation is liquidated, that is, if the offender before his death was condemned by final judgment to make restitution, reparation, or indemnification, the offended party may make effective his claim by following the procedure provided for in Rule 86 of the Rules of Court, that is, by filing a copy of the judgment of conviction against the deceased with the court taking cognizance of the testate or intestate proceedings.

If the death of the offender took place *before* any final judgment of conviction was rendered against him, the *action* for restitution, reparation, or indemnification must necessarily be *dismissed,* in accordance with the provisions of Art. 89, par. 1, of this Code. (Guevara)

Indemnity not possible in acquittal, right of heirs of deceased.

The charge of murder was dismissed by the court because it was covered by the amnesty proclamation. The court, however, allowed an indemnity to be paid by the accused in favor of the heirs of the deceased.

Held: The case having been dismissed by the court, no judgment for indemnity was proper in the criminal proceeding.

But the heirs of the deceased have a right to enforce the civil responsibility of the accused in their favor in a civil action. (U.S. vs. Madlangbayan, 2 Phil. 426, 428-429)

Art. 109. *Share of each person civilly liable.* — If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.

Illustration:

With respect to the civil liability, the indemnity of ₱6,000.00 awarded by the Court should be apportioned as follows: the principal, Dungo-an Abao, shall be liable *primarily* for ₱3,000.00; and the four accomplices (petitioners) shall be liable *primarily* and *in solidum* among themselves for ₱3,000.00. The subsidiary liability of all of them shall be enforced in accordance with the provisions of Article 110 of the Revised Penal Code. (Lumiguis vs. People, G.R. No. L-20338, April 27, 1967, 19 SCRA 842, 847) The last sentence means "that, in case of insolvency of the accomplices, the principal shall be subsidiarily liable for their share of the indemnity; and in case of the insolvency of the principal, the accomplices shall be subsidiarily liable, jointly and severally, for the indemnity due from said principal." (People vs. Cortes, 55 Phil. 143, 150)

Art. 110. ***Several and subsidiary liability of principals, accomplices, and accessories of felony — Preference in payment.*** **— Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally** ***(in solidum)*** **among themselves for their quotas, and subsidiarily for those of the other persons liable.**

The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices; and lastly, against that of the accessories.

Whenever the liability ***in solidum*** **or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares.**

Civil and subsidiary liabilities of principals.

When there are principals and accessories in the commission of the crime of theft of large cattle valued at ₱200.00, the principals are ***solidarily*** **liable for ₱150.00 which represents their quota and** ***subsidiarily*** **liable for P50.00 representing the quota of their accessories. (People vs. Tocbo, C.A., 45 O.G. 2571)**

Civil and subsidiary liabilities of accomplices.

The principal is primarily liable for his own part of the indemnity. The several accomplices are jointly and severally liable for the portion adjudged against them and are subsidiarily liable for the portion of their principal in case of the latter's insolvency. (People vs. Bantagan, 54 Phil. 834, 841)

Art. 111. ***Obligation to make restitution in a certain case.*** **— Any person who has participated gratuitously in the proceeds of a felony shall be bound to make restitution in an amount equivalent to the extent of such participation.**

Not criminally liable.

The person who participated *gratuitously* in the proceeds of a felony referred to in this article is not criminally liable.

Must not be an accessory.

If the person who participated gratuitously in the proceeds of the felony knew that the property came from an illegal source, he is an accessory and he is not only civilly liable, but also criminally liable.

"Participated gratuitously."

This article has reference to a case of an *innocent* person who has participated in the proceeds of a felony through the *liberality* of the offender. In other words, he should not have paid for the stolen property which he received from the offender.

If the innocent person paid for the article, because he bought it, Art. 105 applies.

Example of the application of Art. 111.

Suppose A after having stolen a diamond ring worth ₱1,000, gives it to B who, not knowing the illegal origin of same, accepts it. Later B sells the ring for ₱500 to a foreigner, who immediately leaves the country. As the ring cannot be returned, the remedy available to the offended party is to obtain from the offender the reparation equivalent to the value of the ring. In case A is insolvent, B shall be subsidiarily liable in the sum not exceeding ₱500 which is the *gratuitous share* in the commission of the crime. (Guevara)

The fortune of the innocent person must be augmented by his participation in the proceeds of the crime.

It is necessary that his fortune has been augmented by his participation in the proceeds of the crime. If he merely participated in the eating of the stolen property, he is not obligated to make restitution, because his fortune was not enhanced thereby. (1 Viada, Codigo Penal, 4th Ed., p. 550)

Chapter Three

EXTINCTION AND SURVIVAL OF CIVIL LIABILITY

Art. 112. ***Extinction of civil liability.*** **— Civil liability established in Articles 100, 101, 102, and 103 of this Code shall be extinguished in the same manner as other obligations, in accordance with the provisions of the Civil Law.**

Civil liability is, therefore, extinguished:

(1) By payment or performance;

(2) By the loss of the thing due;

(3) By the condonation or remission of the debt;

(4) By the confusion or merger of the rights of creditor and debtor;

(5) By compensation;

(6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription, are governed elsewhere in this Code. (Art. 1231, Civil Code)

Prescription is one of the modes of extinguishing obligations according to Art. 1231 of the Civil Code. Where a civil action for damages due to an alleged libel was brought more than one year after the cause of action accrued, said action is barred by prescription. Art. 1147 of the Civil Code provides that a civil action for defamation must be brought within one year. (Tejuco vs. E.R. Squibb & Son Phil. Corp., 103 Phil. 594, 595)

Civil liability is extinguished by subsequent agreement between the accused and the offended party.

On March 31, 1959, an agreement was entered into between appellant and complainant whereunder the former agreed to refund to the latter, in stated installments, the sum of $1,210.89, representing the overpayments made for the account of Alfonso Marte, Jr. This agreement was partly executed inasmuch as appellant had made the down payment of ₱170.00 thereon, as well as seven (7) installments of ₱15.00 each or an aggregate amount of ₱275.00. Although the criminal action remained unimpaired, this subsequent agreement entered into between appellant and complainant was, in effect, a novation of the civil liability of appellant. This was well within the right of the parties to do inasmuch as the civil aspect of a crime may be compounded by subsequent agreement or otherwise extinguished by the same causes for the extinguishment of civil obligations under the Civil Law. (Articles 23 and 112, Revised Penal Code) Since novation is a recognized mode of relatively extinguishing a civil obligation, it follows that appellant's civil liability arising from the crime was superseded by the novatory agreement. Complainant's recourse is to enforce the agreement aforesaid. It has become improper to make an award for civil indemnity at this instance. (People vs. Tablante Vda. de Marte, C.A., 65 O.G. 1328, February 10, 1969)

Effect of condonation of civil liability.

The offended party in a criminal case executed an affidavit in which he swore to the following: "That in conscience I hereby withdraw, condone, dismiss and waive any and all claims, civil, criminal or administrative, that I may have against Amancio Balite due to or by reason of the misunderstanding which brought about the filing of the said criminal case." It was held that affidavit of the offended party necessarily wiped out the civil indemnity of ₱5,000.00 granted by the lower court.

Express condonation by the offended party has the effect of waiving civil liability with regard to the interest of the injured party. For civil liability arising from an offense is extinguished in the same manner as other obligations, in accordance with the provision of the civil law. (Balite vs. People, No. L-21475, Sept. 30, 1966, 18 SCRA 280, 290)

Civil liability may arise from —

(1) Crime,

(2) Breach of contract *(culpa contractual),* or

(3) Tortious act *(culpa aquiliana).*

The first is governed by the Revised Penal Code. The second and the third are governed by the Civil Code. The civil liability from any of those three sources is extinguished by the same causes enumerated.

Offender is civilly liable even if stolen property is lost by reason of force majeure.

Where it appears that a person has been deprived of the possession of his property, the malefactor is responsible to the owner either (1) *for the return of the property* or (2) *for the payment of its* value if it cannot be returned, and this whether the property is *lost* or *destroyed* by the act of the *malefactor* or that of any other person, or as a result of *any other* cause or causes. (U.S. vs. Mambang, 36 Phil. 348, 349; See Art. 1268, Civil Code)

Thus, even if the cattle stolen by the accused died from rinderpest while in the possession of the constabulary during the pendency of the trial, in case of conviction, the accused are still liable civilly for the reasonable value of the said cattle.

Art. 113. *Obligation to satisfy civil liability.* — Except in case of extinction of his civil liability as provided in the next preceding article, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence or any other reason.

"Notwithstanding the fact that he x x x has not been required to serve the same (sentence) by reason of amnesty, pardon, commutation of sentence, or any other reason."

While amnesty wipes out all traces and vestiges of the crime,

it does not extinguish the civil liability of the offender. (U.S. vs. Madlangbayan, 2 Phil. 426, 428-429)

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence. (Art. 36, par. 2, Revised Penal Code)

Application for probation affects only the criminal aspect of the case.

Probation is defined as "a disposition under which a defendant, *after conviction and sentence,* is released subject to conditions imposed by the Court and to the supervision of a probation officer." (Sec. 3, P.D. No. 968 [Probation Law]) The "conviction and sentence" clause of the statutory definition clearly signifies that probation affects only the criminal aspect of the case. If under Article 113 of the Revised Penal Code, the obligation to satisfy civil liability continues notwithstanding service of sentence or nonservice due to amnesty, pardon, commutation of sentence, *or any other reason,* there is no reason why an application for probation should have an opposite effect insofar as determination of civil liability is concerned. (Budlong vs. Apalisok, No. L-60151, June 24, 1983, 122 SCRA 935, 938-939, 941)